

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

- - - - -

O. JOHN BENISEK, ET AL.,)
Appellants,)

v.) No. 17-333

LINDA H. LAMONE, ADMINISTRATOR,)
MARYLAND STATE BOARD OF ELECTIONS,)
ET AL.,)
Appellees.)

- - - - -

Washington, D.C.

Wednesday, March 28, 2018

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

APPEARANCES:

MICHAEL B. KIMBERLY, ESQ., Washington, D.C. ;
on behalf of the Appellants.

STEVEN M. SULLIVAN, Solicitor General of Maryland,
Baltimore, Maryland; on behalf of the Appellees.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	MICHAEL B. KIMBERLY, ESQ.	
4	On behalf of the Appellants	3
5	ORAL ARGUMENT OF:	
6	STEVEN M. SULLIVAN	
7	On behalf of the Appellees	37
8	REBUTTAL ARGUMENT OF:	
9	MICHAEL B. KIMBERLY, ESQ.	
10	On behalf of the Appellants	70
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument this morning in Case 17-333, Benisek
5 versus Lamone.

6 Mr. Kimberly.

7 ORAL ARGUMENT OF MICHAEL B. KIMBERLY

8 ON BEHALF OF THE APPELLANTS

9 MR. KIMBERLY: Mr. Chief Justice, and
10 may it please the Court:

11 All nine justices in *Vieth* against
12 *Jubelirer* agreed that partisan gerrymandering
13 can violate the Constitution. The principal
14 question presented in this case is whether this
15 Court has the Article III authority to do
16 anything about it.

17 We submit that it does under the First
18 Amendment. According to this Court's First
19 Amendment retaliation and ballot access cases,
20 government officials may not single out
21 particular individuals for disfavored treatment
22 on the basis of the views that they have
23 expressed at the ballot box in prior elections.

24 JUSTICE GINSBURG: Mr. Kimberly, may I
25 ask you a kind of preliminary question? I -- I

1 take it it's -- it's much too late, even if you
2 were successful, for there to be any change for
3 the 2018 election, and if that's so -- and
4 we're only talking about a preliminary
5 injunction here, right?

6 MR. KIMBERLY: We are talking about a
7 preliminary injunction, Your Honor. That's
8 correct.

9 JUSTICE GINSBURG: So how would you be
10 irreparably injured by the denial of a
11 preliminary injunction if the earliest that --
12 assuming you're right, that a redistricting
13 could go into effect would be 2020?

14 MR. KIMBERLY: Well, Your Honor, we
15 don't concede for purposes of this appeal that
16 it's too late to enter relief in time for the
17 2018 election. Congress has enacted a statute
18 that deals with these sorts of circumstances
19 that this Court addressed in Bush against --
20 I'm sorry -- not Bush against Vera, but the
21 statute is 2 U.S.C. 2a(c) --

22 JUSTICE KENNEDY: Is there anything in
23 the record to indicate that experts will tell
24 you, oh, this is -- this is possible? It's --

25 MR. KIMBERLY: That it's possible to

1 enact a new --

2 JUSTICE KENNEDY: That it's possible
3 to comply with the injunction in time for the
4 2018 election.

5 MR. KIMBERLY: There's nothing in the
6 record about that, Your Honor, but that also
7 isn't an issue that the district court has been
8 in -- given an opportunity to address yet.

9 JUSTICE KENNEDY: Well, but you're
10 asking us to then just -- just assume it.

11 MR. KIMBERLY: Well, as a matter of
12 fact, Your Honor, I think what we're asking for
13 is just a remand for reconsideration of the
14 preliminary injunction motion in light of what
15 we take to be the proper legal standards. And
16 so, if our --

17 JUSTICE SOTOMAYOR: Given the
18 equitable principles involved in an injunction,
19 this is -- you waited an awfully long time to
20 bring this suit from the change in 2011, was
21 it? Should that factor into our consideration
22 of whether to uphold or not uphold your
23 request?

24 MR. KIMBERLY: So I think there are
25 two things to say about that, Your Honor. The

1 first is we don't think that that is an issue
2 that's really properly before this Court,
3 unless this Court concluded that it would be an
4 abuse of discretion not to deny the preliminary
5 injunction on that basis. That is a function
6 of the abuse of discretion standard of -- of
7 review and the fact that the lower court hasn't
8 had an opportunity yet to address that
9 question.

10 JUSTICE ALITO: But I don't think you
11 finished --

12 CHIEF JUSTICE ROBERTS: Well, it's not
13 -- it's not just that equitable factor. There
14 are other factors under the preliminary
15 injunction standard, including irreparable
16 harm. And because of your delay, elections
17 have been held under this district in 2012,
18 2014, and 2016. Right?

19 MR. KIMBERLY: Well, I --

20 CHIEF JUSTICE ROBERTS: Is -- is it --

21 MR. KIMBERLY: It is true that those
22 elections have been held. I would not say that
23 it's attributable to our delay in bringing the
24 suit.

25 CHIEF JUSTICE ROBERTS: Well, no, but

1 it is evidence of the -- the question of
2 whether you've been irreparably harmed, that
3 you've been willing to let go. The elections
4 in 2012, 2014, and 2016, suggest that maybe
5 2018, you're not going to be irreparably harmed
6 in a broader sense. Obviously, you argue you
7 would be in this particular election, but if
8 you've been willing to accept that harm in
9 three different cycles, I don't know if we
10 should get concerned about irreparable harm for
11 one more.

12 MR. KIMBERLY: Well, I -- I guess I
13 have a few things to say about that. The first
14 is this lawsuit was initially filed in 2013.
15 True, after one election had taken place, but
16 district courts have entered injunctions
17 against the enforcement of congressional
18 districting maps after elections have taken
19 place many times in the past. So --

20 CHIEF JUSTICE ROBERTS: Well, if you
21 look at 20 -- you -- you did not file the suit
22 presenting this particular theory of the case
23 until 2016.

24 MR. KIMBERLY: No, our -- our position
25 is that this theory of the case has been in the

1 case from the beginning. This was a premise of
2 this Court's reversal and remand of the Fourth
3 Circuit back in 2015 in Shapiro against
4 McManus, that this claim was in the case, that
5 it was a claim that had not yet been foreclosed
6 by any majority opinion of this Court, and,
7 therefore, that it was a basis for convening a
8 three-judge district court.

9 It's true that it did not claim a
10 majority of the attention of the original
11 complaint, but there is -- this Court could not
12 have reached the decision that it reached in
13 Shapiro against McManus if this claim had not
14 been in the case from the get-go, which is --

15 JUSTICE ALITO: I still don't
16 understand what you want to have take place for
17 -- in practical -- in practical terms. You
18 want this case remanded to the district court
19 and you think that after the case is -- we
20 remand the case to the district court, there
21 will be time to adopt a new map to be used in
22 the 2018 election?

23 MR. KIMBERLY: Your Honor, I -- I --
24 the -- the short answer to that question is
25 that that is an issue for the district court to

1 decide. It is, as I say, not something that we
2 have conceded, and I think it -- it's
3 conceivable that the case could get back down
4 to the district court in time for some form of
5 relief. Certainly, the district court could
6 conclude that there isn't enough time and allow
7 an election to take place under the map as it's
8 drawn. It might look for some sort of interim
9 solution under 2 U.S.C. 2a(c).

10 CHIEF JUSTICE ROBERTS: What would
11 that -- what would that --

12 JUSTICE KENNEDY: But -- but if it was
13 ordered by this Court -- an order by this Court
14 indicating, oh, there might be time, is going
15 to upset settled expectations. There's --
16 there's -- people are planning campaigns and so
17 forth. It would be highly -- you're -- are you
18 suggesting that it would not be disruptive of
19 the current election scheme in the current
20 election districting for this -- for this Court
21 to remand to consider whether the map should be
22 changed at this late date?

23 MR. KIMBERLY: Well, I -- I think it
24 would perpetuate the same sort of uncertainty,
25 frankly, that's been hanging over Maryland

1 politics from the pendency of this suit all
2 along. I -- I don't deny that, Your Honor, but
3 I don't think this Court has to actually take a
4 position on -- on the time in question one way
5 or another. What we're asking this Court to do
6 is evaluate the legal principles that the
7 district court announced in its decision
8 denying our preliminary injunction motion, to
9 correct them if it sees fit to correct them, or
10 to affirm them otherwise.

11 JUSTICE ALITO: Let me ask you a
12 question --

13 CHIEF JUSTICE ROBERTS: Well, it's not
14 simply a question of -- we have held that, in a
15 preliminary injunction context, you do not have
16 to consider the merits if you think the
17 equities and the irreparable harm questions cut
18 against the grant of a preliminary injunction.

19 MR. KIMBERLY: Well, that's true, but,
20 again, that would be a question, I think, for
21 the district court in the first instance. The
22 question whether or not --

23 CHIEF JUSTICE ROBERTS: No, no, you're
24 asking us to --

25 JUSTICE KENNEDY: Right.

1 CHIEF JUSTICE ROBERTS: -- decide the
2 merits and determine from that whether there's
3 been an abuse of discretion. I understand
4 that.

5 MR. KIMBERLY: Right.

6 CHIEF JUSTICE ROBERTS: And what I'm
7 suggesting, most -- I guess the strongest case
8 is the Winter case from a few years ago, where
9 we said if the equities and the harm question
10 cuts strongly in one direction, we don't have
11 to consider the merits at all without
12 determining that there has or hasn't been an
13 abuse of discretion.

14 MR. KIMBERLY: Well, I'm -- I don't
15 recall what it is exactly the district court in
16 the Winter case -- with which I'm familiar,
17 before this Court, I don't recall what the
18 district court in that case had done.

19 If -- if the district court had
20 reached each of the individual issues, surely,
21 the Court can pick out among the issues that
22 the district court resolved which it wants to
23 base its decision on. And surely that doesn't
24 --

25 CHIEF JUSTICE ROBERTS: Well, I think

1 that's exactly -- I think that's exactly right,
2 that the Court can pick out of the different
3 criteria which one it wants to base its
4 decision on. And I think it's part of your
5 challenge today to explain to us why we should
6 pick out the hardest one.

7 MR. KIMBERLY: Well, and -- and the
8 short answer is because that's the one on which
9 the district court based its decision. If this
10 Court were instead to pick out a different
11 factor from the preliminary injunction test and
12 decide that it wants to affirm on that basis,
13 it would basically be taking the discretion of
14 the district court and -- and taking it for
15 itself to exercise.

16 JUSTICE SOTOMAYOR: Let me ask you a
17 practical question. This is a denial of a
18 preliminary injunction. You still have a
19 merits trial to go through or not?

20 MR. KIMBERLY: That also -- yes. We
21 do. Yes, unless there's a summary --

22 JUSTICE SOTOMAYOR: Now can you go
23 through that trial without a ruling from us?
24 And, if not, why not?

25 Judge Niemeyer said that there were

1 many open issues in this case, not the least of
2 which was the motivation of the -- of the
3 Governor and his committee for the change at
4 issue.

5 Would that obviate some of the merits
6 questions that are before us if you don't prove
7 that first prong? You have fairly strong
8 evidence to -- to show that.

9 MR. KIMBERLY: Is -- is --

10 JUSTICE SOTOMAYOR: Is your weakness
11 in the other prongs?

12 MR. KIMBERLY: Well, we don't think we
13 have weakness in any of the prongs,
14 respectfully, Your Honor.

15 JUSTICE SOTOMAYOR: No, assuming we
16 accept your test.

17 (Laughter.)

18 JUSTICE SOTOMAYOR: I -- I agree. But
19 assuming we -- we leave it the way it is, what
20 happens?

21 MR. KIMBERLY: Well, I -- I think what
22 -- the concern that we have is if the -- if the
23 case -- so imagine the district court does not
24 enter summary judgment, and the case proceeds
25 to trial. It will proceed to trial on what we

1 take to be a fundamentally misguided view of
2 what we have to prove to establish a First
3 Amendment violation -- violation against partisan
4 gerrymandering.

5 What the district court indicated at
6 the preliminary injunction hearing is that it
7 would be open to reopening discovery, allowing
8 us basically to conduct a massive district-wide
9 survey of voters to determine whether or not
10 they would have voted one way or another.

11 All because the district court
12 believed that the -- the primary question on
13 burden is whether all of the electoral outcomes
14 in the district under the map are attributable
15 to that.

16 JUSTICE SOTOMAYOR: There's been a lot
17 of --

18 JUSTICE ALITO: Well, let me ask you
19 about your -- your legal theory then because I
20 -- I probably don't understand it. But, if I
21 understand it, I really don't see how any
22 legislature will ever be able to redistrict.

23 So let's say that a legislature is
24 drawing a particular map or a particular
25 district. Let's say it's a map and they say

1 that -- and they have two possible plans that
2 they're considering. And they both have very
3 low population deviations, exactly the same.
4 The districts in both are compact. The
5 territory is contiguous.

6 But they say, look, did -- plan A
7 gives our party a more than de minimis
8 advantage and plan B gives the other party a
9 more than de minimis advantage. So let's pick
10 the one that favors our party.

11 Now, in your view, that's
12 unconstitutional, I gather?

13 MR. KIMBERLY: Well, if -- if what the
14 map drawers are doing is looking at the way
15 that individuals have voted in the past and on
16 that basis attempting to make it more difficult
17 for them to achieve electoral success moving
18 forward, that is the specific intent and there
19 is a burden imposed as a consequence --

20 JUSTICE ALITO: Yes.

21 MR. KIMBERLY: -- it -- it -- it may
22 well be that --

23 JUSTICE ALITO: The answer to my
24 question is yes?

25 MR. KIMBERLY: It -- it may well be

1 that that would be a violation.

2 JUSTICE ALITO: But hasn't this Court
3 said time and again you can't take all
4 consideration of partisan advantage out of the
5 district -- districting?

6 MR. KIMBERLY: I -- I want to be very
7 clear that our theory does not require taking
8 all partisan advantage -- consideration of
9 partisan advantage --

10 JUSTICE ALITO: Well, I don't see how
11 your theory is any different from that, other
12 than -- than a de minimis partisan advantage.

13 MR. KIMBERLY: So there are -- there
14 are two ways in which it's different. The
15 first is there are a range of considerations
16 that map drawers will take into account that
17 bear on the question of partisan advantage.

18 JUSTICE ALITO: Yeah, I know. You
19 have, you know, protection of incumbents and
20 preserving a district that has a particular
21 facility in it and a few other things. Okay.
22 In my example, none of those apply.

23 Your answer is that favoring the
24 political party of the majority in the
25 legislature in a way that's more than de

1 minimis is a violation of the Constitution?

2 MR. KIMBERLY: In -- in two
3 consequences, that -- in two circumstances,
4 that wouldn't be the case. So the first is we
5 also take the position that strict scrutiny
6 applies. And so it certainly is the case that
7 map drawers could consider this sort of
8 information if it's narrowly tailored to a
9 compelling governmental interest, which might
10 include, for example, pursuing a balanced map
11 or pursuing competitive districts.

12 JUSTICE KENNEDY: Well, what -- what
13 would happen if you have the orange party and
14 the green party, the green party's in the
15 minority, orange with 45 and -- orange party
16 55. Then, because of natural population shifts
17 or building new plants and so forth, it
18 switches.

19 Could the legislature say at this
20 point we -- we want, in order to have a
21 congressionally balanced declaration --
22 delegation, change -- change the districting in
23 -- in order to accommodate the new majority?

24 MR. KIMBERLY: I -- it -- it --

25 JUSTICE KENNEDY: It seems to me that

1 that would be definitely to retaliate against
2 certain -- a certain voter. The voter for the
3 orange -- for the orange party who used to be
4 in the majority is now in the minority. He's
5 got a complaint under your view?

6 MR. KIMBERLY: Well, unless, as Your
7 Honor suggested, it's in pursuit of -- of
8 balanced map drawing. I think in that
9 circumstance we've taken the position
10 throughout this litigation that --

11 JUSTICE KAGAN: But is your theory
12 that that would be a compelling interest that
13 could defeat strict scrutiny? In other words,
14 the way I understand your theory is that you
15 would put the state in that position to the
16 test of -- of saying this is a compelling
17 interest, this is the only way we can achieve
18 that interest, and -- and sort of put it
19 through the strict scrutiny hoops, even when
20 the state, you know, wants to achieve balanced
21 districts or wants to undo a former
22 gerrymander, so you would still put the state
23 through a very strict scrutiny test in that
24 case?

25 MR. KIMBERLY: Well, I -- I -- I think

1 the answer is yes, Your Honor, but I -- I think
2 in this circumstance strict scrutiny could do
3 real work, just as this Court in the racial
4 gerrymandering context has generally tolerated
5 the idea, the consideration of race is a
6 compelling -- is -- is a necessary means of
7 achieving the compelling end of complying with
8 Section 2 of the Voting Rights Act for --

9 CHIEF JUSTICE ROBERTS: Well, how
10 would you ever satisfy strict scrutiny in -- in
11 a case like this? In other words, it would
12 seem to me that there are so many alternative
13 approaches that the idea of saying this one way
14 of achieving a particular result was the only
15 possible way.

