

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - x

NEVADA COMMISSION ON ETHICS, :

Petitioner : No. 10-568

v. :

MICHAEL A. CARRIGAN :

- - - - - x

Washington, D.C.

Wednesday, April 27, 2011

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:09 a.m.

APPEARANCES:

JOHN P. ELWOOD, ESQ., Washington, D.C.; on behalf of
Petitioner.

JOSHUA E. ROSENKRANZ, ESQ., New York, New York; on
behalf of Respondent.

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	JOHN P. ELWOOD, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	JOSHUA E. ROSENKRANZ, ESQ.	
7	On behalf of the Respondent	26
8	REBUTTAL ARGUMENT OF	
9	JOHN P. ELWOOD, ESQ.	
10	On behalf of the Petitioner	50
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:09 a.m.)

CHIEF JUSTICE ROBERTS: Our last argument of the term is in Case 10-568, Nevada Commission on Ethics v. Carrigan.

Mr. Elwood.

ORAL ARGUMENT OF JOHN P. ELWOOD
ON BEHALF OF THE PETITIONER

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

Neutral laws requiring official recusal for conflict of interest do not abridge free speech because a legislator's vote, however expressive, is not protected speech. It is, rather, a legally binding exercise of State power that he wields as an incident of public office.

The Nevada Supreme Court concluded that Respondent did have a free speech right to vote, and that overrode the Nevada recusal statute. For four reasons, that holding was error.

First, since the earliest days of the Republic recusal rules have been understood to serve important interests unrelated to any views a legislator may want to express, by requiring disqualification when circumstances indicate that private interests may have

1 affected his independence of judgment.

2 JUSTICE KENNEDY: The -- the -- the case
3 is -- is presented to us with briefs that seem to pass
4 in the night. Your emphasis was on whether or not there
5 was a right to vote that's protected under the First
6 Amendment, and -- which is what the Nevada court held
7 and you're quite correct to address it. But the
8 Respondent says: Well, this interest has a chilling
9 effect on -- on protected speech. I think we have to
10 reach both parts of that argument.

11 Do you -- DO you agree with me?

12 MR. ELWOOD: I think that the Court could
13 simply address what the Nevada Supreme Court did and
14 tell it whether it got it right or got it wrong, whether
15 there's a speech interest, and what -- whether that is
16 subject to strict scrutiny or not.

17 But I think that, even though that argument
18 I don't think was raised or passed on below, that the
19 Court would have discretion to address that. I think it
20 would give additional guidance to the Nevada Supreme
21 Court.

22 JUSTICE KENNEDY: Well, if we -- if we say
23 that intermediate scrutiny is the test, even under that
24 test, certainly under that test, the regulation cannot
25 chill speech any more than necessary to fulfill the

1 governmental interests, even under the intermediate
2 standard.

3 MR. ELWOOD: I --

4 JUSTICE KENNEDY: And -- and it just seems
5 to me it's difficult for it to just address the standard
6 of proof without deciding the case. Maybe you're right.
7 Maybe we can just answer the -- the question that was
8 certified and -- and send it back, if -- if you prevail.
9 I'm not sure.

10 MR. ELWOOD: I think -- I think you're
11 right, Justice Kennedy, that it would provide more
12 guidance to the Nevada Supreme Court. It would be a
13 pretty narrow reversal and remand, assuming that the
14 Court merely reached the speech question.

15 But on the associational question, I think
16 it's important to emphasize from the outset that I think
17 this would have a negligible effect on association,
18 because it simply would not apply all that frequently.
19 In order for the recusal statute to apply, two
20 circumstances have to be simultaneously met. First,
21 there has to be a qualifying relationship which is close
22 and ongoing, and simultaneously it must have the -- it
23 must -- the third party must have a private, usually
24 pecuniary, interest before that same legislator.

25 JUSTICE GINSBURG: As I understand the

1 objection, it's not to the recusal rules in general, but
2 it's to the vagueness of this particular one. As I
3 understand it, there's no concern about the specific
4 categories that were mentioned, like family member or
5 employer.

6 MR. ELWOOD: That is correct, Justice --

7 JUSTICE GINSBURG: So we're dealing not with
8 can you have recusal rules. Everybody believes, yes,
9 you can. It's the degree of specificity.

10 MR. ELWOOD: Well, that was the basis of the
11 holding of the Nevada Supreme Court, was that those
12 implicated speech rights and that all of them would be
13 subject to strict scrutiny. So from the outset, we may
14 all be agreed that the court below applied fundamentally
15 too high a level of scrutiny.

16 JUSTICE KENNEDY: But the -- the objection
17 to the statute on the grounds that it's vague doesn't go
18 away simply because intermediate scrutiny applies, does
19 it, assuming intermediate scrutiny?

20 MR. ELWOOD: No, but I think that the -- our
21 response to the vagueness argument is that Respondent
22 concedes that the four categories for members of your
23 households, relatives, employers, and business
24 relationships are clear. He says that on page 2 of his
25 brief. So the question is whether the "substantially

1 similar" language gums up the works, essentially.

2 Now, "substantially similar" is a statutory
3 phrase that has had to have been used by every State
4 legislature in the country and by Congress.

5 JUSTICE GINSBURG: But not in this context.
6 And you don't disagree that -- I forgot which brief told
7 us that there's no State has a similar catch-all.

8 MR. ELWOOD: Well, first, I would disagree
9 with the characterization of it as a catch-all, because
10 it only sweeps in relationships that are substantially
11 similar. But Seattle, for example, has a, what is a
12 true catch-all, which sweeps in -- it applies "whenever
13 it could appear to a reasonable person having knowledge
14 of the relevant circumstances that the covered
15 individual's judgment is impaired because of either a
16 personal or business relationship not covered under
17 subsection A or B above," which lists the covered
18 relationships, "or a transaction or activity engaged in
19 by the covered individual."

20 So while Nevada may be the only statute that
21 applies "substantially similar" to these four
22 categories, it is not alone in that structure. And I
23 think more importantly, it is not anywhere close to
24 alone in its breadth. The New Jersey statute is I
25 think, if anything, broader: "A direct or indirect

1 financial or personal involvement." There are numerous
2 State statutes which apply to business associates.

3 JUSTICE ALITO: Well, I found this statute
4 very difficult to understand, but maybe you can explain
5 what's -- what I found a bit puzzling. The statute
6 talks about a commitment in a private capacity to the
7 interests of others.

8 Now, I take it that that commitment doesn't
9 have to be something contractual. When you're talking
10 about relatives, that would assume -- that that would
11 include emotional commitments to the relatives who are
12 listed; is that correct?

13 MR. ELWOOD: I think it would include the
14 things -- the same things that are covered by
15 ordinary -- every other recusal statute, which is very
16 close personal relationships and relationships that give
17 rise to a financial interest on the -- for the public
18 official. And we're not talking about, you know --

19 JUSTICE ALITO: Not -- not a financial
20 interest of the public official, a financial interest of
21 the -- the relative or the person who is substantially
22 similar to a relative. Or is that wrong?

23 MR. ELWOOD: Well, I think that in the case
24 of the relative, yes, it's the financial interest of the
25 relative, and that's why the very close personal

1 relationship. But all of the other relationships for
2 members of the household, who are presumably part of the
3 same economic unit, and for employers, in whom the
4 officer has obviously a very close financial interest
5 and they're tied together, and for business
6 relationships, all of those are to get at the financial
7 interests of the officer, not of the third party.

8 JUSTICE ALITO: Maybe if I give you an
9 example it will be clearer. Let's take somebody who is
10 within the third degree of consanguinity. So that would
11 include second cousins?

12 MR. ELWOOD: Yes.

13 JUSTICE ALITO: Okay. Now, let's say a
14 public officer is considering something that would
15 affect everybody's property taxes in town or a measure
16 that would affect the benefits or the wages of everybody
17 who works for the town. And this official has a second
18 cousin whose property taxes would be affected or works
19 for the town, and the second cousin's wages or benefits
20 would be affected. Now, would that person have to
21 recuse?

22 MR. ELWOOD: I think that the -- it would
23 depend on a couple of things. First of all, it is a
24 covered relationship, the second cousin would be a
25 covered relationship. And -- and I think the interest

1 there I think would be the subject of some debate
2 whether it is a private interest because it is a broadly
3 shared interest. But I suppose because his property
4 taxes might increase, it would be a private interest.

5 There is still the question of whether a
6 reasonable person under those circumstances would view
7 his -- his judgment, his independence of judgment, as
8 being materially affected.

9 JUSTICE ALITO: Well, if I were a public
10 officer I would find it very difficult to figure out
11 whether a reasonable person would think that an effect
12 on my second cousin's property taxes would require --
13 would materially affect my judgment. But it's even
14 worse than that because of the "substantially similar."
15 So the public officer not only has to think about second
16 cousins; the person has to think about everybody who is
17 like a second cousin to him or her. I have no idea how
18 you -- how you go about that.

19 MR. ELWOOD: Well, the way that that has
20 been defined, and this appears -- this is not just a
21 Nevada Commission on Ethics interpretation. This is
22 what the legislature understood it to mean, if you look
23 at the legislative history, when they added the statute
24 in 1999. What they were looking for by adding the
25 "substantially similar" relationships were relationships

1 that were substantially similar to household and
2 substantially similar to family. And what is at issue
3 there is not the fact that you have a genetic similarity
4 makes you more likely to see things their way, but that
5 families are presumed to be among your closest
6 relationships.

7 JUSTICE KENNEDY: Suppose that you spent
8 your life in the civil rights movement or the right to
9 bear arms movement or one or the other sides of the
10 abortion debate, and these are your acquaintances, this
11 is your -- it's been one of your principal activities,
12 not for pay, but just because of your civic commitment.
13 And then you are elected to the legislature and under
14 this Nevada statute that controls, must you recuse
15 whenever an officer of that association has -- is paid?

16 MR. ELWOOD: No, Your Honor. Because, to
17 begin with, a personal relationship, it only covers the
18 very closest personal relationships. So your most
19 intimate and closest relationships on earth would be
20 covered.

21 JUSTICE KENNEDY: They have coffee together
22 every morning and they're in the same book club.

23 MR. ELWOOD: And even that, Justice Kennedy,
24 applies with extraordinary rareness. The last case that
25 I'm aware of where personal interests alone justified

1 recusal was in 1999 before the statute was amended.

2 JUSTICE SCALIA: Mr. Elwood, for me at least
3 we've -- we've jumped way ahead. I'm not so much
4 concerned about the vagueness as I am about the
5 proposition that ethical rules adopted by legislatures
6 for voting are subject to review by this Court or by any
7 court under the First Amendment. This is the first case
8 I'm aware of that we've ever had which makes such an
9 allegation or -- I'm not even aware of any other case in
10 220 years in Federal courts.

11 And it's certainly not because legislative
12 rules have not been vague. The first Congress adopted a
13 rule that, quote, "No member shall vote on any question
14 in the event of which he is immediately and particularly
15 interested." I don't consider that very precise. And
16 the rules adopted by Thomas Jefferson for the Senate,
17 "Where the private interests of a member are concerned
18 in a bill or question, he is to withdraw." "The private
19 interests," what does that mean? "And where such an
20 interest has appeared, his voice is disallowed, even
21 after a division."

22 Now, that's been around in our Congress
23 forever, but our Constitution provides that -- that the
24 rules of the legislature are to be determined by
25 Congress and not by this Court, and I am sure we would

1 not, we would not review those rules. Now, is there a
2 contradiction between leaving those rules to Congress
3 and the First Amendment? Do you really think that --
4 that the two are set in opposition to each other?

5 MR. ELWOOD: Certainly, Justice Scalia, I
6 would not think so. And this is the first case that I'm
7 aware of, it's the first time anyone has said it to my
8 knowledge. I don't even know of law review articles
9 that said it before basically the decision that is under
10 review for neutral laws of general applicability.

11 But to return to Justice Kennedy's question,
12 what this law --

13 JUSTICE BREYER: You agree with Justice
14 Scalia?

15 MR. ELWOOD: I agree emphatically with
16 Justice Scalia, except that I could never put it as well
17 as he did.

18 JUSTICE SCALIA: You're ending up
19 skirmishing on what seems to me a less significant
20 aspect of this case. This case is enormously important
21 on that major question. I'm not inclined to resolve it
22 on the question, well, you know, this is too vague. I
23 mean, it's even vaguer than what the first Congress
24 adopted. It seems to me that just opens, opens the door
25 to future litigation challenging ethical rules, which --

1 which does not make me happy.

2 MR. ELWOOD: It is true. And in addition to
3 that, to expand it even more, apply it even more
4 broadly, with the exception of essentially the D.C.
5 Circuit's opinion in Clarke v. United States, this is
6 the first opinion I'm aware of where anyone has even
7 held that there is a First Amendment interest in any
8 sort of expressive official act.

9 CHIEF JUSTICE ROBERTS: You modified your
10 answer to Justice Scalia by saying you're not aware of
11 any case that applied the First Amendment to rules of
12 general -- neutral rules of general applicability, I
13 think. But if the First Amendment doesn't apply, that
14 doesn't matter, does it? You can't limit your -- the
15 type of rules that you say are not -- are okay and are
16 not if the First Amendment doesn't apply at all?

17 MR. ELWOOD: I'm not sure I understand your
18 question, Justice, but I think --

19 CHIEF JUSTICE ROBERTS: Well, if the First
20 Amendment doesn't apply to this type of activity, then
21 you would have no First Amendment objection to biased
22 rules of specific applicability.

