SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - -

NANCY WILLIAMS, ET AL.,)

Petitioners,)

v.) No. 23-191

FITZGERALD WASHINGTON, ALABAMA)

SECRETARY OF LABOR,)

Respondent.)

- - - - - - - - - - - - - - - - - - -

Pages: 1 through 93

Place: Washington, D.C.

Date: October 7, 2024

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - -

NANCY WILLIAMS, ET AL.,)
Petitioners,)
v.) No. 23-191
FITZGERALD WASHINGTON, ALABAMA)
SECRETARY OF LABOR,)
Respondent.)

- - - - - - - - - - - - - - - - - - -

Washington, D.C.
Monday, October 7, 2024

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

APPEARANCES:
ADAM G. UNIKOWSKY, ESQUIRE, Washington, D.C.; on behalf of the Petitioners.
EDMUND G. LaCOUR, JR., Solicitor General, Montgomery, Alabama; on behalf of the Respondent.

C O N T E N T S

ORAL ARGUMENT OF: PAGE:

ADAM G. UNIKOWSKY, ESQ.

On behalf of the Petitioners 3

EDMUND G. LaCOUR, JR., ESQ.

On behalf of Respondent 51

REBUTTAL ARGUMENT OF:

ADAM G. UNIKOWSKY, ESQ.

On behalf of the Petitioners 89

1 P R O C E E D I N G S
2 (10:05 a.m.)
3 CHIEF JUSTICE ROBERTS: We will hear
4 argument first this term in Case 23-191,
5 Williams versus Fitzgerald.
6 Mr. Unikowsky.
7 ORAL ARGUMENT OF ADAM G. UNIKOWSKY
8 ON BEHALF OF THE PETITIONERS
9 MR. UNIKOWSKY: Mr. Chief Justice, and
10 may it please the Court:
11 Patsy and Felder control this case.
12 In Patsy, this Court held that a failure to
13 exhaust was not a defense to liability under
14 Section 1983. In this case, however, the
15 Supreme Court of Alabama dismissed Petitioners'
16 claims because Petitioners failed to exhaust,
17 contradicting Patsy's holding.
18 Felder confirms that Patsy applies in
19 state court. This Court reasoned that the
20 dominant characteristic of a civil rights claim
21 is that it's judicially enforceable in the first
22 instance, and that characteristic does not vary
23 depending on whether the suit is filed in
24 federal or state court. The same reasoning
25 applies to this case.

1 Respondent characterizes Alabama's
2 statute as a neutral procedural rule. But
3 there's nothing neutral about it. A claimant
4 has to seek relief from the Secretary before
5 suing the Secretary. The claimant never -- the
6 Secretary never has to seek relief from the
7 claimant for anything and never has any reason
8 to exhaust any remedy.
9 Respondent also emphasizes that
10 Alabama's law is jurisdictional. But this Court
11 has held that a state cannot avoid preemption by
12 defining the jurisdiction of state courts to
13 exclude cases in which the defendant asserts an
14 affirmative defense that this Court has held is
15 not available. And that's exactly what happened
16 in this case.
17 Finally and at a minimum, the Alabama
18 statute is preempted as applied to this case in
19 which the Alabama Supreme Court reached the
20 Kafkaesque conclusion that Petitioners could not
21 challenge their inability to exhaust precisely
22 because of their inability to exhaust.
23 I welcome the Court's questions.
24 JUSTICE THOMAS: Mr. Unikowsky, would
25 you have the same objection if Alabama required

these claims to be made in a lower state court?

MR. UNIKOWSKY: No, Your Honor. I think the state is allowed to direct these claims to a -- to a court as long as there's no exhaustion requirement.

JUSTICE THOMAS: Well, what's the difference? If it's -- if -- if -- let's say -- and I'm just speculating -- that it required that it goes to something the equivalent of a municipal court before it -- before it goes to its trial court, how is that different from going to an agency? Isn't it a similar exhaustion problem?

MR. UNIKOWSKY: I don't think so. When I think of an exhaustion requirement, I think of a requirement to seek relief from the very person you're planning to sue before suing that person. So that's how Alabama's system works. You have to seek relief from the Secretary. You file a claim with an examiner, who is -- reports to the Secretary. You appeal to an appeals tribunal, which also reports to the Secretary. So you're seeking relief from the very entity that you're ultimately going to sue.

1 And that's the defect the Court
2 identified in the Felder case. I view that as
3 different as the state setting up its judicial
4 system to direct courts -- parties to a
5 third-party neutral.
6 CHIEF JUSTICE ROBERTS: What if,
7 instead of the requirement you're complaining --
8 the exhaustion requirement, what if the
9 requirement were simply that parties had to go
10 through a mediation process?
11 I think several jurisdictions have
12 that. I mean, it may -- it may not last long,
13 but before you can proceed with your suit, you
14 have to sit down, and there's a mediator that
15 sees -- tries to see if you can work it out.
16 MR. UNIKOWSKY: So I think that sounds
17 a little bit like the rule in Felder. So I -- I
18 probably would say that it's preempted, but I
19 think that would boil down to as to whether it's
20 really an exhaustion requirement.
21 The rule I extract from -- from Patsy
22 is that exhaustion requirements are -- are
23 preempted. You know, I think there are some
24 borderline cases about whether something really
25 qualifies as an exhaustion requirement. I think

1 that that question is not presented here because
2 it pretty clearly is a requirement of that
3 nature.
4 CHIEF JUSTICE ROBERTS: Well, I would
5 have thought that your -- your complaint is
6 focusing on the sort of delay, which is what the
7 exhaustion requirement simply imposes, and if
8 it's simply you've got -- you've got to try
9 mediation for a while, I don't know why you
10 would say that's also objectionable.
11 MR. UNIKOWSKY: Well, I think it would
12 depend on exactly what the nuts and bolts of the
13 requirements are. I mean, if you have to
14 present some version of a notice of claim to the
15 state agency and then go through a mediation
16 process, I might say that looks like the notice
17 of claim requirement in Wisconsin.
18 If you can sue right away and then the
19 court just sends the parties off to mediation
20 while the claim is pending, that doesn't sound
21 like an exhaustion requirement at all. It is
22 judicially enforceable in the first instance,
23 and then the court is just applying a particular
24 procedure to try to encourage a settlement.
25 So I think it would -- it would depend

1 on how the mediation rule worked.
2 JUSTICE BARRETT: Mr. Unikowsky, when
3 did the state statute of limitations start
4 running, or has it?
5 MR. UNIKOWSKY: So I think that's an
6 -- an unresolved question whether it would be
7 tolled or not. I think there is some risk that
8 it wouldn't be tolled, that the state might say
9 that, you know, it expired before you got the
10 chance to exhaust because that would be the rule
11 in federal court. But I don't think that the --
12 the lower courts decided whether there would be
13 tolling during the exhaustion process.
14 JUSTICE BARRETT: Has it expired for
15 federal purposes? You know, if your -- if your
16 plaintiffs -- if your plaintiffs -- if your
17 clients were to file in federal court --
18 MR. UNIKOWSKY: No, I don't think --
19 JUSTICE BARRETT: -- would they do so?
20 MR. UNIKOWSKY: We're seeking
21 forward-looking relief, injunctive relief, so
22 we're saying there's a continuing harm. So, no,
23 I think we could still file our -- our lawsuit
24 in federal court.
25 JUSTICE BARRETT: And just out of

1 curiosity, why didn't you file a lawsuit in
2 federal court? Why did you go to state?
3 MR. UNIKOWSKY: I think we felt the
4 state court was -- was best positioned to enter
5 an injunction against the -- the state agency.
6 State courts hear the overwhelming majority of
7 unemployment insurance claims. We just felt the
8 state court would be in the best position to
9 enter and administer an injunction. So that's
10 why we went to state court.
11 JUSTICE SOTOMAYOR: I'm -- I'm very
12 confused by this system. First of all, I'm not
13 sure what the exhaustion is. Is it just merely
14 of the claim for benefits, or do you also have
15 to -- the way I read the lower court's decision,
16 supreme court decision, which is you have to
17 exhaust your due process claim before the agency
18 as well.
19 MR. UNIKOWSKY: Right. So that --
20 JUSTICE SOTOMAYOR: They said both
21 things, not just that you have to exhaust trying
22 to get your remedies, but you have to go to the
23 very agency you're accusing of a due process
24 violation to cure it, correct?
25 MR. UNIKOWSKY: Correct. That was the

1 holding as a matter of state law. We argued
2 below that you had to exhaust your claim for
3 benefits but not the claim that the agency was
4 too slow. But we lost as a matter of state law
5 on that issue.
6 JUSTICE SOTOMAYOR: All right. Just
7 so I'm clear in my own mind, I think what
8 Justice Barrett was getting at, and I -- and I'm
9 not sure I understand this completely, how this
10 would work, can you go to state court? You
11 can't go to federal court to claim a due process
12 violation until you've been denied the process,
13 correct?
14 MR. UNIKOWSKY: That's correct.
15 JUSTICE SOTOMAYOR: So, if you -- do
16 you really have a workable alternative to go to
17 federal court as opposed to state court?
18 MR. UNIKOWSKY: Well --
19 JUSTICE SOTOMAYOR: You have to file
20 with the state to claim the benefits to start
21 with, correct?
22 MR. UNIKOWSKY: Correct.
23 JUSTICE SOTOMAYOR: And so you have to
24 be there. So how and when can you go to federal
25 court?

MR. UNIKOWSKY: Well, I think --

JUSTICE SOTOMAYOR: That -- that's what I don't understand from the other side, but do you understand it?

MR. UNIKOWSKY: I think you can go to federal court at any time, and your claim might lose on the merits if you haven't tried out the process from the state court, but you can still go. It's just the ground for dismissal wouldn't be a lack of exhaustion.

JUSTICE GORSUCH: It might be a lack of ripeness perhaps, though?

MR. UNIKOWSKY: Right. In principle, a federal court could dismiss for lack of ripeness, yes, but it just wouldn't be an exhaustion dismissal.

JUSTICE GORSUCH: So what's --

JUSTICE SOTOMAYOR: So you're really stuck in a state process with a loop that you can't get out of?

MR. UNIKOWSKY: Well, our view is that if we went to federal court in this case, the -- the federal court would not dismiss for lack of exhaustion under Patsy and would -- it would entertain our due process claims on the merits.

JUSTICE GORSUCH: Did you try a futility exception argument?

MR. UNIKOWSKY: I don't -- no, I don't think we -- we made that argument below.

JUSTICE GORSUCH: Do you -- do you have any reason to believe that Alabama doesn't recognize a futility exception requirement?

MR. UNIKOWSKY: Well, I -- I mean, we argued below that it would be absurd. In our brief --

JUSTICE GORSUCH: Yeah.

MR. UNIKOWSKY: -- we argued it would be absurd to --

JUSTICE GORSUCH: You argued it would be absurd and Catch 22 and --

MR. UNIKOWSKY: Right.

JUSTICE GORSUCH: -- Heller was trotted out. And we -- we hear that from time to time, but that's what a futility exception exists to -- to address. And I'm just curious whether you know whether Alabama law permits a futility argument, and -- and -- and you're saying, as I understand it, that none was attempted here in any event?

MR. UNIKOWSKY: So I don't know the

1 answer to the question. Alabama does say this
2 is a jurisdictional limitation, which implies to
3 me that there aren't equitable exceptions like
4 futility, but I -- I'm not sure.
5 JUSTICE GORSUCH: You don't know?
6 MR. UNIKOWSKY: I don't know.
7 JUSTICE GORSUCH: Okay. And then,
8 if -- if one were challenging a benefits
9 decision by the federal -- by the federal
10 government, there -- there's almost assuredly
11 going to be an exhaustion requirement, Social
12 Security disability benefits or whatever, in --
13 in federal court, and I'm just curious what you
14 might say about the incongruity of refusing to
15 allow a state to have a similar exhaustion
16 requirement that the federal government imposes
17 on Americans.
18 MR. UNIKOWSKY: Well, I don't think
19 it's incongruous at all because I think the
20 practical effect of our rule is that most claims
21 would be dismissed in state court if you're just
22 seeking benefits for -- for lack of merit
23 because you've gotten enough process.
24 In other words, if you -- if you just
25 file a claim in a state agency saying, I want

1 benefits, and then you get a bad decision from
2 the hearing examiner, and then you just go
3 straight to federal court and say, well, that
4 was a due process violation, I didn't get a good
5 hearing before the examiner, you would lose in
6 federal court. The federal court would say
7 there's no due process violation. You have
8 plenty of process in --
9 JUSTICE GORSUCH: No, I -- I --
10 MR. UNIKOWSKY: -- the state court.
11 JUSTICE GORSUCH: -- understand that.
12 I think we're speaking past each other.
13 So you -- you're -- you're saying that
14 Alabama can't have an exhaustion requirement,
15 correct?
16 MR. UNIKOWSKY: Only as applied to
17 Section 1983 claims.
18 JUSTICE GORSUCH: Right. Yeah. Yeah.
19 Right. Okay.
20 But, if I were to challenge my federal
21 disability benefit claim, identical claim, just
22 against a different government, here, instead of
23 the state, the federal government, you'd almost
24 assuredly have to exhaust your administrative
25 remedies before you could challenge that

1 decision, and I'm -- I'm just curious how you
2 reconcile that fact with -- with the relief you
3 seek here.
4 MR. UNIKOWSKY: So I'm actually not
5 sure that's the case if it's the type of claim
6 we're asserting here. Like, suppose you filed a
7 Social Security claim and it was stuck in the
8 agency for five, 10, 15 years.
9 JUSTICE GORSUCH: You'd have a
10 futility argument for sure.
11 MR. UNIKOWSKY: Yeah. I think you'd
12 be able to go to federal court.
13 JUSTICE GORSUCH: Yeah.
14 MR. UNIKOWSKY: That's right.
15 JUSTICE GORSUCH: Right. But,
16 otherwise, you'd have to exhaust, right?
17 MR. UNIKOWSKY: Right, unless --
18 JUSTICE GORSUCH: And that's what I'm
19 getting at, okay?
20 So, on the federal system, you have an
21 exhaustion requirement with a futility
22 exception. Assuming Alabama recognizes a
23 futility exception -- and I'll have that
24 question for counsel, I've done a little
25 research on it, it seems to have one -- why

1 shouldn't the state be allowed to have the exact
2 parallel situation that you'd have on the
3 federal system?
4 MR. UNIKOWSKY: I guess I think that
5 argument is incompatible with -- with the Felder
6 case. I mean, look at all the reasoning of the
7 Felder case. I think it would rebut that --
8 that suggestion. I mean, the Court held that
9 it's -- the state is not permitted to put that
10 type of barrier in front of the vindication of
11 the full right.
12 JUSTICE KAVANAUGH: What -- what does
13 Felder -- because that is the linchpin of your
14 argument, is that we've already decided this.
15 So what does -- what kind of state procedural
16 rules or rules does Felder still leave, and how
17 would you define the scope of that?
18 MR. UNIKOWSKY: So Felder left two
19 categories of rules that the State could apply
20 in its own courts.
21 One are neutral procedural rules. So
22 it gave the example of rules governing
23 substitution of parties and service of process,
24 rules that don't just apply to plaintiffs who
25 sue governmental defendants.

1 And then the second category was
2 certain jurisdictional rules. And Haywood
3 elaborated on this. The Court said that
4 jurisdictional rules that reflect concerns over
5 competence over the subject matter and the power
6 over the person, that jurisdictional rules are
7 designed to protect.
8 So, you know, examples of such rules
9 would be like in the -- the Herb case, a
10 jurisdictional rule that a territory -- a city
11 court can only hear cases arising from its
12 territorial limits. The Court upheld such a
13 rule. Or a case saying that the state won't
14 exercise jurisdiction over out-of-state
15 defendants if it's an out-of-state plaintiff.
16 The Court upheld such a rule in the Douglas case
17 from 1929.
18 So those are the types of
19 jurisdictional rules --
20 JUSTICE KAVANAUGH: Do you --
21 MR. UNIKOWSKY: -- that would --
22 JUSTICE KAVANAUGH: -- do you view
23 Felder as a preemption decision then?
24 MR. UNIKOWSKY: Yes, I view Felder as
25 a preemption decision.

1 JUSTICE KAVANAUGH: And what -- on
2 what basis was the preemption?
3 MR. UNIKOWSKY: So the Court talked
4 about purposes and objectives preemption in its
5 opinion. And we actually have no problem with
6 that. We agree with all of its analysis.
7 I actually think there would be a --
8 there's a straighter path to the result in
9 Felder. I just think there's a -- a direct
10 conflict because, when the Court helds -- holds
11 that an affirmative defense is not available, it
12 just means it's not available, regardless of
13 whether the adjudicator is a federal or state
14 judge.
15 So I view sort of direct -- I view
16 Felder as a direct conflict preemption case.
17 The Court did couch it in -- in purposes and
18 objectives language, possibly because, in that
19 case, it actually wasn't clear whether it was an
20 exhaustion requirement at all.
21 Unlike typical exhaustion
22 requirements, you don't have to wait for the
23 agency to rule. And so one of Wisconsin's
24 arguments in that case was this isn't exhaustion
25 like in Patsy. I think that's why the Court

1 walked through all of the -- the reasons that
2 the statute conflicted with, you know, the
3 purpose of Congress. And then it said, well,
4 actually, we think it is an exhaustion
5 requirement, and then Patsy's reasoning just --
6 just follows.
7 JUSTICE JACKSON: What -- what I guess
8 I'm confused about from your answer to Justice
9 Kavanaugh is how the jurisdictional and neutral
10 requirements relate to the -- the analysis in
11 Felder.
12 I mean, Felder's rule about whether or
13 not it was preempted didn't seem to have
14 anything to do with whether the rule was
15 jurisdictional or neutral.
16 So why do you suggest that that's
17 somehow a way to get out of Felder's analysis
18 about preemption?
19 MR. UNIKOWSKY: Well, I think -- so
20 Felder specifically said the rule in that case
21 wasn't neutral. So the Court has this whole
22 discussion about how, you know, it only applies
23 to -- to plaintiffs who sue the government. And
24 so that's -- that's not neutral as the Court --
25 JUSTICE JACKSON: Yeah, but that's not

1 what --
2 MR. UNIKOWSKY: -- understood the
3 question.
4 JUSTICE JACKSON: I mean, I'm looking
5 at the analysis in Felder and it -- as you said
6 subsequently, it's a direct preemption case. It
7 says that the notice of claim statute undermines
8 the uniquely federal remedy that is Section 1983
9 in several interrelated ways.
10 And then it talks about three ways,
11 one of which is that it conditions the right of
12 recovery that Congress has authorized. The
13 second is that it discriminates against the
14 federal right. And the third is that it -- it
15 looks like an exhaustion requirement, all right?
16 But, really, the reason it's preempted
17 is because it undermines the federal right. And
18 it seems to me that Alabama's law is doing all
19 of those three interrelated things. So I don't
20 understand why we care whether or not it's
21 jurisdictional or whether or not it's neutral
22 in -- in any given sense. It's doing what
23 Felder says you can't do because it undermines
24 the federal right.
25 MR. UNIKOWSKY: So I agree the Court

1 doesn't have to care about any of that stuff.
2 In fact, there is language in Felder that says
3 that even if a rule is neutral and procedural,
4 it still -- if, you know, it -- it -- it -- if
5 it undermines a federal right, it's still
6 preempted. And we'd be perfectly fine if the
7 Court went in that direction.
8 JUSTICE ALITO: Well --
9 MR. UNIKOWSKY: I -- I don't think
10 it's neutral and procedural, but -- I'm sorry,
11 Your Honor.
12 JUSTICE ALITO: Well, do you contest
13 the principle that state courts are generally
14 completely free to define the jurisdiction of
15 their courts?
16 MR. UNIKOWSKY: No, I don't contest
17 that general principle.
18 JUSTICE ALITO: But there are some
19 exceptions, right?
20 MR. UNIKOWSKY: Yes.
21 JUSTICE ALITO: So why isn't that body
22 of case law the appropriate body of case law to
23 apply here since the Alabama Supreme Court tells
24 us that this rule is jurisdictional? We
25 assume -- presumably have to accept that. This

is a matter of state court jurisdiction.

So why don't we look to the body of case law that explains when this general rule that the state courts can define the jurisdiction of their own courts gives way?

I know you want to talk about Patsy and Felder, but why is that -- neither of those involves jurisdiction.

MR. UNIKOWSKY: That's right. So this Court has upheld some jurisdictional rules and struck down others, and we're happy to talk about those cases.

So, in Howlett and most recently in Haywood, this Court held that jurisdictional rules were preempted, and in both those cases, the -- the rule of decision was that the state courts in general hear 1983 claims and the state courts sometimes hear claims against these particular defendants, and so the state cannot avoid preemption just by defining the jurisdiction of the state courts to exclude cases where this defense is asserted.

And, in fact, in the Howlett case, there's actually this language that says that Felder would not have come out the other way if

1 Wisconsin had said that state courts lack
2 jurisdiction over claims in which the notice of
3 claim requirement wasn't satisfied.
4 JUSTICE ALITO: Well, in Haywood, the
5 courts -- the Court concluded that the New York
6 rule evinced hostility toward 1983.
7 Can that be said here, when the
8 Alabama courts will entertain the 1983 claim,
9 it's just a question of when they will do it?
10 MR. UNIKOWSKY: Well, I think that you
11 would -- I mean, "hostility" is too strong a
12 word. But I think the State has a policy
13 disagreement with Congress over the merit of
14 hearing unexhausted claims.
15 Respondent's brief emphasizes that
16 Alabama made the policy judgment that exhaustion
17 is a good idea, it really helps the claimant.
18 And that's the policy judgment that is
19 inconsistent with the policy judgment that
20 Congress made when it enacted Section 1983
21 without an exhaustion requirement.
22 JUSTICE KAGAN: You have a broad
23 argument, Mr. Unikowsky, that if it's an
24 exhaustion requirement, it -- it -- it can't get
25 in the way of a lawsuit.

1 You also have a narrower argument that
2 has to do with this case. But what would be --
3 if you had to define a narrower class of cases
4 that are preempted so that if we wanted to avoid
5 the question of whether all preemption -- excuse
6 me, whether all exhaustion requirements were
7 preempted, what would that narrower class of
8 cases look like, and what justifies the
9 parameters?
10 MR. UNIKOWSKY: So I think the Court
11 could say that it's not going to rule on whether
12 all exhaustion requirements are preempted, but
13 it's going to say that this particular statute
14 is preempted as applied to all 1983 claims. And
15 that holding would avoid looking at the facts of
16 this particular case.
17 And I think the Court could reach that
18 conclusion by comparing the time limits here to
19 the time limits in Felder. So, in Felder, the
20 Court held that the statute undermines Section
21 1983 because the claimant only had 120 days to
22 bring the suit, and, therefore, the practical
23 effect of the notice of claim statute was to
24 immunize the state against many types of 1983
25 claims.

