

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

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## **TCP Regrets Loss of Key Provision in Justice for All Act** *Sloan: DoJ needs more tools to confront crisis in indigent defense*

WASHINGTON, D.C. -- A bipartisan legal watchdog group expressed regret that the Senate Judiciary Committee approved the Justice for All Reauthorization Act (S. 250) on Thursday without a key provision giving the federal government the authority to hold states accountable when they fail to provide constitutionally-required lawyers for poor people accused of crimes.

The committee sent the legislation to the full Senate, but only after removing the section of the bill that would have allowed the Department of Justice to go to court -- or, in legal terms, created a "cause of action" -- to ensure that state and local governments provide competent criminal defense lawyers for people unable to afford a lawyer on their own as required by the U.S. Constitution's Sixth Amendment.

"Allowing the Department of Justice to sue states if necessary would have offered an important incentive to the states to take their Sixth Amendment obligations more seriously, and the committee's decision to eliminate this authority is more than disappointing," said Virginia Sloan, president of The Constitution Project (TCP).

Sloan likened the original legislation to a "carrot and stick approach," with the bill's training and technical assistance grants for the states, which were approved, as the "carrots" and the cause of action provision, which was removed, as the "stick."

"A carrot and stick approach without the stick is not much of an approach. There is a crisis in indigent defense across the country, and yesterday's committee action reduces the tools available to the Department to confront it," she said.

Budget shortfalls at the state and local level are putting greater pressure on public defender systems already stretched to the limit, Sloan said. For example, in 2010 nearly three-quarters of all county-based public defender offices exceeded the maximum caseload recommendations.

According to Sloan, the Justice Department has used similar authority in the juvenile justice system to work with states for the last 15 years to protect the constitutional rights of children.

"As we have seen in the juvenile justice context, the Justice Department has rarely used its authority to fully litigate a case, but instead has used it to work cooperatively with the states to address deficiencies. I am certain that the Department would be equally circumspect in using any similar

authority to assist state and local governments struggling to provide constitutionally adequate criminal defense counsel," she said.

Sloan indicated that, despite the disappointment of losing the cause of action provision, TCP would continue to support the bill's passage. It contains a number of other important reforms, including, for the first time, guaranteeing that states will include indigent defense advocates in deciding how to allocate federal grant money and providing financial assistance to states seeking to improve their indigent defense systems. But she also said The Constitution Project would continue to advocate for giving the Department of Justice all the tools it needs, including the ability to sue states and localities that fail to meet their constitutional responsibilities to provide competent indigent defense.

The right to counsel for criminal defendants is guaranteed by the Sixth Amendment to the U.S. Constitution. In a landmark 1963 decision, *Gideon v. Wainwright*, the U.S. Supreme Court ruled that it was the state's responsibility to provide a lawyer for criminal defendants who couldn't afford to hire one on their own.

### [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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