

Statement of
The Honorable Tom Coburn

United States Senator
Oklahoma
March 11, 2009

Statement of Senator Tom Coburn, M.D.
Hearing: "S.J. Res. 7 and H.J. Res. 21: A Constitutional Amendment Concerning
Senate Vacancies" Subcommittee on the Constitution
United States Senate Committee on the Judiciary
March 11, 2009

Mr. Chairman, today marks the first hearing of the Senate Judiciary Subcommittee on the Constitution in the 111th Congress, but also the first hearing I have attended as ranking member of this important subcommittee. I consider it a high honor to serve in this role, as matters within this subcommittee's jurisdiction -- such as constitutional amendments and rights, separation of powers and federalism, and civil rights and liberties -- are among the Senate's most awesome responsibilities.

I also consider it an honor to serve alongside Chairman Feingold, whose command of the law I have always respected. I look forward to working with the Chairman and other members of this subcommittee.

It is fitting that our first order of business is a proposal to amend the Constitution. The matter at hand serves as a reminder of the gravity of our responsibilities as members of this subcommittee.

Like the chairman, I do not consider constitutional amendments lightly. Modifying the nation's founding document should only be done in the most compelling circumstances. Just this week, some seven proposed constitutional amendments were referred to this subcommittee. While it is highly unlikely that all will be considered, our responsibility as members of this subcommittee is to thoroughly vet and debate such proposals before they advance in Congress.

After all, constitutional amendments are relatively rare. Since 1789, more than 5,000 proposals to amend the Constitution have been introduced in Congress, yet only 33 have gone to the states for ratification.¹ By design, the Constitution is difficult to alter. The Founders struck a brilliant balance by creating a document that is amendable, yet authoritative, and their design has served the republic well.

In reality, proponents of this -- and any other -- constitutional amendment face overwhelmingly unfavorable odds. Fortunately, proponents of the amendment at issue today do not have to wait for approval of supermajorities in the House and Senate and three-fourths of the states. The Constitution permits what the amendment would require.

¹ Heritage Guide to the Constitution, at pg. 285.

Although this hearing is intended to advance S.J. Res. 7 and H.J. Res. 21, it may also lead to further discussion within the states about the most prudent way to fill their own Senate vacancies. These discussions began in light of the inordinate number of vacancies created after the 2008 presidential election. Most notably, the scandal sparked by Illinois Governor Rod Blagojevich's efforts to fill the seat of our newly-elected president exposed the potential for corruption in gubernatorial appointments. Although calls for a special election in Illinois were rejected at the time, the fallout from that appointment continues, and we find ourselves here today, debating a proposal that would require for all states what one state would not do for itself.

It is important to note that the vast majority of states have chosen to exercise their constitutional right to allow gubernatorial appointments. Ironically, the chairman and I represent two of the small handful of states that do not allow such appointments. While the citizens of Wisconsin and Oklahoma have clearly determined that special elections are their own preferred course, whether the same approach is right for all of the other states is an open question.

Although the witness panel includes diverse perspectives, there are many important voices not present in today's debate. To that end, I would like to submit statements from governors who oppose this amendment, including the governors of Texas and Idaho. I have yet to hear anyone espouse the virtues of appointed representation over elected representation, but I have heard legitimate concerns raised about the practical implications this amendment may have for the states. It is important that we carefully consider all sides of this debate before moving forward on this amendment, and I invite others to weigh in on this proposal, even after the hearing is over.

I look forward to the witness testimony and thank the chairman for convening this hearing.