23 MR. ELWOOD: Oh, absolutely we would,
24 because I think R.A.V. v. City of St. Paul speech that
25 is subject to prescription can't be regulated in a

1 viewpoint-based manner.

2 CHIEF JUSTICE ROBERTS: I thought your
3 position was that this wasn't speech protected by the
4 First Amendment.

5 MR. ELWOOD: But even speech that is not
6 protected by the First Amendment, such as fighting words
7 in R.A.V., can't be regulated in a viewpoint-based
8 manner.

9 CHIEF JUSTICE ROBERTS: So someone can
10 challenge one of these rules on the grounds that it's
11 not neutral, that it applies in a disproportionate way
12 to particular members of the legislature?

13 MR. ELWOOD: I think they could challenge it
14 in a way -- alleging that it was viewpoint-based if it
15 were only applied to Democrats or Republicans. But I
16 don't think that if it were an otherwise normally
17 applicable rule that it would be subject to challenge on
18 that basis. That is the relevance of neutrality.

19 JUSTICE KAGAN: I'm not sure why you should
20 concede even that, Mr. Elwood. If this is just conduct,
21 if this is not proscribable speech of the kind that
22 R.A.V. was talking about, why should we care about the
23 viewpoint based doctrine that's arisen in First
24 Amendment law?

25 MR. ELWOOD: Well, in the event, Justice

1 Kagan, that is how I interpret R.A.V., that it would not
2 be an available option to have a viewpoint-based recusal
3 statute that affected things differently depending on
4 viewpoint.

5 CHIEF JUSTICE ROBERTS: Do you think that
6 the rules in the House of Representatives allocating
7 time on the floor or committee membership are neutral?
8 They're biased in favor of whichever party happens to be
9 in the majority.

10 MR. ELWOOD: They are -- I think that
11 they're -- I think that they're neutrally applicable. I
12 don't know that they would -- I am not aware of them
13 applying different amounts of time to majority and
14 minority members. I may be incorrect about that.

15 JUSTICE SCALIA: Well, and if they did we
16 would review it.

17 MR. ELWOOD: I think that any time you're
18 talking about -- I mean, depending on what the house is,
19 there's an extra measure of deference when you're
20 applying, obviously, to the houses of Congress.

21 JUSTICE SCALIA: Isn't that nice. But the
22 cases come up here anyway, right?

23 MR. ELWOOD: They certainly do come.

24 JUSTICE SCALIA: Look, fighting words are
25 words. They are speech. There's no doubt that they're

1 speech. And it's a considerable question whether the
2 vote of a legislature is speech for purposes of the
3 first -- is speech at all, not whether it's a fighting
4 speech or something else, whether it's speech. It's a
5 vote.

6 MR. ELWOOD: But in any event, all the Court
7 even needs to get to is whether laws of neutral
8 applicability would be covered, because that's all this
9 statute is.

10 JUSTICE ALITO: This statute doesn't apply
11 just to voting. It says that the public officer shall
12 not vote upon or advocate the passage or failure of the
13 message.

14 MR. ELWOOD: But that is essentially --

15 JUSTICE ALITO: Advocating the passage or
16 failure of the message is surely speech in the ordinary
17 understanding of the concept.

18 MR. ELWOOD: But that is to essentially
19 complete the disqualification just as under Thomas
20 Jefferson's recusal rule. When you were disqualified
21 under Jefferson's rule, you were out of it. You
22 couldn't essentially function as a legislator, and
23 that's all that attempts to do. It hasn't been applied
24 to Mr. Carrigan.

25 JUSTICE KENNEDY: It doesn't apply to

1 outside advocacy? It just applies to advocacy within
2 the limits --

3 MR. ELWOOD: Absolutely. It does not apply
4 to advocacy as a citizen outside the legislature.

5 JUSTICE KENNEDY: But even if you have a law
6 which is not directed to speech and is directed at
7 conduct which is not speech, that law is still --
8 correct me if I'm wrong -- even under intermediate
9 scrutiny, subject to invalidation if it has a chilling
10 effect on -- on speech as an incidental matter, if that
11 chilling effect is more than is necessary to accomplish
12 the purpose of the statute. Isn't that correct?

13 MR. ELWOOD: I -- if it is reviewed -- I
14 mean, it depends on the test you use. We don't think
15 that O'Brien, which is a test that some of the amici
16 have proposed, is an appropriate standard, because even
17 O'Brien is talking about laws that have a much greater
18 effect on expression because, after all, burning a draft
19 card, one of the main reasons you would want to do that
20 is an expressive reason.

21 Whereas these really are laws that have
22 nothing to do with what views people think you are going
23 to be expressing. And we think that a closer analogy
24 are cases like Burdick, where there are laws of neutral
25 applicability that States use to regulate their

1 processes of self-government. And those, unless they
2 have a severe burden on association, have been subject
3 to review for reasonableness under *Burdick* and *Timmons*,
4 and that entire line of cases. We think that furnishes
5 a much more appropriate analogy for this case.

6 JUSTICE BREYER: The statute says "or
7 advocate the passage of." So I guess that's speech.

8 MR. ELWOOD: But, Justice Breyer --

9 JUSTICE BREYER: And the -- I mean, the
10 basic question is, again, do you agree with Justice
11 Scalia's question, the import of it; or don't you?

12 MR. ELWOOD: But Justice --

13 JUSTICE BREYER: If it doesn't apply, if
14 voting is not speech, then no matter how outrageous the
15 law or rule, it doesn't fall within the First Amendment;
16 and if it is speech, then you get into some of the
17 questions that were raised, is this too vague or is it
18 not?

19 So which is it?

20 MR. ELWOOD: Justice Breyer, I don't think
21 we have to get as far as the position that Justice Kagan
22 was suggesting, that I think Justice Scalia is
23 suggesting, because we're willing to abide by *R.A.V.* and
24 require neutrality in the regulations of this. I think
25 the --

1 JUSTICE BREYER: We might have to write an
2 opinion, irrespective --

3 (Laughter.)

4 JUSTICE BREYER: -- which says --

5 JUSTICE SCALIA: You may be willing to, but
6 I'm not.

7 JUSTICE BREYER: -- either it is speech or
8 not, and so that's why we're asking the question, to get
9 your opinion --

10 MR. ELWOOD: Right.

11 JUSTICE BREYER: -- which is an informed
12 opinion, about how we should write that paragraph. Do
13 we say that voting is within the First Amendment scope
14 or do we say it is not?

15 MR. ELWOOD: I think you would say that it
16 is not, that it is not -- voting --

17 JUSTICE BREYER: In that case, the most
18 outrageous law you can think of --

19 MR. ELWOOD: Right.

20 JUSTICE BREYER: -- in respect of voting is
21 not covered by the First Amendment?

22 MR. ELWOOD: I -- Justice Breyer, we again
23 are willing to bite off -- we are willing to abide by
24 R.A.V. --

25 JUSTICE BREYER: No, I'm not asking for

1 willing to do --

2 MR. ELWOOD: It can be a neutral restriction
3 on voting, which is not itself --

4 JUSTICE SCALIA: Mr. Elwood, why is that
5 extraordinary? Why aren't you willing to accept that?
6 I mean, if -- if the Speaker of the House counts the
7 votes wrong and he says the ayes have it when it's
8 obvious that the ayes don't have it, do we review that?

9 MR. ELWOOD: I think that that represents --

10 JUSTICE SCALIA: Is there any greater
11 violation of the principles of democracy than counting
12 the votes wrong in the legislature? Yet that matter is
13 not reviewable here, is it?

14 MR. ELWOOD: I -- I don't believe that it
15 would be.

16 JUSTICE SCALIA: So why is it extraordinary
17 that this one should not be reviewable?

18 MR. ELWOOD: Justice, I just think that
19 there are certain things that you don't -- there's a --
20 there's a sort of principle when you're dealing with
21 other branches of government that you don't look behind
22 it when they certify things. This Court has held that
23 in various contexts. And I don't think -- you know, it
24 may well be that that would support an even -- a
25 stronger rule than we are advocating; but, you know, all

1 we are here to defend is a neutral law on the part of
2 the State of Nevada.

3 JUSTICE ALITO: In several recent cases the
4 Court has taken pains to make the point that it is not
5 going to recognize any new categories of unprotected
6 speech. But the argument that you seem to be endorsing
7 now in response to some questions is that there is this
8 new category of unprotected speech, which is advocacy of
9 the passage of legislation when a recusal statute comes
10 into play.

11 MR. ELWOOD: But I think that if there's any
12 law that has a better claim to -- to be added to that
13 category, it's one that would be consistent with a law
14 or a rule that was adopted by the first Congress 7 days
15 after they first achieved a quorum. I mean, those were
16 the people who were the people who proposed and framed
17 the First Amendment, and they never indicated that they
18 thought any sort of personal First Amendment right was
19 implicated by recusal rules, either by them or Thomas
20 Jefferson's rule, which was not even a rule adopted by
21 the whole House.

22 JUSTICE SOTOMAYOR: Counsel, just to clarify
23 this issue, because I don't know that I've heard you
24 state it explicitly, the second part of this recusal
25 statute that bars the advocacy of a measure in which

1 there's an interest prohibited by the statute, it is
2 your position that's advocacy in the legislative body?

3 MR. ELWOOD: Absolutely.

4 JUSTICE SOTOMAYOR: So it's only limited to
5 getting up on the floor and talking about that?

6 MR. ELWOOD: That is absolutely correct. We
7 view it as basically completing the disqualification and
8 saying you are just not, you cannot act as a legislature
9 in deciding whether this bill will be passed.

10 JUSTICE SOTOMAYOR: That person can still go
11 outside and give all the press releases they want?

12 MR. ELWOOD: Absolutely, they can.

13 JUSTICE SOTOMAYOR: What do we do with cases
14 like Miller v. Town of Hull and Colson v. Grohman that
15 have recognized retaliation claims because of speeches
16 given during the casting of a vote? Would those cases
17 still be viable if we decide that there is no First
18 Amendment right in voting?

19 MR. ELWOOD: I -- I think they would be
20 viable under the -- the way we are framing it, which is
21 that basically if it's a law of general applicability
22 that you could still bring a claim of retaliation,
23 which -- those kind of claims are problematic for other
24 reasons because there's a lot of what would be called
25 retaliation that is itself protected by the First

1 Amendment.

2 But if you're talking about a official who
3 is a civil service employee, assuming you need to even
4 get there because they have their own civil service
5 rights to be there, they would still have the claim that
6 it was based on viewpoint-based discrimination, and
7 under the rule we are proposing -- or the rule that we
8 are willing to abide by, certainly -- R.A.V. v. City of
9 St. Paul would protect those people for a retaliation
10 claim.

11 JUSTICE SCALIA: Mr. Carrigan -- if -- if we
12 did not review any of these ethical rules applicable to
13 a legislature, at least where the rule is adopted by the
14 legislative body itself, as -- as opposed to being
15 imposed upon it by -- by some other body, there is the
16 protection that all of the legislators are subject to
17 it. So if it's vague for Mr. Carrigan in this case,
18 it's vague for everybody else as well.

19 MR. ELWOOD: That is true, Justice Scalia.

20 JUSTICE SCALIA: And so it's sort of a
21 self-regulating mechanism. You --

22 MR. ELWOOD: That's true.

23 JUSTICE SCALIA: You have to be willing to
24 abide by whatever -- whatever vagueness and whatever
25 ethical rules you -- you have opposed -- imposed on

1 somebody else.

2 MR. ELWOOD: That is true, and this law
3 applied -- for the better part of 30 years, it applied
4 to every legislator in the State of Nevada. In July of
5 2009 the State Supreme Court struck it down as applied
6 to members of the legislature. But this was the rule
7 they lived under and they didn't think it was ambiguous,
8 they didn't think that it chilled their associational
9 rights. They seemed to think it was just -- that it was
10 just fine.

11 CHIEF JUSTICE ROBERTS: I suppose you would
12 have a First Amendment claim under your theory if the
13 generally applicable rule was applied in a
14 discriminatory manner; it turned out, you go back and
15 look and over the last 2 years the only people who have
16 been sanctioned for violating the ethics rules have been
17 members of the minority party.

18 MR. ELWOOD: I think that that is another
19 one of those --

20 CHIEF JUSTICE ROBERTS: That would be a
21 viable First Amendment --

22 MR. ELWOOD: Those sort of discriminatory
23 enforcement claims are whole 'nother ball of wax. And I
24 mean, they're certainly, you know, very hard to prove;
25 and they bring up all those sort of Armstrong issues

1 about, you know, presumptive regularity and that people
2 are acting in good faith.

3 I don't know that that would be a First
4 Amendment claim, but perhaps a equal protection claim.
5 But it's certainly not presented here. There's never
6 been any allegation that these laws have been enforced
7 discriminatorily. In fact, arising from the same vote,
8 the Nevada Commission on Ethics sanctioned an opponent
9 of the Lazy 8 Casino because he had an undisclosed
10 interest in -- business interest in the Nugget, which
11 was a political opponent of this.

12 If I could reserve the remainder of my time
13 for rebuttal.

14 CHIEF JUSTICE ROBERTS: Thank you, Mr.
15 Elwood.

16 Mr. Rosenkranz.

17 ORAL ARGUMENT OF JOSHUA E. ROSENKRANZ

18 ON BEHALF OF THE RESPONDENT

19 MR. ROSENKRANZ: Thank you, Mr. Chief
20 Justice, and may it please the Court:

21 The core problem with this statute which the
22 Court has been grappling with is this: an elect -- an
23 unelected commission has arrogated to itself essentially
24 the right to invalidate an election result and to do it
25 in a way that treats core political association as

1 corrupting. If the police of political purity are going
2 to tell an elected official that he cannot cast the vote
3 that he ran on and was elected to cast, they have to do
4 it clearly, they have to do it prospectively, and they
5 have to do it for an important reason.

