

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN LINDKE,)
)
 Petitioner,)
)
 v.) No. 22-611
)
 JAMES R. FREED,)
)
 Respondent.)

Pages: 1 through 86
Place: Washington, D.C.
Date: October 31, 2023

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -

3 KEVIN LINDKE,)

4 Petitioner,)

5 v.) No. 22-611

6 JAMES R. FREED,)

7 Respondent.)

8 - - - - -

9

10 Washington, D.C.

11 Tuesday, October 31, 2023

12

13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 11:47 a.m.

16

17 APPEARANCES:

18 ALLON KEDEM, ESQUIRE, Washington, D.C.; on behalf of
19 the Petitioner.

20 VICTORIA R. FERRES, ESQUIRE, Port Huron, Michigan; on
21 behalf of the Respondent.

22 MASHA G. HANSFORD, Assistant to the Solicitor General,
23 Department of Justice, Washington, D.C.; for the
24 United States, as amicus curiae, supporting the
25 Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ALLON KEDEM, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	VICTORIA R. FERRES, ESQ.	
7	On behalf of the Respondent	35
8	ORAL ARGUMENT OF:	
9	MASHA G. HANSFORD, ESQ.	
10	For the United States, as amicus	
11	curiae, supporting the Respondent	56
12	REBUTTAL ARGUMENT OF:	
13	ALLON KEDEM, ESQ.	
14	On behalf of the Petitioner	81
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:47 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 22-611, Lindke versus Freed.

Mr. Kedem.

ORAL ARGUMENT OF ALLON KEDEM
ON BEHALF OF THE PETITIONER

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

The dialogue between public officials and their constituents is fundamental to our democracy. Much of that conversation now takes place online, with social media platforms serving as the new town square, where public officials provide important information about what they're doing on the public's behalf and soliciting comments in return. While public officials retain First Amendment rights, use of a private social media account does not immunize an official's conduct from First Amendment or constitutional scrutiny.

Under our test for state action, a public official who creates a channel for communicating with constituents about in-office

1 conduct and then blocks a user from that channel
2 must abide by the Constitution. This test,
3 which focuses on how the public official is
4 using and purporting to use that account, is
5 consistent with this Court's precedent under
6 which a public official who purports to act in
7 that capacity is a state actor. It also accords
8 with Section 1983 and the original understanding
9 of what it means to act under color of law.

10 The Sixth Circuit's duty and authority
11 test, by contrast, would provide ready means for
12 public officials to evade the Constitution.
13 Here, for instance, it would mean that the city
14 manager would be free to block from his Facebook
15 page any constituent who is a member of a
16 disfavored race, religion, or political group,
17 free from constitutional constraint.

18 Our test avoids that result while
19 still leaving ample room for public officials to
20 communicate in their personal capacities.

21 I welcome the Court's questions.

22 JUSTICE THOMAS: Would you also win
23 under the doing your -- doing their jobs test?

24 MR. KEDEM: Yes, we absolutely would,
25 in part because, as has been pointed out, part

1 of the job of any high-ranking executive
2 official -- and the city manager is essentially
3 just under the mayor in terms of being high up
4 in city government -- part of that job is
5 telling people about what you're doing.

6 And what Mr. Freed was doing with his
7 Facebook account, sometimes multiple times a
8 day, was informing the citizens about what he,
9 as city manager, in his role as city manager,
10 was doing for the town and then communicating
11 directly with constituents about that, sometimes
12 answering their questions about the scope of his
13 orders.

14 JUSTICE THOMAS: But Ms. Karlan made
15 the point that there were only three instances
16 on the website there in the last case that were
17 personal. In this case, just going through the
18 Joint Appendix, there's quite a bit that is
19 personal.

20 So how would you just -- just
21 factually distinguish that or emphasize the fact
22 -- the fact that --

23 MR. KEDEM: Sure.

24 JUSTICE THOMAS: -- the personal here
25 does not override the official?

1 MR. KEDEM: So there were certainly a
2 lot more personal posts, although the ratio of
3 job-related posts to personal posts changed
4 dramatically at the start of the pandemic, as
5 you would expect, because a lot of the services
6 and the way that he was doing his job migrated
7 online.

8 I think, once you've established a
9 channel for communicating with constituents
10 about your job, I don't think also posting
11 sometimes about your family is going to undo
12 that, although, if what you're complaining about
13 in a specific case is being -- is having a
14 comment on a personal post deleted, obviously,
15 that would change the equation.

16 JUSTICE JACKSON: Does it matter if
17 you've established this channel ahead of time
18 and before you became a public official? I
19 mean, you sort of suggested that it had to do
20 with the purpose of the --

21 MR. KEDEM: Yeah.

22 JUSTICE JACKSON: -- account.

23 MR. KEDEM: So I -- I think you would
24 look at what you were doing with the page
25 beforehand or you could, I suppose, but I think

1 it's fairly clear that Mr. Freed wasn't talking
2 about the job of the city manager before he
3 actually became city manager. He wasn't posting
4 about directives that he himself issued until --

5 JUSTICE JACKSON: Right, but I guess
6 --

7 MR. KEDEM: -- he had that power.

8 JUSTICE JACKSON: -- I'm asking, does
9 it matter whether or not he opens up a new page
10 once he becomes the city manager and begins
11 conversing in the way that --

12 MR. KEDEM: Yeah.

13 JUSTICE JACKSON: -- we're talking
14 about, or, alternatively, he had this page
15 before he became city manager, it had all of his
16 personal information and, you know, pictures of
17 his kids and whatnot, and he just added to the
18 stream of conversation?

19 MR. KEDEM: So I -- I think that's
20 something that you would look at. Obviously, it
21 would be a factor. But there were a lot of
22 things that changed when he became city manager,
23 not just the content of the posts, but,
24 presumably, he also didn't list as his website
25 on the -- the page this official city address.

1 He didn't use the community comments at
2 PortHuron.org as his email address. There were
3 a number of things that changed by virtue of the
4 fact that he was starting to use this in his
5 capacity as the -- the city manager of the town.

6 JUSTICE JACKSON: Would it have
7 mattered to you if he had a disclaimer on it?

8 MR. KEDEM: So I think it probably
9 wouldn't get you back over the line into
10 personal use, in part because of the way that he
11 was using it to make certain announcements and
12 issue directives, information that you wouldn't
13 necessarily be able to get anywhere else. And,
14 certainly, there was no other place that you
15 could go to interact with the city manager.

16 Now it would have, I think, been
17 something that they could argue that he was
18 doing -- using this in a personal capacity, but
19 I think the disclaimer would have been
20 substantially overridden by the way he was
21 actually using the page.

22 JUSTICE ALITO: Just to be clear, if
23 the page had not been created until he became
24 city manager, would the case come out the same
25 way? Should it come out the same way in your

1 view?

2 MR. KEDEM: It -- it would, although
3 perhaps it would be even clearer than it already
4 is.

5 JUSTICE ALITO: It would be -- okay.
6 What if 95 percent of the posts are personal and
7 5 percent of the posts involve discussion of his
8 work?

9 MR. KEDEM: So it would obviously be a
10 more difficult argument for us to make, but I
11 would still be here certainly as my client's
12 attorney telling you, look, if there's only one
13 place to go to interact with the city manager
14 about issues -- directives that he himself had
15 issued, the fact that he posts a lot about cats
16 or whatever personal thing he wants to post
17 about, that doesn't change the fact that if you
18 get blocked off from that page, you're suddenly
19 losing access to a lot of information.

20 JUSTICE ALITO: So, if it's entirely
21 personal, but once he slips and he talks about
22 his work, that -- that changes it?

23 MR. KEDEM: I think it does because,
24 there, it's not really being established as a
25 channel of communication. It's a little bit

1 like running into someone at the grocery store,
2 where maybe they let slip some information about
3 the way the government is working. That doesn't
4 mean that they are going to the grocery store in
5 order to interact with constituents.

6 But you could, obviously, change the
7 hypothetical where they say, I'm going to hold
8 office hours every Friday in the grocery store
9 for an hour to talk with citizens about, you
10 know, pending legislation and what I'm intending
11 to do. It --

12 JUSTICE ALITO: So I -- I'm not sure
13 about what -- the -- the line that you're
14 drawing. You said, if it's 5 percent official,
15 5 percent work-related, then it's state action,
16 but if it's like 1 percent, one-half of
17 1 percent, it's not? Is that what you're
18 saying?

19 MR. KEDEM: So it -- it's not a
20 quantitative test. It's qualitative. But the
21 quality that you're going for is whether you've
22 established it as a channel of communication.
23 And I thought I understood your hypothetical as
24 essentially just one thing you said one time,
25 there's no understanding or expectation that

1 you're using this as an ongoing channel of
2 communicating --

3 JUSTICE GORSUCH: Counsel --

4 MR. KEDEM: -- with constituents.

5 JUSTICE GORSUCH: -- I'm confused.

6 Is -- is it the channel that we're supposed to
7 be focusing on -- this gets back to the Chief
8 Justice's first question in the last argument --
9 or is it the message at issue itself?

10 Because I had thought I heard you say,
11 if the message were about a private family
12 matter and you were blocked from that, you
13 wouldn't have any recourse. So which is it? Is
14 it the channel, or is it the message?

15 MR. KEDEM: So I think, in part, it
16 depends on what function you're complaining
17 about. If your complaint is you're being
18 blocked from access to the page, then it's the
19 channel that matters. It's the entire page and
20 your access to information.

21 If, on the other hand, you're
22 complaining because your comment was deleted
23 from a post, it obviously matters what the post
24 was about. If it was a post about cats, then
25 you don't have any constitutional claim.

1 JUSTICE GORSUCH: Well, what if --
2 what if the individual harasses the public
3 official on all of his personal, you know, cat
4 pictures and children pictures, and he finally
5 gets fed up and he just blocks them --

6 MR. KEDEM: Yeah. So I think --

7 JUSTICE GORSUCH: -- from the channel.

8 MR. KEDEM: Sure.

9 JUSTICE GORSUCH: Then that's state
10 action?

11 MR. KEDEM: So I think it could be in
12 the exact same way that it could be if, for
13 instance, you were on an official page of the
14 town and you were being harassing. At some
15 point --

16 JUSTICE GORSUCH: No, no, all the
17 harassing in my hypothetical has to do with
18 cats.

19 MR. KEDEM: No, I understand.

20 JUSTICE GORSUCH: The -- the commenter
21 hates --

22 MR. KEDEM: Sure.

23 JUSTICE GORSUCH: -- cats.

24 MR. KEDEM: Sure. And --

25 JUSTICE GORSUCH: And maybe he hates

1 your children too, I don't know.

2 (Laughter.)

3 JUSTICE GORSUCH: But -- but -- but,
4 you know --

5 MR. KEDEM: Yeah.

6 JUSTICE GORSUCH: -- if I block that
7 person for that, at some point, you know, even
8 though it's all my personal stuff, that --
9 that's state action?

10 MR. KEDEM: So I -- I think, again,
11 let's say, you know, in -- in official town
12 pages, all the time they say: Here's someone
13 enjoying themselves in the park, and let's say
14 you posted something --

15 JUSTICE GORSUCH: No, no, I'm talking
16 about my -- I -- I -- I understand --

17 MR. KEDEM: I understand, Your Honor.

18 JUSTICE GORSUCH: -- you want to
19 change the hypothetical. I get it.

20 MR. KEDEM: Yeah.

21 JUSTICE GORSUCH: I -- I get it. But
22 just answer mine if you would.

23 MR. KEDEM: Sure. So -- so the answer
24 is there still would be state action, but it
25 would probably easily pass the First Amendment,

1 and especially with the qualified immunity
2 overlay, it would be a very easy case. There
3 would be no problem.

4 JUSTICE KAVANAUGH: Yeah, but there's
5 litigation -- I don't want to interrupt.

6 JUSTICE GORSUCH: No, no, please,
7 please interrupt.

8 JUSTICE KAVANAUGH: You know, once
9 it's state action, then -- then there's an
10 issue. And I guess one of the concerns I have
11 about your position and just the line-drawing is
12 to define doing your job as talking about your
13 job is really quite all-encompassing, really,
14 because a lot of elected officials I've been
15 around love going to the grocery store and
16 talking to people after church, and that's where
17 they learn things to help them do their job
18 better.

19 And they're thinking in their mind,
20 yeah, I'm going to church, I'm going to the
21 grocery, but I'm also going to pick up things --

22 MR. KEDEM: Yes.

23 JUSTICE KAVANAUGH: -- or going to the
24 game or going to the high school football game
25 on Friday night, and I'm going to see a lot of

1 people, and that's going to help me get my
2 finger on the pulse of the community about, you
3 know, whatever issue it might be.

4 MR. KEDEM: And I -- I understand
5 that, but I think that's what the distinction
6 between talking about your job, which you might
7 do at the grocery store, and establishing a
8 communication with constituents about your
9 in-office conduct, which is something that
10 happens on an ongoing basis.

11 JUSTICE KAVANAUGH: So the two key
12 words I think you used there were "establishing"
13 and "channel." And I don't know what it takes
14 to "in the brick-and-mortar world" to establish
15 a channel.

16 But, if you have a regular pattern of
17 seeing a group of people, let's meet -- I want
18 to meet at my house with old friends regularly
19 to talk about what they think's going on --

20 MR. KEDEM: So I think --

21 JUSTICE KAVANAUGH: -- in the
22 community for purposes of helping me figure out
23 what legislation to propose --

24 MR. KEDEM: So --

25 JUSTICE KAVANAUGH: -- as a state rep,

1 say.

2 MR. KEDEM: -- I think -- I think,
3 there, if you were just issuing an invitation to
4 your friends, that's very different than issuing
5 a general invitation to everyone in the town,
6 all your constituents who you basically say, I
7 will interact with anyone who comes, but,
8 according to my friends from the other side, you
9 could essentially say, but only the white
10 citizens of the town are invited.

11 JUSTICE KAVANAUGH: Right. But it
12 goes back to who you want to include and who you
13 want to exclude, I guess. And I think elected
14 officials and appointed officials rely on groups
15 of people who are supporters, friends, people
16 they've known, people that are fair-minded, not
17 people that are just going to come and scream at
18 them --

19 MR. KEDEM: Yeah.

20 JUSTICE KAVANAUGH: -- to get advice,
21 thoughts, including negative and critical
22 thoughts, but they want to exclude, you know,
23 the person who's the jerk who's going to
24 interrupt the whole thing.

25 MR. KEDEM: So I -- I think it's easy

1 sort of on the extremes where either you're just
2 inviting an old friend or you're inviting
3 everyone in the town because they're
4 constituents, which is essentially what Freed
5 was doing.

6 In the middle, I grant you there will
7 be difficult cases where it sort of seems like
8 you are inviting everyone only that you like,
9 or, you know, there may be other ways to divide
10 the hypothetical.

11 But I think, in a case like Facebook,
12 where, essentially, anyone with a profile
13 could -- could look at Mr. Freed's page, I think
14 it's -- it's relatively clear the invitation was
15 to everyone in the town.

16 JUSTICE JACKSON: Can I direct your
17 attention to what I perceive to be a difference
18 between your position and the one that Ms.
19 Karlan just articulated? And maybe there is no
20 daylight, but I would -- be helpful to
21 understand if there is.

22 You've said repeatedly here that this
23 is about whether or not the page has been
24 established as a channel of communication, which
25 sounds to me like a species of the appearance.

1 We're looking at this page and we're seeing how
2 it operates.

3 I understood Ms. Karlan to be saying:
4 Well, really, her test is, are you doing your
5 job? What are the duties and functions of your
6 position? And have you created this page and
7 does it operate to facilitate your job duties?

8 Are you at all -- so is there a
9 difference between those two? And are you also
10 relying at all on the sort of duties or
11 functions the -- whether or not the person had
12 to create the page or something like this?

13 MR. KEDEM: So I think, if they had to
14 create the page, that obviously is game over.
15 But we agree with the Respondents in the prior
16 case that there has to be a broader conception
17 of what duty encompasses to mean everything that
18 is sort of customarily expected of you in your
19 job for a high-ranking executive official.
20 Usually, that's going to be talking about your
21 job at least in certain established ways.

22 JUSTICE JACKSON: But I didn't hear
23 your test to be about duty at all really.

24 MR. KEDEM: Yeah. So --

25 JUSTICE JACKSON: Is it?

1 MR. KEDEM: So I think the answer is
2 it is certainly sufficient if you have a concept
3 of doing your job through your page. We think
4 that we have that here.

5 We also have a slightly broader
6 principle that if you hold yourself out as doing
7 your job through your page, that is also
8 sufficient, which I don't know that my friends
9 on the other side -- on -- Respondent in the
10 first -- first case disagrees with, but they
11 aren't relying as much on that principle.

12 JUSTICE JACKSON: And your hold
13 yourself out in the situation is because we can
14 look at the page and we see that it has been
15 established as a channel for communication with
16 the constituents?

17 MR. KEDEM: Yeah. So it's partly the
18 way that you design your page and partly what
19 you do with it. Here, we have both his profile
20 and the way that he was posting and what he was
21 posting about.

22 JUSTICE KAGAN: I -- I would have
23 thought that the "what it looks like" is the
24 worst test for you, because what this looks like
25 is there are a lot of baby pictures and dog

1 pictures and obviously personal stuff.

2 And intermixed with that, there is, as
3 you say, communication with constituents about
4 important matters. But it's hard to look at
5 this page as a whole, unlike the one in the last
6 case, and not think that surely this could not
7 be the official communication channel.

8 MR. KEDEM: So --

9 JUSTICE KAGAN: Or what, you know --

10 MR. KEDEM: Yeah. So I -- I think --

11 JUSTICE KAGAN: It's not like any town
12 I've ever seen.

13 (Laughter.)

14 MR. KEDEM: Right. Well, I think
15 small-town government works in different ways.
16 Obviously, there was some personal stuff as
17 well. But the way that he was talking about the
18 posts, referring to things in the plural, the
19 way that he was posting things that were
20 directives that he himself had issued only
21 minutes earlier and then answering constituent
22 questions about that, now, admittedly, he was
23 also talking about personal things, but you
24 can't essentially immunize yourself from
25 constitutional scrutiny if you've established

1 this government channel of communication --

2 JUSTICE GORSUCH: What do you --

3 MR. KEDEM: -- just by also posting
4 about your dog.

5 JUSTICE GORSUCH: Well, what do you --
6 what do you say to the Chief Justice's concern
7 at the outset of this conversation about the
8 free speech rights of civil servants? And we're
9 a number in the millions now across this
10 country.

11 And if -- if it is within the scope of
12 your duty, you know, and if you're going to
13 define that very, very broadly, you give the
14 government a lot of power over limiting what --
15 what many millions of Americans can say. And,
16 surely, that must -- must be some concern to
17 you.

18 MR. KEDEM: It is a concern that has
19 to be balanced against the right of people in
20 the town. I think there is some irony that the
21 petitioners in the first case and the United
22 States say the way to solve the First Amendment
23 problem is for the government just to tell
24 people how to use their pages and have --

25 JUSTICE GORSUCH: Well, and -- and --

1 and there's some irony on the other side to say
2 the way to solve the First Amendment problem is
3 to turn it all into government speech, so the
4 government controls what millions of civil
5 servants in -- in towns large, small, and the
6 federal government alike, what they can and
7 cannot say in the public forum.

8 MR. KEDEM: So, admittedly, there is
9 going to be some issue of government control,
10 but I don't think that's escapable. For
11 instance, if the mayor of Port Huron had wanted
12 to, she obviously could have told Mr. Freed
13 either stop posting your directives to your
14 personal page, or, when you post them, also post
15 this additional information, or, when you answer
16 a question about this directive, answer it in
17 this way.

