

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
September 12, 2007

Senate Judiciary Committee
Hearing on "Regulatory Preemption: Are Federal Agencies Usurping Congressional and State Authority"
Wednesday, September 12, 2007

Statement of U.S. Senator Russell D. Feingold

I want to thank Chairman Leahy for holding this important hearing. In recent years, this administration has quietly undermined the longstanding relationship between federal public safety regulation and state common law. After decades of recognizing that state common law is an indispensable partner to federal safety regulation, our federal agencies are suddenly taking the position that state lawsuits and federal regulation cannot coexist, and that state lawsuits intended to compensate the victims of defective products must be preempted.

This 180-degree turnaround is being implemented through a deliberate end-run around Congress. In at least one of these cases, Congress considered and rejected the idea of preempting state law. Likewise, agencies are ignoring their legal obligation under Executive Order 13132 to avoid preemptive regulations where possible, and to consult with states before issuing preemptive regulations.

This back-door dismantling of state tort law suggests that this administration's rhetoric about states' rights is just that - rhetoric. It also disserves the public. For all their good points, federal agencies react slowly to industry developments and lack the power to subpoena product information from corporations. Cases brought by consumers in state courts can help ensure that safety standards keep up with the industry, and can provide an invaluable source of information for regulators as well as the public. They also provide a critical safeguard against "agency capture," the all-too-common phenomenon of agencies falling under the influence of the industries they are supposed to regulate.

Even if federal agencies worked perfectly, federal safety standards are meant to be a floor, not a ceiling. When you prevent consumers from bringing cases in state courts, you remove a key incentive for manufacturers to provide safety features beyond the bare minimum. And make no mistake - people will continue to be injured through defective products. The only difference will be who pays the price: it will be the victim and the taxpayers, instead of the corporation that caused the harm.

I thank the witnesses for being here today to help us begin our examination of this important issue.