

U.S. Senate Republican Policy Committee
Larry E. Craig, Chairman Jade West, Staff Director
Legislative Notice

No. 54

April 17, 2000

**Senate Joint Resolution 3,
Victims' Rights Constitutional Amendment**

Calendar No. 299

The Judiciary Committee reported the resolution favorably, with an amendment, on September 30, 1999, by a vote of 12 to 5. The report, S. Rept. 106-254, was ordered to be printed on April 4, 2000; the report contains additional and minority views.

NOTEWORTHY

- The Senate will convene at 9:30 a.m. on Tuesday, April 25, 2000, and immediately begin debating the motion to proceed to S.J. Res. 3. Debate will continue until 12:30 p.m. when the Senate will recess for the weekly party caucuses. The three hours of debate time will be equally divided between the two managers.
- At 2:15 p.m., the Senate will vote on a motion to invoke cloture on the motion to proceed to S.J. Res. 3. If cloture is not invoked on the Crime Victims Constitutional Amendment, the Senate will vote immediately on a motion to invoke cloture on the Roth substitute amendment (no. 3090) to H.R. 6, the Marriage Tax Relief Act.
- S.J. Res. 3 proposes an amendment to the Constitution of the United States to protect the rights of victims of violent crimes to participate in the administration of criminal justice.
- S.J. Res. 3 has 42 sponsors (29 Republicans and 13 Democrats).
- The Clinton Administration supports a victims' rights constitutional amendment. This may be the first time in decades in which a White House controlled by one party and a Congress controlled by another party have agreed on a proposed constitutional amendment.
- A commentary by law professors Laurence H. Tribe and Paul G. Cassell is appended to this *Legislative Notice*.

BACKGROUND

The impetus for a victims' rights amendment may be traced to a 1982 report of President Reagan's Task Force on Victims of Crime, although that report had its own antecedents. In calling for a constitutional amendment, the Task Force said:

"In applying and interpreting the vital [constitutional] guarantees that protect all citizens, the criminal justice system has lost an essential balance. It should be clearly understood that this Task Force wishes in no way to vitiate the safeguards that shelter anyone accused of crime; but it must be urged with equal vigor that the system has deprived the innocent, the honest, and the helpless of its protection. * * *

"We do not make this recommendation [for a constitutional amendment] lightly. The Constitution is the foundation of national freedom, the source of national spirit. But the combined experience brought to this inquiry and everything learned during its progress affirm that an essential change must be undertaken; the fundamental rights of innocent citizens cannot adequately be preserved by any less decisive action. In this we follow Thomas Jefferson, who said: 'I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the changes of circumstances, institutions must advance also to keep pace with the times.'" President's Task Force on Victims of Crime, *Final Report* 114-15 (Dec. 1982).

That 1982 report also contained numerous compelling statements from victims of crime. For example, one victim said:

"I will never forget being raped, kidnapped, and robbed at gunpoint. However, my sense of disillusionment [at] the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process." *Id.* at 5.

Another victim said:

"They explained the defendant's rights to the *n*th degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me: I haven't got any." *Id.* at 114.

Following the recommendation of the President's Task Force, and responding to a new demand for fairness for victims of crime, the victims' rights movement initially sought constitutional protection in the States. Thirty-two States now have victims' rights provisions in their constitutions, but the provisions vary widely. Based on the experience of the States, there

is now a “national consensus supporting victims’ rights and [an acknowledgment of] the difficulties of protecting these rights with anything other than a Federal amendment.” S. Rept. at 3.

The first victims’ rights constitutional amendment was introduced in the 104th Congress in both the Senate and the House of Representatives, and an improved amendment has been introduced in every subsequent Congress.

Proposed constitutional amendments require the assent of two-thirds of both houses of Congress. Once a proposed amendment has been agreed to by both house of Congress, the amendment is referred directly to the States (it does not go to the President). The consent of three-fourths of the States is then required for ratification. The resolving clause of S.J. Res. 3 provides that, when approved by Congress, the proposed amendment will be referred to the legislatures of the several States (not conventions) and that the States shall have seven years to vote on the proposal.

