Testimony of

The Honorable Patrick Leahy

September 4, 2003

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Executive Business Meeting
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The Michigan Senators both asked that Henry Saad's nomination to the Sixth Circuit not be listed at all today. I cannot think of a time before this year that a Judiciary Chairman proceeded with a Committee vote on a judicial nominee opposed by both that nominee's home-state Senators. Following years in which hearings and Committee consideration were denied to the well-qualified Michigan and Ohio 6th Circuit nominees of President Clinton, this action is another reminder of how partisan Republicans have been in their approach to judicial nominations. Pursuant to the rules of the Committee, there will be no vote on the Saad nomination today.

When this Chairman chaired this Committee and we were considering the nominations of a Democratic President at a much more measured pace, one negative blue slip from one home-state Senator was always more than enough to doom a nomination and prevent a hearing on that nomination. Indeed, among the more than 60 Clinton judicial nominees whom this Committee did not consider, there were also several who were blocked in spite of the positive blue slips from both home-state Senators. So long as a Republican Senator had an objection, it appeared to be honored, whether a home-state Senator or not, whether that was Senator Helms objecting to an African-American nominee from Virginia or Senator Gorton objecting to nominees from California. This is a subject which we will be forced to explore in more detail if and when Republicans insist on voting on a nomination opposed by home-state Senators.

The other judicial nominees on the agenda will likely proceed by consensus. Glen Conrad for the District Court in Virginia, has spent his entire career in the federal court system, the last 25 years as a federal magistrate. Larry Burns and Dana Sabraw for District Courts in California, are nominees who were among those recommended by a bipartisan commission for judgeships Democrats helped authorize to assist the Federal Court in southern California that was neglected by Republicans during the years in which a Democratic President was making nominations. During Democratic leadership we proceeded to authorize additional judgeships that were long overdue for southern California.

The nomination and confirmation process can and should yield nominees like these six, each one of whom has received a unanimous rating from the ABA of "well qualified." It should yield nominees like these six who have support from both of their home-state Senators, Democrats and Republicans alike. And it should yield nominees like these six, who have no political agendas, and who will be quickly and easily confirmed by the Senate.

When the Committee reports these nominations we will have reported more than 160 judicial nominees by this President. Most have been reported with unanimous support by Democrats and Republicans. Some have been contentious and some have been so extreme that they have not garnered any bipartisan support and have been problematic. We have demonstrated time and again that when we unite and work together we make progress. Republicans have too often chosen, instead, to seek to pack the courts and tilt them out of balance and to use unfounded allegations of prejudice to drive wedges among Americans for political purposes.

We have more federal judges currently serving than at any time in our nation's history and we have succeeded in reducing judicial vacancies to the lowest level in 13 years. Even Alberto Gonzales, the White House Counsel, conceded recently that: "If you look at the total numbers, I think one could draw the conclusion that we've been fairly successful in having a lot of the president's nominees confirmed."
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Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Markup of S.J. Res.1 (Victims Rights Constitutional Amendment)
September 4, 2003

Today we will continue our debate over the Victims Rights Amendment to the Constitution. But before discussing that proposal, I would like to raise an important issue for victims: the pending deadline of the September 11 Victim Compensation Fund. I worked hard to create that Victims Fund over the objections of some. We insisted that it be included in the legislation to bail out the airlines passed in the wake of the most devastating terrorist attacks ever on American soil. The current deadline for applying for compensation from the Victims Fund is rapidly approaching, but it has become apparent that many families need more time. Thus far, just under a third of eligible families have applied to the Fund for compensation. Ken Feinberg, the Special Master for the Fund is doing his best to get victims families to understand their rights and has even taken out extensive advertisements in a number of newspapers and created a series of informational meetings and claim assistance sites to assist victim families. I commend him for his efforts.

Yet, victims support groups have told me that they receive calls daily from individuals who understand that the deadline is approaching but cannot face the emotional pain of preparing a claim. At the same time, Mr. Feinberg, has commented that many victims are still too paralyzed by their grief to confront the logistical burden and emotional pain of filing a death claim.

