



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

C O N T E N T S

|                              | PAGE |
|------------------------------|------|
| ORAL ARGUMENT OF             |      |
| ROBERT D. KLAUSNER, ESQ.     |      |
| On behalf of the Petitioners | 3    |
| MALCOLM L. STEWART, ESQ.     |      |
| On behalf of the Respondent  | 23   |
| REBUTTAL ARGUMENT OF         |      |
| ROBERT D. KLAUSNER, ESQ.     |      |
| On behalf of the Petitioners | 49   |

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

(11:09 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 06-1037, Kentucky Retirement Systems v. EEOC.

Mr. Klausner.

ORAL ARGUMENT OF ROBERT D. KLAUSNER

ON BEHALF OF THE PETITIONERS

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

Retirement eligibility in Kentucky is based on 20 years of service or age 55. Age is not the only determinant. And "age" is not a bad word. As Justice White said in McMann v. United Airlines, all retirement plans necessarily make distinctions based on age.

Here it is age or service. And the EEOC's focus on age alone fails to appreciate that Kentucky is an integrated, consolidated retirement plan with the goal of providing benefits to all qualified workers. To say, as the EEOC does, that all younger workers will always fare better than all older workers is factually wrong, and it fails to appreciate the myriad factors that go into determining pension amounts.

It's not age alone that determines the result. Age is a factor. It's not the factor. The

1 plan is not facially discriminatory, it's not arbitrary,  
2 and it doesn't violate --

3 JUSTICE BREYER: I guess the part that they  
4 are saying is arbitrary as I understand it, and I  
5 appreciate your correcting me if I don't understand it  
6 correctly, is that you get double your pension at 55 if  
7 you've worked 20 years as opposed to 10. Is that right?

8 MR. KLAUSNER: No, Mr. Chief Justice --

9 JUSTICE BREYER: A worker who has been  
10 there, he's qualified, he has only worked for 10 years  
11 and now he's 55 years old. There is a chart in the SG's  
12 brief, and as I read that chart, he got amount "X". He  
13 started at 45, he ended up at 55, he gets "X". If he  
14 started at 35 and worked for 20 years, he would get much  
15 more than "X".

16 MR. KLAUSNER: If the EEOC's chart were --  
17 correct, that would be true, Your Honor, limited only to  
18 the amount of imputed service. The person who began  
19 younger in the example which Your Honor used would get  
20 more imputed service.

21 JUSTICE BREYER: You would get "Y", because  
22 he worked for 20 years rather than 10; is that right?  
23 I'm not talking about a disabled person. I'm talking  
24 about anybody.

25 MR. KLAUSNER: No, Your Honor. That's only

1 in the case of disability. In a normal requirement  
2 setting, one works a number of years and you get two  
3 and-a-half percent of your salary for each year that you  
4 worked.

5 JUSTICE BREYER: So if a person works for 20  
6 years, he gets more than if he worked for 10 years; is  
7 that right?

8 MR. KLAUSNER: That's right.

9 JUSTICE BREYER: Now he is disabled. And  
10 when he's disabled, if he's disabled after working only  
11 10 and he is 45 years old, they pretend he had worked  
12 the full 20?

13 MR. KLAUSNER: They impute -- yes, Your  
14 Honor. They impute the additional service to you.

15 JUSTICE BREYER: Now I understand it.

16 Now, this individual says, I was working  
17 there after the age of 55, I only worked for 14 years,  
18 now I become disabled. If I become disabled before I  
19 was 55, let's say I had six years to go, they would give  
20 me six years extra. But because I was disabled after  
21 I'm 55, I get nothing extra. Nothing is imputed. Is  
22 that right?

23 MR. KLAUSNER: It's only partially right,  
24 Mr. Justice. Justice Breyer, the reason that you get  
25 additional before age 55 is the same as the reason why

1 you get extra before you reach 20 years.

2 JUSTICE BREYER: I didn't ask you for the  
3 reasons. I want to know if I'm factually right.

4 MR. KLAUSNER: Your only partially --

5 JUSTICE BREYER: Where am I factually wrong?

6 MR. KLAUSNER: The difference is that the  
7 imputed service comes before 55, because you're not  
8 eligible for after 55 or after 20 years you are eligible  
9 for benefits --

10 JUSTICE BREYER: You're giving me reasons.  
11 I'll ask you in a second for the reasons. I want to  
12 know if what I said is factually true?

13 MR. KLAUSNER: If you were disabled before  
14 normal retirement, you receive imputed service.

15 JUSTICE BREYER: And not after?

16 MR. KLAUSNER: Correct.

17 JUSTICE BREYER: Okay. Now I'll say that I  
18 think is the discrimination of which he is complaining.  
19 And now what he would like to know is what possible  
20 reason is there for that difference? Now I'd like to  
21 hear what the reason is that justifies that difference.

22 You give him six extra years when he retired  
23 after 14 years and though he was only 49 years old, and  
24 you don't give him even one extra year when everything  
25 else was the same but he retired after he was 55.

1                   Now, explain to me what the reason is for  
2 that.

3                   MR. KLAUSNER: The reason for that, Justice  
4 Breyer, is as follows: The person who's 49 and gets  
5 disabled, assuming he does not have -- he or she doesn't  
6 have 20 years of service, can't retire. The person who  
7 is 55 in your example can leave tomorrow.

8                   Additionally, the person who begins work  
9 older starts out closer to retirement. We are not  
10 talking about two different groups of people. The plan  
11 favors the older worker by saying on the day you begin  
12 work, you're always closer to retiring than a younger  
13 person.

14                   The purpose of the imputed service is to try  
15 to replicate as closely as possible within some  
16 financial limits set by the -- by the General Assembly  
17 of Kentucky what you would have received had you made --

18                   JUSTICE BREYER: No. He says now, what he  
19 says to that, I take it, is fine. He is 49 years old.  
20 He has six years to go to qualify for retirement, so let  
21 him retire. If you let him retire, and you gave him 14  
22 years of credit, you would be treating him just like  
23 you're treating me.

24                   But in addition to letting him retire, you  
25 give him six extra years of credit, which at two

1 and-a-half percent per year. Good, I'm glad you do  
2 that. Give me the six extra years at two and-a-half  
3 percent as well. Treat us alike.

4 What's your response?

5 MR. KLAUSNER: My response, Justice, is  
6 this. They start out un-alike. As I mentioned before,  
7 the person who was in 55 in your example, A, is already  
8 eligible for benefit. He doesn't have to wait to be  
9 disabled. He may leave tomorrow.

10 The person who starts younger, particularly  
11 in a public safety retirement plan, spends more time in  
12 the line of fire than the person who starts older. The  
13 person who starts older takes advantage of the fact that  
14 in this retirement plan you can retire with as little as  
15 five years of service. Actually a person who is 55 is  
16 eligible for a benefit after only a month. In fact,  
17 Kentucky may be the only plan in the country that does  
18 that.

19 But where they don't start out alike and  
20 where the EEOC's chart is based on fallacy is that the  
21 person who began older in work in your example was  
22 always closer to retirement, they needed less years.

23 The purpose of the plan for disability  
24 purposes, which is not a separate plan, it's simply a  
25 means of getting one to normal retirement who is not

1 otherwise eligible.

2 JUSTICE KENNEDY: This has been very  
3 helpful, but it does seem to me to raise a question  
4 about the fairness of your opening statement. You began  
5 by saying something to the effect that this does not  
6 discriminate on the basis of age. It does. Age is the  
7 explicit factor that the statute uses in order to answer  
8 Justice Breyer's question. And the Act does not  
9 prohibit the use of age in all circumstances to which it  
10 applies, but it does -- the Act goes on to prohibit the  
11 use of age in some of the circumstances. And one of  
12 those circumstances is the hypothetical of the  
13 55-plus-year-old person used in Justice Breyer's  
14 statement and example.

15 So, it is not correct, it seems to me, for  
16 you to say that this does not discriminate on the basis  
17 of age. Now, maybe there is some good reasons for doing  
18 that, you can get into that, but it seems to me it does  
19 make an explicit determination based on age as to some  
20 people.

21 MR. KLAUSNER: Respectfully, Justice  
22 Kennedy, I think that's not entirely correct, for this  
23 reason. The plan makes the determination of eligible to  
24 retire on 20 years or age 55 with five years. In other  
25 words, it makes the determination not based on age but

1 on pension status, that is, eligibility to receive an  
2 unreduced normal retirement.

3 JUSTICE SCALIA: You're saying you're one  
4 step removed. You're making your determination on the  
5 basis of eligibility for retirement, which in turn is  
6 based on age. And you're saying that that --

7 JUSTICE STEVENS: It's sometimes based on  
8 age.

9 JUSTICE SCALIA: Huh?

10 JUSTICE STEVENS: It's sometimes based on  
11 age, sometimes years of service.

12 JUSTICE SCALIA: Right.

13 CHIEF JUSTICE ROBERTS: And always based on  
14 age plus service.

15 MR. KLAUSNER: Right. Yes, Mr. Chief  
16 Justice.

17 JUSTICE SOUTER: But your answer, as I  
18 understand it, to Justice Breyer's question was, could  
19 be boiled down to this: The person whose disability  
20 benefit or total benefit following disability is  
21 calculated on the basis of age 55, is less likely to  
22 have worked or is likely to have worked less long than  
23 the person whose benefit is imputed and calculated on  
24 the basis of 20 years. And because the odds are that  
25 we'll say the person in the 55-year-old category has

1 worked less and endured less risk, it is, therefore,  
2 fair to impute less time on average to such a person,  
3 and therefore, give a lower benefit.

4           You're saying there is a tradeoff. And the  
5 tradeoff is because the 55-year-old retiree may get a  
6 benefit after very little work and very little risk, it  
7 is therefore fair and not a discrimination that on the  
8 average the windfall is less for that person by the  
9 imputation than the windfall to the person who retires  
10 on the basis of age 20.

11           Is that a fair statement of your argument?

12           MR. KLAUSNER: Yes.

13           JUSTICE SOUTER: Okay.

14           MR. KLAUSNER: As I noted before, it's  
15 about retirement eligibility, not about age.

16           In Hazen Paper you dealt with the question  
17 of an individual who was fired because they were about  
18 to meet the 10-year vesting requirement in a private  
19 sector plan. The person was also over the age of 40.  
20 The Court found that it wasn't an age discrimination  
21 case because it said that age was merely correlated with  
22 what the Court called pension status. I think pension  
23 status and retirement eligibility, which can occur at 20  
24 years or it can occur at age 55 with some service, is  
25 exactly the same. In --

1 JUSTICE ALITO: That would be a good  
2 argument if the sole basis for retirement under your  
3 system was years of service, but it's not just years of  
4 service, isn't that right?

5 MR. KLAUSNER: That's correct, Justice. One  
6 needs some service, but one may retire at 55 or one may  
7 retire at 20 years.

8 JUSTICE ALITO: You can't take your -- you  
9 couldn't take your statute and erase all the references  
10 to age and have the statute work, could you?

11 MR. KLAUSNER: No. And I don't -- I don't  
12 think that pension statutes are required to eliminate  
13 any use of age at all.

14 JUSTICE ALITO: Because the ADA expressly  
15 allows them to do that; isn't that right?

16 MR. KLAUSNER: The ADA is designed to  
17 eliminate arbitrary age discrimination. That is where  
18 the design of the plan is motivated by a policy of the  
19 employer to discriminate, to provide less solely because  
20 of the individual's age.

21 JUSTICE SOUTER: That's -- you're sticking  
22 in a word, "arbitrary," that appears nowhere in the body  
23 of the statute. You picked it up from the preamble, and  
24 that's -- and you're interpreting the statute with that.  
25 And it isn't customary for this Court to take words that

1 don't appear in the text of the statute and read them  
2 in, based on some statement of purpose or preamble.

3 MR. KLAUSNER: Justice Ginsburg, I'm aware  
4 that the preamble alone doesn't direct, and I understand  
5 that the operative language is in 623(a). But I think  
6 that the --

7 JUSTICE SCALIA: You'd be in better shape if  
8 it was in legislative history and not in the preamble.  
9 We probably would take it into account.

10 MR. KLAUSNER: I think, Justice, the  
11 legislative history is important for this reason. When  
12 Title VII was first written age was included and then it  
13 was taken out, and there was a reason why it was taken  
14 out: Because there is never a reason to discriminate on  
15 the basis of race, there is never a reason to  
16 discriminate on the basis of national origin or  
17 religion; but in government retirement plans, which are  
18 paid for life and in which the calculation is determined  
19 in part on age, on how long someone will live and how  
20 long they've worked and that interrelationship, I think  
21 Congress recognized age is qualitatively different.

22 JUSTICE GINSBURG: I think the Congress  
23 recognized that what they were protecting was not age as  
24 such, but old age, where in the other case they say it's  
25 the racial criterion and whether it's -- or the sex

1 criterion, whether it's a man that's adversely affected  
2 or a woman it doesn't make any difference; Title VII  
3 applies to them both. But the Age Discrimination Act  
4 doesn't apply to younger workers. It doesn't say that  
5 you can't discriminate on the basis of age, so you can't  
6 prefer the older person over the younger person.

7 MR. KLAUSNER: Justice Ginsburg, I  
8 understand this Court's holding in Cline was that the  
9 statute is intended to protect the relatively older as  
10 it relates to the relatively younger. But you also said  
11 in Cline that age is qualitatively different, because  
12 what gives age reason in terms of discrimination is when  
13 it's arbitrary. That is, when it is invidious, and  
14 that's the distinction between the Title VII cases that  
15 the Government relies on, and why I think Hazen Paper is  
16 important, because, as the Court said, unless you can  
17 show in a disparate treatment case that the policy is  
18 motivated by age, then I think that the -- the intent  
19 goes. And the -- one cannot draw from the face of the  
20 Kentucky statute -- and that's what this is; this was a  
21 challenge that said the statute discriminates on its  
22 face -- that the only inference that one can have is  
23 that the design of the plan is motivated to pay older  
24 people less.

25 JUSTICE GINSBURG: There is one little piece

1 of it that seems, that clearly does favor the younger  
2 retiree. And that's the -- what is it -- you're  
3 guaranteed, what was it, at least 25 percent of your  
4 final monthly salary. That's not under -- for a regular  
5 retiree; and also this 10 percent that you get added on  
6 for each child -- that's not part -- that's somebody who  
7 is disabled gets that, but not somebody who is already a  
8 retiree. Isn't that so?

9 MR. KLAUSNER: That is correct, but Justice  
10 Ginsburg, that type of disability is not the disability  
11 which was at issue in this particular case. That is for  
12 a person who is disabled from any ability to work,  
13 period, in other words, the Social Security standard of  
14 disability. The disability at issue in this case was  
15 the inability to work as a public safety officer, in  
16 this case a police officer.

17 JUSTICE GINSBURG: I'm not sure that I  
18 follow that answer.

19 JUSTICE STEVENS: Am I correct in  
20 understanding that your plan does not provide a  
21 disability benefit just as a disability benefit? The  
22 only time disability is relevant is when it determines  
23 whether or not a person will become eligible for the  
24 regular retirement benefit?

25 MR. KLAUSNER: That's correct. This isn't,

1 for example, a stand-alone disability insurance policy.

2 JUSTICE STEVENS: So that for the old person  
3 who has already reached retirement age the fact that he  
4 doesn't get a disability benefit is common to everybody  
5 subject to the plan.

6 MR. KLAUSNER: It is common subject to  
7 everyone in the plan without --

8 JUSTICE STEVENS: Isn't that the answer to  
9 Justice Breyer's question?

10 MR. KLAUSNER: And I -- you certainly said  
11 it better than I did, Justice Stevens.

12 CHIEF JUSTICE ROBERTS: But is there any  
13 reason -- I think what you're saying is we should view  
14 this as a retirement plan and there are a number of ways  
15 you can be eligible for retirement: Age plus years of  
16 service, but another way you can be eligible is  
17 disability.

18 MR. KLAUSNER: Disability fills in -- it  
19 covers a gap. Disability is designed to cover you in  
20 most instances from the time you get five years of  
21 service -- and by the way, you're uncovered in this plan  
22 for disability for the first five years of employment  
23 except for a very limited, specific number of instances  
24 in which only total disability from all work applies.