16 MR. KIMBERLY: I -- I don't -- I don't
17 think, under the strict scrutiny approach, I
18 don't think it's -- it's necessarily that that
19 particular district as it's drawn is what would
20 have to be necessary.

21 I think, for example, in Arizona, the
22 independent redistricting commission there is
23 told to pursue competitive districts. In order
24 to pursue competitive districts, it's -- it's
25 -- it's likely, I think, that considering this

1 kind of data is necessary. So --

2 CHIEF JUSTICE ROBERTS: But, I mean,
3 your theory is that the legislature acts with a
4 vengeful intent to punish people for the
5 exercise of their First Amendment rights,
6 right?

7 MR. KIMBERLY: The way we put it is
8 disapproval of their past voting history, yes.

9 CHIEF JUSTICE ROBERTS: And they're
10 going to say that in some circumstances that's
11 going to be okay, even though it applies strict
12 scrutiny, it's going to be okay for them to
13 burden their First Amendment rights?

14 MR. KIMBERLY: Well, I -- I think we
15 would take the position, just as in any other
16 First Amendment context that, yes, if
17 consideration of past voting history is
18 necessary to pursue that compelling
19 governmental interest, we tend to think that
20 balanced maps and competitive districts would
21 fit that hole.

22 JUSTICE GINSBURG: But when you start
23 -- when you start with a district that's been
24 skewed and you take that as the baseline and
25 say any deviation from that skewed districting

1 has to get strict scrutiny, there's something
2 wrong with that.

3 I mean, isn't the state able to say in
4 the past this was a gerrymandered district and
5 now we want to undo the gerrymander, and then
6 people who are left out will say: Now we've
7 been diluted, we've -- we've lost the clout
8 that we once had.

9 I mean, isn't there something wrong
10 with using the district as it now exists as
11 your starting point?

12 MR. KIMBERLY: I think there are three
13 things to say about that, Your Honor. And I
14 recognize that this is an important point in
15 the case, so I'd like to be sure to hit all
16 three.

17 The first is our focus on the
18 immediately prior -- the form of the
19 immediately prior district was a reflection of
20 what this Court said in Karcher against Daggett
21 about districts historically having a -- a core
22 around which changes are made.

23 That accurately describes the Sixth
24 Congressional District, which historically has
25 comprised northwest Maryland and around which

1 changes have been made, but that historical
2 core has been preserved.

3 I think probably analytically the more
4 consistent way to think about it is the first
5 precondition under the Gingles framework for
6 approaching racial vote dilution, which is the
7 question whether the targeted minority is
8 capable of forming -- is -- is sufficiently
9 numerous and geographically compact to form a
10 majority of a reasonably drawn district.

11 We knew in this case that that was
12 true because, of course, between 1990 and 2010,
13 Republican voters had formed the majority of a
14 reasonably drawn district. That's why in this
15 case we had focused on the way that it had been
16 drawn before.

17 But in a circumstance where the Court
18 is looking at whether there has been a
19 maintenance of a prior gerrymander, we think
20 probably the -- the more consistent way to look
21 at it doctrinally and analytically is -- is as
22 I just described under the first prong of the
23 -- of the Gingles preconditions.

24 JUSTICE SOTOMAYOR: May I ask you, is
25 this -- is yours the -- is yours the only test

1 you're proposing? In other political
2 gerrymandering cases, do you see other tests
3 being a possibility?

4 MR. KIMBERLY: Is -- is the question
5 whether we --

6 JUSTICE SOTOMAYOR: Is this the only,
7 versus --

8 MR. KIMBERLY: In -- in this lawsuit,
9 this is -- this is the only --

10 JUSTICE SOTOMAYOR: I didn't ask that.

11 MR. KIMBERLY: I'm sorry. So I --

12 JUSTICE SOTOMAYOR: In other
13 gerrymandering cases.

14 MR. KIMBERLY: Yes.

15 JUSTICE SOTOMAYOR: Do you see the
16 applicability of any other test? You have a
17 lot of amici with different tests, the ACLU.

18 MR. KIMBERLY: Sure.

19 JUSTICE SOTOMAYOR: The others have
20 proposed tests that would address some of
21 Justice Kagan's concern, the entrenchment test,
22 the durability test, that sort of thing.

23 MR. KIMBERLY: Sure.

24 JUSTICE SOTOMAYOR: Why did you
25 disavow those? Do you lose under those?

1 MR. KIMBERLY: Well, our --

2 JUSTICE SOTOMAYOR: Or is yours -- do
3 you think yours is just easier?

4 MR. KIMBERLY: Well, we -- there are
5 two reasons. It was our understanding when we
6 filed the amended complaint back in 2015 that
7 we would not have made out a claim under a
8 number of those other tests, and we were
9 concerned because the focus here really was on
10 the Sixth District and not the map as a whole,
11 that it just wasn't an apt way of thinking
12 about what happened in Maryland.

13 The second reason that we focused on
14 it is because we were concerned about the
15 notion that -- under these other tests, that
16 the injury that was inflicted upon Republican
17 voters in Maryland's Sixth Congressional
18 District could be viewed as being offset by --
19 by allowing effectively gerrymandering other
20 districts in other parts of the state to offset
21 the -- the dilution of votes in the Sixth.

22 JUSTICE SOTOMAYOR: Under your theory,
23 do you think the Democrats in the Eighth
24 District have a complaint?

25 MR. KIMBERLY: No, I think that's a

1 good example of what would be a de minimis
2 effect. It's true that moving Republicans out
3 of the Sixth and into the Eighth and Democrats
4 out of the Eighth and into the Sixth did, in
5 sort of a technical sense, dilute Democratic
6 strength in the Eighth District. The DPI there
7 went from 72 to 60. Both are extremely safe
8 Democratic seats. As a practical matter, it
9 made no difference to the outcome of the
10 election in the Eighth District. It was --

11 JUSTICE GORSUCH: Counsel --

12 CHIEF JUSTICE ROBERTS: Presumably, it
13 wouldn't satisfy the first part of your test,
14 that this would have been done with a vengeful
15 intent --

16 MR. KIMBERLY: And --

17 CHIEF JUSTICE ROBERTS: -- to get
18 those Democrats?

19 MR. KIMBERLY: And that's exactly
20 right. That's the other way to look at it, is
21 it would just be an accepted political
22 consequence and not the specific --

23 JUSTICE KAGAN: But, Mr. Kimberly --

24 JUSTICE BREYER: So we have many
25 briefs, we have three cases, one, two were --

1 you know, was Wisconsin, there's Maryland, and
2 the one we are holding, I think, is North
3 Carolina.

4 MR. KIMBERLY: Right.

5 JUSTICE BREYER: And -- and there --
6 you've read those briefs probably.

7 MR. KIMBERLY: Yes.

8 JUSTICE BREYER: And they all have
9 slight variations on different themes. And I
10 think you're right when you -- when you -- the
11 same theme maybe but variations, and obviously
12 the problem is what you started with.

13 It seems like a -- a pretty clear
14 violation of the -- the Constitution in some
15 form to have deliberate, extreme
16 gerrymandering. The Court said things like
17 that. But is there a practical remedy that
18 won't get judges involved in every -- or dozens
19 and dozens and dozens of very important
20 political decisions?

21 All right. What would you think of
22 taking the three cases and setting them for
23 reargument on the question of standing and
24 there we'd have all three variations in front
25 of us and we would enable people who have an

1 interest in this subject generally to file
2 briefs, and we'd see them all together and they
3 could attack each other's standards or they
4 could support each other's standards or they
5 could attack any standard? But there we'd have
6 right in front of us the possibilities as -- as
7 -- as thought through by lawyers and others who
8 have an interest in this subject.

9 MR. KIMBERLY: Your Honor, I -- I --
10 obviously, this Court has before it those three
11 cases. I do think it makes sense to think
12 about them all together because I think the
13 consequences of not adopting one or the other
14 theory is -- is alarming and ought to be
15 alarming to anybody.

16 I might add that I think today, as the
17 Campaign Legal Center laid out in its brief in
18 this case, a challenge to Maryland's partisan
19 gerrymander in 2011 would likely succeed under
20 the approach that they've taken.

21 Conversely, I think the Wisconsin map
22 could be invalidated under our approach. It
23 would require a different theory and different
24 evidence, perhaps different plaintiffs. But it
25 -- it's certainly imaginable that the Wisconsin

1 map could be invalidated under our theory.

2 JUSTICE BREYER: But I raise it not
3 for that reason. I raise it because I want to
4 think if there's some harm in doing that that I
5 haven't thought of. Is there some reason --
6 would it be harmful to somebody?

7 Because I do see an advantage. You
8 could have a blackboard and have everyone's
9 theory on it, and then you'd have the pros and
10 cons and then you'd be able to look at them all
11 and then you'd be able see perhaps different
12 ones for different variations and, you know,
13 that's -- maybe there are different parts of
14 gerrymandering that rises in different
15 circumstances, dah-dah-dah. You see the point.

16 MR. KIMBERLY: Sure.

17 JUSTICE BREYER: Okay. You can't
18 think of a reason not to do it?

19 MR. KIMBERLY: Well, the -- I mean,
20 the -- the immediate reason, I suppose, would
21 be the intervening 2018 elections. But if --
22 if the Court is disinclined to think that
23 there's time for a remedy in any event, then
24 perhaps there wouldn't be. That certainly
25 isn't an issue that we're willing to concede.

1 As we say, I think it would be an issue for the
2 district court in our case on remand, just as
3 it would be in Wisconsin or North Carolina.

4 JUSTICE GINSBURG: What do you -- what
5 do you think would be permissible? You -- you
6 said your theory allows for de minimis
7 exceptions.

8 MR. KIMBERLY: Right.

9 JUSTICE GINSBURG: So what falls in
10 the de minimis category?

11 MR. KIMBERLY: Well, I think a good
12 example would be -- as I was just describing to
13 Justice Sotomayor, it would be what happened in
14 the Eighth Congressional District. We have --

15 JUSTICE SOTOMAYOR: That's not de
16 minimis. You're saying there's no burden at
17 all. You're saying there wasn't an intent to
18 burden their association.

19 MR. KIMBERLY: Well, that's -- that's
20 -- I think -- I think you can get at the --

21 JUSTICE SOTOMAYOR: All right. So
22 that's different than de minimis.

23 MR. KIMBERLY: But I think you can get
24 at it both ways. It certainly is also the case
25 that I think you can eliminate that -- that

1 claim under the intent prong. I think you
2 could also eliminate it under the burden prong.

3 JUSTICE KAGAN: Well, may I give you a
4 hypothetical that gets to Justice Ginsburg's
5 question? Suppose you had a district and there
6 was a reapportionment and we realized we have
7 to add 15,000 votes -- voters to this district.

8 And they looked at the numbers and
9 they said: You know what, if -- this is a
10 solid Republican district, but if we add 15,000
11 voters from a Democratic area, we're going to
12 turn this into a highly competitive district.

13 Would -- you would now force the state
14 to meet a strict scrutiny burden on that,
15 wouldn't you?

16 MR. KIMBERLY: I think in that
17 circumstance -- it sounds like what's going
18 to -- I just want to --

19 JUSTICE KAGAN: We are taking 15,000
20 of the bluest blue voters, and we're parking
21 them in this district in order to convert the
22 district from a safe Republican district to a
23 competitive district.

24 How do you analyze that?

25 MR. KIMBERLY: I think -- and just to

1 be clear that I have it straight, if the point
2 is that lawmakers in --

3 JUSTICE KAGAN: We want another
4 Democratic senator.

5 MR. KIMBERLY: -- in Annapolis --
6 exactly. They -- they say we -- we disapprove
7 of these voters electing a Republican in this
8 district, we're going to move these Democrats
9 in to prevent them from doing it again in the
10 future, yes, I think that that could be --
11 again, depending on the strict scrutiny
12 question and depending also on the burden
13 question, that could, indeed, be a violation of
14 our theory.

15 JUSTICE GORSUCH: Counsel, one
16 question I have about causation for you.
17 Before the district court, it appeared that you
18 conceded that you had to prove but-for
19 causation, that but for the alleged
20 gerrymander, the outcome would have been
21 different in these last three elections. And
22 the district court expressly rejected a lower
23 standard, rejecting some metaphysical could-be
24 burden in favor of the but-for cause test.

25 In this Court, you seem to now be

1 backing away from the but-for cause
2 requirement, as best I can tell, in favor of
3 something the district court might have
4 described differently.

5 And I wonder how could it be an abuse
6 of discretion for the district court to have
7 proceeded on the basis of a concession before
8 it that you're now backing away from?

9 MR. KIMBERLY: Well, to be clear, we
10 -- we believe that but-for causation is an
11 element of the claim. We just don't think it's
12 ours to prove. We think under Mt. Healthy
13 burden-shifting --

14 JUSTICE GORSUCH: I understand that.
15 But before the district court, you took the
16 position that you had to prove it, according to
17 the district court's opinion.

18 MR. KIMBERLY: I --

19 JUSTICE GORSUCH: According to -- your
20 brief is saying our burden is to show.

21 MR. KIMBERLY: Yes. Right. No, that
22 -- so that -- that is a line taken out of a
23 brief --

24 JUSTICE GORSUCH: Right.

25 MR. KIMBERLY: -- that's really

1 twisted to mean 180 degrees of what it actually
2 meant.

3 JUSTICE GORSUCH: So the district
4 court twisted your concession?

5 MR. KIMBERLY: It misunderstood --
6 Your Honor, it misunderstood what we were
7 saying. We said -- we said very clearly in the
8 context in which that sentence is taken that we
9 did not have to prove that every election
10 forevermore would be --

11 JUSTICE GORSUCH: No. What it said
12 was -- it didn't say that. So I think you're
13 twisting perhaps what the district court said.
14 What the district court quoted you as saying is
15 our burden is to show that purposeful dilution
16 was a but-for cause of the losses in 2012, '14,
17 and '16.

18 MR. KIMBERLY: And -- and, Your Honor,
19 that was a description of the factual arguments
20 that we had made in the case about how it was
21 that we were describing the burden at that
22 point. That is not something that we --

23 JUSTICE GORSUCH: All right. How can
24 it be an abuse of discretion for the district
25 court to have relied on that concession?

1 MR. KIMBERLY: Because that -- I mean,
2 that -- that concession is -- first of all,
3 it's not a concession. It's taken out of
4 context, as I say, to mean something other than
5 what it meant.

6 But I -- I think it's wrong to say
7 that that is -- that that is the basis on which
8 the district court based its decision. It
9 based its decision on the view that, in order
10 to prove an actionable burden in any partisan
11 gerrymandering case, the plaintiffs have to
12 come forward and show that electoral outcomes
13 have been changed in the past and will continue
14 to be changed until the map is altered. And
15 that is not what this Court -- that is not a
16 position that we took in the district court.

17 JUSTICE GORSUCH: One more along these
18 lines for you. In Factual Findings 11 and 12,
19 the district court found that plaintiffs had --
20 had conducted no statistical sampling to show
21 an alternative cause might not have been
22 responsible; namely, that people just preferred
23 the candidate.

24 MR. KIMBERLY: Right.

25 JUSTICE GORSUCH: And it had nothing

1 to do with gerrymandering. How do we -- how do
2 we address that factual finding and call it an
3 abuse of discretion, the decision here, when
4 plaintiffs failed to rule out other potential
5 causal factors for the results here?

6 MR. KIMBERLY: Well, there are two
7 things to say about that. The first and, I
8 think, the easiest way to address it is through
9 the legal question of whether Mt. Healthy
10 burden-shifting applies here, whether it's on
11 the state, when a prima facie case of
12 discrimination has been made, to come forward
13 with neutral justifications for the action that
14 it took.

15 If we're right about that question,
16 then it wasn't our burden to put that evidence
17 before the Court in any event. But I think the
18 other way to think about it, to call it abuse
19 of -- of discretion is, frankly, because it's
20 clear error.

21 The court didn't take account of the
22 strong evidence that we have about the
23 reliability of the metrics that the map drawers
24 themselves used to work the gerrymander in this
25 case. That includes the PVI and the -- well,

1 the map drawers didn't rely on the PVI, but
2 they relied on the DPI.

3 We have evidence uncontested in this
4 case that those metrics are reliable ways of
5 predicting electoral outcomes.

6 That they are reliable is a premise of
7 partisan gerrymandering to begin with. If they
8 weren't reliable, we wouldn't see partisan
9 gerrymandering at all because it would be a
10 fool's errand. We know that not to be the
11 case.

12 We have strong evidence in the case
13 demonstrating that, more likely than not, the
14 electoral outcomes and the dilution of votes in
15 the district was attributable, as common sense
16 suggests, to the way that the -- the map
17 drawers drew the lines.

18 And so I think you have the legal
19 error under Mt. Healthy burden-shifting, and,
20 as to the factual question, it's simply a -- a
21 -- a -- a clear misreading of the record before
22 the district court.

23 If I may reserve my time.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Mr. Sullivan.

2 ORAL ARGUMENT OF STEVEN M. SULLIVAN

3 ON BEHALF OF THE APPELLEES

4 MR. SULLIVAN: Mr. Chief Justice, and
5 may it please the Court:

6 The plaintiffs' First Amendment
7 retaliation claim fails to -- to provide a
8 manageable standard for evaluating partisan
9 gerrymandering for three principal reasons.

