SUPREME COURT OF THE UNITED STATES

ΔN	THE SUPREME COURT OF THE	ONITED STATES
		-
ROBERT F.	KENNEDY, JR.,)
SECRETARY	OF HEALTH AND HUMAN)
SERVICES,	ET AL.,)
	Petitioners,)
	V.) No. 24-316
BRAIDWOOD	MANAGEMENT, INC.,)
ET AL.,)
	Respondents.)

Pages: 1 through 113

Place: Washington, D.C.

Date: April 21, 2025

HERITAGE REPORTING CORPORATION

Official Reporters

1150 Connecticut Avenue, N.W., Suite 305
Washington, D.C. 20036
(202) 628-4888
www.hrccourtreporters.com

1	IN THE SUPREME COURT OF T	HE UNITED STATES
2		
3	ROBERT F. KENNEDY, JR.,)
4	SECRETARY OF HEALTH AND HUMAN)
5	SERVICES, ET AL.,)
6	Petitioners,)
7	v.) No. 24-316
8	BRAIDWOOD MANAGEMENT, INC.,)
9	ET AL.,)
10	Respondents.)
11		
12		
13	Washington, D.	С.
14	Monday, April 21,	2025
15		
16	The above-entitled matter	came on for oral
17	argument before the Supreme Cour	t of the United
18	States at 10:03 a.m.	
19		
20	APPEARANCES:	
21	HASHIM M. MOOPPAN, Principal Dep	uty Solicitor General
22	Department of Justice, Washi	ngton, D.C.; on behal:
23	of the Petitioners.	
24	JONATHAN F. MITCHELL, ESQUIRE, A	ustin, Texas; on
25	behalf of the Respondents.	

1	CONTENTS	
2	ORAL ARGUMENT OF:	PAGE
3	HASHIM M. MOOPPAN, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	JONATHAN F. MITCHELL, ESQ.	
7	On behalf of the Respondents	44
8	REBUTTAL ARGUMENT OF:	
9	HASHIM M. MOOPPAN, ESQ.	
10	On behalf of the Petitioners	107
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	PROCEEDINGS
2	(10:03 a.m.)
3	CHIEF JUSTICE ROBERTS: We will hear
4	argument first this morning in Case 24-316,
5	Kennedy versus Braidwood Management.
6	Mr. Mooppan.
7	ORAL ARGUMENT OF HASHIM M. MOOPPAN
8	ON BEHALF OF THE PETITIONERS
9	MR. MOOPPAN: Mr. Chief Justice, and
10	may it please the Court:
11	Task Force members are inferior
12	officers because they are subject to ample
13	supervision by the Secretary in issuing
14	recommendations that bind the public. Most
15	importantly, the Secretary can remove Task Force
16	members at will. His power to remove them flows
17	from his power to appoint them acting through
18	the director's authorities. And this Court has
19	repeatedly recognized that at-will removal power
20	is a powerful tool for control.
21	Moreover, the Secretary can review
22	Task Force recommendations and prevent them from
23	taking effect. During the minimum interval
24	period, he can direct the Task Force to rescind
25	a recommendation, and he can replace Task Force

- 1 members as needed to ensure that happens. In
- 2 addition, he can require the Task Force to
- 3 obtain his pre-approval before they issue any
- 4 recommendation at all.
- 5 Given these collective powers of
- 6 supervision, the Task Force cannot issue final
- 7 recommendations that bind the public unless the
- 8 Secretary permits them to do so.
- 9 Respondents' contrary argument rests
- 10 entirely on the statutory language providing
- 11 that the Task Force shall be independent and, to
- the extent practicable, not subject to political
- 13 pressure. But, as this Court's cases make
- 14 clear, that language does not create a
- restriction on removing the Task Force members,
- and it does not impose a bar on reviewing their
- 17 recommendations.
- 18 It certainly does not do so clearly
- 19 enough to overcome the canon of constitutional
- 20 avoidance, especially since the language itself
- 21 contemplates some amount of political
- 22 involvement.
- In all events, if that statutory
- 24 language is the constitutional problem, then the
- 25 solution is straightforward. This Court should

1 hold that the language is unenforceable and severable. It is neither necessary nor appropriate to hold instead that Task Force 3 members must be appointed by the president and 4 confirmed by the Senate. 5 6 I welcome this Court's questions. JUSTICE THOMAS: Before we get to the 7 constitutional problems, what's the statutory 8 9 authority to appoint the Task Force? 10 MR. MOOPPAN: So there are two sources 11 of authority, Your Honor. The first is that 12 under the Reorganization Act, the Secretary has the power to exercise all functions and duties 13 14 of the director, and the director, under 299, 15 has the authority to convene the Task Force. 16 JUSTICE THOMAS: Isn't that an odd 17 delegation? Normally, it would be the superior or the principal officer who would have the 18 19 authority who would delegate it to subordinates. 20 MR. MOOPPAN: Well, it's not just a 21 delegation, Your Honor. The Reorganization Act 2.2 was in place when 299 was enacted. And so, when 23 Congress passed 299 and said that the director 24 could convene the Task Force, that meant that

the Secretary could convene the Task Force.

1 JUSTICE THOMAS: So what -- so the 2 word -- you're using the word "convene?" 3 MR. MOOPPAN: Yes, Your Honor. JUSTICE THOMAS: Well, I think that 4 normally connotes just calling a meeting or 5 6 something. The court was convened this morning. 7 The Chief didn't appoint any of us. 8 MR. MOOPPAN: So I agree, Your Honor, 9 that "convene" doesn't necessarily connote 10 appointment, but there's no other language in 11 the statute that specifies who will appoint 12 these members, and in that -- in light of that, "convene" is most naturally read to mean convene 13 14 and select the people who will serve on -- on 15 the board. 16 And that's clearly true before nine --17 before the ACA. Before the ACA was enacted, 18 it's clear that the Secretary and the director 19 had the power to convene these -- to appoint these individuals. 20 21 JUSTICE THOMAS: But appointment would 22 not be an issue if they had no authority to 23 require anything of -- of others. It's just 24 advisory.

MR. MOOPPAN: Well, not as a

- 1 constitutional matter but as a statutory matter, 2 and I took your question to be, where is the statutory authority to do this? Before the ACA, 3 it had to be the case that the Secretary or the 4 director had the authority. It would not be 5 6 constitutional for the president to select and 7 the Senate to confirm these individuals before the ACA because, before the ACA, everyone agrees 8 they weren't officers. And the Senate has no 9 10 constitutional power to have any role in the 11 selection of a non-officer. 12 So the only way to construe the 13 statute before the ACA is that the Secretary and 14 the director had the ability, and nothing about 15 the ACA changed that. 16 JUSTICE THOMAS: Can you give me an 17 example of another body that's selected this way just with using the operative term "convene" and 18 19 that had been and that the authority comes 20 from -- through a subordinate to the principal? 21 MR. MOOPPAN: So not off the top of my 2.2 head, Your Honor, but, again, the -- as a 23 statutory matter, if we're just talking about --
- MR. MOOPPAN: -- how the statute

JUSTICE THOMAS: Yeah.

1 should be construed, there is no other provision 2 anywhere in the code that says who will pick 3 these people. So the most natural way of reading a provision that says he shall convene 4 the Task Force is to also select the people who 5 6 will serve on the Task Force. 7 JUSTICE SOTOMAYOR: Don't you rely --CHIEF JUSTICE ROBERTS: This is --8 9 JUSTICE SOTOMAYOR: I'm sorry. CHIEF JUSTICE ROBERTS: 10 What the Task 11 Force does is fairly technical medically and 12 scientifically. I mean, is the Secretary really supposed to the -- be in the position of going 13 14 down the line and saying, yeah, I mean, I know 15 you think we should use this particular thing 16 with this atomic structure and all that kind of 17 stuff, but I've got a different view on that? Is that -- is that a pertinent consideration in 18 19 deciding whether they're adequately supervised? MR. MOOPPAN: Well, Your Honor, the 20 21 Secretary clearly has the authority to do so. 2.2 Whether he chooses to exercise that authority or 23 whether he instead chooses to defer to the expert judgment of the -- of the Task Force 24 25 isn't relevant to the constitutional question.

- 1 As a constitutional matter and as a statutory
- 2 matter, he has the authority to review their
- 3 recommendations, and that's the critical point
- 4 for here.
- In addition, though, to take a step
- 6 back, it's not just that he has the power to
- 7 review their recommendations. He also has
- 8 at-will removal power, which this Court has
- 9 repeatedly said is a critical means of control.
- 10 So, even before you get to the question of, if
- 11 they issue a recommendation that they may or may
- 12 not disagree with, is it going to get into the
- 13 technical science of it, his mere ability to
- have at-will removal power is a powerful means
- of control. And that's what this Court has
- 16 recognized in cases like Edmond and Free
- 17 Enterprise Fund.
- JUSTICE GORSUCH: Mr. Mooppan, on that
- 19 score, the removal-at-will argument that the
- 20 government makes hinges a lot on the assumption
- 21 that the removal power comes with the
- 22 appointment power and that because the Secretary
- has the power to appoint, he, therefore, has the
- 24 power to remove.
- The Fifth Circuit didn't address the

- 1 antecedent question whether the Secretary,
- 2 indeed, has the power to appoint. What do we do
- 3 about that? Should we -- should we remand the
- 4 case to -- to assess that in the first instance?
- 5 Justice -- as Justice Thomas's questions point
- 6 out, there seems to be some -- some reason to
- 7 question that.
- MR. MOOPPAN: Well, so I guess what I
- 9 would say is the following: There is certainly
- 10 no removal restriction in the statute, so
- 11 whoever it is who has the ability to --
- 12 JUSTICE GORSUCH: Whoever it is --
- MR. MOOPPAN: Right.
- JUSTICE GORSUCH: -- is an important
- 15 question, though, right?
- MR. MOOPPAN: So I take the point,
- 17 Your Honor, but in terms of the question of is
- there removal, at-will removal, there is at-will
- 19 removal.
- 20 JUSTICE GORSUCH: I understand that.
- 21 But -- but you say the Secretary has that
- 22 at-will removal power. That's a pretty critical
- 23 premise of your argument, and it's an untested
- 24 premise, one that the Fifth Circuit hasn't
- 25 addressed and --

1 MR. MOOPPAN: So --2 JUSTICE GORSUCH: -- and is being 3 really addressed here for the first time, as you point out. And -- and, therefore, would you 4 5 object to a remand for that, consideration of 6 that question? 7 MR. MOOPPAN: Well, we think it is fully briefed here, and we think the Court is 8 9 capable of deciding it, but --10 JUSTICE GORSUCH: Well, you also cite 11 Cutter and tell us, you know, we're not normally 12 a court -- reminding us --13 MR. MOOPPAN: So --14 JUSTICE GORSUCH: -- as if we need it, 15 that we're a court of review, not first view. 16 MR. MOOPPAN: So I won't object if 17 this Court doesn't want to address that 18 question, but we do think the answer is quite 19 clear. For the reasons in my -- with my colloquy with Justice Thomas, I don't think the 20 21 statute could plausibly be construed to vest the 22 appointment in the president and confer --23 confirmation by Senate. 24 JUSTICE GORSUCH: I agree with that, 25 but whether it appoint -- whether it -- whether

