

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.