10 First Amendment retaliation does not
11 even try to answer the perennial question of
12 how much is too much politics in a
13 redistricting process that this Court has
14 called inherently political.

15 JUSTICE SOTOMAYOR: I don't know. He
16 says not at all. He says it -- it's too much
17 if that's all you're doing.

18 MR. SULLIVAN: Well, no.

19 JUSTICE SOTOMAYOR: That's basically
20 as I read his argument.

21 MR. SULLIVAN: Well, it depends on --

22 JUSTICE SOTOMAYOR: If that's all
23 you're doing, then it's too much.

24 Now, under that test, he might lose,
25 because you're claiming there were other

1 reasons for this.

2 But that's an issue of fact for the
3 jury, I think. You have some pretty damning
4 evidence that it might not have been. You have
5 your own mayor saying -- your own governor,
6 pardon me --

7 MR. SULLIVAN: Used to be my mayor.

8 JUSTICE SOTOMAYOR: Yeah, your own
9 governor saying that he felt duty-bound to
10 ensure that his party won. And there are
11 basically statements to that effect here.

12 So that tells -- that gives you a
13 standard. You may not like it, but it does
14 give you a standard.

15 MR. SULLIVAN: Well, two things, Your
16 Honor. One is elsewhere in the brief
17 plaintiffs disavow that they have to show how
18 much is too much. They actually say that in
19 words.

20 Two, that kind of intent --

21 JUSTICE SOTOMAYOR: Well, how much is
22 too much is when, I think, balled up in the
23 question of which there -- I -- I grant you
24 they're a little bit equivocal of who bears
25 this burden, but they're -- they are saying

1 that we have to show that there's some form of
2 entrenchment, that the intent is to ensure that
3 only Democrats will be capable of winning in
4 this district for the life of the census or the
5 life of this boundary.

6 So you -- you have a -- you have some
7 form of too much.

8 MR. SULLIVAN: But they -- but they're
9 really relying on is the intent, which they
10 would equate with retaliation. But it's the
11 same intent which the Court recognized in
12 Bandemer is ever present.

13 JUSTICE KAGAN: Well, Mr. Sullivan,
14 let's say you're right, that they have not
15 shown us how much is too much, that they have
16 suggested that in any forum, when there's
17 partisan advantage, the courts should be
18 intervening.

19 But we don't have to say something
20 like that to deal with this case because,
21 however much you think is too much, this case
22 is too much.

23 (Laughter.)

24 JUSTICE KAGAN: I mean, I think.
25 You'll tell me I'm wrong. But, as Justice

1 Sotomayor said, you know, from the Governor,
2 from Congressman Hoyer, people were very
3 upfront about what they were trying to do here,
4 which was to create another Democratic
5 district. And they did that. Only 10,000
6 people had to be removed from this district as
7 a result of one person/one vote.

8 What -- what the Maryland legislature
9 did was to shuffle 360,000 people out and bring
10 in 350,000 people. The result of that is that
11 the district went from 47 percent Republican
12 and 36 percent Democratic to exactly the
13 opposite, 45 percent Democratic and 34 percent
14 Republican.

15 I mean, how much more evidence of
16 partisan intent could we need?

17 MR. SULLIVAN: Well, you might want
18 intent to create something other than a
19 competitive district, which is what Maryland
20 created. It went from a safe Republican, plus
21 13 Republican, to a plus 2 Democrat. And in 19
22 --

23 JUSTICE KAGAN: Plus 2. You're
24 referring to the single election? Is -- is
25 that what you're referring to?

1 MR. SULLIVAN: Well, Cook evaluated
2 the first election after the redistricting,
3 which is the most important one where you can
4 judge the effectiveness of it.

5 JUSTICE KAGAN: I mean, Democrats have
6 now prevailed in three straight elections,
7 including in an election which was a wave
8 Republican election.

9 So the effects were exactly what the
10 intent would suggest: A long-standing
11 Republican incumbent is unseated by a
12 Democratic newcomer, who withstands a wave
13 election, who prevails three straight times.

14 I mean, it appears that the Maryland
15 legislature got exactly what it intended, which
16 was you took a Republican district, like a safe
17 Republican district, and made it into not the
18 safest of Democratic districts but a pretty
19 safe one.

20 MR. SULLIVAN: Well, no, it's not
21 safe. It was judged competitive. And in that
22 first election, 2012, the incumbent Republican
23 had seven -- count them -- seven -- seven
24 opponents in the Republican primary. The total
25 vote for those opponents exceeded the vote for

1 the incumbent.

2 Those seven candidates did not run for
3 office, presumably because they thought it was
4 a waste of time to run for the seat as a
5 Republican in the Sixth District. They
6 considered it to be competitive. And so they
7 ran, as we often do --

8 JUSTICE BREYER: Competitive, the --
9 the -- the idea that's being advanced is
10 extreme gerrymandering. Okay? A
11 hundred percent is extreme. No other reason
12 for doing this other than partisanship. That's
13 an example of extreme gerrymandering.

14 And the election result changed.
15 That's an example of harm. And there is
16 nothing else put forward, okay, except you did
17 put something forward: There's been
18 gerrymandering in the past, we're trying to
19 cure it. Something like that. We've seen that
20 in other cases. Okay. Say no. The last
21 reason is not good enough. You have to start
22 somewhere.

23 Second, there is an example of an
24 effect. And, three, it's 100 percent partisan.
25 That's the reason. That's extreme.

1 Now could we say that? Yes, I think
2 we could. But the problem is that's not going
3 to solve other cases and we'll never have such
4 a record again. I mean, the people who do the
5 gerrymandering are not stupid.

6 (Laughter.)

7 JUSTICE BREYER: And -- and they will
8 never have such a record. And, therefore, we
9 will not do much to deal with a problem of
10 serious dimensions that is national. All
11 right?

12 So what do we do? Just say good-bye?
13 Forget it? And, as, you know, you've read
14 these briefs, if you think what's happened now
15 is something, wait until you see those
16 computers really working. You've read that.
17 I've read it.

18 Okay. What do you think?

19 MR. SULLIVAN: Well, I don't know if
20 I'm smart enough to exceed all of the knowledge
21 that's been applied to this question by this
22 Court for a generation.

23 But we do think that the equal
24 protection law, which is what Baker v. Carr
25 looked to when it first embarked on this

1 project, to have the courts oversee
2 redistricting, provides the -- the best hope
3 for a standard, therefore, to emerge.

4 And -- and -- and First Amendment,
5 there are cases outside of retaliation --
6 retaliation has never been used to evaluate a
7 statute that's otherwise out.

8 JUSTICE BREYER: Okay. Say equal
9 protection law. You get to the same place, you
10 see, because we have 100 percent here, or
11 that's -- the record could be read that way,
12 get to the same place.

13 That's why I was thinking you've got
14 to get all these standards lined up together,
15 you know, and you have to have people
16 criticizing each one back and forth and see if
17 any of them really will work or some work in
18 some cases and some work in other cases and it
19 depends on the type you have.

20 I mean -- I mean, that -- that isn't
21 squarely addressed by the lawyers because
22 they're focused on their one case, et cetera.

23 MR. SULLIVAN: Let's --

24 JUSTICE BREYER: What do you think?

25 MR. SULLIVAN: Well, there's -- there

1 hasn't been 100 percent showing of it was the
2 only purpose here. Eliminating the crossing of
3 the Chesapeake Bay, which had happened in the
4 early '90s, caused the -- the need to move
5 125,000 people in the First District alone.

6 So -- and as everyone who -- all the
7 experts who testified in this case in
8 deposition acknowledged that, if you move one
9 line, it affects the whole map.

10 JUSTICE KENNEDY: Suppose the Maryland
11 Constitution had a provision that required that
12 partisan advantage for one party be the
13 predominant consideration in any districting.
14 Lawful or not?

15 MR. SULLIVAN: That would be viewpoint
16 discrimination, Your Honor, which the court
17 would evaluate on the face of the statute.
18 But, here, we have a facially valid statute
19 that doesn't have any content along that line.

20 JUSTICE KENNEDY: Well, you -- you --
21 you can have viewpoint discrimination with --
22 without challenging something on its face. It
23 goes either way.

24 MR. SULLIVAN: Well, in Christian
25 Legal Society versus Martinez, the Court

1 pointed out that if it's content neutral --

2 JUSTICE KENNEDY: Well, why is the
3 hypothetical viewpoint consideration and what
4 happened here not viewpoint consideration? I
5 don't understand the difference.

6 MR. SULLIVAN: Well, it -- it comes
7 down to how the Court evaluates that kind of
8 statutory challenge, which it has traditionally
9 done on the face of the statute.

10 JUSTICE KENNEDY: My question to you
11 was, A, was that invalid, the hypothetical? I
12 believe, if I can conclude that your answer is
13 no, that's not constitutional.

14 MR. SULLIVAN: Yes, that -- on the
15 face of the statute --

16 JUSTICE KENNEDY: How is this case
17 different?

18 MR. SULLIVAN: Well, we don't have a
19 statute that establishes a preference for one
20 party or the other. It's --

21 CHIEF JUSTICE ROBERTS: Well, but, I
22 mean, the redistricting is a statute, isn't it?

23 MR. SULLIVAN: Yes.

24 CHIEF JUSTICE ROBERTS: Well, that
25 seems to be a statute that -- that prefers one

1 party over another.

2 MR. SULLIVAN: But on its face, it's a
3 series of metes and bounds. It's the longest,
4 most boring deed you've ever written. It
5 doesn't have any -- it doesn't have any
6 particular content.

7 JUSTICE KAGAN: Well, suppose,
8 Mr. Sullivan, that the Maryland legislature
9 passed a statute. What is -- Maryland is about
10 a 60/40 Democratic/Republican state?

11 MR. SULLIVAN: Just about --

12 JUSTICE KAGAN: Is that right?

13 MR. SULLIVAN: Just about --
14 Democratic.

15 JUSTICE KAGAN: Yes, 60 -- 60/40.
16 Suppose the Maryland legislature passed a
17 statute and said, in the next round of
18 reapportionment, we're going to create seven
19 Democratic districts and one Republican
20 district.

21 MR. SULLIVAN: I think it would have a
22 similar result to the question from Justice
23 Kennedy. It would be on its face --

24 JUSTICE KAGAN: Well, that is what
25 then -- I mean, the Chief Justice said the --

1 the reapportionment statute is that statute.

2 MR. SULLIVAN: Well, it isn't on its
3 face in that -- that it would --

4 JUSTICE KAGAN: The districting
5 statute is that.

6 MR. SULLIVAN: -- it would require --
7 rather than using a traditional well-developed
8 standard, the Court would have to depart from
9 its traditional well-developed standard of
10 evaluating viewpoint discrimination on the face
11 of the statute as it's done in recent cases
12 where it doesn't --

13 JUSTICE KENNEDY: So -- so, if you
14 hide the evidence of what you're doing, then
15 you're going to prevail?

16 (Laughter.)

17 MR. SULLIVAN: Well, I don't think
18 it's hiding by stating the statute for where
19 the boundary lines are as they've always been
20 stated. That's not hiding what's being done.

21 CHIEF JUSTICE ROBERTS: Well, let's
22 talk about the boundary lines for -- for a
23 second. People have been talking about the
24 statistics and the numbers. Is it appropriate
25 in a case like this to look at what the

1 district looks like in terms of the boundaries
2 and the extent to which it complies with
3 traditional redistricting criteria?

4 I mean, part of the issue here is you
5 have people from, you know, Potomac joined with
6 people from the far west panhandle.

7 MR. SULLIVAN: Well --

8 CHIEF JUSTICE ROBERTS: I mean, they
9 both have farms but the former, hobby farms.

10 (Laughter.)

11 MR. SULLIVAN: Well --

12 CHIEF JUSTICE ROBERTS: And the -- and
13 others -- the others are real farms.

14 (Laughter.)

15 MR. SULLIVAN: Well, there's a lot in
16 the record that you'll find. The Census
17 considers most of the people in that western
18 Maryland part of the state to actually live in
19 urban areas, according to the Census. But I --
20 the -- Congress abandoned the geographic
21 requirements as early as 1911, was the last
22 time they put contiguity and compactness in a
23 apportionment statute. So it's not in the --
24 it's not in the Constitution. It's not in the
25 governing statute.

1 But if you were going to look at that
2 kind of traditional thing, then you --

3 CHIEF JUSTICE ROBERTS: Well, it just
4 seems to me -- I've read a lot in the record --
5 but worried about, you know, going over
6 Chesapeake Bay and drawing a district, and that
7 makes a lot of sense, but it's not just water
8 that separates --

9 MR. SULLIVAN: Right.

10 CHIEF JUSTICE ROBERTS: -- people, and
11 -- and part of the objection here to the way it
12 was redrawn is that it's -- it doesn't seem to
13 have any internal logic.

14 MR. SULLIVAN: Well, it would be
15 harder to justify the -- what the plaintiffs
16 want to call the benchmark district, which
17 extended the Sixth all the way across the state
18 to far Harford County, which is as far from
19 western Maryland as you can get without
20 plopping into the Chesapeake Bay.

21 So, if you want to say let's judge it
22 by geographic and traditional methods, then you
23 couldn't justify the benchmark district that
24 plaintiffs want to point to, which is the old
25 Sixth. This new district looks much more

1 traditional. In fact, it has Montgomery County
2 in it, which was the traditional layout of the
3 Sixth District until that was changed in 1990,
4 which paved the way for Roscoe Bartlett to be
5 able to get elected, unlike his previous try
6 for the seat, where he lost by 49 points.

7 JUSTICE GINSBURG: Mr. Sullivan, in
8 the racial gerrymandering case, there was a
9 period when "max-black" was the effort. And it
10 seems to me that what we have here is
11 "max-Democratic." And if "max-black" was no
12 good, why should "max-Democratic" be okay?

13 MR. SULLIVAN: There's a couple of
14 reasons. One is factual, that on this record,
15 it's -- there's uncontested evidence in the
16 record that the legislators could have, without
17 much difficulty, drawn a map that would have
18 resulted in eight Democratic and zero
19 Republican congresspersons. So, factually,
20 it's not a "max-Dem" plan.

21 Secondly, in the other case, I believe
22 you're concerned about racial gerrymandering,
23 which is drawn from a history of exclusion of
24 African Americans from our political process,
25 something that Republicans can hardly claim,

1 certainly not today, where our federal
2 government and our state government, as it
3 happens, both controlled by Republican party.

4 So it's a much different --

5 JUSTICE SOTOMAYOR: But we haven't --

6 CHIEF JUSTICE ROBERTS: Counsel,
7 you've made -- just to clear up, I meant to ask
8 it before, a factual question. You said the
9 state was 60/40 Democrat/Republican?

10 MR. SULLIVAN: Yes, Your Honor.

11 CHIEF JUSTICE ROBERTS: But that's
12 just the identified party. How -- what's the
13 percentage of independents in Maryland?

14 MR. SULLIVAN: Well, I'm not sure. In
15 this particular district, it's about
16 20 percent, in the Sixth District. I do -- I
17 do know that. It's 20 percent.

18 CHIEF JUSTICE ROBERTS: Is that a
19 pertinent consideration in deciding whether
20 something's been a partisan gerrymander?

21 MR. SULLIVAN: Well, I think it's --
22 it's important because, here, both major
23 parties are in the minority as far as
24 registration in that district. Neither is the
25 majority. They could have made it that way,

1 but they didn't.

2 So they -- the independent vote is --
3 is critical because, in the election that --
4 the first election, the Democrat won more of
5 the independent vote than the Republican. The
6 redistricting lines couldn't have caused that
7 to happen. That happened because of the views
8 of those voters and the strength of that
9 candidate.

10 CHIEF JUSTICE ROBERTS: As a general
11 matter in partisan gerrymandering cases, do you
12 -- do you have any theory about how you're
13 supposed to take independent voters into
14 account?

15 MR. SULLIVAN: Well, I think they have
16 rights too, and I think what gets lost in --
17 certainly, in plaintiffs' theory, perhaps in
18 some of the others, is what about all the
19 people that aren't part of a major party? They
20 don't enter into the calculus for this First
21 Amendment retaliation. Presumably, they're
22 retaliated in every act of the legislature.

23 JUSTICE KAGAN: But isn't -- isn't it
24 true, Mr. Sullivan, just as a matter of fact,
25 that most people who are independents tend to

1 lean pretty strongly one way or the other over
2 many election cycles?

3 MR. SULLIVAN: Well, I've heard some
4 analysts call them as -- as the angry white
5 vote, but I don't know that that's true. I
6 don't know if you look at the --

7 JUSTICE KAGAN: I wasn't suggesting
8 that they were anything in particular, just,
9 you know, people who call themselves
10 independents and who, in fact, are not members
11 of a political party, you know, tend to -- not
12 all of them, but many of them, tend to vote
13 pretty consistently one way.

14 And this is why when mapmakers do
15 their mapmaking, they look not only to party
16 registration; they look to the way people vote,
17 and what they find is that more members than
18 just the members of the political party -- more
19 voters vote pretty consistently.