25 So in the case of the individual who the

1 EEOC talks about as having been discriminated against,  
2 if you were a younger worker for the first five years of  
3 employment you would have been not covered. A 55 -- for  
4 any benefit at all. A person who starts at 21 and gets  
5 disabled from work as a police officer or firefighter  
6 for the first five years of employment has no protection  
7 at all.

8 JUSTICE GINSBURG: But let's take the one  
9 who gets over the five-year initial period. The  
10 disability pay when you no longer can be in the  
11 hazardous occupation, it will begin immediately, right?  
12 You don't wait until you get -- you're 55 to get it.

13 MR. KLAUSNER: No, ma'am. That's the  
14 purpose of the imputed services. And it's  
15 essentially -- we say if during this gap of time before  
16 normal retirement, this risk that's covered, that if  
17 this disabling event occurs, we advance you to normal  
18 retirement immediately and try to replicate as closely  
19 as possible the benefit that one would have achieved had  
20 you worked to the closest --

21 JUSTICE BREYER: But that's the point,  
22 right?

23 MR. KLAUSNER: -- point of eligibility.

24 JUSTICE BREYER: There -- that's what the  
25 complaint is, I think, that you say it's the second part

1 that you just said. What you do when the person is  
2 disabled and he is not yet 55 -- he hasn't qualified  
3 yet -- is you both qualify him, and when you qualify him  
4 you give him credit for years he hasn't worked. Now,  
5 the older person who is still working and is also  
6 disabled says: Fine, you let me retire, but you don't  
7 give me any extra years.

8 Now that's the complaint, I think. So that  
9 if you had a person who had started at 45, eligible to  
10 retire at 55, works for 4 years and becomes disabled, he  
11 is credited with 14 years; while the person who started  
12 at 35 and at 45 becomes disabled, he is given 20 years.  
13 He is given the 10 extra years. So the first person,  
14 older person, says: You gave him some extra years; you  
15 didn't have to give him those extra years in order to  
16 qualify him to retire. You could have just said you can  
17 retire, but you gave him 10 extra years and you give me  
18 no extra years. Why not?

19 MR. KLAUSNER: The answer to your question,  
20 Justice Breyer, is the person who has either 20 years or  
21 is 55 on the day they become disabled is already  
22 eligible to retire. The plan is a single plan that  
23 provides a benefit. If you start older, you have to  
24 work less to get there. By the same token, by starting  
25 closer to retirement you need less added to your balance

1 to bring you to normal retirement. In the example --

2 JUSTICE BREYER: You don't need anything to  
3 bring you to normal retirement. You could rewrite the  
4 plan and say when a person becomes disabled you get  
5 retirement, right at that moment. You could say that.  
6 And what the plaintiff is saying is, why don't you say  
7 that? Though it's a bit mean. But I think what he  
8 would probably like is you would extend the extra years  
9 to him.

10 MR. KLAUSNER: There's reasons why that  
11 isn't done. Number one, to follow your example, Justice  
12 Breyer, for current employees, people hired before 2004,  
13 of which there were several hundred thousand, you'd have  
14 to lower the benefit to follow your example. The  
15 Kentucky Constitution forbids lowering the benefits.  
16 Actually, the Commonwealth, in response to the liability  
17 in this case, did change the disability benefit. For  
18 people hired after 2004, they slashed its economic value  
19 substantially, and now everybody just gets a certain  
20 amount of disability. It doesn't, however, accomplish  
21 the Commonwealth's goal of attracting and retaining  
22 employees to do hazardous duty jobs.

23 CHIEF JUSTICE ROBERTS: So the effect of  
24 this litigation is that policemen or firefighters who  
25 are injured and become disabled now get lower benefits

1 for disability?

2 MR. KLAUSNER: Much lower. It's a  
3 substantial reduction. They just get a small piece of  
4 change.

5 It's interesting, you know, in the Federal  
6 Civil Service Retirement System, the police officers,  
7 for example, who work in this Court, if they become  
8 disabled, they have imputed service to an age. It's a  
9 very similar system. In fact, all employees in both  
10 FERS, the Federal Employees' Retirement System, and the  
11 Civil Service Employees' Retirement System, both  
12 participate in a program where age is imputed to normal  
13 retirement. It's a common practice, as the Court can  
14 see from the amicus briefs. It's a common practice  
15 throughout the United States. I think --

16 JUSTICE BREYER: See, that's why I think the  
17 result in this case is just terrible. I think it takes  
18 disabled people and cuts their benefits with no benefit.  
19 I cannot believe for two minutes that Congress would  
20 have intended that result. But the reason I asked you  
21 the question was I want you to tell me how to get to  
22 that result under this statute.

23 MR. KLAUSNER: You may get to this result in  
24 this way: If you determine that age is not the driver,  
25 that is, that because you have a plan that has normal

1 retirement based on service alone, a 38-year-old  
2 employee who gets disabled with 18 years of service gets  
3 two years of imputed service. The 45-year-old, in your  
4 example, who started at 35 would get 10 years.

5 JUSTICE KENNEDY: Suppose I can't make that  
6 assumption or adopt that premise. Is there another  
7 basis on which to reach the result? I think this does  
8 explicitly discriminate based on age as to some people,  
9 and you're telling me you don't want me to do that. But  
10 Suppose I don't agree with you. Is there some other way  
11 to reach the result?

12 MR. KLAUSNER: I think Your Honor you can  
13 reach the result in this way. The statute was  
14 challenged as being facially discriminatory, and I think  
15 under this Court's precedents for facial discrimination,  
16 one would have to say that the only reasonable inference  
17 in the statute, by its mere use of age, is that you say  
18 that it starts out presumptively discriminatory. What  
19 the Government has really argued here is an as-applied  
20 circumstance. They said the effect of the statute in  
21 certain cases, and in those circumstances the statute  
22 would stand on its face and if there is a circumstance  
23 in which someone effectively is discriminated, then you  
24 look to see are there reasonable factors other than age  
25 that effect -- that take effect in this instance?

1           Secondly, I think the Court can determine --  
2 and I think this is the question that is the next step  
3 after Hazen, where you said that age correlated with  
4 pension status, in that case being vested for 10 years.  
5 The question is, if a plan has eligibility to retire as  
6 its motivation, that is, it is service regardless of age  
7 or age plus service, is it really motivated by age? And  
8 I think the answer to that question, Justice Kennedy,  
9 clearly is no.

10           The one thing I would add is if you look at  
11 the statute in Betts, the Ohio case, which is the last  
12 time an age case on a public plan got to this Court, in  
13 the Ohio plan you couldn't get a disability because you  
14 were 60, but you could also retire in that plan just  
15 like Kentucky on years of service alone, but a  
16 years-of-service retiree in Ohio could get a disability.

17           That's not true in Kentucky. Somebody who  
18 starts as a firefighter at 18 no longer has disability  
19 protection at 38 years old. A person who starts as a  
20 police officer at 45 retains disability coverage until  
21 they're 55. I think -- I think the language of the  
22 statute alone enables you to get there.

23           And I think to get back to Justice  
24 Ginsburg's question -- and I don't believe I fully  
25 answered on this issue of the role of the word

1 "arbitrary" in the statute -- I think that that gives  
2 that word meaning, not just because it's in the  
3 preamble, but because it's in the legislative history,  
4 and the evil that Congress was trying to get to is what  
5 is it that we're trying to prevent? We're trying to  
6 create job opportunities for older workers, and what  
7 Congress said after Betts is you want to make sure  
8 benefit plans are covered. And I think Kentucky has  
9 accomplished both. It doesn't use a retirement age, as  
10 many employers do. Again, the Federal Government forces  
11 police officers and firefighters out of their jobs.  
12 Firefighters at 55, police officers at 57. Kentucky  
13 doesn't. The program doesn't discriminate on the basis  
14 of age.

15 If there's no question, I'd like to reserve  
16 the rest of my time for rebuttal.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
18 Mr. Stewart.

19 ORAL ARGUMENT OF MALCOLM L. STEWART  
20 ON BEHALF OF THE RESPONDENT

21 MR. STEWART: Mr. Chief Justice, and may it  
22 please the Court:

23 In calculating the retirement benefits owed  
24 to disabled workers, Kentucky uses age as an explicit  
25 decisionmaking factor in a way that disadvantages older

1 employees. Although Kentucky may be able to establish  
2 on --

3 JUSTICE BREYER: Let me ask you this sort of  
4 basic question: Does it use age any differently than it  
5 uses years of service?

6 MR. STEWART: It does in the sense that,  
7 with respect to disabled employees, two employees who  
8 have the same total years of actual service but who are  
9 of different ages may receive dramatically different  
10 benefits.

11 JUSTICE STEVENS: That's because of the  
12 period necessary to qualify for retirement?

13 MR. STEWART: It's -- let me direct your  
14 attention to the relevant provision of the Kentucky  
15 statute, and it's at page 7a and 8a of the blue brief.  
16 This is with respect to -- it's true that, for a normal  
17 retirement, an individual either has to be age 55 with 5  
18 years of service or have 20 years of service at whatever  
19 age. But if you look at the requirements for disability  
20 retirement in particular, the very bottom of the page,  
21 it says: "Any person may qualify to retire on  
22 disability subject to the following. The person shall  
23 have 60 months of service, 12 of which shall be current  
24 service credited under provisions of Kentucky law."

25 JUSTICE STEVENS: Let me just interrupt you.

1 Is there -- is it your position there is a disability  
2 benefit that is different from the retirement benefit?

3 MR. STEWART: They -- they are different in  
4 the sense that they are calculated differently. That  
5 is, if all Kentucky had done was say --

6 JUSTICE STEVENS: I thought that all that  
7 disability did was determine -- help get a man who is  
8 disabled eligible for the retirement benefit.

9 MR. STEWART: The program --

10 JUSTICE STEVENS: That's the only function  
11 it provides.

12 MR. STEWART: I think that's incorrect.  
13 There are two distinct functions of -- there are two  
14 distinct differences between disability retirement and  
15 normal retirement: The first is that the eligibility  
16 criteria are different. In order to qualify for normal  
17 retirement, you have to be either 55 years old with 5  
18 years of service or have 20 years of service. For  
19 disability retirement, you become eligible if you are of  
20 any age and are forced to retire due to disability and  
21 have at least five years of service.

22 JUSTICE SCALIA: Well, why does that matter?  
23 I mean, the exception in the statute is for -- for  
24 retirement, taking age into account for retirement, is  
25 narrowly crafted. It says that they can make any

1 decision about -- they can require the attainment of a  
2 minimum age as a condition of eligibility for normal or  
3 early retirement.

4 Now, we have not read that to exclude adding  
5 an additional element to age, namely age plus years of  
6 service. We don't say that that disables you from the  
7 -- from that exemption. Why can't you add a third  
8 factor? Age, years of service, and disability.

9 MR. STEWART: You can't. The first thing I  
10 would say about that exception is it refers specifically  
11 to a minimum age, and what that was intended to make  
12 clear was that to the extent that Kentucky allows  
13 55-year-olds to retire with only 5 years of service, but  
14 requires a 45-year-old to have 20 years of service, that  
15 minimum age would not violate the statute. Now, as a  
16 result of this Court's decision in Cline, that provision  
17 in a sense is superfluous because the younger worker  
18 wouldn't have an ADEA claim anyway. But the reference  
19 to a minimum age is intended to address that situation.

20 JUSTICE SCALIA: And --

21 JUSTICE ALITO: It seems to me that what  
22 Kentucky is trying to do is to, at least in part,  
23 provide make-whole benefits for a police officer who  
24 becomes disabled below the age of 55. So what they want  
25 to do is to say we want to give you the benefit that you

1 would have received if you had not been hurt on the job  
2 and therefore unable to work and had been able to work  
3 to the normal retirement age.

4 Now, if that's correct, is that an  
5 illegitimate objective? And if it's not an illegitimate  
6 objective, is there any way that they can do that  
7 consistent with your understanding of the ADEA? Because  
8 when someone is over the retirement age, it's rather  
9 hard to see how many years you would add on projecting  
10 how long that person would continue to work beyond the  
11 age of retirement eligibility.

12 MR. STEWART: It is certainly not  
13 illegitimate for Kentucky to say: We want to be more  
14 generous to people who are forced to retire due to  
15 disability than to people who choose to retire  
16 voluntarily when they are physically capable of  
17 continuing to work.

18 And so if Kentucky wants to say, in the case  
19 of an individual who is forced to retire due to  
20 disability, we will add additional years in computing  
21 benefits to estimate the number of years this person  
22 would have worked had he or she not become disabled,  
23 that's fine as well.

24 What they can't do, at least what they can't  
25 do without establishing one of the affirmative defenses,

1 is use age as a proxy, as the basis for deciding how  
2 many years would this person have worked if he or she  
3 had not become disabled because --

4 JUSTICE ALITO: So if they want to do that  
5 and they have a case of a police officer who works  
6 beyond 55 -- the officer is 55-plus with 10 years of  
7 service and then becomes disabled -- you say they have  
8 to give that person 10 years of credit.

9 MR. STEWART: If they are going to give the  
10 45-year-old with 10 years of service 10 years of credit,  
11 they have to give the 55-year-old 10 years of service --  
12 with 10 years of service 10 years of credit, again,  
13 unless they can establish the cost-justification  
14 defense.

15 And part of the argument they are making is  
16 it would be unduly expensive to guarantee the  
17 55-year-old an additional 10 years of service, because  
18 it's much more likely that the 55-year-old will become  
19 disabled than it is with the 45-year-old.

20 JUSTICE SOUTER: But he is saying one thing  
21 more. He is saying it's also highly unlikely that the  
22 55-year-old has worked as long subject to risk at the  
23 point at which the calculation is made than is the case  
24 with the person who retires on the basis of 20 years.  
25 And so that there is a tradeoff. And, therefore, you

1 constantly analyze this as the kind of garden variety of  
2 discrimination based on age which Congress was aiming  
3 for.

4 MR. STEWART: Well, to go back to the  
5 question you were asking Mr. Klausner, I think if we  
6 were looking at the class of voluntary retirees, it  
7 would be an accurate generalization to say that those  
8 above 55 were likely to have fewer years of service than  
9 the younger people. Because the only way that a younger  
10 person could qualify for normal retirement would be to  
11 amass 20 years of service; whereas, the older person  
12 could do it with fewer years.

13 But if you are looking at people who want to  
14 continue working but who are prevented from doing so by  
15 reason of disability, there is no reason to assume that  
16 the older people are going to have spent less time in  
17 the line of fire than the younger people. And, in any  
18 event, the comparison that we are making --

19 JUSTICE SCALIA: Just say that again. Just  
20 say the last thing again. I didn't follow you.

21 JUSTICE SOUTER: Yes. I didn't get it  
22 either.

23 MR. STEWART: If we're looking at the class  
24 of people who -- including over 55-year-old and under  
25 55-year-old -- who want to continue working but who have

1 been prevented from doing so by reason of disability,  
2 there is no reason to think that the older people within  
3 that class, as a group, will have fewer years in the  
4 line of fire than the younger people. And, in any event  
5 --

6 JUSTICE SCALIA: Why? I -- I think -- you  
7 mean in the future?

8 MR. STEWART: No. No. Under their belt.  
9 Under their belt.

10 JUSTICE SCALIA: Under their belt. I see.

11 JUSTICE SOUTER: They are exactly the same  
12 people. The only thing that distinguishes the one  
13 class, those who voluntarily do and those who are  
14 disabled, is happenstance; and the happenstance is  
15 disability in the line of service.

16 MR. STEWART: It's not just happenstance,  
17 because if you're guessing the likely tenure of service  
18 of people who take voluntary normal retirement before  
19 age 55, in a sense you are skewing the class, because  
20 the only people who can do that under Kentucky law are  
21 people with at least 20 years of service.

22 So the voluntary retirees, the younger  
23 people, as a group, are likely to be -- have longer  
24 tenure. But that generalization doesn't hold true with  
25 respect to people who are forced to retire due to

1 disability.

2 JUSTICE STEVENS: It seems to me your  
3 argument boils down to the claim that people who have  
4 already reached -- become eligible for retirement by  
5 either age or period of service, the State has a duty to  
6 give them a chance to recover a disability benefit if  
7 they give a disability benefit to younger workers.

8 MR. STEWART: No. Our point is that they  
9 should use the same computation methodology for both  
10 categories of employees.

11 JUSTICE STEVENS: The computation is for a  
12 different purpose in that -- in -- for the younger  
13 workers the purpose is to make them eligible for  
14 retirement. For the older workers, they are already  
15 eligible for retirement.