- 1 it vests it in the director as opposed to the
- 2 Secretary is -- is an interesting question.
- MR. MOOPPAN: Well, but that's a very
- 4 easy question because, if you agree with me it's
- 5 at least in the director, the Reorganization
- 6 Act, by its --
- 7 JUSTICE GORSUCH: I understand you
- 8 think it's easy. Counsel always thinks it's
- 9 easy.
- 10 (Laughter.)
- MR. MOOPPAN: Also --
- 12 JUSTICE GORSUCH: But -- but I -- I'm
- 13 pretty sure Mr. Mitchell doesn't think it's
- quite as -- he probably thinks it's easy too,
- 15 just the other way.
- MR. MOOPPAN: Well, to be fair --
- 17 JUSTICE GORSUCH: And -- and -- and no
- 18 court's passed on the question. And so, again,
- 19 I ask you: Do you have any objection if we were
- 20 to remand it?
- MR. MOOPPAN: I -- we don't. But, to
- 22 be fair, I don't even hear Mr. Mitchell to
- disagree with what I'm about to say, which is
- 24 that the Reorganization Act of 1966 clearly
- vests the Secretary with all the powers of the

- 1 director. So, if the director has the power,
- 2 the Secretary has the power.
- JUSTICE SOTOMAYOR: And that includes,
- 4 doesn't it, subdivision (b)(2), which transfers
- 5 to the Secretary the power to make such
- 6 provisions as she shall deem appropriate,
- 7 authorizing the performance of any of the
- 8 functions of the director?
- 9 MR. MOOPPAN: That's correct, Your
- 10 Honor.
- JUSTICE SOTOMAYOR: And so, if they
- 12 have to convene something and no one else is
- appointing them, then the director appoints
- 14 them, right?
- MR. MOOPPAN: That's right. And,
- 16 importantly --
- 17 JUSTICE SOTOMAYOR: And removes them?
- 18 MR. MOOPPAN: Correct. And
- 19 Mr. Mitchell's point about the Reorganization
- 20 Act, what he focused on is whether the Task
- 21 Force is an advisory board. But that's
- irrelevant to the question we're talking about
- 23 right now because that's a question about
- 24 whether the Task Force powers have been vested
- in the Secretary.

1	JUSTICE SOTOMAYOR: Now the Chief
2	asked you
3	MR. MOOPPAN: The director
4	JUSTICE SOTOMAYOR: the Chief asked
5	you a question about supervising technical
6	advice. That might be said be true of even
7	us. We're given law clerks to help us on some
8	of the things we don't know anything about.
9	That's the nature of an agency, isn't
10	it, that they hire experts to help the
11	decisionmakers come to a conclusion?
12	MR. MOOPPAN: Right. That was the
13	essential reasoning and holding of Free
14	Enterprise Fund, in fact
15	JUSTICE SOTOMAYOR: All right.
16	MR. MOOPPAN: was that you can have
17	bureaucrats but not be ruled by them.
18	So, yes, you have bureaucrats who
19	contribute their expertise, but, ultimately, the
20	final decision power is in a politically
21	accountable head of an agency.
22	JUSTICE SOTOMAYOR: And and that
23	word "independent" could mean that people on the
24	Task Force have an obligation to give their
25	independent opinion, but that doesn't mean that

- 1 the Secretary has to accept it, correct?
- 2 MR. MOOPPAN: That's exactly right.
- 3 And I would point this Court to how this Court
- 4 has described administrative law judges in -- in
- 5 Butz versus Economou.
- 6 JUSTICE ALITO: And that's an -- an
- 7 incredibly strained interpretation of the term
- 8 "independent."
- 9 Are you independent of the president?
- MR. MOOPPAN: No, Your Honor.
- 11 JUSTICE ALITO: I mean, he's -- he is
- 12 counting on you to exercise a degree of
- independent judgment. But, if somebody's
- 14 removable at will, that person is not in any
- ordinary sense of the term "independent."
- MR. MOOPPAN: Well, with all due
- 17 respect, Your Honor, in Your Honor's opinion for
- 18 the Court in Collins, this Court held that there
- 19 are many statutes that use the phrase
- 20 "independent" to describe an entity that is
- 21 nevertheless not subject to a removal.
- 22 JUSTICE ALITO: All right. Well,
- 23 maybe that's a little bit unfair. But, I
- 24 mean -- maybe I was wrong in Collins. But
- 25 explain to me --

1	(Laughter.)
2	JUSTICE ALITO: You know, explain to
3	me how somebody can be independent and yet
4	subject to removable on the whim of the
5	president.
6	MR. MOOPPAN: Sure. As as Justice
7	Sotomayor said, it's independent in the sense
8	that they have both the duty and the power to
9	exercise their own best judgment. That doesn't
LO	mean that once they've done so, they're free
L1	from accountability.
L2	It just means that when they're making
L3	the decision, they have an obligation to
L4	exercise their best scientific judgment.
L5	JUSTICE KAVANAUGH: Is go ahead.
L6	JUSTICE ALITO: Well, let's say they
L7	are removable at will, okay, and "independent"
L8	means something. It's like a precatory
L9	directive.
20	Still, if the Task Force rates
21	something A or B, then that's it. And you try
22	to get and and even if the members are
23	removable at will, the only way you can get
24	around that is through a really some really
25	ierry-huilt arguments

1 MR. MOOPPAN: I don't think so, Your 2 Let me give you the most straightforward 3 of them. Under the statute itself, no recommendation takes effect until the Secretary 4 sets the minimum interval period. 5 6 JUSTICE ALITO: Right, right. 7 MR. MOOPPAN: And the minimum interval 8 period is at least one year. 9 JUSTICE ALITO: Yeah. 10 MR. MOOPPAN: So one year is more than 11 adequate time for the Secretary, if he doesn't 12 agree with the recommendation, to direct the board to rescind it, the force to rescind it 13 14 and, if the Task Force doesn't rescind it, to 15 replace them with people who will. That doesn't 16 seem very jerry-built to me. 17 In addition to that, the Secretary 18 also has the power to create a pre-approval 19 requirement. Under 300gg-92, he has rulemaking 20 power to implement the statute, and he can say: 21 Before you issue any recommendations, submit it 2.2 to me for my approval, and if and only if I 23 approve it can you issue it in the first place. 24 Again, that's not all that

jerry-built, and it perfectly preserves --

Т	JUSTICE ALITO: And II II II
2	Congress really wanted these Task Force members
3	to do the bidding of the Secretary, isn't that
4	an incredibly odd way to go about conferring
5	that authority?
6	MR. MOOPPAN: No, because, critically,
7	we are not saying that Congress wanted the Task
8	Force to do the Secretary's bidding. We agree
9	that the Task the Secretary cannot tell the
10	Task Force to make a given recommendation.
11	If the Task Force doesn't want to make
12	a recommendation, it doesn't have to make a
13	recommendation. Our point is simply that if the
14	Task Force does make a recommendation, the
15	Secretary can block it.
16	It's to use an analogy, it's like
17	bicameralism. The Senate can't force the House
18	to pass a bill. But, if the Senate doesn't also
19	agree with the bill, it doesn't become a law.
20	JUSTICE ALITO: Well, under the
21	argument that you just made, why can't the
22	Secretary demand that a particular
23	recommendation be made using exactly the same
24	authority that you just outlined?
25	What am I missing? The president

- 1 says: I want you to make this recommendation,
- and if you don't make this recommendation, I'm
- 3 going to remove you and replace you with
- 4 somebody who will make the recommendation.
- 5 MR. MOOPPAN: So he can remove them,
- 6 but we don't think he has the ability to force
- 7 them to make the recommendation because we do
- 8 think that that -- the phrase "independence"
- 9 and, more importantly, the phrase "the
- 10 recommendations made shall be independent in
- 11 299b-4(a)(6), we do think that language
- 12 does prevent that.
- 13 And that makes perfect sense. If you
- take a step back and think about the statutory
- scheme, Congress was, as it often does,
- 16 balancing competing objectives. On the one
- 17 hand, it wanted the benefits of an expert body.
- 18 It wanted recommendations that reflected their
- 19 best scientific judgment. But, on the other
- 20 hand, it recognized that you need to have
- 21 political accountability.
- 22 And so the Secretary can block it,
- 23 but -- and that solves the problem. It means
- that no final decision could be made that binds
- 25 the public unless the Secretary approves it.

1 JUSTICE BARRETT: But, Mr. Mooppan, 2 doesn't that make it difficult for you in your inferiority argument? Because what if it's a 3 big priority of the president to have these 4 AIDS-prevention drugs available and the Task 5 6 Force says no, not -- not going to do it? 7 I mean, doesn't it seem then that that insulates them, especially if -- you know, 8 Justice Alito said, well, what if you fire him 9 and say: I'm going to appoint a Task Force who 10 11 will approve these as preventative care? 12 MR. MOOPPAN: So two points about that, Your Honor. The first is I think this 13 14 Court has already resolved that question in Free 15 Enterprise Fund. 16 So, in Free Enterprise Fund, this 17 Court held that once the PCAOB was made removable at will by the Commission, they were 18 19 inferior officers. Even though it was conceded 20 there was no statutory authority whatsoever for the Commission to force the PCAOB --21 2.2 JUSTICE BARRETT: So that's enough? 23 Your position -- because it was a little bit difficult to tell in your brief. You're saying 24 25 that's enough? At-will removal is all that's

1 required? 2 MR. MOOPPAN: No, that's not what I'm 3 saying, Your Honor. We have said that it's both the at-will removal power plus the powers of 4 supervision we've talked about. But, 5 6 critically, those are powers of supervision to 7 block recommendations. Your -- you asked me, well, what about 8 forcing them to make a recommendation? 9 10 As to forcing them to make a 11 recommendation, my -- our point is you don't 12 need supervision in that respect. Free 13 Enterprise Fund already holds that as long as 14 they're removable at will, the fact that you 15 can't force them to take action is -- does not 16 make them --17 JUSTICE KAVANAUGH: Can you force --18 JUSTICE KAGAN: Why is it --19 JUSTICE KAVANAUGH: Go ahead. 20 MR. MOOPPAN: I -- the last thing I 21 was going to say, which I -- perhaps Justice 22 Kavanaugh was about to say, is you do still have 23 at-will removal power in that context, and so, 24 therefore, you do have some means of ensuring

the recommendation gets made. It's just the

2.2

- 1 means is replacing them if they won't do it, but
- you don't have statutory authority to force them
- 3 to start. And Free Enterprise Fund already
- 4 blesses that arrangement.
- 5 JUSTICE KAGAN: Well, why is it that
- 6 in your brief and again here you're reluctant to
- 7 say that the removal power is sufficient?
- MR. MOOPPAN: Well, we just don't
- 9 think your -- the Court needs to go that far.
- 10 This Court has always, in cases like Edmond and
- 11 Free Enterprise Fund, taken an incremental
- approach to how it determines the line between
- inferior and principal officers.
- 14 And we think, in this case, where
- there's both at-will removal plus abundant means
- of back-end supervision, that's all this Court
- 17 needs to do.
- 18 And to be candid, I think there would
- 19 be harder questions if, for example, you had an
- 20 officer who had the power to issue very
- 21 important, very broad-ranging decisions that
- 22 had -- took immediate effect, couldn't be
- stopped on the back end, and the only means of
- 24 supervision was front-end removal.
- We haven't taken a position one way or

- 1 the other on that, but I do think that that's a
- 2 harder question, and that's why we don't think
- 3 this Court needs to go there.
- But that said, you don't have to go
- 5 very much further than that on the facts of this
- 6 case because, here, it's -- not only do you have
- 7 at-will removal, you have the critical
- 8 difference that the recommendations don't take
- 9 effect immediately. They don't take effect for
- 10 at least a year, and within that year period,
- 11 the Secretary has ample time to ensure they
- 12 never take effect.
- And so those two alone, we're
- 14 perfectly comfortable saying that that's
- 15 sufficient for inferior officers.
- 16 JUSTICE JACKSON: Mr. Mooppan, can I
- 17 go back to Justice Gorsuch's questions about
- 18 at-will removal? Because he at least suggested
- 19 that we may not have at-will removal here, and I
- 20 guess I'm wondering about the presumptions in
- our law related to the removability of officers.
- 22 So do we really need to send it back
- for resolution of that if the law presumes that
- 24 where there is no statement regarding this,
- 25 at-will removal is at play?

