

Testimony of

The Honorable Russ Feingold

July 17, 2002

This hearing will come to order. Good morning. Welcome to this hearing of the Senate Judiciary Committee's Subcommittee on the Constitution. I want to thank everyone for being here today.

This hearing concerns Senate Joint Resolution 35, a proposed victims' rights amendment to the U.S. Constitution. I agreed to hold this hearing at Senator Feinstein's request. And I did so, even though I oppose her proposed amendment, because I agree with her goal: to protect and enhance the rights of victims of crime.

I share the desire to ensure that those in our society who most directly feel the harm callously inflicted by criminals do not suffer yet again at the hands of a criminal justice system that ignores victims. A victim of a particular crime has a personal interest in the prosecution of the alleged offender. Victims want their voices to be heard. They want and deserve to participate in the system that is designed to redress the wrongs that they -- and society -- have suffered at the hands of criminals.

But Congress should proceed very carefully when it comes to amending the Constitution. After thinking long and hard about this issue since I've been a U.S. Senator and this amendment has been proposed, I am just not convinced that an amendment to the Constitution is a necessary means to bring about the end of protecting the rights of victims that we all share. I believe that Congress can better protect the rights of victims by ensuring that current state and federal laws are enforced, providing resources to prosecutors and the courts to allow them to enforce and comply with existing laws, and working with victims to enact additional federal legislation, if needed.

In the 207 year history of the US Constitution, only 27 amendments have been ratified -- just 17 since the Bill of Rights was ratified in 1791. Two of the 17 concerned prohibition and so cancelled each other out. Yet, literally hundreds of constitutional amendments have been introduced in the past few Congresses.

To change the Constitution now is to say that we have come up with an idea that the Framers of that great charter did not. Yes, there are occasions when we need to bring the Constitution up to date, as with granting women the right to vote and protecting the civil rights of African-Americans after the Civil War. But it is difficult to believe that the basic calculus of prosecutor, defendant, and victim has changed much since the foundation of the Republic. There was some debate on this when we considered the amendment on the floor in the last Congress, but I think it is fairly well-established that public prosecutions were the norm when the Constitution was written and adopted.

I also believe that the needs of all victims are impossible to foresee. Statutes are a better, more flexible, and faster response than amending the Constitution. For example, Congress enacted a

statute after the Oklahoma City bombing and created a victims compensation program after September 11. And now, we are in the process of amending that statute to cover victims of other terrorist attacks.

But unlike statutes, constitutional amendments cannot be easily modified. Once this amendment is ratified, if some new development in the law requires a change to the amendment, we would once again need to get approval of 2/3 of the members of each House of Congress, and then ratification by 3/4 of the state legislatures. This is a real problem because there are numerous uncertainties about the effect of this amendment. Even the sponsors have re-written the entire amendment since the last time it was considered by the Senate.

I might add, however, that of all the constitutional amendments I have considered since I became a Senator, this one is perhaps the least troubling because the goal is so laudable. In fact, as I noted before, as a Senator in the Wisconsin State Senate, I voted in favor of amending the Wisconsin state constitution to include protections for victims. Thirty-three states now have a state constitutional protection for victims, and every state in the country has statutes to protect victims.

But, the Wisconsin state constitution, like a number of other state constitutions, appropriately clarifies that the rights granted to victims cannot reduce the rights of the accused in a criminal proceeding. Unfortunately, the proposed victims' rights amendment before us today does not contain a similar provision. This has been a source of significant debate in past years. Proponents of the amendment have argued that the rights of the accused are not undermined by giving victims constitutional rights. Yet, they have steadfastly refused to add a clause such as that contained in the Wisconsin state victims' rights amendment to make it absolutely clear that that is the case. They have never provided a convincing justification for that refusal in my opinion.

Finally, I am also concerned that a victims' rights amendment could jeopardize the ability of prosecutors to investigate their cases, to prosecute suspected criminals, and to balance the competing demands of fairness and truth-finding in the criminal justice system.

And, so, today, I look forward to hearing from our witnesses on the issue of whether it is necessary for Congress to take the rare and extraordinary step of amending the Constitution to protect the rights of victims.

Let me now turn to the ranking member for his opening remarks.