

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - x

CRST VAN EXPEDITED, INC., :

Petitioner : No. 14-1375

v. :

EQUAL EMPLOYMENT OPPORTUNITY :

COMMISSION, :

Respondent. :

- - - - - x

Washington, D.C.

Monday, March 28, 2016

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

PAUL M. SMITH, ESQ., Washington, D.C.; on behalf of  
Petitioner.

BRIAN H. FLETCHER, ESQ., Assistant to the Solicitor  
General, Department of Justice, Washington, D.C.; on  
behalf of Respondent.

	C O N T E N T S	
		PAGE
1		
2	ORAL ARGUMENT OF	
3	PAUL M. SMITH, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	BRIAN H. FLETCHER, ESQ.	
7	On behalf of the Respondent	29
8	REBUTTAL ARGUMENT OF	
9	PAUL M. SMITH, ESQ.	
10	On behalf of the Petitioner	61
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 14-1375, CRST Van Expedited v. Equal Employment Opportunity Commission. Mr. Smith.

ORAL ARGUMENT OF PAUL M. SMITH  
ON BEHALF OF THE PETITIONER

MR. SMITH: Mr. Chief Justice, and may it please the Court:

On the issue we initially asked this Court to resolve in the petition for certiorari, the parties are now in complete agreement. That issue, of course, was whether a prevailing defendant in a Title VII case is barred from seeking attorneys' fees if it hasn't prevailed on the merits. As we showed in our opening brief, such a rule, which exists only in the Eighth Circuit, makes little sense. It doesn't -- it is certainly not compelled by the statutory language and doesn't serve any rationing statutory policy to take away the power of work fees in a -- in a case of a non-merits disposition.

The EEOC, having staunchly defended that rule in its brief in opposition, executed an about-face in its merits brief and now agrees with us that a

1 non-merits disposition can be the basis of a defendant  
2 attorneys' fee award under Title VII.

3 Now, for that reason and for all the reasons  
4 in our opening merits brief, which the government  
5 apparently found convincing, at least, we would suggest  
6 that the Court should reverse the Eighth Circuit's  
7 ruling and resolve the circuit conflict and rule that  
8 prevailing defendants can seek fees as long as they meet  
9 the Christiansburg standard, whether or not the  
10 disposition was on the merits.

11 If there are no questions about that, the  
12 second issue is, what do we do --

13 JUSTICE SOTOMAYOR: Isn't the standard  
14 whether the EEOC's actions were frivolous, unreasonable,  
15 or without foundation?

16 MR. SMITH: That's the Christiansburg  
17 standard, yes, Your Honor.

18 JUSTICE SOTOMAYOR: So what difference does  
19 it make on what ground it was dismissed?

20 MR. SMITH: I couldn't agree more.

21 JUSTICE SOTOMAYOR: I've been reading these  
22 briefs, and with or without prejudice, merits,  
23 non-merits, I don't know that even if a judge gets to  
24 that point of deciding whether it was on the merits or  
25 not, that's not enough. You always have to decide the

1 bottom line.

2 MR. SMITH: Right. But the Eighth Circuit's  
3 ruling was that even if it was frivolous or unreasonable  
4 or without foundation, if the reason it was frivolous or  
5 unreasonable or without foundation was the fact that it  
6 was res judicata, or was time-barred or something like  
7 that --

8 JUSTICE GINSBURG: There wasn't the  
9 slightest suggestion of any frivolity or groundlessness  
10 to this complaint.

11 MR. SMITH: Your Honor, there certainly is.  
12 As the case turned out, they never had any foundation  
13 whatever for bringing this class claim. They never had  
14 any pattern of practice that they could identify and --  
15 and prove.

16 JUSTICE GINSBURG: They -- the claim was  
17 that many women had been harassed by lead drivers, not  
18 one, but many.

19 MR. SMITH: That was -- that was the  
20 allegation, Your Honor. But in order to bring a class  
21 claim -- a collective claim under Title VII, what the  
22 EEOC needs is a pattern or practice, which means either  
23 an express policy that's discriminatory or some  
24 unexpressed standard operating procedure. That's the  
25 term the Court used in the Teamster's case. In the

1 absence of that, what you have is a --

2 JUSTICE GINSBURG: I thought that was the  
3 whole thing, that the -- the -- that the company was not  
4 giving the lead drivers adequate training. To put it  
5 bluntly, they were not taking sexual harassment  
6 seriously.

7 MR. SMITH: Your Honor --

8 JUSTICE GINSBURG: That was -- that was the  
9 complaint about the employer, that there were complaints  
10 about these lead drivers, and the -- and the employer  
11 just didn't take them seriously.

12 MR. SMITH: But what became clear as the  
13 case proceeded is that, A, the EEOC never investigated  
14 any kind of pattern or practice at the investigatory  
15 phase. They only investigated two cases. And then when  
16 it -- when they started alleging that they had a pattern  
17 of practice and telling the Court they wanted to go to  
18 trial on a pattern of practice, we -- we filed a motion  
19 for summary judgment and said, what is your evidence  
20 that there's a consistent policy of disregarding these  
21 complaints, that there is a consistent failure?

22 And -- and the -- and as Judge Reed found,  
23 the evidence didn't remotely support that. The  
24 evidence --

25 JUSTICE GINSBURG: The EEOC, when it was

1 investigating this case, asked CRST, tell us about  
2 complaints you've gotten of sexual harassment. And  
3 initially, the company came out with two names.

4 MR. SMITH: Your Honor --

5 JUSTICE GINSBURG: There were well over a  
6 hundred.

7 MR. SMITH: Your Honor, the -- the EEOC's  
8 suggestion that we did not answer their question  
9 completely was looked at in detail both by the district  
10 court and by the Eighth Circuit, and they both concluded  
11 that the only -- the question at issue was a question  
12 about people who had complained about the conduct at  
13 issue in this case, meaning Ms. Starke -- Ms. Starke's  
14 harassment. The -- the suggestion that we had not  
15 answered that question completely was rejected by the  
16 district court on Pages 168 and 69 of the Petition  
17 Appendix. It was rejected by the Eighth Circuit as  
18 factually baseless on Page 92 of the Petition Appendix.  
19 They simply didn't ask a question that called for that  
20 until later in the investigation. And what the --  
21 what -- all the judges below, the -- the district judge  
22 and the majority in the Eighth Circuit, concluded is we  
23 answered every question in the investigation fully and  
24 accurately. So that is not a basis for what --

25 JUSTICE GINSBURG: Is it so that, when you

1 were initially asked how many complaints have you gotten  
2 or tell us the names of the people who have complained,  
3 they came up with two people?

4 MR. SMITH: It is true that they named two  
5 people. And as Judge Reed concluded --

6 JUSTICE GINSBURG: That wasn't accurate, was  
7 it?

8 MR. SMITH: Well, that wasn't the question.  
9 The question that we were answering was people who had  
10 complained about the particular issue in the charge.  
11 And so as Judge Reed concluded, we gave them more  
12 information than the EEOC requested. That's on page 169  
13 of the Cert Petition Appendix.

14 When they later on asked for all the people  
15 who had filed charges of discrimination, we gave them  
16 all that information. That was about eight more people  
17 that they got.

18 Finally, at the end of the investigation  
19 phase, they said, Give us the names of all the women who  
20 have driven for you in the last several years with their  
21 contact information. We gave them that. They didn't do  
22 anything with it.

23 They then filed their -- their class finding  
24 of reasonable cause, having investigated Ms. Starke's  
25 complaint and one other with -- and did no sort of



1 systematic look at how things were done at the company.

2           And then when they put together this case in  
3 court, they listed 270 people who were so-called class  
4 members; and it turns out most of those claims washed  
5 out. They simply were non-meritorious. And we file a  
6 motion for summary judgment saying they don't have any  
7 evidence of a systematic problem here of a -- of a  
8 pattern of practice. And Judge Reed looked at this  
9 wealth of information, which has developed 154  
10 depositions, accepted the truth of everything that  
11 those -- those women said in those depositions, and  
12 concluded that, in fact, by and large the policies  
13 exist. The policies are followed. People -- complaints  
14 are followed up. Remedies are -- are put in place.  
15 Women are protected.

16           And she said if -- assuming the truth of  
17 everything that's in these depositions, there may be  
18 examples of sporadic exceptions to that where the  
19 managers could have done a better job. Maybe they  
20 didn't act fast enough. Maybe they could have been more  
21 severe in their sanction or whatever, but that that's --  
22 that no rational finder of fact could conclude on this  
23 record that there is any kind of pattern of neglecting  
24 sexual harassment complaints, any kind of problem with  
25 the policies that existed, any kind of problem with the

1 training. That was all factually not true.

2 It is true that there were some complaints  
3 which, of course, when you read them are -- are quite  
4 serious, but that doesn't mean the company is liable,  
5 certainly not liable on a class basis where -- for  
6 claims which were never investigated, never conciliated.  
7 The whole policy of the statute, of course, is to have a  
8 reasonable investigation, have a reasonable cause  
9 finding, have conciliation. And here that became  
10 meaningless, except with respect to one claimant.

11 JUSTICE GINSBURG: Well, you're here  
12 complaining about a threshold question. That is, you  
13 said that the investigation and conciliation efforts  
14 were inadequate. But you said that after 18 months of  
15 heavy litigation.

16 MR. SMITH: No, Your Honor. Here's what  
17 happened. They come in October 15, 2008, with their  
18 list of 270 people. They -- we said -- we then say to  
19 the Court, well, they can't possibly have investigated  
20 270 claims, and how are we going to adjudicate this,  
21 anyway? They respond and say, This is a pattern of  
22 practice case. We're going to -- we're going to  
23 litigate it the way we litigate pattern of practice  
24 cases. We're going to have bifurcation. We are going  
25 to have an initial phase of the trial where we prove

1 that it is their de facto policy to neglect sexual  
2 harassment, and then we're going to have a damages phase  
3 where individual claimants will come in.

4 And so we had a class claim which they said  
5 was a pattern of practice claim. And there was no way  
6 at that point for us to say, well, you -- you can't  
7 litigate these individual claims, because they were  
8 classifying these people as class members, and they were  
9 going to use them as witnesses to establish this  
10 supposed -- this policy of neglect of sexual harassment.

11 We then do 154 depositions of all of these  
12 people, except for the ones who didn't show up at all,  
13 the other 99. And most of those claims turned out to be  
14 non-meritorious, even accepting the truth of everything  
15 that the -- the complainants said.

16 We then file a motion that says, You don't  
17 have a pattern of practice case. This is not a class  
18 case. You can't litigate this case because there is no  
19 systematic policy that has been identified.

20 And we have this wealth of factual  
21 information from these 154 depositions, 154 different  
22 stories involving different drivers, different charges,  
23 different conduct, different responses. And Judge Reed  
24 reads thousands of pages of testimony and concludes  
25 there isn't any evidence that would allow a rational

1 trier of fact to conclude that there is a -- a  
2 systematic --

3 JUSTICE KENNEDY: So that all gets to the  
4 reasonableness or unreasonableness point. And we --  
5 this Court need not reach that, I take it, if we -- we  
6 address the -- the prevailing party argument. And it  
7 is -- as you understand the government's position -- we  
8 can, of course, ask them in a few minutes -- in what  
9 cases, where there is not an adjudication on the merits,  
10 would the government agree that there is a prevailing  
11 party, that the defendant can be a prevailing party?

12 MR. SMITH: I think they have -- they've  
13 said the merits issue is not really relevant. They  
14 have -- as I understand it, what they've said certainly  
15 is, you know, if it was -- they -- they would say if  
16 it's a disposition with prejudice, whether it's based on  
17 a merits issue or some other merits, non-merits issue,  
18 like statute of limitations or something else, that  
19 appears to be their position.

20 And I think the problem with the without  
21 prejudice/with prejudice distinction, which they -- they  
22 brought out in their merits brief, is that's the first  
23 time in this litigation that that argument has ever been  
24 made by the EEOC. They have never in the lower courts  
25 ever argued that, A, the disposition here was without

1 prejudice or, B, that that's a basis on which CRST was  
2 not a prevailing party.

3 JUSTICE KAGAN: Mr. Smith, understanding  
4 that you think that, but if we could just go on from  
5 that, what is wrong with that position? And do you have  
6 a substitute test, or -- or is there no substitute test,  
7 in your view?

8 MR. SMITH: Well, Your Honor, as -- as to  
9 the first question, the first problem with the argument  
10 is it's factually not true. The -- the disposition here  
11 was with prejudice.

12 JUSTICE KAGAN: Right. Let's just assume  
13 that it were.

14 MR. SMITH: Okay. Leaving aside the waiver  
15 and the fact that there's no factual predicate for the  
16 argument here, on the merits, we didn't have an  
17 opportunity to brief this issue because it's not in the  
18 case until we're writing our reply brief. So we have  
19 about a paragraph on the issue.

20 I think that it's a -- there's -- there is a  
21 circuit conflict on the question whether or not a  
22 district judge ought to have the power, in the suitable  
23 circumstances when dismissing a case for failure to do  
24 something like pre-suit petitions, where there was a  
25 sufficient level of abusiveness by the plaintiff, he

1 should have known -- he or she should have known that  
2 this case was not ready for suit, and it has cost the --  
3 the defendant money that shouldn't have had to be spent;  
4 that even in a without prejudice dismissal situation,  
5 there ought to be the power of a court to exercise its  
6 discretion --

7 JUSTICE KAGAN: Even if the -- even if the  
8 reason for the dismissal -- for the dismissal is  
9 completely curable?

10 MR. SMITH: Well, it's curable perhaps, but  
11 there are going to be situations -- and this case is a  
12 good illustration -- where you can't get rid of the fact  
13 that you've spent lots and lots of money litigating  
14 claims which, if they'd been -- been investigated and  
15 had to make reasonable cause findings and been  
16 conciliated, likely would never have seen court to begin  
17 with. 87 of these claims were -- where summary judgment  
18 was granted after the women were deposed, 99 never  
19 showed up for their deposition.

20 JUSTICE KAGAN: But -- but then you're  
21 suggesting that whatever the reason for the dismissal  
22 is, with prejudice, without prejudice, for any reason  
23 whatsoever, curable or not, it's up to the discretion of  
24 the Court?

25 MR. SMITH: I -- I guess I would -- given

1 the severity of the Christiansburg standard, I'm -- it's  
2 not clear to -- clear to me that -- that you can't trust  
3 district judges in those situations. It's not clear to  
4 me that we need to have a categorical bar that turns on  
5 this issue of with prejudice or without prejudice.

6 JUSTICE KENNEDY: In -- in this case as to,  
7 I guess, the 67 women that the Court -- before it goes  
8 to the court of appeals on round number one, says the  
9 Court bars the EEOC from seeking relief.

10 MR. SMITH: Yes, sir.

11 JUSTICE KENNEDY: Is that a phrase district  
12 courts use often, "bars"?

13 MR. SMITH: You know, I think it was  
14 invented by the judge here because she's dealing with a  
15 rather peculiar animal, which is a one-count complaint  
16 which says Ms. Starke was sexually harassed and it was  
17 not appropriately handled, and a class of people were  
18 sexually harassed and it was not appropriately handled.  
19 And they start bringing these things in, and to the  
20 extent that -- at that point in the case, they're trying  
21 to litigate them as individual claims.

22 And the -- so rather than dismiss the -- the  
23 claims, she said individuals -- when they were  
24 litigating on their own behalf, she would dismiss the --  
25 the claim with prejudice, but she would tell the EEOC,

1 You're barred from litigating this claim, this claim,  
2 and this claim. And there were six or seven different  
3 categories of claims where she went through and said,  
4 You can't do these six because there was never a  
5 complaint made to the -- to management. You can't do  
6 these six because the conduct just wasn't severe enough  
7 to be sexual harassment.

8 And then she gets to the 67 and says, You  
9 can't do these claims because you never investigated  
10 them or conciliated them or made a reasonable cause  
11 finding. And there was -- the whole class thing, which  
12 led you to bring them into court --

13 JUSTICE GINSBURG: With respect to those 67,  
14 I thought we had held that in Mach Mining, that the  
15 remedy for inadequate conciliation, investigation and  
16 conciliation, is not dismissal, but return to continue  
17 the efforts to conciliate.

18 MR. SMITH: What you held in Mach Mining,  
19 Your Honor, is that where there is a failure of  
20 conciliation, the appropriate remedy is a stay so they  
21 can conciliate some more. And you cited a provision in  
22 Title VII in 706 which specifically authorizes a judge  
23 to stay a case for further conciliation.

24 What Judge Reed concluded is that a stay  
25 wouldn't make sense here. She expressly considered that



1 question and said, well, you haven't even investigated  
2 the claims, and you haven't made any findings about the  
3 merits of the claims, and you've put the court and the  
4 parties through years of litigation.

5 In that situation, the -- the additional  
6 sanction of barring you from litigating the case is  
7 appropriate, and I think that clearly ought to be within  
8 the discretion of the district court --

9 JUSTICE KAGAN: Mr. Smith, do you understand  
10 her order as -- as saying that if the EEOC did engage in  
11 conciliation, had made the initial findings, had  
12 satisfied all the pre-suit requirements, could the EEOC,  
13 do you think, have come back and brought those  
14 individual claims?

15 MR. SMITH: Certainly I -- I think she was  
16 very clear that that was not available to them --

17 JUSTICE KAGAN: Even after filing the  
18 pre-suit requirements? Even after satisfying the  
19 pre-suit requirements?

20 MR. SMITH: Yes. Because she -- she  
21 considered whether to stay the case and let them go do  
22 that and said, no, I'm going to do the much more severe  
23 remedy of dismissing these claims.

24 And then the government --

25 JUSTICE KAGAN: Why didn't she say "with

1 prejudice," then?

2 MR. SMITH: Well, she does eventually, Your  
3 Honor. The -- the judgment that ends the merits case  
4 in this -- in this -- the merits phase in this case in  
5 2013 entered with the -- the agreement of the government  
6 expressly says that the case and all the claims that  
7 were litigated in this case are dismissed with  
8 prejudice. That's on page 118 of the Joint Appendix.

9 JUSTICE GINSBURG: Why -- why isn't it --

10 JUSTICE KAGAN: But back in 2009, she didn't  
11 say that. So why didn't she say that? You had asked  
12 for the case, the -- all of them to be dismissed with --  
13 with prejudice.

14 MR. SMITH: Right.

15 JUSTICE KAGAN: She did not include that  
16 language.

17 MR. SMITH: She didn't use that language.  
18 She said the government shall take nothing in the  
19 judgment. She said, I'm not going to stay the case and  
20 let you go back and do it -- do a do-over. And she said  
21 it's a severe remedy that means these claims may not  
22 ever see the inside of a courtroom. But she didn't use  
23 the word -- "prejudice" language at that point.

