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Arizona Supreme Court
1501 W. Washington
Phoenix, AZ 85007-3232
Via email: wmontgomery@courts.az.gov

Re: Recommended Changes to the Arizona Rules
Regarding Crime Victims' Rights

Dear Justices of the Arizona Supreme Court:

You may recall that I spoke to the Committee on Criminal Rules Regarding Victims in early 2021 in support of Arizona Voice for Crime Victims' (AVCV's) rule change petition. I write to you today to encourage you to adopt the Section (v) amendments presented to you by Justice Lopez in R-22-0035. This important proposal currently pending before your Court would integrate crime victims' rights throughout the Arizona Rules of Criminal Procedure. This would be an important innovation towards protecting crime victims' rights and would serve as a national model for how to integrate victims into criminal justice processes.

Some background about my experience in this area may be helpful here. In 2005, when I was serving as a federal district court judge here in Utah, I made a similar proposal to integrate crime victims' rights throughout the federal rules of criminal procedure. *See* Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 BYU L. REV. 835. As I explained then, in my view, the federal criminal rules could no longer leave victims unmentioned. I noted that, in October 2004, Congress enacted the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act (CVRA). The CVRA transformed crime victims into participants in the federal criminal justice process by (among other things) guaranteeing them notice of court hearings, the right to attend those hearings, and the opportunity to testify at appropriate points in the process. These new victims' rights required changes to the Federal Rules of Criminal Procedure to reflect the victim's expanded role. My article offered comprehensive, rule-by-rule proposals for changing the federal rules to both implement the CVRA and reflect sound public policy. *Id.* at 856-923 (offering proposed amendments to Rules 10, 11, 12, 15, 17, 18, 20, 21, 23, 32, 44, 46, 48, 50, 51 and 53 of the Federal Rules of Criminal Procedures). I believed that the CVRA dictated changes like these to the Federal Rules of

Criminal Procedure, because only by integrating victims into the federal rules could Congress's goal of making victims participants in the process be fully realized. *Id.* at 924-25.

Unfortunately, the U.S. Supreme Court's Advisory Committee on the Federal Rules of Criminal Procedure elected not to make these comprehensive changes. Instead, drafters of the federal rules did something similar to what the drafters of the Arizona rules have done—the federal drafters choose to add just a single federal rule (Fed. R. Crim. P. 60) onto the backend of the federal rules, briefly restating the CVRA's provisions.

The reasons for this cursory approach were, in my view, misguided. I explained in a subsequently published article that this approach was a “mere tentative, half measure[] that do[es] not being to fully protect crime victims.” Paul G. Cassell, *Treating Crime Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007 UTAH L. REV. 861. And in the years since, we have seen examples of how federal crime victims are, too often, not treated fairly in criminal procedures. For example, I have been involved in long-running federal litigation concerning the rights of crime victims in the Jeffrey Epstein case, attempting to enforce their rights. A decision from the U.S. Court of Appeals for the Eleventh Circuit called the plea deal that was reached with Epstein a “national disgrace” because it was negotiated without regard for the interests of victims. *See in re Wild*, 955 F.3d 1196, 1198 (11th Cir. 2020) (explaining that Epstein's victims were mistreated but that the Court lacked jurisdiction to intervene). I believe that, had my proposals been put into effect, Jeffrey Epstein's victims (and other victims in the federal system) would have had their interests protected.

Arizona now faces a similar choice to those that the federal drafters faced. As you know, currently the Arizona rules rely on just a single rule that briefly discusses crime victims' rights—Arizona Rule of Criminal Procedure 39. Arizona Voice for Crime Victims—one of the nation's leading crime victims' rights organizations—has proposed that this single rule be supplemented with a more fulsome description of crime victims' rights throughout the Arizona Rules of Criminal Procedure. AVCV reports that, because victims' rights are not integrated through the Arizona rules, too often prosecutors, defense attorneys, and judges simply overlook that constitutional and statutory protections for crime victims' rights that are currently part of the Arizona legal landscape.

To me, AVCV's description of the situation rings true. I have frequently travelled around the country working on crime victims' rights issues, not only in the federal system but often in state systems. I have heard over and over again that, even after state constitutional and statutory crime victims' enactments are passed, ensuring that victims' rights are respected in the day-to-day functioning of America's criminal justice systems is a challenge. Based on AVCV's petition to your Court in 2020, it appears that lawyers and judges in Arizona (like lawyers and judges in other jurisdictions) rely on the rules as the basic guide to how to handle proceedings in the process. And so, when looking at a particular rule governing a particular proceeding, because victims' rights are not mentioned, unfortunately in some cases a victim's right will be overlooked.

Fortunately, it is a relatively simple drafting project to incorporate victims' rights into

the structure of Arizona's criminal procedure. The Committee, which I understand was comprised of stakeholders that included judges, defense attorneys, prosecutors, and victim advocates, has done a nice job ensuring that the Section (v) amendments identify places where specific references to specific rights of victims would be useful for improving the treatment of victims in Arizona.

More broadly, in our federalist system, the great "laboratory of the states" serves as an important way in which reform measures can be developed. Because of AVCV's 2020 petition and the hard work of the Committee, Arizona stands on the cusp of becoming the nation's leader in developing rules of criminal procedure that protect not only the important interests of prosecutors and defendants, but also the important interests of crime victims. I hope that Arizona will adopt those proposals so that the Arizona Code of Criminal Procedure can serve as the paradigm for states across the country to consider as they work to ensure that crime victims' interests are appropriately protected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul G. Cassell". The signature is stylized and cursive.

Paul G. Cassell