In light of this painful reality, I intend to introduce legislation to extend the deadline for filing applications to the Fund to December 31, 2004 - an extension of just over a year. This extension would give grieving families additional time to mourn those who were lost and to overcome the emotional challenges of filing paperwork with the Fund. In recent days, I have been in contact with several September 11 victim support groups, all of which agreed that such an extension would provide some relief during these dark days for victims' families as they endure the grieving process. I invite other members of the Committee to join me in this legislation. As the anniversary of the tragedy of September 11 approaches, victim families have many burdens. They do not need this arbitrary deadline confronting them between September 11 and Christmas. This is something we can do now for victims of September 11.

This meeting marks our fourth attempt to mark up S.J. Res. 1, the proposed constitutional amendment to establish rights for crime victims. At our first meeting, we got through opening statements, then lost the quorum. At our second meeting, which we held Tuesday morning at the request of Senator Kyl, we never managed to get a quorum. Members were not consulted about the timing of that special exec, and many had scheduling conflicts that made it impossible for them to attend. We made some progress in the third attempt on July 31 but, again, did not complete Committee consideration. We will try, again, today in spite of the competing matters that require members' attention and attendance this morning.

The sponsors of this proposal have put so much effort into it, and I have urged that we proceed with our work on this measure. But the more important thing, I think we would all agree, is to ensure that the Committee has a full, fair, and productive debate on this proposal and on any amendments that may be offered. I have spent a good deal of time on this matter, as well, and in attendance at our markups. Senator Feingold and Senator Durbin, among others who may not necessarily support the approach of altering the Constitution, have likewise been in attendance and participated in our debate and by offering amendments.

It is true, as Senator Kyl has mentioned, that this Committee has marked up a victims' rights constitutional amendment twice before - first in the 105th Congress, and then in the 106th Congress. But those were very differently worded proposals. This is the first time that the full Committee is considering this particular, completely reworked version of the amendment, and we owe it to ourselves, to the Senate, and to the American people, to exercise great care. This is a constitutional amendment we are discussing, and every word - every comma - counts.

As I have said before, I respect the sponsors of this proposed amendment, and I respect their motivations. But I cannot support a constitutional amendment on the basis of good intentions. I do not believe that this proposal is necessary, and we should not consider amending the Constitution unless that basic test is met.

Argument One: Uniformity

I would like to comment briefly on two arguments that have been raised in support of this amendment. The first is the so-called "uniformity" argument. Proponents of this constitutional amendment say that it offers the only way to fix the "patchwork" of State victims' rights laws.

We should ask ourselves, though, is there really an urgent need for uniformity in this area? I agree that 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 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 disagrees with the Justice Department on this point.

Argument Two: Statutes are insufficient

The second major argument that has been advanced 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.

Finally, I would like to comment on the remarks made by one of the lead sponsors of this proposed amendment in our last markup. On July 31, Senator Feinstein compared the legislative history of the Victims Rights Amendment to the 19th Amendment to the Constitution, which gave women the right to vote. She stated that during congressional debates, opponents of the 19th Amendment relied on an insincere argument in support of States' rights to mask their resistance to women's suffrage.

While many of us do not support S.J.Res.1, this is not based upon a blanket opposition to victims' rights. Rather, it is based upon the conviction that State and federal statutes are the preferred method of promptly ensuring that victims are afforded rights and protections.

Most notably, the circumstances of the debate over the 19th Amendment - including those which belied the true motives of the opponents to the Amendment - are simply not present in the debate over S.J.Res.1. In 1918, just before the 19th Amendment was ratified, only 15 States gave women full suffrage. This amounted to less than one-third of the 48 States that were members of the Union at that time. Based on these numbers, arguments against women's suffrage that were rooted in support for States' rights rang hollow to supporters of the 19th Amendment. By contrast, presently every State in the Union has a statute or statutes in support of victims' rights, and 33 have adopted a victims' rights amendment to their individual State constitutions. Unlike the movement for women's suffrage, the movement for victims' rights cannot legitimately claim that opponents to the constitutional amendment are opposed to the underlying goal. Not only do opponents of S.J.Res.1 fully support increasing victims' rights, but the States' actions prove that the argument about the lack of necessity for amending the Constitution is not a smokescreen for avoiding taking steps to achieve the goals of the proposed amendment.