16 MR. STEWART: I think that's incorrect, and  
17 that was really the point I was making by quoting from  
18 the Kentucky law on page 7a and 8a. The Kentucky  
19 provision that I quoted was the provision that  
20 establishes eligibility for disability retirement. And  
21 it says, as the criterion for eligibility, beyond, of  
22 course, the fact of disability, the person shall have 60  
23 months of service.

24 So an individual under Kentucky law who is  
25 forced to retire due to disability and has at least five

1 years of service is eligible for disability retirement.  
2 The imputation of additional years of service is not  
3 necessary --

4 JUSTICE STEVENS: The term "eligibility for  
5 retirement," as used in that part of the statute, is  
6 referring to actually the same thing as retirement  
7 achieved by getting their -- getting credit for  
8 post-disability years.

9 MR. STEWART: Exactly. Well, the purpose of  
10 defining the category of eligible persons is to make  
11 sure that they do get a retirement benefit even though  
12 they wouldn't satisfy the normal age and service  
13 requirements for ordinary retirement. And we have no  
14 problem with that.

15 Kentucky can say we want to define a  
16 separate category of individuals who don't satisfy  
17 normal age and service rules but who should,  
18 nevertheless, be given a retirement benefit because they  
19 have been forced to retire due to disability. That's  
20 fine.

21 And if they use the same computation  
22 methodology, namely, some factor of actual years of  
23 service times final compensation times a multiplier, as  
24 they do for normal retirement, that would be fine. Our  
25 --

1 CHIEF JUSTICE ROBERTS: So it's fine for  
2 them to use that, but you're saying it's not fine for  
3 them to use any element of age in making that  
4 computation?

5 MR. STEWART: That's correct.

6 CHIEF JUSTICE ROBERTS: Even though, under  
7 the Federal law, they can use age as the exclusive  
8 requirement in determining retirement?

9 MR. STEWART: Well, again, there is a an  
10 explicit exemption in the ADEA for a minimum retirement  
11 age. And so it wouldn't have violated -- even apart  
12 from this Court's decision in Cline, it wouldn't have  
13 violated the ADEA to say an individual who is 55 with  
14 five years of service can get retirement, even though a  
15 younger --

16 JUSTICE BREYER: What is wrong with using  
17 that as a benchmark? If you can fire a person when he  
18 is 55, why can't you use it as a benchmark as to how  
19 much you're going to give a disability person on  
20 pension?

21 MR. STEWART: Well, again, I think the --

22 JUSTICE BREYER: The lesser or greater --  
23 this would be an instance where greater includes lesser  
24 for the reason that this lesser business has no  
25 stereotypes. All they're trying to do is to help people

1 who are disabled at a time when they are younger and  
2 probably have fairly good expenses, and everybody gets  
3 this kind of insurance.

4           And this man who is the Plaintiff here had  
5 it, too, while he was there. So it's true you are  
6 really using in a minimal sense age, but you are doing  
7 it in a statute that permits you to do it because it's a  
8 lesser version of that.

9           MR. STEWART: There are a couple of things  
10 I'd say. The first is that the Act is quite specific in  
11 saying that a State may establish a minimum -- may  
12 establish a retirement age with respect to its State  
13 police and firefighters, but it doesn't say the ADEA is  
14 inapplicable to police and firefighters who are over age  
15 55.

16           JUSTICE BREYER: It doesn't say it's  
17 inapplicable. I wasn't saying it's inapplicable. What  
18 I am worried about -- and this is a perfect example of  
19 people using absolutely mechanical rules, and  
20 particularly when you talk about pension systems, which,  
21 of course, age is relevant to a pension system, and what  
22 they do is find comparisons; and, before you know it,  
23 you are in the kind of a -- of a hamburger situation  
24 where it's so chopped up that perfectly worthwhile  
25 things are forbidden. And this would seem to be a

1 number 1 exhibit.

2 MR. STEWART: There are several different  
3 answers I would give. The first is if the greater  
4 included the lesser, it would be permissible for  
5 Kentucky to say: We will keep the over 55-year-old  
6 people on the work force, but we'll pay them less  
7 because of their age.

8 JUSTICE BREYER: No, because what you are  
9 looking at is to see whether the purpose of Congress is  
10 somehow implicated, a purpose designed to prevent  
11 stereotypical thinking from being used to put older  
12 people at a disadvantage. And there is no indication  
13 that this is so in this case.

14 MR. STEWART: I think --

15 JUSTICE BREYER: Now, what's the response?

16 MR. STEWART: I think that's incorrect, that  
17 is, the two justifications that have been given for the  
18 disparate treatment of older workers are, first, younger  
19 workers as a group are likely to need more of a boost;  
20 and, second, the younger disabled person probably would  
21 have worked longer if he had not become disabled. And  
22 so this replicates the situation that would have  
23 prevailed.

24 I think, whether or not you want to think of  
25 those as stigmatizing stereotypes, it's quite clear that

1 neither of those generalizations could typically be used  
2 as a basis for age-based disparities.

3 For instance, nobody would claim that an  
4 employer could pay the older workers less because they  
5 are likely to be less in need of financial assistance.  
6 And with respect to the initial --

7 JUSTICE SOUTER: The reason for that is that  
8 we accept the criterion at the outset that your pay  
9 bears some relationship to what you do.

10 We are now in a situation in which the  
11 benefit does not bear a relationship to what you are  
12 doing or going to do.

13 MR. STEWART: Well, on the whole, the  
14 benefit bears a close -- the retirement benefit bears a  
15 close relationship to what you have done. That is, the  
16 benefit is calculated on the basis of actual years of  
17 service, and the purpose clearly is, in part, to reward  
18 the employee for service to the employer.

19 But with respect to -- and that's the way  
20 it's done with respect to the older disabled worker.  
21 His benefits are computed based on what years of service  
22 he has actually contributed to the employer. With  
23 respect to the younger people, it's not based on that  
24 alone. Rather, the State imputes additional years --

25 JUSTICE GINSBURG: And with respect to that,

1 Mr. Stewart, the problem that Justice Breyer brought up,  
2 you -- if you would look to your brief, page 30,  
3 footnote 13, the question is, so we have this -- if we  
4 take your interpretation of the statute, how can we deal  
5 with a person in her 30s who becomes disabled when she  
6 is making a low salary and has only, say, 10 years of  
7 service? She is going to get a very low disability.  
8 And you say that's one thing that's all right.

9           On a prospective basis, what could Kentucky  
10 do? One is give the younger workers only their actual  
11 years of service, which Mr. Klausner said is what is  
12 happening, and therefore, these people are getting a lot  
13 less than they used to get. And then you say, oh, but  
14 there's another way, and that is to impute additional  
15 years of service on an age-neutral basis. And you're  
16 not specific about what would the age-neutral basis be.

17           MR. STEWART: I guess there could be a range  
18 of alternatives. One alternative, for instance, would  
19 be for every disabled worker of whatever age impute an  
20 additional five years of service as something of a rough  
21 estimate of the number that person might have worked if  
22 he or she had not become disabled.

23           Another possibility would be to impute years  
24 of service up to 10 or 20. Again, there would be  
25 probably an infinite number of ways it could be done as

1 long as age were not used as, as the basis.

2 The other thing I wanted to say about --

3 JUSTICE ALITO: But if do you that, aren't  
4 you going to be -- you're going to be undercompensating  
5 the younger person who gets disabled and  
6 overcompensating the people over 55 who gets disabled  
7 who may not -- it may not be realistic to think that  
8 someone's going to continue to work as a police officer  
9 until 65. I don't know.

10 MR. STEWART: Well, the other thing I would  
11 say about that justification, which rests on I think the  
12 valid statistical correlation between how old you are at  
13 the time that you're disabled and how much longer you  
14 would have worked. Again, whether or not -- I think you  
15 wouldn't think of that as an invidious stereotype. But  
16 again, it's not a generalization that could typically be  
17 used as a basis for age-specific decisions.

18 For example, the Wirtz report makes clear  
19 that the paradigmatic pre-ADA practice that Congress  
20 wanted to get rid of was a limit of age 50 or age 45 and  
21 an employer saying: We're not going to hire anybody who  
22 is over that age. And certainly the employer could say  
23 justifiably as a group people above that age are likely  
24 to have fewer work years ahead of them than people below  
25 that age. And if that generalization could provide a

1 basis for an explicit age-based distinction, the Act  
2 would really be eviscerated.

3           The other thing I wanted to respond to is  
4 the suggestion that, while we might be able to tease  
5 this out of the literal language of the statute, this is  
6 certainly an unintended consequence. It is not  
7 something that Congress would have wanted. I think, to  
8 the contrary, this is not identical but very similar to  
9 the type of disparity that was present in Betts. That  
10 is, in Betts the individual was over the age of normal  
11 retirement but had elected to keep working. She became  
12 disabled and was prevented from continuing to work. She  
13 was eligible for normal retirement benefits. She wanted  
14 to collect disability retirement benefits, because  
15 again, the reason for her retirement was disability.  
16 She was told that she couldn't do it. And the State's  
17 computation methodology for calculating disability  
18 retirement benefits was significantly more generous than  
19 the one that it offered for --

20           JUSTICE BREYER: What about this idea, which  
21 is -- would this wreck the statute? You say we're  
22 talking about age, which is not an immutable  
23 characteristic. Everybody goes through it. Everybody  
24 is younger, everybody is older. And therefore we take  
25 the word "discriminate" and the word "discriminate" in

1 this context, when considered in terms of pension  
2 requirements, which inevitably are age mixed to a  
3 considerable degree, means that if there are plausible  
4 justifications and no significant reason for thinking  
5 that it reflects stereotypical thinking, that it does  
6 not fall within the scope of the word "discriminate."

7 MR. STEWART: I think, first, that would be  
8 contrary to the way that the word "discriminate" has  
9 been construed in Title VII.

10 JUSTICE BREYER: I started out by saying,  
11 that's why I said that this is not an immutable  
12 characteristic, and it is -- that's why I put all the  
13 qualifications in there.

14 MR. STEWART: Well, the court in *Thurston*  
15 has said the language of the ADEA should be construed  
16 similarly to that of Title VII because the basic  
17 anti-discrimination prohibition was drawn in *haec verba*  
18 from Title VII in the legislative history to the older  
19 workers's Benefit Protection Act when Congress amended  
20 the statute to cover fringe benefits, which the Court in  
21 *Betts* had held were not covered. Congress did that by  
22 enacting a new 29 U.S.C. 630(1) to say the term -- that  
23 the phrase "terms and conditions of employment" includes  
24 fringe benefits.

25 And the legislative history explains that

1 Congress could have achieved the same result by adding a  
2 reference to fringe benefits in the basic  
3 anti-discrimination provision contained in 29 U.S.C.  
4 623(a), but the Congress chose not to do that because it  
5 wanted to maintain the similarity in wording between the  
6 ADEA's anti-discrimination provision and that of Title  
7 VII in order to reinforce the inference that the two  
8 were to be construed in pari materia.

9           The other thing I would say with respect to  
10 your reference to age distinctions that are not based on  
11 stereotypes is again to return to what I was discussing  
12 earlier. The two justifications that have been offered  
13 are first, younger people are likely to have fewer  
14 financial resources, so they need more of a boost; the  
15 second is the younger worker probably would have worked  
16 longer if he hadn't become disabled and therefore this  
17 is replicating the situation that would have prevailed  
18 absent the disability.

19           And again, my point is, whether or not you  
20 think of those as invidious stereotypes, they are  
21 plainly not generalizations that could typically be used  
22 to justify --

23           JUSTICE STEVENS: May I ask this question  
24 right on that point. Supposing you have two different  
25 people retire, one -- that become disabled, rather --

1 one because he's five years short of the age eligibility  
2 and the other because he's five years short of years of  
3 service, so it would be a younger person, and both would  
4 have become eligible for retirement in five years after  
5 their disability. Are they treated the same way under  
6 the plan? And if they are, where is the discrimination?

7 MR. STEWART: Well, the discrimination is if  
8 you imagine --

9 JUSTICE STEVENS: Well, first of all, tell  
10 me whether they're treated the same way under the plan.

11 MR. STEWART: Well, it depends on other  
12 variables. For instance, if you have a --

13 JUSTICE STEVENS: What other variables?

14 MR. STEWART: As to the person who is five  
15 years away from qualifying by reason of --

16 JUSTICE STEVENS: Years of service.

17 MR. STEWART: -- years of service, if that  
18 person is younger than 50, then they'll be treated the  
19 same, because each of them will have --

20 JUSTICE STEVENS: That's a hypothesis.

21 MR. STEWART: But --

22 JUSTICE STEVENS: So then how is that  
23 discrimination on the basis of age?

24 MR. STEWART: But it is a discrimination on  
25 the basis --

1 JUSTICE STEVENS: It's not even  
2 discrimination as far as I see it.

3 MR. STEWART: Well, it wouldn't -- there  
4 wouldn't be any claim of disparate treatment with  
5 respect to those two individuals. But if you have an  
6 individual who is 55 years old with 15 years of service  
7 and 50 years old with 15 years of service, they are both  
8 equally close to the 20-year threshold for qualifying  
9 for normal retirement on the basis of years of service.  
10 Yet the 50-year-old gets 5 imputed years added and gets  
11 a significantly larger benefit than the 55-year-old.

12 Their justification is, well, the  
13 55-year-old is already eligible for normal retirement  
14 and therefore, it's fair to treat him differently. And  
15 the point I was making with reference to the Kentucky  
16 code is the 50-year-old who is forced to retire due to  
17 disability is also eligible for retirement. It's called  
18 disability retirement.

19 JUSTICE STEVENS: It seems to me that your  
20 claim boils down to an argument that the statute  
21 requires someone who is already qualified for retirement  
22 to get a disability benefit that the younger person  
23 would. It seems to me that's the basic difference.

24 MR. STEWART: No, I don't think that's  
25 correct. If all the State did was to say disability

1 retirement benefits will be available to people who have  
2 at least five years of service and are forced to retire  
3 due to disability and we are excluding people who are  
4 above 55, in and of itself that's fine. If the only  
5 purpose of excluding the older workers is to make clear  
6 that they can't get both benefits simultaneously, there  
7 is no problem with that.

8 Our problem is that, having defined the  
9 class of persons eligible for disability benefits to  
10 include only those who are under 55 --

11 JUSTICE STEVENS: I see you talking about  
12 two benefits.

13 MR. STEWART: -- they did use a more  
14 generous computation methodology.

15 JUSTICE STEVENS: There not two benefits.  
16 It's only one.

17 MR. STEWART: It's only one benefit. And  
18 really, that's part of our point. It's only one  
19 benefit, so why would they say that people who are older  
20 will have their benefits computed using a different  
21 formula than people who are younger?

22 CHIEF JUSTICE ROBERTS: You prevent the  
23 State from taking into account the fact that younger  
24 disabled workers have not had the same opportunity that  
25 older disabled workers have. And it results -- if we

1 adopt your system where you can look only at years of  
2 service, what it, in effect, is going to do is to  
3 prevent Kentucky from giving disability benefits to  
4 older workers who become disabled.

5 For example, if you have two workers, one  
6 who starts work at 18 and acquires years of service,  
7 say, 12 years of service and becomes disabled, you would  
8 say, well, you can take those years of service into  
9 account. The older worker who begins at age 30 and is  
10 disabled in his first year on the job, you say, well,  
11 you can only look at years of service. You can't impute  
12 to both of them retirement age. So the 30-year-old who  
13 becomes disabled has to get less, fewer benefits than  
14 the 18-year-old who becomes disabled.

15 MR. STEWART: Well, first, we are not  
16 preventing Kentucky from imputing additional years. We  
17 are simply saying the method of determining how many  
18 years will be imputed, absent an affirmative defense,  
19 can't be dependent on the employee's age.

20 JUSTICE BREYER: Would it be the same as --  
21 I mean it seems to me now -- I'm thinking the problem is  
22 we are going into the package; we are starting opening  
23 up the package that the 55-year-old retiree normally  
24 gets.

25 Suppose they said this: here's what we'll

1 do to the disabled person. We'll treat him just as if  
2 he retired at 55. He is only 35; and, moreover, at 55  
3 when you retire in our police force, we give you a big  
4 party and a gold watch. Well, we don't do that if you  
5 retire later on. Same kind of claim.