1 MR. MOOPPAN: So, again, Your Honor, I 2 I don't think there's any colorable 3 argument that there's a removal restriction here. The only colorable dispute is whether 4 there's actually appointment authority --5 JUSTICE JACKSON: Right. And what 6 7 does our law say about that situation? I mean, part of the problem here, I think, is that we 8 9 are talking about a statute that doesn't speak 10 to particular things. 11 MR. MOOPPAN: I think what --12 JUSTICE JACKSON: And so, to the 13 extent that the law doesn't speak to the 14 removability of these people, I thought our 15 presumption was that we do have at-will removal. 16 MR. MOOPPAN: Yes. The presumption is 17 that there is at-will removal by whoever has 18 appointment authority. And I think the question 19 with Justice Gorsuch is, who is the person who 20 has appointment authority? I don't think 21 there's any serious dispute that whoever it is 2.2 has at-will removal power because --23 JUSTICE JACKSON: And so do you think we need to get to the bottom of who it is --24 25 MR. MOOPPAN: Well, yeah.

1	JUSTICE JACKSON: in this case?
2	MR. MOOPPAN: Either here or on
3	remand, of course, if we need to be right
4	that the Secretary does have appointment
5	authority to defeat their claim. We think that
6	the Secretary does have appointment authority.
7	We think it's clear enough from the statute.
8	JUSTICE JACKSON: Who would it be if
9	it isn't the Secretary?
LO	MR. MOOPPAN: Well, I in my view,
L1	the only other colorable reading of the statute
L2	is that it would be the director because the
L3	statute says the director shall convene.
L4	But, of course, that would render the
L5	statute unconstitutional because the director is
L6	not the head of the department. And so that's
L7	yet another reason why you should read the
L8	statute the way we suggest, that when it says
L9	the director, under the backdrop of a statute
20	that vests all powers in the director and the
21	Secretary, the Secretary has the power.
22	My friend on the other side, his move
23	is to say: No, no, no, it's the president who
24	has the appointment authority confirmed by the
2.5	Senate, invoking the backdrop principle that

- 1 under the Appointments Clause, presidential
- 2 appointment and Senate confirmation is the
- 3 default rule for appointment.
- But the reason that doesn't work, as I
- 5 was discussing earlier, is, before the ACA,
- 6 these were not officers. And if they were not
- 7 officers, it would be unconstitutional for the
- 8 Senate to have any role in their confirmation.
- 9 So you cannot read the statute to have
- 10 presidential appointment and Senate confirmation
- 11 before the ACA, and nothing in the text of the
- 12 statute changed after the ACA about who does the
- 13 appointing.
- 14 JUSTICE KAVANAUGH: I think you said
- earlier that at-will removal gives the Secretary
- 16 the power to influence the content of
- 17 recommendations before they're made.
- 18 Is that accurate?
- MR. MOOPPAN: I think that's correct,
- 20 Your Honor.
- 21 JUSTICE KAVANAUGH: And then --
- 22 because that comes from the at-will removal
- power, correct?
- MR. MOOPPAN: Correct.
- 25 JUSTICE KAVANAUGH: And how does that

- then square with the word "independent?"
- 2 MR. MOOPPAN: Because it's still the
- 3 Task Force ultimate judgment that matters. Yes,
- 4 there will be -- they can consider what the
- 5 Secretary wants, they may be even influenced by
- 6 the fact that if they don't do what he wants,
- 7 they might get removed, but it's still
- 8 ultimately their call as a statutory matter. So
- 9 I would point, for example, the Benefits Review
- 10 Board --
- 11 JUSTICE KAVANAUGH: That's an odd
- definition of "independent," I suppose. Does
- "independent" in this context have any different
- 14 meaning because the folks in question are not
- 15 government employees, that they have outside
- 16 affiliations, their employers or wherever
- 17 they're affiliated with?
- MR. MOOPPAN: Well, they -- well, we
- do think that they are officers of the United
- 20 States, and we do think they're government
- 21 employees. But your point that they have other
- 22 affiliations as well, we do think that's part of
- 23 why it uses --
- JUSTICE KAVANAUGH: They're not paid,
- 25 right?

1 MR. MOOPPAN: Yes, they -- they are 2 volunteers. But we do think the fact -- that's 3 part of the reason why it uses the phrase "independent" to underscore that it's not just 4 that they have the power to make the judgment 5 based on their best scientific judgment; they 6 7 have the duty. They have --8 JUSTICE KAGAN: But I hear you as not 9 relying on the notion that "independence" in 10 that provision means independent from, you know, 11 your university or your think tank or something 12 like that, that you think that the word "independent" here does mean independent from 13 14 political influences and particularly from 15 presidential ones? 16 MR. MOOPPAN: Well, in making the 17 recommendation, we think that they have to 18 exercise their best scientific judgment free 19 from all of it. They shouldn't do what, you 20 know, their university tells them to do. They 21 shouldn't necessarily do what the Secretary 2.2 tells them to do. They should exercise their 23 independent judgment based on the science. 24 JUSTICE KAVANAUGH: But the Secretary 25 might say -- and I think you acknowledged

- 1 this -- if you don't make the following
- 2 recommendation, I'm going to fire you.
- 3 MR. MOOPPAN: That's right. And so
- 4 the analogy I would give, Your Honor --
- 5 JUSTICE KAVANAUGH: That's okay,
- 6 right?
- 7 MR. MOOPPAN: Yes. The analogy I
- 8 would give you is the Benefits Review Board in
- 9 the Department of Labor. So the Benefits Review
- 10 Board in the Department of Labor is an
- 11 adjudicatory body that every -- is at-will
- 12 removable. Because they adjudicate cases, they
- 13 should adjudicate cases based on their view of
- 14 the facts and the law. But it's true that if
- the Secretary tells them, look, you come out one
- 16 way, you're going to get fired, they might get
- 17 fired. But they should still exercise their
- independent best judgment when they issue the
- 19 ruling.
- 20 JUSTICE KAVANAUGH: And an --
- JUSTICE KAGAN: Well, what's this
- language "to the extent practicable" doing?
- MR. MOOPPAN: So, look, I think that
- 24 that -- it's not entirely clear, Your Honor, but
- 25 I think that, if anything, it underscores our

- 1 point that you should not read this statute,
- 2 especially in light of constitutional avoidance,
- 3 to say that the Secretary can't engage --
- 4 exercise the types of review we've said just --
- 5 JUSTICE KAGAN: I mean, it does
- 6 suggest that Congress was thinking, in some
- 7 circumstances, it would not be practicable.
- 8 MR. MOOPPAN: Right. There's at
- 9 least --
- 10 JUSTICE KAGAN: And what circumstances
- 11 would Congress be thinking that about?
- MR. MOOPPAN: Well, at a bare minimum,
- 13 the circumstances where the statute would be
- 14 unconstitutional if the Secretary couldn't
- 15 engage in that level of supervision. So I --
- 16 again, I think that that language just
- 17 underscores the constitutional avoidance point
- that the limited forms of review on the back end
- 19 that we've emphasized have got to be permissible
- 20 under that statute both because it has that
- 21 language in it and because the canon of
- 22 constitutional avoidance says you should read it
- 23 that way.
- 24 And, again, going back to the
- 25 adjudicators, it's not just the Benefits Review

- 1 Board. More generally, under the APA, the
- 2 statutory scheme for adjudication has exactly
- 3 this feature to it. You have adjudicators who
- 4 are tasked with exercising independent judgment,
- 5 but their actions on the back end can be
- 6 reviewed.
- 7 JUSTICE KAVANAUGH: Yeah, I understand
- 8 the analogy to adjudicators, and I thought
- 9 that's what was in your brief, but, normally,
- 10 you wouldn't say with adjudicators that the
- 11 supervising officer can influence the content of
- 12 the adjudication.
- MR. MOOPPAN: Well, yes, and --
- JUSTICE KAVANAUGH: That they can only
- 15 review the adjudication after it's been made.
- MR. MOOPPAN: Well, but they also --
- 17 you know, as the Benefits Review Board says, you
- 18 can also influence -- you have at-will removal,
- 19 and every one of these adjudicators knows --
- JUSTICE KAVANAUGH: Right.
- MR. MOOPPAN: -- that they're acting
- 22 under the shadow of that. So, you know, does
- 23 that affect them? Perhaps. But their duty and
- their power is still to make the decision based
- on their best judgment.

_	reinaps one way or making the point
2	is
3	JUSTICE KAVANAUGH: And that's so
4	you're making the analogy, though, to
5	adjudicators here, right?
6	MR. MOOPPAN: Yeah.
7	JUSTICE KAVANAUGH: You think that's a
8	good analogy? And because their decision
9	recommendations can be reviewed before they take
10	effect, it's similar to all the adjudication
11	cases where there's been supervising
12	supervisor review of the ultimate decision?
13	MR. MOOPPAN: That's right. And one
14	way of making the point is, for these
15	individuals, if the Secretary tells them to do
16	something and they don't do it, they do the
17	opposite and make a different recommendation,
18	that's not insubordinate, right, because they
19	have statutory power to make their independent
20	best judgment.
21	For most inferior officers, if the
22	president or the head of your agency tells to
23	you do X and you do Y, that is insubordinate.
24	So that's what the language does.
25	Now that doesn't mean that you need to

- 1 be protected from removal on the back end. You
- 2 can be independent, make your own statutory
- 3 judgments, but then have to face the
- 4 consequences if the head of the agency disagrees
- 5 with those.
- 6 CHIEF JUSTICE ROBERTS: Thank you,
- 7 counsel.
- Justice Thomas, anything further?
- 9 JUSTICE THOMAS: Just briefly. What
- 10 role did you say the Reorganization Act played
- 11 with respect to the Task Force?
- 12 MR. MOOPPAN: So -- so several roles.
- 13 The first is, on the appointment question, we
- 14 think that the Reorganization Act is a way
- 15 that -- to confirm that the -- the Secretary has
- the direct appointment authority with respect to
- 17 the Task Force members.
- 18 JUSTICE THOMAS: Now is the Task
- 19 Force -- I thought the reorganization dealt with
- agencies within HHS.
- MR. MOOPPAN: That's correct, Your
- Honor.
- JUSTICE THOMAS: Is the Task Force an
- 24 agency?
- 25 MR. MOOPPAN: We think the Task Force

```
1
      is within the AHRQ and within PHS, so it's
     within --
 2
 3
                JUSTICE THOMAS: So what -- what
 4
      supports that?
               MR. MOOPPAN: Well, it is an entity
 5
 6
      that is convened by the Public Health Service,
7
      selected by the Public Health Service,
8
      supervised by the Public Health Service, and
 9
      supported --
10
                JUSTICE THOMAS: Now is it
11
      structurally -- is it -- is it structurally or
12
      statutorily designated a part of an agency?
13
               MR. MOOPPAN: Again, I -- there's not
14
     anything that says they are or aren't, but I
15
      think the clear best reading of the statute is,
16
     when you have an entity that's convened by the
17
     Public Health Service, selected by the Public
18
     Health Service, supervised by the Public Health
19
      Service, and supported by the Public Health
20
     Service, it's part of the Public Health Service.
21
               CHIEF JUSTICE ROBERTS: Justice Alito?
2.2
               JUSTICE ALITO: No.
23
               CHIEF JUSTICE ROBERTS:
24
               Justice Sotomayor?
```

