

Testimony of

The Honorable Russ Feingold

July 24, 2003

Sen. Russ Feingold
Statement on Judiciary Committee Rules
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Mr. Chairman, as you might imagine, I am very disappointed at what occurred yesterday. I am prepared to move forward on today's agenda, but I do think it is important to note for the record my strong disagreement with the Committee's action yesterday to once again ignore and violate its own rules in order to report out Mr. Pryor's nomination.

We faced this problem early this year in the Committee, and until yesterday I thought we had reached a resolution that would allow us to go forward. We on this side lifted our objection to proceeding with floor votes on John Roberts and Justice Deborah Cook after we received assurances that Rule IV would be reinstated and abided by from that time forward. Yesterday, that agreement was put to the test, and I'm sorry to say that the Committee failed.

Just as we did in connection with the Roberts and Cook nominations in late February, yesterday we invoked Rule IV and asked that a vote on the Pryor nomination not be taken. But once again, the Rule was violated. It will be very hard to convince us that we should let Mr. Pryor's nomination proceed any further. This time, a simple promise to reinstate the rule probably won't be enough.

Mr. Chairman, the interpretation of Rule IV that you stated yesterday conflicts with text of the rule, the practice of the Committee for 24 years under five separate Chairmen, including yourself, and with the history of the adoption of the rule. It was as wrong yesterday as it was in February when you first expressed it. On March 27, I laid out the history of the adoption of the rule in some detail. I won't repeat that today, but I would ask that a copy of my statement from that day be placed in the record. And I urge my colleagues to think long and hard about what they are doing to the respect for the rule of law that should be the hallmark of this Committee, more than any other Committee in the Senate, when they go along with an interpretation of a committee rule that is so plainly erroneous.

I want to emphasize, Mr. Chairman, that we have never sought to use Rule IV to indefinitely delay a nomination. It is not like a filibuster on the floor that can be used in some cases to kill a bill. With respect to Mr. Roberts and Justice Cook, we wanted only adequate hearings so that we could properly exercise our constitutional responsibility to advise and consent on the nomination. With respect to Mr. Pryor, we only want to complete an investigation that is well underway already. We aren't going to try to kill the nomination in committee by never voting on it. But we

should not be forced to vote on a nomination before we have all of the information that we feel is needed to make an informed recommendation to our colleagues in the full Senate.

So once again, Mr. Chairman, we are in a very difficult situation. The way to move forward is with respect for each other and for the Committee's rules and practices, not by the exercise of raw political power as was done yesterday. I very much regret that once again the Committee has gone down this path.

Thank you Mr. Chairman.

Statement of U.S. Senator Russ Feingold

At the Senate Judiciary Committee Executive Business Meeting on S.J. Res. 1, the Victims' Rights Constitutional Amendment

July 24, 2003

Mr. Chairman, first I want to thank you for allowing this constitutional amendment to be considered by the Constitution Subcommittee last month. Some observers may believe that our meeting today is just a repeat of that session, but I do believe that amendments to the Constitution deserve searching and comprehensive consideration by the Senate Judiciary Committee. Our subcommittee markup served a valuable function in highlighting some of the concerns that some of us have with this amendment. It prompted some discussions regarding the language of the amendment that some of us regard as problematic, but we may yet be able to reach agreement. And it showed the seriousness with which this Committee views its work on constitutional amendments. So again, Mr. Chairman, I appreciate your referring the amendment to the subcommittee and allowing us to add an important and worthwhile layer to the legislative process.

Mr. Chairman, I share the goal of the supporters of this constitutional amendment - to protect and enhance the rights of victims of crime. I share the desire to ensure that victims of crime do not suffer yet again at the hands of a criminal justice system that is insensitive to their rights and needs. Victims of crime have an interest in the pursuit of swift and just punishment of the perpetrators of the crimes against them. Victims want their voices to be heard. They want and deserve to participate in a system that is designed to redress the wrongs that they and society have suffered at the hands of criminals.

This is not a debate between supporters and opponents of victims' rights. We all support victims' rights. I appreciate the comments made by Senator Kyl on this point at our subcommittee markup.

The issue before us today is determining the best approach for realizing our common goal. I continue to believe that the best approach is a federal statute providing clear goals and the resources to attain them, rather than a constitutional amendment that carries with it uncertain and potentially very troubling consequences to our criminal justice system.

Congress should proceed very carefully when it comes to amending the Constitution. As a Senator and member of this Committee, I have considered this amendment, including prior versions of this amendment, several times over the years. I have attended hearings, and in fact, I chaired a hearing in the Subcommittee on the Constitution at the request of Senator Feinstein last Congress. I remain unconvinced that an amendment to the Constitution is the best way, or even necessary, to protect and enhance the rights of victims. 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 enforce and comply with existing laws, and working with victims to enact additional federal legislation, if needed.

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

But the Wisconsin victims' rights amendment also contains a provision that is notably lacking in the amendment before us today - a provision that clarifies that the rights of the accused are not diminished by the rights granted to the victim.

Mr. Chairman, I am also concerned that the proposed victims' rights amendment could jeopardize the effective administration of justice and the ability of prosecutors to investigate cases, prosecute suspected criminals, enter into plea agreements, and balance the competing demands of fairness and truth-finding in the criminal justice system. I will offer amendments to address these concerns and ensure that, if the amendment is ratified, justice is served.

It would be a cruel result for victims of crimes if the amendment they have fought so hard to pass ends up undermining the criminal justice system. We should always remember that what victims of crime most want, and have every reason to expect and demand from us, is for their victimizers to be swiftly and successfully prosecuted and convicted. This amendment could very well jeopardize the most important duty that we owe to victims of crime.

Finally, the proponents of the amendment have attempted to address a major concern expressed by me and others the last time around that the amendment was so wordy and unwieldy that it read more like a statute than a constitutional amendment. I commend them for their efforts to conform the amendment to other constitutional amendments. But drafting concerns still remain, and I will offer an amendment to address one of them.

Unlike most of the statutes that we pass on a day to day basis, the Constitution will continue to set out the basic structure of our government and the rights of our citizens 50, 100, or even 200 years from now. What we do here today is important, Mr. Chairman, not just for the politics of today, but for the lives that our citizens will lead long after we are gone. I hope that our work today will reflect the grave responsibility to protect and defend our Constitution that has been passed down to us by our forebears. I look forward to this debate. Thank you.

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