

# [***January 6 rioters want the Supreme Court to let them off the hook from obstruction charge***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BTD-WX61-JBSS-S005-00000-00&context=1516831)

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**Body**

(CNN) &#8212; The Supreme Court will hear arguments Tuesday from a former Pennsylvania police officer who [*stormed the US Capitol on January 6, 2021*](https://www.cnn.com/2023/12/13/politics/capitol-rioter-supreme-court/index.html), in a case that could undermine federal charges against more than 350 rioters.

The court's decision could also have significant ramifications for former President Donald Trump, who was charged with the same criminal offense.

Special counsel Jack Smith charged Trump with violating a federal law enacted in 2002 that prohibits people from obstructing an "official proceeding." Prosecutors filed that same charge against hundreds of rioters, such as the [*so-called "QAnon Shaman,"*](https://www.cnn.com/2021/11/17/politics/jacob-chansley-qanon-shaman-january-6-sentencing/index.html) who climbed the Senate chamber's dais in horned headdress, and the leader of the Oath Keepers, who had [*championed a "bloody civil war"*](https://www.cnn.com/2022/11/04/politics/stewart-rhodes-oath-keepers-trial/index.html) in the weeks before the riot.

The charge can add up to 20 years to a prison sentence.

Now, the Supreme Court will consider whether the prosecutors' interpretation of the law can be used against the rioters and whether the convictions already secured will stick.

Trump would almost certainly use a decision against the government tofuel criticism he has directed at prosecutors as he has tried to reframe the January 6 attack on the Capitol as a "beautiful day."

And that means the stakes are high not only for Trump and the January 6 defendants but also the Justice Department.

"Any finding that the Justice Department has been charging improperly in any of these cases would be very politically damaging," said Claire Finkelstein, a professor of law and philosophy at the University of Pennsylvania Carey Law School. "This is a case in which we want our system as a whole to speak with a single voice and weigh in on the side of rule of law."

Trump takes over Supreme Court's docket

The high court will hear arguments in Fischer v. US on the second day of [*Trump's trial in New York*](https://www.cnn.com/politics/live-news/trump-hush-money-trial-04-15-24/index.html) on separate statecharges that he falsified business records to hide the reimbursement of hush money payments to adult film star Stormy Daniels. (Trump has pleaded not guilty in that case, and he has tried to brand all the criminal charges against him as motivated by ***politics***.)

The charge at issue in the Supreme Court case stems from a law Congress enacted in response to a series of corporate accounting scandals, including the [*2001 Enron debacle*](https://www.cnn.com/2013/07/02/us/enron-fast-facts/index.html). That law makes it a felony to "corruptly" alter, destroy or mutilate a record with the intent of making it unavailable for use in an "official proceeding," or to "otherwise" obstruct, influence, or impede such a proceeding.

Prosecutors say the charge should apply to the January 6 cases because the plain meaning of the words "obstruct" an "official proceeding" should cover the attack that interrupted Congress' counting of ballots to certify President Joe Biden's win in the 2020 election.

Critics counter that the law was intended to prevent evidence tampering before a trial or investigation.

Though Trump is not a party in the case, the appeal has indirectly thrust him onto the Supreme Court's docket for the third time this election year. In March, the justices unanimously ruled that the former [*president would appear on the ballot in Colorado*](https://www.cnn.com/2024/03/04/politics/trump-supreme-court-colorado-14th-amendment/index.html) despite claims he violated the 14th Amendment's "insurrectionist ban" because of his actions on January 6.

Next week the court will hear arguments on Trump's explosive claim that he is entitled to immunity from the special counsel's federalelection subversion case, including the obstruction charge.

'Stinging reminder' at stake for prosecutors

Joseph Fischer, a [*former Pennsylvania police officer*](https://www.cnn.com/2021/02/19/politics/capitol-riot-pennsylvania-cop/index.html) who brought the case to the Supreme Court, told the justices that by the time he arrived at the Capitol on January 6, Congress had already recessed. His lawyers said Fischer spent less than four minutes inside the building and that he advanced fewer than 25 feet.

Prosecutors paint a different picture. They say Fischer warned his police chief by text that the day might get violent. He texted that protestors should drag Democrats "into the street and have a mob trial." Fischer captured a video on his own cell phone in which he can be heard yelling "charge!" before he ran into the Capitol, prosecutors say.