1 And so I think, you know, this case,
2 the time limits are actually much shorter. It's
3 -- it's seven days from receipt or 15 days from
4 mailing of a decision to file an internal appeal
5 to the appeals tribunal. It's also 15 days to
6 go to the board of appeals. One of the
7 Petitioners in this case alleges that he
8 couldn't appeal because that entire period came
9 and went when he was in the hospital on a
10 ventilator because of COVID.
11 So I think that the Court can hold
12 that this particular statute has the same type
13 of adverse effects on claimants as --
14 JUSTICE KAGAN: Just -- so it would be
15 a line about the degree of burden that's
16 attached to the 1983 right?
17 MR. UNIKOWSKY: That -- that's right.
18 It could -- it could go in that direction
19 because that was part of Felder's reasoning, and
20 so I think the Court can incorporate that.
21 JUSTICE KAGAN: I mean, it was part of
22 Felder's reasoning. Felder has this -- some
23 language that suggests a very broad rule
24 applying to all exhaustion requirements, but
25 then it also goes into the time limits. It has

1 a lot to do with, like, how much burden there is
2 on the 1983 right, and it also discusses the
3 purposes of the statute and whether those
4 purposes suggest a conflict with the policy of
5 1983.
6 And the relationship between or among
7 all of those things is not particularly clear
8 from the language of the opinion. It sort of
9 suggests that they don't really believe that
10 there's an absolute bar when it comes to
11 exhaustion requirements.
12 Do you agree with that? Do you have
13 any, you know, views about the relationship
14 among those three aspects of the Court's
15 reasoning?
16 MR. UNIKOWSKY: Yeah, I -- I'm not
17 sure I agree with that because I think the
18 reason there were so many different arguments in
19 Felder was that it wasn't really clear that was
20 an exhaustion requirement in the typical way of
21 you file your claim to the agency, you wait for
22 a couple years, you're trapped in purgatory, and
23 then you leave the agency, right? Because it
24 was just a notice of claim requirement, you just
25 submit your claim, and if you wait a particular

1 period and they haven't answered, you get to
2 sue.
3 And, in fact, in -- in -- in the part
4 of the opinion talking about exhaustion and --
5 and -- and Patsy, the Court says, well, you
6 know, the state says it's de minimis, implying
7 that, you know, maybe some exhaustion
8 requirements fall under Patsy, but this just
9 isn't one. And the Court says no, no, no, this
10 really looks like an exhaustion requirement.
11 But, because of that dispute, I think the Court
12 felt the need to go through, you know, all of
13 the other doctrinal machinery.
14 I think this exhaustion requirement is
15 exactly like the ones in Patsy. It's an
16 absolutely classic exhaustion requirement. You
17 go to the agency. You have to wait for it to
18 rule. As this case illustrates, you might have
19 to wait for several years before getting a
20 chance to go to court. And so I think Patsy's
21 reasoning that this is just not an affirmative
22 defense to a Section 1983 claim carries over to
23 this case.
24 JUSTICE BARRETT: Mr. Unikowsky,
25 how -- you know, we've said in our own contexts

1 about jurisdiction it's a term of many, many
2 meanings, too many. How are we supposed to --
3 like, let's say I agree with you that the
4 definition of jurisdiction has to be a federal
5 one.
6 How are we supposed to decide?
7 Because a different test does apply, right, if
8 this is a jurisdictional requirement than if
9 it's just a straight-up, you know, more
10 Felder-like scheme. So what is the test? How
11 do we decide if a state rule is really
12 jurisdictional or not?
13 MR. UNIKOWSKY: So the words of this
14 Court's cases, which I'm sure Your Honor knows
15 very well, is that it's really jurisdictional if
16 it reflects concerns over the power over the
17 person or competence over the subject matter
18 that jurisdictional rules are designed to
19 protect.
20 I certainly understand that that
21 formulation will not resolve any or even many
22 cases, but I think that just looking at how the
23 Courts in Howlett and Haywood reached their
24 conclusions -- so, in both cases, the Court held
25 that, number one, the state courts have general

1 jurisdiction over 1983 claims.
2 JUSTICE BARRETT: Mm-hmm.
3 MR. UNIKOWSKY: Number two, the state
4 courts in general had authority over these
5 defendants as long as certain other, you know,
6 conditions were satisfied. So, for example, in
7 Haywood, the Court emphasizes that you can get
8 injunctive relief against these defendants. And
9 so the Court said, well, if there's power over
10 1983 claims in general, power over these
11 defendants in general, the rule is not a bona
12 fide jurisdictional rule.
13 I think that that's the -- the
14 reasoning in those cases. And, again, carried
15 over to this case, I think you'd have the same
16 reasoning. Alabama courts generally have
17 jurisdiction over Section 1983 claims. There is
18 jurisdiction over this defendant as long as the
19 claim is exhausted. There's claim --
20 jurisdiction over unexhausted claims when there
21 is no exhaustion requirement in the particular
22 scheme.
23 All that's happening here is that the
24 state is cutting out from jurisdiction claims in
25 which the -- the -- the defendant has this

1 particular affirmative defense, even though this
2 Court has held that that's not a defense under
3 Section 1983.
4 And so I don't think the Court really
5 has to elaborate the exact lines here. Its --
6 the lines are a little bit blurry, but I think
7 that, you know, as applied to these particular
8 facts, you can just --
9 JUSTICE BARRETT: It's like a claims
10 processing rule --
11 MR. UNIKOWSKY: Right. Exactly.
12 JUSTICE BARRETT: -- rather than a
13 jurisdictional rule?
14 MR. UNIKOWSKY: Exactly. So, I mean,
15 you know, I think there's going to be a lot of
16 borderline cases, but I don't think this is --
17 this is one.
18 JUSTICE ALITO: I --
19 JUSTICE BARRETT: And let me just ask
20 you one question about how this scheme works
21 because I agree it's very odd. Is there some
22 mechanism when you're before this intermediate
23 tribunal where you actually fill out a piece of
24 paper and say, I'm asserting a due process claim
25 in addition to my claim for benefits? How would

one even exhaust the due process portion of this?

MR. UNIKOWSKY: So I've been wondering that too. I mean, maybe you can just go back right now to the appeals tribunal and, like, file, like, a 28(j) letter saying, hey, enough time has passed; you know, there's a due process violation. I don't -- I don't know if there's any procedural mechanism to do that that I'm aware of, but that does seem to be what the state court is requiring here.

JUSTICE ALITO: I came into this case thinking that perhaps there wasn't a great deal at stake since a plaintiff like your plaintiffs could always file in federal court and avoid the exhaustion requirement by doing that.

But what you just said in response to Justice Barrett makes me think that this could be much more important because, if we are going to read into the general rule that state courts can define their jurisdiction, what we have done in determining whether federal statutes are jurisdictional, which is pretty much to say, boy, it's really hard for us to conclude that anything is jurisdictional, then you are really

1 asking for a significant weakening of this
2 general rule which has been a -- a -- a landmark
3 rule for hundreds of years.
4 MR. UNIKOWSKY: So I'm not sure the
5 Court should engage in the sort of statutory
6 interpretation of state statutes that it would
7 engage in for federal statutes. That's not the
8 rule we're asking for, all right?
9 We're not quarreling with the state
10 court that, as a matter of state law, this is a
11 jurisdictional statute.
12 JUSTICE ALITO: Okay. Fine. All
13 right.
14 MR. UNIKOWSKY: Okay? What we're just
15 saying is that not all jurisdictional rules are
16 created alike for purposes of federal law, and
17 that distinction might sort of match the
18 jurisdictional versus claim processing type of
19 distinction that this Court has articulated --
20 JUSTICE ALITO: Okay.
21 MR. UNIKOWSKY: -- in federal cases.
22 JUSTICE JACKSON: And are you saying
23 that, assuming this is a state jurisdictional
24 rule, it cannot or can be preempted? What is --
25 I thought this case was about preemption, not

about the characterization of the state law.

So, if we agree and assume that the state law is jurisdictional, what implication for whether or not it can be preempted by federal law?

MR. UNIKOWSKY: In this case, I think there's no implications. It's preempted regardless of whether it's jurisdictional.

JUSTICE JACKSON: Why?

MR. UNIKOWSKY: Because this Court has held as far back as, like, the Mondou case in 1912 that a state court cannot decline jurisdiction over a federal claim because of a disagreement with -- with the federal policy allowing the claim to proceed.

And I think that's what's happening in this case. Alabama has the view that exhaustion is a good idea, and it has imposed that by statute. But Congress has decided that that's not the case, that you should be able to bring 1983 claims without having to exhaust. And so the rule --

JUSTICE JACKSON: And so it's a Supremacy Clause issue in terms of whether or not that has to be the outcome?

1 MR. UNIKOWSKY: Yeah. I think the
2 rule of decision applied by the state court in
3 this case is inconsistent with the rule of
4 decision that Section 1983 requires the state
5 court to adopt. So I think there's just direct
6 preemption in that way.
7 We're not disagreeing with the purpose
8 and objectives analysis in Felder. We agree
9 with that too. But I think there's an even more
10 straightforward way to get to the same outcome.
11 JUSTICE KAVANAUGH: Put aside Felder.
12 What is the problem with just going to federal
13 court?
14 MR. UNIKOWSKY: Well, we could have
15 gone to federal court, but there's a lot of
16 cases from this Court. I won't mention Felder,
17 but there's a lot of other cases --
18 JUSTICE KAVANAUGH: Well, what is the
19 real-world problem with just going to federal
20 court? Or maybe there aren't any and you're
21 just saying precedent says we can go to state
22 court. But do you have any real-world problems
23 with just going to federal court?
24 MR. UNIKOWSKY: Yeah, I think there's
25 a lot of reasons that you would want to go to

1 state court. So, first of all, the Pennhurst
2 doctrine sometimes prohibits plaintiffs from
3 bringing state law claims in federal court.
4 Federal courts also often talk -- have
5 abstention doctrines that prohibit bringing the
6 claim in federal court. There's a -- there's a
7 brief from two religious freedom organizations
8 that talks about the abstention doctrines in
9 some detail.
10 Also, there's practical concerns.
11 Like, in some cases, lawyers would just be more
12 familiar with the local state court. The vast
13 majority of unemployment insurance litigation in
14 Alabama happens in state court. And so, if a
15 lawyer may be more familiar with that tribunal,
16 they may spend their entire career practicing in
17 state court, and if they have a civil rights
18 claim from a claimant, then it makes sense for
19 them to go to state court.
20 JUSTICE KAVANAUGH: And you mentioned
21 this earlier, but a procedural due process claim
22 usually requires that you go through the state
23 processes first. Maybe that's how this case got
24 on the -- on the wrong track.
25 Do you agree with that?

1 MR. UNIKOWSKY: In general, yes. I
2 think that if you went to federal court and
3 asserted your due process claim without
4 exhausting, you'd usually lose, except in an
5 unusual case like this, where you're actually
6 challenging the inability to exhaust.
7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.
9 I want to make sure I have your
10 complete answer to the line of questioning I --
11 I understood Justice Kagan to be pursuing, I
12 mean -- and I think why you called this
13 Kafkaesque, which is because you're being told
14 you have to go to the state -- your -- your
15 claim is the state doesn't handle these things
16 in a timely fashion, they lose the papers, you
17 can't answer the phone, so why send them back?
18 If you have to go back there, that's -- your
19 whole point is you -- you -- you can't go back
20 there because they do such a -- that's what
21 you're challenging.
22 And I just want to make sure
23 whether -- if you had the most efficient state
24 procedure imaginable, you know, they answer the
25 phone on the first ring and they quickly give

1 you a decision, would your argument be the same,
2 that it doesn't matter?
3 MR. UNIKOWSKY: It would be the same.
4 We would definitely lose in that scenario, but
5 it would be the same argument, that you wouldn't
6 have to exhaust. So, if such a claim was filed
7 --
8 CHIEF JUSTICE ROBERTS: You would --
9 I'm just -- you would lose? In other words --
10 MR. UNIKOWSKY: On the merits. On the
11 merits, we would lose.
12 CHIEF JUSTICE ROBERTS: You would not
13 -- then the ruling would be you do not -- you --
14 you do -- you do have to go to the state before
15 pursuing your 1983 action?
16 MR. UNIKOWSKY: We don't think that --
17 CHIEF JUSTICE ROBERTS: I mean the
18 state agency.
19 MR. UNIKOWSKY: So we don't think
20 there should ever be an exhaustion requirement.
21 If you filed a suit in federal court
22 and said, you know, even though they answered on
23 the first ring, they should have been even
24 faster, there wouldn't be an exhaustion problem.
25 The federal court would just say there's no due

1 process violation. It's a great state agency.
2 It's very effective.
3 And we just want the state court to
4 apply the same rule of decision, right? You
5 don't have to exhaust, but your claim loses
6 because you're getting plenty of process and
7 there's no problem with the process.
8 CHIEF JUSTICE ROBERTS: Okay. Well,
9 then what was Kafkaesque about the process? I
10 understood you to say that that was the problem,
11 that it was -- it imposed a burden on your --
12 the exercise of your -- your federal right.
13 MR. UNIKOWSKY: What was Kafkaesque is
14 the ruling that we couldn't challenge our
15 inability to exhaust precisely because we
16 haven't exhausted. That was the problem.
17 Like, our -- the problem was we can't
18 exhaust effectively, and the state court held
19 that because you didn't exhaust --
20 CHIEF JUSTICE ROBERTS: Well, but what
21 if you can --
22 MR. UNIKOWSKY: -- you can't challenge
23 that.
24 CHIEF JUSTICE ROBERTS: -- what if you
25 can exhaust effectively?

MR. UNIKOWSKY: Well, then you wouldn't have a -- a claim.

I mean, I -- the problem is, as applied to this fact pattern, I think it doesn't make sense to apply an exhaustion requirement, and that's why we think that, as applied, effectively, what the statute is doing is granting the state immunity in the state courts from this.

CHIEF JUSTICE ROBERTS: Okay. My last question: You say "as applied to this fact pattern."

MR. UNIKOWSKY: Yes.

CHIEF JUSTICE ROBERTS: So tell me what the particulars of this fact pattern are that may not be the case in other situations.

MR. UNIKOWSKY: The particulars of this fact pattern is when the Petitioners are challenging their failure to exhaust and they're told that they can't challenge their failure to exhaust until they have, in fact, exhausted.

The problem with that is that as a practical matter, you're immunizing the state in the state court from the 1983 claim because you can't exhaust. So you're incapable of

1 challenging your inability to exhaust because
2 the state is saying you have to exhaust until
3 you can bring the challenge.
4 So there's no way to challenge in
5 state court at all, and so it's a de facto
6 immunity akin to the immunities that were in the
7 Haywood and -- and the Howlett case. So that's
8 our -- our narrowest argument on this.
9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.
11 Justice Thomas?
12 Justice Alito?
13 JUSTICE ALITO: Could you have sought
14 mandamus in state court to get a ruling in these
15 cases?
16 MR. UNIKOWSKY: So --
17 JUSTICE ALITO: An administrative
18 ruling in these cases?
19 MR. UNIKOWSKY: So there's a dictum
20 that is cited by Respondent from a 1997
21 intermediate appellate court case that says
22 that, in principle, mandamus could be available
23 if an agency intentionally sits on a claim and
24 drags its feet, but no mandamus claim was
25 asserted there.

1 I -- I think mandamus wouldn't be very
2 effective in this case for a few reasons.
3 So, first of all, of course, you have
4 to show a clear and indisputable right to the
5 writ, which is a higher standard than in an
6 ordinary civil case.
7 Also, you wouldn't -- the only thing
8 the state court could do is tell the state
9 agency to rule. It couldn't enter the other
10 remedies that -- that we're seeking in this
11 case. Mandamus is also a discretionary remedy,
12 and so I just don't think it's an effective
13 substitute for the 1983 claims we're asserting
14 today.
15 JUSTICE ALITO: What if a state has
16 a -- a regime under which the -- the -- the
17 person seeking the benefits first has to file
18 the claim and then there -- there's a -- there
19 are two levels of -- of appellate review,
20 administrative review, and after -- I assume
21 that you would admit that if the case were filed
22 in federal court, the -- the person would have
23 to seek the benefits in the first instance,
24 right?
25 MR. UNIKOWSKY: Yes. They wouldn't

1 have to -- it wouldn't be an exhaustion problem
2 under Patsy.
3 JUSTICE ALITO: No. Okay.
4 MR. UNIKOWSKY: They'd have to seek
5 the benefits because there's no violation if you
6 haven't tried the benefits.
7 JUSTICE ALITO: All right. And then
8 the -- then the -- the person says, oh, this
9 process is too long, I -- I want a quick
10 decision, they denied my claim. Then what?
11 MR. UNIKOWSKY: So --
12 JUSTICE ALITO: It's a violation of my
13 due process rights because this is more
14 elaborate than it needs to be.
15 MR. UNIKOWSKY: So, if your claim was
16 denied --
17 JUSTICE ALITO: Right.
18 MR. UNIKOWSKY: -- you can go to
19 federal court and you can file your claim and
20 you can say there was a due process violation,
21 and the court would adjudicate that.
22 If you jumped the gun and didn't wait
23 for all the process to wrap up, then probably
24 the federal court would say that there's no due
25 process problem. The state's given you plenty

of process. And we'd want the state court to reach the same ruling.

And if that's not the case, if you were collaterally attacking the state court administrative process and you finished it and there was still a due process violation, then maybe you'd win in federal court. And if you'd win in federal court, you should win in state court too. We're just asking to align the rules.

JUSTICE ALITO: Thank you.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

JUSTICE SOTOMAYOR: Counsel, I -- you say this is not a neutral rule because, in every other case where there's a due process violation of an agent -- of an agency's process in some way, people can go directly to state court, correct?

MR. UNIKOWSKY: That -- that's one reason it's not neutral. Another reason is Felder's reason, which is that it only applies to plaintiffs who sue the government.

JUSTICE SOTOMAYOR: Plaintiffs who sue the government but for this particular type of

1 benefit?
2 MR. UNIKOWSKY: Right.
3 JUSTICE SOTOMAYOR: So it is sui
4 generis to just one class of plaintiffs on one
5 potential constitutional violation?
6 MR. UNIKOWSKY: That's right.
7 JUSTICE SOTOMAYOR: Or take --
8 MR. UNIKOWSKY: It does apply to --
9 I -- it does apply to state law claims. I
10 acknowledge that. But it's not neutral in the
11 sense that it doesn't apply in private tort
12 litigation. It doesn't apply to other lawsuits
13 against the government.
14 JUSTICE SOTOMAYOR: I -- I guess I'm
15 having trouble with the jurisdictional argument
16 that my colleagues are concerned about.
17 This is not jurisdictional in the
18 sense of we're telling state courts that they
19 can't hear a claim, correct?
20 MR. UNIKOWSKY: That -- I agree with
21 that, Your Honor.
22 JUSTICE SOTOMAYOR: All right. We're
23 not saying this is a federal claim, so it has to
24 go to federal court. We're saying, no, you
25 state courts have the power to hear

constitutional -- 1983 constitutional claims. That your legislature permits you to do.

So it's not as if they're -- filed a neutral rule that says you can't hear 1983 claims, correct?

MR. UNIKOWSKY: Mm-hmm. I agree, Your Honor.

JUSTICE SOTOMAYOR: And so all we're saying is you, state courts, should decide in the first instance whether there is a due process violation, correct?

MR. UNIKOWSKY: That's correct. We're not saying in this Court that we necessarily deserve to win. We just want a chance to be heard.

JUSTICE SOTOMAYOR: Thank you.

CHIEF JUSTICE ROBERTS: Justice Kagan?

JUSTICE KAGAN: In the colloquy that you had with the Chief Justice, you started with the broad form of your argument and ended up with a narrower form, a much narrower form. In the delta between the two, it seems to me you're going to lose on the merits anyway.

In other words, if somebody goes in and says, I got $100, I really deserve $200,

they didn't listen to a certain category of evidence, that's a due process violation. You know, you've not made the argument, they're just going to throw you out, whether it's -- you call it on the merits or for -- for -- because your claim isn't ripe.

So why should we go to the broad form of the argument when nobody's going to win in that category of cases anyhow?

MR. UNIKOWSKY: I -- I guess I just think that's the cleanest reading of Felder. I mean, Felder has lots of different rationales, and I think all those rationales apply to exhaustion requirements in general. Or, even more narrowly, all those rationales apply to this statute whenever it's applied.

So the Court could go narrow. I just -- I just don't see a way of distinguishing Felder from any other case in which the exhaustion requirement is invoked.

But, you know, if the Court rules in our favor narrowly, obviously, that's -- that's fine from our perspective.

JUSTICE KAGAN: Thank you.

CHIEF JUSTICE ROBERTS: Justice

Gorsuch?

JUSTICE GORSUCH: This new narrow theory, what -- what exactly does it encompass? What class of cases?

MR. UNIKOWSKY: So the narrowest argument that I've articulated is, when there's a de facto immunity from the application of the rule, then there's a preemption problem.

JUSTICE GORSUCH: When it's impossible to exhaust? Is that -- is that another way of saying it?

MR. UNIKOWSKY: Well, when the very thing you're challenging is your failure to exhaust, then the state can't say you -- you failed to exhaust because, once you've exhausted, then your -- then your claim goes away because you -- you've exhausted and it becomes moot at that point.

So, essentially, you're immunizing the state from these claims that there's a due process violation in connection with the exhaustion procedure.

JUSTICE GORSUCH: I'm not sure I've got it, but let me try. That it's impossible to bring your claim?

1 MR. UNIKOWSKY: I think, applying this
2 rule, it's impossible to challenge the
3 exhaustion requirement in a state court, yes.
4 JUSTICE GORSUCH: Okay. And what if
5 it's not impossible here because of mandamus,
6 because you might have a futility argument? We
7 just don't know. Then what?
8 MR. UNIKOWSKY: So I don't think
9 Respondent has argued in favor of futility
10 arguments.
11 JUSTICE GORSUCH: Well, I think all of
12 this is kind of new, to be honest with you,
13 this -- this narrow theory. I -- I read your
14 brief as pressing the broad theory, but here we
15 are. Let -- let's say we just don't know
16 whether it is truly impossible here. What do we
17 do then?
18 MR. UNIKOWSKY: Well, I -- even if
19 it's not truly --
20 JUSTICE GORSUCH: Putting aside your
21 broad theory.
22 MR. UNIKOWSKY: No, I understand, Your
23 Honor.
24 Even if it's not truly impossible, I
25 still think that at least it -- it -- it puts a

condition, a significant condition in front of the vindication of the claim that's no less significant than the condition in -- in the Felder case.

JUSTICE GORSUCH: What if they're the same sorts of conditions that exist in the federal administrative realm? When we're dealing with a federal benefit and an agency doesn't rule, I'd make a futility argument and I'd maybe mandamus the agency.

MR. UNIKOWSKY: I guess I think nine -- Section 1983 is a special statute. This Court held --

JUSTICE GORSUCH: Okay.

MR. UNIKOWSKY: -- in Patsy that there's no exhaustion requirement. There's immediate access to a judicial forum. So I just think that's different from the mine-run case in which you're challenging a decision from the Social Security agency.

JUSTICE GORSUCH: Thank you.

CHIEF JUSTICE ROBERTS: Justice Kavanaugh?

Justice Barrett?

