

Testimony of
Ms. Julie Goldscheid

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Good morning Mr. Chairman, Senator Feingold and other members of the Committee. Thank you for providing Safe Horizon the opportunity to testify today. My name is Julie Goldscheid, and I am General Counsel of Safe Horizon, the nation's leading victim assistance organization. Our mission is to provide support, prevent violence, and promote justice for victims of crime and abuse, their families, and communities. We began in 1978 as a small project in the Criminal Court in Brooklyn, New York, helping to give victims a stronger voice and role in the criminal justice system. Since then, we have pioneered victim assistance programs in criminal and civil courts, schools, police precincts, and communities throughout the City of New York and beyond.

Safe Horizon assists over 250,000 crime victims each year through over 75 programs located in all five boroughs of New York City. Advocating for victims' participation in the criminal and civil justice systems is central to our work. Every day, in our family and criminal court offices, police programs, domestic violence and immigration legal services programs, domestic violence shelters and community offices, our staff of over 900 inform victims about their rights, support them with counseling and practical assistance, and, when necessary, intervene to ensure that their rights and choices are respected. In the aftermath of the September 11 terror attacks, we have provided crisis intervention, support counseling, information and referrals and service coordination to victims of the attacks. We have distributed nearly \$100 million in financial assistance to over 45,000 victims.

While we are ardent supporters of victims' rights, we oppose the proposed victims' rights amendment out of a concern that it will not enhance, and could in fact impair, crime victims' abilities to meaningfully participate in the criminal justice system. Our opposition is informed by the victims we serve, who are primarily urban victims of color living in economically depressed neighborhoods, and who face complex challenges in asserting their rights. Enhancement and vigorous enforcement of state and federal statutory rights, rather than a federal constitutional amendment, is the best way to advance their concerns.

Victims need enforcement of statutory rights, not new constitutional protections.

Every state, including New York, has enacted statutory or constitutional protections for crime victims. While in some cases those protections could be improved, victims' overwhelming need is for enforcement of existing rights, not for a federal constitutional amendment. We work with local law enforcement to ensure that our clients' cases are prosecuted and that they are informed about progress as prosecutions proceed. Support for efforts such as enhancing notification systems and providing adequate resources to support victims who want to participate in criminal proceedings, would go a long way toward advancing victims' rights. We are concerned that the lengthy and arduous process of enacting a constitutional amendment could divert attention from enforcing current laws and that support for those enforcement efforts could languish during the process.

Victims' rights are critical but not the same as defendants' rights.

Our clients' experiences demonstrate that those who are victimized by violent crime suffer in numerous and often devastating ways. Participatory rights are essential to help them achieve justice. But crime victims, unlike criminal defendants, do not face the loss of fundamental rights and liberty at the hands of government. The risk of unwarranted state power being used against an individual was historically, and still is, at the core of our constitutional safeguards, and makes it appropriate for defendants' rights to trump those of victims when due process and liberty interests are at stake. Many of our clients share the concern that defendants' rights are rigorously enforced. This is particularly true for those whose experience is compounded by race, gender or other forms of discrimination.

Victims of domestic violence are especially at risk.

Crimes of domestic violence represent a high proportion of the total number of violent crimes. Safe Horizon is particularly concerned about the potential impact of the proposed amendment on the approximately 200,000 domestic violence victims we serve each year. Batterers frequently make false claims of criminal conduct, which often result in arrest of the true victim. Under the proposed amendment, a batterer whose false accusations result in prosecution could be accorded "victim" status and could benefit from all the proposed constitutional rights. For example, batterers could object to a mother's release even if she is the only one who cared for their minor children. The same concern applies to cases in which domestic violence victims strike back at their batterers in self-defense, as well as to dual arrest cases or cases in which victims are arrested as a result of misapplication of mandatory arrest and mandatory prosecution policies.

Victims' rights reform requires the flexibility of statutory approaches

The history of victims' rights legislation illustrates the importance of instituting a flexible framework that can be amended over time. Domestic violence law reform in particular is rife with examples of ways the law has changed to respond to well-intentioned laws that unintentionally prejudice victims. To take but one, mandatory arrest laws were first enacted in response to widespread reports that police failed to take domestic violence cases as seriously as cases involving similar violence between strangers. However, as those laws began to be enforced, the secondary problem of dual arrests emerged. Instead of making no arrest at the scene of a domestic dispute, police would arrest both parties, particularly if there was any allegation of violence by both individuals or if one party struck back in self-defense. This led battered women to be subject to criminal charges, with particularly dire consequences in terms of child custody. Primary aggressor statutes, in which police are required to assess only the actual perpetrator, emerged to address mandatory arrest policies' unintended results. This reflects the ways that law enforcement policies must adapt as awareness and understanding of crimes such as domestic violence evolves. A statutory approach provides that flexibility, while a constitutional amendment, which would take years to amend, does not.