A grand jury [*returned a seven-count indictment against Fischer*](https://www.justice.gov/d9/fischer_-_indictment_0.pdf) weeks after the attack that included charges of civil disorder; assaulting, resisting, or impeding officers as well as the obstruction charge. The case before the Supreme Court involves only that last charge.

The US Court of Appeals for the DC Circuit combined Fischer's case with two others and ruled that the charge could be used against January 6 defendants - siding with 14 of 15 district court judges who ruled the same way. All three defendants appealed to the Supreme Court, but the justices granted only Fischer's case. The other two are pending and will likely be summarily resolved after Fischer.

Yet the political ramifications are potentially enormous.

Exactly how much impact the court's ruling may have on other January 6 cases is unclear. Most defendants who were convicted of the obstruction charge and sentenced to prison were also convicted of additional felony or misdemeanor charges, according to a CNN analysis. The average sentence in those cases was just over four years, the analysis shows - far less than the 20-year maximum the obstruction count carries.

"A Fischer win would not be a revolutionary blow to the DOJ's Capitol riot cases, but would be a stinging reminder that improbably broad interpretations of criminal statutes will not be tolerated," said Nicholas Smith, who represented the defendants before the DC Circuit.

Trump would almost certainly use a win for Fischer to try to further undermine the Justice Department. Depending on how the court rules, he might also attempt to have that charge thrown out in his own case.

The special counsel appears eager to head that argument off.

In a filing last week at the Supreme Court in Trump's immunity case, Smith argued the obstruction charge should stick against Trump even if Fischer wins. In a footnote, Smith pointed out that Trump's charge is based on the fake slate of electors he attempted to have submitted to Congress.

"The Trump charges probably survive almost no matter what the court does in Fischer," said Randall Eliason, a former federal prosecutor and George Washington University law professor.

Progressive groups have called on Justice Clarence Thomas to recuse himself from cases involving January 6 because his wife, conservative activist Ginni Thomas, acknowledged she attended Trump's rally at the White House before the attack. Text messages reviewed by a congressional committee also showed that Ginni Thomas repeatedly texted senior officials inside the White House after the election to offer her support.

Thomas has largely ignored those requests.

Also central to the case: An undersized grouper

Fischer relies heavily on a 2015 [*precedent from a deeply fractured Supreme Court*](https://supreme.justia.com/cases/federal/us/574/528/#tab-opinion-3243029) that centered on a commercialfisherman who was caught with undersized red grouper on his boat**.** The fisherman had ordered the offending fish to be tossed overboard before authorities could confirm he had violated federal fishing regulations.

The fisherman was convicted of a related crime that prohibits people from altering or destroying "any record, document, or tangible object" with the intent to obstruct an investigation. The government argued the fish fell within the definition of "tangible object."

But a 5-4 majority of the Supreme Court that included Justice Ruth Bader Ginsburg, the leader of the court's liberal wing at the time, and Justice Samuel Alito, a stalwart conservative, disagreed. Viewed in context, a plurality of the court reasoned, a "tangible object" included items "used to record or preserve information," like a document - not a fish.

Fischer told the Supreme Court that context and history of the law at issue in the January 6 prosecutions is just as clear. It was meant to apply, his attorneys argue, to efforts to tamper with evidence, not to charge people involved in a riot.

But that interpretation has drawn considerable pushback from the government and some outside experts. The way the law at issue in the January 6 charges is written is different from how it looks in the earlier case.

The section on "obstruction" is more separated, which the Justice Department argues suggests Congress intended to lay down a broad prohibition on disrupting congressional proceedings.

Eliason thinks the earlier decision about the undersized fish will probably ultimately work to the government's benefit. Among those who joined the dissent in the fisherman case was the late Justice Antonin Scalia, a leader of the widely accepted notion of interpreting the law based on its words rather than its legislative history or other factors.

"If they're being consistent, at least two out of the three Trump justices ought to vote against Fischer's positions," Eliason said. "The ambiguity is not there. It's a broad statute, but it's not unclear."

By John Fritze and Hannah Rabinowitz, CNN

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