

lawyers at the same time pocketed over \$9 million. What is interesting is that, meanwhile, Blockbuster was allowed to continue that same late fee practice that the lawsuit was ostensibly launched to end—\$9 million to the lawyers and a \$1 coupon—but the practice continued.

You say that is outrageous and it couldn't be. It is a fact.

Another anecdote and equally outrageous had to do with Coca-Cola and apple juice. What happened a few years ago was the plaintiffs' lawyers charged that the Coca-Cola drink company was improperly adding sweeteners to its apple juice. These plaintiffs' lawyers, who were parading as vigilant deans of public health, managed to secure—yes, once again—a 50-cent coupon for the apple juice victims but the lawyers received \$1.5 million.

If you think that is outrageous, in a class action suit against the Bank of Boston plaintiffs actually lost money when their accounts were drawn down to pay their lawyers \$8.5 million in fees.

That is large business. Also, these large suits have a direct impact on small businesses. These small businesses get drawn into this feeding frenzy that is going on around the country. What happens is that in order to avoid going to Federal court, the class action legal team will rope in local small businesses in the area as codefendants in order to get that case decided in—it may be an adjacent county or an adjacent State—a favorable State. Once the window during which the real class action target can remove the case to the Federal court closes, that unlucky mom-and-pop shop that happened to be in the wrong county or the wrong town at the wrong time is dropped from the case, but not before they have had to invest considerable sums of money in this process of defending themselves.

Such lawsuits are frivolous. Such lawsuits are unnecessary. They are wasteful and they translate into a burden on our economy, a burden on our judicial system, a burden on taxpayers, and clearly a burden on the practice of law. Who can help but be cynical about a system which we have today that awards lawyers millions of dollars over an apple juice sweetener dispute?

So this can't go on. Too many of these lawsuits are little more than operations which shake down these small businesses or these large businesses.

Oftentimes the lawyers are counting on the company to pay a sizable settlement just to avoid that higher cost of going to court. Companies—whether big or small—should no longer be subjected to this blackmail, which is wrong and unfair. It needs to stop.

Today, we tried to take this issue to the floor of the Senate so it could, once and for all, be addressed. Indeed, a majority—it was a bipartisan majority—of Senators said, yes, it is a problem; yes, it deserves to be debated in the Senate; yes, several may have wanted to amend it; yes, it is time to address this issue

which is a burden on the taxpayer. It is a burden on working men and women. It is a burden on small businesses. It is a burden on families.

That was a majority. But in this body it takes 60 votes, not just a majority, 60 of 100 Senators to say, yes, we are going to address that. We only had 59.

I hope my colleagues will come back to the table. As majority leader, I promise I will stay on this issue until we have it resolved. It may take constituents around the country saying, yes, it is important to call Senators, to talk to Senators and encourage Senators in town meetings, to say, yes, it is important to address this problem.

I hope my colleagues recognize the significance of this issue to our economy and to working families.

If one more person came forward, we would be able to address this once and for all. That would be good for the country. It would be good for the law. It would be good for the economy. And it is good for the legitimate claims that are out there and should be fairly and appropriately settled.

DIRECT SUPPORT PROFESSIONALS RECOGNITION

Mr. FRIST. I ask unanimous consent the HELP Committee be discharged from further action on S. Con. Res. 21 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 21) expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent the amendment at the desk be agreed to, the concurrent resolution, as amended, be agreed to, the amendment to the preamble, which is at the desk, be agreed to, the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1897) was agreed to, as follows:

AMENDMENT NO. 1897

In section 2, strike "ensure" and insert "promote".

The concurrent resolution (S. Con. Res. 21), as amended, was agreed to.

The amendment (No. 1898) was agreed to, as follows:

AMENDMENT NO. 1898

In the first whereas clause of the preamble, before the semicolon, insert "including

mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions".

Strike the second whereas clause of the preamble.

Strike the eighth whereas clause of the preamble.

Strike the ninth whereas clause of the preamble.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

S. CON. RES. 21

Whereas there are more than 8,000,000 Americans who have mental retardation or other developmental disabilities, including mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions;

Whereas individuals with mental retardation or other developmental disabilities have substantial limitations on their functional capacities, including limitations in two or more of the areas of self-care, receptive and expressive language, learning, mobility, self-direction, independent living, and economic self-sufficiency, as well as the continuous need for individually planned and coordinated services;

Whereas for the past two decades individuals with mental retardation or other developmental disabilities and their families have increasingly expressed their desire to live and work in their communities, joining the mainstream of American life;

Whereas the Supreme Court, in its *Olmstead* decision, affirmed the right of individuals with mental retardation or other developmental disabilities to receive community-based services as an alternative to institutional care;

Whereas the demand for community supports and services is rapidly growing, as States comply with the *Olmstead* decision and continue to move more individuals from institutions into the community;

Whereas the demand will also continue to grow as family caregivers age, individuals with mental retardation or other developmental disabilities live longer, waiting lists grow, and services expand;

Whereas outside of families, private providers that employ direct support professionals deliver the majority of supports and services for individuals with mental retardation or other developmental disabilities in the community;

Whereas direct support professionals provide a wide range of supportive services to individuals with mental retardation or other developmental disabilities on a day-to-day basis, including habilitation, health needs, personal care and hygiene, employment, transportation, recreation, and housekeeping and other home management-related supports and services so that these individuals can live and work in their communities;

Whereas direct support professionals generally assist individuals with mental retardation or other developmental disabilities to lead a self-directed family, community, and social life;

Whereas private providers and the individuals for whom they provide supports and services are in jeopardy as a result of the growing crisis in recruiting and retaining a direct support workforce;