JUSTICE SOTOMAYOR: There are any

- 1 number -- I think we mentioned them in our 2 opinion -- the opinion in Collins -- that are 3 deemed independent, but the president still has 4 the power to remove the leadership, correct? 5 MR. MOOPPAN: Correct. 6 JUSTICE SOTOMAYOR: I know that -- it 7 seems to me that if the Task Force members are 8 not paid, that that means that they would take their oath more seriously, wouldn't it, because 9 they're not afraid of losing a government job? 10 11 MR. MOOPPAN: I'm not sure I would 12 psychoanalyze them that way. I -- I --13 JUSTICE SOTOMAYOR: No, no, but my 14 colleagues are. They're saying that because 15 they could be removed, they're going to 16 automatically ignore their statutory duty. 17 MR. MOOPPAN: Look, I think that they 18 will exercise their statutory duty, and I 19 think --
- JUSTICE SOTOMAYOR: Which is to give a
- 21 recommendation --
- MR. MOOPPAN: Right.
- JUSTICE SOTOMAYOR: -- independently.
- MR. MOOPPAN: But I -- I would say --
- 25 I -- I wouldn't say that means that the removal

- 1 power isn't a means of supervision and
- 2 influence.
- JUSTICE SOTOMAYOR: Obviously. But I
- 4 go back to the examples I've made, which is my
- 5 law clerks I ask to give me their independent
- 6 judgment of what an answer should be, and
- 7 they'll tell you there are some times -- a lot
- 8 of times I don't accept it, and I certainly have
- 9 the power to fire them, and they still do it.
- 10 (Laughter.)
- MR. MOOPPAN: Correct, Your Honor.
- 12 JUSTICE SOTOMAYOR: All right. That's
- 13 the nature of asking people to advise you,
- 14 correct?
- MR. MOOPPAN: Yes.
- 16 JUSTICE SOTOMAYOR: Which some advice
- 17 you'll accept, some you won't. And you can
- 18 choose to ignore your obligation, but that's not
- something we presume you'll do?
- MR. MOOPPAN: Correct.
- JUSTICE SOTOMAYOR: Thank you.
- 22 CHIEF JUSTICE ROBERTS: Justice Kagan?
- 23 Justice Gorsuch?
- 24 JUSTICE GORSUCH: So I understand that
- 25 you -- you agree that they -- the government --

- 1 the Secretary cannot force a recommendation but
- 2 lean heavily on the fact it can -- the Secretary
- 3 can stop recommendations.
- 4 I think your best authority for that
- 5 may be Section 202 if I'm correct. You tell me
- 6 if I'm wrong. And what in 202, if it is your
- 7 best authority, gives the Secretary that power?
- 8 MR. MOOPPAN: So not quite, Your
- 9 Honor. I -- I -- the basis for the distinction
- is coming from 299b-4(a)(6). We think the
- 11 statutory language says that they shall be
- independent in the recommendations made. And so
- 13 we think that means that they get to make their
- recommendations, but that doesn't necessarily
- mean that those recommendations have to take
- 16 effect.
- 17 JUSTICE GORSUCH: Right. I understand
- 18 that.
- MR. MOOPPAN: Now the statutory
- 20 power --
- JUSTICE GORSUCH: Yeah.
- MR. MOOPPAN: -- to block them, we
- 23 agree, is both 202 --
- JUSTICE GORSUCH: Yeah.
- MR. MOOPPAN: -- and the

- 1 Reorganization Act.
- 2 JUSTICE GORSUCH: Okay. And focusing
- 3 on 202 in particular and putting aside the
- 4 Reorganization Act for the moment, what in that
- 5 empowers the Secretary to stop a recommendation
- 6 from taking effect?
- 7 MR. MOOPPAN: Well, so the Assistant
- 8 Secretary for Health, who is supervised and
- 9 directed by the Secretary, shall administer the
- 10 entire Public Health Service. And the ability
- 11 to administer an agency is the language Congress
- 12 generally uses to describe an agency head's
- 13 power to control the whole agency.
- As we cited in the reply brief, that's
- 15 the language that govern -- allows the Secretary
- of State to administer the entire State
- 17 Department, is the Secretary of State shall
- 18 administer.
- 19 So we think that if it weren't for
- b-4(a)(6), there would be no question at all
- 21 that the Assistant Secretary and, therefore, the
- 22 Secretary could direct what the Task Force does
- 23 root and branch, from front to end.
- Because of b-4(a)(6), we acknowledge
- 25 that the specific governs the general, and they

- 1 have to be independent in making their
- 2 recommendations.
- JUSTICE GORSUCH: Yeah.
- 4 MR. MOOPPAN: But that doesn't mean
- 5 that they can't be blocked on the back end.
- 6 JUSTICE GORSUCH: Appreciate that.
- 7 Thank you.
- 8 CHIEF JUSTICE ROBERTS: Justice
- 9 Kavanaugh?
- 10 JUSTICE KAVANAUGH: I might have
- 11 misunderstood that, but I thought you were also
- relying on 300gg-13(b)(1) for the authority to
- 13 reject a recommendation?
- MR. MOOPPAN: Well, that gives the
- 15 authority to delay the effective date. But then
- 16 you need some other source of authority to then
- 17 make the recommendation go away.
- JUSTICE KAVANAUGH: So that's just the
- when, that's not the whether?
- MR. MOOPPAN: Correct.
- JUSTICE KAVANAUGH: Okay. Thank you.
- 22 CHIEF JUSTICE ROBERTS: Justice
- 23 Barrett?
- JUSTICE BARRETT: I just want to
- 25 clarify what you mean by the word "independent"

- or how you understand it. I mean, Mr. Mitchell
- 2 is reading it in a very maximalist way. You are
- 3 taking a middle road.
- 4 I -- I wonder -- I mean, I was
- 5 thinking of a law clerk example myself. Does
- 6 "independent" even have to mean independent of
- 7 the Secretary? Because it seems to me that I
- 8 could give my law clerk some advance direction.
- 9 I could say: I want you to make an independent
- judgment and I want it to be free of political
- influence or free of outside influence. And by
- 12 that, I would mean outside the Court, I might
- mean outside of our chambers, but I might not
- mean for it to be apart from me, not independent
- 15 of me.
- 16 And I could even do that ex ante. I
- 17 could say: Give me your best understanding of
- 18 this statute, which -- your -- your best take on
- its interpretation, seen through the lens of,
- you know, the way I interpret statutes, the way
- 21 I see law.
- 22 So not entirely independent. If you
- 23 see statutes -- I mean, so, you know, I -- I
- don't put a huge amount of stock in legislative
- 25 history. So, if I say: You know, give me your

- 1 best reading of the statute and that's what they
- 2 bring back, that's not going to be very useful
- 3 to me.
- 4 So they're not independent of me or my
- 5 instruction even though I could say they were
- 6 independent in a very real sense of the word.
- 7 But I take it that you don't adopt that view?
- 8 MR. MOOPPAN: So, Your Honor, we could
- 9 have taken an even narrower interpretation of
- "independence" along the lines you're
- 11 suggesting. We thought the better reading of
- 12 the statute in light of its context is the one
- we have articulated, where there is independence
- in the recommendation made even vis-à-vis the
- 15 Secretary.
- 16 JUSTICE BARRETT: Even vis-à-vis the
- 17 Secretary.
- MR. MOOPPAN: But it doesn't block the
- 19 Secretary on the back end.
- 20 Of course, if you want to interpret
- 21 the statute even more narrowly than that, then
- that just makes it even harder for Mr. Mitchell.
- JUSTICE BARRETT: Well, I mean, I
- 24 think the fact that you could interpret it and,
- 25 I think, give content to the word "independence"

- in an even narrower sense, I mean, you have a
- 2 more middle of the road, and then, as I said, I
- 3 think Mr. Mitchell has a really maximalist view,
- 4 I mean, at a --
- 5 MR. MOOPPAN: Right.
- 6 JUSTICE BARRETT: -- at a minimum, I
- 7 think it shows that the maximalist view isn't
- 8 necessary.
- 9 MR. MOOPPAN: I -- I think that's
- 10 right, Your Honor. And, again, ultimately, I
- 11 think one way of thinking about this is this is
- 12 an Appointments Clause challenge, so the
- 13 question is whether there is adequate
- 14 supervision.
- The Court doesn't necessarily need to
- 16 get into the exact level of what "independent"
- means and does it mean what you said or what I
- 18 said. All we -- the Court really needs to say
- is there's enough supervision that these are
- 20 properly understood as inferior officers.
- 21 That's all you need to do to reject
- the claim here and reverse the decision below.
- JUSTICE BARRETT: Thank you.
- 24 CHIEF JUSTICE ROBERTS: Justice
- 25 Jackson?

1	JUSTICE JACKSON: And we also can rely
2	on the constitutional avoidance canon. I mean,
3	didn't you you mentioned it a couple times.
4	So let me just invite you to explain how that
5	would work in terms of deciding who has the
6	better reading of "independence."
7	MR. MOOPPAN: Sure. And, you know, we
8	do think we have the better reading. But, if
9	you thought there was ambiguity here about what
10	the scope of "independence" was or whether the
11	appointment power was vested in the Secretary
12	rather than just the director, this Court
13	obviously reads statutes to avoid constitutional
14	problems rather than create them.
15	So you shouldn't read the phrase
16	"independent" to impose a removal restriction
17	that's not there, to impose a bar on review
18	that's not there, to impose restrictions on who
19	can appoint that aren't there.
20	You should read the statute to
21	reinforce that the Secretary has adequate
22	supervision so that the statute, as written by
23	Congress, can continue to operate.
24	And Mr. Mitchell's only real response
25	to all of that is, again, to say, well, the

- 1 statute's actually perfectly constitutional on
- 2 even his theory because he thinks the president
- 3 can appoint and the Senate can confirm.
- 4 But that doesn't work as a statutory
- 5 matter for the reasons we discussed. And once
- 6 you take that off the table, his reading does
- 7 create serious constitutional problems with the
- 8 statute that you can void if you adopt our
- 9 reading.
- 10 JUSTICE JACKSON: Thank you.
- 11 CHIEF JUSTICE ROBERTS: Thank you,
- 12 counsel.
- 13 Mr. Mitchell.
- ORAL ARGUMENT OF JONATHAN F. MITCHELL
- 15 ON BEHALF OF THE RESPONDENTS
- MR. MITCHELL: Mr. Chief Justice, and
- 17 may it please the Court:
- 18 The court of appeals correctly held
- 19 that Task Force members are principal officers
- who must be appointed by the president and the
- 21 Senate, as required by Article II. They cannot
- 22 be inferior officers because their task --
- 23 because their preventive care coverage mandates
- are neither directed nor supervised by the
- 25 Secretary of Health and Human Services or by