24 But the government understood what she  
25 meant, what they complain in their brief appealing that

1 order, that they had -- that the order had barred these  
2 claims from ever seeing the inside of a courtroom and  
3 that the judge acknowledged that fact. They did that  
4 again in the second appeal from the Eighth Circuit.

5 And then, most tellingly, they file a  
6 Rule 60 motion after Mach Mining is decided last year in  
7 which they asked the district judge to reopen the case,  
8 and say, you should have done a stay; you shouldn't have  
9 dismissed this. And the reason you should do that is  
10 because we have been prevented for the last six years  
11 from litigating these claims.

12 And does Judge Reed then say, no, it was  
13 dismissed without prejudice. I wasn't telling you, you  
14 couldn't litigate these claims. No. She said I did  
15 what I did, and I did it for good and sufficient reason  
16 because of the way you messed up this case, and you  
17 abused the process and didn't follow your obligations,  
18 and I'm -- and I'm denying the motion.

19 And they then appealed that to the court of  
20 appeals. And the day before they file their merits  
21 brief in this Court, they -- they pull that appeal  
22 because they recognize that the Rule 60 motion and  
23 arguments they're making is completely inconsistent with  
24 the argument they're about to make --

25 JUSTICE KAGAN: But if I understand, their

1 motion did not say now we've satisfied all our pre-suit  
2 requirements, right? So she might just have said, well,  
3 you still haven't satisfied your pre-suit requirements,  
4 so of course I'm not changing anything.

5 MR. SMITH: Well, Your Honor, there's --

6 JUSTICE KAGAN: The question is what would  
7 have happened if the government came back and said we  
8 have satisfied the pre-suit requirements. Would she  
9 then have thought, okay, well, that's a different story  
10 now. I didn't -- I didn't dismiss these with prejudice.  
11 Now that the government has satisfied the pre-suit  
12 requirements, it can go ahead.

13 MR. SMITH: No, Your Honor. I think it's  
14 quite clear from what she did say last fall, in  
15 December, actually, that -- that she knew it was with  
16 prejudice, intended it to be with prejudice, and wasn't  
17 going to change her mind. And I think there's no other  
18 way to read the record here.

19 And we ultimately have a judgment that says  
20 with prejudice, which is the controlling judgment --

21 JUSTICE BREYER: Where is that? There's a  
22 piece of paper called "the judgment" somewhere. What  
23 does it say?

24 MR. SMITH: But you see if you look at the  
25 Joint Appendix -- first of all, I'm at Joint Appendix,

1 Your Honors -- there is a judgment that appears on page  
2 115 and 116 which says, "Judgment is entered in  
3 accordance with the attached." And the attached is an  
4 order of dismissal which was negotiated by the parties.

5 And if you look at the bottom of 118a, the  
6 order of dismissal, which was incorporated in the  
7 judgment, at the bottom of 118a it says, "Based on  
8 EEOC's withdrawal of its claim on behalf of Tillie  
9 Jones, the parties' settlement of EEOC's claim on behalf  
10 of Monika Starke and the mandate issued by the court of  
11 appeals on September 14, 2012, with respect to all other  
12 claims asserted by the EEOC, this case is dismissed with  
13 prejudice."

14 JUSTICE BREYER: That's the end of it, isn't  
15 it? It was dismissed with prejudice.

16 MR. SMITH: That's the point, Your Honor.

17 (Laughter.)

18 MR. SMITH: There doesn't seem to be any  
19 doubt about it. And the government knew it. It  
20 actually agreed to this form of judgment. So we found  
21 it rather remarkable that we were facing this -- this  
22 argument.

23 JUSTICE SOTOMAYOR: Mr. Smith, what is --  
24 what's -- what are you asking us to do in this case?  
25 What's the disposition that you're seeking?

1 MR. SMITH: Well, you should --

2 JUSTICE SOTOMAYOR: Are we supposed to say  
3 Eighth Circuit, you're wrong, it has nothing to do  
4 with -- exclusively with the merits? Do a do-over?

5 MR. SMITH: That's -- that's the issue we  
6 should -- you should certainly reverse them on, Your  
7 Honor. But there's -- I think we have agreement in the  
8 courtroom that that's just -- at least on this side of  
9 the -- of the bench -- that that's an incorrect ruling.

10 And then, you know, I think you should give  
11 the back of the hand to this idea that the judgment here  
12 was without prejudice and therefore that has some impact  
13 on this case. It's just not factually true. It was not  
14 preserved, and it's -- and it's not -- it's not --  
15 probably not the right line, anyway.

16 Then the --

17 JUSTICE GINSBURG: Mr. Smith -- Mr. Smith,  
18 will you explain why "dismiss this case with prejudice"  
19 isn't talking about the case that was settled, the  
20 Starke case?

21 The -- there were -- all the other women  
22 were out of it; it was down to two women; one dropped  
23 out; one was left. Why isn't this case the case that  
24 was just settled?

25 MR. SMITH: Well, it refers to her case; it

1 refers to the Tillie Jones case, and to all the other  
2 claims asserted by the EEOC under a one-count complaint.  
3 There is no separate count for each of these people.  
4 And so when you dismiss that count, it expressly says,  
5 "With respect to all the other claims asserted by the  
6 EEOC," I think it's pretty obvious that the case is  
7 dismissed with prejudice with respect to all the claims  
8 asserted by the EEOC, including the 67, Your Honor.  
9 That was --

10 JUSTICE KAGAN: All the claims that were  
11 then being litigated by the EEOC, which did not include  
12 the claims that had previously been dismissed for  
13 failure to satisfy the pre-suit requirements.

14 MR. SMITH: It's a basic principle that a  
15 judgment at the end of the merits phase goes back and  
16 incorporates all the -- the prior rulings of the court,  
17 and is based on the prior rulings in which --

18 JUSTICE KAGAN: I think that's not -- it's  
19 not right, if the prior ruling was based on a curable  
20 dismissal and the EEOC had simply done nothing with  
21 respect to that set of claims, neither cured it nor  
22 renounced the possibility that they would cure it.

23 In 2013, the court was facing a much reduced  
24 set of claims in a different suit.

25 MR. SMITH: Your Honor, I think that -- that

1 the judgment is going to go back and cover everything  
2 that happened in the case. If there was something left  
3 that could be reopened with -- that had been dismissed  
4 without prejudice, you wouldn't agree to a judgment in  
5 this form.

6 In any event, the -- the government told the  
7 Eighth Circuit twice in two separate appeals that these  
8 claims were dismissed with prejudice, and that was a  
9 problem for them, that they were precluded. They file a  
10 Rule 60 motion acknowledging that they were dismissed  
11 with prejudice and asking for that dismissal to be  
12 lifted. I just -- it's hard for me to believe that --  
13 that they're -- that this argument is available for  
14 them, especially since they never made it before.

15 JUSTICE SOTOMAYOR: So why should we decide  
16 this?

17 MR. SMITH: Well, I think it --

18 MR. SMITH: Why don't we just remand it  
19 completely, and let the Eighth Circuit decide, or the  
20 district court decide what it meant?

21 MR. SMITH: Well, you should certainly  
22 decide the issue that was -- we brought you here, which  
23 is the circuit conflict --

24 JUSTICE SOTOMAYOR: Assuming we reverse, why  
25 don't we leave it to the court below to decide whether



1 they will, in fact, entertain the government's new  
2 argument because there might be a waiver of that, or  
3 whether there's a factual predicate for it at all?

4 MR. SMITH: We could do that, Your Honor. I  
5 guess the -- the main reasons you -- you might want to  
6 at least address it briefly is -- is if you're going to  
7 go on and follow the government's lead and reach the  
8 Christiansburg issue here, which the government asked  
9 you to do at the -- at the end of their brief, and  
10 decide that there -- they want you to decide that the --  
11 whatever positions they took on behalf of these 67 women  
12 were -- were not without foundation; were not  
13 unreasonable.

14 We're actually, in some ways, tempted to ask  
15 you to go ahead and rule on that issue too, because  
16 we've been doing this -- the issue now for six years.  
17 And I think the government's conduct here was glaringly  
18 unreasonable that that --

19 JUSTICE KENNEDY: On that one -- on that one  
20 issue, was -- the amount awarded some \$4 million. Did  
21 the debt include this -- was -- was that your entire  
22 bill, or did you segregate -- the attorneys segregate  
23 out the costs for the Starke?

24 MR. SMITH: I think the Starke issue gets --  
25 gets separated out. It's the entire bill for all 154 of

1 the depositions, including the ones that were --

2 JUSTICE KENNEDY: But there were -- but  
3 there -- in other words, this was not 100 percent of the  
4 fees? There was --

5 MR. SMITH: Oh, no, Your Honor.

6 JUSTICE KENNEDY: The fees were separated  
7 out.

8 MR. SMITH: First of all, they were Cedar  
9 Rapids rates, and we charge Chicago rates. But aside  
10 from that problem, it was about -- there was  
11 certainly -- the part that the government had prevailed  
12 on, it was where there was a settlement. That was  
13 certainly taken out. So I don't think there's an  
14 argument about the amount here of any significance.

15 So -- so I do think that there's a -- there  
16 may be some value in the Court reaching the  
17 Christiansburg issue, if only to instruct the EEOC that  
18 there's a different -- difference between a  
19 pattern-or-practice class case where you have an actual  
20 practice of policy that you're litigating, and a case  
21 where you just have a bunch of individual claims which  
22 you -- which don't add up to any kind of pattern or  
23 practice.

24 If you -- if you allow the EEOC to use class  
25 language like this as kind of a club at the end of an

1 investigation that's not a class investigation in a  
2 complaint for which they have no factual basis, then you  
3 end up creating a great deal of litigation exposure for  
4 defendants in situations where class litigation really  
5 isn't appropriate.

6 JUSTICE KAGAN: Mr. Smith, do you think it's  
7 possible to have a pattern of practice appropriate class  
8 claim with respect to sexual harassment?

9 MR. SMITH: I do, Your Honor. I think it  
10 would -- but it -- but it may be more difficult than in  
11 other contexts. For example, you could have a pattern  
12 of practice case, I think, about one work setting in  
13 which the hostile work environment would affect any  
14 woman working in that setting. I think that would be  
15 appropriate.

16 If -- if they had some specific policy that  
17 they identified that they said has a discriminatory  
18 effect such as, for example, we had a three-strikes  
19 policy. You have to harass people three times before  
20 we'll take the complaint or something like that. That  
21 could be a pattern of practice case.

22 But what I don't think you can do is have  
23 154 individual stories involving different alleged  
24 malefactors, different alleged conduct, different  
25 allegations about who -- what complaints were brought to

1 management's attention and different stories about how  
2 management responded.

3 JUSTICE GINSBURG: Couldn't you have a  
4 pattern and practice case of saying there -- there  
5 are -- all these complaints were made, and the employer  
6 didn't take them seriously, he either did nothing or  
7 gave the -- the driver a slap on the wrist?

8 MR. SMITH: Your Honor, I think you can have  
9 a -- a standard operating procedure that you show by  
10 saying over and over again they don't do what they're  
11 supposed to do and that their policies are not taken  
12 seriously. But you have to show a consistent pattern or  
13 practice in order to do that. And what Judge Reed said  
14 is, by and large, that's not what they do. They do  
15 exactly the opposite.

16 There may be some situations, if we take the  
17 testimony of the complainants at -- at face value  
18 without any -- hearing from anybody else, that where  
19 some of the managers didn't do good -- as good a job as  
20 they might have in some of these cases, but that's the  
21 sporadic exception; that's not the rule. That's not  
22 what they do as a matter of policy.

23 If I could save the balance of my time,  
24 Your Honor.

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

1 Mr. Fletcher.

2 ORAL ARGUMENT OF BRIAN H. FLETCHER

3 ON BEHALF OF THE RESPONDENT

4 MR. FLETCHER: Thank you, Mr. Chief Justice,  
5 and may it please the Court:

6 The question on what this Court granted  
7 certiorari is not, as Mr. Smith suggested, and has been  
8 the basis for his waiver arguments, whether or not the  
9 Eighth Circuit was correct to say that a Title VII  
10 defendant has to prevail on the merits in order to  
11 secure a fee award and to be a prevailing party.

12 Instead, the question that petitioner framed  
13 in the petition and the question on what this Court  
14 granted certiorari is whether the dismissal of a  
15 Title VII case, based on the EEOC's failure to satisfy  
16 its pre-suit investigations, can form the basis for an  
17 award of attorneys' fees.

18 JUSTICE ALITO: In your brief in opposition,  
19 you argued that the Eighth Circuit was correct; did you  
20 not?

21 MR. FLETCHER: We did. We endorsed --

22 JUSTICE ALITO: Have you abandoned that  
23 argument?

24 MR. FLETCHER: We're advancing a slightly  
25 different argument that yields the same answer on the

1 question presented.

2 JUSTICE ALITO: Have you abandoned the  
3 argument that there must be an evaluation of the merits?

4 MR. FLETCHER: We are -- we're making a  
5 slightly different argument, yes.

6 JUSTICE BREYER: You have abandoned it, was  
7 the question.

8 MR. FLETCHER: Well --

9 JUSTICE BREYER: Yes or no?

10 MR. FLETCHER: We have abandoned the Eighth  
11 Circuit's view that you need a disposition on the  
12 merits.

13 JUSTICE BREYER: Thank you.

14 MR. FLETCHER: But I think in explaining --  
15 I don't think that the change in our argument and -- the  
16 change in our argument to a different argument that's  
17 still within the scope of the question presented  
18 constitutes a waiver. I'd like to talk about two  
19 reasons why, because I understand Mr. Smith to have  
20 argued that we're waiving the version of the argument  
21 that we're presenting now at two stages --

22 JUSTICE BREYER: I don't care if it -- I  
23 mean, that's up to you, what you want to argue. But I  
24 would like -- look, it says, can the dismissal, based on  
25 the failure to satisfy form the basis for an attorney's

1 fees? I take that to mean, is the defendant -- can the  
2 defendant in such a case be a prevailing party?

3 MR. FLETCHER: Yes.

4 JUSTICE BREYER: He has to meet the other  
5 standard, too.

6 MR. FLETCHER: Yes.

7 JUSTICE BREYER: I would think the answer is  
8 obviously yes. They won. Okay? So if they won, why  
9 isn't that the end of it? It says judgment -- it  
10 says -- it says the -- the case is dismissed with  
11 prejudice. Therefore, they won. So why aren't they the  
12 prevailing party?

13 MR. FLETCHER: Sir, I'd like to talk about  
14 the dismissal with prejudice, which is a -- a  
15 case-specific issue here that I -- I do want to address.

16 But I think first, I want to talk about the  
17 broader question, which is what makes a party a  
18 prevailing party? Because this Court addressed that in  
19 its *Buckhannon* decision. It said prevailing party is a  
20 term of art. In the fee-shipping statutes, including  
21 Title VII, it means a party that has secured an order  
22 that materially alters the legal relationship between  
23 the parties.

24 JUSTICE BREYER: Can't a plaintiff be a  
25 prevailing party? I don't know the answer, but I

1 thought the plaintiff brings a suit charging, you know,  
2 serious discrimination. After lots of litigation, the  
3 parties decide to settle, and they settle on terms very  
4 favorable to the plaintiff, really because of the  
5 litigation. I thought in such cases, the plaintiff was  
6 the prevailing party. A.m. I wrong?

7 MR. FLETCHER: Well, under Buckhannon, it  
8 depends. What this Court says that under Buckhannon, if  
9 the Court incorporates the settlement agreement into a  
10 consent decree or the lower courts have held if the  
11 settlement agreement is approved by the court or  
12 incorporated into the judgment such that it's  
13 enforceable by the court, then yes. But the courts have  
14 generally said that private settlement agreements, or  
15 the particular issue in Buckhannon, if the defendant  
16 just voluntarily changes its conduct and the plaintiff  
17 gets what it wants, the plaintiff is not a prevailing  
18 party because it has not secured an order that  
19 materially changes the party's legal relationship.

20 JUSTICE SOTOMAYOR: You see, I found --

21 CHIEF JUSTICE ROBERTS: I suppose that the  
22 settlement agreements often take into account liability  
23 for attorneys' fees --

24 MR. FLETCHER: Yes.

25 CHIEF JUSTICE ROBERTS: -- how they are going



1 to apportion those.

2 MR. FLETCHER: Very often, yes.

3 JUSTICE SOTOMAYOR: Why do we apply the same  
4 standard to a defendant? The plaintiff is seeking a  
5 change of the status quo, but a defendant is actually --  
6 all they want is the status quo. They want just to  
7 stay -- not to be found liable. So why do we apply the  
8 question of whether there's been a legal change between  
9 the parties? The defendant was never seeking that.

10 MR. FLETCHER: So what the defendant was  
11 seeking, though, was a judicial declaration that  
12 essentially ratifies the status quo, that -- that ends  
13 the dispute. And so after this Court's decision in  
14 *Buckhannon*, the circuits have looked at this question.  
15 And eight of them, which we cite at Pages 26 to 28 of  
16 our Brief, as far as we can tell, every court to  
17 consider this question has said that the same rule  
18 applies to the defendant. And if the defendant obtains  
19 a dismissal because the plaintiff voluntarily withdraws  
20 or because it's in the wrong forum or something like  
21 that, something that allows the underlying dispute to  
22 continue, then the defendant hasn't prevailed in the  
23 litigation in the sense in which the fee-shifting  
24 statutes have used --

25 CHIEF JUSTICE ROBERTS: I don't know where

1 that -- where that artificial line comes from. I mean,  
2 the defendant wants to win. And I don't know -- it's  
3 getting pretty -- when I was practicing that -- parties  
4 didn't come in and say, I want to win, and I want to win  
5 on this ground. They said, I want to win. I want the  
6 case thrown out.

7 MR. FLETCHER: Well, I -- I think that's --  
8 that's right, but I think that what the defendant  
9 wants -- and I think this is perhaps expressed best, of  
10 all the cases we cite, in Judge Easterbrook's opinion in  
11 the Steel Co. case. The defendant wants to win, but the  
12 defendant wants to win in a way that definitively ends  
13 the litigation. And if the defendant wins on a ground  
14 that makes clear that the plaintiff can come back to  
15 court the next day, or in a different district, or after  
16 satisfying a precondition to suit, I don't think the  
17 defendant has won in the way that the defendant wants to  
18 win.

19 JUSTICE ALITO: There is a material  
20 alteration in their relationship, is it not? I mean,  
21 it's not as big a one as the defendant would like. A  
22 defendant would like to have a -- a win that precludes  
23 future litigation. But don't you think a defendant who  
24 secures a dismissal of a complaint, and, therefore,  
25 doesn't know whether the -- the complaint is going to be

1 filed again is going to celebrate? Isn't that a -- an  
2 alteration in the relationship between the parties?