20 MR. SULLIVAN: Well, I don't know if
21 our record would support that, Your Honor. You
22 may be correct, but the record -- we have
23 statements from experts in our -- Dr. Lichtman
24 testified that the independent vote tends to be
25 a transitional period for voters who are

1 unhappy with their former political party and
2 -- and they may or may not move to the other
3 one.

4 So we don't know which direction
5 they're moving. Are they moving away from the
6 Democrats and parking themselves as
7 independents for a few years before becoming
8 Republican, or, vice versa, they're just
9 disenchanted with Republican views.

10 JUSTICE GORSUCH: Along the lines of
11 things we don't know, we've been talking about
12 the intent of the legislature, but what effect
13 does the -- does the fact that this map was
14 subsequently approved by the people themselves
15 have when we're trying to determine intent?
16 This went up for voter referendum, as I
17 understand it --

18 MR. SULLIVAN: Yes, it did.

19 JUSTICE GORSUCH: -- and passed with
20 64 or so percent of the vote.

21 MR. SULLIVAN: Yes. And some of our
22 plaintiffs were active in getting that
23 referendum on the ballot. Well, in the
24 Schuette case, Justice Kennedy wrote how that
25 raises First Amendment issues of its own

1 because the people have spoken and they've
2 expressed themselves, and they did so
3 overwhelmingly to support this plan, including
4 in 10 out of 12 counties where the majority of
5 voters are Republican.

6 So for -- this is not, as many a
7 redistricting case might be presented to you,
8 as a blow for democracy. This would be a blow
9 against democracy.

10 CHIEF JUSTICE ROBERTS: What did the
11 referendum question ask?

12 MR. SULLIVAN: It asked if -- if the
13 voters approved the plan that had been drawn
14 up.

15 JUSTICE BREYER: No, it said --

16 CHIEF JUSTICE ROBERTS: Is that what
17 it said, the plan that had been drawn up? I
18 thought it -- well, I can look at it.

19 MR. SULLIVAN: Well, it's a more
20 elaborate statement. What the statement --

21 CHIEF JUSTICE ROBERTS: Well, it is a
22 more elaborate statement. My point is you're
23 relying on what the -- the response to the
24 referendum. And, certainly, I think your --
25 your friends on the other side suggest that the

1 question -- the -- the phrasing of the question
2 on the referendum was opaque.

3 MR. SULLIVAN: Yes, Your Honor. That
4 issue was litigated by the proponents of the
5 referendum in state court, and they lost both
6 at trial and appellate court. In a case called
7 Parrott versus McDonough that is cited in the
8 Judicial Watch brief, the court found that the
9 language of the referendum was sufficient on
10 its face to apprise voters, especially when
11 viewed in conjunction with the individual
12 notice that voters received from the Board of
13 Elections that were fully explaining the issue
14 and the -- the map as it existed.

15 JUSTICE BREYER: Now here is the --
16 here it is, I think, if my clerk got it right.
17 Are you for or are you against the following
18 text: Establishes the boundaries for the
19 State's eight United States congressional
20 districts based on recent Census figures, as
21 required by the United States Constitution?

22 MR. SULLIVAN: Yes.

23 JUSTICE BREYER: Well --

24 MR. SULLIVAN: And they were --

25 JUSTICE BREYER: -- I mean, it doesn't

1 even tell you there what establishes it. I
2 mean, what --

3 (Laughter.)

4 MR. SULLIVAN: No, but they were --
5 they were sent a notice that it had a fuller
6 explanation.

7 JUSTICE BREYER: Notice. Have you --
8 do you read all of the notice -- I mean, maybe.

9 MR. SULLIVAN: Notice, but they do
10 read the paper. And the -- the -- the
11 plaintiffs themselves rely on in their second
12 amended complaint, if you look at the fine
13 print at the bottom of some of their maps,
14 drawn from the extensive press coverage in the
15 run-up to the referendum, many of them critical
16 of the map, talking about it as a gerrymander.

17 This referendum was not held in a
18 vacuum. And in Schuette, the Court said we're
19 not going to presume that the voters are not
20 smart enough or well informed enough to make
21 their decisions.

22 JUSTICE BREYER: I got that point, but
23 I have a different question --

24 MR. SULLIVAN: Sure.

25 JUSTICE BREYER: -- which is -- I

1 haven't thought of, and I -- so you may have
2 it. I have not thought of the answer to this
3 question.

4 Let's suppose that you do have
5 100 percent district drawn to help the
6 Democrats, and suppose also in the next
7 election the Democrat was elected, not the
8 Republican.

9 Now, if you said that was
10 unconstitutional, and there's no other reason
11 given, all right, now, in other words, extreme.
12 If that's the holding of the court -- I'm not
13 saying it would be, I'm just saying assume
14 it -- how would that hurt independents? Is
15 there a way that would hurt independent voters?
16 That holding.

17 MR. SULLIVAN: Well, if independent
18 voters had support of that Democratic candidate
19 on the merits of that candidate because they
20 thought that candidate was the better
21 candidate, as happened in the Sixth District
22 when independent voters voted very heavily for
23 the Democratic candidate, then you would be
24 harming them if you were -- if you were -- I
25 don't know if you were going to think about

1 invalidating an election, which the Court
2 hasn't tended to do, but it -- it would be
3 hurting them as well and blaming them for a
4 problem that they didn't create.

5 JUSTICE SOTOMAYOR: We have found
6 standards on things like how many -- what's the
7 burden of treating different political parties
8 to a requirement of signatures to get on the
9 ballot. And we've said in those situations we
10 look to the nature of the burden. We look to
11 the expense. We -- we look to a variety of
12 different factors to inform the seriousness of
13 the burden.

14 The First Amendment has worked well in
15 those cases. Are you just merely suggesting it
16 can't work well here because the redistricting
17 process is so complex? Is that your only
18 reason? Or is it -- what exactly makes it
19 workable in one context but not particularly in
20 this one?

21 MR. SULLIVAN: Well, there's two parts
22 of that, Your Honor, if you -- if I may. One
23 is if we're looking at retaliation, which has
24 never been used as a means of testing a
25 statute, it's been used in the executive part

1 of the government when it's employing people,
2 when it's contracting, where speech -- where
3 the government's consideration of protected
4 speech and political affiliation is generally
5 restricted; whereas when government enacts a
6 redistricting statute, it's legislating, which
7 always involves consideration of speech,
8 including, of course, political speech.

9 But if you're talking about more
10 generally First Amendment law as it affects
11 elections, the right of association, the right
12 to proselytize, to organize, to get on the
13 ballot --

14 JUSTICE SOTOMAYOR: But not to
15 discriminate.

16 MR. SULLIVAN: To cast a ballot.

17 JUSTICE SOTOMAYOR: You -- you
18 answered Justice Kennedy --

19 MR. SULLIVAN: Right.

20 JUSTICE SOTOMAYOR: -- by saying you
21 don't have a right to discriminate.

22 MR. SULLIVAN: Right. But those cases
23 go up to the point of voting. But as far as I
24 know, they don't address the results of the
25 election, which is what partisan gerrymandering

1 claimants care about.

2 They're not claiming they didn't get
3 to vote. They're not claiming their candidate
4 didn't get on the ballot. They're not claiming
5 any of those things that have been addressed --

6 JUSTICE SOTOMAYOR: But the whole --
7 the whole purpose of a gerrymandering attack is
8 that I am being discriminated against or at
9 least the theory of their case because of the
10 views I have expressed over time, and that
11 those views want to be silenced by the other
12 side.

13 MR. SULLIVAN: But those are the same
14 types of things that come up anytime you're on
15 the losing side of legislation. And this Court
16 has repeatedly denied that opportunity to -- to
17 try to turn into a legal issue and -- and a way
18 to get redress the fact that one's views did
19 not prevail in the legislature.

20 JUSTICE SOTOMAYOR: Are you
21 essentially saying -- are you agreeing that
22 gerrymandering is not justiciable?

23 MR. SULLIVAN: Well, not -- we're
24 arguing that on this claim that plaintiffs are
25 bringing, the First Amendment retaliation, that

1 it would not be a manageable standard. We're
2 not stating that --

3 JUSTICE SOTOMAYOR: So go back to my
4 question, why? Would you -- do you agree with
5 the court below that it can be made manageable
6 if you introduce the test that it suggests
7 plaintiff has to undertake?

8 MR. SULLIVAN: No, no, because --

9 JUSTICE SOTOMAYOR: So answer why.
10 The court there seemed to agree, certainly the
11 dissent, Judge Niemeyer, thought it was
12 manageable, but --

13 MR. SULLIVAN: Well --

14 JUSTICE SOTOMAYOR: -- why do you
15 disagree with the majority?

16 MR. SULLIVAN: Well, one --

17 JUSTICE SOTOMAYOR: The majority is
18 basically saying it could be -- it could be,
19 though, but you have to prove these other
20 things.

21 MR. SULLIVAN: It -- it starts with a
22 specific intent, the retaliation requires. As
23 the Court recognized in O'Brien, the intent
24 when it comes to legislation is so diffuse.
25 Many people are involved.

1 JUSTICE SOTOMAYOR: Counsel, given
2 their evidence, they certainly have enough to
3 go to a jury on that question --

4 MR. SULLIVAN: They've got --

5 JUSTICE SOTOMAYOR: -- whether there
6 really was any legislative intent outside of
7 the gerrymandering.

8 MR. SULLIVAN: They don't have
9 anywhere near the number of affidavits they
10 would need from the legislators that actually
11 voted or from the more than 1.5 million
12 Marylanders who approved the plan in a
13 referendum.

14 That's the kind of diffuse intent that
15 comes into play when you're talking about
16 legislation and, here, legislation that's been
17 taken to referendum. It's so far different
18 from the kind of cases that the district court
19 was citing where you have an employer and you
20 know, you know, I fired this employee, it's not
21 very complex to figure out what the intent was
22 and who did what to whom.

23 That's not what you're talking about
24 with legislation.

25 JUSTICE KAGAN: I guess I don't quite

1 understand that, Mr. Sullivan. In the racial
2 gerrymander cases, this is exactly what we do
3 in much harder circumstances, actually.

4 I mean, it's the same in the sense
5 that we look to what legislators say. We look
6 to what mapmakers say. We look to a variety of
7 pieces of circumstantial evidence about how the
8 districting turned out, about what was done.

9 And the reason I say it's harder there
10 than it is here is because there we have to
11 deal with the kind of confluence of race and
12 politics. But here, when you look at this kind
13 of maneuvering and it's all about -- what else
14 is it, except about politics?

15 And we would look to the exact same
16 things that we look to in our consistent line
17 of racial gerrymandering cases.

18 MR. SULLIVAN: Well, I would refer you
19 to plaintiffs' expert -- if you want to say
20 that this is not involving the interplay
21 between race and politics, you should look at
22 the expert report in the record from
23 plaintiffs' expert, Dr. Morrison, who talks
24 about one of the reasons that the plaintiffs
25 are aggrieved is because of the make-up of the

1 prior district was much less diverse racially
2 and ethnically than the new district, and they
3 are being forced to be part of a district with
4 a more diverse population in Montgomery County.

5 So I don't know if you can say that
6 this case --

7 JUSTICE KAGAN: I think my main point
8 was that we just -- we do this, we -- we -- we
9 -- we do it when we deal with racial
10 gerrymandering cases, even if you want to say
11 to me that this is no easier than that, I would
12 say back -- I guess I would argue with that,
13 but -- but my main point was even if it's no
14 easier, we do it all the time.

15 MR. SULLIVAN: But you do it under the
16 Equal Protection Clause and not the First
17 Amendment. That's where your -- your cases
18 will tell you to go.

19 JUSTICE KAGAN: Well, we -- we would
20 be looking at the same things. We would be
21 looking at the same kind of direct evidence,
22 the same kind of statements. We would be
23 looking at the same circumstantial evidence
24 that has to do with where the lines were drawn
25 and how they were drawn. So it's -- it's all

1 the same kind of evidence, isn't it?

2 MR. SULLIVAN: No. When you get to
3 the end of the process, there needs to be a
4 showing of totality of circumstances with
5 historical and sociological evidence of
6 exclusion of that minority, which simply is not
7 the case when you're talking about Republicans.

8 They have -- they're a major party.
9 They've been in control of government
10 oftentimes, and as they are now.

11 JUSTICE KAGAN: I guess -- I guess
12 what I was suggesting was that we're looking to
13 the same things to discover intent in each
14 circumstance.

15 MR. SULLIVAN: You -- you may be
16 looking at similar types of evidence, but as
17 far as I know, you have not applied the First
18 Amendment retaliation rubric to that analysis,
19 as plaintiffs want you to do here.

20 JUSTICE GINSBURG: Is there anything
21 --

22 CHIEF JUSTICE ROBERTS: Well, one
23 difference between -- one difference between
24 the race and partisanship is that we've always
25 recognized that a certain degree of

1 partisanship is acceptable. We've never
2 recognized that a certain degree of racial
3 discrimination is acceptable.

4 MR. SULLIVAN: That's true, Your
5 Honor. And it would be very hard if, in the
6 racial segregation law, where the Court has
7 said you need to remove all vestiges, root and
8 branch. This Court said in Vieth that
9 redistricting is root and branch political.

10 How are you going to give it the same
11 approach? Do you eliminate all evidence of
12 partisanship? And if you can't eliminate --
13 eliminate all of it, how do you judge where the
14 line is?

15 And, again, we get back to how
16 plaintiffs have not presented the Court with a
17 test that gives you that line.

18 JUSTICE BREYER: We've had briefs in
19 other cases that do try to answer that question
20 pretty directly. You know, you -- you look to
21 see what the reason is and why is there
22 partisanship, ask the defendant.

23 And then given that reason, is there,
24 you know, no real explanation, that just
25 doesn't work. And you can, you know, with

1 these experts, you can run it through computers
2 and you can get somebody who will look at this
3 and they'll say: Well, this is a -- if this
4 was the reason, why is it this is in the top
5 5 percent of doesn't satisfy the reason without
6 the partisanship? You've read those briefs.

7 MR. SULLIVAN: Yes.

8 JUSTICE BREYER: Okay. And the
9 problem is they're complicated but not
10 impossible, right?

11 MR. SULLIVAN: Well --

12 JUSTICE BREYER: So -- so we're back
13 -- that's why I'm back to where I started.

14 MR. SULLIVAN: I'm -- I'm not saying
15 it's impossible. And we -- we're not taking
16 the position that it's not possible for this
17 Court to come up with a manageable standard.
18 We're just trying to explain why this one isn't
19 manageable.

20 And the Court has looked for so long,
21 I would hate for it to settle on something less
22 than a valid and workable standard.

23 Unless there are further questions.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Two minutes, Mr. Kimberly.

2 REBUTTAL ARGUMENT OF MICHAEL B. KIMBERLY

3 ON BEHALF OF THE APPELLANTS

4 MR. KIMBERLY: I'd like to come back
5 to something that Justice Kagan raised about
6 intent.

7 The fact is, when it comes to
8 legislative intent, this Court does it. When
9 it comes to the question of burdens imposed on
10 voting -- voting rights in the ballot access
11 cases, this Court does that as well.

12 Our position is that the -- the burden
13 properly understood under the First Amendment
14 and applied in this context is the same burden
15 that this Court has recognized in the ballot
16 access cases. It's -- it's making it more
17 difficult -- deliberately making it more
18 difficult for particular citizens to achieve
19 electoral success because their views are
20 disapproved by those in power, in this case, in
21 Annapolis.

22 The Court, having postponed
23 jurisdiction, I think the question of
24 justiciability is squarely presented to it. I
25 understand that the Court has some concerns

1 about the posture of the case coming up as a
2 preliminary injunction.

3 At the same time, I think the lower
4 court is looking for this Court's guidance on
5 whether the sort of approach that we proposed
6 here is justiciable, and it's one that the
7 Court should proceed on.

8 We would take the position that
9 Justice -- excuse me, that Judge Niemeyer took
10 below that the appropriate approach is to think
11 about whether citizens have been deliberately
12 burdened because of the views that have been
13 expressed in their prior voting histories.

14 And I guess what I would say is if
15 that -- if that approach isn't going -- is --
16 is going to work in any case, it's going to
17 work in this one because, here, the evidence is
18 unequivocal that this was the intent. And,
19 point in fact, the political composition of the
20 district turned 180 degrees. It went from
21 Republican to Democrat, just as the map drawers
22 intended.

23 And if I could just quickly come back
24 to a point -- a concern that the Chief Justice
25 raised at the argument in Gill against

1 Whitford, I think the average person on the
2 street understands what partisan gerrymandering
3 is about. It's about map drawers singling out
4 individuals because of the way that they have
5 voted and making it more difficult for them to
6 achieve electoral success when plaintiffs --
7 may I -- may I finish my thought?

8 CHIEF JUSTICE ROBERTS: Sure.

9 MR. KIMBERLY: When -- when plaintiffs
10 succeed in proving that map drawers have
11 succeeded in rigging an election, they ought to
12 be entitled to relief. The average person on
13 the street will understand that.

14 For those reasons, we ask the Court to
15 reverse. Thank you.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel. The case is submitted.