6           Why not? Over 65 years old, he retired.  
7 Hey, you didn't give him the gold watch. Why did you  
8 give the other person the gold watch? You said the  
9 reason is we treat them all like we treat them when you  
10 retire at 55.

11           MR. STEWART: I'm not quite sure if I  
12 understand the question, but I don't think that there is  
13 any --

14           JUSTICE BREYER: That's fair, that you don't  
15 understand.

16           (Laughter.)

17           MR. STEWART: I don't think there would be  
18 anything wrong with Kentucky saying we are going -- in  
19 fact, this is what we are asking for. If Kentucky wants  
20 to say a younger person who is forced to retire due to  
21 disability will be treated as though he were 55 years  
22 old, that's fine. If they give him disability benefits  
23 and they calculate the benefits using actual years of  
24 service as they do for the other -- for the older  
25 employees, that there is no ADEA problem with that.

1           Our problem is that they say we are treating  
2 him as though he had worked additional years until he  
3 was 55 when he hasn't, and when the older employee isn't  
4 given that same opportunity.

5           And, again, it is true that Kentucky's  
6 system is particularly generous to older employees who  
7 want to retire voluntarily. They can retire with as  
8 little as five years of service, even though the younger  
9 worker would have to have more. But the people on  
10 whose behalf the EEOC is suing have not derived any of  
11 that benefit. These were people who did not retire  
12 voluntarily. They were people who were eligible for  
13 retirement benefits, but chose to remain in the work  
14 force. And, essentially, they are being told, in  
15 estimating how many more years you would have worked, we  
16 are going to have an irrebuttable presumption that the  
17 answer is zero, even though their very circumstances,  
18 the fact that they continued to work after they could  
19 have retired, belie that assumption.

20           And just a final point I wanted to make  
21 about Betts, is that the system here is not identical,  
22 but very similar to the system that was at issue there,  
23 in the sense that an older worker who was forced to  
24 retire due to disability got a lower benefit than she  
25 would have received if she had been younger with the

1 same years of service and the same disability.

2 It couldn't be clearer that Congress wanted  
3 to overturn that decision. That was the impetus for the  
4 enactment of the OWBPA.

5 So I think there is really -- it's not  
6 correct to suggest that, even if we win, this is somehow  
7 an unintended consequence of what Congress did. This is  
8 the very situation that Congress wanted to cover while  
9 providing an affirmative defense to employers who can  
10 satisfy it.

11 JUSTICE GINSBURG: Mr. Stewart, before you  
12 finish, that little piece that seems to be favoring the  
13 younger worker that you guaranteed at least -- what was  
14 it, 25 percent of your final monthly salary, and you get  
15 10 percent for each child -- now that does seem to be  
16 something that's -- that's not available for a regular  
17 retiree.

18 MR. STEWART: It's not available for a  
19 regular retiree, and it's not available for a person who  
20 is eligible for normal retirement but becomes disabled  
21 and is forced to retire for that reason.

22 If the only problem were that Kentucky made  
23 those benefits available to people who were forced to  
24 retire due to disability, that wouldn't be an ADEA  
25 violation, so long as they made those benefits available

1 to the older worker who was also forced to retire.

2 But I take your point that those aspects of  
3 the statute introduce a further element of age  
4 discrimination without even the justification that  
5 Kentucky has proffered for the imputed years.

6 With respect to the children, in particular,  
7 that seems to be the only other area in the plan in  
8 which Kentucky is directly targeting the people who are  
9 in greatest financial need, at least by one measure  
10 having dependent children, and yet the older workers are  
11 left out of that entirely.

12 CHIEF JUSTICE ROBERTS: Thank you,  
13 Mr. Stewart.

14 Now, Mr. Klausner, you have four minutes  
15 remaining.

16 REBUTTAL ARGUMENT OF ROBERT D. KLAUSNER,  
17 ON BEHALF OF THE PETITIONERS

18 MR. KLAUSNER: I'd like to start back where  
19 we just left off with Justice Ginsburg's question about  
20 the guaranteed benefit. If a person is 38 years old and  
21 has 20 years of service, that benefit is not available.  
22 If you're 50 years old with 5 years of service, the  
23 benefit is available.

24 The benefit is not available to the  
25 38-year-old because that person is eligible to retire on

1 a normal retirement benefit. Age isn't the driver.  
2 Eligibility for retirement is the motivation.

3           And while my brother says that Congress  
4 wanted to overturn Betts, what they wanted to overturn  
5 in Betts was the language in this Court's decision that  
6 cast doubt on whether pension plans were generally  
7 covered by the language of the Age Discrimination in  
8 Employment Act. And the Older Workers Benefits  
9 Protection Act, if one looks at the legislative history,  
10 was focused far less on what happened in a public  
11 employee retirement system. The real issue that  
12 Congress focused on, if one looks at the House and  
13 Senate reports, is they said there is a problem in  
14 private industry in the Rust Belt that normal retirement  
15 eligibility is being used to force people not to get  
16 some other benefit in some other stand-alone plan.  
17 That's not the issue here.

18           And the plan in Betts is no more like  
19 Kentucky's plan than the Thurston plan. In Thurston,  
20 the pilot case, no pilot over 60, no matter how  
21 skillful, had bumping rights to be a flight engineer.  
22 In Kentucky, one with 20 years of service, regardless of  
23 age, is in the same posture as someone who is 55 with a  
24 minimum service.

25           My brother also pointed you to a provision

1 in the Kentucky statute on pages 7a and -- page 7a in  
2 the appendix. Look also at 2a, which defines normal  
3 retirement to be 55 with 5 years of service, or 20 years  
4 of service regardless of age. The methodology for  
5 determining disability in this case is exactly the same.  
6 It's based on your proximity to normal retirement, not  
7 based on your age.

8 One example was given. If a person is 45  
9 years old with 4 years of service and became disabled,  
10 that person would get nothing because they haven't met  
11 the five-year service requirement. But a 55-year-old  
12 with 4 years of service has a normal retirement benefit.

13 It's about limited Government resources not  
14 being duplicated, and perhaps that's the reason why the  
15 EEOC adopted its regulation on December 26th  
16 coordinating retiree health care. The rationale they  
17 gave was we looked at all the -- all the ways to do  
18 this, and we couldn't come up with a reason to do it any  
19 other way.

20 In the Sixth Circuit Federal argument, Judge  
21 Boggs noted in his dissent -- Chief Judge Boggs noted he  
22 asked the EEOC for a reason on how to fix this, and they  
23 couldn't give him one.

24 What this case is about is about being fair  
25 to workers without regard to age. All the people who

1 run these plans, who fund these plans, who are in these  
2 plans, are all lined up on Kentucky's side of the table.

3 That should tell you that it's neither  
4 arbitrary nor discriminatory. The plan is fair, and the  
5 plan does not violate the law. We ask you to reverse  
6 the decision below and reinstate the district court's  
7 original final summary judgment.

8 Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you  
10 Mr. Klausner. The case is submitted.

11 (Whereupon, at 12:07 p.m., the case in the  
12 above-entitled matter was submitted.)

13

14

15

16

17

18

19

20

21

22

23

24

25

|          |   |   |  |   |
|----------|---|---|--|---|
| <b>A</b> | <p><b>ADEA's</b> 41:6<br/> <b>adopt</b> 21:6 45:1<br/> <b>adopted</b> 51:15<br/> <b>advance</b> 17:17<br/> <b>advantage</b> 8:13<br/> <b>adversely</b> 14:1<br/> <b>affirmative</b><br/>                 27:25 45:18<br/>                 48:9<br/> <b>age</b> 3:12,12,13<br/>                 3:15,16,17,24<br/>                 3:25 5:17,25<br/>                 9:6,6,9,11,17<br/>                 9:19,24,25<br/>                 10:6,8,11,14<br/>                 10:21 11:10,15<br/>                 11:19,20,21,24<br/>                 12:10,13,17,20<br/>                 13:12,19,21,23<br/>                 13:24 14:3,5<br/>                 14:11,12,18<br/>                 16:3,15 20:8<br/>                 20:12,24 21:8<br/>                 21:17,24 22:3<br/>                 22:6,7,7,12<br/>                 23:9,14,24<br/>                 24:4,17,19<br/>                 25:20,24 26:2<br/>                 26:5,5,8,11,15<br/>                 26:19,24 27:3<br/>                 27:8,11 28:1<br/>                 29:2 30:19<br/>                 31:5 32:12,17<br/>                 33:3,7,11 34:6<br/>                 34:12,14,21<br/>                 35:7 37:19<br/>                 38:1,20,20,22<br/>                 38:23,25 39:10<br/>                 39:22 40:2<br/>                 41:10 42:1,23<br/>                 45:9,12,19<br/>                 49:3 50:1,7,23<br/>                 51:4,7,25<br/> <b>ages</b> 24:9<br/> <b>age-based</b> 36:2<br/>                 39:1<br/> <b>age-neutral</b></p> | <p>37:15,16<br/> <b>age-specific</b><br/>                 38:17<br/> <b>agree</b> 21:10<br/> <b>ahead</b> 38:24<br/> <b>aiming</b> 29:2<br/> <b>Airlines</b> 3:14<br/> <b>AL</b> 1:4<br/> <b>alike</b> 8:3,19<br/> <b>ALITO</b> 12:1,8<br/>                 12:14 26:21<br/>                 28:4 38:3<br/> <b>allows</b> 12:15<br/>                 26:12<br/> <b>alternative</b><br/>                 37:18<br/> <b>alternatives</b><br/>                 37:18<br/> <b>amass</b> 29:11<br/> <b>amended</b> 40:19<br/> <b>amicus</b> 20:14<br/> <b>amount</b> 4:12,18<br/>                 19:20<br/> <b>amounts</b> 3:23<br/> <b>analyze</b> 29:1<br/> <b>and-a-half</b> 5:3<br/>                 8:1,2<br/> <b>answer</b> 9:7<br/>                 10:17 15:18<br/>                 16:8 18:19<br/>                 22:8 47:17<br/> <b>answered</b> 22:25<br/> <b>answers</b> 35:3<br/> <b>anti-discrimin...</b><br/>                 40:17 41:3,6<br/> <b>anybody</b> 4:24<br/>                 38:21<br/> <b>anyway</b> 26:18<br/> <b>apart</b> 33:11<br/> <b>appear</b> 13:1<br/> <b>APPEARAN...</b><br/>                 1:15<br/> <b>appears</b> 12:22<br/> <b>appendix</b> 51:2<br/> <b>applies</b> 9:10<br/>                 14:3 16:24<br/> <b>apply</b> 14:4</p> | <p><b>appreciate</b> 3:17<br/>                 3:22 4:5<br/> <b>arbitrary</b> 4:1,4<br/>                 12:17,22 14:13<br/>                 23:1 52:4<br/> <b>area</b> 49:7<br/> <b>argued</b> 21:19<br/> <b>argument</b> 1:13<br/>                 2:2,7 3:3,7<br/>                 11:11 12:2<br/>                 23:19 28:15<br/>                 31:3 43:20<br/>                 49:16 51:20<br/> <b>asked</b> 20:20<br/>                 51:22<br/> <b>asking</b> 29:5<br/>                 46:19<br/> <b>aspects</b> 49:2<br/> <b>Assembly</b> 7:16<br/> <b>assistance</b> 36:5<br/> <b>Assistant</b> 1:18<br/> <b>assume</b> 29:15<br/> <b>assuming</b> 7:5<br/> <b>assumption</b> 21:6<br/>                 47:19<br/> <b>as-applied</b> 21:19<br/> <b>attainment</b> 26:1<br/> <b>attention</b> 24:14<br/> <b>attracting</b> 19:21<br/> <b>available</b> 44:1<br/>                 48:16,18,19,23<br/>                 48:25 49:21,23<br/>                 49:24<br/> <b>average</b> 11:2,8<br/> <b>aware</b> 13:3<br/> <b>a.m</b> 1:14 3:2</p> | <p>41:10 51:6,7<br/> <b>basic</b> 24:4 40:16<br/>                 41:2 43:23<br/> <b>basis</b> 9:6,16 10:5<br/>                 10:21,24 11:10<br/>                 12:2 13:15,16<br/>                 14:5 21:7<br/>                 23:13 28:1,24<br/>                 36:2,16 37:9<br/>                 37:15,16 38:1<br/>                 38:17 39:1<br/>                 42:23,25 43:9<br/> <b>bear</b> 36:11<br/> <b>bears</b> 36:9,14,14<br/> <b>began</b> 4:18 8:21<br/>                 9:4<br/> <b>begins</b> 7:8 45:9<br/> <b>behalf</b> 1:16,20<br/>                 2:4,6,9 3:8<br/>                 23:20 47:10<br/>                 49:17<br/> <b>belie</b> 47:19<br/> <b>believe</b> 20:19<br/>                 22:24<br/> <b>belt</b> 30:8,9,10<br/>                 50:14<br/> <b>benchmark</b><br/>                 33:17,18<br/> <b>benefit</b> 8:8,16<br/>                 10:20,20,23<br/>                 11:3,6 15:21<br/>                 15:21,24 16:4<br/>                 17:4,19 18:23<br/>                 19:14,17 20:18<br/>                 23:8 25:2,2,8<br/>                 26:25 31:6,7<br/>                 32:11,18 36:11<br/>                 36:14,14,16<br/>                 40:19 43:11,22<br/>                 44:17,19 47:11<br/>                 47:24 49:20,21<br/>                 49:23,24 50:1<br/>                 50:16 51:12<br/> <b>benefits</b> 3:19 6:9<br/>                 19:15,25 20:18<br/>                 23:23 24:10<br/>                 26:23 27:21</p> |
| <b>B</b> |   |   | <p><b>back</b> 22:23 29:4<br/>                 49:18<br/> <b>bad</b> 3:13<br/> <b>balance</b> 18:25<br/> <b>based</b> 3:11,15<br/>                 8:20 9:19,25<br/>                 10:6,7,10,13<br/>                 13:2 21:1,8<br/>                 29:2 36:21,23</p>  |   |