18 So that sort of control is already
19 going to be there regardless of whether he's
20 considered a state actor.

21 JUSTICE GORSUCH: It would be on -- on
22 a clearly public page.

23 MR. KEDEM: As it is, yes.

24 JUSTICE GORSUCH: The question --
25 clearly. The question is whether it might also

1 have to be on a page maintained, somebody
2 thought personally that they came up with before
3 they became a government official that's mostly
4 populated by dog pictures and whether the
5 government can also mandate what the person can
6 say there.

7 And if that's the case, what's left of
8 that person's free speech rights?

9 MR. KEDEM: So I think --

10 JUSTICE GORSUCH: I mean, we -- we
11 used to care about public employee private
12 speech rights, Garcetti, Pickering, you know.

13 MR. KEDEM: Yeah. And I think that as
14 your question alludes to, there is a doctrine
15 under the First Amendment that reconciles the
16 First Amendment rights of a public official
17 against the government's interests in the
18 speech.

19 One of the key points that we're
20 making is the exact same factors that you look
21 to to decide whether the government has an
22 interest in the speech and therefore has some
23 control over it, even when it's ostensibly
24 private speech, those are things like, are you
25 purporting to do your job on the page? Are you

1 holding yourself out as a public official? And,
2 if so, can the government tell you, if you're
3 going to use your title on your page, as many
4 people do, just make clear you're saying this in
5 your private capacity?

6 And if the government can say that to
7 you consistent with the First Amendment, then
8 you sort of understand that there's not going to
9 be a different First Amendment equation just
10 because we're calling it state action as well.

11 CHIEF JUSTICE ROBERTS: Well, I mean,
12 these -- on these pages, people -- people have
13 both a job in the government and they have all
14 sorts of other things, whether it's cats or
15 children or whatever it is, and the problem it
16 seems to me is we kind of have to disaggregate
17 that, right, and say, well, you know, you have
18 to have a governmental page and you have to have
19 a private page and you can't mention the
20 government on your private page or else it's
21 going to become a government page.

22 And as I understand it, you basically
23 say, if you've got 5 percent government, then
24 we, the government, can basically say the whole
25 thing, even if the rest of it is all about your

1 children and -- and -- and the dogs, that's
2 ours. And if we don't like little dogs, we can
3 say you can't put pictures of little dogs on
4 there.

5 And it seems to me that -- that that
6 effort to kind of disentangle the two things
7 doesn't really reflect the reality of how social
8 media works.

9 MR. KEDEM: So, Your Honor, I have to
10 push back in two respects. First --

11 CHIEF JUSTICE ROBERTS: About the dogs
12 or --

13 (Laughter.)

14 MR. KEDEM: A little bit about the
15 dogs.

16 CHIEF JUSTICE ROBERTS: Okay.

17 MR. KEDEM: So one principle is it's
18 not the 5 percent versus 95 percent, that you've
19 gotten over some threshold. It's the way you're
20 using your page as an ongoing place where people
21 in the town go to get information about what you
22 as a city manager are doing, how you're doing
23 your job, the directives that you issue.

24 If you set it up that way, that's the
25 quality that you're looking for --

1 CHIEF JUSTICE ROBERTS: Well, just to

2 --

3 MR. KEDEM: -- not quantity.

4 CHIEF JUSTICE ROBERTS: I don't mean

5 -- well, I do mean to interrupt.

6 MR. KEDEM: Yes.

7 CHIEF JUSTICE ROBERTS: But -- but
8 what if you're doing -- you know that from your
9 -- you know, the official weather, whatever, a
10 very bad storm is coming. You also know that
11 not everybody checks the city's site, you know,
12 12 times a day, but you know a lot of people
13 look at your -- your private site. And if you
14 put on there there's a very bad storm coming or
15 I looked at the city weather, whatever, you need
16 to know there's a bad storm coming, does that
17 compromise the private nature of your page?

18 MR. KEDEM: No. Again, you haven't
19 set up an ongoing channel for communication
20 where people know that's the place to go in the
21 future for important information.

22 JUSTICE JACKSON: Well, why --

23 MR. KEDEM: And the second --

24 JUSTICE KAGAN: And how do you know
25 that this is an ongoing channel of

1 communication? What do you look to to decide
2 that? And -- and be specific about this site.

3 MR. KEDEM: Sure.

4 JUSTICE KAGAN: What on this site
5 indicates that this was what you consider an
6 ongoing channel of communication, as opposed to
7 just a place where you talk about your dogs, you
8 talk about your children --

9 MR. KEDEM: Yeah.

10 JUSTICE KAGAN: -- and you talk about
11 your work?

12 MR. KEDEM: Sure. So I think, as soon
13 as the pandemic started, there were multiple
14 posts a day about what he and other people in
15 the government were doing. Usually, he was
16 going to post a daily COVID update from the,
17 basically, health equivalent of the CDC. He was
18 posting directives. So I could direct you, for
19 instance, to the directive on page 22 of the
20 Joint Appendix. There's another directive on
21 page 20 of the Joint Appendix. And then the
22 specific post that was the subject of the
23 dispute with my client, that was flanked by a
24 post about a community operations outreach
25 center on one side and a place to donate for

1 people who were struggling on the other side.

2 So there were just multiple posts a
3 day about this. And he was also interacting
4 with constituents. So one of the key features,
5 I think, that you would lose out on is, if you
6 go back to page 22 of the Joint Appendix, he
7 issues this order about cutting off water, and
8 he says basically effective immediately we're
9 not going to cut off water for 30 days because
10 of the pandemic. And then there's a question
11 from a constituent below who says, well, what
12 about people whose water is already cut off?
13 Are those going to be turned back on? And he
14 answers yes.

15 So there is essentially a real-time
16 gloss on his own directive. And it's possible
17 that the directive appeared somewhere else.
18 There's nothing in the record about that. But
19 it presumably came a little bit later, and if
20 you wanted to know what is the city manager,
21 who's essentially the chief executive officer
22 for the town, what is he doing, that's the place
23 to go. There was essentially no other game in
24 town for figuring it out if you were a citizen
25 of Port Huron.

1 JUSTICE BARRETT: Well, that makes it
2 pretty difficult for a public official or a city
3 manager to have any kind of private site because
4 he could have a private Facebook page populated
5 with pictures of his dog, pictures of his kids,
6 and one of his friends asks something about the
7 water shutoff, and he says, you know, yeah, the
8 water is going to be shut off, you know, et
9 cetera, or a storm's coming, whatever.

10 Has he then transformed what he
11 thought was his private Facebook page into
12 something that is state action and so he
13 arguably has to give everybody in the town
14 access to, when he might not want to give them,
15 you know, access to pictures of his kids? Or
16 does he have to tell his friend, sorry, I can't
17 answer that question here, head over to my
18 public Facebook page and I'll answer it there?

19 MR. KEDEM: So that sounds a lot to me
20 like the sort of Facebook equivalent of just
21 running into someone in the grocery store. I
22 don't think that that creates any sort of
23 channel that way, although the best practice is
24 obviously to refer someone -- you know, for more
25 information, go to the official page.

1 JUSTICE BARRETT: It creates
2 nightmares of litigation, though, right?

3 MR. KEDEM: So it -- it could create
4 nightmares of litigation. I think, literally,
5 whatever you say here, unless you essentially
6 say nothing that happens over Facebook is going
7 to ever be state action, which I don't even now
8 take any of the -- the parties to be arguing,
9 unless you say that, you're always going to have
10 some amount of litigation.

11 The good news is our test has been the
12 majority test in the circuits. And I think the
13 reason that you don't see a flood of litigation,
14 there are basically only five court of appeals
15 decisions, including the two cases before you,
16 is number one. You've got the qualified
17 immunity overlay, number two. Most of these
18 First Amendment claims are -- are not going to
19 have much to them. They can be dismissed on
20 reasonable time, place, and manner restrictions.

21 JUSTICE KAVANAUGH: Why isn't all of
22 Facebook the equivalent of running into someone
23 at the grocery store, unless, on that personal
24 page, you're announcing some governmental rule
25 or some official notice --

1 MR. KEDEM: Yeah.

2 JUSTICE KAVANAUGH: -- of some kind?
3 And we can debate what official notice is.

4 MR. KEDEM: So I think Facebook, as
5 this Court has said in other cases, and all of
6 these social media -- media platforms are
7 incredibly powerful in a way that running into
8 someone in the grocery store is not. This is
9 not just an incidental place where you happen to
10 receive speech from someone.

11 You know, in the olden days, if you
12 were a public official and you wanted to
13 communicate with the public outside of formal
14 channels, you probably would have had to walk
15 out of your office, maybe find a pay phone, if
16 you remember what those still were, and it would
17 have been very difficult without the use of your
18 staff to communicate to the public in any sort
19 of broad way.

20 These social media platforms make that
21 basically instantaneous. You can cast as wide a
22 net as you want, talk to everyone in the town.
23 You can talk specifically to individual people.
24 They are just incredibly powerful in a way that
25 I don't think that just the happenstance of

1 running into someone in the grocery store is.

2 I think the better analogy, if I may
3 tweak yours, is essentially just saying, you
4 know, I'm going to post my private phone number.
5 Everyone in the town can give me a call if you
6 have problems with your leaf collection. Oh,
7 but, by the way, only white citizens are allowed
8 to use this phone. I think that would also be
9 constitutionally problematic, even though you
10 were using your own private phone number.

11 CHIEF JUSTICE ROBERTS: Thank you.

12 Justice Thomas?

13 Justice Alito?

14 Justice Sotomayor?

15 Justice Kagan?

16 Justice Kavanaugh?

17 Justice Barrett?

18 JUSTICE BARRETT: No.

19 CHIEF JUSTICE ROBERTS: Justice
20 Jackson?

21 JUSTICE JACKSON: Just one final
22 question. I guess I don't understand why this
23 test that you have articulated doesn't require
24 the sort of post-by-post analysis, because I
25 appreciate that you say that this is an ongoing

1 channel of communication because we have some
2 posts that give the kind of information and ask
3 for public feedback, but you also concede that
4 we have other posts, a substantial number of
5 other posts, that are private.

6 So, first, I guess, what is your
7 answer to could the public official who uses
8 this to communicate with the public sometimes,
9 could they block a person who made comments
10 about the dogs or not?

11 MR. KEDEM: So, certainly, they
12 could --

13 JUSTICE JACKSON: Is that state
14 action?

15 MR. KEDEM: Right.

16 JUSTICE JACKSON: Excuse me. Is it
17 state action --

18 MR. KEDEM: So -- so --

19 JUSTICE JACKSON: -- to block a
20 comment about the dogs?

21 MR. KEDEM: So I think the answer is,
22 if you're talking just about removing a comment
23 from a specific post, it is only state action if
24 the post itself has something to do with the
25 job. And I think this goes back to the Chief

1 Justice's questions about whether all of a
2 sudden it means that you basically have to let
3 the government control all the posting that you
4 do about your cats or dogs.

5 JUSTICE JACKSON: Right.

6 MR. KEDEM: The answer is no because
7 the posting about the cats or dogs is not state
8 action. But, if you're talking about blocking
9 someone's access to the entire page for all time
10 on a going-forward basis, then, obviously, it
11 matters not just the specific post that led you
12 to take that action but all of the other
13 information that they're losing out on.

14 JUSTICE JACKSON: So you're saying
15 there is a situation -- was that the case in
16 your situation where the -- the block resulted
17 in no access to this page at all?

18 MR. KEDEM: Yes. So two things
19 happened. He had comments removed, but, also,
20 he was blocked so that he could not access the
21 page when he was signed in. And there were four
22 other people who also either had comments
23 deleted or were blocked, all of whom, because --
24 it was because they essentially criticized the
25 way that Mr. Freed was performing his -- his job

1 of city manager.

2 JUSTICE JACKSON: Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Ms. Ferres.

6 ORAL ARGUMENT OF VICTORIA R. FERRES

7 ON BEHALF OF THE RESPONDENT

8 MS. FERRES: Mr. Chief Justice, and
9 may it please the Court:

10 This country's 21 million government
11 employees should have the right to talk publicly
12 about their jobs on personal social media
13 accounts like their private-sector counterparts.

14 As this Court addresses the question
15 presented, this Court should adopt the Sixth
16 Circuit's duty and authority or state official
17 test because it complies with this Court's
18 precedent and requires that a government
19 employee is either exercising power possessed by
20 virtue of state law or made possible only
21 because he is clothed with the authority of
22 state law.

23 Petitioner wrongly advocates for an
24 inherently subjective test that divorces the
25 state action inquiry from state law.

1 Petitioner's test will result in uncertainty and
2 self-censorship for this country's government
3 employees despite this Court repeatedly finding
4 that government employees do not lose their
5 rights merely by virtue of public employment.

6 James Freed's Facebook account is the
7 perfect example of the danger of Petitioner's
8 test. Mr. Freed opened a personal Facebook
9 account in -- account in 2008 as a college student
10 at Indiana Wesleyan University.

11 For 12 years, he built up the account
12 to interact with friends, family members, and
13 colleagues to talk about his passions and
14 interests, including his wife, daughter, his
15 dog, his work, and his favorite Bible passages.

16 As he had done for over a decade while
17 operating the account, in 2020, Mr. Freed made a
18 private choice like any other Facebook user
19 could do to block Petitioner and delete
20 Petitioner's comments from the page.

21 After being sued, Mr. Freed
22 deactivated the page and stopped speaking to his
23 family and friends and the public on Facebook
24 because he did not want to lose control over his
25 own speech by the threat of state action.

1 Such self-censorship for government
2 employees will not only have a negative impact
3 on society -- on government employees themselves
4 but as society -- in addition to society as a
5 whole as the voices that may advance knowledge
6 and the search for the truth will be silenced.

7 I welcome the Court's questions.

8 JUSTICE THOMAS: There's quite a bit
9 on the site about personal activities, including
10 the battles with raccoons and other things, but
11 Petitioner says that the balance changes
12 somewhat during COVID, during the COVID crisis.

13 Would you react to that and whether or
14 not that sort of episode is enough to convert
15 this into a -- a -- into a -- an official
16 activity on this site as opposed to a personal
17 site?

18 MS. FERRES: Yes, Justice Thomas. So,
19 when you look at the -- from the Joint Appendix
20 from 15 to 24, you can see that from the time
21 that COVID started in March of 2020 through the
22 day that put -- the post in which Petitioner
23 claims he was then blocked and deleted, Mr.
24 Freed only makes 14 posts. And just to give
25 some -- or some context to that, from March 2019

1 to May of 2020, he made 451 posts. He was very
2 clearly a very active Facebook user.

3 And in those 14 posts --

4 JUSTICE THOMAS: Is that -- before you
5 go on -- before -- before you go on, the -- just
6 the COVID activity, though, is that -- would you
7 consider that government speech?

8 MS. FERRES: No, Your Honor. And he
9 had no duty or authority to be the COVID
10 spokesperson from the county. And when you
11 really look at those 14 posts, all he was doing
12 was resharing information from other sources.

13 And most often in only two instances
14 was it the City of Port Huron. There were other
15 nonprofit entities, there was other government
16 agencies that weren't the City of Port Huron.

17 He was sharing information just like
18 your neighbor might have done on Facebook, like
19 anyone else during COVID, so nothing changed
20 during that COVID time period.

21 JUSTICE SOTOMAYOR: How was he --
22 wasn't he inviting the public to comment on his
23 performance as a public official?

24 MS. FERRES: Your Honor, no, there
25 is -- there was a spot that people could

1 comment. And sometimes people did. And as my
2 friend on the other side noted, that he
3 sometimes would give the answer if he knew it,
4 but --

5 JUSTICE SOTOMAYOR: So you're claiming
6 that this site was, in fact, not a site for --
7 not an open square site where he was sharing
8 business/work information on a regular course --

9 MS. FERRES: He did --

10 JUSTICE SOTOMAYOR: -- or -- or
11 soliciting comments on a regular course?

12 MS. FERRES: No, Your Honor. And you
13 can see in the record but oftentimes someone
14 would ask a question related to the city and Mr.
15 Freed didn't respond. So, if he was having --
16 if he had the duty to answer the town's
17 constituents, which he's an employee --

18 JUSTICE SOTOMAYOR: So -- so now use
19 the -- the definition of "duty" and "authority"
20 that both the Solicitor General and the -- the
21 other case has done. Tell me how you fit in
22 within that broader definition.

23 I know how you fit in within the Sixth
24 Circuit. They ruled. Address the way they
25 defined it and tell me how you would get -- how

1 this case would come out under their broader
2 rule.

3 MS. FERRES: Sure, Your Honor.

4 JUSTICE SOTOMAYOR: Assuming its duty
5 includes this -- duty to communicate with
6 constituents, that you have either custom or
7 whatever, and authority includes the authority
8 to bind the state in some way --

9 MS. FERRES: Your Honor --

10 JUSTICE SOTOMAYOR: -- or -- or to do
11 this thing.

12 MS. FERRES: -- I'll start with the
13 Solicitor General's test because I think --

14 JUSTICE SOTOMAYOR: Okay.

15 MS. FERRES: -- that's the easiest.

16 We would very clearly win under that test
17 because this is a personal account. The log-in
18 is JamesRFreedl@facebook.com. So we --

19 JUSTICE SOTOMAYOR: But they went past
20 that and said it depends on the nature of the
21 message in some --

22 MS. FERRES: Your Honor --

23 JUSTICE SOTOMAYOR: Yeah.

24 MS. FERRES: -- I -- I don't -- I
25 don't -- don't think that the Solicitor General

1 --

2 JUSTICE SOTOMAYOR: Well, they said,
3 if you used the account for all that personal
4 stuff and used it for notice-and-comment on a
5 rule, that would be a business account.

6 MS. FERRES: Correct. If he -- he did

7 --

8 JUSTICE SOTOMAYOR: So the message
9 there, you have to look both contextually or the
10 channel, and you have to look also at the
11 message.

12 MS. FERRES: Your Honor, I agree with
13 that. I -- I would say that if Mr. Freed used
14 the Facebook page, they decided to host a -- a
15 city council meeting in his -- on -- on Facebook
16 Live during the pandemic, then, during that
17 period of time, there may be state action in
18 that case.

19 And I think that's where the
20 notice-and-comment comes in, because the city
21 council meeting inherently has a right to access
22 to the public. They're able to come for public
23 comment.

24 But, if you looked at it, if they did
25 that in his backyard and he opened up his

1 backyard to the city council meeting, while
2 there may be state action during the city
3 council meeting, I don't think anyone would
4 dispute that, he doesn't have to let everybody
5 --

6 JUSTICE JACKSON: The government does.
7 The government in -- I understood the
8 government's position to be that if they had the
9 city council meeting in their backyard -- and
10 maybe I'm mistaken -- that it's a property
11 thing, it's -- if they have it on the farm or
12 whatever.

13 MS. FERRES: Your Honor, my
14 understanding on the Solicitor General's test is
15 that the property is a heuristic and that if
16 it's personal in and of itself, then that's
17 pretty much always going to go to the government
18 employee, but I -- I'll let the Solicitor
19 General also --

20 JUSTICE JACKSON: Okay.

21 MS. FERRES: -- answer for herself.

22 JUSTICE JACKSON: Sorry.

23 MS. FERRES: But -- that's okay.

24 And I think the hard -- the biggest
25 problem that we have in -- in this case is that

1 without this type of bright-line rule, we're not
2 going to give government employees -- when we're
3 not looking to anything objective. We're
4 looking to Petitioners' subjective criteria.

5 There is going to be an influx in
6 litigation, and -- and government employees
7 won't know when or when they cannot -- when they
8 can talk about their jobs on social media, which
9 we know from Lane is their right to do.