6 CHIEF JUSTICE ROBERTS: So if the
7 legislature adopts a rule that says from now on we're
8 going to require a four-fifths majority for a bill to
9 pass, that lowers the effectiveness of the speech of
10 someone in the minority, and you can challenge that on
11 First Amendment grounds?

12 MR. ROSENKRANZ: I think not, Your Honor,
13 because that is a way of organizing the institution that
14 applies equally to all members of the institution.

15 JUSTICE SCALIA: So does this.

16 MR. ROSENKRANZ: Well, this will -- this
17 will single out individuals at any particular moment in
18 time who are specifically isolated and told that
19 that particular individual cannot vote.

20 JUSTICE SOTOMAYOR: How is that different
21 from the minority people in the Chief Justice's? It
22 only affects them when they're in the minority?

23 MR. ROSENKRANZ: Well, yes, Your Honor. And
24 I think --

25 JUSTICE SOTOMAYOR: So it only affects

1 somebody if they fall within the strictures of the
2 statute?

3 MR. ROSENKRANZ: And my -- my point is
4 simply that this takes one particular legislator and
5 says, you cannot vote. And those rules are completely
6 fine in certain circumstances, but not when the effect
7 is to tell someone that the rationale, the reason that
8 you are being isolated is because you associated with
9 someone politically who helped you win an election.

10 JUSTICE GINSBURG: Mr. Rosenkranz, you are
11 not -- is it right that you are not challenging any part
12 of this statute except the one that -- that says
13 "substantially similar"? The rest you have no
14 constitutional objection to; is that right?

15 MR. ROSENKRANZ: That is correct, Justice
16 Ginsburg. And more precisely, we are challenging the
17 use of that "substantially similar" provision to expand
18 the statute to -- to relationships that bear no relation
19 to the actual text of the statute.

20 JUSTICE SCALIA: Mr. Rosenkranz, is -- is
21 the vote of a judge in a case like the vote of a
22 legislator? Is -- is that speech? Because judges are
23 subject to ethical rules which -- which prohibit their
24 participating if there would be, quote, "an appearance
25 of impropriety." If there's anything vaguer than that I

1 can't imagine what it might be. Can I get out of all
2 that stuff?

3 (Laughter.)

4 MR. ROSENKRANZ: Here's -- here's what you
5 can get out of, Your Honor. You can get out of -- for
6 example, if you are, in addition to being a judge, a law
7 professor at a State university and that university
8 fires you because of an opinion that you issued, that
9 opinion is speech. That vote has speech aspects to it.

10 JUSTICE SCALIA: Are you answering my
11 question? I want to know whether I can get out of this
12 appearance of impropriety stuff.

13 MR. ROSENKRANZ: The answer is no.

14 JUSTICE SCALIA: Why?

15 MR. ROSENKRANZ: For two reasons. One is
16 that judges are just plain different from legislators.
17 Judges are supposed to bring no political loyalties at
18 all to them when they are sitting on the bench.
19 Legislators are actually not only allowed to, but
20 expected, to bring political loyalties when they --

21 JUSTICE SCALIA: What does that have to do
22 with whether the First Amendment applies, with all of
23 its prohibitions against vagueness?

24 MR. ROSENKRANZ: The answer again, Your
25 Honor, is when it comes to judges, we tolerate quite a

1 bit more by way of chill of a judge's vote precisely
2 because judges are supposed to act judicial and purge
3 their vote of all extraneous effects.

4 JUSTICE SCALIA: That's too bad, because I
5 would have been much more attracted to your position.

6 (Laughter.)

7 MR. ROSENKRANZ: I -- I understand, Your
8 Honor.

9 JUSTICE KAGAN: And -- and Mr. Rosenkranz,
10 what about officials in the Executive Branch? When the
11 Secretary of Defense gives a speech and the President
12 doesn't like it and the President fires the Secretary of
13 Defense, does the Secretary of Defense have a First
14 Amendment action?

15 MR. ROSENKRANZ: The Secretary of Defense
16 has a First Amendment argument. It would be a very weak
17 one under -- under this Court's opinion in Garcetti.
18 But his First Amendment rights are implicated if it's a
19 speech that he's giving not in the line of his duty.

20 JUSTICE KAGAN: So all the official acts in
21 the legislature, in the Executive Branch, you're somehow
22 saying courts are different, so I guess we don't have to
23 worry about that, but official acts across the
24 government are now subject to First Amendment analysis?

25 MR. ROSENKRANZ: Absolutely not, Your Honor,

1 and that was this Court's holding in Garcetti. And the
2 reason this Court held that in Garcetti was that there
3 the government is acting as employer. The government is
4 entitled to discipline its own employees like any other
5 employer can. But we all agree government as employer,
6 that Pickering standard, doesn't really work in the
7 context of regulation of political activity.

8 JUSTICE ALITO: What about the rules of
9 civility in the houses of Congress? There are things
10 that a member of the Senate, for example, cannot say
11 about another Senator, or make a personal attack. That
12 would be protected by the First Amendment if the Senator
13 stepped outside the door. Are those -- is there First
14 Amendment protection for that? Do they have -- do those
15 rules have to pass First Amendment scrutiny?

16 MR. ROSENKRANZ: Within the chamber, Your
17 Honor, no, if it's just the chamber that's sanctioning
18 someone. And the reason is those are Roberts Rules of
19 Order that apply to everyone and that -- that
20 order the -- the debate. But I --

21 JUSTICE KAGAN: Well, I don't understand
22 that. I mean, this rule applies to everyone, too. It
23 might apply to one person on one vote and to another
24 person on another vote, but everybody at every vote has
25 to look at these ethical rules and decide whether they

1 have to recuse themselves as a result.

2 MR. ROSENKRANZ: And -- and so this is a
3 rule, though -- we have to go back to what its effect is
4 outside of the legislature. This is a rule that takes
5 political associations and treats them as corrupting,
6 core political associations, volunteering of the sort --

7 JUSTICE KAGAN: Well, do you think that if
8 there were a statute -- let's take out the vagueness
9 aspect of this. If there were a statute that said you
10 can't vote on anything where you have yourself some
11 monetary gain attached to it or if a very close family
12 member or if a close business associate or campaign
13 manager of your campaign, do you think that would be
14 unconstitutional?

15 MR. ROSENKRANZ: It would not be vague, Your
16 Honor. But it would be unconstitutional, unless the
17 State demonstrates why a campaign manager is corrupting.

18 JUSTICE KAGAN: Because the -- the State --
19 what the State thinks is that a campaign manager is just
20 like a business partner.

21 MR. ROSENKRANZ: And -- and the answer to
22 that is no. A volunteer campaign manager is not just
23 like a business partner. There is no pecuniary gain to
24 the -- to the candidate or the legislator as there is in
25 a relationship with a business partner. There's

1 personal political loyalty. That's what the Ethics
2 Commission said was wrong --

3 JUSTICE GINSBURG: -- no -- there's no -- I
4 thought this -- the -- the only reason that we have this
5 case is that the three-time campaign manager was -- did
6 have a financial stake in this vote because the project
7 was approved.

8 MR. ROSENKRANZ: No, Your Honor, that's not
9 why we're here. That's not why the commission said we
10 are here in the first instance. The commission is now
11 saying we're here because of that, but what the
12 commission said was it's the closeness of this
13 relationship, without regard to the financial gain,
14 which the commission accepted was zero for this
15 particular lobbyist. Regardless of the financial gain,
16 it was the political loyalty. This guy helped you win.
17 Because he helped you win, you will be beholden to him
18 and do him more favors.

19 Well, lots of political activists help a
20 candidate win. But on that --

21 JUSTICE KENNEDY: But it -- it seems to me
22 that if you're going to make this argument -- and this
23 is the point we discussed with Mr. Elwood -- there are
24 two ways to do it. Number one, say this infringes the
25 right to vote, which is a First Amendment right; or you

1 can say that this impinges unduly on necessary rights of
2 association that preceded your election to the
3 legislative post.

4 It seems to me that the latter is the only
5 way that you can make your case and to avoid the force
6 of the argument that the Petitioner makes.

7 MR. ROSENKRANZ: Your Honor, it is certainly
8 correct that the latter is far narrower. This is an
9 outlier statute. No other legislature has ever adopted
10 a statute that says campaign manager or political
11 loyalty is corrupting. And so this Court could very
12 easily say, look, this is just different from all of the
13 other recusal statutes.

14 JUSTICE GINSBURG: It doesn't seem to be
15 different from the ones that Mr. Elwood read to us. I
16 think he read probably one from New Jersey and --

17 MR. ROSENKRANZ: Your Honor, he -- he cited
18 one case from New Jersey. The statute does not refer to
19 political loyalty. And in that case it was a close
20 friendship, and in the course of describing the close
21 friendship the court, after listing multiple factors,
22 said one of them was that they were both part of the
23 same political club. They also vacationed together.
24 That's a completely different application.

25 No State and no commission -- so far as we

1 know from the briefs, there's no case cited where any
2 commission has said this relationship between a
3 volunteer and a candidate is itself so corrupting that
4 we have to disqualify the candidate from casting the
5 vote, the vote that he ran on, that the voters elected
6 him to cast.

7 And if this -- if this is accepted, it
8 places an impossible drag on the associational rights.
9 The candidate will have to think twice before ever
10 hiring or enlisting a volunteer who is a political
11 activist. He will want to recruit the best, the most
12 talented, the most savvy, but he will always have to ask
13 himself: What will this person do 3 years from now that
14 might disqualify me from -- from embarking on my duty
15 that I was elected to engage in?

16 JUSTICE SCALIA: That's rather exaggerated.
17 I mean, you have to worry he's going to buy a casino
18 or -- or something like that? I mean --

19 MR. ROSENKRANZ: No, Your Honor. Let me
20 give you a concrete example from real life that happens
21 all the time. If the NRA or NARAL decide that they
22 believe strongly in a piece of legislation and they hire
23 a lobbyist, so there's benefit to the lobbyist from this
24 relationship, and that lobbyist says "I, too, am on
25 mission; I continually lose in the legislature because

1 it hangs in the balance, I'm going to work for
2 candidates who will tip the balance for me, the
3 commission's opinion says that that lobbyist, because
4 he's worked on that campaign and wins, will by that very
5 act invalidate the vote of the legislator.

6 That's just untenable, and there's no way to
7 interpret the -- the opinion that the commission
8 actually wrote to make that anything other than the
9 natural consequence of its -- of its opinion.

10 And worse yet, from the -- from the --

11 JUSTICE SCALIA: If that's what it means,
12 you would think the legislature would change it,
13 wouldn't you?

14 MR. ROSENKRANZ: Well --

15 JUSTICE SCALIA: I mean, it doesn't just
16 hurt Mr. Carrigan. That -- you know, that -- that would
17 be something every legislator would -- would worry about
18 and say, oh, boy, we've got to change this.

19 MR. ROSENKRANZ: Yes, Your Honor --

20 JUSTICE SCALIA: So why don't we let them
21 change it?

22 MR. ROSENKRANZ: Yes, Your Honor. Yet the
23 legislature comes in with an amicus brief to this Court
24 and says that its interpretation of this statute is all
25 it needs to have is a relationship that is analogous or

1 parallel to those -- this is on page 32 of their amicus
2 brief -- analogous or parallel, and they are defending
3 the application of this statute to political loyalty.

4 But let's look at the other side of the
5 equation; that is the -- the Vasquezes of the world, the
6 NRA advocate. On that side of the equation, anyone who
7 deeply holds a view that's political -- let's say it's
8 Mr. Vasquez, he is pro-development. They will refrain
9 from joining campaigns out of fear that when they join
10 the campaign, they will get the candidate disqualified.

11 JUSTICE BREYER: So why -- I mean, what the
12 commission says is Mr. Vasquez has been a close personal
13 friend, confidante, and political advisor throughout the
14 years. So that doesn't sound like any volunteer. It
15 sounds like somebody sitting on a case where his best
16 friend is likely to gain millions of dollars.

17 MR. ROSENKRANZ: That --

18 JUSTICE BREYER: That's what it seems when I
19 read that opinion, that they're thinking all these
20 things combined is what causes this to fall within the
21 category of a reasonable person might have doubts about
22 the independence of judgment.

23 MR. ROSENKRANZ: Your Honor, they gave a
24 gestalt at the end.

25 JUSTICE BREYER: Yes.

1 MR. ROSENKRANZ: They lead with
2 "instrumental in the success of all three of Councilman
3 Carrigan's campaigns," and they go through a long
4 narrative about the political relationship. These were
5 not --

6 JUSTICE BREYER: That's part of it. But
7 my -- my basic question is, as you know, with judges,
8 and I guess you have a very vague statute which was
9 quoted to you, and what we have are subsidiary rules
10 with ethics commissioners. I have in my office --
11 they're not commissioners; they're committees of judges.

12 And I have in my office seven volumes which
13 I look at when there's a question, as others do, and
14 those seven volumes contain dozens of opinions of a
15 committee trying to apply vague statutes and vague
16 rules -- not constitutionally vague, but generally.