JUSTICE BARRETT: I just want to

1 clarify your answer to Justice Gorsuch.
2 He asked you to stick to the narrow
3 theory, but to answer, you reverted to the broad
4 one, that Patsy just precludes exhaustion
5 requirements generally.
6 If we do not agree with your reading
7 of Patsy, can you articulate -- try one more
8 time to articulate that narrow theory that
9 doesn't rely on Patsy?
10 MR. UNIKOWSKY: Sure. I would say
11 that there is a significant barrier to the
12 vindication of a claim challenging the inability
13 to exhaust a remedy when the court holds that
14 you have to exhaust a remedy in order to bring
15 that claim.
16 I mean, what we're trying to do is get
17 the state agency to give us hearings and give us
18 adequate notice. And what the state court said
19 is that because you didn't exhaust those
20 remedies precisely because we didn't get the
21 hearing and the notice, you can't bring your
22 claim.
23 So, even if Justice Gorsuch is correct
24 that there's some theoretical way with mandamus,
25 which we don't think this is an adequate

1 substitute, to bring the claim, I mean, there's
2 still a very significant barrier which is -- to
3 the bringing of the claim. So, you know, that
4 does place the type of barrier that I think
5 would conflict with Congress's objectives when
6 it enacted Section 1983.
7 JUSTICE BARRETT: Okay. Thanks.
8 CHIEF JUSTICE ROBERTS: Justice
9 Jackson?
10 Thank you, counsel.
11 Mr. LaCour.
12 ORAL ARGUMENT OF EDMUND G. LaCOUR, JR.
13 ON BEHALF OF THE RESPONDENT
14 MR. LaCOUR: Mr. Chief Justice, and
15 may it please the Court:
16 This Court finds historic state powers
17 to be preempted only when the text of federal
18 law makes that result clear. Nothing in 42
19 U.S.C. Section 1983 makes clear that it was
20 meant to preempt neutral jurisdictional rules
21 like the one at issue here.
22 Petitioners' reliance on Patsy ignores
23 the key difference between exhaustion rules
24 created by Congress and exhaustion doctrines
25 crafted by courts. The former may preempt, but

1 the latter do not. They are judge-made timing
2 rules, like ripeness and abstention, that do not
3 add elements to a federal right but merely
4 determine when a federal court is going to hear
5 it.
6 This Court's ripeness and abstention
7 holdings do not apply to state courts. Nor does
8 its determination that federal courts generally
9 should not send 1983 plaintiffs to the states.
10 Precedent confirms that 1983 does not contain a
11 categorical no-exhaustion element. In Johnson
12 v. Fankell, the Court did not require immediate
13 appellate review of a 1983 defense. In Ohio
14 Civil Rights Commission v. Dayton Christian
15 Schools from 1986, this Court applied Younger
16 abstention to force a 1983 plaintiff back into
17 state agency proceedings.
18 These decisions show that deferring
19 consideration of a federal right does not
20 necessarily alter or defeat it. Thus, while
21 some notice of claims rules, like the one in
22 Felder, are preempted as obstacles to
23 adjudication and liability, agency review is
24 typically a means of adjudication and does not
25 inherently conflict with 1983's remedial

purpose.

But, even if immediate judicial consideration were an unwritten element of 1983, neutral jurisdictional rules like Alabama's are still a valid excuse for declining jurisdiction. Reading 1983 to preempt such laws would raise serious constitutional questions that are best avoided.

I welcome the Court's questions.

JUSTICE THOMAS: Well, Mr. Unikowsky's argument as I understand it is that the exhaustion rules in Alabama makes it impossible for -- for him to pursue the due process claims that he has under 1983.

So would you respond to that?

MR. LaCOUR: Yes, Your Honor. Two points. One, as Justice Gorsuch was alluding to, that is a new argument that was not presented to the Alabama Supreme Court. It was not passed upon by the Alabama Supreme Court. It's not in the cert petition, and it's not properly before this Court. Their only argument is that even the most perfect agency adjudication, if it has an exhaustion rule, is preempted. And we think that, as Justice Kagan

1 was alluding to with Felder, that that rule has
2 already been rejected by this Court.
3 But looking at this as-applied
4 challenge to Alabama's law, we don't think that
5 it is the case that it functions as an immunity.
6 Mandamus is still available. There is still the
7 potential for a futility argument, one that was
8 not raised below.
9 And so it's simply not the case that
10 it is impossible to get an adjudication here.
11 JUSTICE SOTOMAYOR: I'm not sure how
12 it is possible given that, as I read the court's
13 decision below, you have to bring the due
14 process argument to the agency, and I don't see
15 any procedure to do that within the agency.
16 MR. LaCOUR: Well, Your Honor --
17 JUSTICE SOTOMAYOR: There's nothing
18 that -- there's no mandamus within the agency.
19 I don't know how the mandamus court would have
20 jurisdiction because it requires exhaustion.
21 So you're in a loop that I'm not sure
22 how this claimant gets out of.
23 MR. LaCOUR: Your Honor, I don't think
24 mandamus would require exhaustion. The point of
25 mandamus would be to break the sort of logjam

1 that Plaintiffs are complaining about here, but
2 they didn't take advantage of mandamus.
3 JUSTICE SOTOMAYOR: Well, Alabama --
4 Alabama ruled very broadly. It didn't say that
5 Mr. Williams, for example, who had a final
6 judgment that he was attacking, had a claim that
7 could be heard in court. And you seem to
8 concede in your briefs that he did. He got his
9 claim thrown out because he didn't file a notice
10 of claim.
11 Then he brought a due process argument
12 saying that the notice he received was
13 inadequate or the time limits were not proper
14 under due process. And the Alabama court
15 dismissed his action as unexhausted. That
16 sounds to me as if the due process claim has to
17 be exhausted within the agency.
18 MR. LaCOUR: Well, Your Honor, if --
19 if he had exhausted it and it was final, he had
20 the ability to file a direct appeal to the
21 circuit court.
22 JUSTICE SOTOMAYOR: He did.
23 MR. LaCOUR: No, Your Honor --
24 JUSTICE SOTOMAYOR: And the court --
25 he did. The court did what it did. And, all of

a sudden, he goes up to the Alabama Supreme Court and it dismisses it as unexhausted.

MR. LaCOUR: Your Honor, I think it's important to remember how this was actually litigated before the state courts. Their primary argument, if you go back to their briefs before the state courts, was that this exhaustion requirement didn't apply to sort of procedural challenges whatsoever. There was no 1983 claim --

JUSTICE SOTOMAYOR: Well, please just tell me what form -- where is it in this process that tells litigants, if we're not acting, you can go to the appeals council and file something and get them to order the agency to do something, and then, if the agency doesn't do it, maybe you've exhausted and you have a futility argument to go seek mandamus or to go do something in state court.

This is a Kafkaesque type of process that's going on here.

MR. LaCOUR: Your Honor, I don't think so. Alabama case law makes clear that mandamus is available and that you may be able to raise futility arguments.

JUSTICE SOTOMAYOR: It's discretionary mandamus, isn't it?

MR. LaCOUR: Correct, but we -- we presume that state courts --

JUSTICE SOTOMAYOR: And I don't know how --

MR. LaCOUR: -- are going to follow the federal Constitution.

JUSTICE SOTOMAYOR: -- I actually don't know how mandamus operates with respect to the exhaustion requirement.

MR. LaCOUR: Well, and that just points out the waiver problems that I was addressing earlier. None of this was briefed up below. None of this was argued in the blue brief either. And so what we are dealing with here is this categorical rule. And we don't think that even Patsy supports this categorical rule.

JUSTICE KAVANAUGH: Well, General, on -- on that question, you started the day but with the -- the text of federal law does not preempt, you know, and that's a fair argument and a good argument. It's just the argument that was in the dissent in Felder. Justice

1 O'Connor made exactly those same points, but it
2 was a dissent in Felder. And in the majority in
3 Felder, it made clear that the exhaustion
4 requirement by Wisconsin's law was problematic.
5 It said it "doesn't involve lengthy or expensive
6 administrative proceedings, but it forces
7 injured persons to seek satisfaction from those
8 alleged to have caused the injury in the first
9 place. Such a dispute resolution system may
10 have much to commend it, but that is a judgment
11 the current Congress must make."
12 In other words, the language in Felder
13 does seem -- contra Justice O'Connor's dissent,
14 the language in the majority in Felder does
15 seems to suggest that exhaustion requirements
16 generally -- and we can talk about how to define
17 those -- but generally are preempted even though
18 there's no text.
19 MR. LaCOUR: Well, a few things on
20 that point, Your Honor.
21 First is Felder did not just say Patsy
22 ruled and then, in a two-page opinion, end the
23 case. There was a detailed, nearly 15-page
24 preemption analysis there. And the Court made
25 clear there were really two key problems with

1 the Wisconsin law. One was that, in purpose and
2 effect, it minimized liability. And so there's
3 your clear conflict. You have a federal law
4 designed to impose liability and a state law
5 designed to minimize it. I think that is the
6 through line from Felder to Howlett to Haywood,
7 is those are immunity laws.
8 And, second, the Court said that the
9 law in Wisconsin frequently and predictably
10 defeated the 1983 claim. Now "defeat" means
11 that you're going to exercise jurisdiction over
12 it and then dismiss it with prejudice because it
13 is an affirmative defense that the defendants
14 were handed by Wisconsin, and that did result in
15 dismissals with prejudice.
16 Jurisdiction -- like the law at issue
17 in Alabama, jurisdiction's not an affirmative
18 defense. You would never say that an amount in
19 controversy requirement is an affirmative
20 defense. And it doesn't defeat the right. It
21 simply says we're not going to consider it.
22 And so there's no way for Alabama to
23 alter the 1983 right by merely --
24 JUSTICE JACKSON: But that's not all
25 that Felder --

1 MR. LaCOUR: -- declining jurisdiction
2 over it.
3 JUSTICE JACKSON: Counsel, that -- I
4 appreciate that summary of what Felder said, but
5 in the section on page 141 where it talks about
6 what it means to undermine for preemption
7 purposes, it, first of all, has three things,
8 not just two, and the three things aren't just
9 minimizing liability and defeating the 1983
10 claim.
11 It says it conditions the right of
12 recovery that Congress has authorized and does
13 so for a reason manifestly inconsistent with the
14 purposes of the federal statute. So that's one
15 thing.
16 And I appreciate that it coloned to
17 minimize government liability --
18 MR. LaCOUR: Yes.
19 JUSTICE JACKSON: -- but the point is
20 that it's inconsistent with the purposes of the
21 federal statute.
22 Second, the notice provision
23 discriminates against the federal right, and it
24 talks about the differences in the time limits
25 in a way that discriminates.

1 And then, finally, it operates in part
2 as an exhaustion requirement.
3 Now I appreciate that your counsel on
4 the other side is just homing in on the
5 exhaustion requirement, but Felder seems to take
6 it even beyond that. So can you explain why
7 Alabama's law is not doing the three things that
8 mattered in Felder to the preemption analysis?
9 MR. LaCOUR: Yes. So agency
10 adjudication is not a means of minimizing
11 liability. It is a means of adjudicating
12 whether or not claimants are entitled to money.
13 I think that's far different from the notice of
14 claims requirement in Felder, which had no
15 benefit whatsoever to plaintiffs.
16 Unlike here, the exhaustion
17 requirement in Alabama law can be beneficial to
18 plaintiffs because it keeps their well-heeled
19 employers or the Secretary from taking them to
20 court immediately --
21 JUSTICE JACKSON: Right. But can you
22 talk about the purposes of the federal statute,
23 right?
24 MR. LaCOUR: Yes. And --
25 JUSTICE JACKSON: Because I understood

1 preemption to be about inconsistency --
2 MR. LaCOUR: Right.
3 JUSTICE JACKSON: -- with the reasons
4 or the goals the federal statute was there.
5 So isn't a requirement like Alabama's,
6 which prohibits the ability to bring a due
7 process claim under these circumstances,
8 inconsistent with Section 1983, which is
9 supposed to be giving people the ability to make
10 these kinds of claims?
11 MR. LaCOUR: Your Honor, we're not
12 prohibiting anyone from bringing them. You get
13 to raise those very claims in front of the
14 agency first. And I think that's a key
15 difference between the Wisconsin law --
16 JUSTICE JACKSON: But not if the
17 agency won't process your papers.
18 MR. LaCOUR: Well, and -- and, Your
19 Honor, that's why we have mandamus. That's why
20 the futility arguments are -- are present as
21 well.
22 And then, second, there's -- there's a
23 key difference between going to an agency for an
24 adjudication and just being forced to go park
25 your claim for 120 days with the police officers

1 who purportedly beat you up, the law at issue in
2 Felder. Again, that in no way can benefit
3 plaintiffs. But the exhaustion requirement can
4 benefit plaintiffs.
5 And also, my -- my friend is -- is
6 incorrect. The exhaustion requirement does
7 apply to the Secretary as it applies to
8 claimants as well.
9 JUSTICE JACKSON: So your argument at
10 bottom is that this is consistent with
11 Congress's objectives in 1983? Because I
12 understood that to be the sort of umbrella
13 consideration with respect to preemption, which
14 is what I thought we were talking about here.
15 MR. LaCOUR: Yes. I -- I don't see
16 any conflict with the way Alabama has structured
17 judicial administration and with the purposes of
18 1983, which are to impose liability.
19 This is not a liability-minimizing
20 scheme. It was not designed to do that. It was
21 invented in 1935 to make unemployment benefits
22 available to people.
23 No one would think that the --
24 JUSTICE JACKSON: Has anybody ever
25 recovered in 1983 making these kinds of claims

1 in Alabama state court that you're aware of?
2 MR. LaCOUR: Your Honor, I -- I'm not
3 aware. I have not -- not seen one cited by my
4 friends and have not found one myself.
5 But I don't think anyone would say
6 that the Social Security Administration is set
7 up as an obstacle to people who are trying to
8 get disability benefits. It is the avenue for
9 getting that.
10 And it's the same thing for Department
11 of Labor.
12 JUSTICE KAGAN: So can I ask about the
13 dimensions of your argument in two different
14 ways? I'll give you just a couple
15 hypotheticals.
16 So one is suppose we take this out of
17 the employment context. We're not talking about
18 a benefit of any kind. There's a person who
19 has, like, a quintessential 1983 claim, which is
20 the improper use of police force, and Alabama
21 sets up a scheme where you have to go to the
22 police department first and you have to go
23 through these three levels of review before you
24 can bring that to court.
25 Is that perfectly okay? Does -- or

1 does that change matters?
2 MR. LaCOUR: I think, Your Honor, if
3 we're talking about case by case, then I think
4 it's time to affirm the Alabama Supreme Court's
5 decision because it was just this categorical
6 argument.
7 But, second, to get to your question,
8 you need to look to see does this look like a
9 rule of judicial administration or not.
10 It may be looking a lot more like
11 Felder and thus might be more suspect, but --
12 JUSTICE KAGAN: I -- I don't
13 understand. What makes it more suspect?
14 MR. LaCOUR: Well, it -- it might be
15 what are -- like, who is it that's doing the
16 adjudication? What are the sort of requirements
17 that bind them?
18 JUSTICE KAGAN: Yeah, I mean, it's
19 sort of set up the same way, but there, it's a
20 police board. You know, police officers are on
21 these boards, and they make you go through
22 three -- three different stages, and we make you
23 do all that for police boards of different
24 levels before you can take the claim to court.
25 MR. LaCOUR: Your Honor, again, if

it's particularly stringent, you might run into some problems like in the Brown case from 1949. If it looks like it's designed to minimize liability, you might run into some Felder problems.

JUSTICE KAGAN: Well, if, if, if.

Let's just say it's the same kind of thing, but it's in the police context.

MR. LaCOUR: Your Honor --

JUSTICE KAGAN: It's the same time limits. It's the same everything. There's no piece of paper that says we're doing this to prevent good claims. You know, it's -- but -- but it's in a -- it's in a different context, a non-benefits context, a quintessential 1983 context.

MR. LaCOUR: The Court has said in Howlett and Haywood that neutral rules of judicial administration are a valid excuse for refusing to entertain a federal claim.

So, if that is a valid and -- and jurisdictional rule that's been set up, then I think that would be okay.

JUSTICE ALITO: Well, why wouldn't --

JUSTICE KAGAN: Okay.

1 JUSTICE ALITO: -- that look an awful
2 lot like Haywood itself, a -- a rule that
3 evinces hostility to the 1983 claim? Because
4 there's no tradition of requiring this sort of
5 thing when a plaintiff wants to sue -- wants to
6 bring a classic Fourth Amendment 1983 claim.
7 MR. LaCOUR: Well, I think that
8 history could factor in. But, at the same time,
9 in Haywood, there was no way to get into state
10 court whatsoever.
11 I took it in Justice Kagan's
12 hypothetical that you -- you would get to court
13 eventually to raise your claim. And so -- and
14 this Court has said -- I think this Court's
15 rulings show that merely deferring consideration
16 of a claim is very different than defeating it.
17 So look at Johnson v. Fankell, where
18 you had a 1983 defense of qualified immunity
19 that was denied at summary judgment stage in the
20 Idaho trial court, and they wanted to take that
21 up immediately to the Idaho Supreme Court and
22 were not able to do so. 1983 did not give them
23 some right of interlocutory appeal. And I think
24 that's essentially what Petitioners are asking
25 for here, is a right of interlocutory appeal.

1 JUSTICE ALITO: Well, I -- I don't
2 want to derail -- Justice Kagan, I think, had a
3 number of hypotheticals, but -- so I -- I don't
4 want to interrupt that. But then, eventually, I
5 do want to ask you about Mr. Unikowsky's narrow
6 argument.
7 Did you want to --
8 JUSTICE KAGAN: It -- it doesn't
9 matter which way we do it.
10 JUSTICE ALITO: Okay. I'm not sure I
11 can capture exactly what his narrow argument is.
12 But suppose the narrow argument is that there's
13 no exhaustion requirement in a 1983 case in
14 state court, where it is, as a practical matter,
15 impossible or extraordinarily onerous to get a
16 decision. How would the state be hurt by that?
17 What would be wrong with that?
18 MR. LaCOUR: I think there might still
19 be some -- some sovereignty interest if you're
20 going to be reading the statute to require state
21 courts to exercise jurisdiction that the state
22 has never given them jurisdiction to exercise.
23 And that's why the Court has been
24 careful in -- even in Haywood to say that these
25 neutral and -- and truly jurisdictional rules

1 are a valid excuse for declining jurisdiction.
2 That's the nature of any
3 jurisdictional rule. That's going to keep some
4 cases out of court, so that can't be the test.
5 JUSTICE GORSUCH: But it -- it --
6 couldn't it be, though, that in some of those
7 cases at least, where it's truly impossible and
8 it really is a Catch 22, that that is evincing
9 hostility to the plaintiffs' claims and a Felder
10 argument might be made there?
11 MR. LaCOUR: Absolutely. Or even a
12 Haywood argument.
13 JUSTICE GORSUCH: Or even a Haywood
14 argument. I mean, you -- we just don't know
15 whether that's the case here.
16 MR. LaCOUR: Right.
17 JUSTICE GORSUCH: Yeah. All right.
18 JUSTICE KAGAN: How about if -- you
19 know, in Felder, there is a lot of talk about
20 the time limits. Here, the time limits are even
21 more stringent than they were in Felder.
22 Suppose we make them even more
23 stringent still, and let's add another bunch of
24 things. Let's say that instead of three levels
25 of review, there are five levels of review.

1 Let's say between each level you have to proceed
2 within five days, and then you have to bring
3 your court claim at the very end within five
4 days.
5 Let's say we have empirical evidence
6 that suggests that because the state
7 administrative process is very slow, it takes an
8 average of 10 years to actually get to court.
9 At that point, can we say that this is
10 so -- so onerous a process that it has to be in
11 conflict with 1983?
12 MR. LaCOUR: Your Honor, that sounds
13 like it -- it could fall under Haywood and --
14 and potentially be in conflict with 1983 under a
15 Haywood theory. Even if it is a truly
16 jurisdictional rule, that starts to look like an
17 evasion rather than something that's really
18 about the competence over the subject matter.
19 But, here, this truly is about
20 competence over the subject matter. You have an
21 expert agency -- like, since these claims
22 existed for the first time in 1935, they've
23 always been adjudicated in the first instance by
24 these hearing officers. They have expertise
25 when it comes to hearing these types of claims

1 because they hear thousands or hundreds of
2 thousands a year. They're applying the statutes
3 and regs again and again.
4 It's the exact sort of situation that
5 this Court confronted in Elgin v. Department of
6 Treasury, a Thunder Basin case about the Merit
7 Systems Protection Board, where the Court
8 recognized that the MSPB has certain expertise
9 because they hear these personnel claims
10 again --
11 JUSTICE KAVANAUGH: You're making a --
12 JUSTICE BARRETT: But the expert --
13 oh.
14 The expertise is in adjudicating the
15 entitle -- entitlement to unemployment, not the
16 due process claim, right?
17 MR. LaCOUR: But, Your Honor, a
18 similar argument was made in Elgin that the MSPB
19 doesn't typically hear constitutional claims.
20 And what the Court recognized was well, no, they
21 are going to hear some similar types of claims
22 that are going to come up again and again in
23 this context. For example, it's not fair
24 because I didn't get my notice on time;
25 therefore, excuse my lack of -- of --

1 JUSTICE BARRETT: But --
2 MR. LaCOURT: -- of filing the appeal.
3 And then that can be considered by the board of
4 appeals, the appeals tribunal, or -- or the
5 circuit court eventually.
6 JUSTICE BARRETT: So tell me -- and
7 this is just the clarifying question I was
8 trying to ask Mr. Unikowsky -- how does one
9 assert these due process claims, say, before the
10 intermediate tribunal? Is there a mechanism for
11 doing that? It just seems like everything that
12 was a description in the briefs was talking
13 about how to pursue getting your unemployment
14 benefit. How does one go about making this due
15 process argument before the agency?
16 MR. LaCOUR: Your Honor, my
17 understanding is it's a fairly informal process.
18 I -- I think it would be as simple as arguing
19 that this is not fair because the notice was
20 ineffective, for example.
21 But, again, ultimately, that issue was
22 not thoroughly briefed because that wasn't the
23 argument they were pressing before the state
24 supreme court.
25 JUSTICE KAVANAUGH: You're making your

position seem benign, but we have amicus briefs from a wide variety of groups, from ACLU and Public Citizen to religious liberty groups, to the Chamber of Commerce, all of which say that your rule will really hinder federal civil rights claims from getting into state court.

The religious liberty plaintiffs say that your position would "grind religious litigants into submission before they are able to have their claims heard in court." We see the same thing from the ACLU's brief. You want to respond to that?

MR. LaCOUR: Yeah. No, I think this Court's precedents in cases like Felder and Haywood help to guard against that. Plus, if the --

JUSTICE KAVANAUGH: They -- don't they guard against it by saying that exhaustion is not a requirement before you bring a 1983 suit in state court?

