

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Watchdog Group Backs Murkowski's Discovery Reform Bill *TCP Says Legislation Needed to Protect Against Rogue Prosecutors*

WASHINGTON, D.C. -- The Constitution Project (TCP) today endorsed the Fairness in Disclosure of Evidence Act, legislation introduced by Senator Lisa Murkowski (R-AK) requiring federal prosecutors to turn over to defendants all evidence favorable to their cases, and providing appropriate penalties when they don't.

Virginia Sloan, president of the bipartisan constitutional watchdog group, said TCP believes the legislation is needed to address the "persistent problems with discovery in the federal criminal justice system" that arise when federal prosecutors fail in their constitutional duty to hand over evidence that might help lawyers for an accused person mount an effective defense.

"The passage of this legislation will ensure that defendants have access to all favorable information, including information to which they are constitutionally entitled, and will create greater consistency by eliminating disparities in the way federal prosecutors determine what information they are required to disclose," she said.

Last week, TCP released a statement from more than 20 criminal justice experts, including a number of former federal prosecutors, calling on Congress to adopt legislation to address the problem, noting that "federal courts, the Department of Justice and other entities have for years articulated inconsistent, shifting, and sometimes contradictory standards for criminal discovery, leaving it up to individual prosecutors to navigate this legal maze and determine the scope of their obligations to disclose information."

The TCP statement points to the high-profile corruption case the federal government brought against former U.S. Senator Ted Stevens (R-AK) as an example of the problem. The U.S. Department of Justice moved in April 2009 to set aside Senator Stevens' conviction and dismiss the indictment after discovering that federal prosecutors in the case had withheld evidence that would have impeached the trial testimony of a key government witness and bolstered the Senator's defense.

A subsequent court-ordered investigation found that the prosecution had been "permeated by the systematic concealment of significant exculpatory evidence." A report on the investigation was released today. Stevens has since died in a plane crash.

According to Sloan, efforts by the Department of Justice to address the problems internally have

failed. Similarly, attempts to amend the Federal Rules of Criminal Procedure have not yielded any results.

"Despite the Department's best efforts, the failures of federal prosecutors to adequately disclose favorable information -- whether intentional or inadvertent -- continue to occur often enough that we concluded the only way to adequately address the issue is for Congress to act," Sloan said.

"Senator Murkowski is to be commended for her leadership on this critical issue," she said.

The Constitution Project's "Call for Congress to Reform Federal Criminal Discovery" with a full list of signatories is available online at

<http://constitutionproject.org/pdf/callforcriminaldiscoveryreform.pdf>.

[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.



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