

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.

On appeal to the Third Circuit, Mr. Hardiman analogized the harm resulting from the racial discrimination at issue to running a red light. The Third Circuit criticized his dismissive analogy and found that his argument and the district court's adoption of it would undermine the Federal housing statutes. The Third Circuit rejected Mr. Hardiman's argument and reversed the trial court.

I am also troubled by Mr. Hardiman's discovery tactics. In answers to written committee questions, he admitted that in the Riga case he repeatedly violated the Federal Rules of Civil Procedure by issuing a subpoena to a nonparty without noticing opposing counsel in this case. After answering two rounds of written questions, Mr. Hardiman subsequently admitted that he had not even reviewed his Riga files before submitting his answers to the committee.

Even the trial judge criticized Mr. Hardiman's associate about their litigation strategy and tactics in this case, including the improper subpoenas. Significantly less troubling matters stalled many judicial nominees of President Clinton.

If this were anytime between 1995 and 2000 and this were a Clinton nominee, the Republican majority would never have accorded this type of nomination a vote. Recall the fate of Clarence Sundrum, Dolly Gee, the 8 district court nominees to vacancies in Pennsylvania and so many others blocked by Republicans from ever being considered.

The Senate has already confirmed 165 of this President's judicial nominees. The current pace of confirmation stands in stark contrast to what occurred with judicial nominees during the Clinton administration. It was not until well into the fourth year of President Clinton's second term, when Republicans controlled the Senate, before this many judicial nominees were confirmed.

It took President Reagan his entire first term to get this many judicial nominees confirmed, and that was with a Senate that was controlled by the same party.

It also took President George H.W. Bush well into his fourth year to get this many of his judicial nominees confirmed.

In contrast, today, with the shifts in Senate control, it has effectively taken a little more than 2 years of rapid Senate action to confirm 165 judicial nominees for this President, including 100 during Democratic control. This year alone the Senate has confirmed 65 judicial nominees, including 12 circuit court nominees in 2003. This includes more judicial confirmations in just 10 months than Republicans allowed for President Clinton in 1995, 1996, 1997, 1999, or 2000. Overall, we have confirmed 29 circuit court nominees of President Bush since July of 2001, which is more than were confirmed at this time in the third year of President

Reagan's first term, President George H.W. Bush's term, or either of President Clinton's terms.

The Senate has held hearings for 13 Pennsylvania nominees of President Bush's to the Federal courts in Pennsylvania. While I was chairman, the Senate held hearings for and confirmed 10 nominees to the district courts in Pennsylvania, plus Judge D. Brooks Smith to the Third Circuit Court of Appeals. In total, we have already confirmed 13 of this President's judicial nominees to the Federal courts in the State of Pennsylvania. Five of these new judges have already been confirmed to the Western District of Pennsylvania.

A look at the Federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated far better than President Clinton's. This treatment is in sharp contrast to the way vacancies in Pennsylvania were kept vacant during Republican control of the Senate when President Clinton was in the White House, particularly regarding nominees in the western half of the State.

Just a few months ago, on May 16, 2003, Jon Delano wrote in the Pittsburgh Business Times, an article titled "Despite Bush Protests, Court Vacancies are Down," about how this President's nominees in the western part of Pennsylvania have been treated more fairly than President Clinton's nominees.

He wrote:

Take the Western District of Pennsylvania, for example. During the years of the Santorum filibuster, that court of 10 judges had as many as five vacancies. Today, the Senate has confirmed four Bush appointees—Judges Joy Conti, David Cercone, Terry McVerry, and Art Schwab—and the fifth nomination, attorney Tom Hardiman, has just been sent to the Senate.

With the elevation and confirmation of Judge Brooks Smith to the U.S. Court of Appeals, the president still needs to name one more judge to the local court, but once completed, Mr. Bush, with less than three years in office, will have named—and the Senate will have confirmed—six of the 10 judges on the local Federal court. That hardly sounds like obstructionism.

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote: Patrick Toole, John Bingler, Robert Freedberg, Lynette Norton, Legrome Davis, David Fineman, David Cercone, Harry Litman, Stephen Lieberman, and Robert Cindrich to the Third Circuit.

Despite how well-qualified these nominees were, they were never considered by the Senate, many waited more than a year for action.

Unfortunately, Mr. Hardiman's record is similar to the record of far too many of President Bush's judicial nominees. Far too many of this President's judicial nominees have less courtroom experience than partisan experience.

In fact, 25 of this President's judicial nominees have earned partial or majority "Not Qualified" ratings from the ABA. In addition to the ABA's review, Mr. Hardiman was also "not recommended" by his county bar association.

Certainly, the citizens of Western Pennsylvania deserve a well-qualified judiciary to hear their important legal claims in Federal court.

I have great respect for the senior Senator from Pennsylvania. I appreciate his efforts to help shepherd the White House's nomination through the Senate.

After considering the negative impression Mr. Hardiman has made on his fellow Pennsylvanians regarding his suitability for this lifetime appointment and his conduct before the Judiciary Committee, I believe that this is among the weakest nominees we have considered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

UNANIMOUS CONSENT AGREEMENT—H.R. 2989

Mr. FRIST. Mr. President, I ask unanimous consent that on Thursday, October 23, following the period of morning business, the Senate proceed to the consideration of calendar No. 279, H.R. 2989, the Transportation appropriations bill.

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

ORDERS FOR THURSDAY, OCTOBER 23, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Thursday, October 23. I further ask consent that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for 60 minutes, with the first 30 minutes under the control of the minority leader or his designee and the second 30 minutes under the control of Senator HUTCHISON or her designee; provided further, that following morning business, the Senate begin consideration of calendar No. 279, H.R. 2989, the Transportation appropriations bill, as provided under the previous order.

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

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow, following morning business, the Senate