Constitutionally recognized rights for victims could impair both victims' and defendants' rights. The specter of constitutionally grounded conflicts between victims' and defendants' rights

ultimately can prejudice victims by increasing rather than reducing delay. Collateral litigation over tensions between defendants' and victims' interests would take on constitutional proportion and increase the overall length of litigation without meaningfully enhancing victims' participation. For example, defendants could challenge a victim's successful assertion of her interest in a speedy trial if it resulted in the prosecution proceeding with the case before it is ready for trial. Litigation likely would arise over

issues such as the extent to which a victim could participate in plea agreements, or the validity of a charging decision if the victim received no advance notice. Similarly, in New York State (as elsewhere), potential witnesses are routinely excluded from the courtroom so that their testimony will not be tainted by that of other witnesses and unfairly prejudice the defendant. Where the victim is also a witness, judges will have to weigh the defendant's right to a fair trial against a victim's newly created right not to be excluded.

Ultimately, both victims' and defendants' interests are best served by a trial in which the defendant's due process rights are fully protected. Full respect for defendants' rights will reduce the possibility of a successful appeal and protracted retrial with its attendant uncertainty and stress. Our concerns about defendants' rights are not allayed by the proposed amendment's flat statement that the rights of victims are "capable of protection without denying the constitutional rights of those accused of victimizing them." That clause would not prohibit rulings that could diminish long-existing and fundamental rights accorded defendants under the constitution.

The amendment's ambiguity will lead to compounded problems.

The proposed amendment would allow victims' rights to be restricted "when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity." While it may be the drafters' intention to protect individuals such as domestic violence victims who are criminal defendants, it is far from clear how those exceptions would be defined. For example, at what point in the trial process would there be a ruling to determine whether a "compelling necessity" warranted restricting victims' newly granted rights? How and when would domestic violence victims assert their status? Would they be able to do so without compromising their Fifth Amendment

rights? What evidence would be sufficient to persuade a court that the defendant is a victim of domestic violence - particularly if there are no police records or orders of protection, as is often the case.

Similarly, the amendment raises new questions such as how to resolve conflicts between victims of the same attack, or conflicts between the prosecutor and the victim. These unanswered questions illustrate the difficulty of knowing the impact of this proposed amendment, whether the proposed rights would be meaningful and practicable, and whether they might rebound to harm some victims.

Conclusion

In conclusion, the proposed constitutional amendment may be well intentioned, but good intentions do not guarantee just results. Safe Horizon is wholeheartedly committed to advancing crime victims' interests and needs. Our nearly 25-year history speaks for itself. We believe, however, that considerable progress with respect to victims' rights has been made in New York and elsewhere in recent years. Statutory frameworks requiring officials to take steps such as

notifying victims about court proceedings must be enforced and services for victims need support. When so much remains to be done to enforce existing victims' rights provisions and to expand the support services so vital to victims, we find it difficult to justify the extensive resources needed to pass a constitutional amendment.

Our position regarding the proposed amendment remains firm in the aftermath of the September 11 attacks. If anything, our experience serving the range of victims affected by the attacks - family members, injured people, displaced residents and displaced workers -- highlights the need to strengthen statutory protections, mandate enforcement of existing laws, and support the range of services crime victims need. Our clients seek services, support, and access to benefits. Those clients who are undocumented seek assurances that they won't be penalized as a result of seeking assistance from private

and government agencies. These experiences reinforce the importance of carefully balancing defendants' and victims' rights.

After careful consideration, we have concluded that the proposed amendment would at best be symbolic, and at worst harmful, to some of the most vulnerable victims. We are concerned that it could prove meaningless for the majority of victims whose cases fail to be prosecuted. Safe Horizon looks forward to working with all those concerned about victims' rights to advance legislative and policy responses that most fully respond to victims' needs.

I would be pleased to answer any questions. Thank you.