

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

The Constitution Project Dismayed by U.S. Supreme Court Decision in *Turner v. Rogers*

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CONTACT: Dallas Jamison, Senior Communications Director; cell: 720.333.1494;

djamison@constitutionproject.org

WASHINGTON - The Constitution Project (TCP) is dismayed by today's opinion from the United States Supreme Court in *Turner v. Rogers*, in which the Court held that defendants do not enjoy a constitutional right to counsel in civil proceedings where their physical liberty is at stake. TCP filed an *amicus* brief in the case based upon the 2010 recommendation of its National Right to Counsel Committee, advocating for the appointment of quality representation to all persons unable to afford counsel in proceedings that result in a loss of liberty-regardless of whether the proceedings are denominated "civil" or "criminal."

"Today, the Supreme Court issued a decision contrary to both its own precedent and to due process requirements enshrined in the Constitution," said TCP's National Right to Counsel Committee co-chair Timothy K. Lewis, a former judge for the U.S. Court of Appeals for the Third Circuit. "All indigent defendants at risk of deprivation of physical liberty ought to be provided effective assistance of counsel, regardless of whether the case is a civil or criminal proceeding. The Court's decision undermines the fundamental fairness of our justice system, putting Americans in danger of losing their liberty simply because they cannot afford a lawyer."

Michael Turner was incarcerated for one year because of his failure to pay court-ordered child support. Although his inability to pay would have constituted a legal defense to incarceration, Mr. Turner was unable to prove his inability to pay to the court. Mr. Turner was not provided a lawyer, who could have helped prove to the court that Mr. Turner's non-payment was due to poverty, not willfulness. The South Carolina Supreme Court determined that Mr. Turner had no constitutional right to counsel at the proceeding, theorizing that he "[held] the key to the cell door" unlike criminal defendants, *i.e.*, he could earn his release by paying his debts. In reality, he had no way to pay.

The U.S. Supreme Court held that defendants like Turner do not have a right to counsel in civil contempt proceedings to enforce child support obligations. Rather, the Court determined that a due process violation could be avoided in such cases if a court implemented alternative procedures like having the defendant fill out a form concerning his or her ability to pay, and notifying the defendant that inability to pay is a defense to imprisonment.

"With this decision, the Supreme Court has effectively endorsed the expansion of the unjust use of debtors' prisons in America," said TCP Senior Counsel Mary Schmid Mergler. "It serves neither the interests of the state nor of custodial parents or creditors to incarcerate indigent persons who lack the means to pay their debts. Appointing counsel to every defendant who faces incarceration is the best way to ensure government resources will not continue to be wasted on debtors whose failure to pay is due to indigence, not willfulness. Unfortunately, the Court failed to recognize this truth."

The TCP National Right to Counsel Committee's comprehensive report *Justice Denied: America's Continuing Neglect of Our Constitution Right to Counsel* is available at: <http://www.constitutionproject.org/pdf/139.pdf>.

The 2010 recommendation of the National Right to Counsel Committee concerning civil contempt proceedings is available at:
<http://www.constitutionproject.org/pdf/416.pdf>.

TCP's *amicus* brief filed in *Turner v. Rogers* is available at:
http://www.constitutionproject.org/pdf/tsac_10-10_brief.pdf.

Petitioner Michael Turner's brief is available at:
http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_2010_2011_10_10_Petitioner_authcheckdam.pdf

About The Constitution Project

Established in 1997, The Constitution Project (TCP) is known for its ability to bring together unlikely allies-experts and practitioners from across the political spectrum-in order to promote and safeguard America's founding charter. TCP is working to reform the nation's broken criminal justice system and to strengthen the rule of law by undertaking scholarship, consensus policy reforms, advocacy and public education. TCP was born out of the belief that we must cast aside the labels that divide us, in order to keep our Constitution and our democracy strong.