

House Passes Durbin, Sullivan Due Process Protections Act

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WASHINGTON – U.S. Senators Dick Durbin (D-IL) and Dan Sullivan (R-AK) applauded the House’s unanimous passage of S. 1380, the *Due Process Protections Act*, legislation they introduced earlier this Congress to reinforce the constitutional right of defendants to access favorable and potentially exculpatory evidence obtained by prosecutors. The bill passed the Senate on May 22.

“The Due Process Clause is enshrined in our Constitution as a check against government overreach, but there are inadequate safeguards in federal law to ensure that this fundamental right is protected for criminal defendants. Our bipartisan bill will help protect the right of the accused to all evidence that could exonerate them without placing undue burdens on prosecutors,” Durbin said. “I’m pleased the House passed this bill and I thank Senator Sullivan for his partnership in this effort.”

“The trial of the late Senator Ted Stevens showed us that, while the vast majority of federal prosecutors abide by their constitutional duties and obligations, some choose to win at all costs by taking short-cuts and violating defendants’ constitutional rights,” said Sullivan. “I thank my colleagues in the House for passing our legislation to prevent these kinds of miscarriages of justice from happening in the future, and I look forward to the President signing this bill into law.”

Under the Fifth and Fourteenth Amendments to the U.S. Constitution, defendants are guaranteed due process under the law. The 1963 *Brady vs. Maryland* U.S. Supreme Court case clarified that due process entails the requirement of prosecutors to disclose to the accused all “favorable” evidence that is “material” to their case.

The *Due Process Protections Act* would:

- Amend Rule 5 of the Federal Rules of Criminal Procedure to require a judge in the beginning of every case to issue an “order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.”
- Require each judicial council in which a District Court is located to promulgate a model order that its courts can use at their discretion.
- Leave it to the courts in each district to tailor the parameters of their *Brady* order, rather than impose any burdensome requirements on prosecutors.

Having these “*Brady* orders” in place will make evidence disclosure requirements a priority for prosecutors, and ensure prosecutors can be held to account for not complying with *Brady* rules.

Despite the constitutional requirement for prosecutors to disclose exculpatory evidence, there continue to be cases in the federal system where this constitutional obligation is ignored. One of the most high-profile examples of this misconduct was the 2008 prosecution of the late Senator Ted Stevens (R-Alaska). The conviction was vacated before sentencing by the federal District Court following revelations of prosecutors and FBI agents conspiring to withhold and conceal favorable evidence from Senator Stevens’ defense.

According to the National Registry of Exonerations, between 1989 and 2017, prosecutors concealed exculpatory evidence at trial in half of all murder exonerations.

1. 1380 was also co-sponsored by Senators Cory Booker (D-NJ), John Cornyn (R-TX), Mike Lee (R-UT), Rand Paul (R-KY) and Sheldon Whitehouse (D-RI).