3 MR. FLETCHER: I'm sure the defendant would  
4 be happy about that, in much the same way a party would  
5 be happy if they secured the reversal of a directed  
6 verdict on appeal or if they defeated a motion for  
7 summary judgment. And you could, in some sense of the  
8 words, say that all of those things materially changed  
9 the party's legal relationship because they settle  
10 certain issues and they alter the course of the future  
11 litigation.

12 But what this Court has said in Buckhannon  
13 and in the cases that it ascribed there is that those  
14 sorts of interlocutory wins don't count.

15 JUSTICE BREYER: Oh, well, this is not  
16 interlocutory. This ended the litigation. So, I mean,  
17 I have the same question the Chief Justice had, where a  
18 defendant secures the end of a case, dismissed, goodbye,  
19 you win. Now, maybe they can bring another case  
20 tomorrow; that's another case. But they won this case.  
21 That's going to be pretty hard for them to get  
22 attorneys' fees anyway because there's a very tough  
23 standard. But why isn't a simple rule the best rule?  
24 If the case is over, the defendant won, he is the  
25 prevailing party for purposes of that case.

1           Then we could go on to take all the things  
2   you wanted to into account when we consider what kind of  
3   fee is reasonable and when we consider whether it's  
4   based on frivolousness. I mean, the -- the plus of  
5   that, to me, is the simplicity. And -- and I don't see  
6   how it would work any unfairness or serious harm to the  
7   objective of this statute. So I'd appreciate it if you  
8   would address what could be my benighted view.

9           MR. FLETCHER: I wouldn't go that far, but I  
10   do think it's a different view, and a very different  
11   view, than the one that all of the courts of appeals  
12   that have considered --

13           JUSTICE BREYER: Well, then they might -- I  
14   mean, unfortunately, I a.m. in the position of having to  
15   decide it.

16           (Laughter.)

17           JUSTICE BREYER: So I put the question to  
18   you. And I'd say at first blush, the simplicity of this  
19   approach, its consistency with the language, its ease of  
20   administration, and so forth, in terms of prevailing  
21   parties has that to recommend it. So now what is -- you  
22   don't like it, so tell me why.

23           MR. FLETCHER: So I think because when a  
24   defendant prevails on this sort of round because the  
25   plaintiff, say, withdraws the claim voluntarily or

1 secures a dismissal with prejudice, the dispute really  
2 isn't over. And it certainly isn't over in the sense  
3 that this Court used the term in *Buckhannon*, which  
4 requires a judicially sanctioned, material alteration of  
5 the legal relationship of the parties. And I this Judge  
6 Easterbrook put this well in *Steel Co.* If the plaintiff  
7 can come back the next day or if the plaintiff can sue  
8 in a next district or if the dispute is going to  
9 continue, that really doesn't -- hasn't changed the  
10 legal relationship of the parties.

11 CHIEF JUSTICE ROBERTS: What if they don't?  
12 What if they don't come back the next day? What if they  
13 don't sue in the next district? Then it seems to me the  
14 purposes of this fee-shifting provision have not been  
15 served.

16 MR. FLETCHER: Well, I -- I don't think  
17 that's quite right. I think you're right, as Your  
18 Honor's question alludes to. I think the purpose of the  
19 fee-shifting statute -- and this is what the Court said  
20 in *Fox versus Vice and Christiansburg* -- is to protect  
21 defendants who are forced to bear factually or legally  
22 unjustified suits. I think, first of all, there's some  
23 reason to question whether that purpose is served, where  
24 the reason why this suit is defeated is a failure to  
25 satisfy a procedural precondition. I'm not sure it's

1 fair to say that that's a factually or legally  
2 ungrounded suit. It's a suit where the plaintiff failed  
3 to take a step that it was supposed to take before  
4 coming to court, but a curable step.

5 I think in those sorts of circumstances to  
6 say that those defendants can't recover for whatever  
7 fees they secure in resolving that initial procedural  
8 question doesn't really get at the core of what the  
9 statute was.

10 JUSTICE BREYER: Well, there -- because --  
11 now, there's much to recommend what you're saying,  
12 saying at least if you come back the next day, at least  
13 if you could sue in another district. But have you  
14 heard of the Hatfields and the McCoys? You see -- you  
15 see why I bring them up? Because they're going to be  
16 fighting each other for 30 years. And if you tell them  
17 they can't sue in this district, they'll change the  
18 complaint slightly and go to a different district.

19 So if I adopt the standard you're just  
20 suggesting, I will discover a whole host of questions:  
21 Is this really the same suit? What about the  
22 possibility that they could have sued in Tasmania? And  
23 what about the possibility -- you -- you see where I'm  
24 going. And so I'm back, again, to that kind of concern,  
25 an administrative concern --

1 MR. FLETCHER: Yes.

2 JUSTICE BREYER: -- versus the simplicity of  
3 saying, well, that ended this case. If they bring  
4 another case and it's frivolous, we'll consider  
5 attorneys' fees in that one.

6 MR. FLETCHER: So, I guess, to the -- to the  
7 administrative point, I do think the -- the views that  
8 the circuits, and the views that the circuits have been  
9 applying for 16 years, in some cases more now, ought to  
10 be persuasive? Not just because that's what the  
11 circuit --

12 JUSTICE BREYER: I didn't say that. I  
13 haven't read them yet.

14 MR. FLETCHER: But -- but just in -- in the  
15 notion that if the sort -- if our rule was going to  
16 cause problems of administration like you suggest, you  
17 would expect to see it in the circuits, and I don't  
18 think you're seeing that in the circuits. I think  
19 they're applying this rule; has the plaintiff been  
20 barred from pursuing this claim permanently? If so,  
21 then the defendant is a prevailing party. If not, if  
22 it's a different ground, if it's a precondition to suit,  
23 if it's the wrong forum, if it's a dismissal without  
24 prejudice, then the defendant hasn't been precluded.  
25 I -- I don't think you can hypothesize cases. I don't

1 think we've seen them in --

2 CHIEF JUSTICE ROBERTS: Wouldn't it be an  
3 adequate response to your concern if fees were awarded  
4 solely on the ground in which the case was dismissed?  
5 That would be -- in other words, the judge would have  
6 the discretion to do that. If the judge looks at this  
7 and says, okay, it's clear you're in the wrong venue,  
8 you know, and hours of research would have showed you  
9 that. So, you know, it's frivolous on that ground, and  
10 I'm throwing the case out because the -- the defendant  
11 prevails on that ground.

12 Now, the defendant may have spent a lot of  
13 other money with depositions and everything else. But  
14 the judge could say, well, you can file the -- the case  
15 again tomorrow. You probably will. You just have to go  
16 into the next district. So I a.m. going to award fees.  
17 They're going to be equal to the amount of time the  
18 defendant had to spend defending against your frivolous  
19 venue assertion.

20 It doesn't have to do that. I mean, you  
21 know, if you have the wrong venue, and they spend five  
22 years doing depositions because you have the wrong  
23 venue, they should probably get fees for all of it. But  
24 if it's just, you know, a small portion, easily disposed  
25 of, is that a possible remedy?



1                   MR. FLETCHER:  Sir, I think that's a better,  
2   a more sensible rule.  Certainly I'll -- I'll say a  
3   little bit about why I think it may be a little tricky  
4   to fit into the doctrine, but just to illustrate its  
5   application in this case, for instance, a petitioner got  
6   a fee award on the order of 4.6, \$4.7 million, as we  
7   explain in our brief.  The amount of those fees that are  
8   attributable to actually litigating about this ground  
9   here, whether or not we satisfied the preconditions to  
10  suit, is a little more than \$100,000.

11                   CHIEF JUSTICE ROBERTS:  Well, then that may  
12  be a case contrary to the proposal where it's that  
13  discreet.  In other words, your frivolity on that  
14  particular point compelled them to incur \$4.6 million  
15  over many years.  It's not their fault that that issue  
16  didn't come up until later in the litigation.

17                   MR. FLETCHER:  Well, first of all --

18                   CHIEF JUSTICE ROBERTS:  It's sort of  
19  intertwined with the merits.  It's not a venue  
20  objection.

21                   MR. FLETCHER:  Well, I -- I'm not sure  
22  that's -- that's right, Mr. Chief Justice.

23                   First of all, we -- we disagree that we were  
24  frivolous in thinking we satisfied our pre-suit  
25  obligations.  That's an issue that hasn't been resolved

1 by the Eighth Circuit yet, and we think for some of the  
2 reasons that Justice Ginsburg suggested and that Judge  
3 Murphy suggested on the merits in the Eighth Circuit.  
4 Actually, we very much were not frivolous on thinking we  
5 had satisfied these preconditions.

6 But to get to the -- the heart of your  
7 question, I do think, actually, that it is a very  
8 discreet issue. It's -- Title VII says before you come  
9 into court, you have to do an investigation. There has  
10 to be a reasonable-cause determination and you have to  
11 attempt to conciliate --

12 CHIEF JUSTICE ROBERTS: Yeah. Well, it may  
13 be a discreet issue, but it's a cause in fact for all  
14 the other fees.

15 MR. FLETCHER: Well, I -- I'm not sure  
16 that's right, in that if Petitioner had raised this  
17 early on -- and I -- I do want to be clear, that from  
18 the outset in this litigation, I disagree a little bit  
19 with what Mr. Smith said about what the EEOC looked into  
20 in its investigation. But from the outset, everyone  
21 knew that we had told them in conciliation, we think you  
22 have a problem here; we think you're engaged in sexual  
23 harassment against a class of women. We tried to  
24 conciliate that class claim; they declined to do that.

25 CHIEF JUSTICE ROBERTS: Wait. Wait. I

1     suppose whether the issue we're debating may not be  
2     directly pertinent, my question is whether or not that  
3     could be a factor that the district courts could look at  
4     in deciding the amount of fees and so on.

5                     MR. FLETCHER:   Yes, I take that point.  
6     If -- if you resolved the question against us, you say a  
7     defendant could be a prevailing party when it prevails  
8     on this sort of ground that doesn't foreclose for  
9     litigation, then I absolutely agree with you that it  
10    would be perfectly appropriate and -- and indeed, I  
11    think a good idea for the district court to engage in  
12    this kind of inquiry.  But, I -- I guess, I think the  
13    main question --

14                    JUSTICE KENNEDY:  So -- so as I understand  
15    your answer, let's assume a hypothetical case, not this  
16    case.  For five years there's litigation, and the  
17    litigation is finally dismissed because the EEOC has not  
18    followed its obligations.  It's a frivolous or an  
19    unreasonable suit.  The trial judge said you are barred  
20    from proceeding further in this case.

21                    MR. FLETCHER:  Yes.

22                    JUSTICE KENNEDY:  Doesn't say with prejudice  
23    or without.

24                    MR. FLETCHER:  Yes.

25                    JUSTICE KENNEDY:  Could fees be awarded in

1 that case?

2 MR. FLETCHER: I believe, no. I believe  
3 that is this case, but -- but I believe no.

4 JUSTICE KENNEDY: Because he didn't say  
5 with -- with prejudice?

6 MR. FLETCHER: Because that sort of  
7 dismissal under principles of res judicata, under this  
8 Court's interpretation of Federal Rule of Civil  
9 Procedure 41, when you have -- even after extended  
10 litigation --

11 JUSTICE KENNEDY: Incidentally, is it clear  
12 that after this time that there was no time bar if they  
13 had come back again?

14 MR. FLETCHER: That's right. The EEOC does  
15 not have a statute of limitation that's applicable to --  
16 to suits brought by the commission.

17 JUSTICE KENNEDY: So then, your position  
18 that no matter how unreasonable the plaintiff has been,  
19 no matter how costly it's been, no matter how long it's  
20 taken, that you cannot award fees unless the case -- and  
21 then the case is dismissed, and the judge says you're  
22 barred from bringing this claim in this suit, no fees;  
23 that's your position.

24 MR. FLETCHER: That's correct. And I  
25 understand that in some cases -- I don't think this is

1 such a case -- but in some cases, that might have  
2 unappealing consequences.

3 JUSTICE ALITO: Well, and that's -- in a  
4 case like that, what if the -- the EEOC after that  
5 dismissal goes back and looks at these cases and says,  
6 you know what, we really have nothing here, and  
7 therefore, chooses not to bring the case, you would say  
8 that because the -- because the first case was dismissed  
9 without prejudice, there could be no fees?

10 MR. FLETCHER: I -- I would, and I think  
11 that follows --

12 JUSTICE ALITO: What sense does that make?

13 MR. FLETCHER: I think it follows from  
14 Buckhannon. Remember, that -- the issue in Buckhannon  
15 was you have a plaintiff that brings a suit. By  
16 hypothesis, let's assume it's a meritorious suit, and  
17 there's some litigation and the plaintiff incurs fees,  
18 and then at some point the defendant sees the writing on  
19 the wall and voluntarily recedes from the conduct and  
20 gives the plaintiff exactly what they want.

21 I think the Court recognized that there is a  
22 really strong policy argument for allowing courts to  
23 award fees to plaintiffs in that case, because they're  
24 doing what Title VII and the Civil Rights Act intended  
25 to -- to encourage plaintiffs to do. And they're sort

1 of left, you know, out of pocket for all the fees if  
2 they're not eligible for fee awards.

3 This Court still said they're not entitled  
4 to get fee awards because they haven't secured a court  
5 order that materially alters the party's legal  
6 relationship. I think the same thing is true of the --

7 JUSTICE ALITO: I guess I just don't see  
8 what functional sense that makes. If -- if the  
9 defendant has wasted a huge amount of litigation  
10 resources and caused the -- I'm sorry, the plaintiff  
11 has -- has caused -- imposed a great and unjustified  
12 burden on the defendant, I don't -- I don't see why, as  
13 a functional matter, unless this is foreclosed by a  
14 prior decision, there shouldn't be a possibility of fees  
15 in that situation.

16 MR. FLETCHER: Well, I do think it's pretty  
17 close to foreclosed by Buckhannon. Obviously,  
18 Buckhannon dealt with whether or not a plaintiff is  
19 prevailing. Our argument is that the Court's rationale  
20 was "prevailing party" is a legal term of art. It means  
21 a party that secured a material alteration in the legal  
22 relationship of the parties.

23 And the court in Buckhannon stuck to that,  
24 despite very strong policy arguments, saying that those  
25 sorts of plaintiffs ought to get fee awards. And I

1 think it ought to do the same thing here when it's  
2 presented with essentially the converse --

3 JUSTICE BREYER: Then what is the argument?  
4 I take it your argument now is what's sauce for the  
5 goose is sauce for the gander.

6 Buckhannon says that a plaintiff can't  
7 recover, even if he litigates to death and they find --  
8 give up and pay him a billion dollars. Unless there is  
9 a judicially sanctioned change in legal relationship, he  
10 can't recover fees. And if he can't recover it, why  
11 should the defendant recover, unless there is a  
12 judicially sanctioned change in relationships and the  
13 only candidate for such a thing is a dismissal with  
14 prejudice of some form.

15 MR. FLETCHER: Yes, that's correct.

16 JUSTICE BREYER: Okay. Got the argument.

17 So if that's the argument, and that argument  
18 is correct, why don't we have the situation here?  
19 Because you heard the judgment being read. It says  
20 "with prejudice."

21 MR. FLETCHER: Yes. So there's two  
22 judgments in this case, the one that's entered after the  
23 district court resolves the issue that's before you  
24 now -- the 67 claims that are before you now is found at  
25 pages 216 to 217 of the Petition Appendix. And what the

1 district court says is the EEOC has asked me to stay  
2 this to allow it to go conciliate. I'm not going to do  
3 that. I'm going to dismiss instead. And it drops a  
4 footnote -- this is a few pages earlier on, pages 213  
5 to 14 -- and it cites another case that dismissed a  
6 claim under the same circumstances. That earlier case  
7 that the district court cited as precedent for the  
8 dismissal was expressly a dismissal without prejudice.

9           The district court then goes on to say --  
10 and this is language that you've referred to, Justice  
11 Kennedy -- that the EEOC is barred from further  
12 litigation on the claims. But it says barred from  
13 further litigation in this case. It cannot pursue  
14 relief in the trial in this case.

15           And I think most importantly, when the  
16 district court says it's dismissing, and then when it  
17 ultimately enters a judgment of dismissal, it does not  
18 specify that the judgment is with prejudice.

19           And we actually have a Federal Rule of Civil  
20 Procedure, Rule 41(b), that is particularly and  
21 expressly designed to address this situation to ensure  
22 that parties and courts don't have to engage in the kind  
23 of inquiry that Mr. Smith was engaged in, in the first  
24 half of the argument, of trying to figure out what does  
25 the judge mean, what do the parties think that the judge



1 means.

2                   This is at -- Rule 41(b) is at page 17a at  
3 Petition Appendix, and it says, "An involuntary  
4 dismissal" -- it establishes a default rule. It says,  
5 "Ordinarily, if you have an involuntary dismissal by the  
6 court, unless the court specifies otherwise, it operates  
7 as an adjudication on the merits." Ordinarily dismissal  
8 with prejudice.

9                   CHIEF JUSTICE ROBERTS: Now, so what you're  
10 saying is in -- the judge said they cannot precede again  
11 in this case?

12                   MR. FLETCHER: They cannot seek relief on  
13 behalf of these 67 women in this case.

14                   CHIEF JUSTICE ROBERTS: And why -- why isn't  
15 that prevailing? Why aren't they prevailing? What --  
16 they may not prevail in another case or -- that's your  
17 argument?

18                   MR. FLETCHER: So that -- that's my  
19 argument.

20                   CHIEF JUSTICE ROBERTS: Because they have  
21 engaged in -- under your theory, they have engaged in an  
22 illegal practice. But they -- they prevailed in this  
23 case, but they may be sued by somebody else in another  
24 case?

25                   MR. FLETCHER: They -- they may be sued by

1 us in another case. They may be sued by the Commission  
2 in another case. They've -- they've secured a dismissal  
3 that said the EEOC didn't satisfy the preconditions that  
4 it had to satisfy before bringing these claims.

5 But our view is -- and -- and we think we're  
6 right about this, and we -- we think it's supported by  
7 Costello -- that leaves the EEOC free to satisfy the  
8 precondition --

9 CHIEF JUSTICE ROBERTS: What -- --

10 MR. FLETCHER: -- and come back to court.

11 CHIEF JUSTICE ROBERTS: What do you -- yeah,  
12 I -- what do you think the significance of Mach Mining  
13 is on this issue?

14 MR. FLETCHER: So our view is that Mach  
15 Mining suggests that this issue shouldn't come up again  
16 in future cases. As we read Mach Mining, it suggests  
17 that the appropriate remedy for a failure of  
18 conciliation like the one here is a stay rather than a  
19 dismissal. I don't think --

20 CHIEF JUSTICE ROBERTS: Then why isn't  
21 that -- I mean, if -- if the EEOC doesn't do anything at  
22 all -- I mean, under Mach Mining, if they don't  
23 conciliate, the remedy is go conciliate.