17 So what's wrong with Nevada doing exactly
18 the same thing here?

19 MR. ROSENKRANZ: Because the difference,
20 Your Honor, is judges are a --

21 JUSTICE BREYER: Oh, so you're saying that
22 the difference is that we're judges?

23 MR. ROSENKRANZ: Yes.

24 JUSTICE BREYER: You mean Congress and
25 legislators and Executive Branch people couldn't have

1 exactly the same system?

2 MR. ROSENKRANZ: So --

3 JUSTICE BREYER: And they have general
4 rules? It's called the common law system.

5 MR. ROSENKRANZ: The answer is no, not when
6 it affects associational rights. So let me just
7 distinguish --

8 JUSTICE SOTOMAYOR: Did you argue
9 associational rights below?

10 MR. ROSENKRANZ: Oh absolutely, Your Honor.
11 And the commission --

12 JUSTICE SOTOMAYOR: Why do you think the
13 court didn't address it? Because it relied on the First
14 Amendment analysis?

15 MR. ROSENKRANZ: I don't know why the court
16 didn't address it. It was front and center. It was a
17 section -- it was called overbreadth, but for eight
18 pages, from page 9 to page 18, there is extensive
19 discussion that what they meant by overbreadth is this
20 reaches too broad, this reaches relationships that
21 should not be reached. It was not in the cert
22 opposition, but it was front and center before the
23 Nevada Supreme Court.

24 JUSTICE GINSBURG: Is there any catch-all
25 that you would say would pass your constitutional test?

1 You told us that the four specific categories, member of
2 the household, employer, that those are all right
3 because they're specific. But you don't like the
4 "substantially similar." Is there any catch-all that a
5 legislature could adopt that would pass what you --
6 what's constitutional?

7 MR. ROSENKRANZ: I -- it's hard to imagine
8 one. Let me just point out, no -- it is very, very rare
9 for a legislature to do anything other than what's in A
10 through D.

11 And the problem with this catch-all, which
12 by the way is the term that was used by both the courts
13 below -- the problem with this catch-all is perhaps the
14 words are okay, maybe. I mean, I can imagine someone
15 interpreting those words so narrowly that they're okay.
16 But what this catch-all does is to add language to the
17 original four criteria, so it's not just family members
18 and business associates. It's now friends, close
19 friends.

20 JUSTICE BREYER: You didn't answer my
21 question, which is since the Judiciary uses what's
22 called the common law method, why is it impermissible
23 for the Executive Branch or the Legislative Branch also
24 to use a common law, case-by-case method of elucidating
25 through example what a general -- what a general

1 provision means?

2 MR. ROSENKRANZ: The answer, Your Honor, is
3 the Judiciary does not engage in political activity
4 outside --

5 JUSTICE BREYER: Well, I -- so you're saying
6 that one who engages has to use a -- a definitive
7 rule-based method rather than a common law method? So
8 my question there would be, assuming your difference
9 between the branches is right, still why?

10 MR. ROSENKRANZ: And the answer is that the
11 candidate and the volunteer have to know ex ante whether
12 to engage in this relationship or not.

13 JUSTICE KAGAN: But why do they have to know
14 ex ante? There was an advisory process that was set up
15 by the Nevada commission here.

16 MR. ROSENKRANZ: And the --

17 JUSTICE KAGAN: Mr. Carrigan chose not to
18 use it. But he could have gone to the commission, said:
19 What do you think about this relationship? Does it fit
20 or does it not fit?

21 MR. ROSENKRANZ: Your Honor, the advisory
22 process, the problem with it is that it comes too late.
23 The relationship was already in place. If you're -- if
24 the -- if the commission is going to invalidate the
25 result of an election, where everyone is talking about

1 this issue and everyone knows about this relationship,
2 they've got to tell them before they're engaged in the
3 relationship. Mr. Carrigan would have dropped Mr.
4 Vasquez.

5 JUSTICE KENNEDY: Well, I mean, but that --
6 but that's unworkable to say, you know, that every
7 potential -- I think I might run for office next year
8 and so I'm going to get advice from some committee as to
9 who I can associate with? That just is unworkable.

10 MR. ROSENKRANZ: My point exactly, Your
11 Honor. You cannot -- you -- you don't know in advance,
12 because you can't know what's going to come out 3 years
13 later. You can't know what conflicts will arise, and so
14 you don't know in advance. You can't present the
15 question to the -- to the commission.

16 CHIEF JUSTICE ROBERTS: Counsel, I've kind
17 of lost the thread of your argument. Is this a
18 vagueness claim or a First Amendment claim? I gather
19 your claim is going to be the same even if the statute
20 clearly said family members, you know, business
21 partners, and political consultants.

22 MR. ROSENKRANZ: Correct, Your Honor; and it
23 is both. There are basically two halves to it. One is,
24 even if statute were perfectly clear, this is a
25 relationship that the State is not allowed to view as

1 toxic, because it is not a toxic relationship in a
2 democratic process; and secondly, this is also vague, so
3 there was no notice up front as to the fact that the
4 commission would later invalidate the result of the
5 election on this basis.

6 CHIEF JUSTICE ROBERTS: Is your vagueness
7 argument, is that a First Amendment argument of its own?

8 MR. ROSENKRANZ: It is a baseline vagueness
9 argument on due process grounds, but it gets elevated
10 because of the First Amendment interest.

11 CHIEF JUSTICE ROBERTS: So we can decide
12 your vagueness -- if we agree with you on vagueness, we
13 don't have to determine whether the First Amendment
14 applies in this type of situation?

15 MR. ROSENKRANZ: Oh, that is correct, Your
16 Honor, absolutely.

17 JUSTICE GINSBURG: In the -- in the Nevada
18 court you argued overbreadth. That was the -- at least
19 how the court understood your challenge, and here
20 overbreadth takes a back seat, and vagueness is the
21 principle on which you rely dominantly.

22 So what accounts for the shift? You were
23 arguing overbreadth before the Nevada Supreme Court.

24 MR. ROSENKRANZ: The answer, Your Honor, is
25 that the Nevada Supreme Court shifted. So before the

1 Nevada Supreme Court, everything was on the table.
2 There was vagueness, there was overbreadth, there was
3 extended relationships -- extending to a relationship
4 that's First Amendment-protected.

5 The two key pieces, first was vagueness and
6 then second was this overbreadth argument as I've
7 described it, which really was about the protected
8 relationship. The Nevada Supreme Court called it
9 overbreadth, but if you look carefully at what it
10 actually says, it is vagueness at every step of the way.
11 It is talking about -- this is on pages 14 to 15 on to
12 16 and 17. It is talking about the Constitution
13 demanding a high level of --

14 JUSTICE KENNEDY: What's the standard for
15 vagueness that we apply? We apply vagueness to First
16 Amendment prohibitions or restrictions on speech. We
17 apply vagueness to criminal statutes. This isn't a
18 criminal statute. It does have a civil penalty. What
19 is the case that I consult to see what standard of
20 vagueness I apply?

21 MR. ROSENKRANZ: Gentile, Your Honor.
22 Gentile is a case that is about sanctions. It's about
23 sanctions for First Amendment-protected activity. And
24 the standard really is -- I mean, it's articulated the
25 same way in all these circumstances, but it really is,

1 can a reasonably intelligent person know in advance that
2 they are going to be sanctioned for this?

3 CHIEF JUSTICE ROBERTS: Here we're talking
4 about penalty for participating. What -- what if it's a
5 disclosure rule saying, you know, you can participate,
6 you can vote, you can advocate, you just have to
7 disclose interest of this sort.

8 MR. ROSENKRANZ: I think --

9 CHIEF JUSTICE ROBERTS: Is that problematic
10 under --

11 MR. ROSENKRANZ: Not at all, Your Honor.
12 That's perfectly appropriate. That is in fact what Mr.
13 Carrigan did right at the outset of --

14 CHIEF JUSTICE ROBERTS: Right. Well,
15 doesn't that burden his First Amendment rights?

16 MR. ROSENKRANZ: A lot, yes; but a lot less
17 so. And this Court has -- is very comfortable with
18 disclosure when you're talking about public officials as
19 lighter medicine, less severe medicine than an outright
20 ban or a punishment for that association. That's the
21 way it should work in the political process. Everyone
22 in this election was aware of Vasquez's role. It was
23 front page news when the hearing was going on. And so
24 for a commission --

25 JUSTICE SOTOMAYOR: If the relationship

1 wasn't particularly special, no more special than any
2 other political volunteer, why did that become front
3 page news?

4 MR. ROSENKRANZ: Oh --

5 JUSTICE SOTOMAYOR: And if your client
6 didn't have a suspicion that he was on the edge of a
7 law, why did he bother going to the city attorney to get
8 an opinion?

9 MR. ROSENKRANZ: Because as he testified,
10 and the commission did not disagree, this guy is a Boy
11 Scout, Your Honor. He does everything to avoid any
12 appearance of impropriety. And he said: I did that
13 because I just wanted to make sure; I am not a lawyer.
14 And the city attorney, of course, gave an opinion
15 that gave him a clean bill of health, said: Yes, go
16 forth and do this.

17 Now, if the lawyer doesn't know and the
18 commissioners can't settle on which of these things the
19 relationship is most similar to, and the district court
20 can't choose one, how is it possible for someone in
21 Mr. Carrigan's position to know ex ante --

22 JUSTICE SOTOMAYOR: How will we ever
23 write -- how will the Congress ever write a law that
24 would be so clear that clients would never have to go to
25 lawyers --

1 (Laughter.)

2 JUSTICE SOTOMAYOR: -- or that lawyers
3 couldn't disagree about? We would have to invalidate
4 virtually every law as vague.

5 MR. ROSENKRANZ: Less so in the First
6 Amendment -- I mean, more so in the First Amendment
7 context. In all the other contexts, the standards are
8 lightened --

9 JUSTICE SOTOMAYOR: But you're not -- you're
10 not denying that most laws would be vague --

11 MR. ROSENKRANZ: Yes, Your Honor.

12 JUSTICE SOTOMAYOR: Under that definition?

13 MR. ROSENKRANZ: And there is a --

14 JUSTICE SOTOMAYOR: That lawyers disagree on
15 the conclusion of what the law means?

16 MR. ROSENKRANZ: And -- and there is a big
17 difference between ambiguity of particular words and
18 what the commission did here, which was to say we see
19 these four categories, we are not applying any of these
20 four categories. We're saying -- we're extracting a
21 principle. It's a principle of closeness.

22 Now, close enough for government work when
23 it comes to relationships that are First Amendment
24 protected just isn't good enough when it -- when you're
25 talking about that context.

1 So I did want to talk just for a moment
2 about the degree of burden that we're talking about
3 here, because the commission seems to be saying no big
4 deal, this is just a disqualification provision. It's
5 not actually a burden at all.

6 Now, I think we all agree that if the State
7 of Nevada declared that anyone who is a campaign manager
8 can never lobby the legislature, that would be
9 unconstitutional, and they'll fine them for it, where
10 the strict scrutiny would also apply if the State passed
11 a law fining a candidate for choosing a campaign manager
12 who lobbies the legislature.

13 JUSTICE KAGAN: I'm not sure I understand
14 that, Mr. Rosenkranz. There are many laws out there
15 that say people who serve in certain government
16 capacities, when they leave those jobs, can't lobby for
17 a certain number of years. How is that any different?

18 MR. ROSENKRANZ: It would be subject to
19 scrutiny for sure. It would be subject to First
20 Amendment scrutiny. And that would be justified on the
21 ground not of the closeness of relationships that are
22 formed, but on the ground that you don't want
23 legislators here and now as they are sitting in the
24 chamber thinking about generating business with their
25 future clients and changing their votes because of that.

1 That's the justification.

2 But there's no such justification here. The
3 commission has never articulated why political loyalty
4 is so toxic that it needs to be banished from politics.
5 And so, just on the -- on the directness of the burden
6 yet, for a political activist who is engaged in these
7 sorts of relationships, the burden of being told, you've
8 got to choose right at the outset, are you going to
9 represent -- are you going to help this candidate get
10 elected or are you going to lobby? That is worse than a
11 fine, because a political activist wants to do both
12 precisely because they care about the ultimate results.

13 And for the candidate himself who is
14 deciding right upfront which of the universe of players
15 am I going to take as volunteers, they need to know
16 upfront whether this relationship will be viewed as
17 toxic, and if it is, they will not engage in that
18 relationship.

19 This is no less direct than the burden that
20 this Court recognized as unconstitutional in the Davis
21 case, the Millionaire's Amendment Case, or in Burdick,
22 where the only burden was that the paid petitioner would
23 have to register to vote, which is a nominal burden, but
24 those whose consciences were affected by a registration
25 were kept out of the process.

1 If there are no further questions, I
2 respectfully request that the Court affirm the judgment.
3 Thank you.

4 CHIEF JUSTICE ROBERTS: Thank you, counsel.
5 Mr. Elwood, you have 5 minutes remaining.

6 REBUTTAL ARGUMENT OF JOHN P. ELWOOD

7 ON BEHALF OF THE PETITIONER

8 MR. ELWOOD: Now, my colleague argues that
9 the Nevada recusal statute targets political
10 association, and that is simply not the case. Nothing
11 in the statute about politics. Mr. Carrigan was recused
12 because he had a business relationship with Mr. Vasquez.
13 Wholly apart from the personal relationship and the fact
14 that he was his three-time campaign manager, he was also
15 the firm -- the campaign's main outside vendor, and 89
16 percent of the Carrigan campaign expenditures were paid
17 through his advertising firm. That is --

18 JUSTICE BREYER: I think his argument is --
19 I don't see -- that the Ethics Commission at least in
20 part relied upon the fact that he was the campaign
21 manager, and he is saying, I think, as I understand it,
22 or at least I have this question, that an ethics
23 commission cannot disqualify a legislator on the ground,
24 even in part, that an individual had a political
25 association with him previously.