10 CHIEF JUSTICE ROBERTS: Well --

11 JUSTICE KAVANAUGH: I think your --

12 CHIEF JUSTICE ROBERTS: -- I was just
13 going to say one clear rule would be, if it's
14 the only place they can go and you're talking
15 about governmental activities, that's the place
16 to go, that -- that -- that's government speech.

17 In other words, here, perhaps the
18 significant characteristic is that there wasn't
19 any other place to go, right?

20 MS. FERRES: Your Honor, there were
21 other places to go. Every -- Mr. Freed
22 very test -- very clearly testified -- and this
23 is at the Joint Appendix at 638 -- that he --
24 anything that was ever released was always
25 released by official channels.

1 So, for example, when he issued the
2 water directive, that would have been sent to
3 the water department, and, of course, when he
4 did that, there's state action there.

5 JUSTICE KAGAN: But what if many
6 people in this town thought that, you -- the
7 site that they wanted to go to was his site.
8 They didn't want to go to the water site and the
9 roads site and the COVID site and the healthcare
10 site and the "this site" and the "that." I
11 mean, he was the one-stop shopping, and they
12 could see pictures of his dog too and that was
13 nice. So this is where they went for their
14 information about what was happening in town.

15 MS. FERRES: Well, rest in peace to
16 his dog, but, Your Honor, he -- in this case, he
17 -- it doesn't matter that someone wanted to go
18 see his site. There was -- he didn't -- his --
19 the city manager position is not a public-facing
20 position. It's not something like a press
21 secretary where they -- they are required to
22 speak to the public.

23 His duties under the -- under the
24 state law or the city ordinances are to manage
25 the government employees.

1 JUSTICE KAGAN: And you don't think
2 that managing the government -- managing
3 everything that goes on in the town, that it
4 helps to have a -- a channel of communication to
5 your constituents, to the people who live in the
6 town?

7 MS. FERRES: Your Honor, I think
8 that's -- that's obvious in any type of position
9 like that. Any governmental position would want
10 to have some type of communication with the
11 public. But that doesn't mean that every single
12 thing, every single time a government employee
13 talks about their job and they happen to be in
14 public, that it transforms into state action.

15 JUSTICE KAVANAUGH: Well, I think the
16 problem is they define the custom, I think, of
17 positions like this as including communicating
18 with the public about your job, and, therefore,
19 everything that you communicate about your job
20 becomes state action. So that's a problem for
21 them as I see it because that seems very broad
22 to me.

23 But then how would you define it short
24 of that? And be very specific. For example,
25 announcing rules, the word "directive" here,

1 announcing directives, announcing notices about
2 COVID, where -- like, where do you draw the line
3 short of the line that I think the other side
4 has?

5 MS. FERRES: Justice Kavanaugh, I
6 think that your hypotheticals in the last case
7 made the most sense and that when, if you have a
8 duty to announce a rule and the only time that
9 you ever do it is on the Facebook page, then
10 there's going to be state action there. If he
11 had an explicit duty to do something and that's
12 the only time he's carrying it out, yes.

13 But, if he's merely reposting or
14 resharing the official action that he had
15 already taken, there's no state action in that
16 case.

17 JUSTICE KAVANAUGH: And on the
18 resharing thing, I guess -- this is a helpful
19 question for you, but just to think it through,
20 I guess the point there is any citizen could be
21 resharing it, not -- not -- it's not unique to
22 the -- the city manager, I suppose.

23 But I think the response to that, just
24 to continue it, as Justice Kagan would say, a
25 lot of people are going to rely -- her question

1 suggested a lot of people are going to rely on
2 the city manager to be the place you go for that
3 information.

4 MS. FERRES: Your Honor, a couple
5 things in response to this. But just the clout
6 of someone's job doesn't transform something
7 into state action. So many more people may
8 attend Mr. Freed's birthday party because he is
9 the city manager, but just that clout of his job
10 alone and the fact that people may be going to
11 his Facebook page because he is the city manager
12 isn't enough to get us into state action.

13 JUSTICE KAVANAUGH: And one thing you
14 said I think I disagree with pretty strongly,
15 which is that it's not part of your duties to
16 communicate as a city manager with the public.
17 I would think, it -- as a customary matter, that
18 would always be -- maybe you didn't say that, so
19 I'll give you an opportunity to amend that if
20 you want.

21 MS. FERRES: No, Your Honor. I think,
22 in all government positions, I think it's an
23 inherent -- talking to -- generally and
24 speaking, but the city manager's role I think is
25 unique in that he has no authority to take any

1 -- he can't make policy, he can't change policy.
2 He can only recommend what he thinks is best to
3 the city council, and then they have to take an
4 official action as the city body.

5 JUSTICE BARRETT: But I hear you --

6 MS. FERRES: He has --

7 JUSTICE BARRETT: Oh, sorry. Please
8 finish.

9 MS. FERRES: He has no authority in --
10 in and of himself to make any -- take any action
11 like that.

12 JUSTICE BARRETT: So Justice Sotomayor
13 was asking in the last argument about the Sixth
14 Circuit's test and whether it relied solely on
15 written law and excluded custom. But you've
16 been talking back and forth with Justice
17 Kavanaugh about custom and customary duties.

18 So do you agree that custom can be
19 part of the source of an -- of authority or
20 duty?

21 MS. FERRES: No, not exactly, Your
22 Honor, but I do think that there could be -- I
23 think the Sixth Circuit used the phrase
24 "apparent duty," so I -- I guess what I would
25 say is if the city council directed Mr. Freed to

1 main -- to discuss city business on a social
2 media account.

3 JUSTICE BARRETT: But 1983, I mean,
4 clearly, custom can be enough.

5 MS. FERRES: Correct.

6 JUSTICE BARRETT: Custom or policy, so
7 do you really want to fight that that hard?

8 MS. FERRES: I -- I don't disagree
9 that 1983 says statute, ordinance, regulation,
10 custom, or usage. So that -- we don't have to
11 look just to -- just to state law, but I think
12 the only case this Court has ever really
13 addressed with custom was Adickes, and it had to
14 be something that was so forceful that it
15 essentially was the law. So, when we look at
16 that case, they weren't letting any blacks into
17 the -- at the counter to eat, and it was --
18 there was a police officer in there enforcing
19 that custom.

20 So we don't have anything like that in
21 this case where it's something so defined that
22 it becomes essentially a duty.

23 JUSTICE JACKSON: Well, why I -- I
24 guess -- I understand your argument to be with
25 respect to the need for some sort of clarity,

1 bright line, the public officials have a First
2 Amendment right and they need to know when
3 they're going to be able to exercise it. I
4 appreciate that.

5 But I guess I thought that we had a
6 line of cases like the Pickering and Garcetti
7 cases in which those kinds of issues were taken
8 into account and the Court did not choose a
9 bright-line test. In other words, in the
10 Pickering scenario, where the public employees
11 are trying to speak on matters of public concern
12 and the government doesn't want them to speak, I
13 suppose the Court could -- could have adopted
14 some sort of a bright line as to when -- when
15 are you speaking in your public capacity and
16 when are you not.

17 But we said that it's a practical
18 inquiry and that the listing of a given task in
19 the employee's written job description is
20 neither necessary nor sufficient to demonstrate
21 that conducting the task is within the -- the
22 scope of the -- the professional duties.

23 So it seems to me like you are arguing
24 for a bright-line listing of the duty or some
25 kind of clear way to know in a circumstance in

1 which in other similar situations we've said
2 that's not required.

3 MS. FERRES: Your Honor, I -- I don't
4 think it's only looking at the specific duty or
5 that bright line, but I think what -- what I
6 mean when I say the term "bright line" is that
7 there's some type of objective indicia of the
8 duty and authority and where the Sixth Circuit,
9 I think, was correct in saying that, you know,
10 you can look whether government employees are
11 helping the person maintain the page, if
12 government funds are used, if the government
13 page is owned by the government, if it -- once
14 -- in Mr. Freed's case, if once he leaves the
15 city manager position, if then the next city
16 manager is going to take over that account. So
17 these are all objective indicia of --

18 JUSTICE JACKSON: Would you include
19 operation, how it functions? The other side
20 says you also look at what's actually going on
21 on the page. Is that a part of the test for you
22 or not?

23 MS. FERRES: No, Your Honor, I
24 wouldn't include function in the way that they
25 -- they do. I -- I -- I would look to whether

1 there is duty and authority because that's what
2 this Court's precedent in state action has
3 required, that there -- you're exercising some
4 type of rights and responsibilities made
5 possible only because you have the authority of
6 state law.

7 JUSTICE SOTOMAYOR: That -- that seems
8 to me not adequate at all, but every elected
9 official tells me that they're on duty 24 hours
10 a day. And so, if they are during that 24 hours
11 creating themselves and posting the Facebook and
12 doing all of the communications they're doing,
13 why isn't that state action?

14 If you're using government resources,
15 you're a government resource. You're a
16 government employee. And if you're claiming
17 you're on duty 24 hours, then you are. And you
18 are using a state resource. So it can't be as
19 limited as you say.

20 MS. FERRES: Your Honor, that would
21 violate the government employee's First
22 Amendment rights because we know from Lane that
23 government employees have the right to speak
24 publicly about their jobs. Even in -- in Lane
25 --

1 JUSTICE SOTOMAYOR: So the question is
2 on what topics, and the issue becomes, as I
3 think your other side is arguing, are you using
4 this as a channel of communication with the
5 public for you to be able to do your job?
6 That's how they want to define it.

7 MS. FERRES: Yes, I'd agree with that,
8 Your Honor. That's how --

9 JUSTICE SOTOMAYOR: All right.

10 MS. FERRES: That's what --

11 JUSTICE SOTOMAYOR: Yeah. That's --
12 that's what they're saying.

13 MS. FERRES: Yes.

14 JUSTICE SOTOMAYOR: But I don't know
15 what's wrong with that if your position is that
16 the state stops you from using it as an official
17 page.

18 MS. FERRES: Well, then every time the
19 -- a government employees speaks about their job
20 they have the threat of litigation like this and
21 they have the threat of their --

22 JUSTICE SOTOMAYOR: Well, this --
23 these Facebook challenges to me are -- are not
24 quite made up, but I don't fully understand them
25 because no one forces a public employee to have

1 a comment box. And so I don't know why your
2 person closed down his Facebook account when he
3 could have just blocked public comments.

4 MS. FERRES: Your Honor, actually, at
5 the time, Facebook did not have that option. It
6 didn't come into effect until March of 2021, so
7 --

8 JUSTICE SOTOMAYOR: I see. Okay.

9 MS. FERRES: -- at the time, he -- he
10 did have to require comments on his page if he
11 wanted to continue speaking to his family and
12 friends on the page.

13 JUSTICE SOTOMAYOR: Got it.

14 MS. FERRES: That is different now,
15 and social media will evolve, so there will be
16 different -- different things that happen, but
17 that wasn't an option at the time.

18 JUSTICE ALITO: If you were advising a
19 -- a different town manager in a different town,
20 someone who's newly elected, this person loves
21 Facebook, wants to communicate with family and
22 friends on Facebook, also wants to communicate
23 with constituents, would you advise that person
24 to mix the two together on the same Facebook
25 page, or would you advise that person to

1 separate them and have a purely job-related
2 official page and a purely personal page?

3 MS. FERRES: I think, until this case
4 is decided, I might have different opinions on
5 what I would advise someone, but I -- I -- I do
6 believe that under the state action inquiry
7 here, a public employee should be able to speak
8 about their job as long as they're not taking
9 official action -- exercising their actual job
10 duties on the page or hosting a -- a city
11 council meeting or things like that. Just
12 speaking and reposting about your job should be
13 perfectly fine to do on either page, on one
14 page.

15 Unless the Court has any further
16 questions?

17 CHIEF JUSTICE ROBERTS: We'll find
18 out.

19 Justice Thomas?

20 Justice Alito?

21 Justice Sotomayor?

22 Justice Gorsuch?

23 Justice Kavanaugh?

24 Justice Barrett?

25 Justice Jackson?

1 Thank you, counsel.

2 MS. FERRES: Thank you, Your Honor.

3 CHIEF JUSTICE ROBERTS: Ms. Hansford?

4 ORAL ARGUMENT OF MASHA G. HANSFORD

5 FOR THE UNITED STATES, AS AMICUS CURIAE,

6 SUPPORTING THE RESPONDENT

7 MS. HANSFORD: Mr. Chief Justice, and
8 may it please the Court:

9 As the government explained in the
10 first argument, the correct overarching test
11 here is duty or authority, and we think how that
12 test plays out in a case like this one that's
13 about denial of access to property should look
14 closely to the nature of the property.

15 And so we're trying to get at whether
16 this is an exercise of state power, and, Justice
17 Barrett, we're happy to view this as evidence of
18 that, but we think that the -- the heuristic or
19 the way the Court should look at this set of
20 cases is that state action generally exists in a
21 denial of access to property case, where either
22 the government controls the property, such as an
23 official Facebook page, or a defendant is
24 exercising a duty that itself requires providing
25 access, such as conducting a city council

1 meeting on Facebook Live, or, Justice Jackson,
2 in his backyard, that's something that requires
3 providing access, so that would be something
4 that's an exercise of state power.

5 By contrast, the appearance and
6 content test that my friend on the other side
7 advances imperils the freedom of a government
8 official to speak as a public citizen on matters
9 of public concern. And I think the facts here
10 are a perfect example.

11 Mr. Freed posted on Facebook on his
12 own time on a page he had created long before.
13 He didn't use any government devices. He didn't
14 use government resources. And still, because,
15 like most people on Facebook, he was talking
16 about the pandemic in March of 2020 and because
17 that overlapped with the subject matter of his
18 job, my friend on the other side says that that
19 became -- state action such that constitutional
20 constraints applied, such that he was required
21 to allow comments he disagreed with or people he
22 found creepy.

23 And I think that that has really
24 serious repercussions. I think both just in the
25 Facebook context specifically, I think, as the

1 Chief Justice pointed out, that does mean
2 employer control.

3 That means that the City of Port Huron
4 could say here, Mr. Freed, no Bible verses on
5 your page. He had Bible verses on his page.
6 Because this is state action, that means it's
7 our speech and we don't want biblical verses on
8 our pages. That would be something the
9 government could do if this is state action, and
10 so it falls into the Garcetti bucket instead of
11 the Pickering bucket.

12 And I think it also has major
13 repercussions for the physical world because, if
14 appearance and content can convert something
15 using purely private resources that has no
16 government ownership into state action, that
17 means that when Mr. Freed goes to the hardware
18 store and maybe he's wearing his city manager
19 pin and he's talking to people, those people
20 have access to the government in that instance
21 because he's knowledgeable about that material.

22 And that suggests that suddenly he
23 might be subject to constitutional constraints
24 or, if he's having people over for a dinner
25 party, either friends or a kitchen cabinet of

1 informal advisors whose views he shares, if he
2 talks too much about his job, if he identifies
3 himself as a city manager or they know that
4 position, that means that he loses the ability
5 to have those conversations in his private
6 capacity.

7 And that's why we think it's so
8 important to look at what the actual duties of
9 the job were that he was exercising, and just
10 this idea that anytime you're having a
11 conversation with the public, that becomes state
12 action, I think, is a really dangerous idea.

13 And to look specifically at what Mr.
14 Freed's duties were in this case, Justice
15 Kavanaugh, I think different city managers might
16 have different roles. But Mr. Freed's role,
17 which I -- is set out in Section 2013 of the
18 city code and (c)(51) of the charter, is really
19 not a public-facing role. He reports to the
20 city council. He issues administrative
21 directives. He manages other officials.

22 I think, if you look at that set of
23 duties, it's clear that he's not the person
24 who's in charge of communicating to the public.
25 And I think that's another way that my friends

1 on the other side position on these facts is so
2 extreme.

3 JUSTICE ALITO: In the physical world,
4 practical limitations severely limit the ability
5 of government officials to move what look very
6 much like government events or functions onto
7 private property. And so your property-based
8 rule may make more sense in that -- in that
9 world, but it -- it doesn't cost anything to
10 open a Facebook page.

11 And so to make so much turn on who
12 owns the Facebook page seems quite artificial.
13 You know, if the mayor of a small town could
14 have everybody -- could have a -- what looks
15 like a quasi-public meeting on -- on the farm,
16 but somebody who -- an elected public official
17 in a jurisdiction with millions of people can't
18 do that.

19 MS. HANSFORD: So -- so, Justice
20 Alito, I agree that if there is a duty to do a
21 certain thing, then the fact that it's happening
22 on private property, whether it's the farm or
23 the Facebook Live or the private Zoom isn't
24 going to change that. The government official
25 can't take things away. If they're carrying out

1 a duty, that is going to still be state action.

2 But I think we have to be really
3 careful before assuming that something that's
4 happening on private property is state action
5 just because it's talking about the subject
6 matter, absent some duty to have that
7 conversation.

8 JUSTICE ALITO: Well, duty -- if duty
9 is positive law, then that's a pretty clear,
10 sharp limitation. But, if you say -- if you
11 agree that custom -- a duty can -- can arise
12 from custom, do you -- you agree with that?

13 MS. HANSFORD: I agree with that but
14 in the narrow sense, the Adickes sense of custom
15 that has the force of law, that's how this Court
16 has defined it in the 1983 context. So, when
17 there is such a strong norm in a town that if
18 you allow your diner to serve racially diverse
19 groups like the facts in Adickes unsegregated
20 groups, the sheriff will come and will -- will
21 beat you up and there will be negative
22 repercussions that -- I think that is the form
23 of custom. I don't want to be too rigid --

24 JUSTICE ALITO: But communicating with
25 --

1 MS. HANSFORD: -- on how I define --

2 JUSTICE ALITO: I'm sorry.

3 Communicating with constituents is not a -- a
4 strong enough custom for elected public
5 officials?

6 MS. HANSFORD: So just -- Mr. Freed is
7 not an elected official. He's an appointed
8 official. But setting that aside, there are --
9 there are roles in which communicating with the
10 public is part of the job, but that is also
11 something that any public official can do as a
12 private citizen, and we have to tell which.

13 And if it's happening on private
14 property, we should be really careful in
15 assuming that that is the exercise of a public
16 duty because that takes away the public
17 official's ability to ever communicate with the
18 public or, on matters of public concern, say
19 things like "Stay Home, Stay Safe" and that
20 becomes official action even though you could
21 equally say that as a private citizen, so --

22 JUSTICE KAVANAUGH: I -- I didn't want
23 to interrupt. Sorry.

24 MS. HANSFORD: No, please go ahead.

25 JUSTICE KAVANAUGH: You -- you were

1 about to say, I don't want to be rigid on how I
2 define, and then you didn't finish that. I just
3 want to make sure I caught that.

4 MS. HANSFORD: I -- I think, on that
5 --

6 JUSTICE KAVANAUGH: I think it was
7 custom, but --

8 MS. HANSFORD: I think on how I define
9 custom, so I think that duty has some
10 flexibility to it.

11 Here, you would look at those
12 provisions that I cited earlier in the city
13 code, and the city charter also provides --

14 JUSTICE KAVANAUGH: But the broader --

15 MS. HANSFORD: -- that Mr. --

16 JUSTICE KAVANAUGH: Keep going.

17 MS. HANSFORD: -- that Mr. Freed's
18 duties include things that the city council
19 instructs him to do, maybe that's in a memo,
20 maybe that's in an employee manual. I think
21 that you -- you can -- you can look at it more
22 or less broadly, but, if there -- if it's
23 unclear and he's doing it on private property,
24 it's not clear whether it's a duty, you should
25 be really careful before assuming --

1 JUSTICE KAVANAUGH: The -- the
2 broader --

3 MS. HANSFORD: -- that it's a duty.

4 JUSTICE KAVANAUGH: -- I don't know
5 that you want us to decide the case based on the
6 specific identified duties in the memo and what
7 have you here as opposed to I think the broader
8 issue is, for a lot of elected and appointed
9 officials, part of their customary duties are to
10 communicate with the public, but that would be
11 from your perspective a mistake, a pretty big
12 mistake to define state action by reference to
13 that customary duty because that would swallow
14 the whole thing?