BILL PROVISIONS

The proposed constitutional amendment within S.J. Res. 3, as reported, is as follows:

Article —

SECTION 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights:

to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;

to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;

to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;

to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence;

to reasonable notice of a release or escape from custody relating to the crime;

to consideration of the interest of the victim that any trial be free from unreasonable delay;

to an order of restitution from the convicted offender;

to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and

to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim’s lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay

or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

SECTION 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

SECTION 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.

ADMINISTRATION POSITION

At press time, no official Statement of Administration Policy had been received. However, President Clinton has said that he supports a constitutional amendment to protect victims of crime. In April of 1997, Attorney General Janet Reno testified as follows in an appearance before the Senate Judiciary Committee:

“The President and I have concluded that a victims’ rights amendment would benefit not only crime victims but also law enforcement. To operate effectively, the criminal justice system relies on victims to report crimes committed against them, to cooperate with law enforcement authorities investigating those crimes, and to provide evidence at trial. Victims will be that much more willing to participate in this process if they perceive that we are striving to treat them with respect and to recognize their central place in any prosecution.” S. Rept. at 6-7.

COST

If the proposed constitutional amendment is ratified by the States, the Congressional Budget Office (CBO) estimates some additional, but insignificant, costs to the Federal court system. CBO says S.J. Res. 3 “would impose no costs on State, local, or tribal governments.” Here, CBO is referring to the resolution itself and not to its impact if added to the Constitution. S. Rept. at 44.

OTHER VIEWS

Additional Views of Senators Kyl and Feinstein. Senators Kyl and Feinstein are the two chief sponsors of S.J. Res. 3. Their Additional Views discuss some of the changes in the amendment over the years, some of the compromises that have been made, and some of the nuances of the Committee Report. They conclude by saying, “The Crime Victims’ Rights Amendment will bring balance to the system by giving victims of violent crime the rights to be informed, present, and heard at critical stages throughout their ordeal — the *least* the system owes to those it failed to protect. After more than 15 years of being tested in the States and more than four years of careful revisions, this amendment is a finely tuned product ready to be passed by the Congress and sent to the States. . . .” S. Rept. at 47.

Additional Views of Senators Leahy and Kennedy. In their Additional Views, the two Senators urge Congress to adopt S. 934, the Crime Victims Assistance Act, which they have introduced, rather than to amend the Constitution. The provisions of the bill are outlined in their statement. They say their bill “secures the core rights contained in the proposed [constitutional] amendment, provides victims’ services, and authorizes funding for these rights and services” without amending the Constitution with the provisions of S.J. Res. 3 which they regard as both “unnecessary and unwise.” S. Rept. at 50.

Minority Views of Senators Leahy, Kennedy, Kohl, and Feingold. In extended Minority Views, these four Senators argue that S.J. Res. 3 is unnecessary; that it could have dangerous and uncertain consequences; that a constitutional amendment will infringe unduly on States’ rights; and that the specific wording of the proposal presents various uncertainties.

The Senators say that while they oppose the constitutional amendment they are supporters of victims’ rights, and they regret “the time and energy that could have led to increased improvements in the implementation of real protections for victims, better training for courts and prosecutors, better notification systems, and more consistent recognition of victims’ rightful place in the criminal justice system have, instead, been focused on this constitutional amendment process.” S. Rept. at 87.

POSSIBLE AMENDMENTS

At the time this Legislative Notice was written, there were no printed amendments to S.J. Res. 3. In Committee, Senator Feingold offered an amendment that would have added the following new section to the resolution: “Nothing in this article shall limit any right of the accused which may be provided by this Constitution.” The amendment was defeated 5 to 11.

Floor amendments to a proposed constitutional amendment may be adopted by majority vote. Only on final passage is the constitutional two-thirds required.

