

Testimony of

# **The Honorable Strom Thurmond**

July 17, 2002

Mr. Chairman:

Thank you for holding this hearing today on a proposed Victims' Rights Amendment (VRA) to the Constitution. This is an important issue that engenders much passion, and many victims' rights groups have worked long and hard to provide constitutional protections to those who suffer because of violent crime. I commend the supporters of the VRA, including both Senators Feinstein and Kyl, for their persistent efforts in this area, and I look forward to our discussion today.

It is highly important that both the Federal government and state governments enact laws that protect the rights of victims during the prosecution of violent criminals. In fact, many states have moved in this direction. For example, 33 states have incorporated victims' rights amendments into their constitutions and others protect the interests of victims by statute. In 1997, Congress passed and the President signed into law the Victim Rights Clarification Act, which prohibits Federal District Court judges from excluding a victim from a trial simply because that victim plans to testify during the sentencing phase about the effects of the crime on the victim and the victim's family. These efforts at both the state and Federal levels indicate that victims' rights are being taken seriously, and I find this to be an encouraging development.

I have supported past versions of the VRA. However, I have always recognized that an amendment to the Constitution is a drastic measure. We must proceed with caution whenever we consider amending the document that has guided our great Nation for over 200 years.

As a general matter, a victims' rights amendment, if not carefully drafted, has the capability of turning on its head our time-honored principle of "innocent until proven guilty." Our criminal justice tradition places the burden on the Government to prove that a defendant has committed a crime beyond a reasonable doubt. It therefore follows that the Constitution cloaks defendants with certain rights, requiring the Government to play fair in its prosecution of defendants. This is one of the crucial distinctions between our system of government and that of autocratic regimes. If we amend the Constitution to cloak victims with rights under the Constitution, we confer a protected status on them even though the defendant has not yet been proven guilty beyond a reasonable doubt. A victim will not only have constitutional rights, but these rights will affect a specific defendant. We should be very careful in this regard. It is by no means certain how courts will construe the VRA, and we run the risk of severely altering basic principles of constitutional law.

I would like to comment on a few provisions of S.J. Res 35, which incorporates the newest version of the VRA. One provision would require that victims be given "reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused." As a general principle, this provision is one that we should all agree upon. When prosecutors share information with victims, it ensures that those who have suffered are not left out of the process. To be sure, victims and their families deserve to know how a criminal prosecution is progressing and, where reasonable, to have a say in how a case is being handled.

However, widespread agreement on this point does not necessitate an amendment to the Federal Constitution. In fact, criminal prosecution is for the most part a state issue. Because most crimes are prosecuted at the state level, state legislatures are perhaps best suited to address the issues associated with victims' rights. As we consider the prospect of a Constitutional amendment, we should be careful about imposing a Federal remedy on states that are perfectly capable of establishing these same remedies themselves.

Another provision of the VRA that must be closely examined would give a victim "the right to adjudicative decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender." While this section attempts to implement laudable policy objectives, I am concerned that this provision would enable victims to interfere with prosecutorial decision-making. If the right to an adjudicative decision is interpreted to mean a right to a hearing, the VRA may permit a victim to insert himself into the criminal investigation or prosecution. Again, most prosecutions occur in state courts, and the VRA may allow the victim to unduly influence the prosecutorial discretion enjoyed by state governments. This result may bring about unwanted Federal encroachment into state matters. Mr. Chairman, I am pleased that we are discussing this important topic today. We should hold frank discussions about the rights of victims. All too often, victims are shut out of criminal prosecutions, and prosecutors at all levels should permit victims to take part in the process. Victims of violent crime suffer enough. They should not be forced to endure even more suffering during the investigation and prosecution of the accused.

Nevertheless, we must be careful when considering changes to the Constitution. It should be a measure of last resort. This Committee should thoroughly examine the work of the states in providing rights to victims. If states are beginning to make serious commitments to victims' rights, a constitutional amendment may be unnecessary. We should also explore the option of a comprehensive Federal statute, rather than a Constitutional amendment, that may adequately address the legitimate concerns of victims. I feel strongly that we should explore all available options before we go down the road of a constitutional amendment, a road whose end is uncertain.