15 MS. HANSFORD: That's right, Justice
16 Kavanaugh. And I think this Court has already
17 said that in cases like Lane and Garcetti where
18 it warned against overbroad descriptions.

19 So, even if the employee manual or the
20 city charter here said your duty is to
21 communicate with the public, it can't be that
22 every time Mr. Freed does it, whether it's at
23 church or at his own house, that is state action
24 that the government can control. That subjects
25 him to viewpoint limitations, which are things

1 that are perfectly appropriate for private
2 individuals to engage in.

3 And we think the kind of odious
4 examples of racial discrimination and the like
5 should be taken care of because -- by the
6 employer being able to regulate private speech
7 under the Pickering balancing test, and so you
8 can ban your professors from saying racially
9 discriminatory things even on their private
10 capacity because it harms their role.

11 But I think it should be -- the Court
12 should be very careful before kind of writing
13 the private social media policies across the
14 board as a constitutional matter, especially
15 with a spillover to --

16 JUSTICE JACKSON: So, Ms. Hansford, do
17 we have enough in this record to really
18 confidently say that the Facebook page here is
19 private property?

20 So much turns on your argument that
21 there is a distinction between private and
22 public, and we can see that clearly in an actual
23 brick-and-mortar scenario. But I didn't
24 understand that either of the courts in the last
25 case and this case really honed in on this

1 issue.

2 And so do we know that a social media
3 account is private in this way?

4 MS. HANSFORD: Justice Jackson, I
5 think the record here is very clear on that, and
6 I think that both of the lower courts looked at
7 it to some extent -- probably at pages 24
8 through 26 of the Petition Appendix has a lot of
9 the key facts, but, here, there is no use of
10 government time. There's no use of government
11 resources. Mr. Freed didn't even use his --

12 JUSTICE JACKSON: But what about the
13 --

14 MS. HANSFORD: -- official devices.

15 JUSTICE JACKSON: -- third-party
16 aspect of this? We know that -- that -- that
17 Facebook itself is -- is operating in this space
18 and doing -- controlling access and that kind of
19 thing. Does that matter to your private
20 analysis?

21 MS. HANSFORD: So that only makes it,
22 if anything, more private, that Facebook also
23 had the authority to take down this account. We
24 don't think that matters on these facts because
25 Facebook didn't actually exercise that

1 authority. The authority that was being
2 exercised was Mr. Freed's ability to block.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 This may be following up a little bit
6 on -- on Justice Jackson's point, but -- and I
7 don't mean this in any pejorative way to the
8 analysis at all, but I was very surprised in
9 reading the brief to see all the emphasis on
10 private property. I mean, usually, we're told
11 in these, you know, social media, whatever,
12 cases that it's not a question of a physical
13 asset.

14 And in what sense is this really
15 private property? They're -- it's just the
16 gathering of the protons or whatever they are.

17 (Laughter.)

18 CHIEF JUSTICE ROBERTS: And they pop
19 up on his page and they could pop up on somebody
20 else's page. So, I mean, is that -- I guess --
21 should I be concerned about the fact that we
22 have this old concept applied to what we always
23 say is some new phenomenon? And I'm not sure
24 that it works in the sense that it's actually --
25 it's not Blackacre. It's -- it's a machine and

1 somebody else's machine can pick it up if you
2 want. It's -- it's -- it seems incongruous to
3 me.

4 MS. HANSFORD: Mr. Chief Justice, the
5 -- this Court has often looked to private
6 property analogies, whether the property is
7 physical or virtual, whether it's access to a
8 public access channel in the Halleck case or the
9 Combined Federal Campaign in Cornelius. What --
10 the question here is a denial of access, and
11 we're trying to figure out if this is an
12 exercise of state power.

13 And -- that you don't need any state
14 power to block someone on Facebook. This is not
15 a case where you -- it's an officer wearing a
16 uniform flashing a badge and the blocking is
17 somehow more effective before -- because you're
18 an officer. So we think the analogy is fully on
19 point, even though it's virtual, not physical.

20 CHIEF JUSTICE ROBERTS: Thank you.
21 Justice Thomas?

22 JUSTICE THOMAS: Yes. This is
23 probably not relevant in this case, but looming
24 in the background is the power of Facebook
25 itself to block these accounts. And what's

1 curious to me is that there's that elephant in
2 the room and we don't discuss -- we decline to
3 discuss it in the context of private property,
4 your -- your approach.

5 Is there any role for consideration of
6 the fact that Facebook could also influence
7 who's blocked and who's not blocked?

8 MS. HANSFORD: Justice Thomas, and I
9 mentioned to Justice Jackson, at most, that's an
10 additional reason to not find state action here,
11 but we ultimately don't think that the fact that
12 Facebook also could exercise control is
13 important because this is not a case where
14 Facebook purported to exercise that control.

15 I believe my colleague gave this
16 example in the first argument, but it's like if
17 the government rents a ballroom for an official
18 meeting and then excludes someone from that
19 meeting, that is exercising its governmental
20 authority as an entity that's controlling that
21 ballroom for this period, even if the hotel
22 could say, oh, this whole meeting is too rowdy,
23 we're going to kick everybody out. That may not
24 be state action on the hotel's part at all.

25 And I think the Facebook's role

1 question is a lurking one that we don't need to
2 address here. But, here, where -- it -- it --
3 when the owner of the Facebook page or the
4 controller of the Facebook page is the one
5 that's doing the blocking, I think you can focus
6 on that person's control even if it's not the
7 full bundle of property rights, but just the
8 ability to exclude for the temporary period
9 until Facebook vetoes it or kicks them off
10 entirely.

11 CHIEF JUSTICE ROBERTS: Justice Alito?
12 Justice Sotomayor?

13 JUSTICE SOTOMAYOR: It just seems to
14 me that you want a set of strong rules that make
15 nothing state action, really, because you keep
16 saying you can only have authority if the state
17 is providing resources, personnel, time for
18 personnel, whatever. And you're saying it's
19 only a duty if it's written basically.

20 And you're saying -- you're giving in
21 a little bit to a strong social norm, but I
22 don't even know what a strong social norm is
23 because a lot of situations, especially in the
24 workplace, can't be described that way.

25 Give me -- let's give you an example.

1 Christmastime, teachers are authorized to give
2 little gifts to kids. One teacher decides --
3 not authorized officially; it's just a norm,
4 okay? And one teacher decides she's not going
5 to give it to one class of kids but to give it
6 to another.

7 Is that a strong social norm? And
8 what built that strong -- social norm? So where
9 do we take that from the situation that now
10 official government sites exist for everything?

11 MS. HANSFORD: So --

12 JUSTICE SOTOMAYOR: And to share this
13 information that public officials are now
14 including in their personal accounts. So why
15 shouldn't a government official who jumps the
16 gun on a state announcement, uses their website
17 to be the first to announce everything, followed
18 an hour later or a day later but followed later
19 by officials' announcements, why should that
20 person not be viewed as using their state
21 authority to facilitate their activities?
22 They're getting information before everyone
23 else. They're publishing it before everyone
24 else.

25 MS. HANSFORD: So, Justice Sotomayor,

1 on that last question about somebody who
2 preempts the official announcement, those are
3 not the facts here. And I think my friend
4 misstated that, but Petition Appendix page 25a
5 shows that -- that there's nothing in this
6 record --

7 JUSTICE SOTOMAYOR: But your test is
8 not taking care of that. Neither is the Sixth
9 Circuit's test taking care of either of these
10 two situations.

11 MS. HANSFORD: But -- but I think even
12 in the case where you're preempting the
13 announcement that ends up being announced
14 somewhere else, that's also something the
15 government official could do by telling just his
16 friends. Government officials are allowed to
17 talk about things that are the subject matter of
18 their job, and if the employer doesn't want them
19 to do that, that can be something that the
20 employer can regulate. But, if they're doing
21 something additional that they're not required
22 to do and if they're doing it on private time
23 and on private property, we don't want to assume
24 that they're exercising state power.

25 And I think it's because --

1 JUSTICE SOTOMAYOR: Well, that takes
2 away from the Griffin case because a private
3 citizen can choose to make an arrest. So can a
4 deputy choose to make an arrest. What changed
5 it in Griffin was the fact that he was wearing
6 the deputy badge and purporting to act as a
7 government official.

8 Similarly here, he's disclosing
9 information that's private to his job and using
10 the site to make people realize or believe that
11 he is performing a social function by being the
12 first to give them the news.

13 MS. HANSFORD: So, Justice Sotomayor,
14 when you're conducting an arrest or ordering
15 somebody to leave, exercising governmental
16 authority and appearing to be exercising
17 governmental authority changes the nature of
18 what you're doing. It's giving you additional
19 power that a private rent-a-cop does not have to
20 obtain compliance.

21 And so we think the analogy to the
22 Griffin case would be, if Mr. Freed went on
23 Facebook and said, by the authority of city
24 manager, I hereby order everybody to stay at
25 home under penalty of fines, and then the fact

1 that he appeared official and that -- that --
2 that might matter. But that is not any of the
3 facts here, and that is not the power that is
4 being exercised by blocking someone.

5 Just talking about things, as Your
6 Honor's opinion in Lane makes clear, talking
7 about your job is not something that the state
8 has a monopoly on and that government employees
9 can only do in their official capacity. That's
10 what makes these cases hard, and that's why we
11 need to figure out if the official was speaking
12 as a private citizen or not. And we think that
13 if it's happening on private property on private
14 time, you -- you should be really careful,
15 without a more specific duty, to infer that.

16 But just the -- one last point. The
17 duty doesn't need to be spelled out in minute
18 detail. In your case about the teacher, the
19 teacher's job in the classroom is to teach and
20 mentor her students, and if she's doing those
21 things in the classroom, the fact that handing
22 out gifts is not specifically delineated I don't
23 think is going to make a difference.

24 I think that's also probably true of
25 Justice Kagan's example of the road closures.

1 If the duty is to provide information in
2 emergency situations, the fact that it doesn't
3 say provide information about road closures as a
4 specific thing doesn't matter. The means don't
5 need to be spelled out. It's still part of the
6 duty.

7 But, if this is just general speaking
8 about the pandemic, before you take that away
9 from a public official as a private citizen, you
10 want to be really care -- really sure it's part
11 of his job by looking at something more
12 specific, and we just don't have that here.

13 CHIEF JUSTICE ROBERTS: Justice Kagan?

14 JUSTICE KAGAN: Ms. Hansford, take
15 this as another version of the Chief Justice's
16 question about the apparent -- let's call it
17 archaic nature of your -- your test, and I guess
18 what strikes me about it is that, you know, it's
19 hard to predict the future, but change has
20 happened very quickly in the last however many
21 years and is going to continue to happen.

22 And part of that change is that more
23 and more of our government operates on social
24 media. More and more of our democracy operates
25 on social media. Public discourse, this is the

1 forum for officials to talk to citizens, for
2 citizens to talk to officials, for citizens to
3 talk to each other, and it is becoming
4 increasingly so.

5 And I worry that the rules that you're
6 suggesting and even the analogies that you're
7 proposing as though we can satisfy our -- our --
8 as we can -- we can solve this case by thinking
9 about grocery stores is really not taking into
10 account the big picture of how much is going to
11 be happening in this forum and how much citizens
12 will be foreclosed from participating in our
13 democracy if the kind of rule you're advocating
14 goes into effect.

15 So I guess I would like you to comment
16 on that. You know, it's a big-picture challenge
17 about the nature of the world we live in and
18 we're going to live in and the need for rules
19 that are going to meet a world that we don't
20 really have any idea what it will look like.

21 MS. HANSFORD: Justice Kagan, I agree
22 that social media is important and is increasing
23 in importance, but I think our test is malleable
24 enough to capture that because I think that
25 precisely because social media is so important,

1 it is now a duty of many officials as one of
2 their jobs to run an official social media
3 account or to have a social media presence or to
4 engage in conversations on social media. And as
5 the duties change, then I think that will become
6 state action.

7 But I -- our -- our submission is that
8 in a case where running the Facebook account is
9 extra or, in this case, when somebody is running
10 a personal Facebook account and happens to talk
11 about topics that matter to his employer, as
12 well as to his community and to him personally,
13 that's not enough.

14 And I think one way to see that this
15 is an extra bucket as opposed to a duty bucket
16 is that Mr. Freed was able to just take down his
17 Facebook page when he was upset at being subject
18 to these private capacity suits. He was able
19 just to take it down. That's just less speech.

20 And if this were a part of his duty,
21 if the mayor said no, no, we really need you to
22 have a Facebook presence, Facebook is critical
23 for the city to communicate with the government,
24 he wouldn't have been allowed to do that, but
25 then he would have been running the Facebook

1 page in his official capacity. It would have
2 been a duty because it would have been something
3 he was instructed to do by the mayor.

4 JUSTICE KAGAN: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Gorsuch?

7 Justice Kavanaugh?

8 Justice Barrett?

9 Justice Jackson?

10 JUSTICE JACKSON: Can I just ask you
11 one last thing, which is I'm trying to
12 understand how we evaluate a government employee
13 controlling access to private property.

14 You -- you keep focusing on the
15 private property nature of this, but what if we
16 have, you know, a big concert, Taylor Swift has
17 a big concert in a private, you know, area, a
18 park or something, and the police recognize
19 there are going to be large crowds, et cetera,
20 and so they come and they help with the
21 screening of the bags and they, you know, kick
22 out people who are rowdy and they're controlling
23 access to this area of the private area of this.

24 Because it's private, we would say
25 that's not state action or --

1 MS. HANSFORD: I -- I -- I don't think
2 so, Justice Jackson. I think those officers
3 would be carrying out their official duties and
4 they would be exercising their power, and, of
5 course, it's a police officer case where the
6 authority of the state makes the expulsion more
7 effective. That's why a police officer is hired
8 --

9 JUSTICE JACKSON: But a -- but a --

10 MS. HANSFORD: -- instead of a private
11 security guard.

12 JUSTICE JACKSON: -- but -- but Taylor
13 Swift could have hired -- it's -- it's not just
14 the fact that -- I mean, they're not doing
15 anything more than a private security guard
16 could have done, right? So it's not -- it's not
17 just we look at, well, what are they doing
18 versus what a private person could do.

19 So what makes it that they are state
20 action and not --

21 MS. HANSFORD: I -- I think that state
22 officials can exclude people from private
23 property, but -- and that is the case that if
24 state officials are carrying out their duty to
25 do it, if they were -- if they were hired to do

1 it, that that would --

2 JUSTICE JACKSON: That would --

3 MS. HANSFORD: -- that would --

4 JUSTICE JACKSON: -- be state action?

5 MS. HANSFORD: -- that would be state
6 action if they were hired as police officers to
7 exercise that power and to make that expulsion
8 more effective. But there's no analogy to that
9 on Facebook because anyone can block equally,
10 and saying I block a city manager doesn't make
11 it any more of a block than just hitting block.

12 If we had a world where Facebook
13 didn't have a blocking function, then maybe
14 saying, oh, if you come back to my account then
15 post again, the city will fine you. I'm saying
16 this as city manager, that would be an instance
17 of apparent authority, but we just don't think
18 that plays into this set of cases, which is why
19 we think you can set it aside and just focus on
20 governmental control.

21 JUSTICE JACKSON: Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Rebuttal, Mr. Kedem.

25

1 REBUTTAL ARGUMENT OF ALLON KEDEM
2 ON BEHALF OF THE PETITIONER

3 MR. KEDEM: Thank you, Your Honor.

4 I'd like to start by addressing the
5 test proposed by the United States. I think it
6 has a number of problems, but I'd like to focus
7 on two of them.

8 First of all, the test is all about
9 denial of access to property. But many disputes
10 on social media have nothing to do with access.
11 They have to do with discrimination or other
12 forms of constitutional harm.

13 We gave the example of a teaching
14 assistant at a public university who on Twitter
15 made a number of anti-Semitic comments about
16 students in her class, has nothing to do with
17 access.

18 But it doesn't make sense to have one
19 state action test for access cases online and
20 another state action test for all the other
21 cases, even assuming that we can figure out what
22 denial of access means in the context of all of
23 these different platforms and their various
24 functions.

25 And, second, the test proposed by the

1 United States is an obvious doctrinal mismatch
2 because it relies on cases about the use of
3 private property, which, because it's private
4 property, it has some governmental involvement,
5 but it has to be pretty extraordinary to
6 overcome the very strong default presumption
7 that private property is just not used for state
8 action ever.

9 And for that reason, the government
10 says, essentially, only if you are performing an
11 exclusive public function does it ever count as
12 state action. But, as this Court is very --
13 well aware, very few things qualify as exclusive
14 public functions. Even something like providing
15 a public education is not an exclusive public
16 function.

17 And for that reason, under the
18 government's test, public officials could
19 transfer a lot of what they do to private
20 property and thereby escape constitutional
21 scrutiny.

22 I'd like to end by talking about the
23 different values on both sides of the equation
24 because this Court has always been mindful in
25 the state action context about the

1 constitutional values that are at stake.

2 In -- on our side, we're talking about
3 creation of a channel of communication between a
4 public official and their constituents about how
5 they're doing their job. So we're not talking
6 about these one-off posts or fortuitous
7 encounters that are essentially the online
8 equivalent of running into someone at the
9 grocery store. Instead, we're talking about
10 denial of access to the channel altogether.

11 And I think that there are four
12 general values. First of all, we've talked a
13 lot about losing out on access to information.
14 Some information is only going to be available
15 on the private Facebook page of public
16 officials. Sometimes it will only be available
17 at a certain time or in a certain form.
18 Sometimes it will be available somewhere else,
19 but it'll be scattered to the four corners of
20 the Internet.

21 But, second, you lose access to the
22 public official him or herself. There were a
23 number of instances where Mr. Freed would
24 explain a directive that he himself had issued
25 to say it applies not just to people who are

1 about to have their water cut off but to people
2 who have already had their water cut off.
3 That's something you would only know if you were
4 able to interact with him and ask him a question
5 online.

6 The third value, as, Justice Kagan,
7 you were pointing out, this is also a place
8 where members of the town came to talk to one
9 another, and that is part of the give-and-take
10 of local self-government.

11 And, finally, I think there's a
12 dignitary interest. To the extent that we're
13 not just talking about someone doing this,
14 blocking information, you had the information,
15 but now you don't have it, it also matters that
16 it is the government who is doing it to you.

17 Now we have an example in our brief
18 about a public school teacher who holds an
19 end-of-the-school -- end-of-year party at her
20 own house. So there's no duty, there's no
21 authority being used. She's not using any state
22 funds. But she only invites the white students
23 from her class.

24 We think that would be an obvious
25 constitutional problem. But it's not a problem

1 because of any sort of coercion. It's not a
2 problem because of use of state resources. And
3 it's not really about denial of access to pizza
4 and ice cream.

5 Really, it's a dignitary harm that it
6 is someone from the government treating you in a
7 particular way that you should not be treated.
8 And that's, I think, something that gets lost
9 when you don't take account of the fact that he
10 was holding himself out as the city manager,
11 establishing this channel, talking to citizens
12 in that capacity.

13 There are also First Amendment values
14 on the other side of the equation, and we admit
15 that, although, again, we think they're somewhat
16 limited when we're just talking about the
17 channel that you've established and whether you
18 can block access to that channel, as opposed to
19 control over all of your other posts about dogs
20 or other things like that.