1 MR. ELWOOD: I think that --

2 JUSTICE BREYER: It may be a new argument in
3 this Court, I don't know.

4 MR. ELWOOD: I think the fact that this
5 happened to be a political relationship was incidental.
6 If Mr. Carrigan -- Mr. Vasquez does two things, he's a
7 campaign manager, he's a -- he assists in development.
8 If Mr. Carrigan had had exactly the same relationship,
9 but had just been working with him on the development
10 side, it would have been exactly the same situation. If
11 he had helped him with past -- I think the fact that --

12 JUSTICE BREYER: Is that a new argument in
13 this Court, as I've stated it to you?

14 MR. ELWOOD: I -- I don't believe so. That
15 they've made that argument --

16 JUSTICE BREYER: You made that argument
17 below?

18 MR. ELWOOD: That -- right. What we have
19 here -- I don't know if they use the term that it was
20 incidental. But I mean they -- if you look at the
21 opinion at pages 105 to 106 of the Pet. App, it's clear
22 that they're looking at the business relationship. It's
23 relevant, certainly, to have helped him win three
24 elections, because that's relevant to the closeness of
25 their personal relationship, but --

1 JUSTICE SOTOMAYOR: I think Justice Breyer's
2 question -- he can tell me if I'm wrong -- is whether
3 that argument by them was actually raised below the way
4 he is stating today?

5 MR. ELWOOD: I'm sorry? I -- the argument
6 by the --

7 JUSTICE SOTOMAYOR: Whether that
8 associational right of the political --

9 MR. ELWOOD: Oh. My understanding, the way
10 I view the briefs is there two references to an
11 associational right in the briefs, and the opening brief
12 before the Supreme Court, I think it's page 918 -- and
13 it was in the context of making a vagueness argument. I
14 looked through it, you can look through it and see what
15 you think, but I did not see that as an argument that
16 this is burdening our associational rights. But I
17 think --

18 JUSTICE ALITO: If they based their decision
19 solely on the -- on the fact that Vasquez had been the
20 campaign manager in the past and he was a great campaign
21 manager, and perhaps Carrigan would like him to be his
22 campaign manager in the future, would there be a problem
23 then?

24 MR. ELWOOD: I think that -- I think
25 probably not, because if the question is whether it --

1 it burdens associations so much that it's chilling, and
2 I mean, basically I think that's a -- an empirical
3 question. And because you have to have a particular
4 interest, a private interest in order to be recused, I
5 think that it wouldn't arise so frequently that it would
6 be a problem; but I think more fundamentally here, or at
7 least for purposes of this case, because it comes here
8 at least Respondent says this as an as-applied
9 challenge.

10 What we have here is a relationship that was
11 front page news, because this isn't just some plain
12 vanilla campaign volunteer. This is somebody with whom
13 he has a very intimate business relationship that --
14 that involved this expenditure of \$46,000.

15 And I think another thing that is worth
16 noting is that in 10 years on the books this law has
17 never been applied to campaign volunteers. It's -- in
18 order -- campaign volunteers specifically come up in the
19 legislative history of the '99 Act, and they would say
20 would not, without more, be covered, because what this
21 covers is the same types of relationships that every
22 other recusal statute covers -- very close relationships
23 and relationships that give rise to a financial interest
24 in the public official.

25 JUSTICE ALITO: Well, suppose somebody had

1 made extensive independent expenditures in support of
2 the -- the public officer's prior campaign, and the
3 public officer may hope that they -- similar
4 expenditures will be made in the future. Would that be
5 a basis?

6 MR. ELWOOD: I don't think it would be a
7 basis under the Nevada law. Because that's a law --

8 JUSTICE ALITO: Why not?

9 MR. ELWOOD: Because it's not a -- it's not
10 a personal relationship, it's not household, it's not
11 relative, it's not employer, and it's not a business
12 relationship.

13 JUSTICE GINSBURG: Is there a way to get
14 advice as to -- I think you said he went to the county
15 attorney, he could have gone to -- to the ethics
16 commission, and they were told ethics commissions can
17 give advice only after the -- is in office, they don't
18 give -- they are not obliged to give advice to
19 candidates. So when Carrigan is running he apparently
20 has no access to the ethics commission?

21 MR. ELWOOD: I think that that's right. The
22 ethics commission only has authority to give opinions to
23 sitting candidates.

24 If there are no further questions --

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

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

The case is submitted.

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

A	<p>adopt 40:5</p> <p>adopted 12:5,12 12:16 13:24 22:14,20 24:13 34:9</p> <p>adopts 27:7</p> <p>advance 42:11 42:14 45:1</p> <p>advertising 50:17</p> <p>advice 42:8 54:14,17,18</p> <p>advisor 37:13</p> <p>advisory 41:14 41:21</p> <p>advocacy 18:1,1 18:4 22:8,25 23:2</p> <p>advocate 17:12 19:7 37:6 45:6</p> <p>advocating 17:15 21:25</p> <p>affect 9:15,16 10:13</p> <p>affirm 50:2</p> <p>agree 4:11 13:13 13:15 19:10 31:5 43:12 48:6</p> <p>agreed 6:14</p> <p>ahead 12:3</p> <p>ALITO 8:3,19 9:8,13 10:9 17:10,15 22:3 31:8 52:18 53:25 54:8</p> <p>allegation 12:9 26:6</p> <p>alleging 15:14</p> <p>allocating 16:6</p> <p>allowed 29:19 42:25</p> <p>ambiguity 47:17</p> <p>ambiguous 25:7</p> <p>amended 12:1</p>	<p>Amendment 4:6 12:7 13:3 14:7 14:11,13,16,20 14:21 15:4,6,24 19:15 20:13,21 22:17,18 23:18 24:1 25:12,21 26:4 27:11 29:22 30:14,16 30:18,24 31:12 31:14,15 33:25 39:14 42:18 43:7,10,13 44:16 45:15 47:6,6,23 48:20 49:21</p> <p>Amendment-p... 44:4,23</p> <p>amici 18:15</p> <p>amicus 36:23 37:1</p> <p>amounts 16:13</p> <p>analogous 36:25 37:2</p> <p>analogy 18:23 19:5</p> <p>analysis 30:24 39:14</p> <p>answer 5:7 14:10 29:13,24 32:21 39:5 40:20 41:2 41:10 43:24</p> <p>answering 29:10</p> <p>ante 41:11,14 46:21</p> <p>anyway 16:22</p> <p>apart 50:13</p> <p>App 51:21</p> <p>apparently 54:19</p> <p>appear 7:13</p> <p>appearance 28:24 29:12 46:12</p> <p>APPEARANC...</p>	<p>1:14</p> <p>appeared 12:20</p> <p>appears 10:20</p> <p>applicability 13:10 14:12,22 17:8 18:25 23:21</p> <p>applicable 15:17 16:11 24:12 25:13</p> <p>application 34:24 37:3</p> <p>applied 6:14 14:11 15:15 17:23 25:3,3,5 25:13 53:17</p> <p>applies 6:18 7:12 7:21 11:24 15:11 18:1 27:14 29:22 31:22 43:14</p> <p>apply 5:18,19 8:2 14:3,13,16,20 17:10,25 18:3 19:13 31:19,23 38:15 44:15,15 44:17,20 48:10</p> <p>applying 16:13 16:20 47:19</p> <p>appropriate 18:16 19:5 45:12</p> <p>approved 33:7</p> <p>April 1:9</p> <p>argue 39:8</p> <p>argued 43:18</p> <p>argues 50:8</p> <p>arguing 43:23</p> <p>argument 1:12 2:2,5,8 3:3,7 4:10,17 6:21 22:6 26:17 30:16 33:22 34:6 42:17 43:7</p>	<p>43:7,9 44:6 50:6,18 51:2,12 51:15,16 52:3,5 52:13,15</p> <p>arisen 15:23</p> <p>arising 26:7</p> <p>arms 11:9</p> <p>Armstrong 25:25</p> <p>arrogated 26:23</p> <p>articles 13:8</p> <p>articulated 44:24 49:3</p> <p>asking 20:8,25</p> <p>aspect 13:20 32:9</p> <p>aspects 29:9</p> <p>assists 51:7</p> <p>associate 32:12 42:9</p> <p>associated 28:8</p> <p>associates 8:2 40:18</p> <p>association 5:17 11:15 19:2 26:25 34:2 45:20 50:10,25</p> <p>associational 5:15 25:8 35:8 39:6,9 52:8,11 52:16</p> <p>associations 32:5,6 53:1</p> <p>assume 8:10</p> <p>assuming 5:13 6:19 24:3 41:8</p> <p>as-applied 53:8</p> <p>attached 32:11</p> <p>attack 31:11</p> <p>attempts 17:23</p> <p>attorney 46:7,14 54:15</p> <p>attracted 30:5</p> <p>authority 54:22</p> <p>available 16:2</p>
----------	---	--	---	---

avoid 34:5 46:11	binding 3:14	business 6:23	case 3:4 4:2 5:6	13:25 28:11,16
aware 11:25 12:8	bit 8:5 30:1	7:16 8:2 9:5	8:23 11:24 12:7	chamber 31:16
12:9 13:7 14:6	bite 20:23	26:10 32:12,20	12:9 13:6,20,20	31:17 48:24
14:10 16:12	body 23:2 24:14	32:23,25 40:18	14:11 19:5	change 36:12,18
45:22	24:15	42:20 48:24	20:17 24:17	36:21
eyes 21:7,8	book 11:22	50:12 51:22	28:21 33:5 34:5	changing 48:25
a.m 1:13 3:2 55:2	books 53:16	53:13 54:11	34:18,19 35:1	characterization
	bother 46:7	buy 35:17	37:15 44:19,22	7:9
B	boy 36:18 46:10		49:21,21 50:10	Chief 3:3,9 14:9
B 7:17	Branch 30:10,21	C	53:7 55:1,2	14:19 15:2,9
back 5:8 25:14	38:25 40:23,23	C 2:1 3:1	cases 16:22	16:5 25:11,20
32:3 43:20	branches 21:21	called 23:24 39:4	18:24 19:4 22:3	26:14,19 27:6
bad 30:4	41:9	39:17 40:22	23:13,16	27:21 42:16
balance 36:1,2	breadth 7:24	44:8	case-by-case	43:6,11 45:3,9
ball 25:23	Breyer 13:13	campaign 32:12	40:24	45:14 50:4
ban 45:20	19:6,8,9,13,20	32:13,17,19,22	casino 26:9	54:25
banished 49:4	20:1,4,7,11,17	33:5 34:10 36:4	35:17	chill 4:25 30:1
bars 22:25	20:20,22,25	37:10 48:7,11	cast 27:2,3 35:6	chilled 25:8
based 15:23 24:6	37:11,18,25	50:14,16,20	casting 23:16	chilling 4:8 18:9
52:18	38:6,21,24 39:3	51:7 52:20,20	35:4	18:11 53:1
baseline 43:8	40:20 41:5	52:22 53:12,17	catch-all 7:7,9,12	choose 46:20
basic 19:10 38:7	50:18 51:2,12	53:18 54:2	39:24 40:4,11	49:8
basically 13:9	51:16	campaigns 37:9	40:13,16	choosing 48:11
23:7,21 42:23	Breyer's 52:1	38:3	categories 6:4	chose 41:17
53:2	brief 6:25 7:6	campaign's	6:22 7:22 22:5	Circuit's 14:5
basis 6:10 15:18	36:23 37:2	50:15	40:1 47:19,20	circumstances
43:5 54:5,7	52:11	candidate 32:24	category 22:8,13	3:25 5:20 7:14
bear 11:9 28:18	briefs 4:3 35:1	33:20 35:3,4,9	37:21	10:6 28:6 44:25
behalf 1:15,18	52:10,11	37:10 41:11	causes 37:20	cited 34:17 35:1
2:4,7,10 3:8	bring 23:22	48:11 49:9,13	center 39:16,22	citizen 18:4
26:18 50:7	25:25 29:17,20	candidates 36:2	cert 39:21	city 14:24 24:8
beholden 33:17	broad 39:20	54:19,23	certain 21:19	46:7,14
believe 21:14	broader 7:25	capacities 48:16	28:6 48:15,17	civic 11:12
35:22 51:14	broadly 10:2	capacity 8:6	certainly 4:24	civil 11:8 24:3,4
believes 6:8	14:4	card 18:19	12:11 13:5	44:18
bench 29:18	burden 19:2	care 15:22 49:12	16:23 24:8	civility 31:9
benefit 35:23	45:15 48:2,5	carefully 44:9	25:24 26:5 34:7	claim 22:12
benefits 9:16,19	49:5,7,19,22	Carrigan 1:6 3:5	51:23	23:22 24:5,10
best 35:11 37:15	49:23	17:24 24:11,17	certified 5:8	25:12 26:4,4
better 22:12 25:3	burdening 52:16	36:16 41:17	certify 21:22	42:18,18,19
biased 14:21	burdens 53:1	42:3 45:13	challenge 15:10	claims 23:15,23
16:8	Burdick 18:24	50:11,16 51:6,8	15:13,17 27:10	25:23
big 47:16 48:3	19:3 49:21	52:21 54:19	43:19 53:9	clarify 22:22
bill 12:18 23:9	burning 18:18	Carrigan's 38:3	challenging	Clarke 14:5
27:8 46:15		46:21		

