

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

Supreme Court State Secrets Decision Distinguishes Government Contractors From Ordinary Victims of Government Misconduct

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WASHINGTON-Today, the U.S. Supreme Court issued its decision in the consolidated cases *General Dynamics v. United States* and *Boeing v. United States* - the first state secrets cases before the Court in over 50 years - in which defense contractors challenged the Government's assertion of the state secrets privilege to block their defense in a contracting dispute. In an opinion focusing narrowly on the government contracting context, the Court held that when state secrets prevent full litigation of a defense in a contract case, neither party to the contract can benefit. The Constitution Project (TCP) had filed an [amicus brief](#) in the case, urging the Court to make clear that the state secrets doctrine is an evidentiary privilege and should not permit the Government to completely block litigation of entire cases or defenses.

The following may be attributed to Sharon Bradford Franklin, Senior Counsel for The Constitution Project:

"Although the Court missed the opportunity to fully revisit and reform the state secrets doctrine, we are pleased that the opinion clearly distinguishes the situation of knowledgeable contractors who negotiate agreements with the Government and must be bound by them, from that of ordinary individuals who allege they were harmed by government misconduct. The Court explicitly stated that the impact of its ruling is limited to 'contracting parties,' and again reaffirmed that 'the state secrets evidentiary privilege is not to be lightly invoked.'

Today's opinion recognizes that where the state secrets privilege applies in an evidentiary dispute, the secret evidence 'is excluded and the trial goes on without it.' We hope that lower courts will therefore recognize that where a private party is not a government contractor, judges must independently determine whether there is enough non-secret evidence for a case to be tried."