|  |          |  |   |  |
|--|----------|--|---|--|
| 36:21 39:13,14<br>39:18 40:20,24<br>41:2 44:1,6,9<br>44:12,15,20<br>45:3,13 46:22<br>46:23 47:13<br>48:23,25 50:8<br><b>better</b> 3:21 13:7<br>16:11<br><b>Betts</b> 22:11 23:7<br>39:9,10 40:21<br>47:21 50:4,5<br>50:18<br><b>beyond</b> 27:10<br>28:6 31:21<br><b>big</b> 46:3<br><b>bit</b> 19:7<br><b>blue</b> 24:15<br><b>body</b> 12:22<br><b>Boggs</b> 51:21,21<br><b>boiled</b> 10:19<br><b>boils</b> 31:3 43:20<br><b>boost</b> 35:19<br>41:14<br><b>bottom</b> 24:20<br><b>Breyer</b> 4:3,9,21<br>5:5,9,15,24 6:2<br>6:5,10,15,17<br>7:4,18 17:21<br>17:24 18:20<br>19:2,12 20:16<br>24:3 33:16,22<br>34:16 35:8,15<br>37:1 39:20<br>40:10 45:20<br>46:14<br><b>Breyer's</b> 9:8,13<br>10:18 16:9<br><b>brief</b> 4:12 24:15<br>37:2<br><b>briefs</b> 20:14<br><b>bring</b> 19:1,3<br><b>brother</b> 50:3,25<br><b>brought</b> 37:1<br><b>bumping</b> 50:21<br><b>business</b> 33:24 | <b>C</b> | 19:23 23:17,21<br>33:1,6 44:22<br>49:12 51:21<br>52:9<br><b>child</b> 15:6 48:15<br><b>children</b> 49:6,10<br><b>choose</b> 27:15<br><b>chopped</b> 34:24<br><b>chose</b> 41:4 47:13<br><b>Circuit</b> 51:20<br><b>circumstance</b><br>21:20,22<br><b>circumstances</b><br>9:9,11,12<br>21:21 47:17<br><b>Civil</b> 20:6,11<br><b>claim</b> 26:18 31:3<br>36:3 43:4,20<br>46:5<br><b>class</b> 29:6,23<br>30:3,13,19<br>44:9<br><b>clear</b> 26:12<br>35:25 38:18<br>44:5<br><b>clearer</b> 48:2<br><b>clearly</b> 15:1 22:9<br>36:17<br><b>Cline</b> 14:8,11<br>26:16 33:12<br><b>close</b> 36:14,15<br>43:8<br><b>closely</b> 7:15<br>17:18<br><b>closer</b> 7:9,12<br>8:22 18:25<br><b>closest</b> 17:20<br><b>code</b> 43:16<br><b>collect</b> 39:14<br><b>come</b> 51:18<br><b>comes</b> 6:7<br><b>COMMISSION</b><br>1:8<br><b>common</b> 16:4,6<br>20:13,14<br><b>Commonwealth</b><br>19:16 | <b>Commonweal...</b><br>19:21<br><b>comparison</b><br>29:18<br><b>comparisons</b><br>34:22<br><b>compensation</b><br>32:23<br><b>complaining</b><br>6:18<br><b>complaint</b> 17:25<br>18:8<br><b>computation</b><br>31:9,11 32:21<br>33:4 39:17<br>44:14<br><b>computed</b> 36:21<br>44:20<br><b>computing</b><br>27:20<br><b>condition</b> 26:2<br><b>conditions</b> 40:23<br><b>Congress</b> 13:21<br>13:22 20:19<br>23:4,7 29:2<br>35:9 38:19<br>39:7 40:19,21<br>41:1,4 48:2,7,8<br>50:3,12<br><b>consequence</b><br>39:6 48:7<br><b>considerable</b><br>40:3<br><b>considered</b> 40:1<br><b>consistent</b> 27:7<br><b>consolidated</b><br>3:18<br><b>constantly</b> 29:1<br><b>Constitution</b><br>19:15<br><b>construed</b> 40:9<br>40:15 41:8<br><b>contained</b> 41:3<br><b>context</b> 40:1<br><b>continue</b> 27:10<br>29:14,25 38:8<br><b>continued</b> 47:18 | <b>continuing</b><br>27:17 39:12<br><b>contrary</b> 39:8<br>40:8<br><b>contributed</b><br>36:22<br><b>coordinating</b><br>51:16<br><b>correct</b> 4:17<br>6:16 9:15,22<br>12:5 15:9,19<br>15:25 27:4<br>33:5 43:25<br>48:6<br><b>correcting</b> 4:5<br><b>correctly</b> 4:6<br><b>correlated</b> 11:21<br>22:3<br><b>correlation</b><br>38:12<br><b>cost-justificati...</b><br>28:13<br><b>counsel</b> 23:17<br><b>country</b> 8:17<br><b>couple</b> 34:9<br><b>course</b> 31:22<br>34:21<br><b>court</b> 1:1,13<br>3:10 11:20,22<br>12:25 14:16<br>20:7,13 22:1<br>22:12 23:22<br>40:14,20<br><b>court's</b> 14:8<br>21:15 26:16<br>33:12 50:5<br>52:6<br><b>cover</b> 16:19<br>40:20 48:8<br><b>coverage</b> 22:20<br><b>covered</b> 17:3,16<br>23:8 40:21<br>50:7<br><b>covers</b> 16:19<br><b>crafted</b> 25:25<br><b>create</b> 23:6<br><b>credit</b> 7:22,25 |
|--|----------|--|---|--|

|   |   |  |   |   |
|---|---|--|---|---|
| 18:4 28:8,10<br>28:12 32:7<br><b>credited</b> 18:11<br>24:24<br><b>criteria</b> 25:16<br><b>criterion</b> 13:25<br>14:1 31:21<br>36:8<br><b>current</b> 19:12<br>24:23<br><b>customary</b><br>12:25<br><b>cuts</b> 20:18  | 3:13<br><b>determination</b><br>9:19,23,25<br>10:4<br><b>determine</b> 20:24<br>22:1 25:7<br><b>determined</b><br>13:18<br><b>determines</b> 3:24<br>15:22<br><b>determining</b><br>3:23 33:8<br>45:17 51:5<br><b>difference</b> 6:6<br>6:20,21 14:2<br>43:23<br><b>differences</b><br>25:14<br><b>different</b> 7:10<br>13:21 14:11<br>24:9,9 25:2,3<br>25:16 31:12<br>35:2 41:24<br>44:20<br><b>differently</b> 24:4<br>25:4 43:14<br><b>direct</b> 13:4<br>24:13<br><b>directly</b> 49:8<br><b>disability</b> 5:1<br>8:23 10:19,20<br>15:10,10,14,14<br>15:21,21,22<br>16:1,4,17,18<br>16:19,22,24<br>17:10 19:17,20<br>20:1 22:13,16<br>22:18,20 24:19<br>24:22 25:1,7<br>25:14,19,20<br>26:8 27:15,20<br>29:15 30:1,15<br>31:1,6,7,20,22<br>31:25 32:1,19<br>33:19 37:7<br>39:14,15,17<br>41:18 42:5 | 43:17,18,22,25<br>44:3,9 45:3<br>46:21,22 47:24<br>48:1,24 51:5<br><b>disabled</b> 4:23<br>5:9,10,10,18<br>5:18,20 6:13<br>7:5 8:9 15:7,12<br>17:5 18:2,6,10<br>18:12,21 19:4<br>19:25 20:8,18<br>21:2 23:24<br>24:7 25:8<br>26:24 27:22<br>28:3,7,19<br>30:14 34:1<br>35:20,21 36:20<br>37:5,19,22<br>38:5,6,13<br>39:12 41:16,25<br>44:24,25 45:4<br>45:7,10,13,14<br>46:1 48:20<br>51:9<br><b>disables</b> 26:6<br><b>disabling</b> 17:17<br><b>disadvantage</b><br>35:12<br><b>disadvantages</b><br>23:25<br><b>discriminate</b> 9:6<br>9:16 12:19<br>13:14,16 14:5<br>21:8 23:13<br>39:25,25 40:6<br>40:8<br><b>discriminated</b><br>17:1 21:23<br><b>discriminates</b><br>14:21<br><b>discrimination</b><br>6:18 11:7,20<br>12:17 14:3,12<br>21:15 29:2<br>42:6,7,23,24<br>43:2 49:4 50:7<br><b>discriminatory</b> | 4:1 21:14,18<br>52:4<br><b>discussing</b> 41:11<br><b>disparate</b> 14:17<br>35:18 43:4<br><b>disparities</b> 36:2<br><b>disparity</b> 39:9<br><b>dissent</b> 51:21<br><b>distinct</b> 25:13,14<br><b>distinction</b><br>14:14 39:1<br><b>distinctions</b> 3:15<br>41:10<br><b>distinguishes</b><br>30:12<br><b>district</b> 52:6<br><b>doing</b> 9:17 29:14<br>30:1 34:6<br>36:12<br><b>double</b> 4:6<br><b>doubt</b> 50:6<br><b>dramatically</b><br>24:9<br><b>draw</b> 14:19<br><b>drawn</b> 40:17<br><b>driver</b> 20:24<br>50:1<br><b>due</b> 25:20 27:14<br>27:19 30:25<br>31:25 32:19<br>43:16 44:3<br>46:20 47:24<br>48:24<br><b>duplicated</b><br>51:14<br><b>duty</b> 19:22 31:5<br><b>D.C</b> 1:10,19 | 4:16 8:20<br><b>effect</b> 9:5 19:23<br>21:20,25,25<br>45:2<br><b>effectively</b> 21:23<br><b>either</b> 18:20<br>24:17 25:17<br>29:22 31:5<br><b>elected</b> 39:11<br><b>element</b> 26:5<br>33:3 49:3<br><b>eligibility</b> 3:11<br>10:1,5 11:15<br>11:23 17:23<br>22:5 25:15<br>26:2 27:11<br>31:20,21 32:4<br>42:1 50:2,15<br><b>eligible</b> 6:8,8 8:8<br>8:16 9:1,23<br>15:23 16:15,16<br>18:9,22 25:8<br>25:19 31:4,13<br>31:15 32:1,10<br>39:13 42:4<br>43:13,17 44:9<br>47:12 48:20<br>49:25<br><b>eliminate</b> 12:12<br>12:17<br><b>employee</b> 21:2<br>36:18 47:3<br>50:11<br><b>employees</b> 19:12<br>19:22 20:9,10<br>20:11 24:1,7,7<br>31:10 46:25<br>47:6<br><b>employee's</b><br>45:19<br><b>employer</b> 12:19<br>36:4,18,22<br>38:21,22<br><b>employers</b> 23:10<br>48:9<br><b>employment</b> 1:7<br>16:22 17:3,6 |
| <b>D</b>  |   |  |   |   |
| <b>D</b> 1:16 2:3,8 3:1<br>3:7 49:16<br><b>day</b> 7:11 18:21<br><b>deal</b> 37:4<br><b>dealt</b> 11:16<br><b>December</b> 51:15<br><b>deciding</b> 28:1<br><b>decision</b> 26:1,16<br>33:12 48:3<br>50:5 52:6<br><b>decisionmaking</b><br>23:25<br><b>decisions</b> 38:17<br><b>defense</b> 28:14<br>45:18 48:9<br><b>defenses</b> 27:25<br><b>define</b> 32:15<br><b>defined</b> 44:8<br><b>defines</b> 51:2<br><b>defining</b> 32:10<br><b>degree</b> 40:3<br><b>Department</b><br>1:19<br><b>dependent</b><br>45:19 49:10<br><b>depends</b> 42:11<br><b>derived</b> 47:10<br><b>design</b> 12:18<br>14:23<br><b>designed</b> 12:16<br>16:19 35:10<br><b>determinant</b> |   |  |   |   |
|   |   |  | <b>E</b>  |   |
|   |   |  | <b>E</b> 2:1 3:1,1<br><b>earlier</b> 41:12<br><b>early</b> 26:3<br><b>economic</b> 19:18<br><b>EEOC</b> 3:5,20<br>17:1 47:10<br>51:15,22<br><b>EEOC's</b> 3:16  |   |

|   |   |   |   |   |
|---|---|---|---|---|
| <p>40:23 50:8<br/> <b>enables</b> 22:22<br/> <b>enacting</b> 40:22<br/> <b>enactment</b> 48:4<br/> <b>ended</b> 4:13<br/> <b>endured</b> 11:1<br/> <b>engineer</b> 50:21<br/> <b>entirely</b> 9:22<br/>             49:11<br/> <b>EQUAL</b> 1:7<br/> <b>equally</b> 43:8<br/> <b>erase</b> 12:9<br/> <b>ESQ</b> 1:16,18 2:3<br/>             2:5,8<br/> <b>essentially</b> 17:15<br/>             47:14<br/> <b>establish</b> 24:1<br/>             28:13 34:11,12<br/> <b>establishes</b><br/>             31:20<br/> <b>establishing</b><br/>             27:25<br/> <b>estimate</b> 27:21<br/>             37:21<br/> <b>estimating</b><br/>             47:15<br/> <b>ET</b> 1:4<br/> <b>event</b> 17:17<br/>             29:18 30:4<br/> <b>everybody</b> 16:4<br/>             19:19 34:2<br/>             39:23,23,24<br/> <b>evil</b> 23:4<br/> <b>eviscerated</b> 39:2<br/> <b>exactly</b> 11:25<br/>             30:11 32:9<br/>             51:5<br/> <b>example</b> 4:19<br/>             7:7 8:7,21 9:14<br/>             16:1 19:1,11<br/>             19:14 20:7<br/>             21:4 34:18<br/>             38:18 45:5<br/>             51:8<br/> <b>exception</b> 25:23<br/>             26:10<br/> <b>exclude</b> 26:4</p> | <p><b>excluding</b> 44:3,5<br/> <b>exclusive</b> 33:7<br/> <b>exemption</b> 26:7<br/>             33:10<br/> <b>exhibit</b> 35:1<br/> <b>expenses</b> 34:2<br/> <b>expensive</b> 28:16<br/> <b>explain</b> 7:1<br/> <b>explains</b> 40:25<br/> <b>explicit</b> 9:7,19<br/>             23:24 33:10<br/>             39:1<br/> <b>explicitly</b> 21:8<br/> <b>expressly</b> 12:14<br/> <b>extend</b> 19:8<br/> <b>extent</b> 26:12<br/> <b>extra</b> 5:20,21<br/>             6:1,22,24 7:25<br/>             8:2 18:7,13,14<br/>             18:15,17,18<br/>             19:8</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> 14:19,22<br/>             21:22<br/> <b>facial</b> 21:15<br/> <b>facially</b> 4:1<br/>             21:14<br/> <b>fact</b> 8:13,16 16:3<br/>             20:9 31:22<br/>             44:23 46:19<br/>             47:18<br/> <b>factor</b> 3:25,25<br/>             9:7 23:25 26:8<br/>             32:22<br/> <b>factors</b> 3:22<br/>             21:24<br/> <b>factually</b> 3:21<br/>             6:3,5,12<br/> <b>fails</b> 3:17,22<br/> <b>fair</b> 11:2,7,11<br/>             43:14 46:14<br/>             51:24 52:4<br/> <b>fairly</b> 34:2<br/> <b>fairness</b> 9:4<br/> <b>fall</b> 40:6<br/> <b>fallacy</b> 8:20</p> | <p><b>far</b> 43:2 50:10<br/> <b>fare</b> 3:21<br/> <b>favor</b> 15:1<br/> <b>favoring</b> 48:12<br/> <b>favours</b> 7:11<br/> <b>Federal</b> 20:5,10<br/>             23:10 33:7<br/>             51:20<br/> <b>FERS</b> 20:10<br/> <b>fewer</b> 29:8,12<br/>             30:3 38:24<br/>             41:13 45:13<br/> <b>fills</b> 16:18<br/> <b>final</b> 15:4 32:23<br/>             47:20 48:14<br/>             52:7<br/> <b>financial</b> 7:16<br/>             36:5 41:14<br/>             49:9<br/> <b>find</b> 34:22<br/> <b>fine</b> 7:19 18:6<br/>             27:23 32:20,24<br/>             33:1,2 44:4<br/>             46:22<br/> <b>finish</b> 48:12<br/> <b>fire</b> 8:12 29:17<br/>             30:4 33:17<br/> <b>fired</b> 11:17<br/> <b>firefighter</b> 17:5<br/>             22:18<br/> <b>firefighters</b><br/>             19:24 23:11,12<br/>             34:13,14<br/> <b>first</b> 13:12 16:22<br/>             17:2,6 18:13<br/>             25:15 26:9<br/>             34:10 35:3,18<br/>             40:7 41:13<br/>             42:9 45:10,15<br/> <b>five</b> 8:15 9:24<br/>             16:20,22 17:2<br/>             17:6 25:21<br/>             31:25 33:14<br/>             37:20 42:1,2,4<br/>             42:14 44:2<br/>             47:8<br/> <b>five-year</b> 17:9</p> | <p>51:11<br/> <b>fix</b> 51:22<br/> <b>Fla</b> 1:16<br/> <b>flight</b> 50:21<br/> <b>focus</b> 3:17<br/> <b>focused</b> 50:10<br/>             50:12<br/> <b>follow</b> 15:18<br/>             19:11,14 29:20<br/> <b>following</b> 10:20<br/>             24:22<br/> <b>follows</b> 7:4<br/> <b>footnote</b> 37:3<br/> <b>forbidden</b> 34:25<br/> <b>forbids</b> 19:15<br/> <b>force</b> 35:6 46:3<br/>             47:14 50:15<br/> <b>forced</b> 25:20<br/>             27:14,19 30:25<br/>             31:25 32:19<br/>             43:16 44:2<br/>             46:20 47:23<br/>             48:21,23 49:1<br/> <b>forces</b> 23:10<br/> <b>formula</b> 44:21<br/> <b>found</b> 11:20<br/> <b>four</b> 49:14<br/> <b>fringe</b> 40:20,24<br/>             41:2<br/> <b>full</b> 5:12<br/> <b>fully</b> 22:24<br/> <b>function</b> 25:10<br/> <b>functions</b> 25:13<br/> <b>fund</b> 52:1<br/> <b>further</b> 49:3<br/> <b>future</b> 30:7</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 3:1<br/> <b>gap</b> 16:19 17:15<br/> <b>garden</b> 29:1<br/> <b>General</b> 1:19<br/>             7:16<br/> <b>generalization</b><br/>             29:7 30:24<br/>             38:16,25<br/> <b>generalizations</b></p> | <p>36:1 41:21<br/> <b>generally</b> 50:6<br/> <b>generous</b> 27:14<br/>             39:18 44:14<br/>             47:6<br/> <b>getting</b> 8:25<br/>             32:7,7 37:12<br/> <b>Ginsburg</b> 13:3<br/>             13:22 14:7,25<br/>             15:10,17 17:8<br/>             36:25 48:11<br/> <b>Ginsburg's</b><br/>             22:24 49:19<br/> <b>give</b> 5:19 6:22<br/>             6:24 7:25 8:2<br/>             11:3 18:4,7,15<br/>             18:17 26:25<br/>             28:8,9,11 31:6<br/>             31:7 33:19<br/>             35:3 37:10<br/>             46:3,7,8,22<br/>             51:23<br/> <b>given</b> 18:12,13<br/>             32:18 35:17<br/>             47:4 51:8<br/> <b>gives</b> 14:12 23:1<br/> <b>giving</b> 6:10 45:3<br/> <b>glad</b> 8:1<br/> <b>go</b> 3:23 5:19<br/>             7:20 29:4<br/> <b>goal</b> 3:19 19:21<br/> <b>goes</b> 9:10 14:19<br/>             39:23<br/> <b>going</b> 28:9 29:16<br/>             33:19 36:12<br/>             37:7 38:4,4,8<br/>             38:21 45:2,22<br/>             46:18 47:16<br/> <b>gold</b> 46:4,7,8<br/> <b>good</b> 8:1 9:17<br/>             12:1 34:2<br/> <b>government</b><br/>             13:17 14:15<br/>             21:19 23:10<br/>             51:13<br/> <b>greater</b> 33:22,23<br/>             35:3</p> |
|---|---|---|---|---|