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Embed the Rights of Victims in the Constitution

By Professors Laurence H. Tribe and Paul G. Cassell

The following article appeared on the “op-ed” page of the Los Angeles Times on July 6, 1998. Laurence H. Tribe is a professor of constitutional law at Harvard Law School and a renowned constitutional scholar. Paul G. Cassell is a professor of law at the University of Utah College of Law and perhaps the chief scholarly force behind the proposed constitutional amendment.

The Supreme Court has instructed that “in the administration of criminal justice, courts may not ignore the concerns of victims.” Sadly, those noble sentiments have yet to be translated into day-to-day realities in the administration of our nation’s criminal justice system.

Fortunately, a remedy lies at hand. The Senate Judiciary Committee is expected to vote shortly on the Victims’ Rights Amendment. The amendment enjoys unusually widespread, bipartisan support. We hope this Congress will approve it and send it to the states for consideration and ratification.

We take it to be common ground that the Constitution should never be amended merely to achieve short-term, partisan or purely policy objectives. Apart from a needed change in governmental structure, an amendment is appropriate only when the goal involves a basic human right that by consensus deserves permanent respect, is not and cannot adequately be protected through state or federal legislation, would not distort basic principles of the separation of powers among the federal branches or the division of powers between the national and state governments or the balance of powers between government and private citizens with respect to their basic rights.

The proposed Victims’ Rights Amendment meets these demanding criteria. It would protect basic rights of crime victims, including their rights to be notified of and present at all proceedings in their case and to be heard at appropriate stages in the process. These are rights not to be victimized again through the process by which government officials prosecute, punish and release accused or convicted offenders.

These are the very kinds of rights with which our Constitution is typically and properly concerned — rights of individuals to participate in all those government processes that strongly affect their lives. “Participation in all forms of government is the essence of democracy,” President Clinton concluded in endorsing the amendment.

Congress and the states already have passed a variety of measures to protect the rights of victims. Yet the reports from the field are that they have all too often been ineffective. Rules to assist victims frequently fail to provide meaningful protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia or the mere mention of an accused’s rights — even when those rights are not genuinely threatened.

Moreover, because we lack the resources to provide victims the guiding hand of appointed legal counsel in the criminal process, victims are largely left to stumble on their own

through a “haphazard patchwork” of rules “not sufficiently consistent, comprehensive or authoritative to safeguard victims' rights,” the Justice Department concluded after careful study. Empirical confirmation of this failure comes from a National Institute of Justice study reporting that today “large numbers of victims are being denied their legal rights.” The same study found that victims’ rights are more frequently denied to racial minorities and presumably other disfavored groups who are unable to assert their interests effectively. Only an unequivocal constitutional mandate will translate paper promises into real guarantees for all victims.

A Victims’ Rights Amendment must, of course, be drafted so that the rights of victims will not furnish excuses for running roughshod over the rights of the accused. The current Senate resolution is such a carefully crafted measure, adding victims’ rights that can coexist side by side with defendants’. For example, paralleling a defendant's constitutionally protected right to a “speedy” trial, the amendment would confer on victims the right to consideration of their interest “in a trial free from unreasonable delay.” By definition, these rights could not collide, since they are both designed to bring matters to a close within a reasonable time. And if any conflict were to emerge, courts would retain ultimate responsibility for harmonizing the rights at stake.

The framers of the Constitution undoubtedly assumed the rights of victims would receive decent protection. Because experience has not vindicated this assumption, it is now necessary to add a corrective amendment. Doing so would neither extend the Constitution to an issue of mere policy, nor provide special benefits to a particular interest group, nor use the heavy artillery of constitutional amendment where a simpler solution is available. Nor would it put the Constitution to a merely symbolic use or enlist it for some narrow partisan purpose. Rather, the proposed amendment would help bridge a distinct and significant gap in our legal system’s existing arrangements for the protection of basic human rights against an important category of government abuse.