18 (Whereupon, at 11:06 a.m., the hearing
19 adjourned.)

20

21

22

23

24

25

Official

1	A		B
<p>1.5 [1] 64:11 10 [1] 56:4 10,000 [1] 40:5 10:03 [2] 1:16 3:2 100 [4] 42:24 44:10 45:1 59:5 11 [1] 34:18 11:06 [1] 72:18 12 [2] 34:18 56:4 125,000 [1] 45:5 13 [1] 40:21 14 [1] 33:16 15,000 [3] 30:7,10,19 16 [1] 33:17 17-333 [1] 3:4 180 [2] 33:1 71:20 19 [1] 40:21 1911 [1] 49:21 1990 [2] 22:12 51:3</p>	<p>a.m [3] 1:16 3:2 72:18 abandoned [1] 49:20 able [5] 14:22 21:3 28:10,11 51:5 above-entitled [1] 1:14 abuse [8] 6:4,6 11:3,13 32:5 33:24 35:3,18 accept [2] 7:8 13:16 acceptable [2] 68:1,3 accepted [1] 25:21 access [3] 3:19 70:10,16 accommodate [1] 17:23 According [4] 3:18 32:16,19 49:19 account [3] 16:16 35:21 53:14 accurately [1] 21:23 achieve [5] 15:17 18:17,20 70:18 72:6 achieving [2] 19:7,14 acknowledged [1] 45:8 ACLU [1] 23:17 across [1] 50:17 Act [2] 19:8 53:22 action [1] 35:13 actionable [1] 34:10 active [1] 55:22 acts [1] 20:3 actually [6] 10:3 33:1 38:18 49:18 64:10 65:3 add [3] 27:16 30:7,10 address [6] 5:8 6:8 23:20 35:2,8 61:24 addressed [3] 4:19 44:21 62:5 adjourned [1] 72:19 ADMINISTRATOR [1] 1:6 adopt [1] 8:21 adopting [1] 27:13 advanced [1] 42:9 advantage [10] 15:8,9 16:4,8,9,12, 17 28:7 39:17 45:12 affects [2] 45:9 61:10 affidavits [1] 64:9 affiliation [1] 61:4 affirm [2] 10:10 12:12 African [1] 51:24 aggrieved [1] 65:25 ago [1] 11:8 agree [3] 13:18 63:4,10 agreed [1] 3:12 agreeing [1] 62:21 AL [2] 1:3,8 alarming [2] 27:14,15 ALITO [9] 6:10 8:15 10:11 14:18 15:20,23 16:2,10,18 alleged [1] 31:19 allow [1] 9:6 allowing [2] 14:7 24:19 allows [1] 29:6 alone [1] 45:5 altered [1] 34:14 alternative [2] 19:12 34:21 amended [2] 24:6 58:12 Amendment [17] 3:18,19 14:3 20:</p>	<p>5,13,16 37:6,10 44:4 53:21 55:25 60:14 61:10 62:25 66:17 67:18 70:13 Americans [1] 51:24 amici [1] 23:17 among [1] 11:21 analysis [1] 67:18 analysts [1] 54:4 analytically [2] 22:3,21 analyze [1] 30:24 angry [1] 54:4 Annapolis [2] 31:5 70:21 announced [1] 10:7 another [5] 10:5 14:10 31:3 40:4 47:1 answer [10] 8:24 12:8 15:23 16:23 19:1 37:11 46:12 59:2 63:9 68:19 answered [1] 61:18 anybody [1] 27:15 anytime [1] 62:14 appeal [1] 4:15 APPEARANCES [1] 1:18 appeared [1] 31:17 appears [1] 41:14 Appellants [6] 1:4,20 2:4,10 3:8 70:3 appellate [1] 57:6 Appellees [4] 1:9,22 2:7 37:3 applicability [1] 23:16 applied [3] 43:21 67:17 70:14 applies [3] 17:6 20:11 35:10 apply [1] 16:22 apportionment [1] 49:23 apprise [1] 57:10 approach [7] 19:17 27:20,22 68:11 71:5,10,15 approaches [1] 19:13 approaching [1] 22:6 appropriate [2] 48:24 71:10 approved [3] 55:14 56:13 64:12 apt [1] 24:11 area [1] 30:11 areas [1] 49:19 aren't [1] 53:19 argue [2] 7:6 66:12 arguing [1] 62:24 argument [10] 1:15 2:2,5,8 3:4,7 37:2,20 70:2 71:25 arguments [1] 33:19 Arizona [1] 19:21 around [2] 21:22,25 Article [1] 3:15 association [2] 29:18 61:11 assume [2] 5:10 59:13 assuming [3] 4:12 13:15,19 attack [3] 27:3,5 62:7 attempting [1] 15:16 attention [1] 8:10 attributable [3] 6:23 14:14 36:15 authority [1] 3:15 average [2] 72:1,12 away [3] 32:1,8 55:5 awfully [1] 5:19</p>	<p>back [11] 8:3 9:3 24:6 44:16 63:3 66:12 68:15 69:12,13 70:4 71:23 backing [2] 32:1,8 Baker [1] 43:24 balanced [5] 17:10,21 18:8,20 20:20 balled [1] 38:22 ballot [9] 3:19,23 55:23 60:9 61:13, 16 62:4 70:10,15 Baltimore [1] 1:22 Bandemer [1] 39:12 Bartlett [1] 51:4 base [2] 11:23 12:3 based [4] 12:9 34:8,9 57:20 baseline [1] 20:24 basically [5] 12:13 14:8 37:19 38:11 63:18 basis [7] 3:22 6:5 8:7 12:12 15:16 32:7 34:7 Bay [3] 45:3 50:6,20 bear [1] 16:17 bears [1] 38:24 becoming [1] 55:7 begin [1] 36:7 beginning [1] 8:1 behalf [8] 1:20,22 2:4,7,10 3:8 37:3 70:3 believe [3] 32:10 46:12 51:21 believed [1] 14:12 below [2] 63:5 71:10 benchmark [2] 50:16,23 BENISEK [2] 1:3 3:4 best [2] 32:2 44:2 better [1] 59:20 between [4] 22:12 65:21 67:23,23 bit [1] 38:24 blackboard [1] 28:8 blaming [1] 60:3 blow [2] 56:8,8 blue [1] 30:20 bluest [1] 30:20 BOARD [2] 1:7 57:12 boring [1] 47:4 both [8] 15:2,4 25:7 29:24 49:9 52:3,22 57:5 bottom [1] 58:13 boundaries [2] 49:1 57:18 boundary [3] 39:5 48:19,22 bounds [1] 47:3 box [1] 3:23 branch [2] 68:8,9 BREYER [19] 25:24 26:5,8 28:2,17 42:8 43:7 44:8,24 56:15 57:15,23, 25 58:7,22,25 68:18 69:8,12 brief [5] 27:17 32:20,23 38:16 57:8 briefs [6] 25:25 26:6 27:2 43:14 68:18 69:6 bring [2] 5:20 40:9 bringing [2] 6:23 62:25 broader [1] 7:6 building [1] 17:17 burden [20] 14:13 15:19 20:13 29:</p>
<p>2</p> <p>2 [5] 4:21 9:9 19:8 40:21,23 20 [3] 7:21 52:16,17 2010 [1] 22:12 2011 [2] 5:20 27:19 2012 [4] 6:17 7:4 33:16 41:22 2013 [1] 7:14 2014 [2] 6:18 7:4 2015 [2] 8:3 24:6 2016 [3] 6:18 7:4,23 2018 [7] 1:12 4:3,17 5:4 7:5 8:22 28:21 2020 [1] 4:13 28 [1] 1:12 2a(c) [2] 4:21 9:9</p>			
<p>3</p> <p>3 [1] 2:4 34 [1] 40:13 350,000 [1] 40:10 36 [1] 40:12 360,000 [1] 40:9 37 [1] 2:7</p>			
<p>4</p> <p>45 [2] 17:15 40:13 47 [1] 40:11 49 [1] 51:6</p>			
<p>5</p> <p>5 [1] 69:5 55 [1] 17:16</p>			
<p>6</p> <p>60 [2] 25:7 47:15 60/40 [3] 47:10,15 52:9 64 [1] 55:20</p>			
<p>7</p> <p>70 [1] 2:10 72 [1] 25:7</p>			
<p>9</p> <p>90s [1] 45:4</p>			

Official

16,18 30:2,14 31:12,24 32:20 33:15,21 34:10 35:16 38:25 60:7,10,13 70:12,14 burden-shifting [3] 32:13 35:10 36:19 burdened [1] 71:12 burdens [1] 70:9 Bush [2] 4:19,20 but-for [5] 31:18,24 32:1,10 33:16	circumstance [5] 18:9 19:2 22:17 30:17 67:14 circumstances [6] 4:18 17:3 20:10 28:15 65:3 67:4 circumstantial [2] 65:7 66:23 cited [1] 57:7 citing [1] 64:19 citizens [2] 70:18 71:11 claim [10] 8:4,5,9,13 24:7 30:1 32:11 37:7 51:25 62:24 claimants [1] 62:1 claiming [4] 37:25 62:2,3,4 Clause [1] 66:16 clear [7] 16:7 26:13 31:1 32:9 35:20 36:21 52:7 clearly [1] 33:7 clerk [1] 57:16 clout [1] 21:7 come [6] 34:12 35:12 62:14 69:17 70:4 71:23 comes [5] 46:6 63:24 64:15 70:7,9 coming [1] 71:1 commission [1] 19:22 committee [1] 13:3 common [1] 36:15 compact [2] 15:4 22:9 compactness [1] 49:22 compelling [6] 17:9 18:12,16 19:6,7 20:18 competitive [10] 17:11 19:23,24 20:20 30:12,23 40:19 41:21 42:6,8 complaint [5] 8:11 18:5 24:6,24 58:12 complex [2] 60:17 64:21 complicated [1] 69:9 complies [1] 49:2 comply [1] 5:3 complying [1] 19:7 composition [1] 71:19 comprised [1] 21:25 computers [2] 43:16 69:1 concede [2] 4:15 28:25 conceded [2] 9:2 31:18 conceivable [1] 9:3 concern [3] 13:22 23:21 71:24 concerned [4] 7:10 24:9,14 51:22 concerns [1] 70:25 concession [5] 32:7 33:4,25 34:2,3 conclude [2] 9:6 46:12 concluded [1] 6:3 conduct [1] 14:8 conducted [1] 34:20 confluence [1] 65:11 Congress [2] 4:17 49:20 congressional [5] 7:17 21:24 24:17 29:14 57:19 congressionally [1] 17:21 Congressman [1] 40:2 congresspersons [1] 51:19 conjunction [1] 57:11 cons [1] 28:10 consequence [2] 15:19 25:22	consequences [2] 17:3 27:13 consider [4] 9:21 10:16 11:11 17:7 consideration [11] 5:21 16:4,8 19:5 20:17 45:13 46:3,4 52:19 61:3,7 considerations [1] 16:15 considered [1] 42:6 considering [2] 15:2 19:25 considers [1] 49:17 consistent [3] 22:4,20 65:16 consistently [2] 54:13,19 Constitution [6] 3:13 17:1 26:14 45:11 49:24 57:21 constitutional [1] 46:13 content [3] 45:19 46:1 47:6 context [7] 10:15 19:4 20:16 33:8 34:4 60:19 70:14 contiguity [1] 49:22 contiguous [1] 15:5 continue [1] 34:13 contracting [1] 61:2 control [1] 67:9 controlled [1] 52:3 convening [1] 8:7 Conversely [1] 27:21 convert [1] 30:21 Cook [1] 41:1 core [2] 21:21 22:2 correct [4] 4:8 10:9,9 54:22 could-be [1] 31:23 couldn't [2] 50:23 53:6 Counsel [7] 25:11 31:15 36:25 52:6 64:1 69:25 72:17 count [1] 41:23 counties [1] 56:4 County [3] 50:18 51:1 66:4 couple [1] 51:13 course [2] 22:12 61:8 COURT [94] 1:1,15 3:10,15 4:19 5:7 6:2,3,7 8:6,8,11,18,20,25 9:4,5,13,13,20 10:3,5,7,21 11:15,17,18,19,21,22 12:2,9,10,14 13:23 14:5,11 16:2 19:3 21:20 22:17 26:16 27:10 28:22 29:2 31:17,22,25 32:3,6,15 33:4,13,14,25 34:8,15,16,19 35:17,21 36:22 37:5,13 39:11 43:22 45:16,25 46:7 48:8 57:5,6,8 58:18 59:12 60:1 62:15 63:5,10,23 64:18 68:6,8,16 69:17,20 70:8,11,15,22,25 71:4,7 72:14 Court's [4] 3:18 8:2 32:17 71:4 courts [3] 7:16 39:17 44:1 coverage [1] 58:14 create [4] 40:4,18 47:18 60:4 created [1] 40:20 criteria [2] 12:3 49:3 critical [2] 53:3 58:15 criticizing [1] 44:16 crossing [1] 45:2 cure [1] 42:19 current [2] 9:19,19 cut [1] 10:17 cuts [1] 11:10 cycles [2] 7:9 54:2	D
calculus [1] 53:20 call [5] 35:2,18 50:16 54:4,9 called [2] 37:14 57:6 came [1] 1:14 Campaign [1] 27:17 campaigns [1] 9:16 candidate [8] 34:23 53:9 59:18,19,20,21,23 62:3 candidates [1] 42:2 capable [2] 22:8 39:3 care [1] 62:1 Carolina [2] 26:3 29:3 Carr [1] 43:24 Case [53] 3:4,14 7:22,25 8:1,4,14,18,19,20 9:3 11:7,8,16,18 13:1,23,24 17:4,6 18:24 19:11 21:15 22:11,15 27:18 29:2,24 33:20 34:11 35:11,25 36:4,11,12 39:20,21 44:22 45:7 46:16 48:25 51:8,21 55:24 56:7 57:6 62:9 66:6 67:7 70:20 71:1,16 72:17 cases [23] 3:19 23:2,13 25:25 26:22 27:11 42:20 43:3 44:5,18,18 48:11 53:11 60:15 61:22 64:18 65:2,17 66:10,17 68:19 70:11,16 cast [1] 61:16 category [1] 29:10 causal [1] 35:5 causation [3] 31:16,19 32:10 cause [4] 31:24 32:1 33:16 34:21 caused [2] 45:4 53:6 census [4] 39:4 49:16,19 57:20 Center [1] 27:17 certain [4] 18:2,2 67:25 68:2 Certainly [10] 9:5 17:6 27:25 28:24 29:24 52:1 53:17 56:24 63:10 64:2 cetera [1] 44:22 challenge [3] 12:5 27:18 46:8 challenging [1] 45:22 change [5] 4:2 5:20 13:3 17:22,22 changed [5] 9:22 34:13,14 42:14 51:3 changes [2] 21:22 22:1 Chesapeake [3] 45:3 50:6,20 CHIEF [39] 3:3,9 6:12,20,25 7:20 9:10 10:13,23 11:1,6,25 19:9 20:2,9 25:12,17 36:24 37:4 46:21,24 47:25 48:21 49:8,12 50:3,10 52:6,11,18 53:10 56:10,16,21 67:22 69:24 71:24 72:8,16 Christian [1] 45:24 Circuit [1] 8:3	D.C [2] 1:11,19 Daggett [1] 21:20 dah-dah-dah [1] 28:15 damning [1] 38:3 data [1] 20:1 date [1] 9:22 de [9] 15:7,9 16:12,25 25:1 29:6,10,15,22 deal [4] 39:20 43:9 65:11 66:9 deals [1] 4:18 decide [3] 9:1 11:1 12:12 deciding [1] 52:19 decision [8] 8:12 10:7 11:23 12:4,9 34:8,9 35:3 decisions [2] 26:20 58:21 declaration [1] 17:21 deed [1] 47:4 defeat [1] 18:13 defendant [1] 68:22 definitely [1] 18:1 degree [2] 67:25 68:2 degrees [2] 33:1 71:20 delay [2] 6:16,23 delegation [1] 17:22 deliberate [1] 26:15 deliberately [2] 70:17 71:11 Democracy [2] 56:8,9 Democrat [4] 40:21 53:4 59:7 71:21 Democrat/Republican [1] 52:9 Democratic [14] 25:5,8 30:11 31:4 40:4,12,13 41:12,18 47:14,19 51:18 59:18,23 Democratic/Republican [1] 47:10 Democrats [8] 24:23 25:3,18 31:8 39:3 41:5 55:6 59:6 demonstrating [1] 36:13 denial [2] 4:10 12:17 denied [1] 62:16 deny [2] 6:4 10:2 denying [1] 10:8 depart [1] 48:8 depending [2] 31:11,12 depends [2] 37:21 44:19 deposition [1] 45:8 described [2] 22:22 32:4 describes [1] 21:23 describing [2] 29:12 33:21 description [1] 33:19 determine [3] 11:2 14:9 55:15 determining [1] 11:12 deviation [1] 20:25 deviations [1] 15:3 difference [4] 25:9 46:5 67:23,23 different [22] 7:9 12:2,10 16:11,14 23:17 26:9 27:23,23,24 28:11,12,13,14 29:22 31:21 46:17 52:4 58:23 60:7,12 64:17 differently [1] 32:4 difficult [4] 15:16 70:17,18 72:5 difficulty [1] 51:17		