|   |   |  |  |   |
|---|---|--|--|---|
| <b>greatest</b> 49:9                            | <b>hypothetical</b><br>9:12                           | 31:24 33:13<br>39:10 43:6                        | <b>judgment</b> 52:7                         | <b>K</b>  |
| <b>group</b> 30:3,23<br>35:19 38:23             | <hr/> <b>I</b> <hr/>                                  | <b>individuals</b><br>32:16 43:5                 | <b>Justice</b> 1:19 3:3                      | <b>keep</b> 35:5 39:11  |
| <b>groups</b> 7:10                              | <b>idea</b> 39:20                                     | <b>individual's</b><br>12:20                     | 3:9,13 4:3,8,9                               | <b>Kennedy</b> 9:2,22<br>21:5 22:8  |
| <b>guarantee</b> 28:16                          | <b>identical</b> 39:8<br>47:21                        | <b>industry</b> 50:14                            | 4:21 5:5,9,15                                | <b>Kentucky</b> 1:3<br>3:4,11,17 7:17<br>8:17 14:20<br>19:15 22:15,17<br>23:8,12,24<br>24:1,14,24<br>25:5 26:12,22<br>27:13,18 30:20<br>31:18,18,24<br>32:15 35:5<br>37:9 43:15<br>45:3,16 46:18<br>46:19 48:22<br>49:5,8 50:22<br>51:1                                   |
| <b>guaranteed</b> 15:3<br>48:13 49:20           | <b>illegitimate</b> 27:5<br>27:5,13                   | <b>inevitably</b> 40:2                           | 5:24,24 6:2,5                                | <b>Kentucky's</b> 47:5<br>50:19 52:2  |
| <b>guess</b> 4:3 37:17                          | <b>imagine</b> 42:8                                   | <b>inference</b> 14:22<br>21:16 41:7             | 6:10,15,17 7:3                               | <b>kind</b> 29:1 34:3<br>34:23 46:5   |
| <b>guessing</b> 30:17                           | <b>immediately</b><br>17:11,18                        | <b>infinite</b> 37:25                            | 7:18 8:5 9:2,8                               | <b>Klausner</b> 1:16<br>2:3,8 3:6,7,9<br>4:8,16,25 5:8<br>5:13,23 6:4,6<br>6:13,16 7:3 8:5<br>9:21 10:15<br>11:12,14 12:5<br>12:11,16 13:3<br>13:10 14:7<br>15:9,25 16:6<br>16:10,18 17:13<br>17:23 18:19<br>19:10 20:2,23<br>21:12 29:5<br>37:11 49:14,16<br>49:18 52:10 |
| <hr/> <b>H</b> <hr/>                            | <b>immutable</b><br>39:22 40:11                       | <b>initial</b> 17:9 36:6                         | 9:13,21 10:3,7                               | <b>know</b> 6:3,12,19<br>20:5 34:22<br>38:9   |
| <b>haec</b> 40:17                               | <b>impetus</b> 48:3                                   | <b>injured</b> 19:25                             | 10:9,10,12,13                                | <hr/> <b>L</b> <hr/>  |
| <b>hamburger</b><br>34:23                       | <b>implicated</b><br>35:10                            | <b>instance</b> 21:25<br>33:23 36:3              | 10:16,17,18                                  | <b>L</b> 1:18 2:5 23:19   |
| <b>happened</b> 50:10                           | <b>important</b> 13:11<br>14:16                       | <b>instances</b> 16:20<br>16:23                  | 10:16,17,18                                  | <b>language</b> 13:5<br>22:21 39:5  |
| <b>happening</b><br>37:12                       | <b>imputation</b> 11:9<br>32:2                        | <b>insurance</b> 16:1<br>34:3                    | 11:13 12:1,5,8                               |   |
| <b>happenstance</b><br>30:14,14,16              | <b>impute</b> 5:13,14<br>11:2 37:14,19<br>37:23 45:11 | <b>integrated</b> 3:18                           | 11:13 12:1,5,8                               |   |
| <b>hard</b> 27:9                                | <b>imputed</b> 4:18,20<br>5:21 6:7,14<br>7:14 10:23   | <b>intended</b> 14:9<br>20:20 26:11,19           | 12:14,21 13:3                                |   |
| <b>hazardous</b> 17:11<br>19:22                 | <b>impudent</b> 4:18,20<br>5:21 6:7,14<br>7:14 10:23  | <b>intent</b> 14:18                              | 13:7,10,22                                   |   |
| <b>Hazen</b> 11:16<br>14:15 22:3                | <b>imputes</b> 36:24                                  | <b>interesting</b> 20:5                          | 14:7,25 15:9                                 |   |
| <b>health</b> 51:16                             | <b>imputing</b> 45:16                                 | <b>interpretation</b><br>37:4                    | 15:17,19 16:2                                |   |
| <b>hear</b> 3:3 6:21                            | <b>inability</b> 15:15                                | <b>interpreting</b><br>12:24                     | 16:8,9,11,12                                 |   |
| <b>held</b> 40:21                               | <b>inapplicable</b><br>34:14,17,17                    | <b>interrelations...</b><br>13:20                | 17:8,21,24                                   |   |
| <b>help</b> 25:7 33:25                          | <b>include</b> 44:10                                  | <b>introduce</b> 24:25                           | 18:20 19:2,11                                |   |
| <b>helpful</b> 9:3                              | <b>included</b> 13:12<br>35:4                         | <b>introduce</b> 49:3                            | 19:23 20:16                                  |   |
| <b>Hey</b> 46:7                                 | <b>includes</b> 33:23<br>40:23                        | <b>invidious</b> 14:13<br>38:15 41:20            | 21:5 22:8,23                                 |   |
| <b>highly</b> 28:21                             | <b>including</b> 29:24                                | <b>irrebuttable</b><br>47:16                     | 23:17,21 24:3                                |   |
| <b>hire</b> 38:21                               | <b>incorrect</b> 25:12<br>31:16 35:16                 | <b>issue</b> 15:11,14<br>22:25 47:22<br>50:11,17 | 24:11,25 25:6                                |   |
| <b>hired</b> 19:12,18                           | <b>indication</b> 35:12                               | <hr/> <b>J</b> <hr/>                             | 25:10,22 26:20                               |   |
| <b>history</b> 13:8,11<br>23:3 40:18,25<br>50:9 | <b>individual</b> 5:16<br>11:17 16:25<br>24:17 27:19  | <b>January</b> 1:11                              | 26:21 28:4,20                                |   |
| <b>hold</b> 30:24                               |   | <b>job</b> 23:6 27:1<br>45:10                    | 29:19,21 30:6                                |   |
| <b>holding</b> 14:8                             |   | <b>jobs</b> 19:22 23:11                          | 30:10,11 31:2                                |   |
| <b>Honor</b> 4:17,19<br>4:25 5:14<br>21:12      |   | <b>Judge</b> 51:20,21                            | 31:11 32:4                                   |   |
| <b>House</b> 50:12                              |   |  | 33:1,6,16,22                                 |   |
| <b>Huh</b> 10:9                                 |   |  | 34:16 35:8,15                                |   |
| <b>hundred</b> 19:13                            |   |  | 36:7,25 37:1                                 |   |
| <b>hurt</b> 27:1                                |   |  | 38:3 39:20                                   |   |
| <b>hypothesis</b><br>42:20                      |   |  | 40:10 41:23                                  |   |
|   |   |  | 42:9,13,16,20                                |   |
|   |   |  | 42:22 43:1,19                                |   |
|   |   |  | 44:11,15,22                                  |   |
|   |   |  | 45:20 46:14                                  |   |
|   |   |  | 48:11 49:12,19<br>52:9                       |   |
|   |   |  | <b>justifiably</b> 38:23                     |   |
|   |   |  | <b>justification</b><br>38:11 43:12<br>49:4  |   |
|   |   |  | <b>justifications</b><br>35:17 40:4<br>41:12 |   |
|   |   |  | <b>justifies</b> 6:21                        |   |
|   |   |  | <b>justify</b> 41:22                         |   |

|  |   |  |  |  |
|--|---|--|--|--|
| <p>40:15 50:5,7<br/> <b>larger</b> 43:11<br/> <b>Laughter</b> 46:16<br/> <b>law</b> 24:24 30:20<br/> 31:18,24 33:7<br/> 52:5<br/> <b>leave</b> 7:7 8:9<br/> <b>left</b> 49:11,19<br/> <b>legislative</b> 13:8<br/> 13:11 23:3<br/> 40:18,25 50:9<br/> <b>lesser</b> 33:22,23<br/> 33:24 34:8<br/> 35:4<br/> <b>letting</b> 7:24<br/> <b>let's</b> 5:19 17:8<br/> <b>liability</b> 19:16<br/> <b>life</b> 13:18<br/> <b>limit</b> 38:20<br/> <b>limited</b> 4:17<br/> 16:23 51:13<br/> <b>limits</b> 7:16<br/> <b>line</b> 8:12 29:17<br/> 30:4,15<br/> <b>lined</b> 52:2<br/> <b>literal</b> 39:5<br/> <b>litigation</b> 19:24<br/> <b>little</b> 8:14 11:6,6<br/> 14:25 47:8<br/> 48:12<br/> <b>live</b> 13:19<br/> <b>long</b> 10:22 13:19<br/> 13:20 27:10<br/> 28:22 38:1<br/> 48:25<br/> <b>longer</b> 17:10<br/> 22:18 30:23<br/> 35:21 38:13<br/> 41:16<br/> <b>look</b> 21:24 22:10<br/> 24:19 37:2<br/> 45:1,11 51:2<br/> <b>looked</b> 51:17<br/> <b>looking</b> 29:6,13<br/> 29:23 35:9<br/> <b>looks</b> 50:9,12<br/> <b>lot</b> 37:12</p> | <p><b>low</b> 37:6,7<br/> <b>lower</b> 11:3 19:14<br/> 19:25 20:2<br/> 47:24<br/> <b>lowering</b> 19:15</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>maintain</b> 41:5<br/> <b>make-whole</b><br/> 26:23<br/> <b>making</b> 10:4<br/> 28:15 29:18<br/> 31:17 33:3<br/> 37:6 43:15<br/> <b>MALCOLM</b><br/> 1:18 2:5 23:19<br/> <b>man</b> 14:1 25:7<br/> 34:4<br/> <b>materia</b> 41:8<br/> <b>matter</b> 1:12<br/> 25:22 50:20<br/> 52:12<br/> <b>ma'am</b> 17:13<br/> <b>McMann</b> 3:14<br/> <b>mean</b> 19:7 25:23<br/> 30:7 45:21<br/> <b>meaning</b> 23:2<br/> <b>means</b> 8:25 40:3<br/> <b>measure</b> 49:9<br/> <b>mechanical</b><br/> 34:19<br/> <b>meet</b> 11:18<br/> <b>mentioned</b> 8:6<br/> <b>mere</b> 21:17<br/> <b>merely</b> 11:21<br/> <b>met</b> 51:10<br/> <b>method</b> 45:17<br/> <b>methodology</b><br/> 31:9 32:22<br/> 39:17 44:14<br/> 51:4<br/> <b>minimal</b> 34:6<br/> <b>minimum</b> 26:2<br/> 26:11,15,19<br/> 33:10 34:11<br/> 50:24<br/> <b>minutes</b> 20:19</p> | <p>49:14<br/> <b>mixed</b> 40:2<br/> <b>moment</b> 19:5<br/> <b>month</b> 8:16<br/> <b>monthly</b> 15:4<br/> 48:14<br/> <b>months</b> 24:23<br/> 31:23<br/> <b>motivated</b> 12:18<br/> 14:18,23 22:7<br/> <b>motivation</b> 22:6<br/> 50:2<br/> <b>multiplier</b> 32:23<br/> <b>myriad</b> 3:22</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 2:1,1 3:1<br/> <b>narrowly</b> 25:25<br/> <b>national</b> 13:16<br/> <b>necessarily</b> 3:15<br/> <b>necessary</b> 24:12<br/> 32:3<br/> <b>need</b> 18:25 19:2<br/> 35:19 36:5<br/> 41:14 49:9<br/> <b>needed</b> 8:22<br/> <b>needs</b> 12:6<br/> <b>neither</b> 36:1<br/> 52:3<br/> <b>never</b> 13:14,15<br/> <b>nevertheless</b><br/> 32:18<br/> <b>new</b> 40:22<br/> <b>normal</b> 5:1 6:14<br/> 8:25 10:2<br/> 17:16,17 19:1<br/> 19:3 20:12,25<br/> 24:16 25:15,16<br/> 26:2 27:3<br/> 29:10 30:18<br/> 32:12,17,24<br/> 39:10,13 43:9<br/> 43:13 48:20<br/> 50:1,14 51:2,6<br/> 51:12<br/> <b>normally</b> 45:23<br/> <b>noted</b> 11:14</p> | <p>51:21,21<br/> <b>number</b> 5:2<br/> 16:14,23 19:11<br/> 27:21 35:1<br/> 37:21,25</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 2:1 3:1<br/> <b>objective</b> 27:5,6<br/> <b>occupation</b><br/> 17:11<br/> <b>occur</b> 11:23,24<br/> <b>occurs</b> 17:17<br/> <b>odds</b> 10:24<br/> <b>offered</b> 39:19<br/> 41:12<br/> <b>officer</b> 15:15,16<br/> 17:5 22:20<br/> 26:23 28:5,6<br/> 38:8<br/> <b>officers</b> 20:6<br/> 23:11,12<br/> <b>oh</b> 37:13<br/> <b>Ohio</b> 22:11,13<br/> 22:16<br/> <b>Okay</b> 6:17 11:13<br/> <b>old</b> 4:11 5:11<br/> 6:23 7:19<br/> 13:24 16:2<br/> 22:19 25:17<br/> 38:12 43:6,7<br/> 46:6,22 49:20<br/> 49:22 51:9<br/> <b>older</b> 3:21 7:9<br/> 7:11 8:12,13<br/> 8:21 14:6,9,23<br/> 18:5,14,23<br/> 23:6,25 29:11<br/> 29:16 30:2<br/> 31:14 35:11,18<br/> 36:4,20 39:24<br/> 40:18 44:5,19<br/> 44:25 45:4,9<br/> 46:24 47:3,6<br/> 47:23 49:1,10<br/> 50:8<br/> <b>opening</b> 9:4</p> | <p>45:22<br/> <b>operative</b> 13:5<br/> <b>opportunities</b><br/> 23:6<br/> <b>opportunity</b> 1:8<br/> 44:24 47:4<br/> <b>opposed</b> 4:7<br/> <b>oral</b> 1:12 2:2 3:7<br/> 23:19<br/> <b>order</b> 9:7 18:15<br/> 25:16 41:7<br/> <b>ordinary</b> 32:13<br/> <b>origin</b> 13:16<br/> <b>original</b> 52:7<br/> <b>outset</b> 36:8<br/> <b>overcompensa...</b><br/> 38:6<br/> <b>overturn</b> 48:3<br/> 50:4,4<br/> <b>OWBPA</b> 48:4<br/> <b>owed</b> 23:23</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 3:1<br/> <b>package</b> 45:22<br/> 45:23<br/> <b>page</b> 2:2 24:15<br/> 24:20 31:18<br/> 37:2 51:1<br/> <b>pages</b> 51:1<br/> <b>paid</b> 13:18<br/> <b>Paper</b> 11:16<br/> 14:15<br/> <b>paradigmatic</b><br/> 38:19<br/> <b>pari</b> 41:8<br/> <b>part</b> 4:3 13:19<br/> 15:6 17:25<br/> 26:22 28:15<br/> 32:5 36:17<br/> 44:18<br/> <b>partially</b> 5:23<br/> 6:4<br/> <b>participate</b><br/> 20:12<br/> <b>particular</b> 15:11<br/> 24:20 49:6</p> |
|--|---|--|--|--|