- 1 anyone else who has been appointed as a
- 2 principal officer.
- 3 The governing statutes make this
- 4 clear. Section 300gg-13(a)(1) gives the Task
- 5 Force alone the prerogative to impose preventive
- 6 care coverage mandates on insurers regardless of
- 7 whether the Secretary approves or disapproves a
- 8 Task Force recommendation.
- 9 And Section 299b-4(a)(1) and (a)(6)
- 10 require the Task Force members and their
- 11 recommendations be kept independent and, to the
- extent practicable, protected from any type of
- 13 political pressure.
- 14 These statutes cannot co-exist with a
- 15 regime in which the Secretary can overrule the
- 16 Task Force coverage recommendations or deny them
- 17 binding effect.
- 18 The Court also has no authority to
- sever Section 299b-4(a)(6), as proposed by the
- 20 government. The remedy prescribed by this Court
- 21 must take the form of a final judgment to be
- 22 entered by the district court on remand.
- 23 And a federal district court has no
- 24 authority and no ability to formally revoke or
- 25 cancel a statutory provision when entering

- 1 judgment for a party. More importantly, a
- 2 remedy from this Court must, to the maximum
- 3 possible extent, respect the will of Congress as
- 4 reflected in its enacted laws.
- 5 Congress has chosen to create an
- 6 independent Task Force and shield it from
- 7 political pressure, and the plaintiffs' proposed
- 8 remedy honors that congressional decision.
- 9 The government's proposed remedy would
- 10 rewrite the statute into something
- 11 unrecognizable by the Congress that enacted the
- 12 ACA. And it is not even clear that Congress
- would have approved a regime in which
- 14 politicians, rather than an independent Task
- 15 Force, decide the preventive care that insurers
- 16 must cover.
- I welcome the Court's questions.
- JUSTICE THOMAS: Mr. Mitchell, your
- 19 argument depends on a much broader reading of
- "independent" than the government's. Would you
- 21 address the government's limit -- more limited
- view of "independence?"
- MR. MITCHELL: Well, there are two
- 24 different words in play here. It's not just the
- word "independent," which appears in both

- 1 Section 299b-4(a)(1) and (a)(6). It's also the
- 2 phrase in subsection (a)(6) that says the Task
- Force is to be protected from political pressure
- 4 to the extent practicable.
- 5 And we don't see any way that
- 6 statutory language can be squared with the
- 7 regime envisioned by the government, where the
- 8 Secretary can come in and influence the Task
- 9 Force decisions on the front end, which
- 10 Mr. Mooppan once again acknowledged at oral
- 11 argument he believes the Secretary can do that.
- 12 And we don't see how that can be squared with
- 13 the actual statutory language.
- 14 Mr. Mooppan suggests invoking the
- canon of constitutional avoidance in a way to
- 16 bend subsection (a)(6) to make it more
- accommodating of his view of secretarial power.
- 18 But the constitutional avoidance canon is
- inapplicable here for many reasons.
- Number one, Mr. Mooppan's proposed
- 21 reading of subsection (a)(6) does not avoid any
- of the constitutional problems that occurred.
- 23 Under the government's interpretation
- of subsection (a)(6), the Task Force members are
- 25 still principal officers because they have

- 1 unreviewable discretion when deciding not to
- 2 recommend A or B ratings on a particular
- 3 preventive care service or when they decide to
- 4 withdraw a previous A or B rating that they have
- 5 conferred prior to their decision to withdraw.
- 6 That means they have final decisionmaking
- 7 authority that's not subject to direction and
- 8 supervision.
- 9 The second point --
- 10 JUSTICE JACKSON: I don't -- I'm
- 11 sorry, I don't understand that. Can you help?
- MR. MITCHELL: Yes.
- JUSTICE JACKSON: What -- what do you
- mean, they have unreviewable authority? First
- of all, I thought there was an interval period
- 16 that the statute imposed.
- 17 MR. MITCHELL: That's right.
- JUSTICE JACKSON: What -- what
- 19 function is that if not to have some
- 20 consideration of what these recommendations are?
- 21 That's one question.
- MR. MITCHELL: Sure.
- JUSTICE JACKSON: And then another is:
- 24 What -- what do you mean about them having
- 25 unreviewable discretion not to make a

1 recommendation? 2 MR. MITCHELL: So the test for 3 principal officer status is whether the officer in question is directed and supervised in his 4 5 decisionmaking. On the government's reading of Section 299b-4(a)(6), if the Court were to adopt 6 7 that view, the Secretary would have the ability to overrule Task Force decisions to confer A or 8 9 B ratings on preventive care. But the Secretary 10 would not have any authority to overrule the 11 Task Force --12 JUSTICE JACKSON: But why is that? 13 MR. MITCHELL: -- if it decides --14 JUSTICE JACKSON: Why is that? I mean, the -- the year --15 16 MR. MITCHELL: This --17 JUSTICE JACKSON: They make a 18 recommendation --19 MR. MITCHELL: Mm-hmm. 20 JUSTICE JACKSON: -- and they have 21 rejected other recommendation -- or --2.2 MR. MITCHELL: Right. 23 JUSTICE JACKSON: -- other options. 24 The Secretary puts into place the interval period, reviews what they did and didn't do --25

1 MR. MITCHELL: Mm-hmm. 2 JUSTICE JACKSON: -- and says I'm 3 going to remove you as a result. You know, I don't like what you did or didn't do and you're 4 5 out. 6 MR. MITCHELL: That doesn't make them 7 into inferior officers. And Arthrex holds as much because Arthrex acknowledges situations in 8 9 which a principal officer can, through informal means, influence the decisionmaking of a 10 11 subordinate official. And Arthrex says that's 12 still not good enough. There has to be a formal 13 authority to review the decisions that are being 14 made. And what --15 JUSTICE JACKSON: But what about all 16 the -- what about all the adjudicatory cases? 17 Mr. Mooppan says --18 MR. MITCHELL: Right. 19 JUSTICE JACKSON: -- this is more like 20 Edmond. 21 MR. MITCHELL: Right. 2.2 JUSTICE JACKSON: This is -- this is

independent in the sense that people are making

recommendations using their own best judgment,

but they're still at-will removable, and we've

23

24

- 1 found that is okay.
- 2 MR. MITCHELL: But they also have all
- 3 their decisions subject to review by a principal
- 4 officer. What this Court said in Edmond was
- 5 that the reason those judges were deemed
- 6 inferior was because they could not issue any
- 7 final decision on behalf of the United States
- 8 without being allowed to do so by a principal
- 9 officer. That is --
- 10 JUSTICE GORSUCH: Mr. Mitchell, I -- I
- 11 take that point, and the government concedes
- 12 that a decision not to list something is
- 13 unreviewable --
- MR. MITCHELL: Yes.
- JUSTICE GORSUCH: -- but says that
- 16 Free Enterprise Fund blessed that arrangement
- 17 already.
- MR. MITCHELL: No.
- 19 JUSTICE GORSUCH: What are your
- thoughts?
- 21 MR. MITCHELL: The difference in Free
- 22 Enterprise Fund was the SEC had all sorts of
- 23 supervisory authority over the PCAOB, the Public
- 24 Accounting -- the Public Company Accounting
- Oversight Board that is not present here. The

- 1 SEC could review and alter any rulemaking done
- 2 by the board. The SEC could review and overrule
- 3 any sanction that was being imposed by the
- 4 board. And if you look at page --
- 5 JUSTICE GORSUCH: But what about a
- 6 non-action by the board?
- 7 MR. MITCHELL: Well, if you look at
- 8 page 504 of the Court's opinion in Free
- 9 Enterprise Fund, it lists all the ways in which
- 10 the SEC had these oversight authorities. And
- 11 this is not -- with all respect, Your Honor,
- 12 this is not a situation of non-action. When the
- 13 Task Force decides to issue a C, D, or I rating
- 14 rather than an A or B rating, that is action.
- 15 It's not inaction. If the Task Force decides to
- 16 withdraw an A or B rating that it previously
- 17 conferred, that is also action rather than
- 18 inaction.
- 19 So the government's brief tries to
- 20 rely on the act/omission distinction. It just
- 21 doesn't hold up here. There will be situations
- 22 in which the Task Force can take affirmative
- 23 actions that cause a certain type of preventive
- care not to receive the A or B rating. And the
- 25 government concedes that's unreviewable, so that

- 1 means they're still principal officers.
- 2 But there's a second problem as well.
- 3 Even if this Court were to think that Task Force
- 4 members become inferior officers under the
- 5 government's interpretation of the statute, they
- 6 are still unconstitutionally appointed because
- 7 Congress has not vested the Secretary of Health
- 8 and Human Service with the authority to appoint
- 9 the Task Force.
- 10 And the court of appeals did not reach
- 11 this question, as Justice Gorsuch noted during
- 12 the questioning of Mr. Mooppan. But the Court
- would have to conclude that there was vesting of
- 14 this authority in the Secretary before it can
- say that they're constitutionally appointed now.
- 16 JUSTICE BARRETT: So are you saying we
- 17 should remand to the Fifth Circuit to let them
- 18 address that for the first time?
- 19 MR. MITCHELL: The Court should not
- 20 remand unless it disagrees with our principal
- 21 officer argument or if the Court wants to impose
- the severance remedy suggested by the
- 23 government. If the Court --
- JUSTICE BARRETT: So, if we disagreed
- 25 with your principal officer argument, you would

- 1 say, say that you disagree with our principal
- 2 officer argument but then remand to the Fifth
- 3 Circuit to give them a crack at the appointment?
- 4 MR. MITCHELL: I think there would
- 5 have to be a remand in that situation, Justice
- 6 Barrett, unless the Court thought the issue was
- 7 so open and shut.
- 8 JUSTICE SOTOMAYOR: You think -- why
- 9 do you think that the Fifth Circuit didn't reach
- 10 it? I saw that this --
- MR. MITCHELL: Right.
- 12 JUSTICE SOTOMAYOR: -- was a huge part
- of the briefing before the Fifth Circuit.
- MR. MITCHELL: It was.
- 15 JUSTICE SOTOMAYOR: It seems to me
- 16 that it -- it wasn't merely an assumption; it
- 17 was a conclusion.
- 18 MR. MITCHELL: But --
- 19 JUSTICE SOTOMAYOR: In their whole
- 20 reasoning, the conclusion was --
- 21 MR. MITCHELL: Well, if I can defend
- 22 the court of appeals for a moment, Justice
- 23 Sotomayor.
- JUSTICE SOTOMAYOR: Yes.
- MR. MITCHELL: They did not need to

- 1 reach that question because they concluded,
- 2 number one, the Task Force members are principal
- 3 officers. So there's no need to decide whether
- 4 Congress vested the appointment authority in the
- 5 Secretary. You only need to reach that question
- if you think they're inferior officers because
- 7 even inferior officers still need to be
- 8 appointed by the president and the Senate unless
- 9 Congress has affirmatively opted out of the
- 10 default rule. But, if you think they're
- 11 principal officers, you don't need to reach that
- 12 question at all.
- 13 The second reason I think the court of
- 14 appeals refused to rule on it was because they
- 15 rejected the government's proposed severance
- 16 remedy.
- 17 And the Court will also need to
- 18 address this point if it wants to sever Section
- 19 299b-4(a)(6) because the severance remedy
- 20 proposed by the government is premised on the
- 21 idea that the Secretary has constitutional
- 22 authority vested by Congress to appoint the Task
- 23 Force. If the Secretary doesn't have that power
- 24 because Congress hasn't vested the power in the
- 25 Secretary, then the government's severance