21 I think, to a large extent, the other
22 side undercuts their own First Amendment
23 argument when they freely admit that the
24 government as employer could basically tell them
25 to do all of the things that we say they should

1 have done in the first place: namely, establish
2 a second Facebook account where they just talk
3 about their job or, at the very least, if you're
4 going to invoke your title, then make clear when
5 you're talking in your personal capacity and
6 make clear when you're talking in your
7 professional capacity.

8 So, to some extent, they're already
9 undercutting their own First Amendment rights.
10 But we do admit that if you establish a channel
11 as a public official purporting to be a public
12 official, you do lose some amount of control and
13 you will be subject to First Amendment scrutiny.
14 A lot of times, you can still block people for
15 various reasons.

16 But we think that as Justice Scalia
17 put it in his concurrence in Doe versus Reed,
18 criticism is traditionally the price that we
19 have been willing to pay for self-government.

20 Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 The case is submitted.

24 (Whereupon, at 1:05 p.m., the case was
25 submitted.)

Official

1	accords ^[1] 4:7 account ^[24] 3:20 4:4 5:7 6:22 36:6,9,11,17 40:17 41:3,5 49:2 50:8 51:16 54:2 66:3,23 76:10 77:3,8,10 80:14 85:9 86:2 accounts ^[3] 35:13 68:25 71:14 across ^[2] 21:9 65:13 act ^[3] 4:6,9 73:6 action ^[56] 3:23 10:15 12:10 13:9,24 14:9 24:10 29:12 30:7 33:14,17,23 34:8,12 35:25 36:25 41:17 42:2 44:4 45:14,20 46:10,14,15 47:7,12 48:4,10 52:2,13 55:6,9 56:20 57:19 58:6,9,16 59:12 61:1,4 62:20 64:12,23 69:10,24 70:15 77:6 78:25 79:20 80:4,6 81:19,20 82:8,12,25 active ^[1] 38:2 activities ^[3] 37:9 43:15 71:21 activity ^[2] 37:16 38:6 actor ^[2] 4:7 22:20 actual ^[3] 55:9 59:8 65:22 actually ^[6] 7:3 8:21 51:20 54:4 66:25 67:24 added ^[1] 7:17 addition ^[1] 37:4 additional ^[4] 22:15 69:10 72:21 73:18 address ^[4] 7:25 8:2 39:24 70:2 addressed ^[1] 49:13 addresses ^[1] 35:14 addressing ^[1] 81:4 adequate ^[1] 52:8 Adickes ^[3] 49:13 61:14,19 administrative ^[1] 59:20 admit ^[3] 85:14,23 86:10 admittedly ^[2] 20:22 22:8 adopt ^[1] 35:15 adopted ^[1] 50:13 advance ^[1] 37:5 advances ^[1] 57:7 advice ^[1] 16:20 advise ^[3] 54:23,25 55:5 advising ^[1] 54:18 advisors ^[1] 59:1 advocates ^[1] 35:23 advocating ^[1] 76:13 agencies ^[1] 38:16 agree ^[9] 18:15 41:12 48:18 53:7 60:20 61:11,12,13 76:21 ahead ^[2] 6:17 62:24 alike ^[1] 22:6 ALITO ^[13] 8:22 9:5,20 10:12 32:13 54:18 55:20 60:3,20 61:8,24 62:2 70:11 all-encompassing ^[1] 14:13	ALLON ^[5] 1:18 2:3,13 3:7 81:1 allow ^[2] 57:21 61:18 allowed ^[3] 32:7 72:16 77:24 alludes ^[1] 23:14 alone ^[1] 47:10 already ^[7] 9:3 22:18 28:12 46:15 64:16 84:2 86:8 alternatively ^[1] 7:14 although ^[5] 6:2,12 9:2 29:23 85:15 altogether ^[1] 83:10 amend ^[1] 47:19 Amendment ^[16] 3:19,21 13:25 21:22 22:2 23:15,16 24:7,9 30:18 50:2 52:22 85:13,22 86:9,13 Americans ^[1] 21:15 amicus ^[3] 1:24 2:10 56:5 amount ^[2] 30:10 86:12 ample ^[1] 4:19 analogies ^[2] 68:6 76:6 analogy ^[4] 32:2 68:18 73:21 80:8 analysis ^[3] 32:24 66:20 67:8 announce ^[2] 46:8 71:17 announced ^[1] 72:13 announcement ^[3] 71:16 72:2,13 announcements ^[2] 8:11 71:19 announcing ^[4] 30:24 45:25 46:1,1 another ^[6] 27:20 59:25 71:6 75:15 81:20 84:9 answer ^[13] 13:22,23 19:1 22:15,16 29:17,18 33:7,21 34:6 39:3,16 42:21 answering ^[2] 5:12 20:21 answers ^[1] 28:14 anti-Semitic ^[1] 81:15 anytime ^[1] 59:10 apparent ^[3] 48:24 75:16 80:17 appeals ^[1] 30:14 appearance ^[3] 17:25 57:5 58:14 APPEARANCES ^[1] 1:17 appeared ^[2] 28:17 74:1 appearing ^[1] 73:16 Appendix ^[8] 5:18 27:20,21 28:6 37:19 43:23 66:8 72:4 applied ^[2] 57:20 67:22 applies ^[1] 83:25 appointed ^[3] 16:14 62:7 64:8 appreciate ^[2] 32:25 50:4 approach ^[1] 69:4 appropriate ^[1] 65:1 archaic ^[1] 75:17 area ^[3] 78:17,23,23	aren't ^[1] 19:11 arguably ^[1] 29:13 argue ^[1] 8:17 arguing ^[3] 30:8 50:23 53:3 argument ^[18] 1:14 2:2,5,8,12 3:4,7 9:10 11:8 35:6 48:13 49:24 56:4,10 65:20 69:16 81:1 85:23 arise ^[1] 61:11 around ^[1] 14:15 arrest ^[3] 73:3,4,14 articulated ^[2] 17:19 32:23 artificial ^[1] 60:12 aside ^[2] 62:8 80:19 asks ^[1] 29:6 aspect ^[1] 66:16 asset ^[1] 67:13 Assistant ^[2] 1:22 81:14 assume ^[1] 72:23 Assuming ^[5] 40:4 61:3 62:15 63:25 81:21 attend ^[1] 47:8 attention ^[1] 17:17 attorney ^[1] 9:12 authority ^[26] 4:10 35:16,21 38:9 39:19 40:7,7 47:25 48:9,19 51:8 52:1,5 56:11 66:23 67:1,1 69:20 70:16 71:21 73:16,17,23 79:6 80:17 84:21 authorized ^[2] 71:1,3 available ^[3] 83:14,16,18 avoids ^[1] 4:18 aware ^[1] 82:13 away ^[4] 60:25 62:16 73:2 75:8	became ^[7] 6:18 7:3,15,22 8:23 23:3 57:19 become ^[2] 24:21 77:5 becomes ^[6] 7:10 45:20 49:22 53:2 59:11 62:20 becoming ^[1] 76:3 beforehand ^[1] 6:25 begins ^[1] 7:10 behalf ^[9] 1:18,21 2:4,7,14 3:8,17 35:7 81:2 believe ^[3] 55:6 69:15 73:10 below ^[1] 28:11 best ^[2] 29:23 48:2 better ^[2] 14:18 32:2 between ^[6] 3:11 15:6 17:18 18:9 65:21 83:3 Bible ^[3] 36:15 58:4,5 biblical ^[1] 58:7 big ^[4] 64:11 76:10 78:16,17 big-picture ^[1] 76:16 biggest ^[1] 42:24 bind ^[1] 40:8 birthday ^[1] 47:8 bit ^[7] 5:18 9:25 25:14 28:19 37:8 67:5 70:21 Blackacre ^[1] 67:25 blacks ^[1] 49:16 block ^[15] 4:14 13:6 33:9,19 34:16 36:19 67:2 68:14,25 80:9,10,11,11 85:18 86:14 blocked ^[9] 9:18 11:12,18 34:20,23 37:23 54:3 69:7,7 blocking ^[6] 34:8 68:16 70:5 74:4 80:13 84:14 blocks ^[2] 4:1 12:5 board ^[1] 65:14 body ^[1] 48:4 both ^[7] 19:19 24:13 39:20 41:9 57:24 66:6 82:23 box ^[1] 54:1 brick-and-mortar ^[2] 15:14 65:23 brief ^[2] 67:9 84:17 bright ^[4] 50:1,14 51:5,6 bright-line ^[3] 43:1 50:9,24 broad ^[2] 31:19 45:21 broader ^[7] 18:16 19:5 39:22 40:1 63:14 64:2,7 broadly ^[2] 21:13 63:22 bucket ^[4] 58:10,11 77:15,15 built ^[2] 36:11 71:8 bundle ^[1] 70:7 business ^[2] 41:5 49:1 business/work ^[1] 39:8
		B		
		baby ^[1] 19:25 back ^[9] 8:9 11:7 16:12 25:10 28:6,13 33:25 48:16 80:14 background ^[1] 68:24 backyard ^[4] 41:25 42:1,9 57:2 bad ^[3] 26:10,14,16 badge ^[2] 68:16 73:6 bags ^[1] 78:21 balance ^[1] 37:11 balanced ^[1] 21:19 balancing ^[1] 65:7 ballroom ^[2] 69:17,21 ban ^[1] 65:8 BARRETT ^[12] 29:1 30:1 32:17,18 48:5,7,12 49:3,6 55:24 56:17 78:8 based ^[1] 64:5 basically ^[10] 16:6 24:22,24 27:17 28:8 30:14 31:21 34:2 70:19 85:24 basis ^[2] 15:10 34:10 battles ^[1] 37:10 beat ^[1] 61:21	C	c)(51 ^[1] 59:18 cabinet ^[1] 58:25

Official

<p>call [2] 32:5 75:16 calling [1] 24:10 came [4] 1:13 23:2 28:19 84:8 Campaign [1] 68:9 cannot [2] 22:7 43:7 capacities [1] 4:20 capacity [13] 4:7 8:5, 18 24:5 50:15 59:6 65:10 74:9 77:18 78:1 85:12 86:5,7 capture [1] 76:24 care [5] 23:11 65:5 72:8,9 75:10 careful [5] 61:3 62:14 63:25 65:12 74:14 carrying [4] 46:12 60:25 79:3,24 Case [46] 3:4 5:16,17 6:13 8:24 14:2 17:11 18:16 19:10 20:6 21:21 23:7 34:15 39:21 40:1 41:18 42:25 44:16 46:6,16 49:12,16,21 51:14 55:3 56:12,21 59:14 64:5 65:25,25 68:8,15,23 69:13 72:12 73:2,22 74:18 76:8 77:8,9 79:5,23 86:23,24 cases [13] 17:7 30:15 31:5 50:6,7 56:20 64:17 67:12 74:10 80:18 81:19,21 82:2 cast [1] 31:21 cat [1] 12:3 cats [7] 9:15 11:24 12:18, 23 24:14 34:4,7 caught [1] 63:3 CDC [1] 27:17 center [1] 27:25 certain [5] 8:11 18:21 60:21 83:17,17 certainly [5] 6:1 8:14 9:11 19:2 33:11 cetera [2] 29:9 78:19 challenge [1] 76:16 challenges [1] 53:23 change [9] 6:15 9:17 10:6 13:19 48:1 60:24 75:19,22 77:5 changed [5] 6:3 7:22 8:3 38:19 73:4 changes [3] 9:22 37:11 73:17 channel [32] 3:24 4:1 6:9, 17 9:25 10:22 11:1,6,14,19 12:7 15:13,15 17:24 19:15 20:7 21:1 26:19,25 27:6 29:23 33:1 41:10 45:4 53:4 68:8 83:3,10 85:11,17,18 86:10 channels [2] 31:14 43:25 characteristic [1] 43:18 charge [1] 59:24 charter [3] 59:18 63:13 64:20 checks [1] 26:11 CHIEF [32] 3:3,9 11:7 21:6</p>	<p>24:11 25:11,16 26:1,4,7 28:21 32:11,19 33:25 35:3, 8 43:10,12 55:17 56:3,7 58:1 67:3,18 68:4,20 70:11 75:13,15 78:5 80:22 86:21 children [5] 12:4 13:1 24:15 25:1 27:8 choice [1] 36:18 choose [3] 50:8 73:3,4 Christmastime [1] 71:1 church [3] 14:16,20 64:23 Circuit [3] 39:24 48:23 51:8 Circuit's [4] 4:10 35:16 48:14 72:9 circuits [1] 30:12 circumstance [1] 50:25 cited [1] 63:12 citizen [8] 28:24 46:20 57:8 62:12,21 73:3 74:12 75:9 citizens [9] 5:8 10:9 16:10 32:7 76:1,2,2,11 85:11 city [60] 4:13 5:2,4,9,9 7:2,3, 10,15,22,25 8:5,15,24 9:13 25:22 26:15 28:20 29:2 35:1 38:14,16 39:14 41:15,20 42:1,2,9 44:19,24 46:22 47:2,9,11,16,24 48:3,4,25 49:1 51:15,15 55:10 56:25 58:3,18 59:3,15,18,20 63:12,13,18 64:20 73:23 77:23 80:10,15,16 85:10 city's [1] 26:11 civil [2] 21:8 22:4 claim [1] 11:25 claiming [2] 39:5 52:16 claims [2] 30:18 37:23 clarity [1] 49:25 class [3] 71:5 81:16 84:23 classroom [2] 74:19,21 clear [13] 7:1 8:22 17:14 24:4 43:13 50:25 59:23 61:9 63:24 66:5 74:6 86:4,6 clearer [1] 9:3 clearly [7] 22:22,25 38:2 40:16 43:22 49:4 65:22 client [1] 27:23 client's [1] 9:11 closed [1] 54:2 closely [1] 56:14 closures [2] 74:25 75:3 clothed [1] 35:21 clout [2] 47:5,9 code [2] 59:18 63:13 coercion [1] 85:1 colleague [1] 69:15 colleagues [1] 36:13 collection [1] 32:6 college [1] 36:9 color [1] 4:9 Combined [1] 68:9 come [9] 8:24,25 16:17 40:</p>	<p>1 41:22 54:6 61:20 78:20 80:14 comes [2] 16:7 41:20 coming [4] 26:10,14,16 29:9 comment [9] 6:14 11:22 33:20,22 38:22 39:1 41:23 54:1 76:15 commenter [1] 12:20 comments [11] 3:18 8:1 33:9 34:19,22 36:20 39:11 54:3,10 57:21 81:15 communicate [13] 4:20 31:13,18 33:8 40:5 45:19 47:16 54:21,22 62:17 64:10, 21 77:23 communicating [9] 3:25 5:10 6:9 11:2 45:17 59:24 61:24 62:3,9 communication [16] 9:25 10:22 15:8 17:24 19:15 20:3,7 21:1 26:19 27:1,6 33:1 45:4,10 53:4 83:3 communications [1] 52:12 community [5] 8:1 15:2,22 27:24 77:12 complaining [3] 6:12 11:16,22 complaint [1] 11:17 compliance [1] 73:20 complies [1] 35:17 compromise [1] 26:17 concede [1] 33:3 concept [2] 19:2 67:22 conception [1] 18:16 concern [6] 21:6,16,18 50:11 57:9 62:18 concerned [1] 67:21 concerns [1] 14:10 concert [2] 78:16,17 concurrency [1] 86:17 conduct [3] 3:21 4:1 15:9 conducting [3] 50:21 56:25 73:14 confidently [1] 65:18 confused [1] 11:5 consider [2] 27:5 38:7 consideration [1] 69:5 considered [1] 22:20 consistent [2] 4:5 24:7 constituent [3] 4:15 20:21 28:11 constituents [18] 3:12,25 5:11 6:9 10:5 11:4 15:8 16:6 17:4 19:16 20:3 28:4 39:17 40:6 45:5 54:23 62:3 83:4 Constitution [2] 4:2,12 constitutional [11] 3:22 4:17 11:25 20:25 57:19 58:23 65:14 81:12 82:20 83:1 84:25 constitutionally [1] 32:9</p>	<p>constraint [1] 4:17 constraints [2] 57:20 58:23 content [3] 7:23 57:6 58:14 context [6] 37:25 57:25 61:16 69:3 81:22 82:25 contextually [1] 41:9 continue [3] 46:24 54:11 75:21 contrast [2] 4:11 57:5 control [13] 22:9,18 23:23 34:3 36:24 58:2 64:24 69:12,14 70:6 80:20 85:19 86:12 controller [1] 70:4 controlling [4] 66:18 69:20 78:13,22 controls [2] 22:4 56:22 conversation [5] 3:13 7:18 21:7 59:11 61:7 conversations [2] 59:5 77:4 conversing [1] 7:11 convert [2] 37:14 58:14 Cornelius [1] 68:9 corners [1] 83:19 Correct [4] 41:6 49:5 51:9 56:10 cost [1] 60:9 council [11] 41:15,21 42:1, 3,9 48:3,25 55:11 56:25 59:20 63:18 Counsel [6] 11:3 35:4 56:1 67:4 80:23 86:22 count [2] 36:9 82:11 counter [1] 49:17 counterparts [1] 35:13 country [1] 21:10 country's [2] 35:10 36:2 county [1] 38:10 couple [1] 47:4 course [4] 39:8,11 44:3 79:5 COURT [21] 1:1,14 3:10 30:14 31:5 35:9,14,15 36:3 49:12 50:8,13 55:15 56:8, 19 61:15 64:16 65:11 68:5 82:12,24 Court's [5] 4:5,21 35:17 37:7 52:2 courts [2] 65:24 66:6 COVID [10] 27:16 37:12,12, 21 38:6,9,19,20 44:9 46:2 cream [1] 85:4 create [3] 18:12,14 30:3 created [3] 8:23 18:6 57:12 creates [3] 3:24 29:22 30:1 creating [1] 52:11 creation [1] 83:3 creepy [1] 57:22 crisis [1] 37:12 criteria [1] 43:4 critical [2] 16:21 77:22</p>	<p>criticism [1] 86:18 criticized [1] 34:24 crowds [1] 78:19 curiae [3] 1:24 2:11 56:5 curious [1] 69:1 custom [17] 40:6 45:16 48:15,17,18 49:4,6,10,13,19 61:11,12,14,23 62:4 63:7,9 customarily [1] 18:18 customary [4] 47:17 48:17 64:9,13 cut [4] 28:9,12 84:1,2 cutting [1] 28:7</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C [3] 1:10,18,23 daily [1] 27:16 danger [1] 36:7 dangerous [1] 59:12 daughter [1] 36:14 day [7] 5:8 26:12 27:14 28:3 37:22 52:10 71:18 daylight [1] 17:20 days [2] 28:9 31:11 deactivated [1] 36:22 debate [1] 31:3 decade [1] 36:16 decide [3] 23:21 27:1 64:5 decided [2] 41:14 55:4 decides [2] 71:2,4 decisions [1] 30:15 decline [1] 69:2 default [1] 82:6 defendant [1] 56:23 define [9] 14:12 21:13 45:16,23 53:6 62:1 63:2,8 64:12 defined [3] 39:25 49:21 61:16 definition [2] 39:19,22 delete [1] 36:19 deleted [4] 6:14 11:22 34:23 37:23 delineated [1] 74:22 democracy [3] 3:13 75:24 76:13 demonstrate [1] 50:20 denial [7] 56:13,21 68:10 81:9,22 83:10 85:3 Department [2] 1:23 44:3 depends [2] 11:16 40:20 deputy [2] 73:4,6 described [1] 70:24 description [1] 50:19 descriptions [1] 64:18 design [1] 19:18 despite [1] 36:3 detail [1] 74:18 devices [2] 57:13 66:14 dialogue [1] 3:11 difference [3] 17:17 18:9 74:23 different [13] 16:4 20:15 24:9 54:14,16,16,19,19 55:</p>
---	---	---	---	--