MR. LaCOUR: No, I -- Felder, again, did not deal with an agency adjudication. It dealt with a law that said park your claim here for four months and then -- and if you don't do that, you have an affirmative defense you're

1 going to be facing and you're going to lose,
2 which I think is -- is far different than --
3 JUSTICE KAVANAUGH: Yeah, but every --
4 just to pause there, your answer suggests that
5 I'm misreading Felder. Every state supreme
6 court that has considered the issue, I think,
7 before the Alabama Supreme Court has read it
8 just the way I just said.
9 MR. LaCOUR: Your Honor, I think -- I
10 think South Dakota was on our side, and then, in
11 some of those cases, you're dealing with --
12 JUSTICE KAVANAUGH: The vast majority
13 of state supreme courts.
14 MR. LaCOUR: We're definitely on the
15 short side of the split, but we don't spend --
16 JUSTICE KAVANAUGH: And the short side
17 of the split is because those state supreme
18 courts, almost uniformly, have read Felder to
19 mean you can't have exhaustion requirements -- a
20 very simple rule, you can't have exhaustion
21 requirements for 1983 in federal or state court.
22 And you have a good argument to the
23 contrary. The problem is it's in the O'Connor
24 dissent, not in the majority in Felder.
25 MR. LaCOUR: No, Your Honor, I -- I --

1 again, I think you have to read those statements
2 from Felder in their context, and, of course,
3 opinions are not statutes, but, if they were,
4 I'd invoke the presumption against superfluity.
5 There -- there's a lot more in Felder to suggest
6 that what was really the problem was that it was
7 trying to minimize liability. And there, the
8 conflict couldn't be clearer with 1983.
9 But I -- I cannot find in the text or
10 in Patsy this categorical no-exhaustion rule,
11 and I don't see how you square that with cases
12 like Ohio Civil Rights Commission, which I -- I
13 mentioned in my opening, and I apologize it's
14 not in the briefs, but it's a 1986 decision
15 where this Court applied Younger abstention to a
16 1983 claim to force that claimant back into a
17 state agency proceeding. Dayton Christian
18 Schools had fired a teacher on religious
19 grounds, sort of a precursor to Hosanna-Tabor.
20 The teacher went to the Civil Rights Commission
21 and said this was based on sex. And the
22 Commission opened an investigation. That 1983
23 plaintiff went to federal court and said we have
24 a free exercise right to be free from these
25 state proceedings altogether. And in an opinion

1 by then Justice Rehnquist, the Court said no,
2 take it up in the state agency, which again
3 shows that deferring consideration does not
4 defeat. And it also suggests that my friend's
5 position would lead to very strange outcomes
6 where a federal court in Ohio did not have to
7 hear that particular 1983 claim, but a state
8 court would have to. That just simply doesn't
9 add up.
10 And I think that gets to the point --
11 JUSTICE KAVANAUGH: You have just one
12 more. You -- you've invoked federalism and
13 respect for states, but I think the practical
14 effect of your rule, if we were to adopt it,
15 would be everyone or most people would go more
16 quickly to federal court and haul the state
17 before federal court. I'm just -- the irony of
18 that, can you comment on that?
19 MR. LaCOUR: I don't think so, Your
20 Honor. I don't think there's an incentive for
21 states to structure their courts in a way that's
22 necessarily going to send everything to federal
23 court. If they do, then so be it. But, at the
24 same time, that might be an incentive for --
25 JUSTICE KAVANAUGH: Well, these kinds

of claims, if you had problems, you know, a free exercise problem, a religion problem, or a procedural due process problem with the unemployment scheme in Alabama, you're just going to go to federal court, right?

MR. LaCOUR: Right, and as Mr. Unikowsky acknowledged, you'll lose on the merits. So I don't think that's going to be a serious problem here for Alabama.

JUSTICE JACKSON: Can I --

JUSTICE SOTOMAYOR: That's the point of suppressing the federal right in state court, isn't it? If you make the hoops so difficult to go through, then they have no remedy. Here, Mr. Williams was thrown out of -- out of the state process because he didn't receive notice because he was unconscious because of COVID, and he's had no remedy in their state court.

So, basically, what you're really saying is no, we're not hostile to a federal right because we know we're going to win no matter what we do.

MR. LaCOUR: Your Honor, I think --

JUSTICE SOTOMAYOR: And -- and one last question. Tell me where in your

1 regulations there is a process set out that --
2 that claimants can go through to speed up the
3 process.
4 MR. LaCOUR: Well, Your Honor --
5 JUSTICE SOTOMAYOR: All of them have
6 told me that they've appealed on time, they've
7 called a -- not all of them, but we have 21
8 plaintiffs here. Many of them filed their
9 appeal notices, letter after letter, phone call
10 after phone call, years and years that passed
11 before they received anything or, when they
12 received something, with no explanation.
13 So tell me where in your regulations
14 you tell claimants what they can do before the
15 agency if there's a due process violation.
16 MR. LaCOUR: Your Honor, I don't have
17 chapter and verse for you because, again, this
18 was not raised --
19 JUSTICE SOTOMAYOR: You can provide a
20 letter. I don't want to hear about mandamus
21 or -- I want to hear where in the regulations
22 these people didn't do what the regulations said
23 they could have done.
24 MR. LaCOUR: Your Honor, mandamus is
25 not something they're required to do, but it is

1 something that is available --
2 JUSTICE SOTOMAYOR: And it's --
3 MR. LaCOUR: -- to them.
4 JUSTICE SOTOMAYOR: -- discretionary,
5 correct?
6 JUSTICE JACKSON: Counsel, can --
7 MR. LaCOUR: Yes, Your Honor, but it
8 is one way to avoid due process problems.
9 JUSTICE KAGAN: In the --
10 JUSTICE JACKSON: Counsel, can I just
11 -- oh, go ahead.
12 JUSTICE KAGAN: No, go ahead.
13 JUSTICE JACKSON: Can I just get you
14 to focus in quickly on Felder, and you -- you've
15 said many times that you see that case as the
16 problem being about minimizing liability.
17 But I'm quoting from the case when it
18 says that this is "essentially" -- "the question
19 is essentially one of preemption. Is the
20 application of the state's law to Section 1983
21 actions brought in state courts consistent with
22 the goals of the federal civil rights laws, or
23 does the enforcement of such a requirement
24 instead stand as an obstacle to the
25 accomplishment and execution of the full

1 purposes of the objectives of Congress?"
2 I thought we were thinking about is it
3 an obstacle, is it consistent? And what I'm
4 worried about is that if we start moving away
5 from that conception of what it means to be
6 preempted, that same kind of thought process and
7 doctrine is used in other laws, not just 1983.
8 For example, we have the Federal
9 Arbitration Act, which has a preemption standard
10 that is almost identical to what Felder just
11 said about whether or not it's consistent. And
12 we've repeatedly said that state laws that do
13 things like -- you know, related to contracts,
14 et cetera, et cetera, are preempted by the FAA
15 for the very same reasons.
16 So can you help us not to be concerned
17 about shifting the standard of what it means to
18 preempt and the way in which that might actually
19 implicate other preemption doctrines and other
20 laws?
21 MR. LaCOUR: So, Your Honor, I think
22 -- I think the real concern would be adopting
23 the view of preemption from my friend, which
24 doesn't really seem to line up with the more
25 disciplined and text-based approach that this

1 Court traditionally --
2 JUSTICE JACKSON: No, I -- we can --
3 MR. LaCOUR: -- takes in the
4 preemption context.
5 JUSTICE JACKSON: Let's say we reject
6 saying there's something about Felder that is
7 focused on exhaustion. I'm looking at Felder as
8 a preemption case that has a standard that talks
9 about the inconsistency with the purposes of the
10 federal statute --
11 MR. LaCOUR: Mm-hmm.
12 JUSTICE JACKSON: -- is it an obstacle
13 to the accomplishment and execution?
14 And I got to tell you, in the
15 Concepcion case in AT&T versus Mobility, that
16 exact same concept is governing what the Court
17 is doing with respect to preemption. So, if we
18 move from that, if we're focused more on
19 minimizing liability or whatever else you say
20 you think Felder means, I'm worried that that's
21 going to bleed over into these other kinds of
22 preemption areas.
23 MR. LaCOUR: Your Honor, what I'd say
24 to that is, why was the law an obstacle? And
25 the text answers that question. State officials

shall be liable. What's the state law do? Minimizes liability. So there is your text-based preemption problem right there on the face of the statute.

JUSTICE JACKSON: It's not in the text of the statute.

MR. LaCOUR: Shall be liable --

JUSTICE JACKSON: Minimizing liability is not in --

MR. LaCOUR: Correct. But the -- the law at issue there was part of a broader liability scheme -- the Felder Court recognized this -- that was enacted after Wisconsin had done away with judicial immunity. The Wisconsin Supreme Court had done away with judicial immunity. And so this new immunity statute was enacted that had damages caps and also had this notice of claims requirement. Wisconsin extolled this as a way to minimize liability.

So there wasn't really a question as to what the law was doing. But --

JUSTICE KAGAN: You believe that plaintiffs here could have brought suit immediately in federal court, is that right?

MR. LaCOUR: Yes, Your Honor.

1 JUSTICE KAGAN: So, I mean, this is
2 Felder's -- it seems to me there's a lot going
3 on in Felder. But one -- its most essential
4 holding is it quotes Patsy, and it says -- you
5 know, Patsy said, too bad about an exhaustion
6 requirement. You have to be able to bring suit
7 in federal court immediately.
8 And then -- and this is on page 147 --
9 it said should there be any different rule with
10 respect to state courts, and it says, given the
11 evil at which the federal civil rights
12 legislation was aimed, there's simply no reason
13 to suppose that Congress meant to have that kind
14 of distinction.
15 So, I mean, that seems just like a
16 very clear-cut understanding of Felder, that
17 once we say that the exhaustion requirement does
18 not preclude suit in state courts, we understand
19 1980 -- does not preclude suit in federal court,
20 we understand 1983 to do the same thing with
21 respect to state courts.
22 MR. LaCOUR: Your Honor, even if I
23 grant you that, this is still a jurisdictional
24 rule, and you've still said in Howlett and
25 Haywood that neutral jurisdictional rules are a

1 valid excuse to keeping federal claims out.
2 So, even if there is some
3 get-to-court-immediately element of 1983, our --
4 our courts do not exercise jurisdiction over
5 that type of claim.
6 JUSTICE KAGAN: Thank you.
7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.
9 Justice Thomas, anything further?
10 Justice Alito?
11 Justice Sotomayor?
12 Justice Kagan?
13 JUSTICE GORSUCH: Your friend on the
14 other side said, if it went to federal court,
15 there might be a ripeness issue and an
16 abstention issue. What are your thoughts?
17 MR. LaCOUR: I think that is -- that's
18 likely true. We've seen that in a lot of courts
19 of appeals decisions. We cited Cotton
20 v. Jackson as a -- I think it's a 2011 circuit
21 decision, where they lost on the merits for not
22 taking advantage of the process and running to
23 federal court too soon.
24 JUSTICE GORSUCH: Okay. And I take
25 your point that -- as I understand it, it's --

1 your argument is it's hard for this to be --
2 an exhaustion requirement of administrative
3 agency processes to be an obstacle that's
4 improper given that the federal government has
5 similar administrative exhaustion requirements.
6 But there does seem to be a tremendous
7 record of difficulty of -- of individuals
8 accessing that administrative process here.
9 What assurance do you have or can you
10 give us that -- that -- that the State is
11 addressing these claims in -- in a proper and
12 timely manner?
13 MR. LaCOUR: Yes, Your Honor, two
14 points.
15 The reason we point to the federal
16 analog is to show that this really does concern
17 competence over the subject matter, like the
18 Court has discussed in Howlett and Haywood.
19 And then, as to assurances that the
20 State is taking this seriously -- this is
21 obviously outside of the record because we're at
22 the motion to dismiss stage -- but we have
23 tripled the number of hearing officers we have
24 from eight to 25, and we have greatly reduced
25 the backlog. I think, in -- in January of 2022,

that backlog of people who had waited at least 21 days for a hearing was up to over 131,000. Today, it's down to about 7,410, and we anticipate clearing that backlog by the end of the year.

JUSTICE GORSUCH: Was some of that backlog due to COVID or -- or other things?

MR. LaCOUR: Absolutely, Your Honor. I think a million additional unemployment claims. And then, of course, when you have COVID, it makes it harder to -- to hire people and makes it harder to retain people too during the height of the pandemic.

JUSTICE GORSUCH: Thank you.

CHIEF JUSTICE ROBERTS: Justice Kavanaugh?

Justice Barrett?

JUSTICE BARRETT: I asked Mr. Unikowsky about the state statute of limitations. I'm going to ask you the same question. When does the state statute of limitations start running on these claims?

And to clarify, my concern is, if somehow the state statute of limitations is running, you know, because the due process

1 violation has already begun in the agency, is it
2 the case that that statute of limitations might
3 run in state, for purposes of state court,
4 before they can even get there?
5 MR. LaCOUR: Your Honor, of course,
6 this hasn't been briefed. I -- I don't think
7 that would be an issue because, I mean, the due
8 process violation is incomplete until the
9 process has run out.
10 So I -- I think -- and, certainly, if
11 they were to appeal out of the agency proceeding
12 directly to the circuit court, there wouldn't be
13 any statute of limitations problem in that
14 situation either.
15 JUSTICE BARRETT: Okay. My other
16 question is: So a couple times in your brief
17 you called the agency proceeding a proper
18 proceeding for redress under 1983, and you said
19 there's no reason for this Court to distinguish
20 between bringing a 1983 claim in something
21 that's called a court versus sending it to an
22 agency.
23 Is that somehow different than the
24 exhaustion requirement? Can you just --
25 MR. LaCOUR: I think, Your Honor --

1 JUSTICE BARRETT: -- explain to me
2 what you're saying?
3 MR. LaCOUR: -- our -- our point there
4 is that we think the language suggests that
5 there is a great deal of discretion for the
6 states in terms of structuring their
7 adjudicatory processes.
8 And, in this instance, we have the
9 agency first functioning sort of as an adjunct.
10 They compile a useful record. That can then go
11 up for the circuit court to -- to review with de
12 novo review.
13 And that -- that's particularly
14 helpful for uncounseled claimants who maybe
15 don't have a lot of means because they just lost
16 their job. They can go through this informal
17 process, have a record. They don't have to go
18 through formal discovery and have a lawyer to
19 have that record when they do get to the circuit
20 court.
21 JUSTICE BARRETT: So is the
22 argument -- I mean, I guess I'm trying to
23 distinguish between an exhaustion requirement,
24 which is almost kind of like a pregame thing,
25 you know, it's a -- it's a threshold.

1 And this makes it sound like, if
2 you're saying this is part of the 1983 claim
3 itself or part of the adjudication, it's
4 actually not a delay of the 1983 claim. But is
5 your argument instead that this is actually part
6 of adjudicating the constitutional violation?
7 MR. LaCOUR: Your Honor, we -- we do
8 think it's advancing the purposes of 1983, which
9 are sort of remedial in ensuring that federal
10 rights are not being violated. But it's not a
11 1983 claim inside of the agency.
12 JUSTICE BARRETT: Okay. So that's --
13 okay. I just wanted to make sure I understood
14 your argument. Thank you.
15 MR. LaCOUR: Yes.
16 CHIEF JUSTICE ROBERTS: Justice
17 Jackson?
18 Thank you, counsel.
19 MR. LaCOUR: Thank you.
20 CHIEF JUSTICE ROBERTS: Rebuttal,
21 Mr. Unikowsky?
22 REBUTTAL ARGUMENT OF ADAM G. UNIKOWSKY
23 ON BEHALF OF THE PETITIONERS
24 MR. UNIKOWSKY: Thank you, Your Honor.
25 I just wanted to clarify one answer I

1 gave to Justice Gorsuch about ripeness. I did
2 acknowledge that ripeness is in general a
3 defense that a federal court can vindicate in a
4 Section 1983 case.
5 I wasn't trying to suggest that in
6 this particular case, if we went to federal
7 court, there would be a ripeness defense. I
8 think we waited long enough and our -- our claim
9 is ripe. So it was more a general point about
10 federal courts' powers to dismiss cases.
11 I'd like to say a couple of words
12 about the Felder case.
13 There's a lot of discussion this
14 morning about whether or not exhaustion was an
15 independent holding or whether the decision was
16 partly based on exhaustion, partly on other
17 considerations.
18 Even if the latter formulation is
19 correct, I actually think that every single
20 consideration in Felder also applies to this
21 case.
22 It's true that Felder talked about
23 whether the state was trying to minimize
24 liability. And my colleague said that the
25 agency system in general wasn't trying to

1 minimize liability.
2 I don't think that's the question. I
3 think the question is whether the exhaustion
4 requirement in particular is trying to minimize
5 liability, and I think the answer has to be yes.
6 The sole function of the exhaustion
7 requirement is to cause claims to be dismissed
8 when they're brought in circuit court. And
9 because the time limits are so tight, claims are
10 going to be predictably dismissed a lot more
11 frequently than the notice of claim requirement
12 at issue in -- in Wisconsin. And so -- in -- in
13 the Felder case. And so, ultimately, I think
14 every single consideration in Felder really
15 applies with equal force to this case.
16 So the Court doesn't need to parse out
17 which aspects of -- of the holding were holding
18 and which were alternative holdings, which were
19 dicta, because I think the entire decision
20 applies to this fact pattern.
21 On the question of jurisdictional
22 rules, I think the Court would really have to
23 overrule a lot of cases dating back to 1912 to
24 vindicate the argument that this is a
25 jurisdictional argument that can survive

1 preemption.
2 I think it's notable that the amicus
3 brief by several states actually does advocate
4 overruling all these cases back to 1912.
5 Respondent doesn't ask for that. And I think,
6 if the Court keeps those cases, then the result
7 in this case follows.
8 As back -- as far back as 1912, the
9 Court said that to -- the Court -- a state court
10 cannot decline jurisdiction based on
11 disagreement with the policy judgment of
12 Congress that a defense is unavailable. And
13 that's simply the principle we're asking to
14 carry forward today.
15 Finally, on this as-applied challenge,
16 I just wanted to point out that in the
17 proceedings below, immediately after asserting
18 our argument based on Patsy, we said it would be
19 absurd to make us wait for years in the
20 administrative process and then bring our
21 claims, which I think is reasonably construed as
22 the same type of as-applied argument we're
23 making this morning.
24 And we did make this argument in the
25 blue brief as well as the yellow brief, so I do

1 think it's teed up for the Court's
2 consideration.
3 If there's no further questions, we'd
4 ask the Court to reverse.
5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel. The case is submitted.
7 (Whereupon, at 11:21 a.m., the case
8 was submitted.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

$

$100 [1] **45:**25
$200 [1] **45:**25

1

10 [2] **15:**8 **70:**8
10:05 [2] **1:**16 **3:**2
11:21 [1] **93:**7
120 [2] **24:**21 **62:**25
131,000 [1] **86:**2
141 [1] **60:**5
147 [1] **83:**8
15 [3] **15:**8 **25:**3,5
15-page [1] **58:**23
1912 [4] **33:**12 **91:**23 **92:**4,8
1929 [1] **17:**17
1935 [2] **63:**21 **70:**22
1949 [1] **66:**2
1980 [1] **83:**19
1983 [69] **3:**14 **14:**17 **20:**8 **22:**17 **23:**6,8,20 **24:**14,21, 24 **25:**16 **26:**2,5 **27:**22 **29:** 1,10,17 **30:**3 **33:**21 **34:**4 **37:**15 **39:**24 **41:**13 **45:**1,4 **49:**12 **51:**6,19 **52:**9,10,13, 16 **53:**3,6,14 **56:**10 **59:**10, 23 **60:**9 **62:**8 **63:**11,18,25 **64:**19 **66:**15 **67:**3,6,18,22 **68:**13 **70:**11,14 **73:**19 **74:** 21 **75:**8,16,22 **76:**7 **79:**20 **80:**7 **83:**20 **84:**3 **87:**18,20 **89:**2,4,8,11 **90:**4
1983's [1] **52:**25
1986 [2] **52:**15 **75:**14
1997 [1] **40:**20

2

2011 [1] **84:**20
2022 [1] **85:**25
2024 [1] **1:**12
21 [2] **78:**7 **86:**2
22 [2] **12:**15 **69:**8
23-191 [1] **3:**4
25 [1] **85:**24
28(j [1] **31:**6