- 1 remedy does not work because the inferior
- 2 officers would still have to be appointed by the
- 3 president and the Senate even if they're
- 4 considered inferior officers.
- JUSTICE SOTOMAYOR: Thank you.
- 6 JUSTICE JACKSON: I guess I don't
- 7 understand why you're separating the principal
- 8 officers and the removability. I thought
- 9 whether or not they are principal officers in
- 10 part turns on whether or not they are removable
- 11 at will. You seem to have --
- MR. MITCHELL: It's --
- JUSTICE JACKSON: -- separated them in
- a way that is confusing to me, so can you help?
- MR. MITCHELL: Well, we don't mean to
- 16 separate the inquiry. Removability is a factor
- 17 to consider. It's not the be all and end all of
- 18 principal officer status, and this Court has
- 19 never held that that --
- JUSTICE JACKSON: I understand, but
- 21 you said the -- the --
- MR. MITCHELL: -- is the only factor,
- 23 but it's one --
- JUSTICE JACKSON: -- you said the
- 25 Fifth Circuit didn't have to really go into

- 1 appointments or removability because they
- 2 determined that they're principal officers. And
- 3 I thought the -- you can only reach the issue of
- 4 whether or not they are principal officers by
- 5 examining such things as how they are appointed
- 6 and how they are removed.
- 7 MR. MITCHELL: The question Justice
- 8 Sotomayor asked was why didn't the Fifth Circuit
- 9 rule on whether Congress had vested --
- JUSTICE JACKSON: Hmm.
- 11 MR. MITCHELL: -- the Secretary of
- 12 Health and Human Services with appointment
- authority over the Task Force. That was the
- 14 question I was answering.
- 15 And the Fifth Circuit had no need to
- 16 reach that issue. And this Court also has no
- 17 need to reach this issue unless it disagrees
- 18 with our argument on principal officers or
- 19 unless the Court wants to impose the
- 20 government's proposed severance --
- 21 JUSTICE KAVANAUGH: In the reply
- 22 brief --
- JUSTICE KAGAN: Why -- no, please.
- JUSTICE KAVANAUGH: In the reply
- brief, the government came back with Hartwell.

- 1 Do you want to address that case?
- 2 MR. MITCHELL: Yeah. Hartwell is not
- 3 on point because, in Hartwell, the statute
- 4 required the Secretary of the Treasury to
- 5 specifically approve the appointment of that
- 6 inferior officer. So Hartwell concluded that
- 7 was enough to vest the appointment power in the
- 8 Secretary of the Treasury.
- 9 We don't have anything like that in
- 10 these statutes. Nothing in any of the statutes
- 11 here requires the Secretary of Health and Human
- 12 Services to affirmatively approve the
- 13 appointment of Task Force members.
- 14 Now --
- JUSTICE KAVANAUGH: And I guess the
- 16 government comes back there and says but they
- 17 have broader authority to -- the Secretary has
- 18 broader authority to carry out the provisions --
- 19 299(a) and the Reorg Act, they say those
- 20 together give the Secretary the authority to
- 21 essentially stand in the shoes, I suppose, would
- 22 be one way to characterize their argument, of
- 23 the director. You want to respond to that?
- 24 MR. MITCHELL: Sure. The Secretary is
- 25 allowed to appoint the Task Force. We

- 1 acknowledge that. Anyone is allowed to appoint
- 2 the Task Force under the statute. The question
- 3 is, under the Constitution, who can appoint.
- 4 The statute doesn't say anything about who
- 5 appoints. So anybody can appoint them. The
- 6 AHRQ director appointed them for a time, and
- 7 that was --
- 8 JUSTICE KAVANAUGH: Well, if you lose
- 9 your principal -- I think that's important. If
- 10 you lose your principal officer argument --
- MR. MITCHELL: Mm-hmm.
- 12 JUSTICE KAVANAUGH: -- so that's the
- 13 premise, not saying you will --
- MR. MITCHELL: Right.
- JUSTICE KAVANAUGH: -- but, if you do,
- and you just said then you could read the
- 17 statute to allow the Secretary to appoint,
- 18 that's kind of the end of it.
- MR. MITCHELL: No, I don't think so.
- 20 That's not vesting, all right? Anyone can
- 21 appoint under the statute. The Secretary of
- 22 Energy could appoint. The president could
- 23 appoint. The AHRQ director could appoint.
- 24 Someone from the private sector could appoint.
- 25 The statute doesn't say anything at all about

- 1 who appoints. No one is vested with the
- 2 authority because the statute takes no position
- 3 on who appoints. So --
- 4 JUSTICE KAVANAUGH: Yeah. Okay. And
- 5 I think I understand your argument. Your
- 6 argument's something's got to speak specifically
- 7 to appointment. The general authorities in the
- 8 Reorganization Act and 299 are not enough to --
- 9 MR. MITCHELL: That's right.
- 10 JUSTICE KAVANAUGH: And that's why
- 11 Hartwell's different, because Hartwell --
- 12 MR. MITCHELL: That's right.
- JUSTICE KAVANAUGH: Yeah. I've got
- 14 it..
- MR. MITCHELL: We have a specific
- 16 reference in the statute in Hartwell to the
- 17 Secretary of the Treasury, who must approve the
- 18 appointment before it can take effect.
- 19 JUSTICE KAGAN: But is -- is -- is --
- MR. MITCHELL: We don't have anything
- 21 remotely like that here.
- 22 JUSTICE KAGAN: -- is your view that
- 23 Congress actually wrote a statute without saying
- 24 who should appoint?
- MR. MITCHELL: Yes, because they

1 didn't need to work --2 JUSTICE KAGAN: Without even thinking 3 that it was saying who should appoint? 4 MR. MITCHELL: Yes. 5 JUSTICE KAGAN: That Congress was 6 leaving this, like, just to the -- whatever they 7 come up with? MR. MITCHELL: Yes, because this was 8 9 initially established as a purely advisory body. 10 So it didn't matter under -- under the 11 Constitution who appointed them. The 12 Appointments Clause didn't apply to the Task 13 Force when it was first created because it only 14 had advisory powers. 15 JUSTICE KAVANAUGH: But, even if 16 purely advisory, to pick up on Justice Kagan's 17 point, it's unlikely that Congress just was 18 throwing it out there in terms of who would --19 JUSTICE KAGAN: I mean, usually 20 Congress thinks that it does things like that, 21 right? I mean, it would be an odd statute. I 2.2 doubt you could find another where Congress has 23 set up a board and said, you know -- just not said who should -- who should --24

25

MR. MITCHELL: Well, all they said --

1	JUSTICE KAGAN: who should make up
2	the board?
3	MR. MITCHELL: all they said is
4	that the AHRQ director shall convene the Task
5	Force. And "convene" does not mean appoint, as
6	Justice Thomas mentioned earlier.
7	JUSTICE KAGAN: No.
8	JUSTICE JACKSON: But it could.
9	JUSTICE KAGAN: But, in the absence of
10	anything else, it would be a natural reading to
11	say: When you're looking at one person and
12	saying he can convene the board, that means
13	and there's nobody else out there to actually
14	pick the board members, that means he should
15	also pick the board members.
16	MR. MITCHELL: He's certainly allowed
17	to pick the board members, Justice Kagan. What
18	we're saying is the statute doesn't forbid other
19	people from appointing.
20	The president could appoint the A
21	the members of the Task Force. He could have
22	done that prior to the ACA, and he can do it
23	after the ACA. In fact, we think he's
24	constitutionally compelled now, after the ACA,
25	to appoint them, with the advice and consent of

- 1 the Senate. There is no statute that forbids
- 2 the president to appoint.
- JUSTICE GORSUCH: Well, if "convene"
- 4 does mean appoint, then -- then we do have a
- 5 problem on -- on an inferior officer theory,
- 6 don't we?
- 7 MR. MITCHELL: There is a problem,
- 8 yes, because now we have a statute that's
- 9 requiring the appointment of a principal
- 10 officer --
- JUSTICE GORSUCH: Well, even on the
- 12 inferior --
- MR. MITCHELL: -- by someone who's not
- even a head of department.
- JUSTICE GORSUCH: Yeah, but even if --
- 16 even if you should lose that argument, again,
- and we're talking about inferior officers,
- 18 Mr. Mitchell, if we read "convene" to mean
- 19 vesting the appointment power in the director,
- 20 that -- that's -- that's a problem.
- 21 MR. MITCHELL: That's a big problem.
- 22 It means the statute is unconstitutional, and
- 23 the Court should, therefore, reject any
- interpretation of the word "convene" that makes
- it synonymous with "appoint" because that would

- 1 create not simply a constitutional question but
- 2 a constitutional violation even --
- JUSTICE KAVANAUGH: Well, that's where
- 4 you -- that's where you --
- 5 JUSTICE JACKSON: But wait. Why?
- 6 JUSTICE KAVANAUGH: -- pull in 299a,
- 7 which says the Secretary can carry out -- shall
- 8 carry out the statutory provisions acting
- 9 through the director. I mean, that's their
- 10 response to that, right?
- MR. MITCHELL: Maybe -- maybe that
- works, but, again, the question Justice Gorsuch
- was asking me is, if (a)(1) is construed to vest
- the appointment power in the AHRQ director, even
- the government would agree with us that's
- 16 unconstitutional.
- 17 JUSTICE KAVANAUGH: That -- yeah, that
- alone would be a problem, I totally agree. But
- 19 then maybe you have to figure out how to fix
- that problem. And one way that the government
- 21 points out is, well, the statute itself
- 22 essentially fixes that problem because it says
- 23 that the Secretary can carry out the duties of
- 24 the director.
- MR. MITCHELL: Maybe that works. But

- 1 the question, again, under the Article II is
- where has Congress vested the appointment power.
- 3 And if Congress has vested it in the
- 4 AHRQ director, who is not even a head of
- 5 department, the AHRQ director can't even appoint
- 6 inferior officers. And the government agrees
- 7 with us on this much, right?
- 8 One thing we all agree on is that the
- 9 Task Force was unconstitutionally appointed for
- the 13-year period that began in March of 2010,
- 11 when the Affordable Care Act was first enacted
- 12 into law, through June of 2023, when Secretary
- 13 Becerra reappointed the Task Force.
- Everyone agrees that those were
- 15 unconstitutional appointments, and everyone
- agrees, I would think, that the recommendations
- 17 that issued during that 13-year period cannot be
- 18 enforced until the Task Force reissues those
- 19 recommendations after receiving a constitutional
- 20 appointment.
- 21 So it's hard for me to understand why
- the government's suggesting a remedy of
- 23 severance when, at the very least, we should be
- 24 entitled to an injunction that restrains the
- 25 enforcement of --

1 JUSTICE KAVANAUGH: Well --2 MR. MITCHELL: -- the previously 3 issued Task Force recommendations. JUSTICE KAVANAUGH: -- I don't want to 4 5 belabor it, but I think --6 MR. MITCHELL: Yeah. 7 JUSTICE KAVANAUGH: -- to Justice Gorsuch's point, which is a good one, they're 8 9 saying constitutional avoidance would say: 10 Well, don't read it to be the director in 11 isolation. Read the other provisions which give 12 the Secretary authority over the director so 13 that the Secretary can do the 14 convening/appointing, and that solves the 15 constitutional problem. 16 MR. MITCHELL: Yeah, Justice 17 Kavanaugh, I agree that the Secretary is allowed to appoint the Task Force. 18 19 JUSTICE KAVANAUGH: Right. MR. MITCHELL: And we've never 20 disputed that. The question is --21 2.2 JUSTICE KAVANAUGH: And so it's 23 vesting by law under Article II. That's your 24 key point there. 25 MR. MITCHELL: Right. Vested by