|  |   |   |  |   |
|--|---|---|--|---|
| <b>particularly</b><br>8:10 34:20<br>47:6  | 19:4 22:19<br>24:21,22 27:10<br>27:21 28:2,8<br>28:24 29:10,11<br>31:22 33:17,19<br>35:20 37:5,21<br>38:5 42:3,14<br>42:18 43:22<br>46:1,8,20<br>48:19 49:20,25<br>51:8,10                                  | <b>point</b> 17:21,23<br>28:23 31:8,17<br>41:19,24 43:15<br>44:18 47:20<br>49:2           | 50:14  | <b>Q</b>  |
| <b>party</b> 46:4  | <b>persons</b> 32:10<br>44:9  | <b>pointed</b> 50:25  | <b>probably</b> 13:9<br>19:8 34:2<br>35:20 37:25<br>41:15                        | <b>qualifications</b><br>40:13  |
| <b>pay</b> 14:23 17:10<br>35:6 36:4,8  | <b>Petitioners</b> 1:5<br>1:17 2:4,9 3:8<br>49:17   | <b>police</b> 15:16<br>17:5 20:6<br>22:20 23:11,12<br>26:23 28:5<br>34:13,14 38:8<br>46:3 | <b>problem</b> 32:14<br>37:1 44:7,8<br>45:21 46:25<br>47:1 48:22<br>50:13        | <b>qualified</b> 3:19<br>4:10 18:2<br>43:21   |
| <b>pension</b> 3:23 4:6<br>10:1 11:22,22<br>12:12 22:4<br>33:20 34:20,21<br>40:1 50:6  | <b>phrase</b> 40:23   | <b>position</b> 25:1  | <b>proffered</b> 49:5  | <b>qualify</b> 7:20<br>18:3,3,16<br>24:12,21 25:16<br>29:10   |
| <b>people</b> 7:10 9:20<br>14:24 19:12,18<br>20:18 21:8<br>27:14,15 29:9<br>29:13,16,17,24<br>30:2,4,12,18<br>30:20,21,23,25<br>31:3 33:25<br>34:19 35:6,12<br>36:23 37:12<br>38:6,23,24<br>41:13,25 44:1<br>44:3,19,21<br>47:9,11,12<br>48:23 49:8<br>50:15 51:25 | <b>physically</b> 27:16   | <b>possibility</b> 37:23  | <b>program</b> 20:12<br>23:13 25:9   | <b>qualifying</b> 42:15<br>43:8   |
| <b>percent</b> 5:3 8:1<br>8:3 15:3,5<br>48:14,15   | <b>picked</b> 12:23   | <b>possible</b> 6:19<br>7:15 17:19  | <b>prohibit</b> 9:9,10   | <b>qualitatively</b><br>13:21 14:11   |
| <b>perfect</b> 34:18   | <b>piece</b> 14:25 20:3<br>48:12  | <b>posture</b> 50:23  | <b>prohibition</b><br>40:17  | <b>question</b> 9:3,8<br>10:18 11:16<br>16:9 18:19<br>20:21 22:2,5,8<br>22:24 23:15<br>24:4 29:5 37:3<br>41:23 46:12<br>49:19 |
| <b>perfectly</b> 34:24   | <b>pilot</b> 50:20,20   | <b>post-disability</b><br>32:8  | <b>projecting</b> 27:9   | <b>quite</b> 34:10<br>35:25 46:11   |
| <b>period</b> 15:13<br>17:9 24:12<br>31:5  | <b>plainly</b> 41:21  | <b>practice</b> 20:13<br>20:14 38:19  | <b>prospective</b> 37:9  | <b>quoted</b> 31:19   |
| <b>permissible</b> 35:4  | <b>plaintiff</b> 19:6<br>34:4   | <b>preamble</b> 12:23<br>13:2,4,8 23:3  | <b>protect</b> 14:9  | <b>quoting</b> 31:17  |
| <b>permits</b> 34:7  | <b>plan</b> 3:18 4:1<br>7:10 8:11,14<br>8:17,23,24<br>9:23 11:19<br>12:18 14:23<br>15:20 16:5,7<br>16:14,21 18:22<br>18:22 19:4<br>20:25 22:5,12<br>22:13,14 42:6<br>42:10 49:7<br>50:16,18,19,19<br>52:4,5 | <b>precedents</b><br>21:15  | <b>protecting</b> 13:23  | <b>R</b>  |
| <b>person</b> 4:18,23<br>5:5 7:4,6,8,13<br>8:7,10,12,13<br>8:15,21 9:13<br>10:19,23,25<br>11:2,8,9,19<br>14:6,6 15:12<br>15:23 16:2<br>17:4 18:1,5,9<br>18:11,13,14,20   | <b>plans</b> 3:15 13:17<br>23:8 50:6 52:1<br>52:1,2   | <b>prefer</b> 14:6  | <b>protection</b> 17:6<br>22:19 40:19<br>50:9                                    | <b>R</b> 3:1  |
|  | <b>Plantation</b> 1:16  | <b>premise</b> 21:6   | <b>provide</b> 12:19<br>15:20 26:23<br>38:25                                     | <b>race</b> 13:15   |
|  | <b>plausible</b> 40:3   | <b>present</b> 39:9   | <b>provides</b> 18:23<br>25:11   | <b>racial</b> 13:25   |
|  | <b>please</b> 3:10<br>23:22   | <b>presumption</b><br>47:16   | <b>provision</b> 24:14<br>26:16 31:19,19<br>41:3,6 50:25                         | <b>raise</b> 9:3  |
|  | <b>plus</b> 10:14 16:15<br>22:7 26:5  | <b>presumptively</b><br>21:18   | <b>provisions</b> 24:24  | <b>range</b> 37:17  |
|  |   | <b>pretend</b> 5:11   | <b>proximity</b> 51:6  | <b>rationale</b> 51:16  |
|  |   | <b>prevailed</b> 35:23<br>41:17   | <b>proxy</b> 28:1  | <b>reach</b> 6:1 21:7<br>21:11,13   |
|  |   | <b>prevent</b> 23:5<br>35:10 44:22<br>45:3  | <b>public</b> 8:11<br>15:15 22:12<br>50:10                                       | <b>reached</b> 16:3<br>31:4   |
|  |   | <b>prevented</b> 29:14<br>30:1 39:12  | <b>purpose</b> 7:14<br>8:23 13:2<br>17:14 31:12,13<br>32:9 35:9,10<br>36:17 44:5 | <b>read</b> 4:12 13:1<br>26:4   |
|  |   | <b>preventing</b><br>45:16  | <b>purposes</b> 8:24   | <b>real</b> 50:11   |
|  |   | <b>pre-ADA</b> 38:19  | <b>put</b> 35:11 40:12   | <b>realistic</b> 38:7   |
|  |   | <b>private</b> 11:18  | <b>p.m</b> 52:11   | <b>really</b> 21:19<br>22:7 31:17<br>34:6 39:2<br>44:18 48:5  |
|  |   |   |  | <b>reason</b> 5:24,25   |

|  |  |   |   |  |
|--|--|---|---|--|
| 6:20,21 7:1,3<br>9:23 13:11,13<br>13:14,15 14:12<br>16:13 20:20<br>29:15,15 30:1<br>30:2 33:24<br>36:7 39:15<br>40:4 42:15<br>46:9 48:21<br>51:14,18,22<br><b>reasonable</b><br>21:16,24<br><b>reasons</b> 6:3,10<br>6:11 9:17<br>19:10<br><b>rebuttal</b> 2:7<br>23:16 49:16<br><b>receive</b> 6:14<br>10:1 24:9<br><b>received</b> 7:17<br>27:1 47:25<br><b>recognized</b><br>13:21,23<br><b>recover</b> 31:6<br><b>reduction</b> 20:3<br><b>reference</b> 26:18<br>41:2,10 43:15<br><b>references</b> 12:9<br><b>referring</b> 32:6<br><b>refers</b> 26:10<br><b>reflects</b> 40:5<br><b>regard</b> 51:25<br><b>regardless</b> 22:6<br>50:22 51:4<br><b>regular</b> 15:4,24<br>48:16,19<br><b>regulation</b> 51:15<br><b>reinforce</b> 41:7<br><b>reinstate</b> 52:6<br><b>relates</b> 14:10<br><b>relationship</b><br>36:9,11,15<br><b>relatively</b> 14:9<br>14:10<br><b>relevant</b> 15:22<br>24:14 34:21<br><b>relies</b> 14:15 | <b>religion</b> 13:17<br><b>remain</b> 47:13<br><b>remaining</b> 49:15<br><b>removed</b> 10:4<br><b>replicate</b> 7:15<br>17:18<br><b>replicates</b> 35:22<br><b>replicating</b><br>41:17<br><b>report</b> 38:18<br><b>reports</b> 50:13<br><b>require</b> 26:1<br><b>required</b> 12:12<br><b>requirement</b> 5:1<br>11:18 33:8<br>51:11<br><b>requirements</b><br>24:19 32:13<br>40:2<br><b>requires</b> 26:14<br>43:21<br><b>reserve</b> 23:15<br><b>resources</b> 41:14<br>51:13<br><b>respect</b> 24:7,16<br>30:25 34:12<br>36:6,19,20,23<br>36:25 41:9<br>43:5 49:6<br><b>Respectfully</b><br>9:21<br><b>respond</b> 39:3<br><b>Respondent</b><br>1:20 2:6 23:20<br><b>response</b> 8:4,5<br>19:16 35:15<br><b>rest</b> 23:16<br><b>rests</b> 38:11<br><b>result</b> 3:25<br>20:17,20,22,23<br>21:7,11,13<br>26:16 41:1<br><b>results</b> 44:25<br><b>retaining</b> 19:21<br><b>retains</b> 22:20<br><b>retire</b> 7:6,21,21<br>7:24 8:14 9:24 | 12:6,7 18:6,10<br>18:16,17,22<br>22:5,14 24:21<br>25:20 26:13<br>27:14,15,19<br>30:25 31:25<br>32:19 41:25<br>43:16 44:2<br>46:3,5,10,20<br>47:7,7,11,24<br>48:21,24 49:1<br>49:25<br><b>retired</b> 6:22,25<br>46:2,6 47:19<br><b>retiree</b> 11:5 15:2<br>15:5,8 22:16<br>45:23 48:17,19<br>51:16<br><b>retirees</b> 29:6<br>30:22<br><b>retirement</b> 1:3<br>3:4,11,14,18<br>6:14 7:9,20<br>8:11,14,22,25<br>10:2,5 11:15<br>11:23 12:2<br>13:17 15:24<br>16:3,14,15<br>17:16,18 18:25<br>19:1,3,5 20:6<br>20:10,11,13<br>21:1 23:9,23<br>24:12,17,20<br>25:2,8,14,15<br>25:17,19,24,24<br>26:3 27:3,8,11<br>29:10 30:18<br>31:4,14,15,20<br>32:1,5,6,11,13<br>32:18,24 33:8<br>33:10,14 34:12<br>36:14 39:11,13<br>39:14,15,18<br>42:4 43:9,13<br>43:17,18,21<br>44:1 45:12<br>47:13 48:20 | 50:1,2,11,14<br>51:3,6,12<br><b>retires</b> 11:9<br>28:24<br><b>retiring</b> 7:12<br><b>return</b> 41:11<br><b>reverse</b> 52:5<br><b>reward</b> 36:17<br><b>rewrite</b> 19:3<br><b>rid</b> 38:20<br><b>right</b> 4:7,22 5:7<br>5:8,22,23 6:3<br>10:12,15 12:4<br>12:15 17:11,22<br>19:5 37:8<br>41:24<br><b>rights</b> 50:21<br><b>risk</b> 11:1,6<br>17:16 28:22<br><b>ROBERT</b> 1:16<br>2:3,8 3:7 49:16<br><b>ROBERTS</b> 3:3<br>10:13 16:12<br>19:23 23:17<br>33:1,6 44:22<br>49:12 52:9<br><b>role</b> 22:25<br><b>rough</b> 37:20<br><b>rules</b> 32:17<br>34:19<br><b>run</b> 52:1<br><b>Rust</b> 50:14 | 46:18<br><b>says</b> 5:16 7:18<br>7:19 18:6,14<br>24:21 25:25<br>31:21 50:3<br><b>SCALIA</b> 10:3,9<br>10:12 13:7<br>25:22 26:20<br>29:19 30:6,10<br><b>scope</b> 40:6<br><b>second</b> 6:11<br>17:25 35:20<br>41:15<br><b>Secondly</b> 22:1<br><b>sector</b> 11:19<br><b>Security</b> 15:13<br><b>see</b> 20:14,16<br>21:24 27:9<br>30:10 35:9<br>43:2 44:11<br><b>Senate</b> 50:13<br><b>sense</b> 24:6 25:4<br>26:17 30:19<br>34:6 47:23<br><b>separate</b> 8:24<br>32:16<br><b>service</b> 3:12,16<br>4:18,20 5:14<br>6:7,14 7:6,14<br>8:15 10:11,14<br>11:24 12:3,4,6<br>16:16,21 20:6<br>20:8,11 21:1,2<br>21:3 22:6,7,15<br>24:5,8,18,18<br>24:23,24 25:18<br>25:18,21 26:6<br>26:8,13,14<br>28:7,10,11,12<br>28:17 29:8,11<br>30:15,17,21<br>31:5,23 32:1,2<br>32:12,17,23<br>33:14 36:17,18<br>36:21 37:7,11<br>37:15,20,24<br>42:3,16,17 |
|--|--|---|---|--|