Whereas providers of supports and services to individuals with mental retardation or other developmental disabilities typically draw from a labor market that competes with other entry-level jobs that provide less physically and emotionally demanding work,

and higher pay and other benefits, and therefore these direct support jobs are not currently competitive in today's labor market;

Whereas annual turnover rates of direct support workers range from 40 to 75 percent;

Whereas high rates of employee vacancies and turnover threaten the ability of providers to achieve their core mission, which is the provision of safe and high-quality supports to individuals with mental retardation or other developmental disabilities;

Whereas direct support staff turnover is emotionally difficult for the individuals being served;

Whereas many parents are becoming increasingly afraid that there will be no one available to take care of their sons and daughters with mental retardation or other developmental disabilities who are living in the community; and

Whereas this workforce shortage is the most significant barrier to implementing the Olmstead decision and undermines the expansion of community integration as called for by President Bush's New Freedom Initiative, placing the community support infrastructure at risk: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This resolution may be cited as the "Direct Support Professional Recognition Resolution".

SEC. 2. SENSE OF CONGRESS REGARDING SERVICES OF DIRECT SUPPORT PROFESSIONALS TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

It is the sense of the Congress that the Federal Government and the States should make it a priority to promote a stable, quality direct support workforce for individuals with mental retardation or other developmental disabilities that advances our Nation's commitment to community integration for such individuals and to personal security for them and their families.

Mr. BUNNING. Mr. President, I am pleased the Senate has agreed to pass S. Con. Res. 21, the Direct Support Professional Recognition Resolution. Earlier this year, I introduced this bipartisan resolution with Senator LINCOLN. This resolution recognizes the importance of direct support professionals who are responsible for helping those with mental retardation and disabilities integrate into and excel in communities across the nation.

These professionals provide a wide range of supportive services to their clients on a daily basis, including habitation, health needs, personal care and hygiene, employment, transportation, recreation, housekeeping and other home management-related supports and services so that these individuals can live and work in their communities. These jobs are demanding both physically and emotionally, and these direct support professionals should be commended for the important work they do. This resolution and action by the Senate recognizes just how important they are to others in need.

The recruitment and retention of quality, trained direct support workers is critical to providing high-quality support and services to disabled individuals. Unfortunately, there is a crisis in the direct support field, particularly in finding and keeping quality direct support workers. In fact, the annual turnover rates of direct support work-

ers range from 40 percent and 75 percent.

Several factors have contributed to this crisis, including a tightened labor market, growing demand for community-based care, and legal decisions supporting community integration. Unfortunately, many parents who rely on direct support professionals to help care for with disabled child in the community are becoming concerned that these professionals may not be available in the future. No parent should be faced with these types of worries.

This resolution draws much-needed attention to the problems surrounding the long-term care infrastructure for individuals with developmental disabilities who live in their communities. The resolution calls on the Federal and State governments to make it a priority to promote a quality, stable direct support workforce that advances this nation's commitment to community integration for individuals with mental retardation and other developmental disabilities.

Without well-trained and quality direct support professionals, many disabled individuals may find living in the community more difficult. We shouldn't let that happen, and I hope this resolution can help focus Congress's and the Nation's attention on this important matter.

I am grateful for the Senate's passage of this resolution and its concern for our direct support professionals and those individuals they care for.

MEASURES PLACED ON THE CALENDAR—H.J. RES. 73 AND H.R. 1446

Mr. FRIST. I understand there are two bills at the desk due for a second reading and I ask unanimous consent the bills be given a second reading en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 73) making further continuing appropriations for fiscal year 2004, and for other purposes;

A bill (H.R. 1446) to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

Mr. FRIST. I object to further proceedings to the measures en bloc at this time.

The PRESIDING OFFICER. The objection having been heard, the measures will be placed on the Calendar.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session

to consider the following nomination on today's Executive Calendar, calendar No. 249. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

THE JUDICIARY

Thomas M. Hardiman, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

Mr. LEAHY. Mr. President, the Senate recently voted to confirm an outstanding district court nominee to the Western District of Pennsylvania named Kim Gibson. Today, the leadership has decided to bring up the nomination of Thomas Hardiman who happens to be nominated to the very same court.

Unfortunately, this nominee's suitability for the Federal bench pales in comparison to Judge Gibson. Judge Gibson came to us with judicial experience, a unanimous "well qualified" rating from the ABA, and the highest rating from his local bar association.

In contrast, Mr. Hardiman has no judicial experience, a relatively small amount of litigation experience and has been given very low peer-review ratings by the ABA and the same local bar association that "highly recommended" Judge Gibson. The Allegheny County Bar Association recently released its opinions about the three pending judicial nominees from their community. After their extensive review, the Bar Association determined that they could simply "not recommend" Mr. Hardiman for a lifetime appointment to their Federal trial court.

Although neither Bar Association explained precisely why Mr. Hardiman received such bad reviews, his communications with the Judiciary Committee potentially shed some light on their concerns.

Mr. Hardiman showed a lack of candor in describing the extent of his litigation experience. After reporting that he had tried 54 cases to judgment, he subsequently revised the number downward to 19, and then upon further review he explained that several of these 19 cases were not actually trials that resulted in a judgment.

In addition, opposing counsel contacted the committee to raise concerns about Mr. Hardiman's exceedingly narrow view of fair housing statutes and his questionable litigation tactics. Counsel in a housing discrimination case entitled, *Alexander v. Riga*, criticized Mr. Hardiman's conduct when he represented landlords who repeatedly refused to show African-American couples an apartment that was for rent. Despite a jury finding of discrimination, Mr. Hardiman argued that there was no resulting damage and the district court adopted his reasoning.