24 MR. FLETCHER: Yes.

25 CHIEF JUSTICE ROBERTS: Wouldn't --

1 wouldn't you think if the reason they're -- didn't -- it  
2 was frivolous for them to bring the suit without  
3 conciliation, you know, if somebody said, Well, we've  
4 got to conciliate, and they said, Oh, forget about it,  
5 go ahead, why wouldn't fees be a perfectly appropriate  
6 sanctions?

7           In other words, there's no -- under some  
8 sense, there's no incentive for them to conciliate,  
9 because if it turns out they didn't, they have to go  
10 conciliate. But if they were subject to fees because  
11 they ignored their duty to conciliate, it seems to me  
12 that might give them some incentive to get it right the  
13 first time.

14           MR. FLETCHER: So I think I -- I'd like to  
15 quibble with the premise. I -- I think, as we explain  
16 in our brief, the EEOC has a great incentive to  
17 conciliate because it gets a massive number of  
18 complaints each year or charges each year. It finds a  
19 reasonable cause to believe that there's been a  
20 violation of Title VII in a huge number of cases, and  
21 has very limited resources. And so it really does, try  
22 and actually does, resolve far more cases by  
23 conciliation than by litigation; it doesn't rush into  
24 court.

25           CHIEF JUSTICE ROBERTS: So you're not likely

1 to be subject to this sanction in many cases, which is a  
2 good thing.

3 MR. FLETCHER: Right.

4 CHIEF JUSTICE ROBERTS: But sometimes --  
5 okay.

6 MR. FLETCHER: But I take your point, that  
7 then the question is, so if the EEOC -- let's -- by  
8 hypothesis, should -- unreasonably fails to satisfy its  
9 conciliation obligation, and the court finds that to be  
10 the case, and then it stays, pursuant to Mach Mining,  
11 and sends them off to conciliate, could the court award  
12 fees, I take it to be the question.

13 CHIEF JUSTICE ROBERTS: Right.

14 MR. FLETCHER: I think the answer is it  
15 couldn't do it under this provision because everyone  
16 agrees that you have to be a prevailing party to get  
17 fees under this provision. And I don't think even  
18 Mr. Smith would argue that if all the defendant gets is  
19 a stay, the defendant has prevailed. Now, I'll argue  
20 that it is dismissal without prejudice to allow for  
21 conciliation and then the potential for coming back to  
22 court isn't that different from a stay to allow for  
23 conciliation as to the same --

24 JUSTICE SOTOMAYOR: It's hard to imagine  
25 that the district court didn't consider this a dismissal

1 with prejudice when it announced in this very decision  
2 you're pointing to that the -- that the Petitioner was a  
3 prevailing party entitled to attorneys' fees at the end  
4 of the case.

5 Certainly the district court thought it was  
6 imposing a sanction. It was barring you from trying  
7 these cases, at least at this trial.

8 MR. FLETCHER: At -- at least at this trial,  
9 I -- I agree with that. And the district court did say  
10 in the same order that that made Petitioner a prevailing  
11 party. It didn't explain what test it was applying, and  
12 it certainly didn't say "dismissed with prejudice." And  
13 this gets back to the point that I was making to Justice  
14 Breyer about Rule 41, which is that Rule 41 serves  
15 exactly this function. It tells you how to read a  
16 dismissal.

17 JUSTICE SOTOMAYOR: Well, the --

18 MR. FLETCHER: It doesn't specify its  
19 effect.

20 JUSTICE SOTOMAYOR: -- the real problem for  
21 you is that any -- the dismissal of the action, even  
22 according to this order by the court, would happen at  
23 the end of the case. And at the end of this case we had  
24 a dismissal with prejudice. One would think that  
25 everything would get merged into the final judgment.

1                   MR. FLETCHER: So I -- I disagree with that,  
2 that you're talking about the dismissal ultimately  
3 entered after remand in 2013. I do want to talk about  
4 that, but -- but first I think it's -- it's helpful to  
5 just sort of tie down the 2009 dismissal originally.

6                   And just to wrap up the point, it's that  
7 under Rule 41, if you have a dismissal that's for lack  
8 of jurisdiction, that doesn't count as an adjudication  
9 on the merits; it's not with prejudice.

10                  And in this Court's decision in Costello,  
11 which courts have followed ever since, jurisdiction  
12 there doesn't mean jurisdiction in the sense of  
13 jurisdiction over the person or the subject matter. It  
14 also includes a failure to satisfy a precondition like  
15 it did here.

16                  JUSTICE BREYER: Just simply, No. 279,  
17 10/1/2009, judgment in favor of CSRT against the EEOC?

18                  MR. FLETCHER: I believe so, yes.

19                  JUSTICE BREYER: Okay. Where is it?

20                  MR. FLETCHER: So the -- the judgment that  
21 is actually entered is I think not in the Joint  
22 Appendix. It's --

23                  JUSTICE BREYER: Well, I mean -- but where  
24 do I find it?

25                  MR. FLETCHER: You find it at Docket Entry

1 No. 279 on the district court's docket.

2 JUSTICE BREYER: What does it say?

3 MR. FLETCHER: It says, "Decision by the  
4 court. This came to trial or hearing before the Court.  
5 The issues have been tried or heard and a decision has  
6 been rendered. It is ordered and adjudged that  
7 Plaintiff EEOC takes nothing, and the action is  
8 dismissed."

9 JUSTICE BREYER: The action is dismissed.

10 MR. FLETCHER: Yes. The action is  
11 dismissed. And so then to understand the effect of that  
12 dismissal, you look to Rule 41, which says, "A dismissal  
13 involuntarily ordinarily operates as an adjudication  
14 with prejudice on the merits."

15 We're not disagreeing with that as to the  
16 claims on which the district court passed on the merits  
17 and concluded that we didn't have enough evidence to  
18 survive a motion for summary judgment.

19 JUSTICE BREYER: Except -- it has three  
20 exceptions: Lack of jurisdiction, improper venue, or  
21 failure to join a party.

22 MR. FLETCHER: Yes.

23 JUSTICE BREYER: This was not failure to  
24 join a party.

25 MR. FLETCHER: Yes.

1 JUSTICE BREYER: It is not improper venue.

2 MR. FLETCHER: Yes.

3 JUSTICE BREYER: I don't think it's lack of  
4 jurisdiction. Is that what it is, lack of jurisdiction?

5 MR. FLETCHER: It's exactly that because in  
6 this Court's decision in Costello, the Court said  
7 jurisdiction in Rule 41 doesn't mean lack of  
8 jurisdiction over the parties. It also includes failure  
9 to satisfy a precondition to bringing suit.

10 In Costello, that particular precondition  
11 was the failure to file an affidavit of good cause  
12 before the government brought a denaturalization  
13 proceeding. That's a precondition that looks a lot like  
14 this one. And, in fact, in Mach Mining, this Court  
15 analogized the precondition at issue in Costello to the  
16 precondition at issue here in --

17 JUSTICE KAGAN: Mr. Fletcher, could I --  
18 could I take you back to where you started, which is  
19 whether you've waived all of this?

20 MR. FLETCHER: Yes.

21 JUSTICE KAGAN: And, you know, you point out  
22 that the question presented includes your argument, but  
23 clearly it is, as you say, a different argument from the  
24 one you litigated below, both in the district court and  
25 in the circuit court.



1 MR. FLETCHER: Yes.

2 JUSTICE KAGAN: And in the bio that you  
3 filed here.

4 And Mr. Smith has responded to this new  
5 argument in less than a page, which is really his every  
6 right to do, given that it has sort of sprung from your  
7 head at this late date. And I'm wondering why we  
8 shouldn't just ignore the whole thing.

9 MR. FLETCHER: So if I could address it  
10 separately. First of all, as to why it wasn't raised  
11 below, below this -- both parties litigated this case on  
12 the understanding that it was governed by circuit  
13 precedent established by an Eighth Circuit decision  
14 called Marquardt that made clear that --

15 JUSTICE KAGAN: Well, you can always file a  
16 footnote, you know? I mean --

17 MR. FLETCHER: Well, that -- that's true,  
18 but I guess that -- that argument doesn't do Mr. Smith  
19 much good because he didn't make that argument. He  
20 didn't challenge beyond the merits rule in the Eighth  
21 Circuit. They didn't even do it in their petition for  
22 rehearing en banc.

23 Now, we haven't argued that they've waived  
24 it because we think it was within their rights to stay  
25 within the confines of circuit precedent and then to

1 make a broader argument on the same legal question once  
2 they're in this Court. But we think we have a equal  
3 right to refine our arguments once we're free from the  
4 constraints of circuit --

5 CHIEF JUSTICE ROBERTS: We -- what is the --  
6 I suppose I should know, but, I mean, what is the  
7 general practice? I mean, it would be kind of futile to  
8 go before the Eighth Circuit and say we think you should  
9 overrule your precedent, at least on the panel decision.  
10 But that doesn't mean they're not free to raise the  
11 argument here. This is where -- where you should go if  
12 you want a court of appeals overruled.

13 MR. FLETCHER: Absolutely. And as I'm  
14 saying, I don't fault Mr. Smith for not raising --  
15 challenging me on the merits rule. I'm just saying that  
16 there's a good reason why we weren't considering a  
17 different argument or considering how we might respond  
18 to a challenge to that rule because it just wasn't  
19 raised by either party. Both parties should have  
20 litigated within the confines of Eighth Circuit  
21 precedent.

22 Now, that also leaves the brief in  
23 opposition, Justice Kagan, which you also asked about.  
24 There, you're right; we didn't raise this argument. We  
25 defended the Eighth Circuit's decision. In part,

1 frankly, obviously, if we had it to do over again, we'd  
2 present the argument that we presented in our merits  
3 brief.

4 But I think it's important to go back and  
5 look at the petition. The petition doesn't really  
6 develop a developed argument on this point, either. It  
7 doesn't say *Buckhannon*. It doesn't make an extended  
8 argument about what it means to be a prevailing party.  
9 It mostly focuses on certiorari considerations.

10 And we did the same thing in our brief in  
11 opposition. I think this Court's argument -- or cases  
12 about when you waive an argument by failing to -- to  
13 include it on -- in the op. Our focus on cases for the  
14 argument is about why the question presented isn't  
15 really presented or why there's a bar to reaching it,  
16 and that's not what this argument is.

17 JUSTICE KAGAN: Well, regardless of whether  
18 there's blame on either part, we're still in a situation  
19 where it really has not been briefed by one party, and  
20 it hasn't been thought about by the courts below. And  
21 usually, you know, we do that -- we're a court of  
22 review, not a first view, mine, and we would kick it  
23 back.

24 MR. FLETCHER: Yes. You certainly could do  
25 that. We think -- you know, we have presented it. It's

1     aired in the amicus briefs. And Mr. Smith certainly  
2     could have addressed it at greater length in his reply  
3     brief. But if that's your view, it's certainly well  
4     within the Court's right to kick it back to the Eighth  
5     Circuit for consideration of these issues.

6             JUSTICE GINSBURG: Mr. Fletcher, is it your  
7     view that all of this discussion of prevailing parties  
8     is really academic because there's no way that the EEOC  
9     could satisfy the Christiansburg standard?

10            MR. FLETCHER: I think I agree with that,  
11     Justice Ginsburg. And that's where I was going to go,  
12     was to say another option for this Court is to resolve  
13     this on the alternative ground that we've raised, which  
14     is Christiansburg.

15            JUSTICE KAGAN: That seems even worse. I  
16     mean, nobody has thought about that. It seems to be a  
17     complicated factual scenario, you know. There are  
18     circumstances in which you could proceed with a class  
19     properly and circumstances in which you couldn't, and we  
20     know nothing about whether this is the circumstances,  
21     one or the other.

22            MR. FLETCHER: Well, you don't -- you  
23     certainly don't have to resolve it on the merits. But I  
24     think all you need to do is to say it was not  
25     unreasonable for us to think that we had done it here.

1 And I think the way that you know that is because  
2 Judge Murphy, in a very persuasive dissent, concluded  
3 that we were not only reasonable, but correct in  
4 thinking that we'd satisfied our obligations. And also  
5 because not even Petitioner is defending the rule that  
6 the district court applied.

7 The district court said you cannot  
8 conciliate a claim on a classwide basis. You have to  
9 conciliate on behalf of each and every one of these 67  
10 individuals. That's the rule the Eighth Circuit  
11 applied. That's the rule Judge Murphy criticized. And  
12 Petitioner doesn't defend it. What Petitioner said  
13 instead is that this was all fine as long as we had a  
14 pattern-or-practice theory. And it only became not fine  
15 when we lost on summary judgment on the  
16 pattern-or-practice issue. But I don't think that --  
17 our -- our conciliation can become inadequate only when  
18 we lose a summary judgment motion.

19 Thank you.

20 CHIEF JUSTICE ROBERTS: Thank you, counsel.

21 Mr. Smith, you have three minutes remaining.

22 REBUTTAL ARGUMENT OF PAUL M. SMITH

23 ON BEHALF OF THE PETITIONER

24 MR. SMITH: Thank you, Mr. Chief Justice.

25 First of all, on the question of Buckhannon

1 and this idea that we have to show a change in the legal  
2 relationship between the parties, the -- the first thing  
3 that Buckhannon says is the paradigm of a -- a case  
4 where there's been a prevailing party is where a  
5 judgment has been entered. It only goes on to talk  
6 about this other more complicated stuff about legal  
7 relationships when it's talking about things plaintiffs  
8 win short of a judgment. But there's nothing in  
9 Buckhannon that says a judgment can't be treated as a  
10 basis for a prevailing party.

11 Now, to the extent it matters what the  
12 nature of the dismissal here was -- and I don't know  
13 that it should, but if it does -- I'd point out that any  
14 uncertainty about the nature of the dismissal here  
15 arises from the fact that the government never made any  
16 argument in the courts below that the distinction made  
17 any difference. And, indeed, it contradicted the very  
18 point it's now making. It said to the Eighth Circuit --  
19 and this is on page 11 in our reply brief in the  
20 footnote -- it said, quote, "The court recognized  
21 dismissal as a severe remedy and acknowledged it would  
22 result in dozens of potentially meritorious sexual  
23 harassment claims never seeing the inside of a  
24 courtroom."

25 JUSTICE GINSBURG: It said it may -- may

1 result, not would result.

2 MR. SMITH: No, no. This is -- I'm reading  
3 their quote from their brief where they left out the  
4 word "may" because they thought that it didn't make a  
5 difference. That they knew at the time and understood,  
6 or at least believed, she was referring to the fact that  
7 these individual women might be able to litigate their  
8 own claims. But they recognized over and over again in  
9 the courts below that the "may" didn't mean that the  
10 EEOC could come back and litigate, that they were  
11 precluded. That's why they filed their Rule 60 motion  
12 five years later.

13 Now, to the extent there was an argument  
14 that we shouldn't get all these fees, we should maybe  
15 get a little bit of fees because we should have raised  
16 the issue early on, the problem here precisely was the  
17 class action. The two are tied together, and they were  
18 both, Judge Reed found, frivolous, the argument that  
19 there was a pattern of practice here, and then the  
20 argument that they could go on and litigate on behalf of  
21 the individuals once the class action washed out.  
22 They're -- they're part of a package. But until --

23 JUSTICE GINSBURG: Did she hold that they  
24 would have to investigate and conciliate each individual  
25 claim?

1                   MR. SMITH: She said that where there is not  
2 a valid pattern or practice. I don't think there's  
3 anything in -- in the court's decision that suggests you  
4 can never conciliate a class claim. The court so held  
5 in General Telephone. She cites the case. I don't know  
6 that the judge was intending to -- to second-guess this  
7 Court's decision in General Telephone about how pattern  
8 and practice cases are litigated. The question is where  
9 you don't have any kind of a policy or -- or standard  
10 operating procedure. You have a handful of individual  
11 stories, or maybe a large number of individual stories.  
12 How do you conciliate those? And the answer she gave  
13 was you have to conciliate them one by one, just --  
14 or -- or you're bypassing the statutory procedure and  
15 the statutory policy.

16                   JUSTICE SOTOMAYOR: What is the rule that  
17 you would like us to announce? When is it right to  
18 award prevailing defendants attorneys' fees?

19                   MR. SMITH: When they --

20                   JUSTICE SOTOMAYOR: What would be your rule?

21                   MR. SMITH: When they've won a judgment and  
22 prevailed, and where the --

23                   JUSTICE SOTOMAYOR: It doesn't matter with  
24 or without prejudice?

25                   MR. SMITH: I would -- I would think that



1 that should not be in the rule, that that ought to be  
2 something within the discretion of the district judge  
3 for a lot of the reasons we've been discussing here.  
4 And where the -- the claim that -- that was dismissed  
5 was frivolous or unreasonable or without foundation  
6 under Christiansburg. And that that, therefore, caused  
7 costs to be incurred as occurred here. And, you know, I  
8 don't see any reason why you would want to add  
9 additional constraints.

10 Thank you, Your Honor.

11 CHIEF JUSTICE ROBERTS: Thank you, counsel.

12 The case is submitted.

13 (Whereupon, at 11:06 a.m., the case in the  
14 above-entitled matter was submitted.)