<p>clean 46:15 clear 6:24 42:24 46:24 51:21 clearer 9:9 clearly 27:4 42:20 client 46:5 clients 46:24 48:25 close 5:21 7:23 8:16,25 9:4 32:11,12 34:19 34:20 37:12 40:18 47:22 53:22 closeness 33:12 47:21 48:21 51:24 closer 18:23 closest 11:5,18 11:19 club 11:22 34:23 coffee 11:21 colleague 50:8 Colson 23:14 combined 37:20 come 16:22,23 42:12 53:18 comes 22:9 29:25 36:23 41:22 47:23 53:7 comfortable 45:17 commission 1:3 3:4 10:21 26:8 26:23 33:2,9,10 33:12,14 34:25 35:2 36:7 37:12 39:11 41:15,18 41:24 42:15 43:4 45:24 46:10 47:18 48:3 49:3 50:19</p>	<p>50:23 54:16,20 54:22 commissioners 38:10,11 46:18 commissions 54:16 commission's 36:3 commitment 8:6 8:8 11:12 commitments 8:11 committee 16:7 38:15 42:8 committees 38:11 common 39:4 40:22,24 41:7 complete 17:19 completely 28:5 34:24 completing 23:7 concede 15:20 concedes 6:22 concept 17:17 concern 6:3 concerned 12:4 12:17 concluded 3:17 conclusion 47:15 concrete 35:20 conduct 15:20 18:7 confidante 37:13 conflict 3:12 conflicts 42:13 Congress 7:4 12:12,22,25 13:2,23 16:20 22:14 31:9 38:24 46:23 consanguinity 9:10 consciences</p>	<p>49:24 consequence 36:9 consider 12:15 considerable 17:1 considering 9:14 consistent 22:13 Constitution 12:23 44:12 constitutional 28:14 39:25 40:6 constitutionally 38:16 consult 44:19 consultants 42:21 contain 38:14 context 7:5 31:7 47:7,25 52:13 contexts 21:23 47:7 continually 35:25 contractual 8:9 contradiction 13:2 controls 11:14 core 26:21,25 32:6 correct 4:7 6:6 8:12 18:8,12 23:6 28:15 34:8 42:22 43:15 corrupting 27:1 32:5,17 34:11 35:3 Councilman 38:2 counsel 22:22 42:16 50:4 54:25 counting 21:11 country 7:4 counts 21:6</p>	<p>county 54:14 couple 9:23 course 34:20 46:14 court 1:1,12 3:10 3:17 4:6,12,13 4:19,21 5:12,14 6:11,14 12:6,7 12:25 17:6 21:22 22:4 25:5 26:20,22 31:2 34:11,21 36:23 39:13,15,23 43:18,19,23,25 44:1,8 45:17 46:19 49:20 50:2 51:3,13 52:12 courts 12:10 30:22 40:12 Court's 30:17 31:1 cousin 9:18,24 10:17 cousins 9:11 10:16 cousin's 9:19 10:12 covered 7:14,16 7:17,19 8:14 9:24,25 11:20 17:8 20:21 53:20 covers 11:17 53:21,22 criminal 44:17 44:18 criteria 40:17</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1 40:10 Davis 49:20 days 3:21 22:14 deal 48:4 dealing 6:7 21:20</p>	<p>debate 10:1 11:10 31:20 decide 23:17 31:25 35:21 43:11 deciding 5:6 23:9 49:14 decision 13:9 52:18 declared 48:7 deeply 37:7 defend 22:1 defending 37:2 Defense 30:11 30:13,13,15 deference 16:19 defined 10:20 definition 47:12 definitive 41:6 degree 6:9 9:10 48:2 demanding 44:13 democracy 21:11 democratic 43:2 Democrats 15:15 demonstrates 32:17 denying 47:10 depend 9:23 depending 16:3 16:18 depends 18:14 described 44:7 describing 34:20 determine 43:13 determined 12:24 development 51:7,9 difference 38:19 38:22 41:8 47:17 different 16:13</p>
--	--	--	---	---

<p>27:20 29:16 30:22 34:12,15 34:24 48:17 differently 16:3 difficult 5:5 8:4 10:10 direct 7:25 49:19 directed 18:6,6 directness 49:5 disagree 7:6,8 46:10 47:3,14 disallowed 12:20 discipline 31:4 disclose 45:7 disclosure 45:5 45:18 discretion 4:19 discrimination 24:6 discriminatorily 26:7 discriminatory 25:14,22 discussed 33:23 discussion 39:19 disproportionate 15:11 disqualification 3:24 17:19 23:7 48:4 disqualified 17:20 37:10 disqualify 35:4 35:14 50:23 distinguish 39:7 district 46:19 division 12:21 doctrine 15:23 doing 38:17 dollars 37:16 dominantly 43:21 door 13:24 31:13 doubt 16:25</p>	<p>doubts 37:21 dozens 38:14 draft 18:18 drag 35:8 dropped 42:3 due 43:9 duty 30:19 35:14 D.C 1:8,15 14:4</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 1:17 2:1,6 3:1,1 26:17 earliest 3:21 earth 11:19 easily 34:12 economic 9:3 edge 46:6 effect 4:9 5:17 10:11 18:10,11 18:18 28:6 32:3 effectiveness 27:9 effects 30:3 eight 39:17 either 7:15 20:7 22:19 elect 26:22 elected 11:13 27:2,3 35:5,15 49:10 election 26:24 28:9 34:2 41:25 43:5 45:22 elections 51:24 elevated 43:9 elucidating 40:24 Elwood 1:15 2:3 2:9 3:6,7,9 4:12 5:3,10 6:6,10 6:20 7:8 8:13 8:23 9:12,22 10:19 11:16,23 12:2 13:5,15 14:2,17,23 15:5 15:13,20,25</p>	<p>16:10,17,23 17:6,14,18 18:3 18:13 19:8,12 19:20 20:10,15 20:19,22 21:2,4 21:9,14,18 22:11 23:3,6,12 23:19 24:19,22 25:2,18,22 26:15 33:23 34:15 50:5,6,8 51:1,4,14,18 52:5,9,24 54:6 54:9,21 embarking 35:14 emotional 8:11 emphasis 4:4 emphasize 5:16 emphatically 13:15 empirical 53:2 employee 24:3 employees 31:4 employer 6:5 31:3,5,5 40:2 54:11 employers 6:23 9:3 endorsing 22:6 enforced 26:6 enforcement 25:23 engage 35:15 41:3,12 49:17 engaged 7:18 42:2 49:6 engages 41:6 enlisting 35:10 enormously 13:20 entire 19:4 entitled 31:4 equal 26:4 equally 27:14</p>	<p>equation 37:5,6 error 3:20 ESQ 1:15,17 2:3 2:6,9 essentially 7:1 14:4 17:14,18 17:22 26:23 ethical 12:5 13:25 24:12,25 28:23 31:25 ethics 1:3 3:4 10:21 25:16 26:8 33:1 38:10 50:19,22 54:15 54:16,20,22 event 12:14 15:25 17:6 everybody 6:8 9:16 10:16 24:18 31:24 everybody's 9:15 ex 41:11,14 46:21 exactly 38:17 39:1 42:10 51:8 51:10 exaggerated 35:16 example 7:11 9:9 29:6 31:10 35:20 40:25 exception 14:4 Executive 30:10 30:21 38:25 40:23 exercise 3:15 expand 14:3 28:17 expected 29:20 expenditure 53:14 expenditures 50:16 54:1,4</p>	<p>explain 8:4 explicitly 22:24 express 3:24 expressing 18:23 expression 18:18 expressive 3:13 14:8 18:20 extended 44:3 extending 44:3 extensive 39:18 54:1 extra 16:19 extracting 47:20 extraneous 30:3 extraordinary 11:24 21:5,16</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 11:3 26:7 43:3 45:12 50:13,20 51:4 51:11 52:19 factors 34:21 failure 17:12,16 faith 26:2 fall 19:15 28:1 37:20 families 11:5 family 6:4 11:2 32:11 40:17 42:20 far 19:21 34:8,25 favor 16:8 favors 33:18 fear 37:9 Federal 12:10 fighting 15:6 16:24 17:3 figure 10:10 financial 8:1,17 8:19,20,24 9:4 9:6 33:6,13,15 53:23 find 10:10 fine 25:10 28:6</p>
--	--	---	--	---

48:9 49:11	front 39:16,22	23:10 25:14	held 4:6 14:7	40:22
fining 48:11	43:3 45:23 46:2	32:3 38:3 46:15	21:22 31:2	impinges 34:1
fires 29:8 30:12	53:11	46:24	help 33:19 49:9	implicated 6:12
firm 50:15,17	fulfill 4:25	going 18:22 22:5	helped 28:9	22:19 30:18
first 3:21 4:5	function 17:22	27:1,8 33:22	33:16,17 51:11	import 19:11
5:20 7:8 9:23	fundamentally	35:17 36:1	51:23	important 3:23
12:7,7,12 13:3	6:14 53:6	41:24 42:8,12	high 6:15 44:13	5:16 13:20 27:5
13:6,7,23 14:6	furnishes 19:4	42:19 45:2,23	hire 35:22	importantly 7:23
14:7,11,13,16	further 50:1	46:7 49:8,9,10	hiring 35:10	imposed 24:15
14:19,21 15:4,6	54:24	49:15	history 10:23	24:25
15:23 17:3	future 13:25	good 26:2 47:24	53:19	impossible 35:8
19:15 20:13,21	48:25 52:22	government	holding 3:20 6:11	impropriety
22:14,15,17,18	54:4	21:21 30:24	31:1	28:25 29:12
23:17,25 25:12		31:3,3,5 47:22	holds 37:7	46:12
25:21 26:3	G	48:15	Honor 11:16	incident 3:15
27:11 29:22	G 3:1	governmental	27:12,23 29:5	incidental 18:10
30:13,16,18,24	gain 32:11,23	5:1	29:25 30:8,25	51:5,20
31:12,13,15	33:13,15 37:16	grappling 26:22	31:17 32:16	inclined 13:21
33:10,25 39:13	Garcetti 30:17	great 52:20	33:8 34:7,17	include 8:11,13
42:18 43:7,10	31:1,2	greater 18:17	35:19 36:19,22	9:11
43:13 44:4,5,15	gather 42:18	21:10	37:23 38:20	incorrect 16:14
44:23 45:15	general 6:1	Grohman 23:14	39:10 41:2,21	increase 10:4
47:5,6,23 48:19	13:10 14:12,12	ground 48:21,22	42:11,22 43:16	independence
fit 41:19,20	23:21 39:3	50:23	43:24 44:21	4:1 10:7 37:22
floor 16:7 23:5	40:25,25	grounds 6:17	45:11 46:11	independent
force 34:5	generally 25:13	15:10 27:11	47:11	54:1
forever 12:23	38:16	43:9	hope 54:3	indicate 3:25
forgot 7:6	generating 48:24	guess 19:7 30:22	house 16:6,18	indicated 22:17
formed 48:22	genetic 11:3	38:8	21:6 22:21	indirect 7:25
forth 46:16	Gentile 44:21,22	guidance 4:20	household 9:2	individual 7:19
found 8:3,5	gestalt 37:24	5:12	11:1 40:2 54:10	27:19 50:24
four 3:19 6:22	getting 23:5	gums 7:1	households 6:23	individuals 27:17
7:21 40:1,17	Ginsburg 5:25	guy 33:16 46:10	houses 16:20	individual's 7:15
47:19,20	6:7 7:5 28:10		31:9	informed 20:11
four-fifths 27:8	28:16 33:3	H	Hull 23:14	infringes 33:24
framed 22:16	34:14 39:24	halves 42:23	hurt 36:16	instance 33:10
framing 23:20	43:17 54:13	hangs 36:1		institution 27:13
free 3:12,18	give 4:20 8:16	happened 51:5	I	27:14
frequently 5:18	9:8 23:11 35:20	happens 16:8	idea 10:17	instrumental
53:5	53:23 54:17,18	35:20	40:7,14	38:2
friend 37:13,16	54:18,22	happy 14:1	immediately	intelligent 45:1
friends 40:18,19	given 23:16	hard 25:24 40:7	12:14	interest 3:12 4:8
friendship 34:20	gives 30:11	health 46:15	impaired 7:15	4:15 5:24 8:17
34:21	giving 30:19	heard 22:23	impermissible	8:20,20,24 9:4
	go 6:17 10:18	hearing 45:23		