Official

<p>4 59:15,16 81:23 82:23 difficult [4] 9:10 17:7 29:2 31:17 dignitary [2] 84:12 85:5 diner [1] 61:18 dinner [1] 58:24 direct [2] 17:16 27:18 directed [1] 48:25 directive [8] 22:16 27:19, 20 28:16,17 44:2 45:25 83:24 directives [9] 7:4 8:12 9:14 20:20 22:13 25:23 27:18 46:1 59:21 directly [1] 5:11 disaggregate [1] 24:16 disagree [2] 47:14 49:8 disagreed [1] 57:21 disagrees [1] 19:10 disclaimer [2] 8:7,19 disclosing [1] 73:8 discourse [1] 75:25 discrimination [2] 65:4 81:11 discriminatory [1] 65:9 discuss [3] 49:1 69:2,3 discussion [1] 9:7 disentangle [1] 25:6 disfavored [1] 4:16 dismissed [1] 30:19 dispute [2] 27:23 42:4 disputes [1] 81:9 distinction [2] 15:5 65:21 distinguish [1] 5:21 diverse [1] 61:18 divide [1] 17:9 divorces [1] 35:24 doctrinal [1] 82:1 doctrine [1] 23:14 Doe [1] 86:17 dog [7] 19:25 21:4 23:4 29:5 36:15 44:12,16 dogs [11] 25:1,2,3,11,15 27:7 33:10,20 34:4,7 85:19 doing [34] 3:17 4:23,23 5:5,6,10 6:6,24 8:18 14:12 17:5 18:4 19:3,6 25:22,22 26:8 27:15 28:22 38:11 52:12,12 63:23 66:18 70:5 72:20,22 73:18 74:20 79:14,17 83:5 84:13,16 donate [1] 27:25 done [5] 36:16 38:18 39:21 79:16 86:1 down [4] 54:2 66:23 77:16,19 dramatically [1] 6:4 draw [1] 46:2 drawing [1] 10:14 during [8] 37:12,12 38:19,20 41:16,16 42:2 52:10 duties [16] 18:5,7,10 44:23 47:15 48:17 50:22 55:10 59:8,14,23 63:18 64:6,9</p>	<p>77:5 79:3 duty [46] 4:10 18:17,23 21:12 35:16 38:9 39:16,19 40:4,5 46:8,11 48:20,24 49:22 50:24 51:4,8 52:1,9,17 56:11,24 60:20 61:1,6,8,8,11 62:16 63:9,24 64:3,13,20 70:19 74:15,17 75:1,6 77:1,15,20 78:2 79:24 84:20</p> <hr/> <p style="text-align: center;">E</p> <p>each [1] 76:3 earlier [2] 20:21 63:12 easiest [1] 40:15 easily [1] 13:25 easy [2] 14:2 16:25 eat [1] 49:17 education [1] 82:15 effect [2] 54:6 76:14 effective [4] 28:8 68:17 79:7 80:8 effort [1] 25:6 either [10] 17:1 22:13 34:22 35:19 40:6 55:13 56:21 58:25 65:24 72:9 elected [8] 14:14 16:13 52:8 54:20 60:16 62:4,7 64:8 elephant [1] 69:1 else's [2] 67:20 68:1 email [1] 8:2 emergency [1] 75:2 emphasis [1] 67:9 emphasize [1] 5:21 employee [11] 23:11 35:19 39:17 42:18 45:12 52:16 53:25 55:7 63:20 64:19 78:12 employee's [2] 50:19 52:21 employees [13] 35:11 36:3,4 37:2,3 43:2,6 44:25 50:10 51:10 52:23 53:19 74:8 employer [6] 58:2 65:6 72:18,20 77:11 85:24 employment [1] 36:5 encompasses [1] 18:17 encounters [1] 83:7 end [1] 82:22 end-of-the-school [1] 84:19 end-of-year [1] 84:19 ends [1] 72:13 enforcing [1] 49:18 engage [2] 65:2 77:4 enjoying [1] 13:13 enough [7] 37:14 47:12 49:4 62:4 65:17 76:24 77:13 entire [2] 11:19 34:9 entirely [2] 9:20 70:10 entities [1] 38:15 entity [1] 69:20 episode [1] 37:14 equally [2] 62:21 80:9 equation [4] 6:15 24:9 82:</p>	<p>23 85:14 equivalent [4] 27:17 29:20 30:22 83:8 escapable [1] 22:10 escape [1] 82:20 especially [3] 14:1 65:14 70:23 ESQ [4] 2:3,6,9,13 ESQUIRE [2] 1:18,20 essentially [16] 5:2 10:24 16:9 17:4,12 20:24 28:15,21,23 30:5 32:3 34:24 49:15,22 82:10 83:7 establish [3] 15:14 86:1,10 established [9] 6:8,17 9:24 10:22 17:24 18:21 19:15 20:25 85:17 establishing [3] 15:7,12 85:11 et [2] 29:8 78:19 evade [1] 4:12 evaluate [1] 78:12 even [19] 9:3 13:7 23:23 24:25 30:7 32:9 52:24 62:20 64:19 65:9 66:11 68:19 69:21 70:6,22 72:11 76:6 81:21 82:14 events [1] 60:6 everybody [6] 26:11 29:13 42:4 60:14 69:23 73:24 everyone [8] 16:5 17:3,8,15 31:22 32:5 71:22,23 everything [8] 18:17 45:3,19 71:10,17 evidence [1] 56:17 evolve [1] 54:15 exact [2] 12:12 23:20 exactly [1] 48:21 example [9] 36:7 44:1 45:24 57:10 69:16 70:25 74:25 81:13 84:17 examples [1] 65:4 exclude [4] 16:13,22 70:8 79:22 excluded [1] 48:15 excludes [1] 69:18 exclusive [3] 82:11,13,15 Excuse [1] 33:16 executive [3] 5:1 18:19 28:21 exercise [9] 50:3 56:16 57:4 62:15 66:25 68:12 69:12,14 80:7 exercised [2] 67:2 74:4 exercising [10] 35:19 52:3 55:9 56:24 59:9 69:19 72:24 73:15,16 79:4 exist [1] 71:10 exists [1] 56:20 expect [1] 6:5 expectation [1] 10:25 expected [1] 18:18 explain [1] 83:24 explained [1] 56:9</p>	<p>explicit [1] 46:11 expulsion [2] 79:6 80:7 extent [4] 66:7 84:12 85:21 86:8 extra [2] 77:9,15 extraordinary [1] 82:5 extreme [1] 60:2 extremes [1] 17:1</p> <hr/> <p style="text-align: center;">F</p> <p>Facebook [58] 4:14 5:7 17:11 29:4,11,18,20 30:6,22 31:4 36:6,8,18,23 38:2,18 41:14,15 46:9 47:11 52:11 53:23 54:2,5,21,22,24 56:23 57:1,11,15,25 60:10,12,23 65:18 66:17,22,25 68:14,24 69:6,12,14 70:3,4,9 73:23 77:8,10,17,22,22,25 80:9,12 83:15 86:2 Facebook's [1] 69:25 facilitate [2] 18:7 71:21 fact [17] 5:21,22 8:4 9:15,17 39:6 47:10 60:21 67:21 69:6,11 73:5,25 74:21 75:2 79:14 85:9 factor [1] 7:21 factors [1] 23:20 facts [7] 57:9 60:1 61:19 66:9,24 72:3 74:3 factually [1] 5:21 fair-minded [1] 16:16 fairly [1] 7:1 falls [1] 58:10 family [6] 6:11 11:11 36:12,23 54:11,21 farm [3] 42:11 60:15,22 favorite [1] 36:15 features [1] 28:4 fed [1] 12:5 federal [2] 22:6 68:9 feedback [1] 33:3 FERRES [44] 1:20 2:6 35:5,6,8 37:18 38:8,24 39:9,12 40:3,9,12,15,22,24 41:6,12 42:13,21,23 43:20 44:15 45:7 46:5 47:4,21 48:6,9,21 49:5,8 51:3,23 52:20 53:7,10,13,18 54:4,9,14 55:3 56:2 few [1] 82:13 fight [1] 49:7 figure [4] 15:22 68:11 74:11 81:21 figuring [1] 28:24 final [1] 32:21 finally [2] 12:4 84:11 find [3] 31:15 55:17 69:10 finding [1] 36:3 fine [2] 55:13 80:15 finer [1] 73:25 finger [1] 15:2 finish [2] 48:8 63:2 First [29] 3:19,21 11:8 13:</p>	<p>25 19:10,10 21:21,22 22:2 23:15,16 24:7,9 25:10 30:18 33:6 50:1 52:21 56:10 69:16 71:17 73:12 81:8 83:12 85:13,22 86:1,9,13 fit [2] 39:21,23 five [1] 30:14 flanked [1] 27:23 flashing [1] 68:16 flexibility [1] 63:10 flood [1] 30:13 focus [3] 70:5 80:19 81:6 focuses [1] 4:3 focusing [2] 11:7 78:14 followed [2] 71:17,18 following [1] 67:5 football [1] 14:24 force [1] 61:15 forceful [1] 49:14 forces [1] 53:25 foreclosed [1] 76:12 form [2] 61:22 83:17 format [1] 31:13 forms [1] 81:12 forth [1] 48:16 fortuitous [1] 83:6 forum [3] 22:7 76:1,11 found [1] 57:22 four [3] 34:21 83:11,19 free [4] 4:14,17 21:8 23:8 FREED [24] 1:6 3:5 5:6 7:1 17:4 22:12 34:25 36:8,17,21 37:24 39:15 41:13 43:21 48:25 57:11 58:4,17 62:6 64:22 66:11 73:22 77:16 83:23 Freed's [8] 17:13 36:6 47:8 51:14 59:14,16 63:17 67:2 freedom [1] 57:7 Friday [1] 85:23 Friday [2] 10:8 14:25 friend [6] 17:2 29:16 39:2 57:6,18 72:3 friends [13] 15:18 16:4,8,15 19:8 29:6 36:12,23 54:12,22 58:25 59:25 72:16 full [1] 70:7 fully [2] 53:24 68:18 function [6] 11:16 51:24 73:11 80:13 82:11,16 functions [6] 18:5,11 51:19 60:6 81:24 82:14 fundamental [1] 3:12 funds [2] 51:12 84:22 further [1] 55:15 future [2] 26:21 75:19</p> <hr/> <p style="text-align: center;">G</p> <p>game [4] 14:24,24 18:14 28:23 Garcetti [4] 23:12 50:6 58:10 64:17 gathering [1] 67:16 gave [2] 69:15 81:13</p>
---	--	---	--	---

Official

<p>General [7] 1:22 16:5 39:20 40:25 42:19 75:7 83:12 General's [2] 40:13 42:14 generally [2] 47:23 56:20 gets [3] 11:7 12:5 85:8 getting [1] 71:22 gifts [2] 71:2 74:22 give [15] 21:13 29:13,14 32:5 33:2 37:24 39:3 43:2 47:19 70:25,25 71:1,5,5 73:12 give-and-take [1] 84:9 given [1] 50:18 giving [2] 70:20 73:18 gloss [1] 28:16 going-forward [1] 34:10 GORSUCH [23] 11:3,5 12:1,7,9,16,20,23,25 13:3,6,15,18,21 14:6 21:2,5,25 22:21,24 23:10 55:22 78:6 got [3] 24:23 30:16 54:13 gotten [1] 25:19 government [79] 5:4 10:3 20:15 21:1,14,23 22:3,4,6,9 23:3,5,21 24:2,6,13,20,21,23,24 27:15 34:3 35:10,18 36:2,4 37:1,3 38:7,15 42:6,7,17 43:2,6,16 44:25 45:2,12 47:22 50:12 51:10,12,12,13 52:14,15,16,21,23 53:19 56:9,22 57:7,13,14 58:9,16,20 60:5,6,24 64:24 66:10,10 69:17 71:10,15 72:15,16 73:7 74:8 75:23 77:23 78:12 82:9 84:16 85:6,24 government's [3] 23:17 42:8 82:18 governmental [9] 24:18 30:24 43:15 45:9 69:19 73:15,17 80:20 82:4 grant [1] 17:6 Griffin [3] 73:2,5,22 grocery [12] 10:1,4,8 14:15,21 15:7 29:21 30:23 31:8 32:1 76:9 83:9 group [2] 4:16 15:17 groups [3] 16:14 61:19,20 guard [2] 79:11,15 guess [13] 7:5 14:10 16:13 32:22 33:6 46:18,20 48:24 49:24 50:5 67:20 75:17 76:15 gun [1] 71:16</p>	<p>happen [4] 31:9 45:13 54:16 75:21 happened [2] 34:19 75:20 happening [6] 44:14 60:21 61:4 62:13 74:13 76:11 happens [3] 15:10 30:6 77:10 happenstance [1] 31:25 happy [1] 56:17 harasses [1] 12:2 harassing [2] 12:14,17 hard [5] 20:4 42:24 49:7 74:10 75:19 hardware [1] 58:17 harm [2] 81:12 85:5 harms [1] 65:10 hates [2] 12:21,25 head [1] 29:17 health [1] 27:17 healthcare [1] 44:9 hear [3] 3:3 18:22 48:5 heard [1] 11:10 help [3] 14:17 15:1 78:20 9 23:3,5,21 24:2,6,13,20,21,23,24 27:15 34:3 35:10,18 36:2,4 37:1,3 38:7,15 42:6,7,17 43:2,6,16 44:25 45:2,12 47:22 50:12 51:10,12,12,13 52:14,15,16,21,23 53:19 56:9,22 57:7,13,14 58:9,16,20 60:5,6,24 64:24 66:10,10 69:17 71:10,15 72:15,16 73:7 74:8 75:23 77:23 78:12 82:9 84:16 85:6,24 government's [3] 23:17 42:8 82:18 governmental [9] 24:18 30:24 43:15 45:9 69:19 73:15,17 80:20 82:4 grant [1] 17:6 Griffin [3] 73:2,5,22 grocery [12] 10:1,4,8 14:15,21 15:7 29:21 30:23 31:8 32:1 76:9 83:9 group [2] 4:16 15:17 groups [3] 16:14 61:19,20 guard [2] 79:11,15 guess [13] 7:5 14:10 16:13 32:22 33:6 46:18,20 48:24 49:24 50:5 67:20 75:17 76:15 gun [1] 71:16</p>	<p>identified [1] 64:6 identifies [1] 59:2 immediately [1] 28:8 immunity [2] 14:1 30:17 immunize [2] 3:20 20:24 impact [1] 37:2 imperils [1] 57:7 importance [1] 76:23 important [7] 3:16 20:4 26:21 59:8 69:13 76:22,25 in-office [2] 3:25 15:9 incidental [1] 31:9 include [4] 16:12 51:18,24 63:18 includes [2] 40:5,7 including [6] 16:21 30:15 36:14 37:9 45:17 71:14 incongruous [1] 68:2 increasing [1] 76:22 increasingly [1] 76:4 incredibly [2] 31:7,24 Indiana [1] 36:10 indicates [1] 27:5 indicia [2] 51:7,17 individual [2] 12:2 31:23 individuals [1] 65:2 infer [1] 74:15 influence [1] 69:6 influx [1] 43:5 informal [1] 59:1 information [26] 3:16 7:16 8:12 9:19 10:2 11:20 22:15 25:21 26:21 29:25 33:2 34:13 38:12,17 39:8 44:14 47:3 71:13,22 73:9 75:1,3 83:13,14 84:14,14 informing [1] 5:8 inherent [1] 47:23 inherently [2] 35:24 41:21 inquiry [3] 35:25 50:18 55:6 instance [6] 4:13 12:13 22:11 27:19 58:20 80:16 instances [3] 5:15 38:13 83:23 instantaneous [1] 31:21 instead [3] 58:10 79:10 83:9 instructed [1] 78:3 instructs [1] 63:19 intending [1] 10:10 interact [6] 8:15 9:13 10:5 16:7 36:12 84:4 interacting [1] 28:3 interest [2] 23:22 84:12 interests [2] 23:17 36:14 intermixed [1] 20:2 Internet [1] 83:20 interrupt [5] 14:5,7 16:24 26:5 62:23 invitation [3] 16:3,5 17:14 invited [1] 16:10 invites [1] 84:22 inviting [4] 17:2,2,8 38:22</p>	<p>invoke [1] 86:4 involve [1] 9:7 involvement [1] 82:4 irony [2] 21:20 22:1 isn't [4] 30:21 47:12 52:13 60:23 issue [9] 8:12 11:9 14:10 15:3 22:9 25:23 53:2 64:8 66:1 issued [5] 7:4 9:15 20:20 44:1 83:24 issues [4] 9:14 28:7 50:7 59:20 issuing [2] 16:3,4 it'll [1] 83:19 itself [6] 11:9 33:24 42:16 56:24 66:17 68:25</p> <p style="text-align: center;">J</p> <p>JACKSON [39] 6:16,22 7:5,8,13 8:6 17:16 18:22,25 19:12 26:22 32:20,21 33:13,16,19 34:5,14 35:2 42:6,20,22 49:23 51:18 55:25 57:1 65:16 66:4,12,15 69:9 78:9,10 79:2,9,12 80:2,4,21 Jackson's [1] 67:6 JAMES [2] 1:6 36:6 JamesRFreed1@facebo ok.com [1] 40:18 jerk [1] 16:23 job [42] 5:1,4 6:6,10 7:2 14:12,13,17 15:6 18:5,7,19,21 19:3,7 23:25 24:13 25:23 33:25 34:25 45:13,18,19 47:6,9 50:19 53:5,19 55:8,9,12 57:18 59:2,9 62:10 72:18 73:9 74:7,19 75:11 83:5 86:3 job-related [2] 6:3 55:1 jobs [5] 4:23 35:12 43:8 52:24 77:2 Joint [6] 5:18 27:20,21 28:6 37:19 43:23 jumps [1] 71:15 jurisdiction [1] 60:17 Justice [20] 1:23 3:3,9 4:22 5:14,24 6:16,22 7:5,8,13 8:6,22 9:5,20 10:12 11:3,5 12:1,7,9,16,20,23,25 13:3,6,15,18,21 14:4,6,8,23 15:11,21,25 16:11,20 17:16 18:22,25 19:12,22 20:9,11 21:2,5,25 22:21,24 23:10 24:11 25:11,16 26:1,4,7,22,24 27:4,10 29:1 30:1,21 31:2 32:11,12,13,14,15,16,17,18,19,19,21 33:13,16,19 34:5,14 35:2,3,8 37:8,18 38:4,21 39:5,10,18 40:4,10,14,19,23 41:2,8 42:6,20,22 43:10,11,12 44:5 45:1,15 46:5,17,24 47:13</p>	<p>48:5,7,12,12,16 49:3,6,23 51:18 52:7 53:1,9,11,14,22 54:8,13,18 55:17,19,20,21,22,23,24,25 56:3,7,16 57:1 58:1 59:14 60:3,19 61:8,24 62:2,22,25 63:6,14,16 64:1,4,15 65:16 66:4,12,15 67:3,6,18 68:4,20,21,22 69:8,9 70:11,11,12,13 71:12,25 72:7 73:1,13 74:25 75:13,13,14 76:21 78:4,5,5,7,8,9,10 79:2,9,12 80:2,4,21,22 84:6 86:16,21 Justice's [4] 11:8 21:6 34:1 75:15</p> <p style="text-align: center;">K</p> <p>KAGAN [15] 19:22 20:9,11 26:24 27:4,10 32:15 44:5 45:1 46:24 75:13,14 76:21 78:4 84:6 Kagan's [1] 74:25 Karlan [3] 5:14 17:19 18:3 KAVANAUGH [28] 14:4,8,23 15:11,21,25 16:11,20 30:21 31:2 32:16 43:11 45:15 46:5,17 47:13 48:17 55:23 59:15 62:22,25 63:6,14,16 64:1,4,16 78:7 KEDEM [75] 1:18 2:3,13 3:6,7,9 4:24 5:23 6:1,21,23 7:7,12,19 8:8 9:2,9,23 10:19 11:4,15 12:6,8,11,19,22,24 13:5,10,17,20,23 14:22 15:4,20,24 16:2,19,25 18:13,24 19:1,17 20:8,10,14 21:3,18 22:8,23 23:9,13 25:9,14,17 26:3,6,18,23 27:3,9,12 29:19 30:3 31:1,4 33:11,15,18,21 34:6,18 80:24 81:1,3 Keep [3] 63:16 70:15 78:14 KEVIN [1] 1:3 key [4] 15:11 23:19 28:4 66:9 kick [2] 69:23 78:21 kicks [1] 70:9 kids [6] 7:17 29:5,15 71:2,5 kind [10] 24:16 25:6 29:3 31:2 33:2 50:25 65:3,12 66:18 76:13 kinds [1] 50:7 kitchen [1] 58:25 knowledge [1] 37:5 knowledgeable [1] 58:21 known [1] 16:16</p> <p style="text-align: center;">L</p> <p>Lane [5] 43:9 52:22,24 64:17 74:6 large [3] 22:5 78:19 85:21 last [10] 5:16 11:8 20:5 46:6 48:13 65:24 72:1 74:16 75:20 78:11</p>
--	---	--	---	---