3

3 [1] **2:**4

4

42 [1] **51:**18

5

51 [1] **2:**6

7

7 [1] **1:**12
7,410 [1] **86:**3

8

89 [1] **2:**9

A

a.m [3] **1:**16 **3:**2 **93:**7
ability [3] **55:**20 **62:**6,9
able [6] **15:**12 **33:**20 **56:**24 **67:**22 **73:**9 **83:**6
above-entitled [1] **1:**14
absolute [1] **26:**10
absolutely [3] **27:**16 **69:**11 **86:**8
abstention [7] **35:**5,8 **52:**2, 6,16 **75:**15 **84:**16
absurd [4] **12:**9,13,15 **92:** 19
accept [1] **21:**25
access [1] **49:**17
accessing [1] **85:**8
accomplishment [2] **79:** 25 **81:**13
accusing [1] **9:**23
acknowledge [2] **44:**10 **90:** 2
acknowledged [1] **77:**7
ACLU [1] **73:**2
ACLU's [1] **73:**11
Act [1] **80:**9
acting [1] **56:**13
action [2] **37:**15 **55:**15
actions [1] **79:**21
actually [17] **15:**4 **18:**5,7,19 **19:**4 **22:**24 **25:**2 **30:**23 **36:** 5 **56:**4 **57:**9 **70:**8 **80:**18 **89:** 4,5 **90:**19 **92:**3
ADAM [5] **1:**19 **2:**3,8 **3:**7 **89:** 22
add [3] **52:**3 **69:**23 **76:**9
addition [1] **30:**25
additional [1] **86:**9
address [1] **12:**20
addressing [2] **57:**14 **85:** 11
adequate [2] **50:**18,25
adjudicate [1] **42:**21
adjudicated [1] **70:**23
adjudicating [3] **61:**11 **71:** 14 **89:**6
adjudication [9] **52:**23,24 **53:**24 **54:**10 **61:**10 **62:**24 **65:**16 **73:**22 **89:**3
adjudicator [1] **18:**13
adjudicatory [1] **88:**7
adjunct [1] **88:**9
administer [1] **9:**9
administration [4] **63:**17 **64:**6 **65:**9 **66:**19
administrative [11] **14:**24 **40:**17 **41:**20 **43:**5 **49:**7 **58:** 6 **70:**7 **85:**2,5,8 **92:**20
admit [1] **41:**21
adopt [2] **34:**5 **76:**14
adopting [1] **80:**22
advancing [1] **89:**8
advantage [2] **55:**2 **84:**22
adverse [1] **25:**13
advocate [1] **92:**3
affirm [1] **65:**4
affirmative [8] **4:**14 **18:**11 **27:**21 **30:**1 **59:**13,17,19 **73:** 25
agency [47] **5:**12 **7:**15 **9:**5, 17,23 **10:**3 **13:**25 **15:**8 **18:** 23 **26:**21,23 **27:**17 **37:**18 **38:**1 **40:**23 **41:**9 **49:**8,10, 20 **50:**17 **52:**17,23 **53:**23 **54:**14,15,18 **55:**17 **56:**15, 16 **61:**9 **62:**14,17,23 **70:**21 **72:**15 **73:**22 **75:**17 **76:**2 **78:** 15 **85:**3 **87:**1,11,17,22 **88:**9 **89:**11 **90:**25
agency's [1] **43:**17
agent [1] **43:**17
agree [12] **18:**6 **20:**25 **26:**12, 17 **28:**3 **30:**21 **33:**2 **34:**8 **35:**25 **44:**20 **45:**6 **50:**6
ahead [2] **79:**11,12
aimed [1] **83:**12
akin [1] **40:**6
AL [1] **1:**3
ALABAMA [35] **1:**6,22 **3:** 15 **4:**17,19,25 **12:**6,21 **13:**1 **14:**14 **15:**22 **21:**23 **23:**8,16 **29:**16 **33:**17 **35:**14 **53:**12, 19,20 **55:**3,4,14 **56:**1,23 **59:** 17,22 **61:**17 **63:**16 **64:**1,20 **65:**4 **74:**7 **77:**4,9
Alabama's [8] **4:**1,10 **5:**18 **20:**18 **53:**4 **54:**4 **61:**7 **62:**5
align [1] **43:**9
alike [1] **32:**16
ALITO [23] **21:**8,12,18,21 **23:**4 **30:**18 **31:**12 **32:**12,20 **40:**12,13,17 **41:**15 **42:**3,7, 12,17 **43:**11 **66:**24 **67:**1 **68:** 1,10 **84:**10
alleged [1] **58:**8
alleges [1] **25:**7
allow [1] **13:**15
allowed [2] **5:**3 **16:**1
allowing [1] **33:**15
alluding [2] **53:**17 **54:**1
almost [5] **13:**10 **14:**23 **74:** 18 **80:**10 **88:**24
already [3] **16:**14 **54:**2 **87:**1
alter [2] **52:**20 **59:**23
alternative [2] **10:**16 **91:**18
altogether [1] **75:**25
Amendment [1] **67:**6
Americans [1] **13:**17
amicus [2] **73:**1 **92:**2
among [2] **26:**6,14
amount [1] **59:**18
analog [1] **85:**16
analysis [7] **18:**6 **19:**10,17 **20:**5 **34:**8 **58:**24 **61:**8
Another [3] **43:**21 **47:**10 **69:** 23
answer [10] **13:**1 **19:**8 **36:** 10,17,24 **50:**1,3 **74:**4 **89:**25 **91:**5
answered [2] **27:**1 **37:**22
answers [1] **81:**25
anticipate [1] **86:**4
anybody [1] **63:**24
anyhow [1] **46:**9
anyway [1] **45:**23
apologize [1] **75:**13
appeal [9] **5:**21 **25:**4,8 **55:** 20 **67:**23,25 **72:**2 **78:**9 **87:** 11
appealed [1] **78:**6
appeals [8] **5:**22 **25:**5,6 **31:** 5 **56:**14 **72:**4,4 **84:**19
APPEARANCES [1] **1:**18
appellate [3] **40:**21 **41:**19 **52:**13
application [2] **47:**7 **79:**20
applied [11] **4:**18 **14:**16 **24:** 14 **30:**7 **34:**2 **39:**4,6,11 **46:** 16 **52:**15 **75:**15
applies [8] **3:**18,25 **19:**22 **43:**22 **63:**7 **90:**20 **91:**15,20
apply [15] **16:**19,24 **21:**23 **28:**7 **38:**4 **39:**5 **44:**8,9,11, 12 **46:**13,15 **52:**7 **56:**8 **63:** 7
applying [4] **7:**23 **25:**24 **48:** 1 **71:**2
appreciate [3] **60:**4,16 **61:** 3
approach [1] **80:**25
appropriate [1] **21:**22
Arbitration [1] **80:**9
areas [1] **81:**22
aren't [3] **13:**3 **34:**20 **60:**8
argued [6] **10:**1 **12:**9,12,14 **48:**9 **57:**15
arguing [1] **72:**18
argument [58] **1:**15 **2:**2,7 **3:** 4,7 **12:**2,4,22 **15:**10 **16:**5, 14 **23:**23 **24:**1 **37:**1,5 **40:**8 **44:**15 **45:**20 **46:**3,8 **47:**6 **48:**6 **49:**9 **51:**12 **53:**11,18, 22 **54:**7,14 **55:**11 **56:**6,18 **57:**23,24,24 **63:**9 **64:**13 **65:** 6 **68:**6,11,12 **69:**10,12,14 **71:**18 **72:**15,23 **74:**22 **85:**1 **88:**22 **89:**5,14,22 **91:**24,25 **92:**18,22,24
arguments [5] **18:**24 **26:** 18 **48:**10 **56:**25 **62:**20
arising [1] **17:**11
articulate [2] **50:**7,8
articulated [2] **32:**19 **47:**6
as-applied [3] **54:**3 **92:**15, 22
aside [2] **34:**11 **48:**20
aspects [2] **26:**14 **91:**17
assert [1] **72:**9
asserted [3] **22:**22 **36:**3 **40:** 25
asserting [4] **15:**6 **30:**24 **41:**13 **92:**17
asserts [1] **4:**13
assume [3] **21:**25 **33:**2 **41:** 20
Assuming [2] **15:**22 **32:**23
assurance [1] **85:**9
assurances [1] **85:**19
assuredly [2] **13:**10 **14:**24
AT&T [1] **81:**15
attached [1] **25:**16
attacking [2] **43:**4 **55:**6
attempted [1] **12:**23
authority [1] **29:**4
authorized [2] **20:**12 **60:**12
available [8] **4:**15 **18:**11,12 **40:**22 **54:**6 **56:**24 **63:**22 **79:** 1
avenue [1] **64:**8
average [1] **70:**8
avoid [6] **4:**11 **22:**20 **24:**4, 15 **31:**15 **79:**8
avoided [1] **53:**8
aware [3] **31:**10 **64:**1,3
away [5] **7:**18 **47:**17 **80:**4 **82:**14,15
awful [1] **67:**1

B

back [12] **31:**4 **33:**11 **36:**17, 18,19 **52:**16 **56:**6 **75:**16 **91:** 23 **92:**4,8,8
backlog [4] **85:**25 **86:**1,4,7
bad [2] **14:**1 **83:**5
bar [1] **26:**10
BARRETT [23] **8:**2,14,19, 25 **10:**8 **27:**24 **29:**2 **30:**9, 12,19 **31:**18 **49:**24,25 **51:**7 **71:**12 **72:**1,6 **86:**17,18 **87:** 15 **88:**1,21 **89:**12
barrier [4] **16:**10 **50:**11 **51:** 2,4
based [4] **75:**21 **90:**16 **92:** 10,18
basically [1] **77:**19
Basin [1] **71:**6
basis [1] **18:**2
beat [1] **63:**1
becomes [1] **47:**18
begun [1] **87:**1
behalf [8] **1:**20,22 **2:**4,6,9 **3:** 8 **51:**13 **89:**23
believe [3] **12:**6 **26:**9 **82:**22
below [7] **10:**2 **12:**4,9 **54:**8, 13 **57:**15 **92:**17
beneficial [1] **61:**17
benefit [8] **14:**21 **44:**1 **49:**8 **61:**15 **63:**2,4 **64:**18 **72:**14
benefits [14] **9:**14 **10:**3,20 **13:**8,12,22 **14:**1 **30:**25 **41:** 17,23 **42:**5,6 **63:**21 **64:**8
benign [1] **73:**1
best [3] **9:**4,8 **53:**7
between [8] **26:**6 **45:**22 **51:** 23 **62:**15,23 **70:**1 **87:**20 **88:** 23
beyond [1] **61:**6
bind [1] **65:**17
bit [2] **6:**17 **30:**6
bleed [1] **81:**21
blue [2] **57:**15 **92:**25

blurry [1] **30**:6
board [4] **25**:6 **65**:20 **71**:7 **72**:3
boards [2] **65**:21,23
body [3] **21**:21,22 **22**:2
boil [1] **6**:19
bolts [1] **7**:12
bona [1] **29**:11
borderline [2] **6**:24 **30**:16
both [3] **9**:20 **22**:15 **28**:24
bottom [1] **63**:10
boy [1] **31**:24
break [1] **54**:25
brief [10] **12**:10 **23**:15 **35**:7 **48**:14 **57**:16 **73**:11 **87**:16 **92**:3,25,25
briefed [3] **57**:14 **72**:22 **87**:6
briefs [5] **55**:8 **56**:6 **72**:12 **73**:1 **75**:14
bring [15] **24**:22 **33**:20 **40**:3 **47**:25 **50**:14,21 **51**:1 **54**:13 **62**:6 **64**:24 **67**:6 **70**:2 **73**:19 **83**:6 **92**:20
bringing [5] **35**:3,5 **51**:3 **62**:12 **87**:20
broad [7] **23**:22 **25**:23 **45**:20 **46**:7 **48**:14,21 **50**:3
broader [1] **82**:11
broadly [1] **55**:4
brought [4] **55**:11 **79**:21 **82**:23 **91**:8
Brown [1] **66**:2
bunch [1] **69**:23
burden [3] **25**:15 **26**:1 **38**:11

C

call [3] **46**:4 **78**:9,10
called [4] **36**:12 **78**:7 **87**:17,21
came [3] **1**:14 **25**:8 **31**:12
cannot [6] **4**:11 **22**:19 **32**:24 **33**:12 **75**:9 **92**:10
caps [1] **82**:17
capture [1] **68**:11
care [2] **20**:20 **21**:1
career [1] **35**:16
careful [1] **68**:24
carried [1] **29**:14
carries [1] **27**:22
carry [1] **92**:14
Case [75] **3**:4,11,14,25 **4**:16,18 **6**:2 **11**:22 **15**:5 **16**:6,7 **17**:9,13,16 **18**:16,19,24 **19**:20 **20**:6 **21**:22,22 **22**:3,23 **24**:2,16 **25**:1,7 **27**:18,23 **29**:15 **31**:12 **32**:25 **33**:6,11,17,20 **34**:3 **35**:23 **36**:5 **39**:16 **40**:7,21 **41**:2,6,11,21 **43**:3,16 **46**:19 **49**:4,18 **54**:5,9 **56**:23 **58**:23 **65**:3,3 **66**:2 **68**:13 **69**:15 **71**:6 **79**:15,17 **81**:8,15 **87**:2 **90**:4,6,12,21 **91**:13,15 **92**:7 **93**:6,7
cases [30] **4**:13 **6**:24 **17**:11 **22**:12,15,22 **24**:3,8 **28**:14,22,24 **29**:14 **30**:16 **32**:21 **34**:16,17 **35**:11 **40**:15,18 **46**:9 **47**:4 **69**:4,7 **73**:14 **74**:11 **75**:11 **90**:10 **91**:23 **92**:4,6
Catch [2] **12**:15 **69**:8
categorical [5] **52**:11 **57**:17,18 **65**:5 **75**:10
categories [1] **16**:19
category [3] **17**:1 **46**:1,9
cause [1] **91**:7
caused [1] **58**:8
cert [1] **53**:21
certain [4] **17**:2 **29**:5 **46**:1 **71**:8
certainly [2] **28**:20 **87**:10
cetera [2] **80**:14,14
challenge [11] **4**:21 **14**:20,25 **38**:14,22 **39**:20 **40**:3,4 **48**:2 **54**:4 **92**:15
challenges [1] **56**:9
challenging [8] **13**:8 **36**:6,21 **39**:19 **40**:1 **47**:13 **49**:19 **50**:12
Chamber [1] **73**:4
chance [3] **8**:10 **27**:20 **45**:14
change [1] **65**:1
chapter [1] **78**:17
characteristic [2] **3**:20,22
characterization [1] **33**:1
characterizes [1] **4**:1
CHIEF [26] **3**:3,9 **6**:6 **7**:4 **36**:7 **37**:8,12,17 **38**:8,20,24 **39**:10,14 **40**:9 **43**:12 **45**:17,19 **46**:25 **49**:22 **51**:8,14 **84**:7 **86**:15 **89**:16,20 **93**:5
Christian [2] **52**:14 **75**:17
circuit [7] **55**:21 **72**:5 **84**:20 **87**:12 **88**:11,19 **91**:8
circumstances [1] **62**:7
cited [3] **40**:20 **64**:3 **84**:19
Citizen [1] **73**:3
city [1] **17**:10
civil [9] **3**:20 **35**:17 **41**:6 **52**:14 **73**:5 **75**:12,20 **79**:22 **83**:11
claim [86] **3**:20 **5**:20 **7**:14,17,20 **9**:14,17 **10**:2,3,11,20 **11**:6 **13**:25 **14**:21,21 **15**:5,7 **20**:7 **23**:3,8 **24**:23 **26**:21,24,25 **27**:22 **29**:19,19 **30**:24,25 **32**:18 **33**:13,15 **35**:6,18,21 **36**:3,15 **37**:6 **38**:5 **39**:2,24 **40**:23,24 **41**:18 **42**:10,15,19 **44**:19,23 **46**:6 **47**:16,25 **49**:2 **50**:12,15,22 **51**:1,3 **55**:6,9,10,16 **56**:10 **59**:10 **60**:10 **62**:7,25 **64**:19 **65**:24 **66**:20 **67**:3,6,13,16 **70**:3 **71**:16 **73**:23 **75**:16 **76**:7 **84**:5 **87**:20 **89**:2,4,11 **90**:8 **91**:11
claimant [8] **4**:3,5,7 **23**:17 **24**:21 **35**:18 **54**:22 **75**:16
claimants [6] **25**:13 **61**:12 **63**:8 **78**:2,14 **88**:14
claims [51] **3**:16 **5**:1,4 **9**:7 **11**:25 **13**:20 **14**:17 **22**:17,18 **23**:2,14 **24**:14,25 **29**:1,10,17,20,24 **30**:9 **33**:21 **35**:3 **41**:13 **44**:9 **45**:1,5 **47**:20 **52**:21 **53**:13 **61**:14 **62**:10,13 **63**:25 **66**:13 **69**:9 **70**:21,25 **71**:9,19,21 **72**:9 **73**:6,10 **77**:1 **82**:18 **84**:1 **85**:11 **86**:10,22 **91**:7,9 **92**:21
clarify [3] **50**:1 **86**:23 **89**:25
clarifying [1] **72**:7
class [4] **24**:3,7 **44**:4 **47**:4
classic [2] **27**:16 **67**:6
Clause [1] **33**:24
cleanest [1] **46**:11
clear [11] **10**:7 **18**:19 **26**:7,19 **41**:4 **51**:18,19 **56**:23 **58**:3,25 **59**:3
clear-cut [1] **83**:16
clearer [1] **75**:8
clearing [1] **86**:4
clearly [1] **7**:2
clients [1] **8**:17
collaterally [1] **43**:4
colleague [1] **90**:24
colleagues [1] **44**:16
colloquy [1] **45**:18
coloned [1] **60**:16
come [2] **22**:25 **71**:22
comes [2] **26**:10 **70**:25
commend [1] **58**:10
comment [1] **76**:18
Commerce [1] **73**:4
Commission [4] **52**:14 **75**:12,20,22
comparing [1] **24**:18
competence [5] **17**:5 **28**:17 **70**:18,20 **85**:17
compile [1] **88**:10
complaining [2] **6**:7 **55**:1
complaint [1] **7**:5
complete [1] **36**:10
completely [2] **10**:9 **21**:14
concede [1] **55**:8
Concepcion [1] **81**:15
concept [1] **81**:16
conception [1] **80**:5
concern [3] **80**:22 **85**:16 **86**:23
concerned [2] **44**:16 **80**:16
concerns [3] **17**:4 **28**:16 **35**:10
conclude [1] **31**:24
concluded [1] **23**:5
conclusion [2] **4**:20 **24**:18
conclusions [1] **28**:24
condition [3] **49**:1,1,3
conditions [4] **20**:11 **29**:6 **49**:6 **60**:11
confirms [2] **3**:18 **52**:10
conflict [10] **18**:10,16 **26**:4 **51**:5 **52**:25 **59**:3 **63**:16 **70**:11,14 **75**:8
conflicted [1] **19**:2
confronted [1] **71**:5
confused [2] **9**:12 **19**:8
Congress [11] **19**:3 **20**:12 **23**:13,20 **33**:19 **51**:24 **58**:11 **60**:12 **80**:1 **83**:13 **92**:12
Congress's [2] **51**:5 **63**:11
connection [1] **47**:21
consider [1] **59**:21
consideration [8] **52**:19 **53**:3 **63**:13 **67**:15 **76**:3 **90**:20 **91**:14 **93**:2
considerations [1] **90**:17
considered [2] **72**:3 **74**:6
consistent [4] **63**:10 **79**:21 **80**:3,11
Constitution [1] **57**:8
constitutional [6] **44**:5 **45**:1,1 **53**:7 **71**:19 **89**:6
construed [1] **92**:21
contain [1] **52**:10
contest [2] **21**:12,16
context [8] **64**:17 **66**:8,14,15,16 **71**:23 **75**:2 **81**:4
contexts [1] **27**:25
continuing [1] **8**:22
contra [1] **58**:13
contracts [1] **80**:13
contradicting [1] **3**:17
contrary [1] **74**:23
control [1] **3**:11
controversy [1] **59**:19
correct [17] **9**:24,25 **10**:13,14,21,22 **14**:15 **43**:19 **44**:19 **45**:5,11,12 **50**:23 **57**:3 **79**:5 **82**:10 **90**:19
Cotton [1] **84**:19
couch [1] **18**:17
couldn't [5] **25**:8 **38**:14 **41**:9 **69**:6 **75**:8
council [1] **56**:14
counsel [12] **15**:24 **36**:8 **40**:10 **43**:14 **51**:10 **60**:3 **61**:3 **79**:6,10 **84**:8 **89**:18 **93**:6
couple [4] **26**:22 **64**:14 **87**:16 **90**:11
course [4] **41**:3 **75**:2 **86**:10 **87**:5
COURT [207] **1**:1,15 **3**:10,12,15,19,19,24 **4**:10,14,19 **5**:1,4,10,11 **6**:1 **7**:19,23 **8**:11,17,24 **9**:2,4,8,10,16 **10**:10,11,17,17,25 **11**:6,8,14,22,23 **13**:13,21 **14**:3,6,6,10 **15**:12 **16**:8 **17**:3,11,12,16 **18**:3,10,17,25 **19**:21,24 **20**:25 **21**:7,23 **22**:1,10,14 **23**:5 **24**:10,17,20 **25**:11,20 **27**:5,9,11,20 **28**:24 **29**:7,9 **30**:2,4 **31**:11,15 **32**:5,10,19 **33**:10,12 **34**:2,5,13,15,16,20,22,23 **35**:1,3,6,12,14,17,19 **36**:2 **37**:21,25 **38**:3,18 **39**:24 **40**:5,14,21 **41**:8,22 **42**:19,21,24 **43**:1,4,7,8,9,18 **44**:24 **45**:13 **46**:17,21 **48**:3 **49**:13 **50**:13,18 **51**:15,16 **52**:4,12,15 **53**:19,20,22 **54**:2,19 **55**:7,14,21,24,25 **56**:2,19 **58**:24 **59**:8 **61**:20 **64**:1,24 **65**:24 **66**:17 **67**:10,12,14,20,21 **68**:14,23 **69**:4 **70**:3,8 **71**:5,7,20 **72**:5,24 **73**:6,10,20 **74**:6,7,21 **75**:15,23 **76**:1,6,8,16,17,23 **77**:5,12,18 **81**:1,16 **82**:12,15,24 **83**:7,19 **84**:14,23 **85**:18 **87**:3,12,19,21 **88**:11,20 **90**:3,7 **91**:8,16,22 **92**:6,9,9,9 **93**:4
Court's [11] **4**:23 **9**:15 **26**:14 **28**:14 **52**:6 **53**:9 **54**:12 **65**:4 **67**:14 **73**:14 **93**:1
courts [41] **4**:12 **6**:4 **8**:12 **9**:6 **16**:20 **21**:13,15 **22**:4,5,17,18,21 **23**:1,5,8 **28**:23,25 **29**:4,16 **31**:20 **35**:4 **39**:8 **44**:18,25 **45**:9 **51**:25 **52**:7,8 **56**:5,7 **57**:4 **68**:21 **74**:13,18 **76**:21 **79**:21 **83**:10,18,21 **84**:4,18
courts' [1] **90**:10
COVID [4] **25**:10 **77**:17 **86**:7,11
crafted [1] **51**:25
created [2] **32**:16 **51**:24
cure [1] **9**:24
curiosity [1] **9**:1
curious [3] **12**:20 **13**:13 **15**:1
current [1] **58**:11
cutting [1] **29**:24

D

D.C [2] **1**:11,19
Dakota [1] **74**:10
damages [1] **82**:17
dating [1] **91**:23
day [1] **57**:21
days [8] **24**:21 **25**:3,3,5 **62**:25 **70**:2,4 **86**:2
Dayton [2] **52**:14 **75**:17
de [4] **27**:6 **40**:5 **47**:7 **88**:11
deal [3] **31**:13 **73**:22 **88**:5
dealing [3] **49**:8 **57**:16 **74**:11
dealt [1] **73**:23
decide [3] **28**:6,11 **45**:9
decided [3] **8**:12 **16**:14 **33**:19
decision [22] **9**:15,16 **13**:9 **14**:1 **15**:1 **17**:23,25 **22**:16 **25**:4 **34**:2,4 **37**:1 **38**:4 **42**:

10 **49**:19 **54**:13 **65**:5 **68**:16 **75**:14 **84**:21 **90**:15 **91**:19
decisions [2] **52**:18 **84**:19
decline [2] **33**:12 **92**:10
declining [3] **53**:5 **60**:1 **69**:1
defeat [4] **52**:20 **59**:10,20 **76**:4
defeated [1] **59**:10
defeating [2] **60**:9 **67**:16
defect [1] **6**:1
defendant [3] **4**:13 **29**:18,25
defendants [7] **16**:25 **17**:15 **22**:19 **29**:5,8,11 **59**:13
defense [16] **3**:13 **4**:14 **18**:11 **22**:22 **27**:22 **30**:1,2 **52**:13 **59**:13,18,20 **67**:18 **73**:25 **90**:3,7 **92**:12
deferring [3] **52**:18 **67**:15 **76**:3
define [6] **16**:17 **21**:14 **22**:4 **24**:3 **31**:21 **58**:16
defining [2] **4**:12 **22**:20
definitely [2] **37**:4 **74**:14
definition [1] **28**:4
degree [1] **25**:15
delay [2] **7**:6 **89**:4
delta [1] **45**:22
denied [4] **10**:12 **42**:10,16 **67**:19
Department [3] **64**:10,22 **71**:5
depend [2] **7**:12,25
depending [1] **3**:23
derail [1] **68**:2
description [1] **72**:12
deserve [2] **45**:14,25
designed [6] **17**:7 **28**:18 **59**:4,5 **63**:20 **66**:3
detail [1] **35**:9
detailed [1] **58**:23
determination [1] **52**:8
determine [1] **52**:4
determining [1] **31**:22
dicta [1] **91**:19
dictum [1] **40**:19
difference [4] **5**:7 **51**:23 **62**:15,23
differences [1] **60**:24
different [16] **5**:11 **6**:3 **14**:22 **26**:18 **28**:7 **46**:12 **49**:18 **61**:13 **64**:13 **65**:22,23 **66**:14 **67**:16 **74**:2 **83**:9 **87**:23
difficult [1] **77**:13
difficulty [1] **85**:7
dimensions [1] **64**:13
direct [8] **5**:3 **6**:4 **18**:9,15,16 **20**:6 **34**:5 **55**:20
direction [2] **21**:7 **25**:18
directly [2] **43**:18 **87**:12
disability [3] **13**:12 **14**:21 **64**:8
disagreeing [1] **34**:7
disagreement [3] **23**:13 **33**:14 **92**:11
disciplined [1] **80**:25
discovery [1] **88**:18
discretion [1] **88**:5
discretionary [3] **41**:11 **57**:1 **79**:4
discriminates [3] **20**:13 **60**:23,25
discussed [1] **85**:18
discusses [1] **26**:2
discussion [2] **19**:22 **90**:13
dismiss [5] **11**:14,23 **59**:12 **85**:22 **90**:10
dismissal [2] **11**:9,16
dismissals [1] **59**:15
dismissed [5] **3**:15 **13**:21 **55**:15 **91**:7,10
dismisses [1] **56**:2
dispute [2] **27**:11 **58**:9
dissent [4] **57**:25 **58**:2,13 **74**:24
distinction [3] **32**:17,19 **83**:14
distinguish [2] **87**:19 **88**:23
distinguishing [1] **46**:18
doctrinal [1] **27**:13
doctrine [2] **35**:2 **80**:7
doctrines [4] **35**:5,8 **51**:24 **80**:19
doing [10] **20**:18,22 **31**:16 **39**:7 **61**:7 **65**:15 **66**:12 **72**:11 **81**:17 **82**:21
dominant [1] **3**:20
done [5] **15**:24 **31**:21 **78**:23 **82**:14,15
Douglas [1] **17**:16
down [4] **6**:14,19 **22**:11 **86**:3
drags [1] **40**:24
due [35] **9**:17,23 **10**:11 **11**:25 **14**:4,7 **30**:24 **31**:1,7 **35**:21 **36**:3 **37**:25 **42**:13,20,24 **43**:6,16 **45**:10 **46**:2 **47**:20 **53**:13 **54**:13 **55**:11,14,16 **62**:6 **71**:16 **72**:9,14 **77**:3 **78**:15 **79**:8 **86**:7,25 **87**:7
during [2] **8**:13 **86**:12

