

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

FOR IMMEDIATE RELEASE - March 20, 2012

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## **TCP Welcomes Decision Providing Better Access to Counsel** *Sloan: 'Regrettable' the Supreme Court Failed to Address Constitutional Grounds*

WASHINGTON, D.C. -- The Constitution Project (TCP) welcomed today's decision in *Martinez v. Ryan*, in which the U.S. Supreme Court held that ineffective post-conviction counsel could excuse the procedural bar that had originally prevented a federal court from considering Martinez's constitutional claims.

"While the Court regrettably failed to make it a constitutional right, today's decision at least provides access to courts for petitioners like Mr. Martinez, who are barred from raising certain constitutional claims until later in the appellate process," said Virginia Sloan, president of TCP, a bipartisan constitutional watchdog group.

"The Court recognized that the appeals process has become so complex, with so many traps for those who lack legal training, that the effective assistance of an attorney has become essential to successfully establish constitutional violations," she said.

According to Sloan, TCP had hoped that this case would be the vehicle through which the Court recognized a constitutional right to counsel in certain post-conviction proceedings. However, the Court ultimately decided the case on narrower equitable grounds, rather than constitutional grounds.

In this case, Martinez wished to challenge the adequacy of his trial lawyer's performance, but Arizona's procedural rules prevented him from doing so during the direct appeals process (which immediately follows trial). His first opportunity to raise his ineffective-assistance-of-trial-counsel claim was during the collateral appeals process (which follows a defendant's final conviction).

However, because Martinez's appellate counsel, without Martinez's knowledge, waived his constitutional claims in state court, a federal court ruled that the ineffective-assistance-of-trial-counsel claim had been procedurally defaulted. This meant the federal court was prohibited from considering the claim on its merits. For Martinez to have any chance for this constitutional claim to be heard, a federal court would have to recognize either that there was cause to excuse the procedural default or that Martinez had a constitutional right to effective representation during the collateral appeals process, at least as to this claim. In a [7-to-2 ruling](#) authored by Justice Kennedy, the Supreme Court chose the former route to granting Martinez relief.

Specifically, the Court recognized that when a state prisoner is required by state law to wait to

raise an ineffective-assistance-of-counsel claim until collateral appeal, the prisoner may establish grounds for excusing a default on that appeal if the prisoner was never appointed counsel or if the prisoner's post-conviction counsel was ineffective, as in Martinez's case.

"In many states, post-conviction proceedings provide the only opportunity for certain constitutional claims to be heard. Because violations of the constitutional right to counsel are so pervasive, defendants must be able to challenge these violations with the assistance of trained counsel," Sloan said.

"Today the Court recognized that for constitutional protections to have force, defendants must have the opportunity to be heard in a fair manner, which can only be ensured by the effective assistance of counsel," she said.

In 2009, TCP issued [Justice Denied](#), a comprehensive report that documents failures of the criminal justice system to protect the Sixth Amendment right to counsel, and offers recommendations for protecting this fundamental constitutional right. The report shows that throughout the United States, public defenders are overworked and under-resourced, leading to frequent violations of the rights of indigent defendants.

#### [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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