<p>diffuse [2] 63:24 64:14 dilute [1] 25:5 diluted [1] 21:7 dilution [4] 22:6 24:21 33:15 36:14 dimensions [1] 43:10 direct [1] 66:21 direction [2] 11:10 55:4 directly [1] 68:20 disagree [1] 63:15 disapproval [1] 20:8 disapprove [1] 31:6 disapproved [1] 70:20 disavow [2] 23:25 38:17 discover [1] 67:13 discovery [1] 14:7 discretion [9] 6:4,6 11:3,13 12:13 32:6 33:24 35:3,19 discriminate [2] 61:15,21 discriminated [1] 62:8 discrimination [5] 35:12 45:16,21 48:10 68:3 disenchanted [1] 55:9 disfavored [1] 3:21 disinclined [1] 28:22 disruptive [1] 9:18 dissent [1] 63:11 district [89] 5:7 6:17 7:16 8:8,18, 20,25 9:4,5 10:7,21 11:15,18,19, 22 12:9,14 13:23 14:5,11,14,25 16:5,20 19:19 20:23 21:4,10,19, 24 22:10,14 24:10,18,24 25:6,10 29:2,14 30:5,7,10,12,21,22,22,23 31:8,17,22 32:3,6,15,17 33:3,13, 14,24 34:8,16,19 36:15,22 39:4 40:5,6,11,19 41:16,17 42:5 45:5 47:20 49:1 50:6,16,23,25 51:3 52:15,16,24 59:5,21 64:18 66:1,2,3 71:20 district-wide [1] 14:8 districting [8] 7:18 9:20 16:5 17:22 20:25 45:13 48:4 65:8 districts [11] 15:4 17:11 18:21 19:23,24 20:20 21:21 24:20 41:18 47:19 57:20 diverse [2] 66:1,4 doctrinally [1] 22:21 doing [7] 15:14 28:4 31:9 37:17,23 42:12 48:14 done [6] 11:18 25:14 46:9 48:11, 20 65:8 down [2] 9:3 46:7 dozens [3] 26:18,19,19 DPI [2] 25:6 36:2 drawers [9] 15:14 16:16 17:7 35:23 36:1,17 71:21 72:3,10 drawing [3] 14:24 18:8 50:6 drawn [13] 9:8 19:19 22:10,14,16 51:17,23 56:13,17 58:14 59:5 66:24,25 drew [1] 36:17 durability [1] 23:22 duty-bound [1] 38:9</p>	<p style="text-align: center;">E</p> <p>each [5] 11:20 27:3,4 44:16 67:13 earliest [1] 4:11 early [2] 45:4 49:21 easier [3] 24:3 66:11,14 easiest [1] 35:8 effect [5] 4:13 25:2 38:11 42:24 55:12 effectively [1] 24:19 effectiveness [1] 41:4 effects [1] 41:9 effort [1] 51:9 eight [2] 51:18 57:19 Eighth [6] 24:23 25:3,4,6,10 29:14 either [1] 45:23 elaborate [2] 56:20,22 elected [2] 51:5 59:7 electing [1] 31:7 election [25] 4:3,17 5:4 7:7,15 8:22 9:7,19,20 25:10 33:9 40:24 41:2,7,8,13,22 42:14 53:3,4 54:2 59:7 60:1 61:25 72:11 ELECTIONS [11] 1:7 3:23 6:16,22 7:3,18 28:21 31:21 41:6 57:13 61:11 electoral [7] 14:13 15:17 34:12 36:5,14 70:19 72:6 element [1] 32:11 eliminate [5] 29:25 30:2 68:11,12, 13 Eliminating [1] 45:2 elsewhere [1] 38:16 embarked [1] 43:25 emerge [1] 44:3 employee [1] 64:20 employer [1] 64:19 employing [1] 61:1 enable [1] 26:25 enact [1] 5:1 enacted [1] 4:17 enacts [1] 61:5 end [2] 19:7 67:3 enforcement [1] 7:17 enough [6] 9:6 42:21 43:20 58:20, 20 64:2 ensure [2] 38:10 39:2 enter [3] 4:16 13:24 53:20 entered [1] 7:16 entitled [1] 72:12 entrenchment [2] 23:21 39:2 equal [3] 43:23 44:8 66:16 equate [1] 39:10 equitable [2] 5:18 6:13 equities [2] 10:17 11:9 equivocal [1] 38:24 errand [1] 36:10 error [2] 35:20 36:19 especially [1] 57:10 ESQ [3] 1:19 2:3,9 essentially [1] 62:21 establish [1] 14:2 establishes [3] 46:19 57:18 58:1 ET [3] 1:3,8 44:22</p>	<p>ethnically [1] 66:2 evaluate [3] 10:6 44:6 45:17 evaluated [1] 41:1 evaluates [1] 46:7 evaluating [2] 37:8 48:10 even [7] 4:1 18:19 20:11 37:11 58:1 66:10,13 event [2] 28:23 35:17 everyone [1] 45:6 everyone's [1] 28:8 evidence [20] 7:1 13:8 27:24 35:16,22 36:3,12 38:4 40:15 48:14 51:15 64:2 65:7 66:21,23 67:1,5, 16 68:11 71:17 exact [1] 65:15 exactly [1] 11:15 12:1,1 15:3 25:19 31:6 40:12 41:9,15 60:18 65:2 example [8] 16:22 17:10 19:21 25:1 29:12 42:13,15,23 exceed [1] 43:20 exceeded [1] 41:25 except [2] 42:16 65:14 exceptions [1] 29:7 exclusion [2] 51:23 67:6 excuse [1] 71:9 executive [1] 60:25 exercise [2] 12:15 20:5 existed [1] 57:14 exists [1] 21:10 expectations [1] 9:15 expense [1] 60:11 expert [3] 65:19,22,23 experts [4] 4:23 45:7 54:23 69:1 explain [2] 12:5 69:18 explaining [1] 57:13 explanation [2] 58:6 68:24 expressed [4] 3:23 56:2 62:10 71:13 expressly [1] 31:22 extended [1] 50:17 extensive [1] 58:14 extent [1] 49:2 extreme [6] 26:15 42:10,11,13,25 59:11 extremely [1] 25:7</p> <p style="text-align: center;">F</p> <p>face [9] 45:17,22 46:9,15 47:2,23 48:3,10 57:10 facially [1] 45:18 facie [1] 35:11 facility [1] 16:21 fact [10] 5:12 6:7 38:2 51:1 53:24 54:10 55:13 62:18 70:7 71:19 factor [3] 5:21 6:13 12:11 factors [3] 6:14 35:5 60:12 factual [6] 33:19 34:18 35:2 36:20 51:14 52:8 factually [1] 51:19 failed [1] 35:4 fails [1] 37:7 fairly [1] 13:7 falls [1] 29:9 familiar [1] 11:16</p>	<p>far [7] 49:6 50:18,18 52:23 61:23 64:17 67:17 farms [3] 49:9,9,13 favor [2] 31:24 32:2 favoring [1] 16:23 favors [1] 15:10 federal [1] 52:1 felt [1] 38:9 few [4] 7:13 11:8 16:21 55:7 figure [1] 64:21 figures [1] 57:20 file [2] 7:21 27:1 filed [2] 7:14 24:6 find [2] 49:16 54:17 finding [1] 35:2 Findings [1] 34:18 fine [1] 58:12 finish [1] 72:7 finished [1] 6:11 fired [1] 64:20 First [34] 3:17,18 6:1 7:13 10:21 13:7 14:2 16:15 17:4 20:5,13,16 21:17 22:4,22 25:13 34:2 35:7 37:6,10 41:2,22 43:25 44:4 45:5 53:4, 20 55:25 60:14 61:10 62:25 66:16 67:17 70:13 fit [2] 10:9 20:21 focus [2] 21:17 24:9 focused [3] 22:15 24:13 44:22 following [1] 57:17 fool's [1] 36:10 force [1] 30:13 forced [1] 66:3 foreclosed [1] 8:5 forevermore [1] 33:10 Forget [1] 43:13 form [6] 9:4 21:18 22:9 26:15 39:1, 7 formed [1] 22:13 former [3] 18:21 49:9 55:1 forming [1] 22:8 forth [3] 9:17 17:17 44:16 forum [1] 39:16 forward [5] 15:18 34:12 35:12 42:16,17 found [3] 34:19 57:8 60:5 Fourth [1] 8:2 framework [1] 22:5 frankly [2] 9:25 35:19 friends [1] 56:25 front [2] 26:24 27:6 fuller [1] 58:5 fully [1] 57:13 function [1] 6:5 fundamentally [1] 14:1 further [1] 69:23 future [1] 31:10</p> <p style="text-align: center;">G</p> <p>gather [1] 15:12 General [2] 1:21 53:10 generally [4] 19:4 27:1 61:4,10 generation [1] 43:22 geographic [2] 49:20 50:22</p>
---	---	--	--

<p>geographically ^[1] 22:9</p> <p>gerrymander ^[9] 18:22 21:5 22:19 27:19 31:20 35:24 52:20 58:16 65:2</p> <p>gerrymandered ^[1] 21:4</p> <p>gerrymandering ^[27] 3:12 14:4 19:4 23:2,13 24:19 26:16 28:14 34:11 35:1 36:7,9 37:9 42:10,13,18 43:5 51:8,22 53:11 61:25 62:7,22 64:7 65:17 66:10 72:2</p> <p>get-go ^[1] 8:14</p> <p>gets ^[2] 30:4 53:16</p> <p>getting ^[1] 55:22</p> <p>Gill ^[1] 71:25</p> <p>Gingles ^[2] 22:5,23</p> <p>GINSBURG ^[7] 3:24 4:9 20:22 29:4,9 51:7 67:20</p> <p>Ginsburg's ^[1] 30:4</p> <p>give ^[3] 30:3 38:14 68:10</p> <p>given ^[5] 5:8,17 59:11 64:1 68:23</p> <p>gives ^[4] 15:7,8 38:12 68:17</p> <p>good-bye ^[1] 43:12</p> <p>GORSUCH ^[12] 25:11 31:15 32:14,19,24 33:3,11,23 34:17,25 55:10,19</p> <p>got ^[6] 18:5 41:15 44:13 57:16 58:22 64:4</p> <p>governing ^[1] 49:25</p> <p>government ^[6] 3:20 52:2,2 61:1,5 67:9</p> <p>government's ^[1] 61:3</p> <p>governmental ^[2] 17:9 20:19</p> <p>Governor ^[4] 13:3 38:5,9 40:1</p> <p>grant ^[2] 10:18 38:23</p> <p>green ^[2] 17:14,14</p> <p>guess ^[7] 7:12 11:7 64:25 66:12 67:11,11 71:14</p> <p>guidance ^[1] 71:4</p>	<p>hiding ^[2] 48:18,20</p> <p>highly ^[2] 9:17 30:12</p> <p>historical ^[2] 22:1 67:5</p> <p>historically ^[2] 21:21,24</p> <p>histories ^[1] 71:13</p> <p>history ^[3] 20:8,17 51:23</p> <p>hit ^[1] 21:15</p> <p>hobby ^[1] 49:9</p> <p>holding ^[3] 26:2 59:12,16</p> <p>hole ^[1] 20:21</p> <p>Honor ^[2] 4:7,14 5:6,12,25 8:23 10:2 13:14 18:7 19:1 21:13 27:9 33:6,18 38:16 45:16 52:10 54:21 57:3 60:22 68:5</p> <p>hoops ^[1] 18:19</p> <p>hope ^[1] 44:2</p> <p>however ^[1] 39:21</p> <p>Hoyer ^[1] 40:2</p> <p>hundred ^[1] 42:11</p> <p>hurt ^[2] 59:14,15</p> <p>hurting ^[1] 60:3</p> <p>hypothetical ^[3] 30:4 46:3,11</p>	<p>intended ^[2] 41:15 71:22</p> <p>intent ^[23] 15:18 20:4 25:15 29:17 30:1 38:20 39:2,9,11 40:16,18 41:10 55:12,15 63:22,23 64:6,14,21 67:13 70:6,8 71:18</p> <p>interest ^[7] 17:9 18:12,17,18 20:19 27:1,8</p> <p>interim ^[1] 9:8</p> <p>internal ^[1] 50:13</p> <p>interplay ^[1] 65:20</p> <p>intervening ^[2] 28:21 39:18</p> <p>introduce ^[1] 63:6</p> <p>invalid ^[1] 46:11</p> <p>invalidated ^[2] 27:22 28:1</p> <p>invalidating ^[1] 60:1</p> <p>involved ^[3] 5:18 26:18 63:25</p> <p>involves ^[1] 61:7</p> <p>involving ^[1] 65:20</p> <p>irreparable ^[3] 6:15 7:10 10:17</p> <p>irreparably ^[3] 4:10 7:2,5</p> <p>isn't ^[13] 5:7 9:6 21:3,9 28:25 44:20 46:22 48:2 53:23,23 67:1 69:18 71:15</p> <p>issue ^[11] 5:7 6:1 8:25 13:4 28:25 29:1 38:2 49:4 57:4,13 62:17</p> <p>issues ^[4] 11:20,21 13:1 55:25</p> <p>itself ^[1] 12:15</p>	<p>justify ^[2] 50:15,23</p> <p style="text-align: center;">K</p> <p>KAGAN ^[21] 18:11 25:23 30:3,19 31:3 39:13,24 40:23 41:5 47:7,12,15,24 48:4 53:23 54:7 64:25 66:7,19 67:11 70:5</p> <p>Kagan's ^[1] 23:21</p> <p>Karcher ^[1] 21:20</p> <p>KENNEDY ^[16] 4:22 5:2,9 9:12 10:25 17:12,25 45:10,20 46:2,10,16 47:23 48:13 55:24 61:18</p> <p>KIMBERLY ^[77] 1:19 2:3,9 3:6,7,9,24 4:6,14,25 5:5,11,24 6:19,21 7:12,24 8:23 9:23 10:19 11:5,14 12:7,20 13:9,12,21 15:13,21,25 16:6,13 17:2,24 18:6,25 19:16 20:7,14 21:12 23:4,8,11,14,18,23 24:1,4,25 25:16,19,23 26:4,7 27:9 28:16,19 29:8,11,19,23 30:16,25 31:5 32:9,18,21,25 33:5,18 34:1,24 35:6 70:1,2,4 72:9</p> <p>kind ^[12] 3:25 20:1 38:20 46:7 50:2 64:14,18 65:11,12 66:21,22 67:1</p> <p>knowledge ^[1] 43:20</p>
<p style="text-align: center;">H</p> <p>hanging ^[1] 9:25</p> <p>happen ^[2] 17:13 53:7</p> <p>happened ^[7] 24:12 29:13 43:14 45:3 46:4 53:7 59:21</p> <p>happens ^[2] 13:20 52:3</p> <p>hard ^[1] 68:5</p> <p>harder ^[3] 50:15 65:3,9</p> <p>hardest ^[1] 12:6</p> <p>hardly ^[1] 51:25</p> <p>Harford ^[1] 50:18</p> <p>harm ^[7] 6:16 7:8,10 10:17 11:9 28:4 42:15</p> <p>harmed ^[2] 7:2,5</p> <p>harmful ^[1] 28:6</p> <p>harming ^[1] 59:24</p> <p>hate ^[1] 69:21</p> <p>Healthy ^[3] 32:12 35:9 36:19</p> <p>hear ^[1] 3:3</p> <p>heard ^[1] 54:3</p> <p>hearing ^[2] 14:6 72:18</p> <p>heavily ^[1] 59:22</p> <p>held ^[4] 6:17,22 10:14 58:17</p> <p>help ^[1] 59:5</p> <p>hide ^[1] 48:14</p>	<p style="text-align: center;">I</p> <p>idea ^[3] 19:5,13 42:9</p> <p>identified ^[1] 52:12</p> <p>Ill ^[1] 3:15</p> <p>imaginable ^[1] 27:25</p> <p>imagine ^[1] 13:23</p> <p>immediate ^[1] 28:20</p> <p>immediately ^[2] 21:18,19</p> <p>important ^[4] 21:14 26:19 41:3 52:22</p> <p>imposed ^[2] 15:19 70:9</p> <p>impossible ^[2] 69:10,15</p> <p>include ^[1] 17:10</p> <p>includes ^[1] 35:25</p> <p>including ^[4] 6:15 41:7 56:3 61:8</p> <p>incumbent ^[3] 41:11,22 42:1</p> <p>incumbents ^[1] 16:19</p> <p>indeed ^[1] 31:13</p> <p>independent ^[8] 19:22 53:2,5,13 54:24 59:15,17,22</p> <p>independents ^[5] 52:13 53:25 54:10 55:7 59:14</p> <p>indicate ^[1] 4:23</p> <p>indicated ^[1] 14:5</p> <p>indicating ^[1] 9:14</p> <p>individual ^[2] 11:20 57:11</p> <p>individuals ^[3] 3:21 15:15 72:4</p> <p>inflicted ^[1] 24:16</p> <p>inform ^[1] 60:12</p> <p>information ^[1] 17:8</p> <p>informed ^[1] 58:20</p> <p>inherently ^[1] 37:14</p> <p>initially ^[1] 7:17</p> <p>injunction ^[15] 4:5,7,11 5:3,14,18 6:5,15 10:8,15,18 12:11,18 14:6 71:2</p> <p>injunctions ^[1] 7:16</p> <p>injured ^[1] 4:10</p> <p>injury ^[1] 24:16</p> <p>instance ^[1] 10:21</p> <p>instead ^[1] 12:10</p>	<p style="text-align: center;">J</p> <p>JOHN ^[1] 1:3</p> <p>joined ^[1] 49:5</p> <p>Jubelirer ^[1] 3:12</p> <p>Judge ^[6] 12:25 41:4 50:21 63:11 68:13 71:9</p> <p>judged ^[1] 41:21</p> <p>judges ^[1] 26:18</p> <p>judgment ^[1] 13:24</p> <p>Judicial ^[1] 57:8</p> <p>jurisdiction ^[1] 70:23</p> <p>jury ^[2] 38:3 64:3</p> <p>JUSTICE ^[164] 3:3,9,24 4:9,22 5:2,9,17 6:10,12,20,25 7:20 8:15 9:10,12 10:11,13,23,25 11:1,6,25 12:16,22 13:10,15,18 14:16,18 15:20,23 16:2,10,18 17:12,25 18:11 19:9 20:2,9,22 22:24 23:6,10,12,15,19,21,24 24:2,22 25:11,12,17,23,24 26:5,8 28:2,17 29:4,9,13,15,21 30:3,4,19 31:3,15 32:14,19,24 33:3,11,23 34:17,25 36:24 37:4,15,19,22 38:8,21 39:13,24,25 40:23 41:5 42:8 43:7 44:8,24 45:10,20 46:2,10,16,21,24 47:7,12,15,22,24,25 48:4,13,21 49:8,12 50:3,10 51:7 52:5,6,11,18 53:10,23 54:7 55:10,19,24 56:10,15,16,21 57:15,23,25 58:7,22,25 60:5 61:14,17,18,20 62:6,20 63:3,9,14,17 64:1,5,25 66:7,19 67:11,20,22 68:18 69:8,12,24 70:5 71:9,24 72:8,16</p> <p>justices ^[1] 3:11</p> <p>justiciability ^[1] 70:24</p> <p>justiciable ^[2] 62:22 71:6</p> <p>justifications ^[1] 35:13</p>	<p style="text-align: center;">L</p> <p>laid ^[1] 27:17</p> <p>LAMONE ^[2] 1:6 3:5</p> <p>language ^[1] 57:9</p> <p>last ^[3] 31:21 42:20 49:21</p> <p>late ^[3] 4:1,16 9:22</p> <p>Laughter ^[7] 13:17 39:23 43:6 48:16 49:10,14 58:3</p> <p>law ^[4] 43:24 44:9 61:10 68:6</p> <p>Lawful ^[1] 45:14</p> <p>lawmakers ^[1] 31:2</p> <p>lawsuit ^[2] 7:14 23:8</p> <p>lawyers ^[2] 27:7 44:21</p> <p>layout ^[1] 51:2</p> <p>lean ^[1] 54:1</p> <p>least ^[2] 13:1 62:9</p> <p>leave ^[1] 13:19</p> <p>left ^[1] 21:6</p> <p>legal ^[8] 5:15 10:6 14:19 27:17 35:9 36:18 45:25 62:17</p> <p>legislating ^[1] 61:6</p> <p>legislation ^[5] 62:15 63:24 64:16,16,24</p> <p>legislative ^[2] 64:6 70:8</p> <p>legislators ^[3] 51:16 64:10 65:5</p> <p>legislature ^[12] 14:22,23 16:25 17:19 20:3 40:8 41:15 47:8,16 53:22 55:12 62:19</p> <p>less ^[2] 66:1 69:21</p> <p>Lichtman ^[1] 54:23</p> <p>life ^[2] 39:4,5</p> <p>light ^[1] 5:14</p> <p>likely ^[3] 19:25 27:19 36:13</p> <p>LINDA ^[1] 1:6</p> <p>line ^[6] 32:22 45:9,19 65:16 68:14,17</p> <p>lined ^[1] 44:14</p> <p>lines ^[7] 34:18 36:17 48:19,22 53:6</p>

