

Docket Chat: Fresh Faces Get Argument Time in November Cycle

Tony Mauro, *Supreme Court Brief*

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(L-R) STEVEN BRIGHT OF SOUTHERN CENTER FOR HUMAN RIGHTS, ANTHONY SHELLEY OF MILLER & CHEVALIER, MICHAEL KIMBERLY OF MAYER BROWN, AND WILLIAM CONSOVOY OF CONSOVOY MCCARTHY PARK.

File photos.

The November cycle of arguments before the U.S. Supreme Court will bring a large number of relatively new faces to the lectern. Even Solicitor General Donald Verrilli Jr., who usually argues at least one case during each two-week session, will sit this one out.

It may be the calm before the storm. December cases include the affirmative action battle *Fisher v. University of Texas*, and the one-person-one-vote case *Evenwel v. Abbott*. But November's arguments include a stream of criminal law and other cases that have not drawn as much attention.

Among private practitioners Michael Kimberly, a Mayer Brown associate, is one of the first-time high court advocates who will appear in November. He is set to argue Nov. 4 in *Shapiro v. McManus*, a case that could have consequences for future litigation over redistricting. At issue is the power to convene a three-judge district court panel in redistricting cases. The case also involves the impact of gerrymandering on First Amendment freedom of association rights. "It could make a real difference in post-2020 Census litigation," Kimberly said.

Kimberly's debut at the high court reflects the firm's willingness to spread Supreme Court work around, but also represents a milestone for Mayer Brown's association with the Yale Law School Supreme Court Clinic since its founding in 2006.

Now co-director of the Yale clinic, Kimberly was a student in the clinic in its first year. And he will be the fifth former clinic student to argue before the high court.

Another November novice is Matthew Guadagno, a solo New York immigration law practitioner. He'll argue on Nov. 3 in *Torres v. Lynch*, a challenge to a defendant's deportation when convicted of a state crime that differs from a parallel federal crime.

Guadagno did not return a phone call seeking comment about his first Supreme Court argument, but this plea, in capital letters, appeared on his website: "Due To my current workload, I will not be doing any consultations until after November 4, 2015."

On his blog, Guadagno explained, "Please understand that I am a solo practitioner without any staff. I even answer my own phone. This is the way that I like to do things. Unfortunately, I do not have the means to take on any new cases at this time."

Anthony Shelley, chairman of the executive committee at Miller & Chevalier, will appear for the second time before the justices on Nov. 4 in *Bruce v. Samuels*, a Prison Litigation Reform Act case that addresses filing fees for indigent inmates.

Shelley's usual specialty is ERISA and employee benefits, and his first argument was in the 2006 case *Empire HealthChoice Assurance, Inc. v. McVeigh* on federal employee health benefits.

How did Shelley come to represent a prison inmate in the upcoming argument? As part of the firm's pro bono program, Shelley said the U.S. Court of Appeals for the D.C. Circuit has appointed him more than a dozen times to argue appeals for indigent inmates, many of them involving the prison litigation reform law.

"I don't get involved with too many criminal defendants in ERISA cases," Shelley said. "But they are appeals in both cases, and the preparation is similar. You work all the briefs and test the strengths and weakness of your arguments and do the best you can."

Stephen Bright's name is well-known to the justices, but he'll be arguing before the high court for only his third time. A longtime advocate for death row inmates on appeal, Bright is president and senior counsel of Southern Center for Human Rights. He argued before the court in 1988 and 2008, both time winning post-*Batson v. Kentucky* cases that involve racial bias in jury selection.

Bright is hoping for a third win on Nov. 2, when he argues in *Foster v. Chatman*, another case testing the boundaries of *Batson* in striking down convictions tainted by biased jury selection.

The court appointed Bright as counsel to Timothy Foster, whom he had represented since 2005. "I appreciate the chance to present the case to the court, both because my client's life is at stake and because of the discrimination that took place in the case, and that regularly occurs in jury selection in criminal cases," Bright said.

In *Luis v. United States*, Miami lawyer Howard Srebnick will argue before the justices in his second Supreme Court case involving the use of a criminal defendant's money in paying legal fees.

Srebnick, a partner in Black, Srebnick, Kornspan & Stumpf, argued unsuccessfully in 2013 in *Kaley v. United States* that defendants should be able to challenge asset forfeitures, even assets needed to pay for a lawyer.

Not all the private-firm lawyers arguing in November are newcomers. Former acting U.S. Solicitor General Neal Katyal of Hogan Lovells is representing the respondent in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, an ERISA case set to be argued on Nov. 9. He is the only former SG arguing in this two-week cycle.

And the parties in the next of a series of class action cases, *Tyson Foods v. Bouphakeo*, will be represented by high court veterans on Nov. 10: Carter Phillips of Sidley Austin for Tyson, and David Frederick of Kellogg, Huber, Hansen, Todd, Evans & Figel for the class members.

Mayer Brown's Andrew Pincus, another longtime advocate, will appear on Nov. 2 in *Spokeo v. Robins*, a case that tests how much actual injury is needed to give a party standing to sue, in this instance under the Fair Credit Reporting Act.

But the lawyer arguing for Thomas Robins, who brought the suit, will be a first-timer before the high court: William Consovoy of Consovoy McCarthy Park in Virginia. A former clerk to Justice Clarence Thomas, Consovoy won't be a rookie for long; he'll argue again in the *Evenwel* case in December.