

Statement of
The Honorable Russ Feingold

United States Senator
Wisconsin
March 11, 2009

S.J. Res. 7 and H.J. Res. 21: A Constitutional Amendment Concerning Senate Vacancies
Hearing before the Senate Judiciary Committee
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March 4, 2009 The hearing will come to order. I want to welcome everyone to this joint hearing of the House and Senate Constitution Subcommittees on S.J. Res. 7 and H.J. Res. 21, which are both proposed constitutional amendments concerning Senate vacancies. A special welcome to our colleagues from the House side, especially two long time friends, John Conyers, the Chair of the House Judiciary Committee, who will act as the Chair of the House subcommittee today, and James Sensenbrenner from my own state of Wisconsin, a former Chair of the House Judiciary Committee, who now serves as the ranking member of the House subcommittee.

I want to thank my new ranking member, Senator Coburn, and his staff, for their great cooperation in putting this unusual hearing together. This is the first hearing that Dr. Coburn and I have worked together on, and I look forward to continuing the productive working relationship that we have had on so many issues in the past as he takes on this new role.

Joint hearings of House and Senate Committees are not unprecedented, but they are unusual. I think it is fitting that we are holding this particular joint hearing because the topic is so timely, and so fundamental. There are now four Senators who will serve until the next general election, still 20 months away, who were not elected by their constituents. They serve because of what I have called a "constitutional anachronism," which allowed the governors of their states to appoint them to serve.

Now I want to be clear, I don't have anything against these newest Senators. I hope and expect that they will serve with great distinction, as quite a few appointed Senators have done in the past. But when over 12% of our citizens are represented by someone in the Senate who they did not elect, I think that's a problem for our system of democracy. And it's a problem that only be fixed by a constitutional amendment.

In 1913, the citizens of this country, acting through their elected state legislatures, ratified the 17th Amendment to the Constitution, providing for the direct election of Senators. That ratification was the culmination of a nearly century long struggle. The public's disgust with the corruption, bribery, and political chicanery that resulted from the original constitutional provision giving state legislatures the power to choose United States Senators was a big

motivation for passing the amendment. As we have seen in recent months, gubernatorial appointments pose the same dangers. They demand the same solution - direct elections.

The constitutional anachronism was created by the inclusion in the 17th Amendment of a proviso, permitting state legislatures to empower their governors to make temporary appointments in the case of an unexpected vacancy. Since the 17th Amendment, 184 such appointments have been made. So this departure from the principle that was behind the 17th Amendment itself - that the people should elect their Senators -- is by no means an uncommon occurrence.

I believe that those who want to be a U.S. Senator should have to make their case to the people whom they want to represent, not just the occupant of the governor's mansion. And the voters should choose them in the time-honored way that they choose the rest of the Congress of the United States - in an election.

This proposal is not simply a response to these latest cases that have been in the news over the past few months. These cases have simply confirmed my longstanding view that Senate appointments by state governors are an unfortunate relic of the pre-17th Amendment era, when state legislatures elected U.S. Senators, and those legislatures might only meet for a few months a year. I view this issue, at base, as a voting rights question. The people of this country should no longer be deprived, for months or even years, of their right to be represented in the Senate by someone whom they have elected.

Direct election of Senators was championed by the great progressive Bob La Follette, who served as Wisconsin's Governor and a U.S. Senator. We need to finish the job started by La Follette and other reformers nearly a century ago. No one can represent the people in the House of Representatives without the approval of the voters. The same should be true for the Senate. I look forward to the testimony of our witness on this very important topic.

I am pleased to turn now to the ranking member of the Senate subcommittee, Senator Coburn.