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Supreme Court will hear arguments on Sullivan & Cromwell's mailroom mixup

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The U.S. Supreme Court is preparing to hear a case Tuesday that's got law firms lining up in sympathy for a mistake made by one of their own.

At issue is whether a client — in this case, a death row inmate — should be punished if his lawyers missed a deadline to file an appeal. ([Maples v. Thomas](#))

Lawyer blunders commonly land firms in hot water. The consequences for law firms, though, are often limited to losing a client's business or facing malpractice suits. But the Maples case involves unusually high stakes: a death sentence for a man convicted of murder, and a mailroom mix-up at Sullivan & Cromwell that caused his attorneys to botch an opportunity for appeal.

The client, Cory Maples, is an Alabama man who in 2000 was sentenced to death by a jury who found he'd shot and killed two people after a night of drinking. Two associates at Sullivan & Cromwell's New York office took on the case pro bono, and tried to overturn the conviction.

But by the time the Alabama court sent a notice dismissing Maples' petition (starting the clock on a 42-day deadline to appeal the decision in federal court), his attorneys had left Sullivan & Cromwell. New lawyers at the firm had inherited the case, but neither the Alabama court nor the firm's mailroom were notified. The ruling was sent back to the court unopened, with "Return to Sender — Left Firm" written on the envelope; a court clerk filed the return letter in a drawer. An Alabama attorney acting as local counsel also received the letter but didn't act on it, saying he had no role in the case other than serving as local counsel of record because the New York lawyers weren't licensed to practice in Alabama. Maples himself never received the notice.

Now, after failed attempts to persuade lower courts to waive the deadline, Sullivan & Cromwell is trying to convince the U.S. Supreme Court that Maples shouldn't be blamed for the law firm's mistake. The firm has hired Gregory Garre, a star litigator and former solicitor general now at Latham & Watkins, to argue on their behalf.

Michael Steinberg, a partner at Sullivan & Cromwell, said the firm "continues to work diligently to support Mr. Maples in asserting his rights."

Garre, who chairs Latham's Supreme Court practice group, declined to comment, but in [briefs](#) filed with the

high court said Maples should be given the opportunity to have his case reviewed by federal courts, and that the Alabama court should have taken greater measures to make sure Maples and his attorneys received the critical notice.

“The court clerk did nothing when the notices to both Maples’s out-of-state pro bono attorneys of record were returned unopened and unclaimed, except to stick the notices in a file drawer,” Garre wrote. “The state’s failure to do anything more deprived Maples of constitutionally adequate notice and directly impeded his ability to meet the deadline for appeal.”

Countering the firm’s argument is the state of Alabama, which says Maples cannot shift the blame to the court clerk, who followed state law by sending notices to Maples’s attorneys. That a court needs to provide even more notice on top of that “is a novel position, to say the least ... [and] is directly contrary to the court’s established precedents,” said John Neiman Jr., solicitor general for the Alabama Attorney General’s Office.

“When Maples missed his deadline, he was represented by a team of lawyers,” Neiman wrote in [brief](#) filed with the court. “Maples defaulted ... simply because they made mistakes.” In accordance with a 1991 U.S. Supreme Court decision in *Coleman v. Thompson*, petitioners bear the risk “for all attorney errors made in the course of the representation,” the brief said.

Attorneys at several major law firms (including Fulbright & Jaworski, Arnold & Porter and O’Melveny & Myers) are siding with Sullivan & Cromwell, filing friend-of-the-court briefs arguing that federal courts should hear Maples’s case. They’re joined by the ACLU, constitutional rights nonprofits and a prominent law professor. Lining up on the other side are the Criminal Justice Legal Foundation and the attorney general’s office of 20 states, including Texas, Arizona, Delaware and Virginia.

The case is “important for law firms but it’s more important for law firm’s clients,” said Jonathan Franklin, head of Fulbright & Jaworski’s Supreme Court and appellate practice who filed a brief on behalf of The Constitution Project and the Cato Institute. “In any law firm, the client always comes first. In this case, the client should not lose his life because of things his attorneys did that he had no responsibility for.”

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