

# *Would VAWA Survive a Supreme Court Challenge?*

Three cases related to the Violence Against Women Act (VAWA) have come to the U.S. Supreme Court thus far:

1. *United States v. Morrison* (2000): Ruling the Commerce Clause does not allow VAWA to provide a federal civil remedy.
2. *Crawford v. Washington* (2004): Strengthening the Confrontation Clause of the Sixth Amendment, and casting doubt on the constitutionality of so-called “evidence-based” prosecutions in which the DA pursues a domestic violence case even though the complainant refuses to testify.
3. *Town of Castle Rock, Colo. v. Gonzales* (2005): Finding the respondent did not have a property interest in police enforcement of a domestic violence restraining order.

In all three cases, the Supreme Court issued restrictive rulings. So how would the Court rule on these constitutional questions?

## *1. Mandatory Arrest and No-Drop Prosecution*

Each year VAWA spends \$26 million to enforce mandatory arrest laws. Such policies appear to openly violate 4<sup>th</sup> Amendment protections that require the existence of probable cause before a person can be seized.

No-drop prosecution policies have also become widespread. Such mandatory prosecution policies also violate requirements for probable-cause.

## *2. Right to a Fair Trial*

VAWA’s “Legal Assistance for Victims” program provides legal help for alleged victims, *but not for alleged offenders* – thus placing a heavy thumb on the scales of justice.

## *3. Due Process*

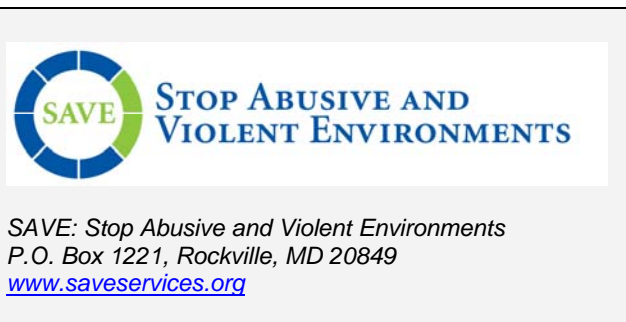
The 5<sup>th</sup> and 14<sup>th</sup> Amendments require due process of law. But many believe a person accused of domestic violence becomes deprived of due process protections:

1. VAWA spends millions of dollars to enforce restraining orders. But such orders, typically issued on an *ex parte* basis and requiring no proof of violence, lack the rudiments of due process.
2. Many state laws define domestic violence to include “annoyance” and “emotional distress,” terms that are unconstitutionally broad.

## *VAWA At Risk*

The SAVE report, “Are Domestic Violence Policies Respecting our Fundamental Freedoms?”<sup>1</sup> identifies 9 areas where domestic violence laws and practices infringe on Americans’ civil liberties.

The upcoming renewal of the Violence Against Women Act offers a historic opportunity to bring the law into line with constitutional requirements and civil rights.



<sup>1</sup> <http://www.saveservices.org/downloads/SAVE-Assault-Civil-Rights>