15

16

17

18

19

20

21

22

23

24

25

<b>A</b>				
<b>a.m</b> 1:15 3:2 32:6 36:14 40:16 65:13	<b>adjudicate</b> 10:20	60:13	<b>approach</b> 36:19	<b>asserted</b> 21:12 23:2,5,8
<b>abandoned</b> 29:22 30:2,6 30:10	<b>adjudication</b> 12:9 49:7 54:8 55:13	<b>alters</b> 31:22 46:5	<b>appropriate</b> 16:20 17:7 27:5,7,15 43:10 50:17 51:5	<b>assertion</b> 40:19
<b>able</b> 63:7	<b>administration</b> 36:20 39:16	<b>amount</b> 25:20 26:14 40:17 41:7 43:4 46:9	<b>appropriately</b> 15:17,18	<b>Assistant</b> 1:19
<b>about-face</b> 3:24	<b>administrative</b> 38:25 39:7	<b>analogized</b> 56:15	<b>approved</b> 32:11	<b>assume</b> 13:12 43:15 45:16
<b>above-entitled</b> 1:13 65:14	<b>adopt</b> 38:19	<b>animal</b> 15:15	<b>argue</b> 30:23 52:18,19	<b>assuming</b> 9:16 24:24
<b>absence</b> 6:1	<b>advancing</b> 29:24	<b>announce</b> 64:17	<b>argued</b> 12:25 29:19 30:20 57:23	<b>attached</b> 21:3,3
<b>absolutely</b> 43:9 58:13	<b>affect</b> 27:13	<b>announced</b> 53:1	<b>argument</b> 1:14 2:2,5,8 3:4,7 12:6,23 13:9 13:16 19:24 21:22 24:13 25:2 26:14 29:2,23,25 30:3,5,15,16 30:16,20 45:22 46:19 47:3,4 47:16,17,17 48:24 49:17,19 56:22,23 57:5 57:18,19 58:1 58:11,17,24 59:2,6,8,11,12 59:14,16 61:22 62:16 63:13,18 63:20	<b>attempt</b> 42:11
<b>abused</b> 19:17	<b>affidavit</b> 56:11	<b>answer</b> 7:8 29:25 31:7,25 43:15 52:14 64:12	<b>argues</b> 12:25 29:19 30:20 57:23	<b>attention</b> 28:1
<b>abusiveness</b> 13:25	<b>agree</b> 4:20 12:10 24:4 43:9 53:9 60:10	<b>answered</b> 7:15 7:23	<b>argued</b> 12:25 29:19 30:20 57:23	<b>attorney's</b> 30:25
<b>academic</b> 60:8	<b>agreed</b> 21:20	<b>answering</b> 8:9	<b>argument</b> 1:14 2:2,5,8 3:4,7 12:6,23 13:9 13:16 19:24 21:22 24:13 25:2 26:14 29:2,23,25 30:3,5,15,16 30:16,20 45:22 46:19 47:3,4 47:16,17,17 48:24 49:17,19 56:22,23 57:5 57:18,19 58:1 58:11,17,24 59:2,6,8,11,12 59:14,16 61:22 62:16 63:13,18 63:20	<b>attorneys</b> 25:22
<b>accepted</b> 9:10	<b>agreement</b> 3:13 18:5 22:7 32:9 32:11	<b>anybody</b> 28:18	<b>argued</b> 12:25 29:19 30:20 57:23	<b>attorneys'</b> 3:15 4:2 29:17 32:23 35:22 39:5 53:3 64:18
<b>accepting</b> 11:14	<b>agrees</b> 3:25 52:16	<b>anyway</b> 10:21 22:15 35:22	<b>argued</b> 12:25 29:19 30:20 57:23	<b>attributable</b> 41:8
<b>account</b> 32:22 36:2	<b>agreements</b> 32:14,22	<b>apparently</b> 4:5	<b>argued</b> 12:25 29:19 30:20 57:23	<b>authorizes</b> 16:22
<b>accurate</b> 8:6	<b>agrees</b> 3:25 52:16	<b>appeal</b> 19:4,21 35:6	<b>argued</b> 12:25 29:19 30:20 57:23	<b>available</b> 17:16 24:13
<b>accurately</b> 7:24	<b>ahead</b> 20:12 25:15 51:5	<b>appealed</b> 19:19	<b>argued</b> 12:25 29:19 30:20 57:23	<b>award</b> 4:2 29:11 29:17 40:16 41:6 44:20 45:23 52:11 64:18
<b>acknowledged</b> 19:3 62:21	<b>aired</b> 60:1	<b>appealing</b> 18:25	<b>argued</b> 12:25 29:19 30:20 57:23	<b>awarded</b> 25:20 40:3 43:25
<b>acknowledging</b> 24:10	<b>ALITO</b> 29:18 29:22 30:2 34:19 45:3,12 46:7	<b>appeals</b> 15:8 19:20 21:11 24:7 36:11 58:12	<b>argued</b> 12:25 29:19 30:20 57:23	<b>awards</b> 46:2,4 46:25
<b>act</b> 9:20 45:24	<b>allegation</b> 5:20	<b>APPEARAN...</b> 1:16	<b>argued</b> 12:25 29:19 30:20 57:23	
<b>action</b> 53:21 55:7,9,10 63:17,21	<b>allegations</b> 27:25	<b>appears</b> 12:19 21:1	<b>arguments</b> 19:23 29:8 46:24 58:3	<b>B</b>
<b>actions</b> 4:14	<b>alleged</b> 27:23,24	<b>Appendix</b> 7:17 7:18 8:13 18:8 20:25,25 47:25 49:3 54:22	<b>arises</b> 62:15	<b>B</b> 13:1
<b>actual</b> 26:19	<b>alleging</b> 6:16	<b>applicable</b> 44:15	<b>art</b> 31:20 46:20	<b>back</b> 17:13 18:10,20 20:7 22:11 23:15 24:1 34:14 37:7,12 38:12 38:24 44:13 45:5 50:10 52:21 53:13 56:18 59:4,23 60:4 63:10
<b>add</b> 26:22 65:8	<b>allow</b> 11:25 26:24 48:2 52:20,22	<b>application</b> 41:5	<b>artificial</b> 34:1	<b>balance</b> 28:23
<b>additional</b> 17:5 65:9	<b>allowing</b> 45:22	<b>applied</b> 61:6,11	<b>ascribed</b> 35:13	<b>banc</b> 57:22
<b>address</b> 12:6 25:6 31:15 36:8 48:21 57:9	<b>allows</b> 33:21	<b>applies</b> 33:18	<b>aside</b> 13:14 26:9	
<b>addressed</b> 31:18 60:2	<b>alludes</b> 37:18	<b>apply</b> 33:3,7	<b>asked</b> 3:11 7:1 8:1,14 18:11 19:7 25:8 48:1 58:23	
<b>adequate</b> 6:4 40:3	<b>alteration</b> 34:20 35:2 37:4 46:21	<b>applying</b> 39:9 39:19 53:11	<b>asking</b> 21:24 24:11	
<b>adjudged</b> 55:6	<b>alter</b> 35:10	<b>apportion</b> 33:1		
	<b>alternative</b>	<b>appreciate</b> 36:7		

<p><b>bar</b> 15:4 44:12 59:15</p> <p><b>barred</b> 3:15 16:1 19:1 39:20 43:19 44:22 48:11,12</p> <p><b>barring</b> 17:6 53:6</p> <p><b>bars</b> 15:9,12</p> <p><b>based</b> 12:16 21:7 23:17,19 29:15 30:24 36:4</p> <p><b>baseless</b> 7:18</p> <p><b>basic</b> 23:14</p> <p><b>basis</b> 4:1 7:24 10:5 13:1 27:2 29:8,16 30:25 61:8 62:10</p> <p><b>bear</b> 37:21</p> <p><b>behalf</b> 1:17,21 2:4,7,10 3:8 15:24 21:8,9 25:11 29:3 49:13 61:9,23 63:20</p> <p><b>believe</b> 24:12 44:2,2,3 51:19 54:18</p> <p><b>believed</b> 63:6</p> <p><b>bench</b> 22:9</p> <p><b>benighted</b> 36:8</p> <p><b>best</b> 34:9 35:23</p> <p><b>better</b> 9:19 41:1</p> <p><b>beyond</b> 57:20</p> <p><b>bifurcation</b> 10:24</p> <p><b>big</b> 34:21</p> <p><b>bill</b> 25:22,25</p> <p><b>billion</b> 47:8</p> <p><b>bio</b> 57:2</p> <p><b>bit</b> 41:3 42:18 63:15</p> <p><b>blame</b> 59:18</p> <p><b>bluntly</b> 6:5</p> <p><b>blush</b> 36:18</p> <p><b>bottom</b> 5:1 21:5</p>	<p>21:7</p> <p><b>Breyer</b> 20:21 21:14 30:6,9 30:13,22 31:4 31:7,24 35:15 36:13,17 38:10 39:2,12 47:3 47:16 53:14 54:16,19,23 55:2,9,19,23 56:1,3</p> <p><b>BRIAN</b> 1:19 2:6 29:2</p> <p><b>brief</b> 3:17,24,25 4:4 12:22 13:17,18 18:25 19:21 25:9 29:18 33:16 41:7 51:16 58:22 59:3,10 60:3 62:19 63:3</p> <p><b>briefed</b> 59:19</p> <p><b>briefly</b> 25:6</p> <p><b>briefs</b> 4:22 60:1</p> <p><b>bring</b> 5:20 16:12 35:19 38:15 39:3 45:7 51:2</p> <p><b>bringing</b> 5:13 15:19 44:22 50:4 56:9</p> <p><b>brings</b> 32:1 45:15</p> <p><b>broader</b> 31:17 58:1</p> <p><b>brought</b> 12:22 17:13 24:22 27:25 44:16 56:12</p> <p><b>Buckhannon</b> 31:19 32:7,8 32:15 33:14 35:12 37:3 45:14,14 46:17 46:18,23 47:6 59:7 61:25 62:3,9</p>	<p><b>bunch</b> 26:21</p> <p><b>burden</b> 46:12</p> <p><b>bypassing</b> 64:14</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 2:1 3:1</p> <p><b>called</b> 7:19 20:22 57:14</p> <p><b>candidate</b> 47:13</p> <p><b>care</b> 30:22</p> <p><b>case</b> 3:4,14,21 5:12,25 6:13 7:1,13 9:2 10:22 11:17,18 11:18 13:18,23 14:2,11 15:6 15:20 16:23 17:6,21 18:3,4 18:6,7,12,19 19:7,16 21:12 21:24 22:13,18 22:19,20,23,23 22:25 23:1,6 24:2 26:19,20 27:12,21 28:4 29:15 31:2,10 34:6,11 35:18 35:19,20,20,24 35:25 39:3,4 40:4,10,14 41:5,12 43:15 43:16,20 44:1 44:3,20,21 45:1,4,7,8,23 47:22 48:5,6 48:13,14 49:11 49:13,16,23,24 50:1,2 52:10 53:4,23,23 57:11 62:3 64:5 65:12,13</p> <p><b>case-specific</b> 31:15</p> <p><b>cases</b> 6:15 10:24 12:9 28:20 32:5 34:10 35:13 39:9,25</p>	<p>44:25 45:1,5 50:16 51:20,22 52:1 53:7 59:11,13 64:8</p> <p><b>categorical</b> 15:4</p> <p><b>categories</b> 16:3</p> <p><b>cause</b> 8:24 10:8 14:15 16:10 39:16 42:13 51:19 56:11</p> <p><b>caused</b> 46:10,11 65:6</p> <p><b>Cedar</b> 26:8</p> <p><b>celebrate</b> 35:1</p> <p><b>Cert</b> 8:13</p> <p><b>certain</b> 35:10</p> <p><b>certainly</b> 3:19 5:11 10:5 12:14 17:15 22:6 24:21 26:11,13 37:2 41:2 53:5,12 59:24 60:1,3 60:23</p> <p><b>certiorari</b> 3:12 29:7,14 59:9</p> <p><b>challenge</b> 57:20 58:18</p> <p><b>challenging</b> 58:15</p> <p><b>change</b> 20:17 30:15,16 33:5 33:8 38:17 47:9,12 62:1</p> <p><b>changed</b> 35:8 37:9</p> <p><b>changes</b> 32:16 32:19</p> <p><b>changing</b> 20:4</p> <p><b>charge</b> 8:10 26:9</p> <p><b>charges</b> 8:15 11:22 51:18</p> <p><b>charging</b> 32:1</p> <p><b>Chicago</b> 26:9</p> <p><b>Chief</b> 3:3,9 28:25 29:4 32:21,25 33:25</p>	<p>35:17 37:11 40:2 41:11,18 41:22 42:12,25 49:9,14,20 50:9,11,20,25 51:25 52:4,13 58:5 61:20,24 65:11</p> <p><b>chooses</b> 45:7</p> <p><b>Christiansburg</b> 4:9,16 15:1 25:8 26:17 37:20 60:9,14 65:6</p> <p><b>circuit</b> 3:18 4:7 7:10,17,22 13:21 19:4 22:3 24:7,19 24:23 29:9,19 39:11 42:1,3 56:25 57:12,13 57:21,25 58:4 58:8,20 60:5 61:10 62:18</p> <p><b>Circuit's</b> 4:6 5:2 30:11 58:25</p> <p><b>circuits</b> 33:14 39:8,8,17,18</p> <p><b>circumstances</b> 13:23 38:5 48:6 60:18,19 60:20</p> <p><b>cite</b> 33:15 34:10</p> <p><b>cited</b> 16:21 48:7</p> <p><b>cites</b> 48:5 64:5</p> <p><b>Civil</b> 44:8 45:24 48:19</p> <p><b>claim</b> 5:13,16,21 5:21 11:4,5 15:25 16:1,1,2 21:8,9 27:8 36:25 39:20 42:24 44:22 48:6 61:8 63:25 64:4 65:4</p> <p><b>claimant</b> 10:10</p>
---	--	---	---	--

<b>claimants</b> 11:3	<b>compelled</b> 3:19	55:17 61:2	61:3	<b>courtroom</b>
<b>claims</b> 9:4 10:6	41:14	<b>concludes</b> 11:24	<b>cost</b> 14:2	18:22 19:2
10:20 11:7,13	<b>complain</b> 18:25	<b>conduct</b> 7:12	<b>Costello</b> 50:7	22:8 62:24
14:14,17 15:21	<b>complainants</b>	11:23 16:6	54:10 56:6,10	<b>courts</b> 12:24
15:23 16:3,9	11:15 28:17	25:17 27:24	56:15	15:12 32:10,13
17:2,3,14,23	<b>complained</b> 7:12	32:16 45:19	<b>costly</b> 44:19	36:11 43:3
18:6,21 19:2	8:2,10	<b>confines</b> 57:25	<b>costs</b> 25:23 65:7	45:22 48:22
19:11,14 21:12	<b>complaining</b>	58:20	<b>counsel</b> 28:25	54:11 59:20
23:2,5,7,10,12	10:12	<b>conflict</b> 4:7	61:20 65:11	62:16 63:9
23:21,24 24:8	<b>complaint</b> 5:10	13:21 24:23	<b>count</b> 23:3,4	<b>cover</b> 24:1
26:21 47:24	6:9 8:25 15:15	<b>consent</b> 32:10	35:14 54:8	<b>creating</b> 27:3
48:12 50:4	16:5 23:2 27:2	<b>consequences</b>	<b>course</b> 3:13 10:3	<b>criticized</b> 61:11
55:16 62:23	27:20 34:24,25	45:2	10:7 12:8 20:4	<b>CRST</b> 1:3 3:4
63:8	38:18	<b>consider</b> 33:17	35:10	7:1 13:1
<b>class</b> 5:13,20	<b>complaints</b> 6:9	36:2,3 39:4	<b>court</b> 1:1,14	<b>CSRT</b> 54:17
8:23 9:3 10:5	6:21 7:2 8:1	52:25	3:10,11 4:6	<b>curable</b> 14:9,10
11:4,8,17	9:13,24 10:2	<b>consideration</b>	5:25 6:17 7:10	14:23 23:19
15:17 16:11	27:25 28:5	60:5	7:16 9:3 10:19	38:4
26:19,24 27:1	51:18	<b>considerations</b>	12:5 14:5,16	<b>cure</b> 23:22
27:4,7 42:23	<b>complete</b> 3:13	59:9	14:24 15:7,8,9	<b>cured</b> 23:21
42:24 60:18	<b>completely</b> 7:9	<b>considered</b>	16:12 17:3,8	
63:17,21 64:4	7:15 14:9	16:25 17:21	19:19,21 21:10	<b>D</b>
<b>classifying</b> 11:8	19:23 24:19	36:12	23:16,23 24:20	<b>D</b> 3:1
<b>classwide</b> 61:8	<b>complicated</b>	<b>considering</b>	24:25 26:16	<b>D.C</b> 1:10,17,20
<b>clear</b> 6:12 15:2,2	60:17 62:6	58:16,17	29:5,6,13	<b>damages</b> 11:2
15:3 17:16	<b>concern</b> 38:24	<b>consistency</b>	31:18 32:8,9	<b>date</b> 57:7
20:14 34:14	38:25 40:3	36:19	32:11,13 33:16	<b>day</b> 19:20 34:15
40:7 42:17	<b>conciliate</b> 16:17	<b>consistent</b> 6:20	34:15 35:12	37:7,12 38:12
44:11 57:14	16:21 42:11,24	6:21 28:12	37:3,19 38:4	<b>de</b> 11:1
<b>clearly</b> 17:7	48:2 50:23,23	<b>constitutes</b>	42:9 43:11	<b>deal</b> 27:3
56:23	51:4,8,10,11	30:18	45:21 46:3,4	<b>dealing</b> 15:14
<b>close</b> 46:17	51:17 52:11	<b>constraints</b> 58:4	46:23 47:23	<b>dealt</b> 46:18
<b>club</b> 26:25	61:8,9 63:24	65:9	48:1,7,9,16	<b>death</b> 47:7
<b>collective</b> 5:21	64:4,12,13	<b>contact</b> 8:21	49:6,6 50:10	<b>debating</b> 43:1
<b>come</b> 10:17 11:3	<b>conciliated</b> 10:6	<b>contexts</b> 27:11	51:24 52:9,11	<b>debt</b> 25:21
17:13 34:4,14	14:16 16:10	<b>continue</b> 16:16	52:22,25 53:5	<b>December</b> 20:15
37:7,12 38:12	<b>conciliation</b> 10:9	33:22 37:9	53:9,22 55:4,4	<b>decide</b> 4:25
41:16 42:8	10:13 16:15,16	<b>contradicted</b>	55:16 56:6,14	24:15,19,20,22
44:13 50:10,15	16:20,23 17:11	62:17	56:24,25 58:2	24:25 25:10,10
63:10	42:21 50:18	<b>contrary</b> 41:12	58:12 59:21	32:3 36:15
<b>comes</b> 34:1	51:3,23 52:9	<b>controlling</b>	60:12 61:6,7	<b>decided</b> 19:6
<b>coming</b> 38:4	52:21,23 61:17	20:20	62:20 64:4	<b>deciding</b> 4:24
52:21	<b>conclude</b> 9:22	<b>converse</b> 47:2	<b>court's</b> 33:13	43:4
<b>commission</b> 1:7	12:1	<b>convincing</b> 4:5	44:8 46:19	<b>decision</b> 31:19
3:5 44:16 50:1	<b>concluded</b> 7:10	<b>core</b> 38:8	54:10 55:1	33:13 46:14
<b>company</b> 6:3 7:3	7:22 8:5,11	<b>correct</b> 29:9,19	56:6 59:11	53:1 54:10
9:1 10:4	9:12 16:24	44:24 47:15,18	60:4 64:3,7	55:3,5 56:6