<p>55:10 66:24 litigated [1] 57:4 litigation [1] 18:10 little [1] 38:24 live [1] 49:18 logic [1] 50:13 long [2] 5:19 69:20 long-standing [1] 41:10 longest [1] 47:3 look [25] 7:21 9:8 15:6 22:20 25:20 28:10 48:25 50:1 54:6,15,16 56:18 58:12 60:10,10,11 65:5,5,6,12,15,16,21 68:20 69:2 looked [3] 30:8 43:25 69:20 looking [9] 15:14 22:18 60:23 66:20,21,23 67:12,16 71:14 looks [2] 49:1 50:25 lose [2] 23:25 37:24 losing [1] 62:15 losses [1] 33:16 lost [4] 21:7 51:6 53:16 57:5 lot [5] 14:16 23:17 49:15 50:4,7 low [1] 15:3 lower [3] 6:7 31:22 71:3</p>	<p>mean [22] 20:2 21:3,9 28:19 33:1 34:1,4 39:24 40:15 41:5,14 43:4 44:20,20 46:22 47:25 49:4,8 57:25 58:2,8 65:4 means [2] 19:6 60:24 meant [3] 33:2 34:5 52:7 meet [1] 30:14 members [3] 54:10,17,18 merely [1] 60:15 merits [6] 10:16 11:2,11 12:19 13:5 59:19 metaphysical [1] 31:23 metes [1] 47:3 methods [1] 50:22 metrics [2] 35:23 36:4 MICHAEL [5] 1:19 2:3,9 3:7 70:2 might [10] 9:8,14 17:9 27:16 32:3 34:21 37:24 38:4 40:17 56:7 million [1] 64:11 minimis [9] 15:7,9 16:12 17:1 25:1 29:6,10,16,22 minority [5] 17:15 18:4 22:7 52:23 67:6 minutes [1] 70:1 misguided [1] 14:1 misreading [1] 36:21 misunderstood [2] 33:5,6 Montgomery [2] 51:1 66:4 morning [1] 3:4 Morrison [1] 65:23 most [5] 11:7 41:3 47:4 49:17 53:25 motion [2] 5:14 10:8 motivation [1] 13:2 move [4] 31:8 45:4,8 55:2 moving [4] 15:17 25:2 55:5,5 Mt [3] 32:12 35:9 36:19 much [22] 4:1 37:12,12,16,23 38:18,18,21,22 39:7,15,15,21,21,22 40:15 43:9 50:25 51:17 52:4 65:3 66:1</p>	<p>northwest [1] 21:25 nothing [3] 5:5 34:25 42:16 notice [5] 57:12 58:5,7,8,9 notion [1] 24:15 number [2] 24:8 64:9 numbers [2] 30:8 48:24 numerous [1] 22:9</p>	<p>outside [2] 44:5 64:6 over [5] 9:25 47:1 50:5 54:1 62:10 oversee [1] 44:1 overwhelmingly [1] 56:3 own [4] 38:5,5,8 55:25</p>
M		O	
<p>made [10] 21:22 22:1 24:7 25:9 33:20 35:12 41:17 52:7,25 63:5 main [2] 66:7,13 maintenance [1] 22:19 major [3] 52:22 53:19 67:8 majority [11] 8:6,10 16:24 17:23 18:4 22:10,13 52:25 56:4 63:15,17 make-up [1] 65:25 manageable [6] 37:8 63:1,5,12 69:17,19 maneuvering [1] 65:13 many [10] 7:19 13:1 19:12 25:24 54:2,12 56:6 58:15 60:6 63:25 map [26] 8:21 9:7,21 14:14,24,25 15:14 16:16 17:7,10 18:8 24:10 27:21 28:1 34:14 35:23 36:1,16 45:9 51:17 55:13 57:14 58:16 71:21 72:3,10 mapmakers [2] 54:14 65:6 mapping [1] 54:15 maps [3] 7:18 20:20 58:13 March [1] 1:12 Martinez [1] 45:25 MARYLAND [17] 1:7,21,22 9:25 21:25 24:12 26:1 40:8,19 41:14 45:10 47:8,9,16 49:18 50:19 52:13 Maryland's [2] 24:17 27:18 Marylanders [1] 64:12 massive [1] 14:8 matter [5] 1:14 5:11 25:8 53:11,24 max-black [2] 51:9,11 max-Dem [1] 51:20 max-Democratic [2] 51:11,12 mayor [2] 38:5,7 McDonough [1] 57:7 McManus [2] 8:4,13</p>	<p>namely [1] 34:22 narrowly [1] 17:8 national [1] 43:10 natural [1] 17:16 nature [1] 60:10 near [1] 64:9 necessarily [1] 19:18 necessary [4] 19:6,20 20:1,18 need [4] 40:16 45:4 64:10 68:7 needs [1] 67:3 Neither [1] 52:24 neutral [2] 35:13 46:1 never [5] 43:3,8 44:6 60:24 68:1 new [6] 5:1 8:21 17:17,23 50:25 66:2 newcomer [1] 41:12 next [2] 47:17 59:6 Niemeyer [3] 12:25 63:11 71:9 nine [1] 3:11 none [1] 16:22 North [2] 26:2 29:3</p>	<p>O'Brien [1] 63:23 objection [1] 50:11 obviate [1] 13:5 Obviously [3] 7:6 26:11 27:10 office [1] 42:3 officials [1] 3:20 offset [2] 24:18,20 often [1] 42:7 oftentimes [1] 67:10 Okay [11] 16:21 20:11,12 28:17 42:10,16,20 43:18 44:8 51:12 69:8 old [1] 50:24 once [1] 21:8 one [40] 7:11,15 10:4 11:10 12:3,6,8 14:10 15:10 19:13 25:25 26:2 27:13 31:15 34:17 38:16 40:7 41:3,19 44:16,22 45:8,12 46:19,25 47:19 51:14 54:1,13 55:3 60:19,20,22 63:16 65:24 67:22,23 69:18 71:6,17 one's [1] 62:18 ones [1] 28:12 only [11] 4:4 18:17 19:14 22:25 23:6,9 39:3 40:5 45:2 54:15 60:17 opaque [1] 57:2 open [2] 13:1 14:7 opinion [2] 8:6 32:17 opponents [2] 41:24,25 opportunity [3] 5:8 6:8 62:16 opposite [1] 40:13 oral [5] 1:14 2:2,5 3:7 37:2 orange [5] 17:13,15,15 18:3,3 order [6] 9:13 17:20,23 19:23 30:21 34:9 ordered [1] 9:13 organize [1] 61:12 original [1] 8:10 other [38] 6:14 13:11 15:8 16:11,21 18:13 19:11 20:15 23:1,2,12,16 24:8,15,19,20 25:20 27:13 34:4 35:4,18 37:25 40:18 42:11,12,20 43:3 44:18 46:20 51:21 54:1 55:2 56:25 59:10,11 62:11 63:19 68:19 other's [2] 27:3,4 others [5] 23:19 27:7 49:13,13 53:18 otherwise [2] 10:10 44:7 ought [2] 27:14 72:11 out [21] 3:20 11:21 12:2,6,10 16:4 21:6 24:7 25:2,4 27:17 32:22 34:3 35:4 40:9 44:7 46:1 56:4 64:21 65:8 72:3 outcome [2] 25:9 31:20 outcomes [4] 14:13 34:12 36:5,14</p>	<p style="text-align: center;">P</p> <p>PAGE [1] 2:2 panhandle [1] 49:6 paper [1] 58:10 pardon [1] 38:6 parking [2] 30:20 55:6 Parrott [1] 57:7 part [8] 12:4 25:13 49:4,18 50:11 53:19 60:25 66:3 particular [12] 3:21 7:7,22 14:24,24 16:20 19:14,19 47:6 52:15 54:8 70:18 particularly [1] 60:19 parties [2] 52:23 60:7 partisan [20] 3:12 14:3 16:4,8,9,12,17 27:18 34:10 36:7,8 37:8 39:17 40:16 42:24 45:12 52:20 53:11 61:25 72:2 partisanship [6] 42:12 67:24 68:1,12,22 69:6 parts [3] 24:20 28:13 60:21 party [20] 15:7,8,10 16:24 17:13,14,15 18:3 38:10 45:12 46:20 47:1 52:3,12 53:19 54:11,15,18 55:1 67:8 party's [1] 17:14 passed [3] 47:9,16 55:19 past [7] 7:19 15:15 20:8,17 21:4 34:13 42:18 paved [1] 51:4 pendency [1] 10:1 people [25] 9:16 20:4 21:6 26:25 34:22 40:2,6,9,10 43:4 44:15 45:5 48:23 49:5,6,17 50:10 53:19,25 54:9,16 55:14 56:1 61:1 63:25 percent [13] 40:11,12,13,13 42:11,24 44:10 45:1 52:16,17 55:20 59:5 69:5 percentage [1] 52:13 perennial [1] 37:11 perhaps [5] 27:24 28:11,24 33:13 53:17 period [2] 51:9 54:25 permissible [1] 29:5 perpetuate [1] 9:24 person [2] 72:1,12 person/one [1] 40:7 pertinent [1] 52:19 phrasing [1] 57:1 pick [5] 11:21 12:2,6,10 15:9 pieces [1] 65:7 place [6] 7:15,19 8:16 9:7 44:9,12 plaintiff [1] 63:7 plaintiffs [15] 27:24 34:11,19 35:4 38:17 50:15,24 55:22 58:11 62:24 65:24 67:19 68:16 72:6,9 plaintiffs' [4] 37:6 53:17 65:19,23 plan [7] 15:6,8 51:20 56:3,13,17</p>

