

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

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## Supreme Court Must Clarify Award of Attorneys' Fees for Litigation Misconduct, TCP Says

*Group's Amicus Brief Argues 11th Circuit Decision 'Guts the Hyde Amendment'*

WASHINGTON, D.C. -- The Constitution Project wants the U.S. Supreme Court to clarify that a federal law called the "Hyde Amendment" requires the Department of Justice to pay the attorneys' fees when prosecutors intentionally withhold favorable evidence from prevailing defendants.

In an [amicus brief](#) filed today, the bipartisan watchdog group asked the Court to take up the case of *Ali Shaygan v. United States*, in which the Eleventh Circuit Court of Appeals threw out an award of more than \$600,000 in fees to Shaygan's lawyers, despite a lower court's findings of repeated violations of the defendant's rights by the prosecutors.

"The trial court found constitutional violations and unethical behavior on the part of the prosecutors throughout this case," said Virginia Sloan, president of The Constitution Project (TCP). "If this case doesn't merit the award of attorneys' fees under the Hyde Amendment, it is hard to imagine one that would; the Eleventh Circuit was wrong to deny them."

Enacted in 1997, the Hyde Amendment gives federal judges the power to force the government to pay reasonable fees to acquitted defendants if the actions of the government lawyers were "vexatious, frivolous or in bad faith."

TCP argues in its brief that a sharply divided Eleventh Circuit wrongly interpreted the Hyde Amendment to permit any kind of prosecutorial behavior so long as there were grounds to file the initial charges, saying that such an interpretation "guts the Hyde Amendment, rendering it meaningless."

The group also argues that violations of a defendant's *Brady* rights often go unpunished and that the Hyde Amendment is one of few deterrents to such violations, making its application to *Brady* violations essential. In 1963, the U.S. Supreme Court ruled in *Brady v. Maryland* that prosecutors have a constitutional obligation to provide the defense with "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment." The failure by a prosecutor to disclose appropriate information is often referred to as a "*Brady* violation."

"Congress clearly understood in passing the law that prosecutorial misconduct such as discovery violations can taint an entire prosecution," Sloan said, "and it undoubtedly intended that the Hyde

Amendment apply in cases involving such misconduct."

The issue arose from the unsuccessful prosecution of a Miami doctor, Ali Shaygan, on drug charges in 2008. The trial court found that government agents had continued to interrogate Shaygan after he requested legal counsel, a violation of the U.S. Supreme Court's ruling in *Miranda v. Arizona*, and piled on additional indictments to punish him for seeking to suppress the interrogation. In addition, when the government thought its case was "going south," it launched a secret, collateral investigation in an attempt to disqualify Shaygan's attorneys right before trial, and government lawyers withheld a number of documents that could have helped the defense mount its case.

The *amicus* brief notes that The Constitution Project has issued [several reports](#) calling for stronger *Brady* enforcement. Earlier this year, the group assembled nearly 150 criminal justice experts -- more than 100 of whom are former federal prosecutors -- who agree that [Congress should act](#) to reduce instances of prosecutorial misconduct by clarifying the standards for required disclosure and imposing meaningful penalties when they are violated.

Sloan said the high court should use this case to "take a step in the right direction" by clarifying that the Hyde Amendment applies to failures to disclose favorable evidence in violation of *Brady*.

#### [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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