57:13 58:9,25 64:3,7 <b>declaration</b> 33:11 <b>declined</b> 42:24 <b>decree</b> 32:10 <b>default</b> 49:4 <b>defeated</b> 35:6 37:24 <b>defend</b> 61:12 <b>defendant</b> 3:14 4:1 12:11 14:3 29:10 31:1,2 32:15 33:4,5,9 33:10,18,18,22 34:2,8,11,12 34:13,17,17,21 34:22,23 35:3 35:18,24 36:24 39:21,24 40:10 40:12,18 43:7 45:18 46:9,12 47:11 52:18,19 <b>defendants</b> 4:8 27:4 37:21 38:6 64:18 <b>defended</b> 3:23 58:25 <b>defending</b> 40:18 61:5 <b>definitively</b> 34:12 <b>denaturalizati...</b> 56:12 <b>denying</b> 19:18 <b>Department</b> 1:20 <b>depends</b> 32:8 <b>deposed</b> 14:18 <b>deposition</b> 14:19 <b>depositions</b> 9:10 9:11,17 11:11 11:21 26:1 40:13,22 <b>designed</b> 48:21 <b>despite</b> 46:24 <b>detail</b> 7:9	<b>determination</b> 42:10 <b>develop</b> 59:6 <b>developed</b> 9:9 59:6 <b>difference</b> 4:18 26:18 62:17 63:5 <b>different</b> 11:21 11:22,22,23,23 16:2 20:9 23:24 26:18 27:23,24,24 28:1 29:25 30:5,16 34:15 36:10,10 38:18 39:22 52:22 56:23 58:17 <b>difficult</b> 27:10 <b>directed</b> 35:5 <b>directly</b> 43:2 <b>disagree</b> 41:23 42:18 54:1 <b>disagreeing</b> 55:15 <b>discover</b> 38:20 <b>discreet</b> 41:13 42:8,13 <b>discretion</b> 14:6 14:23 17:8 40:6 65:2 <b>discrimination</b> 8:15 32:2 <b>discriminatory</b> 5:23 27:17 <b>discussing</b> 65:3 <b>discussion</b> 60:7 <b>dismiss</b> 15:22,24 20:10 22:18 23:4 48:3 <b>dismissal</b> 14:4,8 14:8,21 16:16 21:4,6 23:20 24:11 29:14 30:24 31:14 33:19 34:24 37:1 39:23	44:7 45:5 47:13 48:8,8 48:17 49:4,5,7 50:2,19 52:20 52:25 53:16,21 53:24 54:2,5,7 55:12,12 62:12 62:14,21 <b>dismissed</b> 4:19 18:7,12 19:9 19:13 21:12,15 23:7,12 24:3,8 24:10 31:10 35:18 40:4 43:17 44:21 45:8 48:5 53:12 55:8,9 55:11 65:4 <b>dismissing</b> 13:23 17:23 48:16 <b>disposed</b> 40:24 <b>disposition</b> 3:22 4:1,10 12:16 12:25 13:10 21:25 30:11 <b>dispute</b> 33:13,21 37:1,8 <b>disregarding</b> 6:20 <b>dissent</b> 61:2 <b>distinction</b> 12:21 62:16 <b>district</b> 7:9,16 7:21 13:22 15:3,11 17:8 19:7 24:20 34:15 37:8,13 38:13,17,18 40:16 43:3,11 47:23 48:1,7,9 48:16 52:25 53:5,9 55:1,16 56:24 61:6,7 65:2 <b>do-over</b> 18:20 22:4 <b>docket</b> 54:25	55:1 <b>doctrine</b> 41:4 <b>doing</b> 25:16 40:22 45:24 <b>dollars</b> 47:8 <b>doubt</b> 21:19 <b>dozens</b> 62:22 <b>driven</b> 8:20 <b>driver</b> 28:7 <b>drivers</b> 5:17 6:4 6:10 11:22 <b>dropped</b> 22:22 <b>drops</b> 48:3 <b>duty</b> 51:11 <hr/> <b>E</b> <hr/> <b>E</b> 2:1 3:1,1 <b>earlier</b> 48:4,6 <b>early</b> 42:17 63:16 <b>ease</b> 36:19 <b>easily</b> 40:24 <b>Easterbrook</b> 37:6 <b>Easterbrook's</b> 34:10 <b>EEOC</b> 3:23 5:22 6:13,25 8:12 12:24 15:9,25 17:10,12 21:12 23:2,6,8,11,20 26:17,24 42:19 43:17 44:14 45:4 48:1,11 50:3,7,21 51:16 52:7 54:17 55:7 60:8 63:10 <b>EEOC's</b> 4:14 7:7 21:8,9 29:15 <b>effect</b> 27:18 53:19 55:11 <b>efforts</b> 10:13 16:17 <b>eight</b> 8:16 33:15 <b>Eighth</b> 3:18 4:6	5:2 7:10,17,22 19:4 22:3 24:7 24:19 29:9,19 30:10 42:1,3 57:13,20 58:8 58:20,25 60:4 61:10 62:18 <b>either</b> 5:22 28:6 58:19 59:6,18 <b>eligible</b> 46:2 <b>employer</b> 6:9,10 28:5 <b>Employment</b> 1:6 3:5 <b>en</b> 57:22 <b>encourage</b> 45:25 <b>ended</b> 35:16 39:3 <b>endorsed</b> 29:21 <b>ends</b> 18:3 33:12 34:12 <b>enforceable</b> 32:13 <b>engage</b> 17:10 43:11 48:22 <b>engaged</b> 42:22 48:23 49:21,21 <b>ensure</b> 48:21 <b>entered</b> 18:5 21:2 47:22 54:3,21 62:5 <b>enters</b> 48:17 <b>entertain</b> 25:1 <b>entire</b> 25:21,25 <b>entitled</b> 46:3 53:3 <b>Entry</b> 54:25 <b>environment</b> 27:13 <b>equal</b> 1:6 3:5 40:17 58:2 <b>especially</b> 24:14 <b>ESQ</b> 1:17,19 2:3 2:6,9 <b>essentially</b> 33:12 47:2 <b>establish</b> 11:9
---	--	---	---	--

<b>established</b> 57:13	<b>fact</b> 5:5 9:12,22 12:1 13:15	39:5 40:3,16 40:23 41:7	31:6,13 32:7 32:24 33:2,10	<b>Fox</b> 37:20
<b>establishes</b> 49:4	14:12 19:3	42:14 43:4,25	34:7 35:3 36:9	<b>framed</b> 29:12
<b>evaluation</b> 30:3	25:1 42:13	44:20,22 45:9	36:23 37:16	<b>frankly</b> 59:1
<b>event</b> 24:6	56:14 62:15	45:17,23 46:1	39:1,6,14 41:1	<b>free</b> 50:7 58:3,10
<b>eventually</b> 18:2	63:6	46:14 47:10	41:17,21 42:15	<b>frivolity</b> 5:9 41:13
<b>evidence</b> 6:19,23 6:24 9:7 11:25 55:17	<b>facto</b> 11:1	51:5,10 52:12	43:5,21,24	<b>frivolous</b> 4:14 5:3,4 39:4 40:9 40:18 41:24 42:4 43:18 51:2 63:18 65:5
<b>exactly</b> 28:15 45:20 53:15 56:5	<b>factor</b> 43:3	52:17 53:3	44:2,6,14,24	<b>frivolousness</b> 36:4
<b>example</b> 27:11 27:18	<b>factual</b> 11:20 13:15 25:3 27:2 60:17	63:14,15 64:18	45:10,13 46:16 47:15,21 49:12 49:18,25 50:10 50:14,24 51:14 52:3,6,14 53:8 53:18 54:1,18 54:20,25 55:3 55:10,22,25 56:2,5,17,20 57:1,9,17 58:13 59:24 60:6,10,22	<b>fully</b> 7:23
<b>examples</b> 9:18	<b>factually</b> 7:18 10:1 13:10 22:13 37:21 38:1	<b>fighting</b> 38:16	57:1,9,17	<b>function</b> 53:15
<b>exception</b> 28:21	<b>failed</b> 38:2	<b>figure</b> 48:24	58:13 59:24	<b>functional</b> 46:8 46:13
<b>exceptions</b> 9:18 55:20	<b>failing</b> 59:12	<b>file</b> 9:5 11:16 19:5,20 24:9 40:14 56:11 57:15	60:6,10,22	<b>further</b> 16:23 43:20 48:11,13
<b>exclusively</b> 22:4	<b>fails</b> 52:8	<b>filled</b> 6:18 8:15 8:23 35:1 57:3 63:11	<b>focus</b> 59:13	<b>futile</b> 58:7
<b>executed</b> 3:24	<b>failure</b> 6:21 13:23 16:19 23:13 29:15 30:25 37:24 50:17 54:14 55:21,23 56:8 56:11	<b>filing</b> 17:17	<b>focuses</b> 59:9	<b>future</b> 34:23 35:10 50:16
<b>exercise</b> 14:5	<b>fair</b> 38:1	<b>final</b> 53:25	<b>follow</b> 19:17 25:7	<hr/> <b>G</b> <hr/>
<b>exist</b> 9:13	<b>fall</b> 20:14	<b>finally</b> 8:18 43:17	<b>followed</b> 9:13,14 43:18 54:11	<b>G 3:1</b>
<b>existed</b> 9:25	<b>far</b> 33:16 36:9 51:22	<b>find</b> 47:7 54:24 54:25	<b>follows</b> 45:11,13	<b>gander</b> 47:5
<b>exists</b> 3:17	<b>fast</b> 9:20	<b>finder</b> 9:22	<b>footnote</b> 48:4 57:16 62:20	<b>general</b> 1:20 58:7 64:5,7
<b>expect</b> 39:17	<b>fault</b> 41:15 58:14	<b>finding</b> 8:23 10:9 16:11	<b>forced</b> 37:21	<b>generally</b> 32:14
<b>Expedited</b> 1:3 3:5	<b>favor</b> 54:17	<b>findings</b> 14:15 17:2,11	<b>foreclose</b> 43:8	<b>getting</b> 34:3
<b>explain</b> 22:18 41:7 51:15 53:11	<b>favorable</b> 32:4	<b>finds</b> 51:18 52:9	<b>foreclosed</b> 46:13 46:17	<b>Ginsburg</b> 5:8,16 6:2,8,25 7:5,25 8:6 10:11 16:13 18:9 22:17 28:3 42:2 60:6,11 62:25 63:23
<b>explaining</b> 30:14	<b>Federal</b> 44:8 48:19	<b>fine</b> 61:13,14	<b>forget</b> 51:4	<b>give</b> 8:19 22:10 47:8 51:12
<b>exposure</b> 27:3	<b>fee</b> 4:2 29:11 36:3 41:6 46:2 46:4,25	<b>first</b> 3:4 12:22 13:9,9 20:25 26:8 31:16 36:18 37:22 41:17,23 45:8 48:23 51:13 54:4 57:10 59:22 61:25 62:2	<b>form</b> 21:20 24:5 29:16 30:25 47:14	<b>giving</b> 6:4
<b>express</b> 5:23	<b>fee-shifting</b> 33:23 37:14,19	<b>fit</b> 41:4	<b>forum</b> 33:20 39:23	<b>glaringly</b> 25:17
<b>expressed</b> 34:9	<b>fee-shipping</b> 31:20	<b>five</b> 40:21 43:16 63:12	<b>found</b> 4:5 6:22 21:20 32:20 33:7 47:24 63:18	<b>go</b> 6:17 13:4 17:21 18:20 20:12 24:1
<b>expressly</b> 16:25 18:6 23:4 48:8 48:21	<b>fees</b> 3:15,21 4:8 26:4,6 29:17 31:1 32:23 35:22 38:7	<b>Fletcher</b> 1:19 2:6 29:1,2,4,21 29:24 30:4,8 30:10,14 31:3	<b>foundation</b> 4:15 5:4,5,12 25:12 65:5	
<b>extended</b> 44:9 59:7				
<b>extent</b> 15:20 62:11 63:13				
<hr/> <b>F</b> <hr/>				
<b>face</b> 28:17				
<b>facing</b> 21:21 23:23				

<p>25:7,15 36:1,9 38:18 40:15 48:2 50:23 51:5,9 58:8,11 59:4 60:11 63:20 <b>goes</b> 15:7 23:15 45:5 48:9 62:5 <b>going</b> 10:20,22 10:22,24,24 11:2,9 14:11 17:22 18:19 20:17 24:1 25:6 32:25 34:25 35:1,21 37:8 38:15,24 39:15 40:16,17 48:2,3 60:11 <b>good</b> 14:12 19:15 28:19,19 43:11 52:2 56:11 57:19 58:16 <b>goodbye</b> 35:18 <b>goose</b> 47:5 <b>gotten</b> 7:2 8:1 <b>governed</b> 57:12 <b>government</b> 4:4 12:10 17:24 18:5,18,24 20:7,11 21:19 24:6 25:8 26:11 56:12 62:15 <b>government's</b> 12:7 25:1,7,17 <b>granted</b> 14:18 29:6,14 <b>great</b> 27:3 46:11 51:16 <b>greater</b> 60:2 <b>ground</b> 4:19 34:5,13 39:22 40:4,9,11 41:8 43:8 60:13 <b>groundlessness</b> 5:9</p>	<p><b>guess</b> 14:25 15:7 25:5 39:6 43:12 46:7 57:18</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>H</b> 1:19 2:6 29:2 <b>half</b> 48:24 <b>hand</b> 22:11 <b>handful</b> 64:10 <b>handled</b> 15:17 15:18 <b>happen</b> 53:22 <b>happened</b> 10:17 20:7 24:2 <b>happy</b> 35:4,5 <b>harass</b> 27:19 <b>harassed</b> 5:17 15:16,18 <b>harassment</b> 6:5 7:2,14 9:24 11:2,10 16:7 27:8 42:23 62:23 <b>hard</b> 24:12 35:21 52:24 <b>harm</b> 36:6 <b>Hatfields</b> 38:14 <b>head</b> 57:7 <b>hear</b> 3:3 <b>heard</b> 38:14 47:19 55:5 <b>hearing</b> 28:18 55:4 <b>heart</b> 42:6 <b>heavy</b> 10:15 <b>held</b> 16:14,18 32:10 64:4 <b>helpful</b> 54:4 <b>hold</b> 63:23 <b>Honor</b> 4:17 5:11 5:20 6:7 7:4,7 10:16 13:8 16:19 18:3 20:5,13 21:16 22:7 23:8,25 25:4 26:5 27:9</p>	<p>28:8,24 65:10 <b>Honor's</b> 37:18 <b>Honors</b> 21:1 <b>host</b> 38:20 <b>hostile</b> 27:13 <b>hours</b> 40:8 <b>huge</b> 46:9 51:20 <b>hundred</b> 7:6 <b>hypothesis</b> 45:16 52:8 <b>hypothesize</b> 39:25 <b>hypothetical</b> 43:15</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 22:11 43:11 62:1 <b>identified</b> 11:19 27:17 <b>identify</b> 5:14 <b>ignore</b> 57:8 <b>ignored</b> 51:11 <b>illegal</b> 49:22 <b>illustrate</b> 41:4 <b>illustration</b> 14:12 <b>imagine</b> 52:24 <b>impact</b> 22:12 <b>important</b> 59:4 <b>importantly</b> 48:15 <b>imposed</b> 46:11 <b>imposing</b> 53:6 <b>improper</b> 55:20 56:1 <b>inadequate</b> 10:14 16:15 61:17 <b>incentive</b> 51:8 51:12,16 <b>Incidentally</b> 44:11 <b>include</b> 18:15 23:11 25:21 59:13 <b>includes</b> 54:14</p>	<p>56:8,22 <b>including</b> 23:8 26:1 31:20 <b>inconsistent</b> 19:23 <b>incorporated</b> 21:6 32:12 <b>incorporates</b> 23:16 32:9 <b>incorrect</b> 22:9 <b>incur</b> 41:14 <b>incurred</b> 65:7 <b>incurs</b> 45:17 <b>individual</b> 11:3 11:7 15:21 17:14 26:21 27:23 63:7,24 64:10,11 <b>individuals</b> 15:23 61:10 63:21 <b>information</b> 8:12,16,21 9:9 11:21 <b>initial</b> 10:25 17:11 38:7 <b>initially</b> 3:11 7:3 8:1 <b>inquiry</b> 43:12 48:23 <b>inside</b> 18:22 19:2 62:23 <b>instance</b> 41:5 <b>instruct</b> 26:17 <b>intended</b> 20:16 45:24 <b>intending</b> 64:6 <b>interlocutory</b> 35:14,16 <b>interpretation</b> 44:8 <b>intertwined</b> 41:19 <b>invented</b> 15:14 <b>investigate</b> 63:24 <b>investigated</b></p>	<p>6:13,15 8:24 10:6,19 14:14 16:9 17:1 <b>investigating</b> 7:1 <b>investigation</b> 7:20,23 8:18 10:8,13 16:15 27:1,1 42:9,20 <b>investigations</b> 29:16 <b>investigatory</b> 6:14 <b>involuntarily</b> 55:13 <b>involuntary</b> 49:3,5 <b>involving</b> 11:22 27:23 <b>issue</b> 3:11,13 4:12 7:11,13 8:10 12:13,17 12:17 13:17,19 15:5 22:5 24:22 25:8,15 25:16,20,24 26:17 31:15 32:15 41:15,25 42:8,13 43:1 45:14 47:23 50:13,15 56:15 56:16 61:16 63:16 <b>issued</b> 21:10 <b>issues</b> 35:10 55:5 60:5</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>job</b> 9:19 28:19 <b>join</b> 55:21,24 <b>Joint</b> 18:8 20:25 20:25 54:21 <b>Jones</b> 21:9 23:1 <b>judge</b> 4:23 6:22 7:21 8:5,11 9:8 11:23 13:22 15:14 16:22,24 19:3,7,12</p>
--	---	---	---	--

