

Testimony of

The Honorable Patrick Leahy

July 29, 2003

Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Markup of S.J. Res.1 (Victims Rights Constitutional Amendment)
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Today we continue our consideration of S.J.Res. 1, the proposed constitutional amendment to establish rights for crime victims. I understand that the Chairman convened this special Tuesday-morning exec at the request of Sen. Kyl, who was concerned that the Committee might not finish its work on this bill if it was left until the Thursday before the August recess.

I am somewhat mystified by the urgency here - the bill will not be going to the floor next month, regardless of whether we report it today, this Thursday, or the week we return from recess. I hope we would all agree that the most important thing is to ensure that the Committee has a full and fair opportunity to debate this proposal and any amendments that may be offered. After all, as Sen. Feinstein said last week, this is a constitutional amendment we are discussing, so every word matters.

That said, I have no problem with Sen. Kyl's request to convene this special exec - the first of two that the Committee will hold this week. Nor do I have any problem with the Chairman's decision to accommodate Sen. Kyl. I am troubled, however, that despite the specific request last week of the Ranking Member of the Constitution Subcommittee to be consulted on the timing of this exec, neither he, nor I, was consulted on the issue. This is just the latest example of the breakdown in comity and professionalism on this Committee, which I spoke about last week, and which I deeply regret.

I also regret that this important discussion may be interrupted, and that I and other members may be pulled away, by another Judiciary Committee matter that will require our attention. Apparently, the Democrats on this Committee were not the only ones who were not consulted about this markup. It seems that the Republican leadership was also not consulted, since it has scheduled a debate and cloture vote on a judicial nominee that may directly conflict with our meeting this morning.

Despite the lack of consultation, I hope that everyone who wanted to weigh in on this proposed constitutional amendment will be able to attend this morning, and that we can have a full and productive debate.

As I stated at last week's exec, I respect the sponsors of this proposed amendment, and I respect their motivations. I wish very much that I could support a proposal like this that includes such

good intentions. But I do not believe that this proposal is necessary, and we should not consider amending the Constitution unless that basic test is met.

According to the Congressional Research Service, as of last Friday, a total of 11,186 proposed constitutional amendments have been introduced since the First Congress convened in March 1789. Of these, only 27 have been adopted - and that includes the 10 amendments that make up the Bill of Rights. That's 27 out of more than 11,000.

I have had the privilege of serving in the Senate since 1975. In that time alone, more than 2,500 constitutional amendments have been proposed. Only one was ratified - the 27th amendment - and that was submitted to the States by the First Congress back in 1789, as part of the proposed Bill of Rights.

My point is not that we should never amend the Constitution. Rather, my point is that amendments should be rare. They should be reserved, as James Madison wrote, for "certain great and extraordinary occasions," when there is a pressing need that cannot be addressed by other means. I agree with the more than 400 law professors who, in a recent letter to this Committee, concluded that victims' rights can be adequately protected without amending our fundamental national charter.

Argument One: Uniformity

I have heard several arguments as to why we need a constitutional amendment to protect crime victims. In my view, none comes close to justifying it.

Let me comment briefly on two arguments that were raised last week in support of this amendment. The first is the so-called "uniformity" argument. Supporters of this proposal say that it offers the only way to fix the "patchwork" of State victims' rights laws. But is there really a pressing need for uniformity in this area?

There are times when Congress must step in and ensure a uniform national floor with respect to a particular policy issue - competent counsel standards in death penalty cases comes to mind as one such issue. If the States were as unwilling to protect victims as some are to provide capital defendants with competent counsel, I might agree that we need to set a national floor for victims' rights. But States are not unwilling to protect victims - far from it. Every State already protects the rights of crime victims, whether by statute or by constitutional amendment, or both.

Even assuming that a "one-size-fits-all" approach to victims' rights is desirable or even necessary, that does not mean that we need to amend the Constitution. There are other ways to achieve uniformity. For example, Congress could simply pass spending power-based legislation, which conditioned money to the States on the States' implementing a uniform national standard of victim rights. This year's Justice Department witness (then Assistant Attorney General Viet Dinh) acknowledged that Congress could achieve uniformity this way. I would be interested in whether anyone on the Committee holds a different view.

Argument Two: Statutes are insufficient

The second major argument that was advanced last week for amending the Constitution is that victims' rights will never be taken seriously until they are elevated to the level of Federal

constitutional rights. In other words, mere statutes are insufficient to protect victims because they lack the stature of the U.S. Constitution.

This argument shows a remarkable disregard for statutory law, which provides the vast majority of the rights and protections enjoyed by Americans today. It also places undue faith in the power of constitutional rights. You do not need to be a Harvard Law School professor to know that constitutional rights can be, and sadly are, violated all the time.

Amending the U.S. Constitution is a serious business. We should not amend the Constitution as a symbolic gesture - as a way of saying, "listen up ... we really mean it!" When we pass a statute, we also "really mean it." So do State legislators.

I am not saying that existing victims' rights laws are perfect, or that we cannot do more in this area. But what is needed is sufficient funding and better training for criminal justice personnel, not a constitutional amendment.

At last week's markup, the Senator from Arizona quoted a December 1998 report by the National Institute of Justice which summarized the findings of April 1997 study by the National Center for Victims of Crime - which happens to be one of the leading advocates for the proposed constitutional amendment. A more recent study by the Vera Institute of Justice drew a different conclusion about the effectiveness of State victims rights legislation. The Vera Institute surveyed 396 prosecutors' offices across the country, in large and small jurisdictions, and found that by and large, victims' rights were being honored. To quote the study:

"During the last decade, researchers who studied victim rights tended to be pessimistic about the extent to which statutes were followed in practice by local criminal justice officials. In the sites we visited, however, we are confident that, overall, people are making a serious effort to implement the state statutes."

I should note that I have only been able to read a press account of the Vera Institute study and not the study itself, which has not been released. When my staff called the Vera Institute to request a copy, they were told that the "funder" had not cleared its release. It would appear that the "funder" - the Department of Justice - is unhappy with some of the study's findings. I hope my colleagues on the Committee will join me in asking the Attorney General to release the study, which may be of use in the Senate's deliberations regarding the proposed constitutional amendment.

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