E

each [2] **14**:12 **70**:1
earlier [2] **35**:21 **57**:14
EDMUND [3] **1**:21 **2**:5 **51**:12
effect [4] **13**:20 **24**:23 **59**:2 **76**:14
effective [3] **38**:2 **41**:2,12
effectively [3] **38**:18,25 **39**:7
effects [1] **25**:13
efficient [1] **36**:23
eight [1] **85**:24
either [2] **57**:16 **87**:14
elaborate [2] **30**:5 **42**:14
elaborated [1] **17**:3
element [3] **52**:11 **53**:3 **84**:3
elements [1] **52**:3
Elgin [2] **71**:5,18
emphasizes [3] **4**:9 **23**:15 **29**:7
empirical [1] **70**:5
employers [1] **61**:19
employment [1] **64**:17
enacted [4] **23**:20 **51**:6 **82**:13,17
encompass [1] **47**:3
encourage [1] **7**:24
end [3] **58**:22 **70**:3 **86**:4
ended [1] **45**:20
enforceable [2] **3**:21 **7**:22
enforcement [1] **79**:23
engage [2] **32**:5,7
enough [3] **13**:23 **31**:6 **90**:8
ensuring [1] **89**:9
enter [3] **9**:4,9 **41**:9
entertain [3] **11**:25 **23**:8 **66**:20
entire [3] **25**:8 **35**:16 **91**:19
entitle [1] **71**:15
entitled [1] **61**:12
entitlement [1] **71**:15
entity [1] **5**:24
equal [1] **91**:15
equitable [1] **13**:3
equivalent [1] **5**:9
ESQ [3] **2**:3,5,8
ESQUIRE [1] **1**:19
essential [1] **83**:3
essentially [4] **47**:19 **67**:24 **79**:18,19
ET [3] **1**:3 **80**:14,14
evasion [1] **70**:17
even [26] **21**:3 **28**:21 **30**:1 **31**:1 **34**:9 **37**:22,23 **46**:14 **48**:18,24 **50**:23 **53**:2,23 **57**:18 **58**:17 **61**:6 **68**:24 **69**:11,13,20,22 **70**:15 **83**:22 **84**:2 **87**:4 **90**:18
event [1] **12**:24
eventually [3] **67**:13 **68**:4 **72**:5
everyone [1] **76**:15
everything [3] **66**:11 **72**:11 **76**:22
evidence [2] **46**:2 **70**:5
evil [1] **83**:11
evinced [1] **23**:6
evinces [1] **67**:3
evincing [1] **69**:8
exact [4] **16**:1 **30**:5 **71**:4 **81**:16
exactly [8] **4**:15 **7**:12 **27**:15 **30**:11,14 **47**:3 **58**:1 **68**:11
examiner [3] **5**:20 **14**:2,5
example [6] **16**:22 **29**:6 **55**:5 **71**:23 **72**:20 **80**:8
examples [1] **17**:8
except [1] **36**:4
exception [5] **12**:2,7,19 **15**:22,23
exceptions [2] **13**:3 **21**:19
exclude [2] **4**:13 **22**:21
excuse [6] **24**:5 **53**:5 **66**:19 **69**:1 **71**:25 **84**:1
execution [2] **79**:25 **81**:13
exercise [8] **17**:14 **38**:12 **59**:11 **68**:21,22 **75**:24 **77**:2 **84**:4
exhaust [31] **3**:13,16 **4**:8,21,22 **8**:10 **9**:17,21 **10**:2 **14**:24 **15**:16 **31**:1 **33**:21 **36**:6 **37**:6 **38**:5,15,18,19,25 **39**:19,21,25 **40**:1,2 **47**:10,14,15 **50**:13,14,19
exhausted [8] **29**:19 **38**:16 **39**:21 **47**:16,17 **55**:17,19 **56**:17
exhausting [1] **36**:4
exhaustion [79] **5**:5,13,15 **6**:8,20,22,25 **7**:7,21 **8**:13 **9**:13 **11**:10,16,24 **13**:11,15 **14**:14 **15**:21 **18**:20,21,24 **19**:4 **20**:15 **23**:16,21,24 **24**:6,12 **25**:24 **26**:11,20 **27**:4,7,10,14,16 **29**:21 **31**:16 **33**:17 **37**:20,24 **39**:5 **42**:1 **46**:14,20 **47**:22 **48**:3 **49**:16 **50**:4 **51**:23,24 **53**:12,24 **54**:20,24 **56**:8 **57**:11 **58**:3,15 **61**:2,5,16 **63**:3,6 **68**:13 **73**:18 **74**:19,20 **81**:7 **83**:5,17 **85**:2,5 **87**:24 **88**:23 **90**:14,16 **91**:3,6
exist [1] **49**:6
existed [1] **70**:22
exists [1] **12**:19
expensive [1] **58**:5
expert [2] **70**:21 **71**:12
expertise [3] **70**:24 **71**:8,14
expired [2] **8**:9,14
explain [2] **61**:6 **88**:1
explains [1] **22**:3
explanation [1] **78**:12
extolled [1] **82**:19
extract [1] **6**:21
extraordinarily [1] **68**:15

F

FAA [1] **80**:14
face [1] **82**:4
facing [1] **74**:1
fact [10] **15**:2 **21**:2 **22**:23 **27**:3 **39**:4,11,15,18,21 **91**:20
facto [2] **40**:5 **47**:7
factor [1] **67**:8
facts [2] **24**:15 **30**:8
failed [2] **3**:16 **47**:15
failure [4] **3**:12 **39**:19,20 **47**:13
fair [3] **57**:23 **71**:23 **72**:19
fairly [1] **72**:17
fall [2] **27**:8 **70**:13
familiar [2] **35**:12,15
Fankell [2] **52**:12 **67**:17
far [4] **33**:11 **61**:13 **74**:2 **92**:8
fashion [1] **36**:16
faster [1] **37**:24
favor [2] **46**:22 **48**:9
federal [100] **3**:24 **8**:11,15,17,24 **9**:2 **10**:11,17,24 **11**:6,14,22,23 **13**:9,9,13,16 **14**:3,6,6,20,23 **15**:12,20 **16**:3 **18**:13 **20**:8,14,17,24 **21**:5 **28**:4 **31**:15,22 **32**:7,16,21 **33**:5,13,14 **34**:12,15,19,23 **35**:3,4,6 **36**:2 **37**:21,25 **38**:12 **41**:22 **42**:19,24 **43**:7,8 **44**:23,24 **49**:7,8 **51**:17 **52**:3,4,8,19 **57**:8,22 **59**:3 **60**:14,21,23 **61**:22 **62**:4 **66**:20 **73**:5 **74**:21 **75**:23 **76**:6,16,17,22 **77**:5,12,20 **79**:22 **80**:8 **81**:10 **82**:24 **83**:7,11,19 **84**:1,14,23 **85**:4,15 **89**:9 **90**:3,6,10
federalism [1] **76**:12
feet [1] **40**:24
Felder [71] **3**:11,18 **6**:2,17 **16**:5,7,13,16,18 **17**:23,24 **18**:9,16 **19**:11,20 **20**:5,23 **21**:2 **22**:7,25 **24**:19,19 **25**:22 **26**:19 **34**:8,11,16 **46**:11,12,19 **49**:4 **52**:22 **54**:1 **57**:25 **58**:2,3,12,14,21 **59**:6,25 **60**:4 **61**:5,8,14 **63**:2 **65**:11 **66**:4 **69**:9,19,21 **73**:14,21 **74**:5,18,24 **75**:2,5 **79**:14 **80**:10 **81**:6,7,20 **82**:12 **83**:3,16 **90**:12,20,22 **91**:13,14
Felder's [6] **19**:12,17 **25**:19,22 **43**:22 **83**:2
Felder-like [1] **28**:10
felt [3] **9**:3,7 **27**:12
few [2] **41**:2 **58**:19
fide [1] **29**:12
file [15] **5**:20 **8**:17,23 **9**:1 **10**:19 **13**:25 **25**:4 **26**:21 **31**:6,15 **41**:17 **42**:19 **55**:9,20 **56**:14
filed [7] **3**:23 **15**:6 **37**:6,21 **41**:21 **45**:3 **78**:8
filing [1] **72**:2
fill [1] **30**:23
final [2] **55**:5,19
Finally [3] **4**:17 **61**:1 **92**:15
find [1] **75**:9
finds [1] **51**:16
fine [3] **21**:6 **32**:12 **46**:23
finished [1] **43**:5
fired [1] **75**:18

first [20] **3:**4,21 **7:**22 **9:**12 **35:**1,23 **36:**25 **37:**23 **41:**3, 17,23 **45:**10 **58:**8,21 **60:**7 **62:**14 **64:**22 **70:**22,23 **88:**9
FITZGERALD [2] **1:**6 **3:**5
five [4] **15:**8 **69:**25 **70:**2,3
focus [1] **79:**14
focused [2] **81:**7,18
focusing [1] **7:**6
follow [1] **57:**7
follows [2] **19:**6 **92:**7
force [4] **52:**16 **64:**20 **75:**16 **91:**15
forced [1] **62:**24
forces [1] **58:**6
form [5] **45:**20,21,21 **46:**7 **56:**12
formal [1] **88:**18
former [1] **51:**25
formulation [2] **28:**21 **90:** 18
forum [1] **49:**17
forward [1] **92:**14
forward-looking [1] **8:**21
found [1] **64:**4
four [1] **73:**24
Fourth [1] **67:**6
free [4] **21:**14 **75:**24,24 **77:**1
freedom [1] **35:**7
frequently [2] **59:**9 **91:**11
friend [3] **63:**5 **80:**23 **84:**13
friend's [1] **76:**4
friends [1] **64:**4
front [3] **16:**10 **49:**1 **62:**13
full [2] **16:**11 **79:**25
function [1] **91:**6
functioning [1] **88:**9
functions [1] **54:**5
further [2] **84:**9 **93:**3
futility [15] **12:**2,7,19,21 **13:** 4 **15:**10,21,23 **48:**6,9 **49:**9 **54:**7 **56:**18,25 **62:**20

G

gave [2] **16:**22 **90:**1
General [16] **1:**21 **21:**17 **22:** 3,17 **28:**25 **29:**4,10,11 **31:** 20 **32:**2 **36:**1 **46:**14 **57:**20 **90:**2,9,25
generally [6] **21:**13 **29:**16 **50:**5 **52:**8 **58:**16,17
generis [1] **44:**4
get-to-court-immediately [1] **84:**3
gets [2] **54:**22 **76:**10
getting [7] **10:**8 **15:**19 **27:** 19 **38:**6 **64:**9 **72:**13 **73:**6
give [6] **36:**25 **50:**17,17 **64:** 14 **67:**22 **85:**10
given [6] **20:**22 **42:**25 **54:** 12 **68:**22 **83:**10 **85:**4
gives [1] **22:**5
giving [1] **62:**9
goals [2] **62:**4 **79:**22
GORSUCH [37] **11:**11,17 **12:**1,5,11,14,17 **13:**5,7 **14:** 9,11,18 **15:**9,13,15,18 **47:**1, 2,9,23 **48:**4,11,20 **49:**5,14, 21 **50:**1,23 **53:**17 **69:**5,13, 17 **84:**13,24 **86:**6,14 **90:**1
got [8] **7:**8,8 **8:**9 **35:**23 **45:** 25 **47:**24 **55:**8 **81:**14
gotten [1] **13:**23
governing [2] **16:**22 **81:**16
government [10] **13:**10,16 **14:**22,23 **19:**23 **43:**23,25 **44:**13 **60:**17 **85:**4
governmental [1] **16:**25
grant [1] **83:**23
granting [1] **39:**8
great [3] **31:**13 **38:**1 **88:**5
greatly [1] **85:**24
grind [1] **73:**8
ground [1] **11:**9
grounds [1] **75:**19
groups [2] **73:**2,3
guard [2] **73:**15,18
guess [6] **16:**4 **19:**7 **44:**14 **46:**10 **49:**11 **88:**22
gun [1] **42:**22

H

handed [1] **59:**14
handle [1] **36:**15
happened [1] **4:**15
happening [2] **29:**23 **33:**16
happens [1] **35:**14
happy [1] **22:**11
hard [2] **31:**24 **85:**1
harder [2] **86:**11,12
harm [1] **8:**22
haul [1] **76:**16
Haywood [18] **17:**2 **22:**14 **23:**4 **28:**23 **29:**7 **40:**7 **59:**6 **66:**18 **67:**2,9 **68:**24 **69:**12, 13 **70:**13,15 **73:**15 **83:**25 **85:**18
hear [17] **3:**3 **9:**6 **12:**18 **17:** 11 **22:**17,18 **44:**19,25 **45:**4 **52:**4 **71:**1,9,19,21 **76:**7 **78:** 20,21
heard [3] **45:**15 **55:**7 **73:**10
hearing [8] **14:**2,5 **23:**14 **50:**21 **70:**24,25 **85:**23 **86:**2
hearings [1] **50:**17
height [1] **86:**13
held [11] **3:**12 **4:**11,14 **16:**8 **22:**14 **24:**20 **28:**24 **30:**2 **33:** 11 **38:**18 **49:**13
helds [1] **18:**10
Heller [1] **12:**17
help [2] **73:**15 **80:**16
helpful [1] **88:**14
helps [1] **23:**17
Herb [1] **17:**9
higher [1] **41:**5
hinder [1] **73:**5
hire [1] **86:**11
historic [1] **51:**16
history [1] **67:**8
hold [1] **25:**11
holding [7] **3:**17 **10:**1 **24:** 15 **83:**4 **90:**15 **91:**17,17
holdings [2] **52:**7 **91:**18
holds [2] **18:**10 **50:**13
homing [1] **61:**4
honest [1] **48:**12
Honor [41] **5:**2 **21:**11 **28:**14 **44:**21 **45:**7 **48:**23 **53:**16 **54:** 16,23 **55:**18,23 **56:**3,22 **58:** 20 **62:**11,19 **64:**2 **65:**2,25 **66:**9 **70:**12 **71:**17 **72:**16 **74:** 9,25 **76:**20 **77:**23 **78:**4,16, 24 **79:**7 **80:**21 **81:**23 **82:**25 **83:**22 **85:**13 **86:**8 **87:**5,25 **89:**7,24
hoops [1] **77:**13
Hosanna-Tabor [1] **75:**19
hospital [1] **25:**9
hostile [1] **77:**20
hostility [4] **23:**6,11 **67:**3 **69:**9
however [1] **3:**14
Howlett [8] **22:**13,23 **28:**23 **40:**7 **59:**6 **66:**18 **83:**24 **85:** 18
hundreds [2] **32:**3 **71:**1
hurt [1] **68:**16
hypothetical [1] **67:**12
hypotheticals [2] **64:**15 **68:**3

I

Idaho [2] **67:**20,21
idea [2] **23:**17 **33:**18
identical [2] **14:**21 **80:**10
identified [1] **6:**2
ignores [1] **51:**22
illustrates [1] **27:**18
imaginable [1] **36:**24
immediate [3] **49:**17 **52:**12 **53:**2
immediately [5] **61:**20 **67:** 21 **82:**24 **83:**7 **92:**17
immunities [1] **40:**6
immunity [9] **39:**8 **40:**6 **47:** 7 **54:**5 **59:**7 **67:**18 **82:**14, 16,16
immunize [1] **24:**24
immunizing [2] **39:**23 **47:** 19
implicate [1] **80:**19
implication [1] **33:**3
implications [1] **33:**7
implies [1] **13:**2
implying [1] **27:**6
important [2] **31:**19 **56:**4
impose [2] **59:**4 **63:**18
imposed [2] **33:**18 **38:**11
imposes [2] **7:**7 **13:**16
impossible [10] **47:**9,24 **48:**2,5,16,24 **53:**12 **54:**10 **68:**15 **69:**7
improper [2] **64:**20 **85:**4
inability [6] **4:**21,22 **36:**6 **38:**15 **40:**1 **50:**12
inadequate [1] **55:**13
incapable [1] **39:**25
incentive [2] **76:**20,24
incompatible [1] **16:**5
incomplete [1] **87:**8
incongruity [1] **13:**14
incongruous [1] **13:**19
inconsistency [2] **62:**1 **81:** 9
inconsistent [5] **23:**19 **34:** 3 **60:**13,20 **62:**8
incorporate [1] **25:**20
incorrect [1] **63:**6
independent [1] **90:**15
indisputable [1] **41:**4
individuals [1] **85:**7
ineffective [1] **72:**20
informal [2] **72:**17 **88:**16
inherently [1] **52:**25
injunction [2] **9:**5,9
injunctive [2] **8:**21 **29:**8
injured [1] **58:**7
injury [1] **58:**8
inside [1] **89:**11
instance [6] **3:**22 **7:**22 **41:** 23 **45:**10 **70:**23 **88:**8
instead [5] **6:**7 **14:**22 **69:**24 **79:**24 **89:**5
insurance [2] **9:**7 **35:**13
intentionally [1] **40:**23
interest [1] **68:**19
interlocutory [2] **67:**23,25
intermediate [3] **30:**22 **40:** 21 **72:**10
internal [1] **25:**4
interpretation [1] **32:**6
interrelated [2] **20:**9,19
interrupt [1] **68:**4
invented [1] **63:**21
investigation [1] **75:**22
invoke [1] **75:**4
invoked [2] **46:**20 **76:**12
involve [1] **58:**5
involves [1] **22:**8
irony [1] **76:**17
Isn't [8] **5:**12 **18:**24 **21:**21 **27:**9 **46:**6 **57:**2 **62:**5 **77:**13
issue [12] **10:**5 **33:**24 **51:**21 **59:**16 **63:**1 **72:**21 **74:**6 **82:** 11 **84:**15,16 **87:**7 **91:**12
itself [2] **67:**2 **89:**3

J

JACKSON [27] **19:**7,25 **20:** 4 **32:**22 **33:**9,23 **51:**9 **59:** 24 **60:**3,19 **61:**21,25 **62:**3, 16 **63:**9,24 **77:**10 **79:**6,10, 13 **81:**2,5,12 **82:**5,8 **84:**20 **89:**17
January [1] **85:**25
job [1] **88:**16
Johnson [2] **52:**11 **67:**17
JR [3] **1:**21 **2:**5 **51:**12
judge [1] **18:**14
judge-made [1] **52:**1
judgment [7] **23:**16,18,19 **55:**6 **58:**10 **67:**19 **92:**11
judicial [8] **6:**3 **49:**17 **53:**2 **63:**17 **65:**9 **66:**19 **82:**14,15
judicially [2] **3:**21 **7:**22
jumped [1] **42:**22
jurisdiction [27] **4:**12 **17:** 14 **21:**14 **22:**1,5,8,21 **23:**2 **28:**1,4 **29:**1,17,18,20,24 **31:** 21 **33:**13 **53:**5 **54:**20 **59:**11, 16 **60:**1 **68:**21,22 **69:**1 **84:** 4 **92:**10
jurisdiction's [1] **59:**17
jurisdictional [39] **4:**10 **13:** 2 **17:**2,4,6,10,19 **19:**9,15 **20:**21 **21:**24 **22:**10,14 **28:**8, 12,15,18 **29:**12 **30:**13 **31:** 23,25 **32:**11,15,18,23 **33:**3, 8 **44:**15,17 **51:**20 **53:**4 **66:** 22 **68:**25 **69:**3 **70:**16 **83:**23, 25 **91:**21,25
jurisdictions [1] **6:**11
JUSTICE [219] **3:**3,9 **4:**24 **5:** 6 **6:**6 **7:**4 **8:**2,14,19,25 **9:** 11,20 **10:**6,8,15,19,23 **11:**2, 11,17,18 **12:**1,5,11,14,17 **13:**5,7 **14:**9,11,18 **15:**9,13, 15,18 **16:**12 **17:**20,22 **18:**1 **19:**7,8,25 **20:**4 **21:**8,12,18, 21 **23:**4,22 **25:**14,21 **27:**24 **29:**2 **30:**9,12,18,19 **31:**12, 18 **32:**12,20,22 **33:**9,23 **34:** 11,18 **35:**20 **36:**7,11 **37:**8, 12,17 **38:**8,20,24 **39:**10,14 **40:**9,11,12,13,17 **41:**15 **42:** 3,7,12,17 **43:**11,12,12,14, 24 **44:**3,7,14,22 **45:**8,16,17, 17,18,19 **46:**24,25,25 **47:**2, 9,23 **48:**4,11,20 **49:**5,14,21, 22,22,24,25 **50:**1,23 **51:**7,8, 8,14 **53:**10,17,25 **54:**11,17 **55:**3,22,24 **56:**11 **57:**1,5,9, 20,25 **58:**13 **59:**24 **60:**3,19 **61:**21,25 **62:**3,16 **63:**9,24 **64:**12 **65:**12,18 **66:**6,10,24, 25 **67:**1,11 **68:**1,2,8,10 **69:** 5,13,17,18 **71:**11,12 **72:**1,6, 25 **73:**17 **74:**3,12,16 **76:**1, 11,25 **77:**10,11,24 **78:**5,19 **79:**2,4,6,9,10,12,13 **81:**2,5, 12 **82:**5,8,22 **83:**1 **84:**6,7,9, 10,11,12,13,24 **86:**6,14,15, 15,17,18 **87:**15 **88:**1,21 **89:** 12,16,16,20 **90:**1 **93:**5
justifies [1] **24:**8

K

Kafkaesque [5] **4:**20 **36:** 13 **38:**9,13 **56:**20

KAGAN [23] **23:**22 **25:**14, 21 **36:**11 **45:**17,18 **46:**24 **53:**25 **64:**12 **65:**12,18 **66:**6, 10,25 **68:**2,8 **69:**18 **79:**9,12 **82:**22 **83:**1 **84:**6,12
Kagan's [1] **67:**11
KAVANAUGH [19] **16:**12 **17:**20,22 **18:**1 **19:**9 **34:**11, 18 **35:**20 **49:**23 **57:**20 **71:** 11 **72:**25 **73:**17 **74:**3,12,16 **76:**11,25 **86:**16
keep [1] **69:**3
keeping [1] **84:**1
keeps [2] **61:**18 **92:**6
key [4] **51:**23 **58:**25 **62:**14, 23
kind [7] **16:**15 **48:**12 **64:**18 **66:**7 **80:**6 **83:**13 **88:**24
kinds [4] **62:**10 **63:**25 **76:** 25 **81:**21
knows [1] **28:**14