28:13 34:10 37:5 40:5,6,14 42:2 43:19 44:21 48:25,25 49:10 61:2,11 63:18 64:6 65:2 <b>judges</b> 7:21 15:3 <b>judgment</b> 6:19 9:6 14:17 18:3 18:19 20:19,20 20:22 21:1,2,7 21:20 22:11 23:15 24:1,4 31:9 32:12 35:7 47:19 48:17,18 53:25 54:17,20 55:18 61:15,18 62:5 62:8,9 64:21 <b>judgments</b> 47:22 <b>judicata</b> 5:6 44:7 <b>judicial</b> 33:11 <b>judicially</b> 37:4 47:9,12 <b>jurisdiction</b> 54:8 54:11,12,13 55:20 56:4,4,7 56:8 <b>Justice</b> 1:20 3:3 3:9 4:13,18,21 5:8,16 6:2,8,25 7:5,25 8:6 10:11 12:3 13:3,12 14:7 14:20 15:6,11 16:13 17:9,17 17:25 18:9,10 18:15 19:25 20:6,21 21:14 21:23 22:2,17 23:10,18 24:15 24:24 25:19 26:2,6 27:6 28:3,25 29:4	29:18,22 30:2 30:6,9,13,22 31:4,7,24 32:20,21,25 33:3,25 34:19 35:15,17 36:13 36:17 37:11 38:10 39:2,12 40:2 41:11,18 41:22 42:2,12 42:25 43:14,22 43:25 44:4,11 44:17 45:3,12 46:7 47:3,16 48:10 49:9,14 49:20 50:9,11 50:20,25 51:25 52:4,13,24 53:13,17,20 54:16,19,23 55:2,9,19,23 56:1,3,17,21 57:2,15 58:5 58:23 59:17 60:6,11,15 61:20,24 62:25 63:23 64:16,20 64:23 65:11 <hr/> <b>K</b> <b>Kagan</b> 13:3,12 14:7,20 17:9 17:17,25 18:10 18:15 19:25 20:6 23:10,18 27:6 56:17,21 57:2,15 58:23 59:17 60:15 <b>Kennedy</b> 12:3 15:6,11 25:19 26:2,6 43:14 43:22,25 44:4 44:11,17 48:11 <b>kick</b> 59:22 60:4 <b>kind</b> 6:14 9:23 9:24,25 26:22 26:25 36:2	38:24 43:12 48:22 58:7 64:9 <b>knew</b> 20:15 21:19 42:21 63:5 <b>know</b> 4:23 12:15 15:13 22:10 31:25 32:1 33:25 34:2,25 40:8,9,21,24 45:6 46:1 51:3 56:21 57:16 58:6 59:21,25 60:17,20 61:1 62:12 64:5 65:7 <b>known</b> 14:1,1 <hr/> <b>L</b> <b>lack</b> 54:7 55:20 56:3,4,7 <b>language</b> 3:19 18:16,17,23 26:25 36:19 48:10 <b>large</b> 9:12 28:14 64:11 <b>late</b> 57:7 <b>Laughter</b> 21:17 36:16 <b>lead</b> 5:17 6:4,10 25:7 <b>leave</b> 24:25 <b>leaves</b> 50:7 58:22 <b>Leaving</b> 13:14 <b>led</b> 16:12 <b>left</b> 22:23 24:2 46:1 63:3 <b>legal</b> 31:22 32:19 33:8 35:9 37:5,10 46:5,20,21 47:9 58:1 62:1 62:6 <b>legally</b> 37:21	38:1 <b>length</b> 60:2 <b>let's</b> 13:12 43:15 45:16 52:7 <b>level</b> 13:25 <b>liability</b> 32:22 <b>liable</b> 10:4,5 33:7 <b>lifted</b> 24:12 <b>limitation</b> 44:15 <b>limitations</b> 12:18 <b>limited</b> 51:21 <b>line</b> 5:1 22:15 34:1 <b>list</b> 10:18 <b>listed</b> 9:3 <b>litigate</b> 10:23,23 11:7,18 15:21 19:14 63:7,10 63:20 <b>litigated</b> 18:7 23:11 56:24 57:11 58:20 64:8 <b>litigates</b> 47:7 <b>litigating</b> 14:13 15:24 16:1 17:6 19:11 26:20 41:8 <b>litigation</b> 10:15 12:23 17:4 27:3,4 32:2,5 33:23 34:13,23 35:11,16 41:16 42:18 43:9,16 43:17 44:10 45:17 46:9 48:12,13 51:23 <b>little</b> 3:18 41:3,3 41:10 42:18 63:15 <b>long</b> 4:8 44:19 61:13 <b>look</b> 9:1 20:24 21:5 30:24 43:3 55:12	59:5 <b>looked</b> 7:9 9:8 33:14 42:19 <b>looks</b> 40:6 45:5 56:13 <b>lose</b> 61:18 <b>lost</b> 61:15 <b>lot</b> 40:12 56:13 65:3 <b>lots</b> 14:13,13 32:2 <b>lower</b> 12:24 32:10 <hr/> <b>M</b> <b>M</b> 1:17 2:3,9 3:7 61:22 <b>Mach</b> 16:14,18 19:6 50:12,14 50:16,22 52:10 56:14 <b>main</b> 25:5 43:13 <b>majority</b> 7:22 <b>making</b> 19:23 30:4 53:13 62:18 <b>malefactors</b> 27:24 <b>management</b> 16:5 28:2 <b>management's</b> 28:1 <b>managers</b> 9:19 28:19 <b>mandate</b> 21:10 <b>March</b> 1:11 <b>Marquardt</b> 57:14 <b>massive</b> 51:17 <b>material</b> 34:19 37:4 46:21 <b>materially</b> 31:22 32:19 35:8 46:5 <b>matter</b> 1:13 28:22 44:18,19 44:19 46:13
--	--	---	--	--



<p>54:13 64:23 65:14 <b>matters</b> 62:11 <b>McCoys</b> 38:14 <b>mean</b> 10:4 30:23 31:1 34:1,20 35:16 36:4,14 40:20 48:25 50:21,22 54:12 54:23 56:7 57:16 58:6,7 58:10 60:16 63:9 <b>meaning</b> 7:13 <b>meaningless</b> 10:10 <b>means</b> 5:22 18:21 31:21 46:20 49:1 59:8 <b>meant</b> 18:25 24:20 <b>meet</b> 4:8 31:4 <b>members</b> 9:4 11:8 <b>merged</b> 53:25 <b>meritorious</b> 45:16 62:22 <b>merits</b> 3:16,25 4:4,10,22,24 12:9,13,17,17 12:22 13:16 17:3 18:3,4 19:20 22:4 23:15 29:10 30:3,12 41:19 42:3 49:7 54:9 55:14,16 57:20 58:15 59:2 60:23 <b>messed</b> 19:16 <b>million</b> 25:20 41:6,14 <b>mind</b> 20:17 <b>mine</b> 59:22 <b>Mining</b> 16:14,18 19:6 50:12,15</p>	<p>50:16,22 52:10 56:14 <b>minutes</b> 12:8 61:21 <b>Monday</b> 1:11 <b>money</b> 14:3,13 40:13 <b>Monika</b> 21:10 <b>months</b> 10:14 <b>morning</b> 3:4 <b>motion</b> 6:18 9:6 11:16 19:6,18 19:22 20:1 24:10 35:6 55:18 61:18 63:11 <b>Murphy</b> 42:3 61:2,11</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>N</b> 2:1,1 3:1 <b>named</b> 8:4 <b>names</b> 7:3 8:2 8:19 <b>nature</b> 62:12,14 <b>need</b> 12:5 15:4 30:11 60:24 <b>needs</b> 5:22 <b>neglect</b> 11:1,10 <b>neglecting</b> 9:23 <b>negotiated</b> 21:4 <b>neither</b> 23:21 <b>never</b> 5:12,13 6:13 10:6,6 12:24 14:16,18 16:4,9 24:14 33:9 62:15,23 64:4 <b>new</b> 25:1 57:4 <b>non-meritorio...</b> 9:5 11:14 <b>non-merits</b> 3:22 4:1,23 12:17 <b>notion</b> 39:15 <b>number</b> 15:8 51:17,20 64:11</p>	<hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 2:1 3:1 <b>objection</b> 41:20 <b>objective</b> 36:7 <b>obligation</b> 52:9 <b>obligations</b> 19:17 41:25 43:18 61:4 <b>obtains</b> 33:18 <b>obvious</b> 23:6 <b>obviously</b> 31:8 46:17 59:1 <b>occurred</b> 65:7 <b>October</b> 10:17 <b>Oh</b> 26:5 35:15 51:4 <b>okay</b> 13:14 20:9 31:8 40:7 47:16 52:5 54:19 <b>once</b> 58:1,3 63:21 <b>one-count</b> 15:15 23:2 <b>ones</b> 11:12 26:1 <b>op</b> 59:13 <b>opening</b> 3:16 4:4 <b>operates</b> 49:6 55:13 <b>operating</b> 5:24 28:9 64:10 <b>opinion</b> 34:10 <b>opportunity</b> 1:6 3:5 13:17 <b>opposite</b> 28:15 <b>opposition</b> 3:24 29:18 58:23 59:11 <b>option</b> 60:12 <b>oral</b> 1:13 2:2,5 3:7 29:2 <b>order</b> 5:20 17:10 19:1,1 21:4,6 28:13 29:10 31:21 32:18 41:6 46:5</p>	<p>53:10,22 <b>ordered</b> 55:6 <b>ordinarily</b> 49:5 49:7 55:13 <b>originally</b> 54:5 <b>ought</b> 13:22 14:5 17:7 39:9 46:25 47:1 65:1 <b>outset</b> 42:18,20 <b>overrule</b> 58:9 <b>overruled</b> 58:12</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 3:1 <b>package</b> 63:22 <b>page</b> 2:2 7:18 8:12 18:8 21:1 49:2 57:5 62:19 <b>pages</b> 7:16 11:24 33:15 47:25 48:4,4 <b>panel</b> 58:9 <b>paper</b> 20:22 <b>paradigm</b> 62:3 <b>paragraph</b> 13:19 <b>part</b> 26:11 58:25 59:18 63:22 <b>particular</b> 8:10 32:15 41:14 56:10 <b>particularly</b> 48:20 <b>parties</b> 3:12 17:4 21:4 31:23 32:3 33:9 34:3 35:2 36:21 37:5,10 46:22 48:22,25 56:8 57:11 58:19 60:7 62:2 <b>parties'</b> 21:9 <b>party</b> 12:6,11,11 13:2 29:11</p>	<p>31:2,12,17,18 31:19,21,25 32:6,18 35:4 35:25 39:21 43:7 46:20,21 52:16 53:3,11 55:21,24 58:19 59:8,19 62:4 62:10 <b>party's</b> 32:19 35:9 46:5 <b>passed</b> 55:16 <b>pattern</b> 5:14,22 6:14,16,18 9:8 9:23 10:21,23 11:5,17 26:22 27:7,11,21 28:4,12 63:19 64:2,7 <b>pattern-or-pr...</b> 26:19 61:14,16 <b>PAUL</b> 1:17 2:3 2:9 3:7 61:22 <b>pay</b> 47:8 <b>peculiar</b> 15:15 <b>people</b> 7:12 8:2 8:3,5,9,14,16 9:3,13 10:18 11:8,12 15:17 23:3 27:19 <b>percent</b> 26:3 <b>perfectly</b> 43:10 51:5 <b>permanently</b> 39:20 <b>person</b> 54:13 <b>persuasive</b> 39:10 61:2 <b>pertinent</b> 43:2 <b>petition</b> 3:12 7:16,18 8:13 29:13 47:25 49:3 57:21 59:5,5 <b>petitioner</b> 1:4,18 2:4,10 3:8 29:12 41:5</p>
--	---	--	---	--

<p>42:16 53:2,10 61:5,12,12,23 <b>petitions</b> 13:24 <b>phase</b> 6:15 8:19 10:25 11:2 18:4 23:15 <b>phrase</b> 15:11 <b>piece</b> 20:22 <b>place</b> 9:14 <b>plaintiff</b> 13:25 31:24 32:1,4,5 32:16,17 33:4 33:19 34:14 36:25 37:6,7 38:2 39:19 44:18 45:15,17 45:20 46:10,18 47:6 55:7 <b>plaintiffs</b> 45:23 45:25 46:25 62:7 <b>please</b> 3:10 29:5 <b>plus</b> 36:4 <b>pocket</b> 46:1 <b>point</b> 4:24 11:6 12:4 15:20 18:23 21:16 39:7 41:14 43:5 45:18 52:6 53:13 54:6 56:21 59:6 62:13,18 <b>pointing</b> 53:2 <b>policies</b> 9:12,13 9:25 28:11 <b>policy</b> 3:20 5:23 6:20 10:7 11:1 11:10,19 26:20 27:16,19 28:22 45:22 46:24 64:9,15 <b>portion</b> 40:24 <b>position</b> 12:7,19 13:5 36:14 44:17,23 <b>positions</b> 25:11 <b>possibility</b> 23:22</p>	<p>38:22,23 46:14 <b>possible</b> 27:7 40:25 <b>possibly</b> 10:19 <b>potential</b> 52:21 <b>potentially</b> 62:22 <b>power</b> 3:21 13:22 14:5 <b>practice</b> 5:14,22 6:14,17,18 9:8 10:22,23 11:5 11:17 26:20,23 27:7,12,21 28:4,13 49:22 58:7 63:19 64:2,8 <b>practicing</b> 34:3 <b>pre-suit</b> 13:24 17:12,18,19 20:1,3,8,11 23:13 29:16 41:24 <b>precede</b> 49:10 <b>precedent</b> 48:7 57:13,25 58:9 58:21 <b>precisely</b> 63:16 <b>precluded</b> 24:9 39:24 63:11 <b>precludes</b> 34:22 <b>precondition</b> 34:16 37:25 39:22 50:8 54:14 56:9,10 56:13,15,16 <b>preconditions</b> 41:9 42:5 50:3 <b>predicate</b> 13:15 25:3 <b>prejudice</b> 4:22 12:16,21 13:1 13:11 14:4,22 14:22 15:5,5 15:25 18:1,8 18:13,23 19:13 20:10,16,16,20</p>	<p>21:13,15 22:12 22:18 23:7 24:4,8,11 31:11,14 37:1 39:24 43:22 44:5 45:9 47:14,20 48:8 48:18 49:8 52:20 53:1,12 53:24 54:9 55:14 64:24 <b>prejudice/with</b> 12:21 <b>premise</b> 51:15 <b>present</b> 59:2 <b>presented</b> 30:1 30:17 47:2 56:22 59:2,14 59:15,25 <b>presenting</b> 30:21 <b>preserved</b> 22:14 <b>pretty</b> 23:6 34:3 35:21 46:16 <b>prevail</b> 29:10 49:16 <b>prevailed</b> 3:16 26:11 33:22 49:22 52:19 64:22 <b>prevailing</b> 3:14 4:8 12:6,10,11 13:2 29:11 31:2,12,18,19 31:25 32:6,17 35:25 36:20 39:21 43:7 46:19,20 49:15 49:15 52:16 53:3,10 59:8 60:7 62:4,10 64:18 <b>prevails</b> 36:24 40:11 43:7 <b>prevented</b> 19:10 <b>previously</b> 23:12 <b>principle</b> 23:14</p>	<p><b>principles</b> 44:7 <b>prior</b> 23:16,17 23:19 46:14 <b>private</b> 32:14 <b>probably</b> 22:15 40:15,23 <b>problem</b> 9:7,24 9:25 12:20 13:9 24:9 26:10 42:22 53:20 63:16 <b>problems</b> 39:16 <b>procedural</b> 37:25 38:7 <b>procedure</b> 5:24 28:9 44:9 48:20 64:10,14 <b>proceed</b> 60:18 <b>proceeded</b> 6:13 <b>proceeding</b> 43:20 56:13 <b>process</b> 19:17 <b>properly</b> 60:19 <b>proposal</b> 41:12 <b>protect</b> 37:20 <b>protected</b> 9:15 <b>prove</b> 5:15 10:25 <b>provision</b> 16:21 37:14 52:15,17 <b>pull</b> 19:21 <b>purpose</b> 37:18 37:23 <b>purposes</b> 35:25 37:14 <b>pursuant</b> 52:10 <b>pursue</b> 48:13 <b>pursuing</b> 39:20 <b>put</b> 6:4 9:2,14 17:3 36:17 37:6</p>	<p>20:6 29:6,12 29:13 30:1,7 30:17 31:17 33:8,14,17 35:17 36:17 37:18,23 38:8 42:7 43:2,6,13 52:7,12 56:22 58:1 59:14 61:25 64:8 <b>questions</b> 4:11 38:20 <b>quibble</b> 51:15 <b>quite</b> 10:3 20:14 37:17 <b>quo</b> 33:5,6,12 <b>quote</b> 62:20 63:3</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>R</b> 3:1 <b>raise</b> 58:10,24 <b>raised</b> 42:16 57:10 58:19 60:13 63:15 <b>raising</b> 58:14 <b>Rapids</b> 26:9 <b>rates</b> 26:9,9 <b>ratifies</b> 33:12 <b>rational</b> 9:22 11:25 <b>rationale</b> 46:19 <b>rationing</b> 3:20 <b>reach</b> 12:5 25:7 <b>reaching</b> 26:16 59:15 <b>read</b> 10:3 20:18 39:13 47:19 50:16 53:15 <b>reading</b> 4:21 63:2 <b>reads</b> 11:24 <b>ready</b> 14:2 <b>real</b> 53:20 <b>really</b> 12:13 27:4 32:4 37:1 37:9 38:8,21 45:6,22 51:21</p>
--	---	---	--	--