Official

<p>later [4] 28:19 71:18,18,18 Laughter [4] 13:2 20:13 25:13 67:17 law [11] 4:9 35:20,22,25 44:24 48:15 49:11,15 52:6 61:9,15 leaf [1] 32:6 learn [1] 14:17 least [2] 18:21 86:3 leave [1] 73:15 leaves [1] 51:14 leaving [1] 4:19 led [1] 34:11 left [1] 23:7 legislation [2] 10:10 15:23 less [2] 63:22 77:19 letting [1] 49:16 limit [1] 60:4 limitation [1] 61:10 limitations [2] 60:4 64:25 limited [2] 52:19 85:16 limiting [1] 21:14 LINDKE [2] 1:3 3:4 line [9] 8:9 10:13 46:2,3 50:1,6,14 51:5,6 line-drawing [1] 14:11 list [1] 7:24 listing [2] 50:18,24 literally [1] 30:4 litigation [7] 14:5 30:2,4,10,13 43:6 53:20 little [8] 9:25 25:2,3,14 28:19 67:5 70:21 71:2 Live [6] 41:16 45:5 57:1 60:23 76:17,18 local [1] 84:10 log-in [1] 40:17 long [2] 55:8 57:12 look [28] 6:24 7:20 9:12 17:13 19:14 20:4 23:20 26:13 27:1 37:19 38:11 41:9,10 49:11,15 51:10,20,25 56:13,19 59:8,13,22 60:5 63:11,21 76:20 79:17 looked [4] 26:15 41:24 66:6 68:5 looking [6] 18:1 25:25 43:3,4 51:4 75:11 looks [3] 19:23,24 60:14 looming [1] 68:23 lose [5] 28:5 36:4,24 83:21 86:12 loses [1] 59:4 losing [3] 9:19 34:13 83:13 lost [1] 85:8 lot [19] 6:2,5 7:21 9:15,19 14:14,25 19:25 21:14 26:12 29:19 46:25 47:1 64:8 66:8 70:23 82:19 83:13 86:14 love [1] 14:15 loves [1] 54:20 lower [1] 66:6 lurking [1] 70:1</p>	<p style="text-align: center;">M</p> <p>machine [2] 67:25 68:1 made [9] 5:14 33:9 35:20 36:17 38:1 46:7 52:4 53:24 81:15 main [1] 49:1 maintain [1] 51:11 maintained [1] 23:1 major [1] 58:12 majority [1] 30:12 malleable [1] 76:23 manage [1] 44:24 manager [32] 4:14 5:2,9,9 7:2,3,10,15,22 8:5,15,24 9:13 25:22 28:20 29:3 35:1 44:19 46:22 47:2,9,11,16 51:15,16 54:19 58:18 59:3 73:24 80:10,16 85:10 manager's [1] 47:24 managers [1] 59:15 manages [1] 59:21 managing [2] 45:2,2 mandate [1] 23:5 manner [1] 30:20 manual [2] 63:20 64:19 many [7] 21:15 24:3 44:5 47:7 75:20 77:1 81:9 March [4] 37:21,25 54:6 57:16 MASHA [3] 1:22 2:9 56:4 material [1] 58:21 matter [14] 1:13 6:16 7:9 11:12 44:17 47:17 57:17 61:6 65:14 66:19 72:17 74:2 75:4 77:11 mattered [1] 8:7 matters [9] 11:19,23 20:4 34:11 50:11 57:8 62:18 66:24 84:15 mayor [5] 5:3 22:11 60:13 77:21 78:3 mean [17] 4:13 6:19 10:4 18:17 23:10 24:11 26:4,5 44:11 45:11 49:3 51:6 58:1 67:7,10,20 79:14 means [9] 4:9,11 34:2 58:3,6,17 59:4 75:4 81:22 media [21] 3:14,20 25:8 31:6,6,20 35:12 43:8 49:2 54:15 65:13 66:2 67:11 75:24,25 76:22,25 77:2,3,4 81:10 meet [3] 15:17,18 76:19 meeting [11] 41:15,21 42:1,3,9 55:11 57:1 60:15 69:18,19,22 member [1] 4:15 members [2] 36:12 84:8 memo [2] 63:19 64:6 mention [1] 24:19 mentioned [1] 69:9 mentor [1] 74:20 merely [2] 36:5 46:13 message [6] 11:9,11,14 40:</p>	<p>21 41:8,11 Michigan [1] 1:20 middle [1] 17:6 might [9] 15:3,6 22:25 29:14 38:18 55:4 58:23 59:15 74:2 migrated [1] 6:6 million [1] 35:10 millions [4] 21:9,15 22:4 60:17 mind [1] 14:19 mindful [1] 82:24 mine [1] 13:22 minute [1] 74:17 minutes [1] 20:21 mismatch [1] 82:1 misstated [1] 72:4 mistake [2] 64:11,12 mistaken [1] 42:10 mix [1] 54:24 monopoly [1] 74:8 Most [5] 30:17 38:13 46:7 57:15 69:9 move [1] 23:3 move [1] 60:5 Ms [74] 5:14 17:18 18:3 35:5,8 37:18 38:8,24 39:9,12 40:3,9,12,15,22,24 41:6,12 42:13,21,23 43:20 44:15 45:7 46:5 47:4,21 48:6,9,21 49:5,8 51:3,23 52:20 53:7,10,13,18 54:4,9,14 55:3 56:2,3,7 60:19 61:13 62:1,6,24 63:4,8,15,17 64:3,15 65:16 66:4,14,21 68:4 69:8 71:11,25 72:11 73:13 75:14 76:21 79:1,10,21 80:3,5 Much [10] 3:13 19:11 30:19 42:17 59:2 60:6,11 65:20 76:10,11 multiple [3] 5:7 27:13 28:2 must [3] 4:2 21:16,16</p> <p style="text-align: center;">N</p> <p>namely [1] 86:1 narrow [1] 61:14 nature [7] 26:17 40:20 56:14 73:17 75:17 76:17 78:15 necessarily [1] 8:13 necessary [1] 50:20 need [10] 26:15 49:25 50:2 68:13 70:1 74:11,17 75:5 76:18 77:21 negative [3] 16:21 37:2 61:21 neighbor [1] 38:18 neither [2] 50:20 72:8 net [1] 31:22 new [3] 3:15 7:9 67:23 newly [1] 54:20 news [2] 30:11 73:12 next [2] 3:4 51:15</p>	<p>nice [1] 44:13 night [1] 14:25 nightmares [2] 30:2,4 nonprofit [1] 38:15 nor [1] 50:20 norm [6] 61:17 70:21,22 71:3,7,8 noted [1] 39:2 nothing [7] 28:18 30:6 38:19 70:15 72:5 81:10,16 notice [2] 30:25 31:3 notice-and-comment [2] 41:4,20 notices [1] 46:1 number [10] 8:3 21:9 30:16,17 32:4,10 33:4 81:6,15 83:23</p> <p style="text-align: center;">O</p> <p>objective [3] 43:3 51:7,17 obtain [1] 73:20 obvious [3] 45:8 82:1 84:24 obviously [11] 6:14 7:20 9:9 10:6 11:23 18:14 20:1,16 22:12 29:24 34:10 October [1] 1:11 odious [1] 65:3 office [2] 10:8 31:15 officer [6] 28:21 49:18 68:15,18 79:5,7 officers [2] 79:2 80:6 official [59] 3:24 4:3,6 5:2,25 6:18 7:25 10:14 12:3,13 13:11 18:19 20:7 23:3,16 24:1 26:9 29:2,25 30:25 31:3,12 33:7 35:16 37:15 38:23 43:25 46:14 48:4 52:9 53:16 55:2,9 56:23 57:8 60:16,24 62:7,8,11,20 66:14 69:17 71:10,15 72:2,15 73:7 74:1,9,11 75:9 77:2 78:1 79:3 83:4,22 86:11,12 official's [2] 3:21 62:17 officially [1] 71:3 officials [22] 3:11,16,19 4:12,19 14:14 16:14,14 50:1 59:21 60:5 62:5 64:9 71:13 72:16 76:1,2 77:1 79:22,24 82:18 83:16 officials' [1] 71:19 often [2] 38:13 68:5 oftentimes [1] 39:13 okay [7] 9:5 25:16 40:14 42:20,23 54:8 71:4 old [3] 15:18 17:2 67:22 olden [1] 31:11 once [6] 6:8 7:10 9:21 14:8 51:13,14 one [29] 9:12 10:24,24 14:10 17:18 20:5 23:19 25:17 27:25 28:4 29:6 30:16 32:21 43:13 47:13 53:25 55:</p>	<p>13 56:12 70:1,4 71:2,4,5 74:16 77:1,14 78:11 81:18 84:8 one-half [1] 10:16 one-off [1] 83:6 one-stop [1] 44:11 ongoing [7] 11:1 15:10 25:20 26:19,25 27:6 32:25 online [5] 3:14 6:7 81:19 83:7 84:5 only [28] 5:15 9:12 16:9 17:8 20:20 30:14 32:7 33:23 35:20 37:2,24 38:13 43:14 46:8,12 48:2 49:12 51:4 52:5 66:21 70:16,19 74:9 82:10 83:14,16 84:3,22 open [2] 39:7 60:10 opened [2] 36:8 41:25 opens [1] 7:9 operate [1] 18:7 operates [3] 18:2 75:23,24 operating [2] 36:17 66:17 operation [1] 51:19 operations [1] 27:24 opinion [1] 74:6 opinions [1] 55:4 opportunity [1] 47:19 opposed [5] 27:6 37:16 64:7 77:15 85:18 option [2] 54:5,17 oral [7] 1:14 2:2,5,8 3:7 35:6 56:4 order [3] 10:5 28:7 73:24 ordering [1] 73:14 orders [1] 5:13 ordinance [1] 49:9 ordinances [1] 44:24 original [1] 4:8 ostensibly [1] 23:23 other [41] 8:14 11:21 16:8 17:9 19:9 22:1 24:14 27:14 28:1,23 31:5 33:4,5 34:12,22 36:18 37:10 38:12,14,15 39:2,21 43:17,19,21 46:3 50:9 51:1,19 53:3 57:6,18 59:21 60:1 76:3 81:11,20 85:14,19,20,21 out [31] 4:25 8:24,25 15:22 19:6,13 24:1 28:5,24 31:15 34:13 40:1 46:12 55:18 56:12 58:1 59:17 60:25 68:11 69:23 74:11,17,22 75:5 78:22 79:3,24 81:21 83:13 84:7 85:10 outreach [1] 27:24 outset [1] 21:7 outside [1] 31:13 over [12] 8:9 18:14 21:14 23:23 25:19 29:17 30:6 36:16,24 51:16 58:24 85:19 overarching [1] 56:10 overbroad [1] 64:18 overcome [1] 82:6 overlapped [1] 57:17</p>
---	--	---	--	--

Official

overlay [2] 14:2 30:17
overridden [1] 8:20
override [1] 5:25
own [8] 28:16 32:10 36:25
 57:12 64:23 84:20 85:22
 86:9
owned [1] 51:13
owner [1] 70:3
ownership [1] 58:16
owns [1] 60:12

P

p.m [1] 86:24
PAGE [77] 2:2 4:15 6:24 7:
 9,14,25 8:21,23 9:18 11:18,
 19 12:13 17:13,23 18:1,6,
 12,14 19:3,7,14,18 20:5 22:
 14,22 23:1,25 24:3,18,19,
 20,21 25:20 26:17 27:19,
 21 28:6 29:4,11,18,25 30:
 24 34:9,17,21 36:20,22 41:
 14 46:9 47:11 51:11,13,21
 53:17 54:10,12,25 55:2,2,
 10,13,14 56:23 57:12 58:5,
 5 60:10,12 65:18 67:19,20
 70:3,4 72:4 77:17 78:1 83:
 15
pages [5] 13:12 21:24 24:
 12 58:8 66:7
pandemic [6] 6:4 27:13 28:
 10 41:16 57:16 75:8
park [2] 13:13 78:18
part [16] 4:25,25 5:4 8:10
 11:15 47:15 48:19 51:21
 62:10 64:9 69:24 75:5,10,
 22 77:20 84:9
participating [1] 76:12
particular [1] 85:7
parties [1] 30:8
partly [2] 19:17,18
party [3] 47:8 58:25 84:19
pass [1] 13:25
passages [1] 36:15
passions [1] 36:13
past [1] 40:19
pattern [1] 15:16
pay [2] 31:15 86:19
peace [1] 44:15
pejorative [1] 67:7
penalty [1] 73:25
pending [1] 10:10
people [41] 5:5 14:16 15:1,
 17 16:15,15,16,17 21:19,
 24 24:4,12,12 25:20 26:12,
 20 27:14 28:1,12 31:23 34:
 22 38:25 39:1 44:6 45:5
 46:25 47:1,7,10 57:15,21
 58:19,19,24 60:17 73:10
 78:22 79:22 83:25 84:1 86:
 14
perceive [1] 17:17
percent [9] 9:6,7 10:14,15,
 16,17 24:23 25:18,18
perfect [2] 36:7 57:10

perfectly [2] 55:13 65:1
performance [1] 38:23
performing [3] 34:25 73:
 11 82:10
perhaps [2] 9:3 43:17
period [4] 38:20 41:17 69:
 21 70:8
person [13] 13:7 16:23 18:
 11 23:5 33:9 51:11 54:2,
 20,23,25 59:23 71:20 79:
 18
person's [2] 23:8 70:6
personal [31] 4:20 5:17,19,
 24 6:2,3,14 7:16 8:10,18 9:
 6,16,21 12:3 13:8 20:1,16,
 23 22:14 30:23 35:12 36:8
 37:9,16 40:17 41:3 42:16
 55:2 71:14 77:10 86:5
personally [2] 23:2 77:12
personnel [2] 70:17,18
perspective [1] 64:11
Petition [2] 66:8 72:4
Petitioner [10] 1:4,19 2:4,
 14 3:8 35:23 36:19 37:11,
 22 81:2
Petitioner's [3] 36:1,7,20
petitioners [1] 21:21
Petitioners' [1] 43:4
phenomenon [1] 67:23
phone [4] 31:15 32:4,8,10
phrase [1] 48:23
physical [5] 58:13 60:3 67:
 12 68:7,19
pick [2] 14:21 68:1
Pickering [5] 23:12 50:6,
 10 58:11 65:7
picture [1] 76:10
pictures [11] 7:16 12:4,4
 19:25 20:1 23:4 25:3 29:5,
 5,15 44:12
pin [1] 58:19
pizza [1] 85:3
place [16] 3:14 8:14 9:13
 25:20 26:20 27:7,25 28:22
 30:20 31:9 43:14,15,19 47:
 2 84:7 86:1
places [1] 43:21
platforms [4] 3:14 31:6,20
 81:23
plays [2] 56:12 80:18
please [7] 3:10 14:6,7 35:9
 48:7 56:8 62:24
plural [1] 20:18
point [7] 5:15 12:15 13:7
 46:20 67:6 68:19 74:16
pointed [2] 4:25 58:1
pointing [1] 84:7
points [1] 23:19
police [5] 49:18 78:18 79:5,
 7 80:6
policies [1] 65:13
policy [3] 48:1,1 49:6
political [1] 4:16
pop [2] 67:18,19

populated [2] 23:4 29:4
Port [6] 1:20 22:11 28:25
 38:14,16 58:3
PortHuron.org [1] 8:2
position [12] 14:11 17:18
 18:6 42:8 44:19,20 45:8,9
 51:15 53:15 59:4 60:1
positions [2] 45:17 47:22
positive [1] 61:9
possessed [1] 35:19
possible [3] 28:16 35:20
 52:5
post [16] 6:14 9:16 11:23,
 23,24 22:14,14 27:16,22,
 24 32:4 33:23,24 34:11 37:
 22 80:15
post-by-post [1] 32:24
posted [2] 13:14 57:11
posting [11] 6:10 7:3 19:20,
 21 20:19 21:3 22:13 27:18
 34:3,7 52:11
posts [19] 6:2,3,3 7:23 9:6,
 7,15 20:18 27:14 28:2 33:
 2,4,5 37:24 38:1,3,11 83:6
 85:19
power [13] 7:7 21:14 35:19
 56:16 57:4 68:12,14,24 72:
 24 73:19 74:3 79:4 80:7
powerful [2] 31:7,24
practical [2] 50:17 60:4
practice [1] 29:23
precedent [3] 4:5 35:18 52:
 2
precisely [1] 76:25
predict [1] 75:19
preempting [1] 72:12
preempts [1] 72:2
presence [2] 77:3,22
presented [1] 35:15
press [1] 44:20
presumably [2] 7:24 28:19
presumption [1] 82:6
pretty [6] 29:2 42:17 47:14
 61:9 64:11 82:5
price [1] 86:18
principle [3] 19:6,11 25:17
prior [1] 18:15
private [63] 3:20 11:11 23:
 11,24 24:5,19,20 26:13,17
 29:3,4,11 32:4,10 33:5 36:
 18 58:15 59:5 60:7,22,23
 61:4 62:12,13,21 63:23 65:
 1,6,9,13,19,21 66:3,19,22
 67:10,15 68:5 69:3 72:22,
 23 73:2,9,19 74:12,13,13
 75:9 77:18 78:13,15,17,23,
 24 79:10,15,18,22 82:3,3,7,
 19 83:15
private-sector [1] 35:13
probably [6] 8:8 13:25 31:
 14 66:7 68:23 74:24
problem [10] 14:3 21:23
 22:2 24:15 42:25 45:16,20
 84:25,25 85:2

problematic [1] 32:9
problems [2] 32:6 81:6
professional [2] 50:22 86:
 7
professors [1] 65:8
profile [2] 17:12 19:19
property [28] 42:10,15 56:
 13,14,21,22 60:7,22 61:4
 62:14 63:23 65:19 67:10,
 15 68:6,6 69:3 70:7 72:23
 74:13 78:13,15 79:23 81:9
 82:3,4,7,20
property-based [1] 60:7
propose [1] 15:23
proposed [2] 81:5,25
proposing [1] 76:7
protons [1] 67:16
provide [4] 3:16 4:11 75:1,
 3
provides [1] 63:13
providing [4] 56:24 57:3
 70:17 82:14
provisions [1] 63:12
public [73] 3:11,15,18,24 4:
 3,6,12,19 6:18 12:2 22:7,
 22 23:11,16 24:1 29:2,18
 31:12,13,18 33:3,7,8 36:5,
 23 38:22,23 41:22,22 44:
 22 45:11,14,18 47:16 50:1,
 10,11,15 53:5,25 54:3 55:7
 57:8,9 59:11,24 60:16 62:
 4,10,11,15,16,18,18 64:10,
 21 65:22 68:8 71:13 75:9,
 25 81:14 82:11,14,15,15,
 18 83:4,15,22 84:18 86:11,
 11
public's [1] 3:17
public-facing [2] 44:19 59:
 19
publicly [2] 35:11 52:24
publishing [1] 71:23
pulse [1] 15:2
purely [3] 55:1,2 58:15
purported [1] 69:14
purporting [4] 4:4 23:25
 73:6 86:11
purports [1] 4:6
purpose [1] 6:20
purposes [1] 15:22
push [1] 25:10
put [4] 25:3 26:14 37:22 86:
 17

