

Statement of
The Honorable Russ Feingold

United States Senator
Wisconsin
February 6, 2007

Statement of U.S. Senator Russell D. Feingold
Senate Committee on the Judiciary
Hearing on "Preserving Prosecutorial Independence:
Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"
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Mr. Chairman, thank you very much for giving me an opportunity to say a few words. I am chairing a hearing in the Africa Subcommittee of the Foreign Relations committee in a few minutes, but I wanted to show my support for the hearing you are holding here, and for Sen. Feinstein's legislation.

It is absolutely vital that our citizens be able to rely on the integrity of the justice system. It is equally important that they have confidence that individuals who represent the federal government in the justice system are above reproach, and are acting in the interest of justice--and not politics--at all times. Even the possibility of any sort of impropriety or overt politicization in the choice of U.S. Attorneys is very troubling, and I am glad that we have an opportunity to investigate this very serious matter.

The Senate confirmation process for U.S. Attorneys ensures transparency and accountability in their selection, and it is very important to protect that process. Wisconsin has developed what I believe is a particularly effective method for handling federal nominations. In 1979, Senators William Proxmire and Gaylord Nelson created the Wisconsin Federal Nominating Commission to advise them on nominations. The Commission process has continued for over a quarter century, used by both Republican and Democratic senators from our state under both Republican and Democratic presidents.

The Commission operates whenever a vacancy occurs for a federal judge or U.S. Attorney position in Wisconsin. The Commission reviews applications and then makes recommendations to the Senators. Senator Kohl and I choose from those recommended by the Commission in making our recommendations to the President. This bipartisan Commission helps ensure that dedicated and qualified individuals fill the positions. It gives our citizens additional assurance that these important nominations are made based on merit, not politics. I believe commissions like this are a particularly reliable and transparent form of filling these vacancies.

Thus, I was deeply troubled when I learned that a change made during the Patriot Act reauthorization process allows the Justice Department to sidestep the confirmation process for U.S. Attorneys altogether. There is simply no good reason why the Attorney General needs the

power to make indefinite interim appointments. When it exercises that power, whether intended or not, the Administration cuts Congress, and in the case of my state, the people of Wisconsin, out of that process.

I am a cosponsor of the "Preserving United States Attorney Independence Act of 2007," Senator Feinstein's legislation that will close this unnecessary circumvention of the confirmation process. I look forward to the committee's consideration of that bill later this week, and I hope that the hearing this morning will help us fine-tune the bill, if needed. One thing that is very important is to ensure that any individuals who obtained interim appointments under current law do not remain in their posts indefinitely. Provisions ensuring that the confirmation process is not avoided in these cases should be included in the bill.

But this hearing is not just about what process should be in place for filling interim appointments in the future. It is an inquiry into what has already taken place in a range of firings of U.S. Attorneys across the country. I do not know whether concerns that some of these hirings and firings were politically motivated will be validated, but I do know that even an appearance of impropriety can harm our judicial system. A flurry of newspaper articles raising questions about how the Attorney General has used the new indefinite interim appointment power--from both local newspapers and national papers--show that there is such a concern. We in Congress have a duty to address it.

Mr. Chairman, once again, I thank you for calling this hearing and for giving us the opportunity to explore this problem. I can think of few things more appropriate for this committee to consider than the integrity and impartiality of our judicial system and the individuals we select to represent the United States in that system. Thank you again for your courtesy.