<p>57:5 59:5,15 59:19 60:8 <b>reason</b> 4:3 5:4 14:8,21,22 19:9,15 37:23 37:24 51:1 58:16 65:8 <b>reasonable</b> 8:24 10:8,8 14:15 16:10 36:3 51:19 61:3 <b>reasonable-ca...</b> 42:10 <b>reasonableness</b> 12:4 <b>reasons</b> 4:3 25:5 30:19 42:2 65:3 <b>REBUTTAL</b> 2:8 61:22 <b>recedes</b> 45:19 <b>recognize</b> 19:22 <b>recognized</b> 45:21 62:20 63:8 <b>recommend</b> 36:21 38:11 <b>record</b> 9:23 20:18 <b>recover</b> 38:6 47:7,10,10,11 <b>reduced</b> 23:23 <b>Reed</b> 6:22 8:5,11 9:8 11:23 16:24 19:12 28:13 63:18 <b>referred</b> 48:10 <b>referring</b> 63:6 <b>refers</b> 22:25 23:1 <b>refine</b> 58:3 <b>regardless</b> 59:17 <b>rehearing</b> 57:22 <b>rejected</b> 7:15,17 <b>relationship</b> 31:22 32:19 34:20 35:2,9</p>	<p>37:5,10 46:6 46:22 47:9 62:2 <b>relationships</b> 47:12 62:7 <b>relevant</b> 12:13 <b>relief</b> 15:9 48:14 49:12 <b>remaining</b> 61:21 <b>remand</b> 24:18 54:3 <b>remarkable</b> 21:21 <b>Remedies</b> 9:14 <b>remedy</b> 16:15,20 17:23 18:21 40:25 50:17,23 62:21 <b>Remember</b> 45:14 <b>remotely</b> 6:23 <b>rendered</b> 55:6 <b>renounced</b> 23:22 <b>reopen</b> 19:7 <b>reopened</b> 24:3 <b>reply</b> 13:18 60:2 62:19 <b>requested</b> 8:12 <b>requirements</b> 17:12,18,19 20:2,3,8,12 23:13 <b>requires</b> 37:4 <b>res</b> 5:6 44:7 <b>research</b> 40:8 <b>resolve</b> 3:12 4:7 51:22 60:12,23 <b>resolved</b> 41:25 43:6 <b>resolves</b> 47:23 <b>resolving</b> 38:7 <b>resources</b> 46:10 51:21 <b>respect</b> 10:10 16:13 21:11 23:5,7,21 27:8</p>	<p><b>respond</b> 10:21 58:17 <b>responded</b> 28:2 57:4 <b>Respondent</b> 1:8 1:21 2:7 29:3 <b>response</b> 40:3 <b>responses</b> 11:23 <b>result</b> 62:22 63:1,1 <b>return</b> 16:16 <b>reversal</b> 35:5 <b>reverse</b> 4:6 22:6 24:24 <b>review</b> 59:22 <b>rid</b> 14:12 <b>right</b> 5:2 13:12 18:14 20:2 22:15 23:19 34:8 37:17,17 41:22 42:16 44:14 50:6 51:12 52:3,13 57:6 58:3,24 60:4 64:17 <b>rights</b> 45:24 57:24 <b>ROBERTS</b> 3:3 28:25 32:21,25 33:25 37:11 40:2 41:11,18 42:12,25 49:9 49:14,20 50:9 50:11,20,25 51:25 52:4,13 58:5 61:20 65:11 <b>round</b> 15:8 36:24 <b>rule</b> 3:17,24 4:7 19:6,22 24:10 25:15 28:21 33:17 35:23,23 39:15,19 41:2 44:8 48:19,20 49:2,4 53:14 53:14 54:7</p>	<p>55:12 56:7 57:20 58:15,18 61:5,10,11 63:11 64:16,20 65:1 <b>ruling</b> 4:7 5:3 22:9 23:19 <b>rulings</b> 23:16,17 <b>rush</b> 51:23</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 2:1 3:1 <b>sanction</b> 9:21 17:6 52:1 53:6 <b>sanctioned</b> 37:4 47:9,12 <b>sanctions</b> 51:6 <b>satisfied</b> 17:12 20:1,3,8,11 41:9,24 42:5 61:4 <b>satisfy</b> 23:13 29:15 30:25 37:25 50:3,4,7 52:8 54:14 56:9 60:9 <b>satisfying</b> 17:18 34:16 <b>sauce</b> 47:4,5 <b>save</b> 28:23 <b>saying</b> 9:6 17:10 28:4,10 38:11 38:12 39:3 46:24 49:10 58:14,15 <b>says</b> 11:16 15:8 15:16 16:8 18:6 20:19 21:2,7 23:4 30:24 31:9,10 31:10 32:8 40:7 42:8 44:21 45:5 47:6,19 48:1 48:12,16 49:3 49:4 55:3,12 62:3,9</p>	<p><b>scenario</b> 60:17 <b>scope</b> 30:17 <b>second</b> 4:12 19:4 <b>second-guess</b> 64:6 <b>secure</b> 29:11 38:7 <b>secured</b> 31:21 32:18 35:5 46:4,21 50:2 <b>secures</b> 34:24 35:18 37:1 <b>see</b> 18:22 20:24 32:20 36:5 38:14,15,23 39:17 46:7,12 65:8 <b>seeing</b> 19:2 39:18 62:23 <b>seek</b> 4:8 49:12 <b>seeking</b> 3:15 15:9 21:25 33:4,9,11 <b>seen</b> 14:16 40:1 <b>sees</b> 45:18 <b>segregate</b> 25:22 25:22 <b>sends</b> 52:11 <b>sense</b> 3:18 16:25 33:23 35:7 37:2 45:12 46:8 51:8 54:12 <b>sensible</b> 41:2 <b>separate</b> 23:3 24:7 <b>separated</b> 25:25 26:6 <b>separately</b> 57:10 <b>September</b> 21:11 <b>serious</b> 10:4 32:2 36:6 <b>seriously</b> 6:6,11 28:6,12 <b>serve</b> 3:20 <b>served</b> 37:15,23</p>
--	---	--	---	---

<p><b>serves</b> 53:14  <b>set</b> 23:21,24  <b>setting</b> 27:12,14  <b>settle</b> 32:3,3  35:9  <b>settled</b> 22:19,24  <b>settlement</b> 21:9  26:12 32:9,11  32:14,22  <b>seven</b> 16:2  <b>severe</b> 9:21 16:6  17:22 18:21  62:21  <b>severity</b> 15:1  <b>sexual</b> 6:5 7:2  9:24 11:1,10  16:7 27:8  42:22 62:22  <b>sexually</b> 15:16  15:18  <b>short</b> 62:8  <b>show</b> 11:12 28:9  28:12 62:1  <b>showed</b> 3:16  14:19 40:8  <b>side</b> 22:8  <b>significance</b>  26:14 50:12  <b>simple</b> 35:23  <b>simplicity</b> 36:5  36:18 39:2  <b>simply</b> 7:19 9:5  23:20 54:16  <b>sir</b> 15:10 31:13  41:1  <b>situation</b> 14:4  17:5 46:15  47:18 48:21  59:18  <b>situations</b> 14:11  15:3 27:4  28:16  <b>six</b> 16:2,4,6  19:10 25:16  <b>slap</b> 28:7  <b>slightest</b> 5:9  <b>slightly</b> 29:24</p>	<p>30:5 38:18  <b>small</b> 40:24  <b>Smith</b> 1:17 2:3,9  3:6,7,9 4:16,20  5:2,11,19 6:7  6:12 7:4,7 8:4  8:8 10:16  12:12 13:3,8  13:14 14:10,25  15:10,13 16:18  17:9,15,20  18:2,14,17  20:5,13,24  21:16,18,23  22:1,5,17,17  22:25 23:14,25  24:17,18,21  25:4,24 26:5,8  27:6,9 28:8  29:7 30:19  42:19 48:23  52:18 57:4,18  58:14 60:1  61:21,22,24  63:2 64:1,19  64:21,25  <b>so-called</b> 9:3  <b>solely</b> 40:4  <b>Solicitor</b> 1:19  <b>somebody</b> 49:23  51:3  <b>sorry</b> 46:10  <b>sort</b> 8:25 36:24  39:15 41:18  43:8 44:6  45:25 54:5  57:6  <b>sorts</b> 35:14 38:5  46:25  <b>SOTOMAYOR</b>  4:13,18,21  21:23 22:2  24:15,24 32:20  33:3 52:24  53:17,20 64:16  64:20,23  <b>specific</b> 27:16</p>	<p><b>specifically</b>  16:22  <b>specifies</b> 49:6  <b>specify</b> 48:18  53:18  <b>spend</b> 40:18,21  <b>spent</b> 14:3,13  40:12  <b>sporadic</b> 9:18  28:21  <b>sprung</b> 57:6  <b>stages</b> 30:21  <b>standard</b> 4:9,13  4:17 5:24 15:1  28:9 31:5 33:4  35:23 38:19  60:9 64:9  <b>Starke</b> 7:13  15:16 21:10  22:20 25:23,24  <b>Starke's</b> 7:13  8:24  <b>start</b> 15:19  <b>started</b> 6:16  56:18  <b>States</b> 1:1,14  <b>status</b> 33:5,6,12  <b>statute</b> 10:7  12:18 36:7  37:19 38:9  44:15  <b>statutes</b> 31:20  33:24  <b>statutory</b> 3:19  3:20 64:14,15  <b>staunchly</b> 3:23  <b>stay</b> 16:20,23,24  17:21 18:19  19:8 33:7 48:1  50:18 52:19,22  57:24  <b>stays</b> 52:10  <b>Steel</b> 34:11 37:6  <b>step</b> 38:3,4  <b>stories</b> 11:22  27:23 28:1  64:11,11</p>	<p><b>story</b> 20:9  <b>strong</b> 45:22  46:24  <b>stuck</b> 46:23  <b>stuff</b> 62:6  <b>subject</b> 51:10  52:1 54:13  <b>submitted</b> 65:12  65:14  <b>substitute</b> 13:6,6  <b>sue</b> 37:7,13  38:13,17  <b>sued</b> 38:22  49:23,25 50:1  <b>sufficient</b> 13:25  19:15  <b>suggest</b> 4:5  39:16  <b>suggested</b> 29:7  42:2,3  <b>suggesting</b> 14:21  38:20  <b>suggestion</b> 5:9  7:8,14  <b>suggests</b> 50:15  50:16 64:3  <b>suit</b> 14:2 23:24  32:1 34:16  37:24 38:2,2  38:21 39:22  41:10 43:19  44:22 45:15,16  51:2 56:9  <b>suitable</b> 13:22  <b>suits</b> 37:22  44:16  <b>summary</b> 6:19  9:6 14:17 35:7  55:18 61:15,18  <b>support</b> 6:23  <b>supported</b> 50:6  <b>suppose</b> 32:21  43:1 58:6  <b>supposed</b> 11:10  22:2 28:11  38:3  <b>Supreme</b> 1:1,14</p>	<p><b>sure</b> 35:3 37:25  41:21 42:15  <b>survive</b> 55:18  <b>systematic</b> 9:1,7  11:19 12:2</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 2:1,1  <b>take</b> 3:20 6:11  12:5 18:18  27:20 28:6,16  31:1 32:22  36:1 38:3,3  43:5 47:4 52:6  52:12 56:18  <b>taken</b> 26:13  28:11 44:20  <b>takes</b> 55:7  <b>talk</b> 30:18 31:13  31:16 54:3  62:5  <b>talking</b> 22:19  54:2 62:7  <b>Tasmania</b> 38:22  <b>Teamster's</b> 5:25  <b>Telephone</b> 64:5  64:7  <b>tell</b> 7:1 8:2 15:25  33:16 36:22  38:16  <b>telling</b> 6:17  19:13  <b>tellingly</b> 19:5  <b>tells</b> 53:15  <b>tempted</b> 25:14  <b>term</b> 5:25 31:20  37:3 46:20  <b>terms</b> 32:3 36:20  <b>test</b> 13:6,6 53:11  <b>testimony</b> 11:24  28:17  <b>Thank</b> 28:25  29:4 30:13  61:19,20,24  65:10,11  <b>theory</b> 49:21  61:14</p>
---	--	--	---	--

<p><b>they'd</b> 14:14  <b>thing</b> 6:3 16:11            46:6 47:1,13            52:2 57:8            59:10 62:2  <b>things</b> 9:1 15:19            35:8 36:1 62:7  <b>think</b> 12:12,20            13:4,20 15:13            17:7,13,15            20:13,17 22:7            22:10 23:6,18            23:25 24:17            25:17,24 26:13            26:15 27:6,9            27:12,14,22            28:8 30:14,15            31:7,16 34:7,8            34:9,16,23            36:10,23 37:16            37:17,18,22            38:5 39:7,18            39:18,25 40:1            41:1,3 42:1,7            42:21,22 43:11            43:12 44:25            45:10,13,21            46:6,16 47:1            48:15,25 50:5            50:6,12,19            51:1,14,15            52:14,17 53:24            54:4,21 56:3            57:24 58:2,8            59:4,11,25            60:10,24,25            61:1,16 64:2            64:25  <b>thinking</b> 41:24            42:4 61:4  <b>thought</b> 6:2            16:14 20:9            32:1,5 53:5            59:20 60:16            63:4  <b>thousands</b> 11:24  <b>three</b> 27:19</p>	<p>55:19 61:21  <b>three-strikes</b>            27:18  <b>threshold</b> 10:12  <b>throwing</b> 40:10  <b>thrown</b> 34:6  <b>tie</b> 54:5  <b>tied</b> 63:17  <b>Tillie</b> 21:8 23:1  <b>time</b> 12:23 28:23            40:17 44:12,12            51:13 63:5  <b>time-barred</b> 5:6  <b>times</b> 27:19  <b>Title</b> 3:14 4:2            5:21 16:22            29:9,15 31:21            42:8 45:24            51:20  <b>told</b> 24:6 42:21  <b>tomorrow</b> 35:20            40:15  <b>tough</b> 35:22  <b>training</b> 6:4            10:1  <b>treated</b> 62:9  <b>trial</b> 6:18 10:25            43:19 48:14            53:7,8 55:4  <b>tricky</b> 41:3  <b>tried</b> 42:23 55:5  <b>trier</b> 12:1  <b>true</b> 8:4 10:1,2            13:10 22:13            46:6 57:17  <b>trust</b> 15:2  <b>truth</b> 9:10,16            11:14  <b>try</b> 51:21  <b>trying</b> 15:20            48:24 53:6  <b>turned</b> 5:12            11:13  <b>turns</b> 9:4 15:4            51:9  <b>twice</b> 24:7  <b>two</b> 6:15 7:3 8:3</p>	<p>8:4 22:22 24:7          30:18,21 47:21          63:17  <hr/> <p style="text-align:center"><b>U</b></p> <hr/> <b>ultimately</b> 20:19            48:17 54:2  <b>unappealing</b>            45:2  <b>uncertainty</b>            62:14  <b>underlying</b>            33:21  <b>understand</b> 12:7            12:14 17:9            19:25 30:19            43:14 44:25            55:11  <b>understanding</b>            13:3 57:12  <b>understood</b>            18:24 63:5  <b>unexpressed</b>            5:24  <b>unfairness</b> 36:6  <b>unfortunately</b>            36:14  <b>ungrounded</b>            38:2  <b>United</b> 1:1,14  <b>unjustified</b>            37:22 46:11  <b>unreasonable</b>            4:14 5:3,5            25:13,18 43:19            44:18 60:25            65:5  <b>unreasonable...</b>            12:4  <b>unreasonably</b>            52:8  <b>use</b> 11:9 15:12            18:17,22 26:24  <b>usually</b> 59:21  <hr/> <p style="text-align:center"><b>V</b></p> <hr/> <b>v</b> 1:5 3:5</p>	<p><b>valid</b> 64:2  <b>value</b> 26:16            28:17  <b>Van</b> 1:3 3:4  <b>venue</b> 40:7,19            40:21,23 41:19            55:20 56:1  <b>verdict</b> 35:6  <b>version</b> 30:20  <b>versus</b> 37:20            39:2  <b>Vice</b> 37:20  <b>view</b> 13:7 30:11            36:8,10,11            50:5,14 59:22            60:3,7  <b>views</b> 39:7,8  <b>VII</b> 3:14 4:2            5:21 16:22            29:9,15 31:21            42:8 45:24            51:20  <b>violation</b> 51:20  <b>voluntarily</b>            32:16 33:19            36:25 45:19  <hr/> <p style="text-align:center"><b>W</b></p> <hr/> <b>Wait</b> 42:25,25  <b>waive</b> 59:12  <b>waived</b> 56:19            57:23  <b>waiver</b> 13:14            25:2 29:8            30:18  <b>waiving</b> 30:20  <b>wall</b> 45:19  <b>want</b> 25:5,10            30:23 31:15,16            33:6,6 34:4,4,5            34:5 42:17            45:20 54:3            58:12 65:8  <b>wanted</b> 6:17            36:2  <b>wants</b> 32:17            34:2,9,11,12</p>	<p>34:17  <b>washed</b> 9:4            63:21  <b>Washington</b>            1:10,17,20  <b>wasn't</b> 5:8 8:6,8            16:6 19:13            20:16 57:10            58:18  <b>wasted</b> 46:9  <b>way</b> 10:23 11:5            19:16 20:18            34:12,17 35:4            60:8 61:1  <b>ways</b> 25:14  <b>we'll</b> 27:20 39:4  <b>we're</b> 10:22,22            10:24 11:2            13:18 25:14            29:24 30:4,20            30:21 43:1            50:5 55:15            58:3 59:18,21  <b>we've</b> 20:1 25:16            40:1 51:3            60:13 65:3  <b>wealth</b> 9:9 11:20  <b>went</b> 16:3  <b>weren't</b> 58:16  <b>whatsoever</b>            14:23  <b>win</b> 34:2,4,4,5            34:11,12,18,22            35:19 62:8  <b>wins</b> 34:13            35:14  <b>withdrawal</b> 21:8  <b>withdraws</b>            33:19 36:25  <b>witnesses</b> 11:9  <b>woman</b> 27:14  <b>women</b> 5:17            8:19 9:11,15            14:18 15:7            22:21,22 25:11            42:23 49:13            63:7</p>
---	--	---	---	--

<b>won</b> 31:8,8,11 34:17 35:20,24 64:21	<b>11</b> 62:19	<hr/> <b>5</b> <hr/>		
<b>wondering</b> 57:7	<b>11:06</b> 65:13	<hr/> <b>6</b> <hr/>	<b>60</b> 19:6,22 24:10	
<b>word</b> 18:23 63:4	<b>115</b> 21:2		63:11	
<b>words</b> 26:3 35:8	<b>116</b> 21:2		<b>61</b> 2:10	
40:5 41:13	<b>118</b> 18:8		<b>67</b> 15:7 16:8,13	
51:7	<b>118a</b> 21:5,7		23:8 25:11	
<b>work</b> 3:21 27:12	<b>14-1375</b> 1:4 3:4		47:24 49:13	
27:13 36:6	<b>15</b> 10:17		61:9	
<b>working</b> 27:14	<b>154</b> 9:9 11:11,21		<b>69</b> 7:16	
<b>worse</b> 60:15	11:21 25:25		<hr/> <b>7</b> <hr/>	
<b>wouldn't</b> 16:25	27:23		<b>706</b> 16:22	
24:4 36:9 40:2	<b>16</b> 39:9		<hr/> <b>8</b> <hr/>	
50:25 51:1,5	<b>168</b> 7:16		<b>87</b> 14:17	
<b>wrap</b> 54:6	<b>169</b> 8:12		<hr/> <b>9</b> <hr/>	
<b>wrist</b> 28:7	<b>17a</b> 49:2		<b>92</b> 7:18	
<b>writing</b> 13:18	<b>18</b> 10:14		<b>99</b> 11:13 14:18	
45:18	<hr/> <b>2</b> <hr/>			
<b>wrong</b> 13:5 22:3	<b>2008</b> 10:17			
32:6 33:20	<b>2009</b> 18:10 54:5			
39:23 40:7,21	<b>2012</b> 21:11			
40:22	<b>2013</b> 18:5 23:23			
<hr/> <b>X</b> <hr/>	54:3			
<b>x</b> 1:2,9	<b>2016</b> 1:11			
<hr/> <b>Y</b> <hr/>	<b>213</b> 48:4			
<b>yeah</b> 42:12	<b>216</b> 47:25			
50:11	<b>217</b> 47:25			
<b>year</b> 19:6 51:18	<b>26</b> 33:15			
51:18	<b>270</b> 9:3 10:18,20			
<b>years</b> 8:20 17:4	<b>279</b> 54:16 55:1			
19:10 25:16	<b>28</b> 1:11 33:15			
38:16 39:9	<b>29</b> 2:7			
40:22 41:15	<hr/> <b>3</b> <hr/>			
43:16 63:12	<b>3</b> 2:4			
<b>yields</b> 29:25	<b>30</b> 38:16			
<hr/> <b>Z</b> <hr/>	<hr/> <b>4</b> <hr/>			
<hr/> <b>0</b> <hr/>	<b>4</b> 25:20			
<hr/> <b>1</b> <hr/>	<b>4.6</b> 41:6,14			
<b>10/1/2009</b> 54:17	<b>4.7</b> 41:6			
<b>10:05</b> 1:15 3:2	<b>41</b> 44:9 53:14,14			
<b>100</b> 26:3	54:7 55:12			
<b>100,000</b> 41:10	56:7			
	<b>41(b)</b> 48:20 49:2			