Q

qualified [2] 14:1 30:16
qualify [1] 82:13
qualitative [1] 10:20
quality [2] 10:21 25:25
quantitative [1] 10:20
quantity [1] 26:3
quasi-public [1] 60:15
question [19] 11:8 22:16,
 24,25 23:14 28:10 29:17
 32:22 35:14 39:14 46:19,

25 53:1 67:12 68:10 70:1
 72:1 75:16 84:4
questions [6] 4:21 5:12 20:
 22 34:1 37:7 55:16
quickly [1] 75:20
quite [5] 5:18 14:13 37:8
 53:24 60:12

R

raccoons [1] 37:10
race [1] 4:16
racial [1] 65:4
racially [2] 61:18 65:8
ratio [1] 6:2
react [1] 37:13
reading [1] 67:9
ready [1] 4:11
real-time [1] 28:15
reality [1] 25:7
realize [1] 73:10
really [27] 9:24 14:13,13 18:
 4,23 25:7 38:11 49:7,12
 57:23 59:12,18 61:2 62:14
 63:25 65:17,25 67:14 70:
 15 74:14 75:10,10 76:9,20
 77:21 85:3,5
reason [4] 30:13 69:10 82:
 9,17
reasonable [1] 30:20
reasons [1] 86:15
REBUTTAL [3] 2:12 80:24
 81:1
receive [1] 31:10
recognize [1] 78:18
recommend [1] 48:2
reconciles [1] 23:15
record [5] 28:18 39:13 65:
 17 66:5 72:6
recourse [1] 11:13
Reed [1] 86:17
refer [1] 29:24
reference [1] 64:12
referring [1] 20:18
reflect [1] 25:7
regardless [1] 22:19
regular [3] 15:16 39:8,11
regularly [1] 15:18
regulate [2] 65:6 72:20
regulation [1] 49:9
related [1] 39:14
relatively [1] 17:14
released [2] 43:24,25
relevant [1] 68:23
relied [1] 48:14
relies [1] 82:2
religion [1] 4:16
rely [3] 16:14 46:25 47:1
relying [2] 18:10 19:11
remember [1] 31:16
removed [1] 34:19
removing [1] 33:22
rent-a-cop [1] 73:19
rents [1] 69:17
rep [1] 15:25

Official

<p>repeatedly [2] 17:22 36:3 repercussions [3] 57:24 58:13 61:22 reports [1] 59:19 reposting [2] 46:13 55:12 require [2] 32:23 54:10 required [5] 44:21 51:2 52:3 57:20 72:21 requires [3] 35:18 56:24 57:2 resharing [4] 38:12 46:14, 18,21 resource [2] 52:15,18 resources [6] 52:14 57:14 58:15 66:11 70:17 85:2 respect [1] 25:10 respects [1] 25:10 respond [1] 39:15 Respondent [8] 1:7,21,25 2:7,11 19:9 35:7 56:6 Respondents [1] 18:15 response [2] 46:23 47:5 responsibilities [1] 52:4 rest [2] 24:25 44:15 restrictions [1] 30:20 result [2] 4:18 36:1 resulted [1] 34:16 retain [1] 3:19 return [1] 3:18 rights [10] 3:19 21:8 23:8, 12,16 36:5 52:4,22 70:7 86:9 rigid [2] 61:23 63:1 road [2] 74:25 75:3 roads [1] 44:9 ROBERTS [22] 3:3 24:11 25:11,16 26:1,4,7 32:11,19 35:3 43:10,12 55:17 56:3 67:3,18 68:20 70:11 75:13 78:5 80:22 86:21 role [7] 5:9 47:24 59:16,19 65:10 69:5,25 roles [2] 59:16 62:9 room [2] 4:19 69:2 rowdy [2] 69:22 78:22 rule [8] 30:24 40:2 41:5 43:1,13 46:8 60:8 76:13 ruled [1] 39:24 rules [4] 45:25 70:14 76:5, 18 run [1] 77:2 running [9] 10:1 29:21 30:22 31:7 32:1 77:8,9,25 83:8</p> <hr/> <p style="text-align: center;">S</p> <p>Safe [1] 62:19 same [5] 8:24,25 12:12 23:20 54:24 satisfy [1] 76:7 saying [14] 10:18 18:3 24:4 32:3 34:14 51:9 53:12 65:8 70:16,18,20 80:10,14,15 says [8] 28:8,11 29:7 37:11</p>	<p>49:9 51:20 57:18 82:10 Scalia [1] 86:16 scattered [1] 83:19 scenario [2] 50:10 65:23 school [2] 14:24 84:18 scope [3] 5:12 21:11 50:22 scream [1] 16:17 screening [1] 78:21 scrutiny [4] 3:22 20:25 82:21 86:13 search [1] 37:6 second [4] 26:23 81:25 83:21 86:2 secretary [1] 44:21 Section [2] 4:8 59:17 security [2] 79:11,15 see [12] 14:25 19:14 30:13 37:20 39:13 44:12,18 45:21 54:8 65:22 67:9 77:14 seeing [2] 15:17 18:1 seems [9] 17:7 24:16 25:5 45:21 50:23 52:7 60:12 68:2 70:13 seen [1] 20:12 self-censorship [2] 36:2 37:1 self-government [2] 84:10 86:19 sense [7] 46:7 60:8 61:14, 14 67:14,24 81:18 sent [1] 44:2 separate [1] 55:1 serious [1] 57:24 servants [2] 21:8 22:5 serve [1] 61:18 services [1] 6:5 serving [1] 3:15 set [8] 25:24 26:19 56:19 59:17,22 70:14 80:18,19 setting [1] 62:8 role [7] 5:9 47:24 59:16,19 65:10 69:5,25 roles [2] 59:16 62:9 room [2] 4:19 69:2 rowdy [2] 69:22 78:22 rule [8] 30:24 40:2 41:5 43:1,13 46:8 60:8 76:13 ruled [1] 39:24 rules [4] 45:25 70:14 76:5, 18 run [1] 77:2 running [9] 10:1 29:21 30:22 31:7 32:1 77:8,9,25 83:8</p> <hr/> <p style="text-align: center;">S</p> <p>Safe [1] 62:19 same [5] 8:24,25 12:12 23:20 54:24 satisfy [1] 76:7 saying [14] 10:18 18:3 24:4 32:3 34:14 51:9 53:12 65:8 70:16,18,20 80:10,14,15 says [8] 28:8,11 29:7 37:11</p>	<p>site [20] 26:11,13 27:2,4 29:3 37:9,16,17 39:6,6,7 44:7, 7,8,9,9,10,10,18 73:10 sites [1] 71:10 situation [4] 19:13 34:15, 16 71:9 situations [4] 51:1 70:23 72:10 75:2 Sixth [7] 4:10 35:15 39:23 48:13,23 51:8 72:8 slightly [1] 19:5 slip [1] 10:2 slips [1] 9:21 small [2] 22:5 60:13 small-town [1] 20:15 social [25] 3:14,20 25:7 31:6,20 35:12 43:8 49:1 54:15 65:13 66:2 67:11 70:21, 22 71:7,8 73:11 75:23,25 76:22,25 77:2,3,4 81:10 society [3] 37:3,4,4 solely [1] 48:14 soliciting [2] 3:18 39:11 Solicitor [6] 1:22 39:20 40:13,25 42:14,18 solve [3] 21:22 22:2 76:8 somebody [7] 23:1 60:16 67:19 68:1 72:1 73:15 77:9 somehow [1] 68:17 someone [18] 10:1 13:12 29:21,24 30:22 31:8,10 32:1 39:13 44:17 54:20 55:5 68:14 69:18 74:4 83:8 84:13 85:6 someone's [2] 34:9 47:6 sometimes [8] 5:7,11 6:11 33:8 39:1,3 83:16,18 somewhat [2] 37:12 85:15 somewhere [3] 28:17 72:14 83:18 soon [1] 27:12 sorry [5] 29:16 42:22 48:7 62:2,23 sort [15] 6:19 17:1,7 18:10, 18 22:18 24:8 29:20,22 31:18 32:24 37:14 49:25 50:14 85:1 sorts [1] 24:14 Sotomayor [29] 32:14 38:21 39:5,10,18 40:4,10,14, 19,23 41:2,8 48:12 52:7 53:1,9,11,14,22 54:8,13 55:21 70:12,13 71:12,25 72:7 73:1,13 sounds [2] 17:25 29:19 source [1] 48:19 sources [1] 38:12 space [1] 66:17 speaking [7] 36:22 47:24 50:15 54:11 55:12 74:11 75:7 speaks [1] 53:19 species [1] 17:25</p>	<p>specific [11] 6:13 27:2,22 33:23 34:11 45:24 51:4 64:6 74:15 75:4,12 specifically [4] 31:23 57:25 59:13 74:22 speech [14] 21:8 22:3 23:8, 12,18,22,24 31:10 36:25 38:7 43:16 58:7 65:6 77:19 spelled [2] 74:17 75:5 spillover [1] 65:15 spokesperson [1] 38:10 spot [1] 38:25 square [2] 3:15 39:7 staff [1] 31:18 stake [1] 83:1 start [3] 6:4 40:12 81:4 started [2] 27:13 37:21 starting [1] 8:4 state [77] 3:23 4:7 10:15 12:9 13:9,24 14:9 15:25 22:20 24:10 29:12 30:7 33:13, 17,23 34:7 35:16,20,22,25, 25 36:25 40:8 41:17 42:2 44:4,24 45:14,20 46:10,15 47:7,12 49:11 52:2,6,13,18 53:16 55:6 56:16,20 57:4, 19 58:6,9,16 59:11 61:1,4 64:12,23 68:12,13 69:10, 24 70:15,16 71:16,20 72:24 74:7 77:6 78:25 79:6, 19,21,24 80:4,5 81:19,20 82:7,12,25 84:21 85:2 STATES [8] 1:1,15,24 2:10 21:22 56:5 81:5 82:1 statute [1] 49:9 Stay [3] 62:19,19 73:24 still [8] 4:19 9:11 13:24 31:16 57:14 61:1 75:5 86:14 stop [1] 22:13 stopped [1] 36:22 stops [1] 53:16 store [11] 10:1,4,8 14:15 15:7 29:21 30:23 31:8 32:1 58:18 83:9 stores [1] 76:9 storm [3] 26:10,14,16 storm's [1] 29:9 stream [1] 7:18 strikes [1] 75:18 strong [8] 61:17 62:4 70:14,21,22 71:7,8 82:6 strongly [1] 47:14 struggling [1] 28:1 student [1] 36:9 students [3] 74:20 81:16 84:22 stuff [4] 13:8 20:1,16 41:4 subject [7] 27:22 57:17 58:23 61:5 72:17 77:17 86:13 subjective [2] 35:24 43:4 subjects [1] 64:24 submission [1] 77:7 submitted [2] 86:23,25</p>	<p>substantial [1] 33:4 substantially [1] 8:20 sudden [1] 34:2 suddenly [2] 9:18 58:22 sued [1] 36:21 sufficient [3] 19:2,8 50:20 suggested [2] 6:19 47:1 suggesting [1] 76:6 suggests [1] 58:22 suits [1] 77:18 supporters [1] 16:15 supporting [3] 1:24 2:11 56:6 suppose [3] 6:25 46:22 50:13 supposed [1] 11:6 SUPREME [2] 1:1,14 surely [2] 20:6 21:16 surprised [1] 67:8 swallow [1] 64:13 Swift [2] 78:16 79:13</p> <hr/> <p style="text-align: center;">T</p> <p>talked [1] 83:12 talks [3] 9:21 45:13 59:2 task [2] 50:18,21 Taylor [2] 78:16 79:12 teach [1] 74:19 teacher [4] 71:2,4 74:18 84:18 teacher's [1] 74:19 teachers [1] 71:1 teaching [1] 81:13 tells [1] 52:9 temporary [1] 70:8 term [1] 51:6 terms [1] 5:3 test [37] 3:23 4:2,11,18,23 10:20 18:4,23 19:24 30:11, 12 32:23 35:17,24 36:1,8 40:13,16 42:14 43:22 48:14 50:9 51:21 56:10,12 57:6 65:7 72:7,9 75:17 76:23 81:5,8,19,20,25 82:18 testified [1] 43:22 themselves [3] 13:13 37:3 52:11 there's [24] 5:18 9:12 10:25 14:4,9 22:1 24:8 26:14, 16 27:20 28:10,18 37:8 44:4 46:10,15 51:7 66:10 69:1 72:5 80:8 84:11,20,20 thereby [1] 82:20 therefore [2] 23:22 45:18 they've [1] 16:16 think's [1] 15:19 thinking [2] 14:19 76:8 thinks [1] 48:2 third [1] 84:6 third-party [1] 66:15 THOMAS [11] 4:22 5:14,24 32:12 37:8,18 38:4 55:19 68:21,22 69:8 though [7] 13:8 30:2 32:9</p>
--	---	---	---	--

Official

<p>38:6 62:20 68:19 76:7 thoughts [2] 16:21,22 threat [3] 36:25 53:20,21 three [1] 5:15 threshold [1] 25:19 title [2] 24:3 86:4 together [1] 54:24 topics [2] 53:2 77:11 town [26] 3:15 5:10 8:5 12:14 13:11 16:5,10 17:3,15 20:11 21:20 25:21 28:22, 24 29:13 31:22 32:5 44:6, 14 45:3,6 54:19,19 60:13 61:17 84:8 town's [1] 39:16 towns [1] 22:5 traditionally [1] 86:18 transfer [1] 82:19 transform [1] 47:6 transformed [1] 29:10 transforms [1] 45:14 treated [1] 85:7 treating [1] 85:6 true [1] 74:24 truth [1] 37:6 trying [4] 50:11 56:15 68:11 78:11 Tuesday [1] 1:11 turn [2] 22:3 60:11 turned [1] 28:13 turns [1] 65:20 tweak [1] 32:3 Twitter [1] 81:14 two [11] 15:11 18:9 25:6,10 30:15,17 34:18 38:13 54:24 72:10 81:7 type [5] 43:1 45:8,10 51:7 52:4</p> <hr/> <p style="text-align: center;">U</p> <p>ultimately [1] 69:11 uncertainty [1] 36:1 unclear [1] 63:23 Under [14] 3:23 4:5,9,23 5:3 23:15 40:1,16 44:23,23 55:6 65:7 73:25 82:17 undercuts [1] 85:22 undercutting [1] 86:9 understand [12] 12:19 13:16,17 15:4 17:21 24:8,22 32:22 49:24 53:24 65:24 78:12 understanding [3] 4:8 10:25 42:14 understood [3] 10:23 18:3 42:7 undo [1] 6:11 uniform [1] 68:16 unique [2] 46:21 47:25 UNITED [8] 1:1,15,24 2:10 21:21 56:5 81:5 82:1 University [2] 36:10 81:14 unless [4] 30:5,9,23 55:15 unlike [1] 20:5</p>	<p>unsegregated [1] 61:19 until [5] 7:4 8:23 54:6 55:3 70:9 up [16] 5:3 7:9 12:5 14:21 23:2 25:24 26:19 36:11 41:25 53:24 61:21 67:5,19,19 68:1 72:13 update [1] 27:16 upset [1] 77:17 usage [1] 49:10 user [3] 4:1 36:18 38:2 uses [2] 33:7 71:16 using [15] 4:4 8:11,18,21 11:1 25:20 32:10 52:14,18 53:3,16 58:15 71:20 73:9 84:21</p> <hr/> <p style="text-align: center;">V</p> <p>value [1] 84:6 values [4] 82:23 83:1,12 85:13 various [2] 81:23 86:15 verses [3] 58:4,5,7 version [1] 75:15 versus [4] 3:4 25:18 79:18 86:17 veto [1] 70:9 VICTORIA [3] 1:20 2:6 35:6 view [2] 9:1 56:17 viewed [1] 71:20 viewpoint [1] 64:25 views [1] 59:1 violate [1] 52:21 virtual [2] 68:7,19 virtue [3] 8:3 35:20 36:5 voices [1] 37:5</p> <hr/> <p style="text-align: center;">W</p> <p>walk [1] 31:14 wanted [6] 22:11 28:20 31:12 44:7,17 54:11 wants [3] 9:16 54:21,22 warned [1] 64:18 Washington [3] 1:10,18, 23 water [10] 28:7,9,12 29:7,8 44:2,3,8 84:1,2 way [34] 6:6 7:11 8:10,20, 25,25 10:3 12:12 19:18,20 20:17,19 21:22 22:2,17 25:19,24 29:23 31:7,19,24 32:7 34:25 39:24 40:8 50:25 51:24 56:19 59:25 66:3 67:7 70:24 77:14 85:7 ways [3] 17:9 18:21 20:15 wearing [3] 58:18 68:15 73:5 weather [2] 26:9,15 website [3] 5:16 7:24 71:16 welcome [2] 4:21 37:7 Wesleyan [1] 36:10 whatever [12] 9:16 15:3 24:</p>	<p>15 26:9,15 29:9 30:5 40:7 42:12 67:11,16 70:18 whatnot [1] 7:17 Whereupon [1] 86:24 whether [21] 7:9 10:21 17:23 18:11 22:19,25 23:4,21 24:14 34:1 37:13 48:14 51:10,25 56:15 60:22 63:24 64:22 68:6,7 85:17 white [3] 16:9 32:7 84:22 who's [7] 16:23,23 28:21 54:20 59:24 69:7,7 whole [6] 16:24 20:5 24:24 37:5 64:14 69:22 whom [1] 34:23 wide [1] 31:21 wife [1] 36:14 will [18] 16:7 17:6 36:1 37:2, 6 54:15,15 61:20,20,20,21 76:12,20 77:5 80:15 83:16, 18 86:13 willing [1] 86:19 win [2] 4:22 40:16 within [4] 21:11 39:22,23 50:21 without [3] 31:17 43:1 74:15 word [1] 45:25 words [3] 15:12 43:17 50:9 work [4] 9:8,22 27:11 36:15 work-related [1] 10:15 working [1] 10:3 workplace [1] 70:24 works [3] 20:15 25:8 67:24 world [7] 15:14 58:13 60:3, 9 76:17,19 80:12 worry [1] 76:5 worst [1] 19:24 writing [1] 65:12 written [3] 48:15 50:19 70:19 wrongly [1] 35:23</p> <hr/> <p style="text-align: center;">Y</p> <p>years [2] 36:11 75:21 yourself [4] 19:6,13 20:24 24:1</p> <hr/> <p style="text-align: center;">Z</p> <p>Zoom [1] 60:23</p>
--	--	---