

# [***How lawyers in the Trump ballot case are training for the Supreme Court arguments***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6B7N-3H01-JBSS-S000-00000-00&context=1516831)

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**Body**

(CNN) &#8212; LawyerJason Murray, taking the lead next week in the Supreme Court [*battle to keep Donald Trump off presidential ballots*](https://www.cnn.com/2024/01/20/politics/donald-trump-ballot-removal-efforts-dg/index.html), has never argued before the justices.

[*Jonathan Mitchell*](https://www.cnn.com/2024/01/26/politics/supreme-court-trump-colorado-mitchell-analysis/index.html), representing Trump, is a well-known conservative advocate with some experience at the court - yetnone in a case close to this magnitude.

As of Friday, both men will move their operations to Washington and tap into a sophisticated network of lawyers who've stood many times in the well of the courtroom and are positioned to channel the justices. Murray and Mitchell will engage in multiple "moot courts," separately honing their cases before attorneys who fire questions designed to simulate the justices and their intensity.

Such sessions are designed to expose the weaknesses in a case, devise solutions and refine its strong points. The tougher the moot - the adage goes - the smoother the actual argument.

During any given session at the real venue, a lawyer will be pummeled with questions fromthe nine justices on everything from tiny details in the trial record to broad scenarios regarding the consequences of a potential ruling. Some of these scenarios can be wildly outlandish, and the strongest advocates field the myriad while continually turning the court back to core legal points that reinforce their case.

"It's an extraordinary lift for an advocate to master the historical and constitutional materials raised in this case," said David Frederick, who has argued 59 times at the court and written a book on advocacy.

"But the hardest part," Frederick said of the Trump case, "is anticipating the many hypotheticals the justices will raise to determine where to draw the proper line. The justices will be mindful that wherever they draw the line, partisans on both sides may seek to use it for future political gain."

Some questioning from the bench can have little to do with the lawyer at the lectern. Justices might use queries to signal their own stands and [*engage in subtle advocacy*](https://www.cnn.com/2019/06/21/politics/supreme-court-justices-code-precedent/index.html) ahead of the vote in their private session.

For his part, Chief Justice [*John Roberts*](https://www.cnn.com/2023/12/31/politics/john-roberts-year-end-report-supreme-court-ai/index.html)may pose a question that reframes the issue and suddenly extinguishes any assumptions of his thinking. Advocates are advised to especially heed Roberts and Justices Amy Coney Barrett and Brett Kavanaugh who are at the ideological center of the bench and can steer the outcome of close cases.

Liberal Justice Elena Kagan and conservative Justice Samuel Alito**,** meanwhile, can trip up the most experienced advocates with their hypothetical questions. They have a way of targetingthe weakest spot.

Despite the solemn grandeur of the Supreme Court setting, arguments are often free-for-alls. There can be interruptions and crosstalk among justices. Lawyers can never be sure what element of a case someone might latch onto, perhaps consequential, perhaps in the end irrelevant. This case of Trump v. Anderson is particularly difficult because of the multitude concerns arising from the open-ended 14th Amendment section barring certain officials who engaged in an insurrection from holding future office.

Murray, representing the Colorado voters trying to exclude Trump from the state ballot, has four moots planned. Mitchell, on behalf of Trump, has two arranged. Sources familiar with their schedules say both men will appear at the Georgetown Law School's Supreme Court Institute, with its courtroom that replicates the crimson drapes and other trappings of the real setting. They will have separate, closed-door sessions at the place that has become a national leader in moots for attorneys preparing for a Supreme court appearance.

Preparing for Thursday's arguments, Murray and Mitchell face a herculean challenge with this dispute that involves multiple constitutional issues and strikes at the core of electoral ***politics*** and democracy. It also brings the court back to the January 6, 2021, attack on the US Capitol, across from its own columned structure.

All deadlines for the lawyers' filings and oral arguments were dramatically compressed, as the justices positioned themselves to try to decide the case before most of the state presidential primaries. Lawyers typically have several months to prepare. Other cases that were granted hearings in early January, as Trump v. Anderson was, will not be heard until late April or even next fall.