Official

<p>64:12 planning [1] 9:16 plans [1] 15:1 plants [1] 17:17 play [1] 64:15 please [2] 3:10 37:5 plopping [1] 50:20 plus [3] 40:20,21,23 point [14] 17:20 21:11,14 28:15 31:1 33:22 50:24 56:22 58:22 61:23 66:7,13 71:19,24 pointed [1] 46:1 points [1] 51:6 political [14] 16:24 23:1 25:21 26:20 37:14 51:24 54:11,18 55:1 60:7 61:4,8 68:9 71:19 politics [5] 10:1 37:12 65:12,14,21 population [3] 15:3 17:16 66:4 position [11] 7:24 10:4 17:5 18:9,15 20:15 32:16 34:16 69:16 70:12 71:8 possibilities [1] 27:6 possibility [1] 23:3 possible [6] 4:24,25 5:2 15:1 19:15 69:16 postponed [1] 70:22 posture [1] 71:1 potential [1] 35:4 Potomac [1] 49:5 power [1] 70:20 practical [5] 8:17,17 12:17 25:8 26:17 precondition [1] 22:5 preconditions [1] 22:23 predicting [1] 36:5 predominant [1] 45:13 preference [1] 46:19 preferred [1] 34:22 prefers [1] 46:25 preliminary [14] 3:25 4:4,7,11 5:14 6:4,14 10:8,15,18 12:11,18 14:6 71:2 premise [2] 8:1 36:6 present [1] 39:12 presented [4] 3:14 56:7 68:16 70:24 presenting [1] 7:22 preserved [1] 22:2 preserving [1] 16:20 press [1] 58:14 Presumably [3] 25:12 42:3 53:21 presume [1] 58:19 pretty [7] 26:13 38:3 41:18 54:1,13,19 68:20 prevail [2] 48:15 62:19 prevailed [1] 41:6 prevails [1] 41:13 prevent [1] 31:9 previous [1] 51:5 prima [1] 35:11 primary [2] 14:12 41:24 principal [2] 3:13 37:9 principles [2] 5:18 10:6 print [1] 58:13</p>	<p>prior [6] 3:23 21:18,19 22:19 66:1 71:13 probably [4] 14:20 22:3,20 26:6 problem [5] 26:12 43:2,9 60:4 69:9 proceed [2] 13:25 71:7 proceeded [1] 32:7 proceeds [1] 13:24 process [4] 37:13 51:24 60:17 67:3 project [1] 44:1 prong [4] 13:7 22:22 30:1,2 prongs [2] 13:11,13 proper [1] 5:15 properly [2] 6:2 70:13 proponents [1] 57:4 proposed [2] 23:20 71:5 proposing [1] 23:1 pros [1] 28:9 proselytize [1] 61:12 protected [1] 61:3 protection [4] 16:19 43:24 44:9 66:16 prove [8] 13:6 14:2 31:18 32:12,16 33:9 34:10 63:19 provide [1] 37:7 provides [1] 44:2 proving [1] 72:10 provision [1] 45:11 punish [1] 20:4 purpose [2] 45:2 62:7 purposeful [1] 33:15 purposes [1] 4:15 pursue [3] 19:23,24 20:18 pursuing [2] 17:10,11 pursuit [1] 18:7 put [8] 18:15,18,22 20:7 35:16 42:16,17 49:22 PVI [2] 35:25 36:1</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question [4] 3:14,25 6:9 7:1 8:24 10:4,12,14,20,22 11:9 12:17 14:12 15:24 16:17 22:7 23:4 26:23 30:5 31:12,13,16 35:9,15 36:20 37:11 38:23 43:21 46:10 47:22 52:8 56:11 57:1,1 58:23 59:3 63:4 64:3 68:19 70:9,23 questions [3] 10:17 13:6 69:23 quickly [1] 71:23 quite [1] 64:25 quoted [1] 33:14</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race [4] 19:5 65:11,21 67:24 racial [9] 19:3 22:6 51:8,22 65:1,17 66:9 68:2,6 racially [1] 66:1 raise [2] 28:2,3 raised [2] 70:5 71:25 raises [1] 55:25 ran [1] 42:7 range [1] 16:15 rather [1] 48:7</p>	<p>reached [3] 8:12,12 11:20 read [10] 26:6 37:20 43:13,16,17 44:11 50:4 58:8,10 69:6 real [3] 19:3 49:13 68:24 realized [1] 30:6 really [8] 6:2 14:21 24:9 32:25 39:9 43:16 44:17 64:6 reapportionment [3] 30:6 47:18 48:1 reargument [1] 26:23 reason [15] 24:13 28:3,5,18,20 42:11,21,25 59:10 60:18 65:9 68:21,23 69:4,5 reasonably [2] 22:10,14 reasons [6] 24:5 37:9 38:1 51:14 65:24 72:14 REBUTTAL [2] 2:8 70:2 recall [2] 11:15,17 received [1] 57:12 recent [2] 48:11 57:20 recognize [1] 21:14 recognized [5] 39:11 63:23 67:25 68:2 70:15 reconsideration [1] 5:13 record [13] 4:23 5:6 36:21 43:4,8 44:11 49:16 50:4 51:14,16 54:21,22 65:22 redistrict [1] 14:22 redistricting [12] 4:12 19:22 37:13 41:2 44:2 46:22 49:3 53:6 56:7 60:16 61:6 68:9 redrawn [1] 50:12 redress [1] 62:18 refer [1] 65:18 referendum [11] 55:16,23 56:11,24 57:2,5,9 58:15,17 64:13,17 referring [2] 40:24,25 reflection [1] 21:19 registration [2] 52:24 54:16 rejected [1] 31:22 rejecting [1] 31:23 reliability [1] 35:23 reliable [3] 36:4,6,8 relied [2] 33:25 36:2 relief [3] 4:16 9:5 72:12 rely [2] 36:1 58:11 relying [2] 39:9 56:23 remand [5] 5:13 8:2,20 9:21 29:2 remanded [1] 8:18 remedy [2] 26:17 28:23 remove [1] 68:7 removed [1] 40:6 reopening [1] 14:7 repeatedly [1] 62:16 report [1] 65:22 Republican [25] 22:13 24:16 30:10,22 31:7 40:11,14,20,21 41:8,11,16,17,22,24 42:5 47:19 51:19 52:3 53:5 55:8,9 56:5 59:8 71:21 Republicans [3] 25:2 51:25 67:7 request [1] 5:23 require [3] 16:7 27:23 48:6 required [2] 45:11 57:21 requirement [2] 32:2 60:8</p>	<p>requirements [1] 49:21 requires [1] 63:22 reserve [1] 36:23 resolved [1] 11:22 respectfully [1] 13:14 response [1] 56:23 responsible [1] 34:22 restricted [1] 61:5 result [5] 19:14 40:7,10 42:14 47:22 resulted [1] 51:18 results [2] 35:5 61:24 retaliate [1] 18:1 retaliated [1] 53:22 retaliation [11] 3:19 37:7,10 39:10 44:5,6 53:21 60:23 62:25 63:22 67:18 reversal [1] 8:2 reverse [1] 72:15 review [1] 6:7 rigging [1] 72:11 Rights [5] 19:8 20:5,13 53:16 70:10 rises [1] 28:14 ROBERTS [35] 3:3 6:12,20,25 7:20 9:10 10:13,23 11:1,6,25 19:9 20:2,9 25:12,17 36:24 46:21,24 48:21 49:8,12 50:3,10 52:6,11,18 53:10 56:10,16,21 67:22 69:24 72:8,16 root [2] 68:7,9 Roscoe [1] 51:4 round [1] 47:17 rubric [1] 67:18 rule [1] 35:4 ruling [1] 12:23 run [3] 42:2,4 69:1 run-up [1] 58:15</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe [6] 25:7 30:22 40:20 41:16,19,21 safest [1] 41:18 same [18] 9:24 15:3 26:11 39:11 44:9,12 62:13 65:4,15 66:20,21,22,23 67:1,13 68:10 70:14 71:3 sampling [1] 34:20 satisfy [3] 19:10 25:13 69:5 saying [16] 18:16 19:13 29:16,17 32:20 33:7,14 38:5,9,25 59:13,13 61:20 62:21 63:18 69:14 says [2] 37:16,16 scheme [1] 9:19 Schuetz [2] 55:24 58:18 scrutiny [11] 17:5 18:13,19,23 19:2,10,17 20:12 21:1 30:14 31:11 seat [2] 42:4 51:6 seats [1] 25:8 second [4] 24:13 42:23 48:23 58:11 Secondly [1] 51:21 Section [1] 19:8 see [13] 14:21 16:10 23:2,15 27:2 28:7,11,15 36:8 43:15 44:10,16</p>
---	--	---	---

Official

<p>68:21 seem [3] 19:12 31:25 50:12 seemed [1] 63:10 seems [5] 17:25 26:13 46:25 50:4 51:10 seen [1] 42:19 sees [1] 10:9 segregation [1] 68:6 senator [1] 31:4 sense [6] 7:6 25:5 27:11 36:15 50:7 65:4 sent [1] 58:5 sentence [1] 33:8 separates [1] 50:8 series [1] 47:3 serious [1] 43:10 seriousness [1] 60:12 setting [1] 26:22 settle [1] 69:21 settled [1] 9:15 seven [5] 41:23,23,23 42:2 47:18 Shapiro [2] 8:3,13 shifts [1] 17:16 short [2] 8:24 12:8 show [7] 13:8 32:20 33:15 34:12, 20 38:17 39:1 showing [2] 45:1 67:4 shown [1] 39:15 shuffle [1] 40:9 side [3] 56:25 62:12,15 signatures [1] 60:8 silenced [1] 62:11 similar [2] 47:22 67:16 simply [3] 10:14 36:20 67:6 single [2] 3:20 40:24 singling [1] 72:3 situations [1] 60:9 Sixth [12] 21:23 24:10,17,21 25:3,4 42:5 50:17,25 51:3 52:16 59:21 skewed [2] 20:24,25 slight [1] 26:9 smart [2] 43:20 58:20 Society [1] 45:25 sociological [1] 67:5 Solicitor [1] 1:21 solid [1] 30:10 solution [1] 9:9 solve [1] 43:3 somebody [2] 28:6 69:2 something's [1] 52:20 somewhere [1] 42:22 sorry [2] 4:20 23:11 sort [7] 9:8,24 17:7 18:18 23:22 25:5 71:5 sorts [1] 4:18 SOTOMAYOR [38] 5:17 12:16,22 13:10,15,18 14:16 22:24 23:6,10, 12,15,19,24 24:2,22 29:13,15,21 37:15,19,22 38:8,21 40:1 52:5 60:5 61:14,17,20 62:6,20 63:3,9,14, 17 64:1,5 sounds [1] 30:17 specific [3] 15:18 25:22 63:22 speech [4] 61:2,4,7,8</p>	<p>spoken [1] 56:1 squarely [2] 44:21 70:24 standard [13] 6:6,15 27:5 31:23 37:8 38:13,14 44:3 48:8,9 63:1 69:17,22 standards [5] 5:15 27:3,4 44:14 60:6 standing [1] 26:23 start [3] 20:22,23 42:21 started [2] 26:12 69:13 starting [1] 21:11 starts [1] 63:21 STATE [14] 1:7 18:15,20,22 21:3 24:20 30:13 35:11 47:10 49:18 50:17 52:2,9 57:5 State's [1] 57:19 stated [1] 48:20 statement [3] 56:20,20,22 statements [3] 38:11 54:23 66:22 STATES [4] 1:1,16 57:19,21 stating [2] 48:18 63:2 statistical [1] 34:20 statistics [1] 48:24 statute [21] 4:17,21 44:7 45:17,18 46:9,15,19,22,25 47:9,17 48:1,1,5, 11,18 49:23,25 60:25 61:6 statutory [1] 46:8 STEVEN [3] 1:21 2:6 37:2 still [3] 8:15 12:18 18:22 straight [3] 31:1 41:6,13 street [2] 72:2,13 strength [2] 25:6 53:8 strict [11] 17:5 18:13,19,23 19:2,10, 17 20:11 21:1 30:14 31:11 strong [3] 13:7 35:22 36:12 strongest [1] 11:7 strongly [2] 11:10 54:1 stupid [1] 43:5 subject [2] 27:1,8 submit [1] 3:17 submitted [1] 72:17 subsequently [1] 55:14 succeed [2] 27:19 72:10 succeeded [1] 72:11 success [3] 15:17 70:19 72:6 successful [1] 4:2 sufficient [1] 57:9 sufficiently [1] 22:8 suggest [3] 7:4 41:10 56:25 suggested [2] 18:7 39:16 suggesting [5] 9:18 11:7 54:7 60:15 67:12 suggests [2] 36:16 63:6 suit [4] 5:20 6:24 7:21 10:1 SULLIVAN [77] 1:21 2:6 37:1,2,4, 18,21 38:7,15 39:8,13 40:17 41:1, 20 43:19 44:23,25 45:15,24 46:6, 14,18,23 47:2,8,11,13,21 48:2,6, 17 49:7,11,15 50:9,14 51:7,13 52:10,14,21 53:15,24 54:3,20 55:18, 21 56:12,19 57:3,22,24 58:4,9,24 59:17 60:21 61:16,19,22 62:13,23 63:8,13,16,21 64:4,8 65:1,18 66:15 67:2,15 68:4 69:7,11,14</p>	<p>summary [2] 12:21 13:24 support [4] 27:4 54:21 56:3 59:18 suppose [7] 28:20 30:5 45:10 47:7,16 59:4,6 supposed [1] 53:13 SUPREME [2] 1:1,15 surely [2] 11:20,23 survey [1] 14:9 switches [1] 17:18</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tailored [1] 17:8 talks [1] 65:23 targeted [1] 22:7 technical [1] 25:5 tells [1] 38:12 tend [4] 20:19 53:25 54:11,12 tended [1] 60:2 tends [1] 54:24 terms [2] 8:17 49:1 territory [1] 15:5 test [13] 12:11 13:16 18:16,23 22:25 23:16,21,22 25:13 31:24 37:24 63:6 68:17 testified [2] 45:7 54:24 testing [1] 60:24 tests [5] 23:2,17,20 24:8,15 text [1] 57:18 theme [1] 26:11 themes [1] 26:9 themselves [6] 35:24 54:9 55:6, 14 56:2 58:11 theory [18] 7:22,25 14:19 16:7,11 18:11,14 20:3 24:22 27:14,23 28:1,9 29:6 31:14 53:12,17 62:9 There's [20] 5:5 9:15,16 11:2 12:21 14:16 21:1 26:1 28:4,23 29:16 39:1,16 42:17 44:25 49:15 51:13, 15 59:10 60:21 therefore [3] 8:7 43:8 44:3 they'll [1] 69:3 they've [5] 27:20 48:19 56:1 64:4 67:9 thinking [2] 24:11 44:13 though [2] 20:11 63:19 three [12] 7:9 21:12,16 25:25 26:22,24 27:10 31:21 37:9 41:6,13 42:24 three-judge [1] 8:8 throughout [1] 18:10 today [3] 12:5 27:16 52:1 together [3] 27:2,12 44:14 tolerated [1] 19:4 took [5] 32:15 34:16 35:14 41:16 71:9 top [1] 69:4 total [1] 41:24 totality [1] 67:4 traditional [7] 48:7,9 49:3 50:2,22 51:1,2 traditionally [1] 46:8 transitional [1] 54:25 treating [1] 60:7 treatment [1] 3:21</p>	<p>trial [5] 12:19,23 13:25,25 57:6 true [9] 6:21 7:15 8:9 10:19 22:12 25:2 53:24 54:5 68:4 try [4] 37:11 51:5 62:17 68:19 trying [4] 40:3 42:18 55:15 69:18 turn [2] 30:12 62:17 turned [2] 65:8 71:20 twisted [2] 33:1,4 twisting [1] 33:13 two [12] 5:25 15:1 16:14 17:2,3 24:5 25:25 35:6 38:15,20 60:21 70:1 type [1] 44:19 types [2] 62:14 67:16</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S.C [2] 4:21 9:9 uncertainty [1] 9:24 unconstitutional [2] 15:12 59:10 uncontested [2] 36:3 51:15 under [24] 3:17 6:14,17 9:7,9 14:14 18:5 19:17 22:5,22 23:25 24:7, 15,22 27:19,22 28:1 30:1,2 32:12 36:19 37:24 66:15 70:13 understand [11] 8:16 11:3 14:20, 21 18:14 32:14 46:5 55:17 65:1 70:25 72:13 understanding [1] 24:5 understands [1] 72:2 understood [1] 70:13 undertake [1] 63:7 undo [2] 18:21 21:5 unequivocal [1] 71:18 unhappy [1] 55:1 UNITED [4] 1:1,15 57:19,21 unless [4] 6:3 12:21 18:6 69:23 unlike [1] 51:5 unseated [1] 41:11 until [4] 7:23 34:14 43:15 51:3 up [10] 38:22 44:14 52:7 55:16 56:14,17 61:23 62:14 69:17 71:1 upfront [1] 40:3 uphold [2] 5:22,22 upset [1] 9:15 urban [1] 49:19 using [2] 21:10 48:7</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacuum [1] 58:18 valid [2] 45:18 69:22 variations [4] 26:9,11,24 28:12 variety [2] 60:11 65:6 vengeful [2] 20:4 25:14 Vera [1] 4:20 versa [1] 55:8 versus [4] 3:5 23:7 45:25 57:7 vestiges [1] 68:7 vice [1] 55:8 Vieth [2] 3:11 68:8 view [4] 14:1 15:11 18:5 34:9 viewed [2] 24:18 57:11 viewpoint [5] 45:15,21 46:3,4 48:10 views [8] 3:22 53:7 55:9 62:10,11, 18 70:19 71:12</p>
--	--	--	--

<p>violate ^[1] 3:13 violation ^[5] 14:3 16:1 17:1 26:14 31:13 violet ^[1] 14:3 vote ^[13] 22:6 40:7 41:25,25 53:2,5 54:5,12,16,19,24 55:20 62:3 voted ^[5] 14:10 15:15 59:22 64:11 72:5 voter ^[3] 18:2,2 55:16 voters ^[19] 14:9 22:13 24:17 30:7, 11,20 31:7 53:8,13 54:19,25 56:5, 13 57:10,12 58:19 59:15,18,22 votes ^[3] 24:21 30:7 36:14 Voting ^[7] 19:8 20:8,17 61:23 70:10,10 71:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait ^[1] 43:15 waited ^[1] 5:19 wants ^[5] 11:22 12:3,12 18:20,21 Washington ^[2] 1:11,19 waste ^[1] 42:4 Watch ^[1] 57:8 water ^[1] 50:7 wave ^[2] 41:7,12 way ^[30] 10:4 13:19 14:10 15:14 16:25 18:14,17 19:13,15 20:7 22:4, 15,20 24:11 25:20 35:8,18 36:16 44:11 45:23 50:11,17 51:4 52:25 54:1,13,16 59:15 62:17 72:4 ways ^[3] 16:14 29:24 36:4 weakness ^[2] 13:10,13 Wednesday ^[1] 1:12 well-developed ^[2] 48:7,9 west ^[1] 49:6 western ^[2] 49:17 50:19 whereas ^[1] 61:5 Whereupon ^[1] 72:18 whether ^[17] 3:14 5:22 7:2 9:21 10:22 11:2 14:9,13 22:7,18 23:5 35:9,10 52:19 64:5 71:5,11 white ^[1] 54:4 Whitford ^[1] 72:1 whole ^[4] 24:10 45:9 62:6,7 whom ^[1] 64:22 will ^[14] 4:23 8:21 13:25 14:22 16:16 21:6 34:13 39:3 43:7,9 44:17 66:18 69:2 72:13 willing ^[3] 7:3,8 28:25 winning ^[1] 39:3 Winter ^[2] 11:8,16 Wisconsin ^[4] 26:1 27:21,25 29:3 without ^[6] 11:11 12:23 45:22 50:19 51:16 69:5 withstands ^[1] 41:12 won ^[2] 38:10 53:4 wonder ^[1] 32:5 words ^[4] 18:13 19:11 38:19 59:11 work ^[9] 19:3 35:24 44:17,17,18 60:16 68:25 71:16,17 workable ^[2] 60:19 69:22 worked ^[1] 60:14 working ^[1] 43:16 worried ^[1] 50:5</p>	<p>written ^[1] 47:4 wrote ^[1] 55:24</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[2] 11:8 55:7</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero ^[1] 51:18</p>
---	---