<p>9:25 10:2,3,4 12:20 14:7 23:1 26:10,10 43:10 45:7 53:4,4,23 interested 12:15 interests 3:23,25 5:1 8:7 9:7 11:25 12:17,19 intermediate 4:23 5:1 6:18 6:19 18:8 interpret 16:1 36:7 interpretation 10:21 36:24 interpreting 40:15 intimate 11:19 53:13 invalidate 26:24 36:5 41:24 43:4 47:3 invalidation 18:9 involved 53:14 involvement 8:1 irrespective 20:2 isolated 27:18 28:8 issue 11:2 22:23 42:1 issued 29:8 issues 25:25</p> <hr/> <p style="text-align: center;">J</p> <p>Jefferson 12:16 Jefferson's 17:20,21 22:20 Jersey 7:24 34:16,18 jobs 48:16 JOHN 1:15 2:3,9 3:7 50:6 join 37:9 joining 37:9 JOSHUA 1:17</p>	<p>2:6 26:17 judge 28:21 29:6 judges 28:22 29:16,17,25 30:2 38:7,11,20 38:22 judge's 30:1 judgment 4:1 7:15 10:7,7,13 37:22 50:2 judicial 30:2 Judiciary 40:21 41:3 July 25:4 jumped 12:3 Justice 3:3,9 4:2 4:22 5:4,11,25 6:6,7,16 7:5 8:3 8:19 9:8,13 10:9 11:7,21,23 12:2 13:5,11,13 13:13,16,18 14:9,10,18,19 15:2,9,19,25 16:5,15,21,24 17:10,15,25 18:5 19:6,8,9 19:10,12,13,20 19:21,22 20:1,4 20:5,7,11,17 20:20,22,25 21:4,10,16,18 22:3,22 23:4,10 23:13 24:11,19 24:20,23 25:11 25:20 26:14,20 27:6,15,20,25 28:10,15,20 29:10,14,21 30:4,9,20 31:8 31:21 32:7,18 33:3,21 34:14 35:16 36:11,15 36:20 37:11,18</p>	<p>37:25 38:6,21 38:24 39:3,8,12 39:24 40:20 41:5,13,17 42:5 42:16 43:6,11 43:17 44:14 45:3,9,14,25 46:5,22 47:2,9 47:12,14 48:13 50:4,18 51:2,12 51:16 52:1,1,7 52:18 53:25 54:8,13,25 Justice's 27:21 justification 49:1 49:2 justified 11:25 48:20</p> <hr/> <p style="text-align: center;">K</p> <p>Kagan 15:19 16:1 19:21 30:9 30:20 31:21 32:7,18 41:13 41:17 48:13 Kennedy 4:2,22 5:4,11 6:16 11:7,21,23 17:25 18:5 33:21 42:5 44:14 Kennedy's 13:11 kept 49:25 key 44:5 kind 15:21 23:23 42:16 know 8:18 13:8 13:22 16:12 21:23,25 22:23 25:24 26:1,3 29:11 35:1 36:16 38:7 39:15 41:11,13 42:6,11,12,13 42:14,20 45:1,5</p>	<p>46:17,21 49:15 51:3,19 knowledge 7:13 13:8 knows 42:1</p> <hr/> <p style="text-align: center;">L</p> <p>language 7:1 40:16 late 41:22 Laughter 20:3 29:3 30:6 47:1 law 13:8,12 15:24 18:5,7 19:15 20:18 22:1,12,13 23:21 25:2 29:6 39:4 40:22,24 41:7 46:7,23 47:4,15 48:11 53:16 54:7,7 laws 3:11 13:10 17:7 18:17,21 18:24 26:6 47:10 48:14 lawyer 46:13,17 lawyers 46:25 47:2,14 Lazy 26:9 lead 38:1 leave 48:16 leaving 13:2 legally 3:14 legislation 22:9 35:22 legislative 10:23 12:11 23:2 24:14 34:3 40:23 53:19 legislator 3:23 5:24 17:22 25:4 28:4,22 32:24 36:5,17 50:23 legislators 24:16 29:16,19 38:25</p>	<p>48:23 legislator's 3:13 legislature 7:4 10:22 11:13 12:24 15:12 17:2 18:4 21:12 23:8 24:13 25:6 27:7 30:21 32:4 34:9 35:25 36:12,23 40:5,9 48:8,12 legislatures 12:5 let's 9:9,13 32:8 37:4,7 level 6:15 44:13 life 11:8 35:20 lightened 47:8 lighter 45:19 limit 14:14 limited 23:4 limits 18:2 line 19:4 30:19 listed 8:12 listing 34:21 lists 7:17 litigation 13:25 lived 25:7 lobbies 48:12 lobby 48:8,16 49:10 lobbyist 33:15 35:23,23,24 36:3 long 38:3 look 10:22 16:24 21:21 25:15 31:25 34:12 37:4 38:13 44:9 51:20 52:14 looked 52:14 looking 10:24 51:22 lose 35:25 lost 42:17</p>
--	---	---	---	--

<p>lot 23:24 45:16 45:16 lots 33:19 lowers 27:9 loyalties 29:17 29:20 loyalty 33:1,16 34:11,19 37:3 49:3</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>main 18:19 50:15 major 13:21 majority 16:9,13 27:8 making 52:13 manager 32:13 32:17,19,22 33:5 34:10 48:7 48:11 50:14,21 51:7 52:20,21 52:22 manner 15:1,8 25:14 materially 10:8 10:13 matter 1:11 14:14 18:10 19:14 21:12 55:3 mean 10:22 12:19 13:23 16:18 18:14 19:9 21:6 22:15 25:24 31:22 35:17,18 36:15 37:11 38:24 40:14 42:5 44:24 47:6 51:20 53:2 means 36:11 41:1 47:15 meant 39:19 measure 9:15 16:19 22:25</p>	<p>mechanism 24:21 medicine 45:19 45:19 member 6:4 12:13,17 31:10 32:12 40:1 members 6:22 9:2 15:12 16:14 25:6,17 27:14 40:17 42:20 membership 16:7 mentioned 6:4 merely 5:14 message 17:13 17:16 met 5:20 method 40:22,24 41:7,7 MICHAEL 1:6 Miller 23:14 Millionaire's 49:21 millions 37:16 minority 16:14 25:17 27:10,21 27:22 minutes 50:5 mission 35:25 modified 14:9 moment 27:17 48:1 monetary 32:11 morning 11:22 movement 11:8 11:9 multiple 34:21</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 NARAL 35:21 narrative 38:4 narrow 5:13 narrower 34:8</p>	<p>narrowly 40:15 natural 36:9 necessary 4:25 18:11 34:1 need 24:3 49:15 needs 17:7 36:25 49:4 negligible 5:17 neutral 3:11 13:10 14:12 15:11 16:7 17:7 18:24 21:2 22:1 neutrality 15:18 19:24 neutrally 16:11 Nevada 1:3 3:4 3:17,19 4:6,13 4:20 5:12 6:11 7:20 10:21 11:14 22:2 25:4 26:8 38:17 39:23 41:15 43:17,23,25 44:1,8 48:7 50:9 54:7 never 13:16 22:17 26:5 46:24 48:8 49:3 53:17 new 1:17,17 7:24 22:5,8 34:16,18 51:2,12 news 45:23 46:3 53:11 nice 16:21 night 4:4 nominal 49:23 normally 15:16 nother 25:23 notice 43:3 noting 53:16 NRA 35:21 37:6 Nugget 26:10 number 33:24</p>	<p>48:17 numerous 8:1</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 objection 6:1,16 14:21 28:14 obliged 54:18 obvious 21:8 obviously 9:4 16:20 office 3:16 38:10 38:12 42:7 54:17 officer 9:4,7,14 10:10,15 11:15 17:11 54:3 officer's 54:2 official 3:11 8:18 8:20 9:17 14:8 24:2 27:2 30:20 30:23 53:24 officials 30:10 45:18 oh 14:23 36:18 38:21 39:10 43:15 46:4 52:9 okay 9:13 14:15 40:14,15 ones 34:15 ongoing 5:22 opening 52:11 opens 13:24,24 opinion 14:5,6 20:2,9,12 29:8 29:9 30:17 36:3 36:7,9 37:19 46:8,14 51:21 opinions 38:14 54:22 opponent 26:8 26:11 opposed 24:14 24:25 opposition 13:4</p>	<p>39:22 option 16:2 oral 1:11 2:2,5 3:7 26:17 order 5:19 31:19 31:20 53:4,18 ordinary 8:15 17:16 organizing 27:13 original 40:17 outlier 34:9 outrageous 19:14 20:18 outright 45:19 outset 5:16 6:13 45:13 49:8 outside 18:1,4 23:11 31:13 32:4 41:4 50:15 overbreadth 39:17,19 43:18 43:20,23 44:2,6 44:9 overrode 3:19 O'Brien 18:15 18:17</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 1:15 2:3,9 3:1,7 50:6 page 2:2 6:24 37:1 39:18,18 45:23 46:3 52:12 53:11 pages 39:18 44:11 51:21 paid 11:15 49:22 50:16 pains 22:4 paragraph 20:12 parallel 37:1,2 part 9:2 22:1,24 25:3 28:11 34:22 38:6 50:20,24</p>
---	---	---	--	---

participate 45:5	31:11 33:1	precisely 28:16	10:3,12	20:8 29:11 38:7
participating 28:24 45:4	37:12 50:13	30:1 49:12	proposed 18:16	38:13 40:21
particular 6:2	51:25 54:10	prescription 14:25	22:16	41:8 42:15
15:12 27:17,19	Pet 51:21	present 42:14	proposing 24:7	50:22 52:2,25
28:4 33:15	petitioner 1:4,16	presented 4:3	proposition 12:5	53:3
47:17 53:3	2:4,10 3:8 34:6	26:5	proscribable 15:21	questions 19:17
particularly 12:14 46:1	49:22 50:7	President 30:11	prospectively 27:4	22:7 50:1 54:24
partner 32:20,23	phrase 7:3	30:12	protect 24:9	quite 4:7 29:25
32:25	Pickering 31:6	press 23:11	protected 3:14	quorum 22:15
partners 42:21	piece 35:22	presumably 9:2	4:5,9 15:3,6	quote 12:13
parts 4:10	pieces 44:5	presumed 11:5	23:25 31:12	28:24
party 5:23 9:7	place 41:23	presumptive 26:1	44:7 47:24	quoted 38:9
16:8 25:17	places 35:8	pretty 5:13	protection 24:16	<hr/> R <hr/>
pass 4:3 27:9	plain 29:16 53:11	prevail 5:8	26:4 31:14	R 3:1
31:15 39:25	play 22:10	previously 50:25	prove 25:24	raised 4:18 19:17
40:5	players 49:14	principal 11:11	provide 5:11	52:3
passage 17:12	please 3:10	principle 21:20	provides 12:23	ran 27:3 35:5
17:15 19:7 22:9	26:20	43:21 47:21,21	provision 28:17	rare 40:8
passed 4:18 23:9	point 22:4 28:3	principles 21:11	41:1 48:4	rareness 11:24
48:10	33:23 40:8	prior 54:2	pro-developm... 37:8	rational 28:7
Paul 14:24 24:9	42:10	private 3:25 5:23	public 3:16 8:17	reach 4:10
pay 11:12	police 27:1	8:6 10:2,4	8:20 9:14 10:9	reached 5:14
pecuniary 5:24	political 26:11,25	12:17,18 53:4	10:15 17:11	39:21
32:23	27:1 29:17,20	probably 34:16	45:18 53:24	reaches 39:20,20
penalty 44:18	31:7 32:5,6	52:25	54:2,3	read 34:15,16
45:4	33:1,16,19	problem 26:21	punishment 45:20	37:19
people 18:22	34:10,19,23	40:11,13 41:22	purge 30:2	real 35:20
22:16,16 24:9	35:10 37:3,7,13	52:22 53:6	purity 27:1	really 13:3 18:21
25:15 26:1	38:4 41:3 42:21	problematic 23:23 45:9	purpose 18:12	31:6 44:7,24,25
27:21 38:25	45:21 46:2 49:3	process 41:14,22	purposes 17:2	reason 18:20
48:15	49:6,11 50:9,24	43:2,9 45:21	53:7	27:5 28:7 31:2
percent 50:16	51:5 52:8	49:25	put 13:16	31:18 33:4
perfectly 42:24	politically 28:9	processes 19:1	puzzling 8:5	reasonable 7:13
45:12	politics 49:4	43:2,9 45:21	<hr/> Q <hr/>	10:6,11 37:21
person 7:13 8:21	50:11	49:25	qualifying 5:21	reasonableness 19:3
9:20 10:6,11,16	position 15:3	professor 29:7	question 5:7,14	reasonably 45:1
23:10 31:23,24	19:21 23:2 30:5	prohibit 28:23	5:15 6:25 10:5	reasons 3:20
35:13 37:21	46:21	prohibited 23:1	12:13,18 13:11	18:19 23:24
45:1	possible 46:20	prohibitions 29:23 44:16	13:21,22 14:18	29:15
personal 7:16 8:1	post 34:3	project 33:6	17:1 19:10,11	rebuttal 2:8
8:16,25 11:17	potential 42:7	proof 5:6		26:13 50:6
11:18,25 22:18	power 3:15	property 9:15,18		recognize 22:5
	preceded 34:2			recognized 23:15
	precise 12:15			