And, adding to the pressure, every word the men speak will be parsed in real time. Many media outlets, including CNN, will be carrying the session live.

Preparing with moot courts

Although lacking experience before these nine justices, Murray and Mitchell have their respective fortes. Murray is a veteran of appellate courts and argued the challenge to Trump in Colorado that ended with a state supreme court decision disqualifying him from the state ballot.

Mitchell joined the case on behalf of Trump around the time arguments were underway at the Colorado Supreme Court. Mitchell, however, is a strategic conservative thinker [*in sync with the right-wing of this bench*](https://www.cnn.com/2024/01/26/politics/supreme-court-trump-colorado-mitchell-analysis/index.html).

They each have thrived in different professional realms. Murray was a trial lawyer for 11 years with the national corporate law firm Bartlit Beck, handling big-dollar commercial disputes. Last year, Murray left the firm to join former colleagues in a new Colorado-based boutique firm of Olson Grimsley. The six-lawyer firm said its aim was groundbreaking public interest litigation.

Mitchell, meanwhile, has been attracted to ideologically and politically charged cases, serving as solicitor general of Texas for five years and teaching at various law schools before establishing his own one-person firm in 2018.

Mitchell previously argued five cases at the high court, including in 2021 to support a Texas abortion ban. Three weeks after the Trump case, Mitchell will be back before the justices, representing a gun owner challenging a federal ban on bump stocks, devices that allow semi-automatic weapons to fire more rapidly, potentially hundreds of bullets a minute.

The Supreme Court typically allots one hour for each case, 30 minutes per side. But because of the justices' protracted questioning, the sessions regularly go about twice as long.

Moot courts - ferociously testing a lawyer - tend to go even longer.

At the same time, there are limits to replicating the real thing. Rather than nine moot "justices," many advocates say the ideal for a moot is four or five on the panel. Any more along a makeshift bench, and the practice session grows too chaotic.

Organizers of a moot, whether a law school, public-interest entity, or simply a small group of legal partners, naturally try to enlist lawyers who have argued many times before the justices and understand their points of persuasion.

Georgetown's Supreme Court Institute, for instance, relies heavily on attorneys who have served in the US solicitor general's office, the government's top lawyers before the Supreme Court.

The Institute usually conducts a confidential moot for just one side, on a first-come, first-served basis. (If both sides come in within 48 hours, there's a coin toss.) In a handful of cases of major significance, the Institute will hold moot courts for both sides, but only if both sets of parties agree to the arrangement. (The Institute, which operates on a non-partisan basis and offers its sessions for free, declined to comment on the Trump case arrangement.)

Particularly valuable for any moot court, along with former members of the solicitor general's office, are former Supreme Court law clerks. They were once in a position to help prepare justices for arguments and then assist in the writing of decisions.

Both Murray and Mitchell have such experience.

A Harvard law graduate, Murray served as a law clerk to two of the justices: Kagan and Neil Gorsuch, when he was on the Denver-based 10th US Circuit Court of Appeals. Joining Murray at the counsel table on Thursday will be Eric Olson and Sean Grimsely, also former Supreme Court law clerks who have been involved in the Colorado case from the start.

Mitchell, a graduate of the University of Chicago, was a law clerk to the late Justice Antonin Scalia. Mitchell is well-known to all the current bench for devising the Texas abortion ban that led to the Supreme Court's eventual 5-4 vote reversing Roe v. Wade.

Kagan, a dissenter in that 2022 case, [*Dobbs v. Jackson Women's Health Organization*](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf), also dissented in the 2021 Texas case but not before referring disparagingly during oral arguments to the Texas ban masterminds as "some geniuses" who figured out a way to evade the Constitution.

In that November 2021 controversy, the Supreme Court allowed Mitchell 10 minutes as an an intervenor on the Texas side. His time at the lectern came after four other sets of arguments more central to the dispute were heard.

Next week, Mitchell and Murray will hold the leading roles. They may be allotted only the usual 30 minutes per side, or the justices may expand the number of minutes scheduled for each.

No matter the allotment, if past oral arguments are any guide, Murray and Mitchell will be in the courtroom for hours and longer than imagined.

By Joan Biskupic, CNN Senior Supreme Court Analyst

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