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How Can We Fix the Constitution?

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Standing for Victims

They need their own Constitutional amendment.

By **Paul G. Cassell** | Posted Thursday, June 14, 2012, at 03:52:12 PM ET

The legal options of Tracy Martin and Sybrina Fulton, parents of Trayvon Martin, would be affected by a Victims' Rights Amendment

Kevorc Djansezian/Getty Images.

*This month, some of **Slate's** legal eagles are proposing their favorite Constitutional amendments, in the service of our effort, with **Me the People** author Kevin Bleyer, to rewrite the founding document. Here are proposals about the right to trial by jury, protecting informational privacy, amending the Constitution by national referendum, electing the attorney general, moving up the date of the presidential inauguration, restoring the balance of war powers, Supreme Court term limits, forcing Congress to fix the rules of congressional procedure, a right to health care, a right to vote, campaign finance, and elections.*

Victims' Rights (New Amendment)

Our Constitution should include a Bill of Rights for crime victims, along the lines of the Victims' Rights Amendment which has been introduced in Congress. This amendment is rooted in the simple idea that victims of crime deserve a role in the criminal process. It matches constitutional protections for criminal defendants with rights for crime victims. They would be guaranteed the rights to notice of court hearings, to attend those hearings, and to speak when appropriate, for example, at proceedings for bail, plea bargains, and sentencing. Victims would also have the right to see their cases proceed without unreasonable delay, to be notified when an offender is released or escapes, to have judges consider their safety before granting bail, and to restitution from a convicted offender.

These rights restore victims to their original place in the criminal justice system. When the Constitution was drafted, victims could actively pursue criminal cases, even serving as their own private prosecutors. The diminishment of their role over time shortchanged their interest in the outcome of government-determined prosecutions. Prompted by the victims' rights movement of the last few decades, more than 30 states have enshrined victims' rights in their own constitutions since 1988. And in 2004, Congress passed the Crime Victims' Rights Act, which gave victims rights in federal court.

The growing number of state amendments, along with the federal law, reflects a growing national consensus that victims belong inside the criminal justice process—with a voice in decision-making. And yet, as Harvard Law professor Laurence Tribe has observed, victims'-rights provisions have too often failed in the face of bureaucratic habit, traditional indifference, or the potential for conflict with the rights of the accused—even when those rights are not genuinely threatened. In the late 1990s, a study by the National Institute of Justice found that "large numbers of victims are being denied their legal rights." For example, even in several states identified as giving "strong protection" to victims' rights, fewer than 60 percent of victims were notified when defendants were sentenced and fewer than 40 percent were notified of the pretrial release of the defendant. A follow-up analysis found that racial minorities were the least likely to be afforded their rights. Former Attorney

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General Janet Reno concluded that the current “haphazard patchwork” of rules is “not sufficiently consistent, comprehensive or authoritative to safeguard victims’ rights.” At the federal level, in 2008 the General Accountability Office gave the Crime Victims’ Rights Act a mixed review for efficacy. In court, cases testing the law, have produced uneven results and even crushing defeats. For example, in 2008 the [parents of a murder victim in Salt Lake City were blocked from delivering a victim impact statement](#) at the sentencing of the man convicted of illegally selling the murder weapon to her killer.

The Victims’ Rights Amendment to the Constitution was first proposed by President Bill Clinton in 1996 (the only constitutional amendment endorsed by his administration) and has since garnered congressional support across the ideological spectrum, from Republican Sens. Orrin Hatch and Jon Kyl to Democrats Joseph Biden and Dianne Feinstein. Critics have focused their attacks not on the amendment’s underlying principles but rather on the mechanics of implementation. Some opponents have argued that the rights of crime victims do not belong to be in the Constitution because they do not concern the country’s political architecture. Yet the amendment promotes the grand theme of the Bill of Rights—protecting citizens against governmental misconduct—while also advancing the goals of later amendments that increase citizen participation in governmental processes ([as I argue at greater length here](#)). Nor does the amendment challenge the Warren Court rulings that expanded the protections for criminal defendants, as the ACLU has charged. The idea is merely that we should make a national commitment to ensuring that victims receive equal treatment.

In an earlier era, judges might have been able to informally accommodate victims’ interests. But today the coin of the criminal justice realm is federal constitutional rights. Without this level of recognition, victims inevitably become second-class citizens, with judges too often giving automatic precedence to the asserted claims of defendants rather than searching for reasonable alternatives that can accommodate the interests of both sides. To change that, here’s the Victims’ Rights Amendment, [as proposed in the current Congress](#):

SECTION 1. The rights of a crime victim to fairness, respect, and dignity, being capable of protection without denying the constitutional rights of the accused, shall not be denied or abridged by the United States or any State. The crime victim shall, moreover, have the rights to reasonable notice of, and shall not be excluded from, public proceedings relating to the offense, to be heard at any release, plea, sentencing, or other such proceeding involving any right established by this article, to proceedings free from unreasonable delay, to reasonable notice of the release or escape of the accused, to due consideration of the crime victim’s safety, and to restitution. The crime victim or the crime victim’s lawful representative has standing to fully assert and enforce these rights in any court. Nothing in this article provides grounds for a new trial or any claim for damages and no person accused of the conduct described in section 2 of this article may obtain any form of relief.

SECTION 2. For purposes of this article, a crime victim includes any person against whom the criminal offense is committed or who is directly harmed by the commission of an act, which, if committed by a competent adult, would constitute a crime.

SECTION 3. ... This article shall take effect on the 180th day after the date of its ratification.

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