L

LABOR [2] **1:**7 **64:**11
lack [7] **11:**10,11,14,23 **13:** 22 **23:**1 **71:**25
LaCOUR [67] **1:**21 **2:**5 **51:** 11,12,14 **53:**16 **54:**16,23 **55:**18,23 **56:**3,22 **57:**3,7,12 **58:**19 **60:**1,18 **61:**9,24 **62:** 2,11,18 **63:**15 **64:**2 **65:**2,14, 25 **66:**9,17 **67:**7 **68:**18 **69:** 11,16 **70:**12 **71:**17 **72:**16 **73:**13,21 **74:**9,14,25 **76:**19 **77:**6,23 **78:**4,16,24 **79:**3,7 **80:**21 **81:**3,11,23 **82:**7,10, 25 **83:**22 **84:**17 **85:**13 **86:**8 **87:**5,25 **88:**3 **89:**7,15,19
LaCOURT [1] **72:**2
landmark [1] **32:**2
language [8] **18:**18 **21:**2 **22:**24 **25:**23 **26:**8 **58:**12,14 **88:**4
last [3] **6:**12 **39:**10 **77:**25
latter [2] **52:**1 **90:**18
law [35] **4:**10 **10:**1,4 **12:**21 **20:**18 **21:**22,22 **22:**3 **32:**10, 16 **33:**1,3,5 **35:**3 **44:**9 **51:** 18 **54:**4 **56:**23 **57:**22 **58:**4 **59:**1,3,4,9,16 **61:**7,17 **62:** 15 **63:**1 **73:**23 **79:**20 **81:**24 **82:**1,11,21
laws [6] **53:**6 **59:**7 **79:**22 **80:** 7,12,20
lawsuit [3] **8:**23 **9:**1 **23:**25
lawsuits [1] **44:**12
lawyer [2] **35:**15 **88:**18
lawyers [1] **35:**11
lead [1] **76:**5
least [3] **48:**25 **69:**7 **86:**1
leave [2] **16:**16 **26:**23
left [1] **16:**18
legislation [1] **83:**12
legislature [1] **45:**2
lengthy [1] **58:**5
less [1] **49:**2
letter [4] **31:**6 **78:**9,9,20
level [1] **70:**1
levels [5] **41:**19 **64:**23 **65:** 24 **69:**24,25
liability [19] **3:**13 **52:**23 **59:** 2,4 **60:**9,17 **61:**11 **63:**18 **66:**4 **75:**7 **79:**16 **81:**19 **82:** 2,8,12,19 **90:**24 **91:**1,5
liability-minimizing [1] **63:**19
liable [2] **82:**1,7
liberty [2] **73:**3,7
likely [1] **84:**18
limitation [1] **13:**2
limitations [6] **8:**3 **86:**20, 22,24 **87:**2,13
limits [11] **17:**12 **24:**18,19 **25:**2,25 **55:**13 **60:**24 **66:**11 **69:**20,20 **91:**9
linchpin [1] **16:**13
line [4] **25:**15 **36:**10 **59:**6 **80:** 24
lines [2] **30:**5,6
listen [1] **46:**1
litigants [2] **56:**13 **73:**9
litigated [1] **56:**5
litigation [2] **35:**13 **44:**12
little [3] **6:**17 **15:**24 **30:**6
local [1] **35:**12
logjam [1] **54:**25
long [6] **5:**4 **6:**12 **29:**5,18 **42:**9 **90:**8
look [8] **16:**6 **22:**2 **24:**8 **65:** 8,8 **67:**1,17 **70:**16
looking [6] **20:**4 **24:**15 **28:** 22 **54:**3 **65:**10 **81:**7
looks [4] **7:**16 **20:**15 **27:**10 **66:**3
loop [2] **11:**19 **54:**21
lose [10] **11:**7 **14:**5 **36:**4,16 **37:**4,9,11 **45:**23 **74:**1 **77:**7
loses [1] **38:**5
lost [3] **10:**4 **84:**21 **88:**15
lot [15] **26:**1 **30:**15 **34:**15,17, 25 **65:**10 **67:**2 **69:**19 **75:**5 **83:**2 **84:**18 **88:**15 **90:**13 **91:** 10,23
lots [1] **46:**12
lower [3] **5:**1 **8:**12 **9:**15

M

machinery [1] **27:**13
made [10] **5:**1 **12:**4 **23:**16, 20 **46:**3 **58:**1,3,24 **69:**10 **71:**18
mailing [1] **25:**4
majority [6] **9:**6 **35:**13 **58:**2, 14 **74:**12,24
mandamus [21] **40:**14,22, 24 **41:**1,11 **48:**5 **49:**10 **50:** 24 **54:**6,18,19,24,25 **55:**2 **56:**18,23 **57:**2,10 **62:**19 **78:** 20,24
manifestly [1] **60:**13
manner [1] **85:**12
many [8] **24:**24 **26:**18 **28:**1, 1,2,21 **78:**8 **79:**15
match [1] **32:**17
matter [15] **1:**14 **10:**1,4 **17:** 5 **22:**1 **28:**17 **32:**10 **37:**2 **39:**23 **68:**9,14 **70:**18,20 **77:** 22 **85:**17
mattered [1] **61:**8
matters [1] **65:**1
mean [24] **6:**12 **7:**13 **12:**8 **16:**6,8 **19:**12 **20:**4 **23:**11 **25:**21 **30:**14 **31:**4 **36:**12 **37:** 17 **39:**3 **46:**12 **50:**16 **51:**1 **65:**18 **69:**14 **74:**19 **83:**1,15 **87:**7 **88:**22
meanings [1] **28:**2
means [10] **18:**12 **52:**24 **59:** 10 **60:**6 **61:**10,11 **80:**5,17 **81:**20 **88:**15
meant [2] **51:**20 **83:**13
mechanism [3] **30:**22 **31:**9 **72:**10
mediation [5] **6:**10 **7:**9,15, 19 **8:**1
mediator [1] **6:**14
mention [1] **34:**16
mentioned [2] **35:**20 **75:**13
merely [4] **9:**13 **52:**3 **59:**23 **67:**15
merit [3] **13:**22 **23:**13 **71:**6
merits [8] **11:**7,25 **37:**10,11 **45:**23 **46:**5 **77:**8 **84:**21
might [18] **7:**16 **8:**8 **11:**6,11 **13:**14 **27:**18 **32:**17 **48:**6 **65:** 11,14 **66:**1,4 **68:**18 **69:**10 **76:**24 **80:**18 **84:**15 **87:**2
million [1] **86:**9
mind [1] **10:**7
mine-run [1] **49:**18
minimis [1] **27:**6
minimize [8] **59:**5 **60:**17 **66:** 3 **75:**7 **82:**19 **90:**23 **91:**1,4
minimized [1] **59:**2
Minimizes [1] **82:**2
minimizing [5] **60:**9 **61:**10 **79:**16 **81:**19 **82:**8
minimum [1] **4:**17
misreading [1] **74:**5
Mm-hmm [3] **29:**2 **45:**6 **81:** 11
Mobility [1] **81:**15
Monday [1] **1:**12
Mondou [1] **33:**11
money [1] **61:**12
Montgomery [1] **1:**21
months [1] **73:**24
moot [1] **47:**18
morning [2] **90:**14 **92:**23
most [6] **13:**20 **22:**13 **36:**23 **53:**23 **76:**15 **83:**3
motion [1] **85:**22
move [1] **81:**18
moving [1] **80:**4
MSPB [2] **71:**8,18
much [6] **25:**2 **26:**1 **31:**19, 23 **45:**21 **58:**10
municipal [1] **5:**10
must [1] **58:**11
myself [1] **64:**4

N

NANCY [1] **1:**3
narrow [8] **46:**17 **47:**2 **48:** 13 **50:**2,8 **68:**5,11,12
narrower [5] **24:**1,3,7 **45:** 21,21
narrowest [2] **40:**8 **47:**5
narrowly [2] **46:**15,22
nature [2] **7:**3 **69:**2
nearly [1] **58:**23
necessarily [3] **45:**13 **52:** 20 **76:**22
need [3] **27:**12 **65:**8 **91:**16
needs [1] **42:**14
neither [1] **22:**7
neutral [20] **4:**2,3 **6:**5 **16:**21 **19:**9,15,21,24 **20:**21 **21:**3, 10 **43:**15,21 **44:**10 **45:**4 **51:** 20 **53:**4 **66:**18 **68:**25 **83:**25
never [5] **4:**5,6,7 **59:**18 **68:** 22
New [5] **23:**5 **47:**2 **48:**12 **53:** 18 **82:**16
nine [1] **49:**11
no-exhaustion [2] **52:**11 **75:**10
nobody's [1] **46:**8
non-benefits [1] **66:**15
none [3] **12:**23 **57:**14,15
Nor [1] **52:**7
notable [1] **92:**2
nothing [3] **4:**3 **51:**18 **54:** 17
notice [18] **7:**14,16 **20:**7 **23:** 2 **24:**23 **26:**24 **50:**18,21 **52:** 21 **55:**9,12 **60:**22 **61:**13 **71:** 24 **72:**19 **77:**16 **82:**18 **91:** 11
notices [1] **78:**9
novo [1] **88:**12
number [4] **28:**25 **29:**3 **68:** 3 **85:**23
nuts [1] **7:**12

O

O'Connor [2] **58:**1 **74:**23
O'Connor's [1] **58:**13
objection [1] **4:**25
objectionable [1] **7:**10
objectives [6] **18:**4,18 **34:** 8 **51:**5 **63:**11 **80:**1
obstacle [6] **64:**7 **79:**24 **80:** 3 **81:**12,24 **85:**3
obstacles [1] **52:**22
obviously [2] **46:**22 **85:**21
October [1] **1:**12
odd [1] **30:**21
officers [4] **62:**25 **65:**20 **70:** 24 **85:**23
officials [1] **81:**25
often [1] **35:**4
Ohio [3] **52:**13 **75:**12 **76:**6
Okay [20] **13:**7 **14:**19 **15:**19 **32:**12,14,20 **38:**8 **39:**10 **42:** 3 **48:**4 **49:**14 **51:**7 **64:**25 **66:**23,25 **68:**10 **84:**24 **87:** 15 **89:**12,13
once [2] **47:**15 **83:**17
one [35] **13:**8 **15:**25 **16:**21 **18:**23 **20:**11 **25:**6 **27:**9 **28:** 5,25 **30:**17,20 **31:**1 **43:**20 **44:**4,4 **50:**4,7 **51:**21 **52:**21 **53:**17 **54:**7 **59:**1 **60:**14 **63:** 23 **64:**3,4,16 **72:**8,14 **76:**11 **77:**24 **79:**8,19 **83:**3 **89:**25
onerous [2] **68:**15 **70:**10
ones [1] **27:**15
Only [8] **14:**16 **17:**11 **19:**22 **24:**21 **41:**7 **43:**22 **51:**17 **53:** 22
opened [1] **75:**22
opening [1] **75:**13
operates [2] **57:**10 **61:**1
opinion [5] **18:**5 **26:**8 **27:**4 **58:**22 **75:**25
opinions [1] **75:**3
opposed [1] **10:**17
oral [4] **1:**15 **2:**2 **3:**7 **51:**12
order [2] **50:**14 **56:**15
ordinary [1] **41:**6
organizations [1] **35:**7
other [24] **11:**3 **13:**24 **14:**12 **22:**25 **27:**13 **29:**5 **34:**17 **37:** 9 **39:**16 **41:**9 **43:**16 **44:**12 **45:**24 **46:**19 **58:**12 **61:**4 **80:** 7,19,19 **81:**21 **84:**14 **86:**7 **87:**15 **90:**16
others [1] **22:**11
otherwise [1] **15:**16
out [23] **6:**15 **8:**25 **11:**7,20 **12:**18 **19:**17 **22:**25 **29:**24 **30:**23 **46:**4 **54:**22 **55:**9 **57:** 13 **64:**16 **69:**4 **77:**15,15 **78:** 1 **84:**1 **87:**9,11 **91:**16 **92:** 16
out-of-state [2] **17:**14,15
outcome [2] **33:**25 **34:**10
outcomes [1] **76:**5
outside [1] **85:**21
over [27] **17:**4,5,6,14 **23:**2, 13 **27:**22 **28:**16,16,17 **29:**1, 4,9,10,15,17,18,20 **33:**13 **59:**11 **60:**2 **70:**18,20 **81:**21 **84:**4 **85:**17 **86:**2
overrule [1] **91:**23
overruling [1] **92:**4
overwhelming [1] **9:**6
own [4] **10:**7 **16:**20 **22:**5 **27:** 25

P

PAGE [3] **2:**2 **60:**5 **83:**8
pandemic [1] **86:**13
paper [2] **30:**24 **66:**12
papers [2] **36:**16 **62:**17
parallel [1] **16:**2
parameters [1] **24:**9
park [2] **62:**24 **73:**23
parse [1] **91:**16
part [8] **25:**19,21 **27:**3 **61:**1 **82:**11 **89:**2,3,5
particular [13] **7:**23 **22:**19 **24:**13,16 **25:**12 **26:**25 **29:**21 **30:**1,7 **43:**25 **76:**7 **90:**6 **91:**4
particularly [3] **26:**7 **66:**1 **88:**13
particulars [2] **39:**15,17
parties [4] **6:**4,9 **7:**19 **16:**23
partly [2] **90:**16,16
passed [3] **31:**7 **53:**20 **78:**10
past [1] **14:**12
path [1] **18:**8
Patsy [22] **3:**11,12,18 **6:**21 **11:**24 **18:**25 **22:**6 **27:**5,8,15 **42:**2 **49:**15 **50:**4,7,9 **51:**22 **57:**18 **58:**21 **75:**10 **83:**4,5 **92:**18
Patsy's [3] **3:**17 **19:**5 **27:**20
pattern [5] **39:**4,12,15,18 **91:**20
pause [1] **74:**4
pending [1] **7:**20
Pennhurst [1] **35:**1
people [9] **43:**18 **62:**9 **63:**22 **64:**7 **76:**15 **78:**22 **86:**1,11,12
perfect [1] **53:**23
perfectly [2] **21:**6 **64:**25
perhaps [2] **11:**12 **31:**13
period [2] **25:**8 **27:**1
permits [2] **12:**21 **45:**2
permitted [1] **16:**9
person [8] **5:**17,18 **17:**6 **28:**17 **41:**17,22 **42:**8 **64:**18
personnel [1] **71:**9
persons [1] **58:**7
perspective [1] **46:**23
petition [1] **53:**21
Petitioners [11] **1:**4,20 **2:**4,9 **3:**8,16 **4:**20 **25:**7 **39:**18 **67:**24 **89:**23
Petitioners' [2] **3:**15 **51:**22
phone [4] **36:**17,25 **78:**9,10
piece [2] **30:**23 **66:**12
place [2] **51:**4 **58:**9
plaintiff [5] **17:**15 **31:**14 **52:**16 **67:**5 **75:**23
plaintiffs [18] **8:**16,16 **16:**24 **19:**23 **31:**14 **35:**2 **43:**23,24 **44:**4 **52:**9 **55:**1 **61:**15,18 **63:**3,4 **73:**7 **78:**8 **82:**23
plaintiffs' [1] **69:**9
planning [1] **5:**17
please [3] **3:**10 **51:**15 **56:**11
plenty [3] **14:**8 **38:**6 **42:**25
Plus [1] **73:**15
point [13] **36:**19 **47:**18 **54:**24 **58:**20 **60:**19 **70:**9 **76:**10 **77:**11 **84:**25 **85:**15 **88:**3 **90:**9 **92:**16
points [4] **53:**17 **57:**13 **58:**1 **85:**14
police [7] **62:**25 **64:**20,22 **65:**20,20,23 **66:**8
policy [7] **23:**12,16,18,19 **26:**4 **33:**14 **92:**11
portion [1] **31:**1
position [4] **9:**8 **73:**1,8 **76:**5
positioned [1] **9:**4
possible [1] **54:**12
possibly [1] **18:**18
potential [2] **44:**5 **54:**7
potentially [1] **70:**14
power [5] **17:**5 **28:**16 **29:**9,10 **44:**25
powers [2] **51:**16 **90:**10
practical [6] **13:**20 **24:**22 **35:**10 **39:**23 **68:**14 **76:**13
practicing [1] **35:**16
precedent [2] **34:**21 **52:**10
precedents [1] **73:**14
precisely [3] **4:**21 **38:**15 **50:**20
preclude [2] **83:**18,19
precludes [1] **50:**4
precursor [1] **75:**19
predictably [2] **59:**9 **91:**10
preempt [5] **51:**20,25 **53:**6 **57:**23 **80:**18
preempted [20] **4:**18 **6:**18,23 **19:**13 **20:**16 **21:**6 **22:**15 **24:**4,7,12,14 **32:**24 **33:**4,7 **51:**17 **52:**22 **53:**25 **58:**17 **80:**6,14
preemption [28] **4:**11 **17:**23,25 **18:**2,4,16 **19:**18 **20:**6 **22:**20 **24:**5 **32:**25 **34:**6 **47:**8 **58:**24 **60:**6 **61:**8 **62:**1 **63:**13 **79:**19 **80:**9,19,23 **81:**4,8,17,22 **82:**3 **92:**1
pregame [1] **88:**24
prejudice [2] **59:**12,15
present [2] **7:**14 **62:**20
presented [2] **7:**1 **53:**19
pressing [2] **48:**14 **72:**23
presumably [1] **21:**25
presume [1] **57:**4
presumption [1] **75:**4
pretty [2] **7:**2 **31:**23
prevent [1] **66:**13
primary [1] **56:**6
principle [5] **11:**13 **21:**13,17 **40:**22 **92:**13
private [1] **44:**11
probably [2] **6:**18 **42:**23
problem [23] **5:**13 **18:**5 **34:**12,19 **37:**24 **38:**7,10,16,17 **39:**3,22 **42:**1,25 **47:**8 **74:**23 **75:**6 **77:**2,2,3,9 **79:**16 **82:**3 **87:**13
problematic [1] **58:**4
problems [7] **34:**22 **57:**13 **58:**25 **66:**2,5 **77:**1 **79:**8
procedural [9] **4:**2 **16:**15,21 **21:**3,10 **31:**9 **35:**21 **56:**9 **77:**3
procedure [4] **7:**24 **36:**24 **47:**22 **54:**15
proceed [3] **6:**13 **33:**15 **70:**1
proceeding [4] **75:**17 **87:**11,17,18
proceedings [4] **52:**17 **58:**6 **75:**25 **92:**17
process [66] **6:**10 **7:**16 **8:**13 **9:**17,23 **10:**11,12 **11:**8,19,25 **13:**23 **14:**4,7,8 **16:**23 **30:**24 **31:**1,7 **35:**21 **36:**3 **38:**1,6,7,9 **42:**9,13,20,23,25 **43:**1,5,6,16,17 **45:**11 **46:**2 **47:**21 **53:**13 **54:**14 **55:**11,14,16 **56:**12,20 **62:**7,17 **70:**7,10 **71:**16 **72:**9,15,17 **77:**3,16 **78:**1,3,15 **79:**8 **80:**6 **84:**22 **85:**8 **86:**25 **87:**8,9 **88:**17 **92:**20
processes [3] **35:**23 **85:**3 **88:**7
processing [2] **30:**10 **32:**18
prohibit [1] **35:**5
prohibiting [1] **62:**12
prohibits [2] **35:**2 **62:**6
proper [3] **55:**13 **85:**11 **87:**17
properly [1] **53:**22
protect [2] **17:**7 **28:**19
Protection [1] **71:**7
provide [1] **78:**19
provision [1] **60:**22
Public [1] **73:**3
purgatory [1] **26:**22
purportedly [1] **63:**1
purpose [4] **19:**3 **34:**7 **53:**1 **59:**1
purposes [15] **8:**15 **18:**4,17 **26:**3,4 **32:**16 **60:**7,14,20 **61:**22 **63:**17 **80:**1 **81:**9 **87:**3 **89:**8
pursue [2] **53:**13 **72:**13
pursuing [2] **36:**11 **37:**15
put [2] **16:**9 **34:**11
puts [1] **48:**25
Putting [1] **48:**20

Q

qualified [1] **67:**18
qualifies [1] **6:**25
quarreling [1] **32:**9
question [21] **7:**1 **8:**6 **13:**1 **15:**24 **20:**3 **23:**9 **24:**5 **30:**20 **39:**11 **57:**21 **65:**7 **72:**7 **77:**25 **79:**18 **81:**25 **82:**20 **86:**21 **87:**16 **91:**2,3,21
questioning [1] **36:**10
questions [4] **4:**23 **53:**7,9 **93:**3
quick [1] **42:**9
quickly [3] **36:**25 **76:**16 **79:**14
quintessential [2] **64:**19 **66:**15
quotes [1] **83:**4
quoting [1] **79:**17

R

raise [4] **53:**6 **56:**24 **62:**13 **67:**13
raised [2] **54:**8 **78:**18
rather [2] **30:**12 **70:**17
rationales [3] **46:**12,13,15
reach [2] **24:**17 **43:**2
reached [2] **4:**19 **28:**23
read [7] **9:**15 **31:**20 **48:**13 **54:**12 **74:**7,18 **75:**1
reading [4] **46:**11 **50:**6 **53:**6 **68:**20
real [1] **80:**22
real-world [2] **34:**19,22
really [26] **6:**20,24 **10:**16 **11:**18 **20:**16 **23:**17 **26:**9,19 **27:**10 **28:**11,15 **30:**4 **31:**24,25 **45:**25 **58:**25 **69:**8 **70:**17 **73:**5 **75:**6 **77:**19 **80:**24 **82:**20 **85:**16 **91:**14,22
realm [1] **49:**7
reason [11] **4:**7 **12:**6 **20:**16 **26:**18 **43:**21,21,22 **60:**13 **83:**12 **85:**15 **87:**19
reasonably [1] **92:**21
reasoned [1] **3:**19
reasoning [9] **3:**24 **16:**6 **19:**5 **25:**19,22 **26:**15 **27:**21 **29:**14,16
reasons [5] **19:**1 **34:**25 **41:**2 **62:**3 **80:**15
rebut [1] **16:**7
REBUTTAL [3] **2:**7 **89:**20,22
receipt [1] **25:**3
receive [1] **77:**16
received [3] **55:**12 **78:**11,12
recently [1] **22:**13
recognize [1] **12:**7
recognized [3] **71:**8,20 **82:**12
recognizes [1] **15:**22
reconcile [1] **15:**2
record [5] **85:**7,21 **88:**10,17,19
recovered [1] **63:**25
recovery [2] **20:**12 **60:**12
redress [1] **87:**18
reduced [1] **85:**24
reflect [1] **17:**4
reflects [1] **28:**16
refusing [2] **13:**14 **66:**20
regardless [2] **18:**12 **33:**8
regime [1] **41:**16
regs [1] **71:**3
regulations [4] **78:**1,13,21,22
Rehnquist [1] **76:**1
reject [1] **81:**5
rejected [1] **54:**2
relate [1] **19:**10
related [1] **80:**13
relationship [2] **26:**6,13
reliance [1] **51:**22
relief [9] **4:**4,6 **5:**16,19,23 **8:**21,21 **15:**2 **29:**8
religion [1] **77:**2
religious [5] **35:**7 **73:**3,7,8 **75:**18
rely [1] **50:**9
remedial [2] **52:**25 **89:**9
remedies [4] **9:**22 **14:**25 **41:**10 **50:**20
remedy [7] **4:**8 **20:**8 **41:**11 **50:**13,14 **77:**14,18
remember [1] **56:**4
repeatedly [1] **80:**12
reports [2] **5:**21,22
require [3] **52:**12 **54:**24 **68:**20
required [3] **4:**25 **5:**8 **78:**25
requirement [59] **5:**5,15,16 **6:**7,8,9,20,25 **7:**2,7,17,21 **12:**7 **13:**11,16 **14:**14 **15:**21 **18:**20 **19:**5 **20:**15 **23:**3,21,24 **26:**20,24 **27:**10,14,16 **28:**8 **29:**21 **31:**16 **37:**20 **39:**5 **46:**20 **48:**3 **49:**16 **56:**8 **57:**11 **58:**4 **59:**19 **61:**2,5,14,17 **62:**5 **63:**3,6 **68:**13 **73:**19 **79:**23 **82:**18 **83:**6,17 **85:**2 **87:**24 **88:**23 **91:**4,7,11
requirements [16] **6:**22 **7:**13 **18:**22 **19:**10 **24:**6,12 **25:**24 **26:**11 **27:**8 **46:**14 **50:**5 **58:**15 **65:**16 **74:**19,21 **85:**5
requires [3] **34:**4 **35:**22 **54:**20
requiring [2] **31:**11 **67:**4
research [1] **15:**25
resolution [1] **58:**9
resolve [1] **28:**21
respect [6] **57:**10 **63:**13 **76:**13 **81:**17 **83:**10,21
respond [2] **53:**15 **73:**12
Respondent [9] **1:**8,22 **2:**6 **4:**1,9 **40:**20 **48:**9 **51:**13 **92:**5