|  |  |  |   |   |
|--|--|--|---|---|
| 43:6,7,9 44:2<br>45:2,6,7,8,11<br>46:24 47:8<br>48:1 49:21,22<br>50:22,24 51:3<br>51:4,9,11,12<br><b>services</b> 17:14<br><b>set</b> 7:16<br><b>setting</b> 5:2<br><b>sex</b> 13:25<br><b>SG's</b> 4:11<br><b>shape</b> 13:7<br><b>short</b> 42:1,2<br><b>show</b> 14:17<br><b>side</b> 52:2<br><b>significant</b> 40:4<br><b>significantly</b><br>39:18 43:11<br><b>similar</b> 20:9<br>39:8 47:22<br><b>similarity</b> 41:5<br><b>similarly</b> 40:16<br><b>simply</b> 8:24<br>45:17<br><b>simultaneously</b><br>44:6<br><b>single</b> 18:22<br><b>situation</b> 26:19<br>34:23 35:22<br>36:10 41:17<br>48:8<br><b>six</b> 5:19,20 6:22<br>7:20,25 8:2<br><b>Sixth</b> 51:20<br><b>skewing</b> 30:19<br><b>skillful</b> 50:21<br><b>slashed</b> 19:18<br><b>small</b> 20:3<br><b>Social</b> 15:13<br><b>sole</b> 12:2<br><b>solely</b> 12:19<br><b>Solicitor</b> 1:18<br><b>somebody</b> 15:6<br>15:7 22:17<br><b>someone's</b> 38:8<br><b>sort</b> 24:3<br><b>SOUTER</b> 10:17 | 11:13 12:21<br>28:20 29:21<br>30:11 36:7<br><b>specific</b> 16:23<br>34:10 37:16<br><b>specifically</b><br>26:10<br><b>spends</b> 8:11<br><b>spent</b> 29:16<br><b>stand</b> 21:22<br><b>standard</b> 15:13<br><b>stand-alone</b><br>16:1 50:16<br><b>start</b> 8:6,19<br>18:23 49:18<br><b>started</b> 4:13,14<br>18:9,11 21:4<br>40:10<br><b>starting</b> 18:24<br>45:22<br><b>starts</b> 7:9 8:10<br>8:12,13 17:4<br>21:18 22:18,19<br>45:6<br><b>State</b> 31:5 34:11<br>34:12 36:24<br>43:25 44:23<br><b>statement</b> 9:4,14<br>11:11 13:2<br><b>States</b> 1:1,13<br>20:15<br><b>State's</b> 39:16<br><b>statistical</b> 38:12<br><b>status</b> 10:1<br>11:22,23 22:4<br><b>statute</b> 9:7 12:9<br>12:10,23,24<br>13:1 14:9,20<br>14:21 20:22<br>21:13,17,20,21<br>22:11,22 23:1<br>24:15 25:23<br>26:15 32:5<br>34:7 37:4 39:5<br>39:21 40:20<br>43:20 49:3<br>51:1 | <b>statutes</b> 12:12<br><b>step</b> 10:4 22:2<br><b>stereotype</b> 38:15<br><b>stereotypes</b><br>33:25 35:25<br>41:11,20<br><b>stereotypical</b><br>35:11 40:5<br><b>Stevens</b> 10:7,10<br>15:19 16:2,8<br>16:11 24:11,25<br>25:6,10 31:2<br>31:11 32:4<br>41:23 42:9,13<br>42:16,20,22<br>43:1,19 44:11<br>44:15<br><b>Stewart</b> 1:18 2:5<br>23:18,19,21<br>24:6,13 25:3,9<br>25:12 26:9<br>27:12 28:9<br>29:4,23 30:8<br>30:16 31:8,16<br>32:9 33:5,9,21<br>34:9 35:2,14<br>35:16 36:13<br>37:1,17 38:10<br>40:7,14 42:7<br>42:11,14,17,21<br>42:24 43:3,24<br>44:13,17 45:15<br>46:11,17 48:11<br>48:18 49:13<br><b>sticking</b> 12:21<br><b>stigmatizing</b><br>35:25<br><b>subject</b> 16:5,6<br>24:22 28:22<br><b>submitted</b> 52:10<br>52:12<br><b>substantial</b> 20:3<br><b>substantially</b><br>19:19<br><b>suggest</b> 48:6<br><b>suggestion</b> 39:4<br><b>suing</b> 47:10 | <b>summary</b> 52:7<br><b>superfluous</b><br>26:17<br><b>Suppose</b> 21:5,10<br>45:25<br><b>Supposing</b><br>41:24<br><b>Supreme</b> 1:1,13<br><b>sure</b> 15:17 23:7<br>32:11 46:11<br><b>system</b> 12:3 20:6<br>20:9,10,11<br>34:21 45:1<br>47:6,21,22<br>50:11<br><b>systems</b> 1:4 3:4<br>34:20 | <b>thing</b> 22:10 26:9<br>28:20 29:20<br>30:12 32:6<br>37:8 38:2,10<br>39:3 41:9<br><b>things</b> 34:9,25<br><b>think</b> 6:18 9:22<br>11:22 12:12<br>13:5,10,20,22<br>14:15,18 16:13<br>17:25 18:8<br>19:7 20:15,16<br>20:17 21:7,12<br>21:14 22:1,2,8<br>22:21,21,23<br>23:1,8 25:12<br>29:5 30:2,6<br>31:16 33:21<br>35:14,16,24,24<br>38:7,11,14,15<br>39:7 40:7<br>41:20 43:24<br>46:12,17 48:5<br><b>thinking</b> 35:11<br>40:4,5 45:21<br><b>third</b> 26:7<br><b>thought</b> 25:6<br><b>thousand</b> 19:13<br><b>threshold</b> 43:8<br><b>Thurston</b> 40:14<br>50:19,19<br><b>time</b> 8:11 11:2<br>15:22 16:20<br>17:15 22:12<br>23:16 29:16<br>34:1 38:13<br><b>times</b> 32:23,23<br><b>Title</b> 13:12 14:2<br>14:14 40:9,16<br>40:18 41:6<br><b>token</b> 18:24<br><b>told</b> 39:16 47:14<br><b>tomorrow</b> 7:7<br>8:9<br><b>total</b> 10:20<br>16:24 24:8<br><b>tradeoff</b> 11:4,5 |
|--|--|--|---|---|

|   |  |  |   |  |
|---|--|--|---|--|
| <p>28:25<br/> <b>treat</b> 8:3 43:14<br/>                 46:1,9,9<br/> <b>treated</b> 42:5,10<br/>                 42:18 46:21<br/> <b>treating</b> 7:22,23<br/>                 47:1<br/> <b>treatment</b> 14:17<br/>                 35:18 43:4<br/> <b>true</b> 4:17 6:12<br/>                 22:17 24:16<br/>                 30:24 34:5<br/>                 47:5<br/> <b>try</b> 7:14 17:18<br/> <b>trying</b> 23:4,5,5<br/>                 26:22 33:25<br/> <b>turn</b> 10:5<br/> <b>two</b> 5:2 7:10,25<br/>                 8:2 20:19 21:3<br/>                 24:7 25:13,13<br/>                 35:17 41:7,12<br/>                 41:24 43:5<br/>                 44:12,15 45:5<br/> <b>type</b> 15:10 39:9<br/> <b>typically</b> 36:1<br/>                 38:16 41:21</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>unable</b> 27:2<br/> <b>uncovered</b><br/>                 16:21<br/> <b>undercompen...</b><br/>                 38:4<br/> <b>understand</b> 4:4<br/>                 4:5 5:15 10:18<br/>                 13:4 14:8<br/>                 46:12,15<br/> <b>understanding</b><br/>                 15:20 27:7<br/> <b>unduly</b> 28:16<br/> <b>unintended</b> 39:6<br/>                 48:7<br/> <b>United</b> 1:1,13<br/>                 3:14 20:15<br/> <b>unreduced</b> 10:2<br/> <b>un-alike</b> 8:6<br/> <b>use</b> 9:9,11 12:13</p> | <p>21:17 23:9<br/>                 24:4 28:1 31:9<br/>                 32:21 33:2,3,7<br/>                 33:18 44:13<br/> <b>uses</b> 9:7 23:24<br/>                 24:5<br/> <b>U.S.C</b> 40:22<br/>                 41:3</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p><b>v</b> 1:6 3:4,14<br/> <b>valid</b> 38:12<br/> <b>value</b> 19:18<br/> <b>variables</b> 42:12<br/>                 42:13<br/> <b>variety</b> 29:1<br/> <b>verba</b> 40:17<br/> <b>version</b> 34:8<br/> <b>vested</b> 22:4<br/> <b>vesting</b> 11:18<br/> <b>view</b> 16:13<br/> <b>VII</b> 13:12 14:2<br/>                 14:14 40:9,16<br/>                 40:18 41:7<br/> <b>violate</b> 4:2 26:15<br/>                 52:5<br/> <b>violated</b> 33:11<br/>                 33:13<br/> <b>violation</b> 48:25<br/> <b>voluntarily</b><br/>                 27:16 30:13<br/>                 47:7,12<br/> <b>voluntary</b> 29:6<br/>                 30:18,22</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>wait</b> 8:8 17:12<br/> <b>want</b> 6:3,11<br/>                 20:21 21:9<br/>                 23:7 26:24,25<br/>                 27:13 28:4<br/>                 29:13,25 32:15<br/>                 35:24 47:7<br/> <b>wanted</b> 38:2,20<br/>                 39:3,7,13 41:5<br/>                 47:20 48:2,8<br/>                 50:4,4<br/> <b>wants</b> 27:18</p> | <p>46:19<br/> <b>Washington</b><br/>                 1:10,19<br/> <b>wasn't</b> 11:20<br/>                 34:17<br/> <b>watch</b> 46:4,7,8<br/> <b>way</b> 16:16,21<br/>                 20:24 21:10,13<br/>                 23:25 27:6<br/>                 29:9 36:19<br/>                 37:14 40:8<br/>                 42:5,10 51:19<br/> <b>ways</b> 16:14<br/>                 37:25 51:17<br/> <b>Wednesday</b><br/>                 1:11<br/> <b>we'll</b> 3:3 10:25<br/>                 35:6 45:25<br/>                 46:1<br/> <b>we're</b> 23:5,5<br/>                 29:23 38:21<br/>                 39:21<br/> <b>White</b> 3:14<br/> <b>win</b> 48:6<br/> <b>windfall</b> 11:8,9<br/> <b>Wirtz</b> 38:18<br/> <b>woman</b> 14:2<br/> <b>word</b> 3:13 12:22<br/>                 22:25 23:2<br/>                 39:25,25 40:6<br/>                 40:8<br/> <b>wording</b> 41:5<br/> <b>words</b> 9:25<br/>                 12:25 15:13<br/> <b>work</b> 7:8,12<br/>                 8:21 11:6<br/>                 12:10 15:12,15<br/>                 16:24 17:5<br/>                 18:24 20:7<br/>                 27:2,2,10,17<br/>                 35:6 38:8,24<br/>                 39:12 45:6<br/>                 47:13,18<br/> <b>worked</b> 4:7,10<br/>                 4:14,22 5:4,6<br/>                 5:11,17 10:22<br/>                 10:22 11:1</p> | <p>13:20 17:20<br/>                 18:4 27:22<br/>                 28:2,22 35:21<br/>                 37:21 38:14<br/>                 41:15 47:2,15<br/> <b>worker</b> 4:9 7:11<br/>                 17:2 26:17<br/>                 36:20 37:19<br/>                 41:15 45:9<br/>                 47:9,23 48:13<br/>                 49:1<br/> <b>workers</b> 3:19,20<br/>                 3:21 14:4 23:6<br/>                 23:24 31:7,13<br/>                 31:14 35:18,19<br/>                 36:4 37:10<br/>                 44:5,24,25<br/>                 45:4,5 49:10<br/>                 50:8 51:25<br/> <b>workers's</b> 40:19<br/> <b>working</b> 5:10,16<br/>                 18:5 29:14,25<br/>                 39:11<br/> <b>works</b> 5:2,5<br/>                 18:10 28:5<br/> <b>worried</b> 34:18<br/> <b>worthwhile</b><br/>                 34:24<br/> <b>wouldn't</b> 26:18<br/>                 32:12 33:11,12<br/>                 38:15 43:3,4<br/>                 48:24<br/> <b>wreck</b> 39:21<br/> <b>written</b> 13:12<br/> <b>wrong</b> 3:22 6:5<br/>                 33:16 46:18</p> <hr/> <p style="text-align: center;"><b>X</b></p> <p><b>x</b> 1:2,9 4:12,13<br/>                 4:15</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p><b>Y</b> 4:21<br/> <b>year</b> 5:3 6:24<br/>                 8:1 45:10<br/> <b>years</b> 3:12 4:7<br/>                 4:10,11,14,22<br/>                 5:2,6,6,11,17</p> | <p>5:19,20 6:1,8<br/>                 6:22,23,23 7:6<br/>                 7:19,20,22,25<br/>                 8:2,15,22 9:24<br/>                 9:24 10:11,24<br/>                 11:24 12:3,3,7<br/>                 16:15,20,22<br/>                 17:2,6 18:4,7<br/>                 18:10,11,12,13<br/>                 18:14,15,17,18<br/>                 18:20 19:8<br/>                 21:2,3,4 22:4<br/>                 22:15,19 24:5<br/>                 24:8,18,18<br/>                 25:17,18,18,21<br/>                 26:5,8,13,14<br/>                 27:9,20,21<br/>                 28:2,6,8,10,10<br/>                 28:11,12,12,17<br/>                 28:24 29:8,11<br/>                 29:12 30:3,21<br/>                 32:1,2,8,22<br/>                 33:14 36:16,21<br/>                 36:24 37:6,11<br/>                 37:15,20,23<br/>                 38:24 42:1,2,2<br/>                 42:4,15,16,17<br/>                 43:6,6,7,7,9,10<br/>                 44:2 45:1,6,7,8<br/>                 45:11,16,18<br/>                 46:6,21,23<br/>                 47:2,8,15 48:1<br/>                 49:5,20,21,22<br/>                 49:22 50:22<br/>                 51:3,3,9,9,12<br/> <b>years-of-service</b><br/>                 22:16<br/> <b>younger</b> 3:20<br/>                 4:19 7:12 8:10<br/>                 14:4,6,10 15:1<br/>                 17:2 26:17<br/>                 29:9,9,17 30:4<br/>                 30:22 31:7,12<br/>                 33:15 34:1<br/>                 35:18,20 36:23<br/>                 37:10 38:5<br/>                 39:24 41:13,15</p> |
|---|--|--|---|--|

|   |  |  |  |  |
|---|--|--|--|--|
| 42:3,18 43:22<br>44:21,23 46:20<br>47:8,25 48:13  | <b>23</b> 2:6<br><b>25</b> 15:3 48:14<br><b>26th</b> 51:15<br><b>29</b> 40:22 41:3   | 34:15 38:6<br>43:6 44:4,10<br>46:2,2,10,21<br>47:3 50:23<br>51:3   |  |  |
| <b>Z</b>  | <b>3</b>   | <b>55-plus</b> 28:6<br><b>55-plus-year-...</b><br>9:13<br><b>55-year-old</b><br>10:25 11:5<br>28:11,17,18,22<br>29:24,25 35:5<br>43:11,13 45:23<br>51:11 |  |  |
| <b>zero</b> 47:17   | <b>3</b> 2:4<br><b>30</b> 37:2 45:9<br><b>30s</b> 37:5<br><b>30-year-old</b><br>45:12<br><b>35</b> 4:14 18:12<br>21:4 46:2<br><b>38</b> 22:19 49:20<br><b>38-year-old</b> 21:1<br>49:25  | <b>55-year-olds</b><br>26:13<br><b>57</b> 23:12  |  |  |
| <b>0</b>  | <b>4</b>   | <b>6</b>   |  |  |
| <b>06-1037</b> 1:6 3:4  | <b>4</b> 18:10 51:9,12<br><b>40</b> 11:19<br><b>45</b> 4:13 5:11<br>18:9,12 22:20<br>38:20 51:8<br><b>45-year-old</b> 21:3<br>26:14 28:10,19<br><b>49</b> 2:9 6:23 7:4<br>7:19   | <b>60</b> 22:14 24:23<br>31:22 50:20<br><b>623(a)</b> 13:5 41:4<br><b>630(I)</b> 40:22<br><b>65</b> 38:9 46:6  |  |  |
| <b>1</b>  | <b>5</b>   | <b>7</b>   |  |  |
| <b>1</b> 35:1<br><b>10</b> 4:7,10,22 5:6<br>5:11 15:5<br>18:13,17 21:4<br>22:4 28:6,8,10<br>28:10,11,12,12<br>28:17 37:6,24<br>48:15<br><b>10-year</b> 11:18<br><b>11:09</b> 1:14 3:2<br><b>12</b> 24:23 45:7<br><b>12:07</b> 52:11<br><b>13</b> 37:3<br><b>14</b> 5:17 6:23<br>7:21 18:11<br><b>15</b> 43:6,7<br><b>18</b> 21:2 22:18<br>45:6<br><b>18-year-old</b><br>45:14 | <b>5</b> 24:17 25:17<br>26:13 43:10<br>49:22 51:3<br><b>50</b> 38:20 42:18<br>43:7 49:22<br><b>50-year-old</b><br>43:10,16<br><b>55</b> 3:12 4:6,11<br>4:13 5:17,19<br>5:21,25 6:7,8<br>6:25 7:7 8:7,15<br>9:24 10:21<br>11:24 12:6<br>17:3,12 18:2<br>18:10,21 22:21<br>23:12 24:17<br>25:17 26:24<br>28:6 29:8<br>30:19 33:13,18 | <b>7a</b> 24:15 31:18<br>51:1,1  |  |  |
| <b>2</b>  |  | <b>8</b>   |  |  |
| <b>2a</b> 51:2<br><b>20</b> 3:12 4:7,14<br>4:22 5:5,12 6:1<br>6:8 7:6 9:24<br>10:24 11:10,23<br>12:7 18:12,20<br>24:18 25:18<br>26:14 28:24<br>29:11 30:21<br>37:24 49:21<br>50:22 51:3<br><b>20-year</b> 43:8<br><b>2004</b> 19:12,18<br><b>2008</b> 1:11<br><b>21</b> 17:4  |  | <b>9</b>   |  |  |
|   |  | <b>9</b> 1:11  |  |  |