<p>49:20 recruit 35:11 recusal 3:11,19 3:22 5:19 6:1,8 8:15 12:1 16:2 17:20 22:9,19 22:24 34:13 50:9 53:22 recuse 9:21 11:14 32:1 recused 50:11 53:4 refer 34:18 references 52:10 refrain 37:8 regard 33:13 Regardless 33:15 register 49:23 registration 49:24 regularity 26:1 regulate 18:25 regulated 14:25 15:7 regulation 4:24 31:7 regulations 19:24 relation 28:18 relationship 5:21 7:16 9:1,24,25 11:17 32:25 33:13 35:2,24 36:25 38:4 41:12,19,23 42:1,3,25 43:1 44:3,8 45:25 46:19 49:16,18 50:12,13 51:5,8 51:22,25 53:10 53:13 54:10,12 relationships 6:24 7:10,18</p>	<p>8:16,16 9:1,6 10:25,25 11:6 11:18,19 28:18 39:20 44:3 47:23 48:21 49:7 53:21,22 53:23 relative 8:21,22 8:24,25 54:11 relatives 6:23 8:10,11 releases 23:11 relevance 15:18 relevant 7:14 51:23,24 relied 39:13 50:20 rely 43:21 remainder 26:12 remaining 50:5 remand 5:13 represent 49:9 Representatives 16:6 represents 21:9 Republic 3:22 Republicans 15:15 request 50:2 require 10:12 19:24 27:8 requiring 3:11,24 reserve 26:12 resolve 13:21 respect 20:20 respectfully 50:2 Respondent 1:18 2:7 3:18 4:8 6:21 26:18 53:8 response 6:21 22:7 rest 28:13 restriction 21:2 restrictions</p>	<p>44:16 result 26:24 32:1 41:25 43:4 results 49:12 retaliation 23:15 23:22,25 24:9 return 13:11 reversal 5:13 review 12:6 13:1 13:8,10 16:16 19:3 21:8 24:12 reviewable 21:13 21:17 reviewed 18:13 right 3:18 4:5,14 5:6,11 11:8 16:22 20:10,19 22:18 23:18 26:24 28:11,14 33:25,25 40:2 41:9 45:13,14 49:8,14 51:18 52:8,11 54:21 rights 6:12 11:8 24:5 25:9 30:18 34:1 35:8 39:6 39:9 45:15 52:16 rise 8:17 53:23 Roberts 3:3 14:9 14:19 15:2,9 16:5 25:11,20 26:14 27:6 31:18 42:16 43:6,11 45:3,9 45:14 50:4 54:25 role 45:22 Rosenkranz 1:17 2:6 26:16,17,19 27:12,16,23 28:3,10,15,20 29:4,13,15,24 30:7,9,15,25</p>	<p>31:16 32:2,15 32:21 33:8 34:7 34:17 35:19 36:14,19,22 37:17,23 38:1 38:19,23 39:2,5 39:10,15 40:7 41:2,10,16,21 42:10,22 43:8 43:15,24 44:21 45:8,11,16 46:4 46:9 47:5,11,13 47:16 48:14,18 rule 12:13 15:17 17:20,21 19:15 21:25 22:14,20 22:20 24:7,7,13 25:6,13 27:7 31:22 32:3,4 45:5 rules 3:22 6:1,8 12:5,12,16,24 13:1,2,25 14:11 14:12,15,22 15:10 16:6 22:19 24:12,25 25:16 28:5,23 31:8,15,18,25 38:9,16 39:4 rule-based 41:7 run 42:7 running 54:19 R.A.V 14:24 15:7,22 16:1 19:23 20:24 24:8</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 sanctioned 25:16 26:8 45:2 sanctioning 31:17 sanctions 44:22 44:23</p>	<p>savvy 35:12 saying 14:10 23:8 30:22 33:11 38:21 41:5 45:5 47:20 48:3 50:21 says 4:8 6:24 17:11 19:6 20:4 21:7 27:7 28:5 28:12 34:10 35:24 36:3,24 37:12 44:10 53:8 Scalia 12:2 13:5 13:14,16,18 14:10 16:15,21 16:24 19:22 20:5 21:4,10,16 24:11,19,20,23 27:15 28:20 29:10,14,21 30:4 35:16 36:11,15,20 Scalia's 19:11 scope 20:13 Scout 46:11 scrutiny 4:16,23 6:13,15,18,19 18:9 31:15 48:10,19,20 seat 43:20 Seattle 7:11 second 9:11,17 9:19,24 10:12 10:15,17 22:24 44:6 secondly 43:2 Secretary 30:11 30:12,13,15 section 39:17 see 11:4 44:19 47:18 50:19 52:14,15 self-government</p>
--	--	--	--	--

<p>19:1 self-regulating 24:21 Senate 12:16 31:10 Senator 31:11,12 send 5:8 serve 3:22 48:15 service 24:3,4 set 13:4 41:14 settle 46:18 seven 38:12,14 severe 19:2 45:19 shared 10:3 shift 43:22 shifted 43:25 side 37:4,6 51:10 sides 11:9 significant 13:19 similar 7:1,2,7 7:11,21 8:22 10:14,25 11:1,2 28:13,17 40:4 46:19 54:3 similarity 11:3 simply 4:13 5:18 6:18 28:4 50:10 simultaneously 5:20,22 single 27:17 sitting 29:18 37:15 48:23 54:23 situation 43:14 51:10 skirmishing 13:19 solely 52:19 somebody 9:9 25:1 28:1 37:15 53:12,25 sorry 52:5 sort 14:8 21:20</p>	<p>22:18 24:20 25:22,25 32:6 45:7 sorts 49:7 SOTOMAYOR 22:22 23:4,10 23:13 27:20,25 39:8,12 45:25 46:5,22 47:2,9 47:12,14 52:1,7 sound 37:14 sounds 37:15 Speaker 21:6 special 46:1,1 specific 6:3 14:22 40:1,3 specifically 27:18 53:18 specificity 6:9 speech 3:12,14 3:18 4:9,15,25 5:14 6:12 14:24 15:3,5,21 16:25 17:1,2,3,4,4,16 18:6,7,10 19:7 19:14,16 20:7 22:6,8 27:9 28:22 29:9,9 30:11,19 44:16 speeches 23:15 spent 11:7 St 14:24 24:9 stake 33:6 standard 5:2,5 18:16 31:6 44:14,19,24 standards 47:7 state 3:15 7:3,7 8:2 22:2,24 25:4,5 29:7 32:17,18,19 34:25 42:25 48:6,10 stated 51:13</p>	<p>States 1:1,12 14:5 18:25 stating 52:4 statute 3:19 5:19 6:17 7:20,24 8:3,5,15 10:23 11:14 12:1 16:3 17:9,10 18:12 19:6 22:9,25 23:1 26:21 28:2 28:12,18,19 32:8,9 34:9,10 34:18 36:24 37:3 38:8 42:19 42:24 44:18 50:9,11 53:22 statutes 8:2 34:13 38:15 44:17 statutory 7:2 step 44:10 stepped 31:13 strict 4:16 6:13 48:10 strictures 28:1 stronger 21:25 strongly 35:22 struck 25:5 structure 7:22 stuff 29:2,12 subject 4:16 6:13 10:1 12:6 14:25 15:17 18:9 19:2 24:16 28:23 30:24 48:18,19 submitted 55:1,3 subsection 7:17 subsidiary 38:9 substantially 6:25 7:2,10,21 8:21 10:14,25 11:1,2 28:13,17 40:4 success 38:2</p>	<p>suggesting 19:22 19:23 support 21:24 54:1 suppose 10:3 11:7 25:11 53:25 supposed 29:17 30:2 Supreme 1:1,12 3:17 4:13,20 5:12 6:11 25:5 39:23 43:23,25 44:1,8 52:12 sure 5:9 12:25 14:17 15:19 46:13 48:13,19 surely 17:16 suspicion 46:6 sweeps 7:10,12 system 39:1,4</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 2:1,1 table 44:1 take 8:8 9:9 32:8 49:15 taken 22:4 takes 28:4 32:4 43:20 talented 35:12 talk 48:1 talking 8:9,18 15:22 16:18 18:17 23:5 24:2 41:25 44:11,12 45:3,18 47:25 48:2 talks 8:6 targets 50:9 taxes 9:15,18 10:4,12 tell 4:14 27:2 28:7 42:2 52:2 term 3:4 40:12</p>	<p>51:19 test 4:23,24,24 18:14,15 39:25 testified 46:9 text 28:19 Thank 26:14,19 50:3,4 54:25 theory 25:12 thing 38:18 53:15 things 8:14,14 9:23 11:4 16:3 21:19,22 31:9 37:20 46:18 51:6 think 4:9,12,17 4:18,19 5:10,10 5:15,16 6:20 7:23,25 8:13,23 9:22,25 10:1,11 10:15,16 13:3,6 14:13,18,24 15:13,16 16:5 16:10,11,17 18:14,22,23 19:4,20,22,24 20:15,18 21:9 21:18,23 22:11 23:19 25:7,8,9 25:18 27:12,24 32:7,13 34:16 35:9 36:12 39:12 41:19 42:7 45:8 48:6 50:18,21 51:1,4 51:11 52:1,12 52:15,17,24,24 53:2,5,6,15 54:6,14,21 thinking 37:19 48:24 thinks 32:19 third 5:23 9:7,10 Thomas 12:16 17:19 22:19</p>
--	--	--	---	---

<p>22:18 33:4 thread 42:17 three 38:2 51:23 three-time 33:5 50:14 tied 9:5 time 13:7 16:7,13 16:17 26:12 27:18 35:21 Timmons 19:3 tip 36:2 today 52:4 told 7:6 27:18 40:1 49:7 54:16 tolerate 29:25 town 9:15,17,19 23:14 toxic 43:1,1 49:4 49:17 transaction 7:18 treats 26:25 32:5 true 7:12 14:2 24:19,22 25:2 trying 38:15 turned 25:14 twice 35:9 two 5:19 13:4 29:15 33:24 42:23 44:5 51:6 52:10 type 14:15,20 43:14 types 53:21</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 49:12 unconstitutional 32:14,16 48:9 49:20 understand 5:25 6:3 8:4 14:17 30:7 31:21 48:13 50:21 understanding 17:17 52:9</p>	<p>understood 3:22 10:22 43:19 undisclosed 26:9 unduly 34:1 unelected 26:23 unit 9:3 United 1:1,12 14:5 universe 49:14 university 29:7,7 unprotected 22:5 22:8 unrelated 3:23 untenable 36:6 unworkable 42:6 42:9 upfront 49:14,16 use 18:14,25 28:17 40:24 41:6,18 51:19 uses 40:21 usually 5:23</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:5 3:5 14:5,24 23:14,14 24:8 vacationed 34:23 vague 6:17 12:12 13:22 19:17 24:17,18 32:15 38:8,15,15,16 43:2 47:4,10 vagueness 6:2 6:21 12:4 24:24 29:23 32:8 42:18 43:6,8,12 43:12,20 44:2,5 44:10,15,15,17 44:20 52:13 vaguer 13:23 28:25 vanilla 53:12 various 21:23 Vasquez 37:8,12 42:4 50:12 51:6</p>	<p>52:19 Vasquez 37:5 Vasquez's 45:22 vendor 50:15 viable 23:17,20 25:21 view 10:6 23:7 37:7 42:25 52:10 viewed 49:16 viewpoint 15:23 16:4 viewpoint-based 15:1,7,14 16:2 24:6 views 3:23 18:22 violating 25:16 violation 21:11 virtually 47:4 voice 12:20 volumes 38:12 38:14 volunteer 32:22 35:3,10 37:14 41:11 46:2 53:12 volunteering 32:6 volunteers 49:15 53:17,18 vote 3:13,18 4:5 12:13 17:2,5,12 23:16 26:7 27:2 27:19 28:5,21 28:21 29:9 30:1 30:3 31:23,24 31:24 32:10 33:6,25 35:5,5 36:5 45:6 49:23 voters 35:5 votes 21:7,12 48:25 voting 12:6 17:11 19:14 20:13,16</p>	<p>20:20 21:3 23:18</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wages 9:16,19 want 3:24 18:19 23:11 29:11 35:11 48:1,22 wanted 46:13 wants 49:11 Washington 1:8 1:15 wasn't 15:3 46:1 wax 25:23 way 10:19 11:4 12:3 15:11,14 23:20 26:25 27:13 30:1 34:5 36:6 40:12 44:10,25 45:21 52:3,9 54:13 ways 33:24 weak 30:16 Wednesday 1:9 went 54:14 we're 6:7 8:18 19:23 20:8 27:7 33:9,11 38:22 45:3 47:20,20 48:2 we've 12:3,3,8 36:18 whichever 16:8 Wholly 50:13 wields 3:15 willing 19:23 20:5,23,23 21:1 21:5 24:8,23 win 28:9 33:16 33:17,20 51:23 wins 36:4 withdraw 12:18 words 15:6 16:24 16:25 40:14,15 47:17</p>	<p>work 31:6 36:1 45:21 47:22 worked 36:4 working 51:9 works 7:1 9:17 9:18 world 37:5 worry 30:23 35:17 36:17 worse 10:14 36:10 49:10 worth 53:15 wouldn't 36:13 53:5 write 20:1,12 46:23,23 wrong 4:14 8:22 18:8 21:7,12 33:2 38:17 52:2 wrote 36:8</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 1:2,7</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 42:7 years 12:10 25:3 25:15 35:13 37:14 42:12 48:17 53:16 York 1:17,17</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 33:14</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$46,000 53:14</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>10 53:16 10-568 1:4 3:4 10:09 1:13 3:2 105 51:21 106 51:21 11:06 55:2 14 44:11</p>
---	--	--	---	--

15 44:11				
16 44:12				
17 44:12				
18 39:18				
1999 10:24 12:1				
<hr/> 2 <hr/>				
2 6:24 25:15				
2009 25:5				
2011 1:9				
220 12:10				
26 2:7				
27 1:9				
<hr/> 3 <hr/>				
3 2:4 35:13 42:12				
30 25:3				
32 37:1				
<hr/> 5 <hr/>				
5 50:5				
50 2:10				
<hr/> 7 <hr/>				
7 22:14				
<hr/> 8 <hr/>				
8 26:9				
89 50:15				
<hr/> 9 <hr/>				
9 39:18				
918 52:12				
99 53:19				