Respondent's [1] **23:**15
response [1] **31:**17
result [4] **18:**8 **51:**18 **59:**14 **92:**6
retain [1] **86:**12
reverse [1] **93:**4
reverted [1] **50:**3
review [9] **41:**19,20 **52:**13, 23 **64:**23 **69:**25,25 **88:**11, 12
rights [10] **3:**20 **35:**17 **42:** 13 **52:**14 **73:**6 **75:**12,20 **79:** 22 **83:**11 **89:**10
ring [2] **36:**25 **37:**23
ripe [2] **46:**6 **90:**9
ripeness [8] **11:**12,15 **52:**2, 6 **84:**15 **90:**1,2,7
risk [1] **8:**7
ROBERTS [23] **3:**3 **6:**6 **7:**4 **36:**7 **37:**8,12,17 **38:**8,20,24 **39:**10,14 **40:**9 **43:**12 **45:**17 **46:**25 **49:**22 **51:**8 **84:**7 **86:** 15 **89:**16,20 **93:**5
rule [56] **4:**2 **6:**17,21 **8:**1,10 **13:**20 **17:**10,13,16 **18:**23 **19:**12,14,20 **21:**3,24 **22:**3, 16 **23:**6 **24:**11 **25:**23 **27:**18 **28:**11 **29:**11,12 **30:**10,13 **31:**20 **32:**2,3,8,24 **33:**22 **34:**2,3 **38:**4 **41:**9 **43:**15 **45:** 4 **47:**8 **48:**2 **49:**9 **53:**24 **54:** 1 **57:**17,19 **65:**9 **66:**22 **67:** 2 **69:**3 **70:**16 **73:**5 **74:**20 **75:**10 **76:**14 **83:**9,24
ruled [2] **55:**4 **58:**22
rules [27] **16:**16,16,19,21, 22,24 **17:**2,4,6,8,19 **22:**10, 15 **28:**18 **32:**15 **43:**10 **46:** 21 **51:**20,23 **52:**2,21 **53:**4, 12 **66:**18 **68:**25 **83:**25 **91:** 22
ruling [5] **37:**13 **38:**14 **40:** 14,18 **43:**2
rulings [1] **67:**15
run [4] **66:**1,4 **87:**3,9
running [4] **8:**4 **84:**22 **86:** 22,25

S

same [26] **3:**24 **4:**25 **25:**12 **29:**15 **34:**10 **37:**1,3,5 **38:**4 **43:**2 **49:**6 **58:**1 **64:**10 **65:** 19 **66:**7,10,11 **67:**8 **73:**11 **76:**24 **80:**6,15 **81:**16 **83:**20 **86:**20 **92:**22
satisfaction [1] **58:**7
satisfied [2] **23:**3 **29:**6
saying [21] **8:**22 **12:**22 **13:** 25 **14:**13 **17:**13 **31:**6 **32:**15, 22 **34:**21 **40:**2 **44:**23,24 **45:** 9,13 **47:**11 **55:**12 **73:**18 **77:** 20 **81:**6 **88:**2 **89:**2
says [18] **20:**7,23 **21:**2 **22:** 24 **27:**5,6,9 **34:**21 **40:**21 **42:**8 **45:**4,25 **59:**21 **60:**11 **66:**12 **79:**18 **83:**4,10
scenario [1] **37:**4
scheme [7] **28:**10 **29:**22 **30:** 20 **63:**20 **64:**21 **77:**4 **82:**12
Schools [2] **52:**15 **75:**18
scope [1] **16:**17
second [6] **17:**1 **20:**13 **59:**8 **60:**22 **62:**22 **65:**7
SECRETARY [9] **1:**7 **4:**4,5, 6 **5:**20,21,23 **61:**19 **63:**7
Section [16] **3:**14 **14:**17 **20:** 8 **23:**20 **24:**20 **27:**22 **29:**17 **30:**3 **34:**4 **49:**12 **51:**6,19 **60:**5 **62:**8 **79:**20 **90:**4
Security [4] **13:**12 **15:**7 **49:** 20 **64:**6
see [8] **6:**15 **46:**18 **54:**14 **63:** 15 **65:**8 **73:**10 **75:**11 **79:**15
seek [9] **4:**4,6 **5:**16,19 **15:**3 **41:**23 **42:**4 **56:**18 **58:**7
seeking [5] **5:**23 **8:**20 **13:** 22 **41:**10,17
seem [7] **19:**13 **31:**10 **55:**7 **58:**13 **73:**1 **80:**24 **85:**6
seems [8] **15:**25 **20:**18 **45:** 22 **58:**15 **61:**5 **72:**11 **83:**2, 15
seen [2] **64:**3 **84:**18
sees [1] **6:**15
send [3] **36:**17 **52:**9 **76:**22
sending [1] **87:**21
sends [1] **7:**19
sense [5] **20:**22 **35:**18 **39:**5 **44:**11,18
serious [2] **53:**7 **77:**9
seriously [1] **85:**20
service [1] **16:**23
set [4] **64:**6 **65:**19 **66:**22 **78:** 1
sets [1] **64:**21
setting [1] **6:**3
settlement [1] **7:**24
seven [1] **25:**3
several [4] **6:**11 **20:**9 **27:**19 **92:**3
sex [1] **75:**21
shall [2] **82:**1,7
shifting [1] **80:**17
short [2] **74:**15,16
shorter [1] **25:**2
shouldn't [1] **16:**1
show [4] **41:**4 **52:**18 **67:**15 **85:**16
shows [1] **76:**3
side [6] **11:**3 **61:**4 **74:**10,15, 16 **84:**14
significant [5] **32:**1 **49:**1,3 **50:**11 **51:**2
similar [5] **5:**12 **13:**15 **71:** 18,21 **85:**5
simple [2] **72:**18 **74:**20
simply [8] **6:**9 **7:**7,8 **54:**9 **59:**21 **76:**8 **83:**12 **92:**13
since [3] **21:**23 **31:**14 **70:**21
single [2] **90:**19 **91:**14
sit [1] **6:**14
sits [1] **40:**23
situation [3] **16:**2 **71:**4 **87:** 14
situations [1] **39:**16
slow [2] **10:**4 **70:**7
Social [4] **13:**11 **15:**7 **49:**20 **64:**6
sole [1] **91:**6
Solicitor [1] **1:**21
somebody [1] **45:**24
somehow [3] **19:**17 **86:**24 **87:**23
sometimes [2] **22:**18 **35:**2
soon [1] **84:**23
sorry [1] **21:**10
sort [15] **7:**6 **18:**15 **26:**8 **32:** 5,17 **54:**25 **56:**8 **63:**12 **65:** 16,19 **67:**4 **71:**4 **75:**19 **88:** 9 **89:**9
sorts [1] **49:**6
SOTOMAYOR [33] **9:**11,20 **10:**6,15,19,23 **11:**2,18 **43:** 13,14,24 **44:**3,7,14,22 **45:**8, 16 **54:**11,17 **55:**3,22,24 **56:** 11 **57:**1,5,9 **77:**11,24 **78:**5, 19 **79:**2,4 **84:**11
sought [1] **40:**13
sound [2] **7:**20 **89:**1
sounds [3] **6:**16 **55:**16 **70:** 12
South [1] **74:**10
sovereignty [1] **68:**19
speaking [1] **14:**12
special [1] **49:**12
specifically [1] **19:**20
speculating [1] **5:**8
speed [1] **78:**2
spend [2] **35:**16 **74:**15
split [2] **74:**15,17
square [1] **75:**11
stage [2] **67:**19 **85:**22
stages [1] **65:**22
stake [1] **31:**14
stand [1] **79:**24
standard [4] **41:**5 **80:**9,17 **81:**8
start [4] **8:**3 **10:**20 **80:**4 **86:** 22
started [2] **45:**19 **57:**21
starts [1] **70:**16
state [145] **3:**19,24 **4:**11,12 **5:**1,3 **6:**3 **7:**15 **8:**3,8 **9:**2,4, 5,6,8,10 **10:**1,4,10,17,20 **11:**8,19 **13:**15,21,25 **14:**10, 23 **16:**1,9,15,19 **17:**13 **18:** 13 **21:**13 **22:**1,4,16,17,19, 21 **23:**1,12 **24:**24 **27:**6 **28:** 11,25 **29:**3,24 **31:**11,20 **32:** 6,9,10,23 **33:**1,3,12 **34:**2,4, 21 **35:**1,3,12,14,17,19,22 **36:**14,15,23 **37:**14,18 **38:**1, 3,18 **39:**8,8,23,24 **40:**2,5, 14 **41:**8,8,15 **43:**1,4,8,18 **44:**9,18,25 **45:**9 **47:**14,20 **48:**3 **50:**17,18 **51:**16 **52:**7, 17 **56:**5,7,19 **57:**4 **59:**4 **64:** 1 **67:**9 **68:**14,16,20,21 **70:**6 **72:**23 **73:**6,20 **74:**5,13,17, 21 **75:**17,25 **76:**2,7,16 **77:** 12,16,18 **79:**21 **80:**12 **81:** 25 **82:**1 **83:**10,18,21 **85:**10, 20 **86:**19,21,24 **87:**3,3 **90:** 23 **92:**9
state's [2] **42:**25 **79:**20
statements [1] **75:**1
STATES [7] **1:**1,16 **52:**9 **76:** 13,21 **88:**6 **92:**3
statute [29] **4:**2,18 **8:**3 **19:**2 **20:**7 **24:**13,20,23 **25:**12 **26:** 3 **32:**11 **33:**19 **39:**7 **46:**16 **49:**12 **60:**14,21 **61:**22 **62:**4 **68:**20 **81:**10 **82:**4,6,16 **86:** 19,21,24 **87:**2,13
statutes [5] **31:**22 **32:**6,7 **71:**2 **75:**3
statutory [1] **32:**5
stick [1] **50:**2
still [15] **8:**23 **11:**8 **16:**16 **21:** 4,5 **43:**6 **48:**25 **51:**2 **53:**5 **54:**6,6 **68:**18 **69:**23 **83:**23, 24
straight [1] **14:**3
straight-up [1] **28:**9
straighter [1] **18:**8
straightforward [1] **34:**10
strange [1] **76:**5
stringent [3] **66:**1 **69:**21,23
strong [1] **23:**11
struck [1] **22:**11
structure [1] **76:**21
structured [1] **63:**16
structuring [1] **88:**6
stuck [2] **11:**19 **15:**7
stuff [1] **21:**1
subject [5] **17:**5 **28:**17 **70:** 18,20 **85:**17
submission [1] **73:**9
submit [1] **26:**25
submitted [2] **93:**6,8
subsequently [1] **20:**6
substitute [2] **41:**13 **51:**1
substitution [1] **16:**23
sudden [1] **56:**1
sue [9] **5:**17,25 **7:**18 **16:**25 **19:**23 **27:**2 **43:**23,24 **67:**5
suggest [5] **19:**16 **26:**4 **58:** 15 **75:**5 **90:**5
suggestion [1] **16:**8
suggests [6] **25:**23 **26:**9 **70:**6 **74:**4 **76:**4 **88:**4
sui [1] **44:**3
suing [2] **4:**5 **5:**17
suit [9] **3:**23 **6:**13 **24:**22 **37:** 21 **73:**19 **82:**23 **83:**6,18,19
summary [2] **60:**4 **67:**19
superfluity [1] **75:**4
supports [1] **57:**18
suppose [5] **15:**6 **64:**16 **68:** 12 **69:**22 **83:**13
supposed [3] **28:**2,6 **62:**9
suppressing [1] **77:**12
Supremacy [1] **33:**24
SUPREME [17] **1:**1,15 **3:**15 **4:**19 **9:**16 **21:**23 **53:**19,20 **56:**1 **65:**4 **67:**21 **72:**24 **74:** 5,7,13,17 **82:**15
survive [1] **91:**25
suspect [2] **65:**11,13
system [7] **5:**18 **6:**4 **9:**12 **15:**20 **16:**3 **58:**9 **90:**25
Systems [1] **71:**7

T

talked [2] **18:**3 **90:**22
talks [5] **20:**10 **35:**8 **60:**5,24 **81:**8
teacher [2] **75:**18,20
teed [1] **93:**1
tells [2] **21:**23 **56:**13
term [2] **3:**4 **28:**1
terms [2] **33:**24 **88:**6
territorial [1] **17:**12
territory [1] **17:**10
test [3] **28:**7,10 **69:**4
text [6] **51:**17 **57:**22 **58:**18 **75:**9 **81:**25 **82:**5
text-based [2] **80:**25 **82:**3
Thanks [1] **51:**7
theoretical [1] **50:**24
theory [7] **47:**3 **48:**13,14,21 **50:**3,8 **70:**15
there's [59] **4:**3 **5:**4 **6:**14 **8:** 22 **13:**10 **14:**7 **18:**8,9 **22:** 24 **26:**10 **29:**9,19 **30:**15 **31:** 7,8 **33:**7 **34:**5,9,15,17,24 **35:**6,6,10 **37:**25 **38:**7 **40:**4, 19 **41:**18 **42:**5,24 **43:**16 **47:** 6,8,20 **49:**16,16 **50:**24 **51:**1 **54:**17,18 **58:**18 **59:**2,22 **62:** 22,22 **64:**18 **66:**11 **67:**4 **68:** 12 **75:**5 **76:**20 **78:**15 **81:**6 **83:**2,12 **87:**19 **90:**13 **93:**3
therefore [2] **24:**22 **71:**25
they've [3] **70:**22 **78:**6,6
thinking [2] **31:**13 **80:**2
third [1] **20:**14
third-party [1] **6:**5
THOMAS [5] **4:**24 **5:**6 **40:** 11 **53:**10 **84:**9
thoroughly [1] **72:**22
though [5] **11:**12 **30:**1 **37:** 22 **58:**17 **69:**6
thoughts [1] **84:**16
thousands [2] **71:**1,2
three [10] **20:**10,19 **26:**14 **60:**7,8 **61:**7 **64:**23 **65:**22, 22 **69:**24
threshold [1] **88:**25
throw [1] **46:**4

thrown [2] **55:**9 **77:**15
Thunder [1] **71:**6
tight [1] **91:**9
timely [2] **36:**16 **85:**12
timing [1] **52:**1
today [3] **41:**14 **86:**3 **92:**14
tolled [2] **8:**7,8
tolling [1] **8:**13
took [1] **67:**11
tort [1] **44:**11
toward [1] **23:**6
track [1] **35:**24
tradition [1] **67:**4
traditionally [1] **81:**1
trapped [1] **26:**22
Treasury [1] **71:**6
tremendous [1] **85:**6
trial [2] **5:**11 **67:**20
tribunal [7] **5:**22 **25:**5 **30:** 23 **31:**5 **35:**15 **72:**4,10
tried [2] **11:**7 **42:**6
tries [1] **6:**15
tripled [1] **85:**23
trotted [1] **12:**17
trouble [1] **44:**15
true [2] **84:**18 **90:**22
truly [7] **48:**16,19,24 **68:**25 **69:**7 **70:**15,19
try [5] **7:**8,24 **12:**1 **47:**24 **50:** 7
trying [10] **9:**21 **50:**16 **64:**7 **72:**8 **75:**7 **88:**22 **90:**5,23, 25 **91:**4
two [10] **16:**18 **29:**3 **35:**7 **41:** 19 **45:**22 **53:**16 **58:**25 **60:**8 **64:**13 **85:**13
two-page [1] **58:**22
type [9] **15:**5 **16:**10 **25:**12 **32:**18 **43:**25 **51:**4 **56:**20 **84:** 5 **92:**22
types [4] **17:**18 **24:**24 **70:**25 **71:**21
typical [2] **18:**21 **26:**20
typically [2] **52:**24 **71:**19

U

U.S.C [1] **51:**19
ultimately [3] **5:**24 **72:**21 **91:**13
umbrella [1] **63:**12
unavailable [1] **92:**12
unconscious [1] **77:**17
uncounseled [1] **88:**14
under [12] **3:**13 **11:**24 **27:**8 **30:**2 **41:**16 **42:**2 **53:**14 **55:** 14 **62:**7 **70:**13,14 **87:**18
undermine [1] **60:**6
undermines [5] **20:**7,17, 23 **21:**5 **24:**20
understand [13] **10:**9 **11:**3, 4 **12:**23 **14:**11 **20:**20 **28:**20 **48:**22 **53:**11 **65:**13 **83:**18, 20 **84:**25
understanding [2] **72:**17 **83:**16
understood [6] **20:**2 **36:**11 **38:**10 **61:**25 **63:**12 **89:**13
unemployment [7] **9:**7 **35:** 13 **63:**21 **71:**15 **72:**13 **77:**4 **86:**9
unexhausted [4] **23:**14 **29:** 20 **55:**15 **56:**2
uniformly [1] **74:**18
UNIKOWSKY [109] **1:**19 **2:** 3,8 **3:**6,7,9 **4:**24 **5:**2,14 **6:** 16 **7:**11 **8:**2,5,18,20 **9:**3,19, 25 **10:**14,18,22 **11:**1,5,13, 21 **12:**3,8,12,16,25 **13:**6,18 **14:**10,16 **15:**4,11,14,17 **16:** 4,18 **17:**21,24 **18:**3 **19:**19 **20:**2,25 **21:**9,16,20 **22:**9 **23:**10,23 **24:**10 **25:**17 **26:** 16 **27:**24 **28:**13 **29:**3 **30:**11, 14 **31:**3 **32:**4,14,21 **33:**6,10 **34:**1,14,24 **36:**1 **37:**3,10,16, 19 **38:**13,22 **39:**1,13,17 **40:** 16,19 **41:**25 **42:**4,11,15,18 **43:**20 **44:**2,6,8,20 **45:**6,12 **46:**10 **47:**5,12 **48:**1,8,18,22 **49:**11,15 **50:**10 **72:**8 **77:**7 **86:**19 **89:**21,22,24
Unikowsky's [2] **53:**10 **68:** 5
uniquely [1] **20:**8
UNITED [2] **1:**1,16
unless [1] **15:**17
Unlike [2] **18:**21 **61:**16
unresolved [1] **8:**6
until [4] **10:**12 **39:**21 **40:**2 **87:**8
unusual [1] **36:**5
unwritten [1] **53:**3
up [19] **6:**3 **42:**23 **45:**20 **56:** 1 **57:**14 **63:**1 **64:**7,21 **65:** 19 **66:**22 **67:**21 **71:**22 **76:**2, 9 **78:**2 **80:**24 **86:**2 **88:**11 **93:**1
upheld [3] **17:**12,16 **22:**10
useful [1] **88:**10

V

valid [5] **53:**5 **66:**19,21 **69:**1 **84:**1
variety [1] **73:**2
vary [1] **3:**22
vast [2] **35:**12 **74:**12
ventilator [1] **25:**10
verse [1] **78:**17
version [1] **7:**14
versus [4] **3:**5 **32:**18 **81:**15 **87:**21
view [8] **6:**2 **11:**21 **17:**22,24 **18:**15,15 **33:**17 **80:**23
views [1] **26:**13
vindicate [2] **90:**3 **91:**24
vindication [3] **16:**10 **49:**2 **50:**12
violated [1] **89:**10
violation [19] **9:**24 **10:**12 **14:**4,7 **31:**8 **38:**1 **42:**5,12, 20 **43:**6,16 **44:**5 **45:**11 **46:** 2 **47:**21 **78:**15 **87:**1,8 **89:**6

W

wait [7] **18:**22 **26:**21,25 **27:** 17,19 **42:**22 **92:**19
waited [2] **86:**1 **90:**8
waiver [1] **57:**13
walked [1] **19:**1
wanted [5] **24:**4 **67:**20 **89:** 13,25 **92:**16
wants [2] **67:**5,5
WASHINGTON [3] **1:**6,11, 19
way [25] **9:**15 **19:**17 **22:**5,25 **23:**25 **26:**20 **34:**6,10 **40:**4 **43:**18 **46:**18 **47:**10 **50:**24 **59:**22 **60:**25 **63:**2,16 **65:**19 **67:**9 **68:**9 **74:**8 **76:**21 **79:**8 **80:**18 **82:**19
ways [3] **20:**9,10 **64:**14
weakening [1] **32:**1
welcome [2] **4:**23 **53:**9
well-heeled [1] **61:**18
whatever [2] **13:**12 **81:**19
whatsoever [3] **56:**9 **61:**15 **67:**10
whenever [1] **46:**16
Whereupon [1] **93:**7
whether [32] **3:**23 **6:**19,24 **8:**6,12 **12:**20,21 **18:**13,19 **19:**12,14 **20:**20,21 **24:**5,6, 11 **26:**3 **31:**22 **33:**4,8,24 **36:**23 **45:**10 **46:**4 **48:**16 **61:** 12 **69:**15 **80:**11 **90:**14,15, 23 **91:**3
whole [2] **19:**21 **36:**19
wide [1] **73:**2
will [5] **3:**3 **23:**8,9 **28:**21 **73:** 5
WILLIAMS [4] **1:**3 **3:**5 **55:**5 **77:**15
win [6] **43:**7,8,8 **45:**14 **46:**8 **77:**21
Wisconsin [10] **7:**17 **23:**1 **59:**1,9,14 **62:**15 **82:**13,14, 18 **91:**12
Wisconsin's [2] **18:**23 **58:** 4
within [5] **54:**15,18 **55:**17 **70:**2,3
without [3] **23:**21 **33:**21 **36:** 3
wondering [1] **31:**3
word [1] **23:**12
words [6] **13:**24 **28:**13 **37:**9 **45:**24 **58:**12 **90:**11
work [2] **6:**15 **10:**10
workable [1] **10:**16
worked [1] **8:**1
works [2] **5:**19 **30:**20
worried [2] **80:**4 **81:**20
wrap [1] **42:**23
writ [1] **41:**5

Y

year [2] **71:**2 **86:**5
years [8] **15:**8 **26:**22 **27:**19 **32:**3 **70:**8 **78:**10,10 **92:**19
yellow [1] **92:**25
York [1] **23:**5
Younger [2] **52:**15 **75:**15