- 1 Congress. Where has Congress by law vested that
- 2 authority? And if the statute is vesting the
- 3 authority in the AHRQ director, that is
- 4 unconstitutional even if they're inferior
- officers. And that's why the Court, I think,
- 6 has to reject an interpretation of the word
- 7 "convene" that equates it to "appoint"
- 8 because --
- 9 JUSTICE GORSUCH: And you're saying as
- 10 well, as I understand it, that if Congress
- 11 didn't vest it in the director but vested it in
- 12 the director and the Secretary and 15 other
- people in between, that's a problem too?
- MR. MITCHELL: It's a problem too
- 15 because these are principal officers. So
- 16 Congress can't --
- 17 JUSTICE GORSUCH: Well, even if
- 18 they're inferior officers, would it be a
- 19 problem? If an inferior -- if the -- if
- 20 Congress vested the power to appoint an inferior
- officer in the Secretary plus 15 people, is that
- 22 permissible?
- MR. MITCHELL: I'm not sure. It
- 24 would -- at the very least, if they had vested
- it in the Secretary and they also go on to say

- in the statute but other people can also
- 2 exercise the power, it still has to be, I think,
- 3 ultimately, a head of department that exercises
- 4 that power, so --
- 5 JUSTICE KAGAN: But what if it's --
- 6 what if it's investing it in the director
- 7 subject to the supervision and control of the
- 8 Secretary? So there aren't 14 other people
- 9 wandering around. It's in the director because
- 10 he's the person who convenes, subject to the
- 11 Secretary, because the statute otherwise gives
- 12 the -- the Secretary supervisory control over
- 13 the director.
- 14 MR. MITCHELL: I -- I don't think
- that's good enough, Justice Kagan. I think the
- 16 statute would have to say the Secretary must
- 17 affirmatively approve the Assistant Secretary or
- 18 the director's recommendation. That was
- 19 Hartwell.
- JUSTICE BARRETT: But doesn't --
- 21 MR. MITCHELL: If the statute went
- that far, I would agree that's vesting.
- JUSTICE KAVANAUGH: What if it says --
- JUSTICE BARRETT: But doesn't that --
- 25 MR. MITCHELL: I don't think it -- I'm

- 1 sorry.
- 2 JUSTICE BARRETT: Go ahead, Justice
- 3 Kavanaugh.
- 4 But doesn't that prove the point there
- 5 are all of these questions, and shouldn't we
- 6 leave this to the Fifth Circuit --
- 7 MR. MITCHELL: Yeah.
- 8 JUSTICE BARRETT: -- on remand if you
- 9 lose the principal officer point?
- 10 MR. MITCHELL: Yes, I do believe that
- it should be remanded if the Court thinks it
- 12 necessary to reach this question.
- We don't think the Court should reach
- 14 this question or any court should reach this
- 15 question because --
- 16 JUSTICE KAVANAUGH: What -- what if --
- just to stay on this point --
- MR. MITCHELL: Yes.
- 19 JUSTICE KAVANAUGH: -- what if --
- Justice Kagan's point, what if it said Secretary
- or director may appoint?
- MR. MITCHELL: If it says the
- 23 Secretary or director may appoint, then Congress
- 24 has vested the appointment authority in a head
- of department. But we would still say that's

- 1 unconstitutional because they're principal
- 2 officers. So, if the Court --
- JUSTICE KAVANAUGH: Putting that
- 4 aside.
- 5 MR. MITCHELL: If the Court disagrees
- 6 with us, if they reject our principal officer
- 7 argument, that's the question that would have to
- 8 be resolved by the Fifth Circuit on remand,
- 9 Justice Kavanaugh.
- JUSTICE GORSUCH: I mean, that's --
- it's a curious thing just to -- just to continue
- 12 to say you're -- it's vested in two places. One
- is constitutional, and the other's
- 14 unconstitutional.
- MR. MITCHELL: But at least Congress
- has made the vesting in a head of department.
- 17 JUSTICE GORSUCH: Well, but --
- 18 MR. MITCHELL: And I think the head of
- 19 department would have to exercise that
- 20 authority, first of all.
- JUSTICE GORSUCH: Well, what if --
- 22 what if he didn't, though? What if the
- 23 Secretary didn't exercise that authority, but
- 24 the other person did? I mean, I --
- MR. MITCHELL: And --

1 JUSTICE GORSUCH: We've never had a 2 case like that. MR. MITCHELL: I don't think there 3 I think the Secretary would have to 4 approve the appointment for it to be valid under 5 Hartwell, and --6 7 JUSTICE GORSUCH: Yeah, I -- yeah. 8 So -- so you're saying that under -- under any 9 circumstance -- vested in 15 different places, but, ultimately, for it to be constitutional, it 10 11 has to be the Secretary who acts? 12 MR. MITCHELL: The Secretary has to 13 act some in some way, and it may be --JUSTICE SOTOMAYOR: I'm sorry, 14 you're -- you're --15 16 JUSTICE KAVANAUGH: Hartwell --17 JUSTICE SOTOMAYOR: -- requiring -- if I have an employee and they do something and if 18 I don't like it, I tell them, and if I like it, 19 I leave it alone. 20 21 MR. MITCHELL: Mm-hmm. 2.2 JUSTICE SOTOMAYOR: You want the

Secretary to sign a piece of paper that says the

the Task Force, I saw the recommendations, I saw

director took this action, I saw the -- I saw

23

24

- 1 him leaving them in place, and that doesn't mean
- 2 that the Secretary agrees?
- 3 MR. MITCHELL: No. We don't think the
- 4 Secretary has the authority to do any of that.
- 5 JUSTICE SOTOMAYOR: You think that the
- 6 Constitution requires him -- giving Justice
- 7 Kagan's example -- that the director is subject
- 8 to the supervision of the Secretary?
- 9 MR. MITCHELL: Is Your Honor's
- 10 question asking whether the Secretary has to
- 11 approve the Task Force's recommendations, or are
- 12 you -- is Your Honor asking about whether the
- 13 Secretary has to approve an appointment to the
- 14 Task Force?
- 15 JUSTICE SOTOMAYOR: Both. Both.
- MR. MITCHELL: All right. So, if --
- this is a hypothetical I was being asked from
- 18 Justice Gorsuch. If there's a statute that
- 19 vests the appointment power in the Secretary and
- another person, the Secretary needs to sign off
- 21 on the ultimate appointment if these are
- 22 inferior officers -- and we reject that
- 23 premise -- in order for the appointment to be
- 24 constitutional.
- JUSTICE SOTOMAYOR: All right.

1 MR. MITCHELL: Now the -- the other --2 JUSTICE SOTOMAYOR: I just -- I -- I'm 3 having a difficult time understanding. 4 JUSTICE KAVANAUGH: Do you -- you accept Hartwell. You just say this doesn't fall 5 within Hartwell? 6 7 MR. MITCHELL: That's right. That's 8 right. 9 JUSTICE KAVANAUGH: Okay. 10 MR. MITCHELL: And, again, all these 11 issues probably should be remanded to the Fifth 12 Circuit if the Court thinks it necessary to reach this point because, number one, the Fifth 13 14 Circuit didn't resolve the question below. 15 There's very little briefing on this issue. We 16 barely discussed this in our brief. There's a little bit of a more robust discussion in the 17 18 Solicitor General's reply brief. But also --19 JUSTICE KAVANAUGH: Two pages. 20 MR. MITCHELL: Yeah. This Court has 21 said --2.2 JUSTICE KAVANAUGH: I was agreeing 23 with you. MR. MITCHELL: And this Court has said 24

many times: We are a court of review, not of

- 1 first view.
- JUSTICE KAVANAUGH: Yeah.
- 3 MR. MITCHELL: So I don't think it
- 4 would be prudent for the Court to rule on that
- 5 question in the first instance if it thinks it
- 6 necessary to reach that. And, of course, we
- 7 believe it's not necessary for the Court to
- 8 reach that.
- 9 JUSTICE BARRETT: Can I -- can I ask
- 10 you about your -- your principal argument, the
- 11 independence point?
- MR. MITCHELL: Mm-hmm. Yes
- JUSTICE BARRETT: I mean, I guess one
- thing that I'm struggling with is, you know, as
- 15 I was suggesting to Mr. Mooppan, your
- interpretation is very maximalist, and, you
- know, normally, as Mr. Mooppan said, we try to
- 18 construe statutes to avoid constitutional
- 19 questions, not create them.
- MR. MITCHELL: Right.
- JUSTICE BARRETT: And I feel like, you
- 22 know, there is a way, and during the colloquy
- with your friend on the other side, a lot of us
- 24 were asking, you know, ways that you can
- 25 construe "independence" more narrowly.

- 1 Why wouldn't we do that for the sake
- of constitutional avoidance? I mean, I assume
- 3 you're going to say, oh, it's not plausible. Is
- 4 that the --
- 5 MR. MITCHELL: Well, that's part of
- 6 the answer. I mean, it's not just the word
- 7 "independence," but it's also the provision that
- 8 says that the Task Force members have to be
- 9 protected from political pressure to the extent
- 10 practicable. So that -- that is a maximalist
- interpretation that's in the statute itself.
- 12 That language appears there.
- But I think, secondly, the statute
- 14 is --
- JUSTICE KAGAN: Well, I don't know. I
- mean, "to the extent practicable" actually seems
- 17 non-maximalist to me.
- MR. MITCHELL: Mm-hmm.
- 19 JUSTICE KAGAN: It suggests that there
- 20 are limits and --
- MR. MITCHELL: Sure.
- 22 JUSTICE KAGAN: -- we understand that
- 23 sometimes it's not going to be possible.
- MR. MITCHELL: It may not be possible.
- 25 You -- you can't censor people from talking, for

- 1 example. And if you really wanted to make them
- 2 completely immune from political pressure, you
- 3 might have to sequester them the way jurors get
- 4 sequestered during a trial and not allow them to
- 5 read the newspaper or something to that effect.
- It's not saying that we should go to
- 7 these types of extreme measures. But the -- the
- 8 reason I don't think constitutional avoidance is
- 9 even relevant here, Justice Barrett, is because
- 10 the statute is constitutional no matter how it's
- 11 construed. Even if the Court were to adopt our
- view of the meaning of "independent," there is
- 13 no constitutional problem with the statute. It
- does not violate the Constitution for Congress
- 15 to give the Task Force authority to make these
- 16 preventive care coverage decisions as long as
- 17 the president and the Senate appoint them --
- JUSTICE KAVANAUGH: Well, I guess --
- 19 MR. MITCHELL: -- as principal
- 20 officers.
- 21 JUSTICE KAVANAUGH: I don't mean to
- 22 interrupt.
- MR. MITCHELL: Yes. Please.
- 24 JUSTICE KAVANAUGH: Just coming from a
- 25 different Article II direction, we usually don't

- 1 interpret statutes to create independent
- 2 agencies without some indication that's stronger
- 3 than what we have here that this is really
- 4 protected from presidential or someone else's,
- 5 Secretary, head of department, removal power.
- 6 MR. MITCHELL: I don't know how the
- 7 language could be stronger, though, Justice
- 8 Kavanaugh. It's not just the word
- 9 "independent," which is what we had in Collins
- 10 against Yellen, and the Court said that's not
- 11 good enough to make it independent from
- 12 presidential removal. It's --
- JUSTICE KAVANAUGH: Well, it could be
- 14 stronger if it had for-cause protection, and it
- could be stronger if it didn't have the phrase
- 16 that Justice Kagan --
- 17 MR. MITCHELL: Sure.
- JUSTICE KAVANAUGH: -- identified, "to
- 19 the extent practicable." Those are two big
- 20 differences from what you would see normally
- 21 with an independent agency. And, normally, with
- 22 an independent agency -- correct me if I'm
- 23 wrong -- the statutes usually say the president,
- 24 by and with the consent of the Senate, shall
- 25 appoint.

- 1 MR. MITCHELL: Right. And there's no
- 2 specified --
- JUSTICE KAVANAUGH: And that's usually
- 4 in the statute.
- 5 MR. MITCHELL: It is, that's right,
- 6 because it has to be in the statute.
- 7 Otherwise --
- 8 JUSTICE KAVANAUGH: And then it
- 9 says --
- 10 MR. MITCHELL: -- there's an
- 11 Appointments Clause problem.
- 12 JUSTICE KAVANAUGH: And -- and many of
- them, although not all, say the for-cause
- 14 removal protection too.
- MR. MITCHELL: Right. But I think the
- 16 reason we don't have --
- 17 JUSTICE KAVANAUGH: Right. So all
- 18 that's missing here.
- MR. MITCHELL: That's true, but I
- 20 think there are -- it's easy to explain why it's
- 21 missing. This was initially established as a
- 22 purely advisory body that had no real powers.
- 23 So that's why they didn't initially say in the
- 24 statute that the president has to appoint these
- 25 people with the Senate's advice and consent. It

- 1 was only when the Affordable Care Act for the
- 2 first time gave the Task Force real powers as
- 3 officers of the United States --
- 4 JUSTICE JACKSON: Can you speak to
- 5 the --
- 6 JUSTICE KAGAN: Well, point taken as
- 7 to what the history is, but still, I mean, we
- 8 don't go around just creating independent
- 9 agencies. More -- more -- more often we destroy
- 10 independent agencies.
- 11 (Laughter.)
- MR. MITCHELL: That seems to be --
- 13 JUSTICE KAGAN: You know, the idea
- that we would take a statute which doesn't set
- 15 up an independent agency and declare it one
- 16 strikes me as pretty inconsistent with
- 17 everything that we've done in this area.
- 18 MR. MITCHELL: In terms of construing
- 19 statutes --
- 20 JUSTICE KAGAN: In terms of --
- 21 MR. MITCHELL: -- to maximize
- 22 presidential influence over the -- over the
- 23 independent official.
- JUSTICE KAGAN: Yeah. I mean, that,
- you know, we've -- we've basically said we're

- 1 not going to read something as putting
- 2 restrictions on removal power unless it puts
- 3 restrictions on removal power.
- 4 MR. MITCHELL: Right. But the problem
- 5 here, it's not really a question of removal
- 6 power, Justice Kagan. The test for principal
- 7 officer status turns on whether the Secretary
- 8 can direct and supervise the decisions of these
- 9 Task Force members. It's the question whether
- 10 the principal --
- 11 JUSTICE KAGAN: Well, why isn't
- 12 removal power enough? Suppose that there
- 13 were --
- MR. MITCHELL: Right.
- 15 JUSTICE KAGAN: -- clear at-will
- 16 removal power here.
- 17 MR. MITCHELL: Mm-hmm.
- JUSTICE KAGAN: I mean, we've gone to
- 19 such lengths to say that that's pretty much --
- somebody said it's not the end all and the be
- 21 all. I think Mr. Mooppan said that.
- MR. MITCHELL: Right.
- JUSTICE KAGAN: And I don't know. If
- 24 you read this Court's decisions, it seems often
- 25 to be the end all and the be all, that the Court

- 1 has suggested on many occasions that removal
- 2 power is really the essence of control. If you
- 3 have it, you have control. If you don't have
- 4 it, you don't have control.
- Now, as you know I'm sure, on -- on a
- 6 number of occasions, I've said that that
- 7 understanding of removal power is not
- 8 realistic --
- 9 MR. MITCHELL: Right.
- 10 JUSTICE KAGAN: -- at least in certain
- 11 contexts. But the Court has said it again and
- 12 again. So why doesn't it get you, if not a
- 13 hundred percent of the way there in a context
- 14 like this, pretty near there?
- MR. MITCHELL: I think that argument
- 16 would have more force if it weren't for the
- opinion in Arthrex. If we were litigating this
- 18 case 10 years ago before the Arthrex opinion, I
- 19 think that would have a lot of -- that would be
- 20 a very powerful reason to say these could be
- 21 inferior officers.
- But, if you look at the Arthrex
- opinion, pages 15 and 16, where Arthrex catalogs
- 24 all the ways in which the PTO Director can
- 25 influence the decisionmaking of these

- 1 administrative patent judges in an informal way,
- 2 without the formal ability to review their
- decisions, and then the Court says not only is
- 4 that not good enough, it actually says that
- 5 aggravates the problem. This is not the
- 6 solution; it is the problem because it blurs the
- 7 lines of accountability and it undermines the
- 8 transparency that the Appointments Clause is
- 9 supposed to provide.
- 10 You know, again, if Arthrex wasn't
- 11 there, I think we would have an interesting
- 12 discussion about whether the test for principal
- officer status should be this formalistic test
- 14 that Arthrex sets forth or whether we should
- 15 have more of a hard-nosed legal realist look at
- the actual powers that the Secretary can exert
- 17 to influence the Task Force. But Arthrex
- 18 really, I think, makes it hard for that argument
- 19 to get off the ground.
- 20 JUSTICE JACKSON: Mr. Mitchell, can I
- 21 ask you about the interval?
- MR. MITCHELL: Yes.
- 23 JUSTICE JACKSON: Because we don't
- just have potential at-will removal power here.
- We have something in this statute that seems to

1 me to be fairly unusual, which is the 2 requirement that the Secretary establish this minimal interval after the recommendation is 3 made before they come -- it comes into effect. 4 MR. MITCHELL: Right. 5 JUSTICE JACKSON: So can you speak to 6 7 why that doesn't have some indicia of secretarial control that we can look to when we 8 9 try to understand the relationship between the 10 Secretary and these members and their recommendations? 11 12 MR. MITCHELL: I think it has the opposite implication, Justice Jackson, because 13 14 300gg-13 specifically addresses the Secretary's 15 role vis-à-vis the Task Force, and as Justice 16 Kavanaugh suggested earlier, it only allows the 17 Secretary to determine when these preventive 18 care provisions are to take effect. 19 JUSTICE JACKSON: No, I understand --20 MR. MITCHELL: So --JUSTICE JACKSON: -- but it does so 21 2.2 for a reason. I mean, if you're right that 23 these are principal officers who are making binding recommendations, I guess I'm struggling 24

to understand what the point of deferring them

- or allowing the Secretary to intervene and defer
- 2 them for at least a year, what is -- what is the
- 3 point of that?
- 4 MR. MITCHELL: The point of that is
- 5 it's very hard for insurers to change their
- 6 coverage requirements in the middle of a plan
- 7 year. So the minimum interval is set at one
- 8 year. That's the minimum so the insurance
- 9 companies can plan ahead for the next --
- 10 JUSTICE JACKSON: But Congress could
- 11 have done that by statute without the Secretary
- 12 being involved. They gave the Secretary some
- authority to establish an interval, so the
- 14 Secretary's doing work.
- 15 MR. MITCHELL: Right.
- JUSTICE JACKSON: Mr. Mooppan says,
- 17 during that interval, the Secretary can not only
- delay the recommendations but can also, in his
- 19 view, take some steps as to the constitution of
- the Task Force, perhaps even in communication
- 21 with them regarding those steps having been done
- 22 because they made certain recommendations
- 23 with -- with respect to which the Secretary
- 24 disagrees.
- So I guess I'm just trying -- I mean,

- 1 it doesn't necessarily suggest that really this
- is only a time-related thing. The Secretary's
- 3 getting involved. He's making decisions. Why
- 4 doesn't that give us some basis for interpreting
- 5 this to be a statute in which there is
- 6 secretarial control?
- 7 MR. MITCHELL: We dispute all those
- 8 claims Mr. Mooppan made about what the Secretary
- 9 can do during that minimum time interval because
- 10 the statutes guarantee the Task Force's
- independence. What Mr. Mooppan is describing
- where the Secretary can put pressure on the Task
- Force to pull down a previously issued A or B
- rating is not consistent with the statutory
- 15 guarantee.
- 16 JUSTICE JACKSON: But the statute
- 17 doesn't have specific blocks, and so what I'm --
- 18 what I guess I'm -- I'm going back to this
- 19 notion of how should we be reading this statute.
- 20 You dispute that the Secretary can do
- 21 all of those things, but the statute doesn't say
- 22 he can't. And so why would we read the statute
- 23 to prevent the Secretary from exercising the
- 24 control that is necessary to make it
- 25 constitutional in this situation?

1	MR. MITCHELL: Because it doesn't make
2	the statute constitutional for all sorts of
3	reasons.
4	May I answer, Mr. Chief Justice?
5	CHIEF JUSTICE ROBERTS: Sure.
6	MR. MITCHELL: It doesn't make the
7	statute constitutional, Justice Jackson,
8	because, number one, they're still principal
9	officers because they have unreviewable
LO	discretion when it comes to decisions not to
L1	impose an A or B rating.
L2	Number two, even if Your Honor's
L3	proposed reading of the statute makes the Task
L4	Force members into inferior officers, Congress
L5	has not vested the Secretary with appointment
L6	power over the Task Force, so they're still
L7	unconstitutionally appointed.
L8	And, number three, Your Honor's
L9	proposed reading of the statute still does not
20	fix the problem that occurred from March of 2010
21	to June of 2023 when even the government
22	acknowledges the Task Force was
23	unconstitutionally appointed during that 13-year
24	window of time. And all the preventive care
25	coverage mandates that were issued during that

- 1 time should not be enforceable until the Task
- 2 Force members receive a new appointment that is
- 3 constitutional and they reissue the A or B
- 4 ratings in response to that constitutional
- 5 appointment.
- 6 CHIEF JUSTICE ROBERTS: Thank you,
- 7 counsel.
- 8 Justice Thomas?
- 9 Justice Alito?
- 10 JUSTICE ALITO: Would you comment on
- 11 Mr. Mooppan's just -- argument that a
- distinction can be made under his understanding
- of what the Secretary can do between pressure to
- 14 get rid of a recommendation and pressure to
- adopt a recommendation in the first place?
- MR. MITCHELL: Any kind of pressure,
- Justice Alito, is incompatible in our view with
- 18 the statutory guarantees of independence. I
- 19 don't see how that distinction can be reconciled
- 20 with the text of a statute that not only
- 21 guarantees the independence of the Task Force
- 22 members and their recommendations but also says
- 23 that the Task Force and their recommendations
- has to be immunized from political pressure to
- 25 the extent practicable. I just don't see how

- 1 that distinction could be squared with anything
- 2 in the text of the statute.
- I think what Mr. Mooppan is trying to
- 4 do is salvage some role for 299b-4(a)(6) because
- 5 it's not plausible, I think, even on the
- 6 government's view to allow the earlier enacted
- 7 statutes, such as Section 202 and the
- 8 Reorganization Plan, to completely swallow up
- 9 these later-enacted guarantees of independence.
- 10 So they're trying to draw some line.
- 11 But there's nothing in the text of the statute
- that can provide an anchor for the distinction
- 13 he -- that he's trying to draw.
- 14 JUSTICE ALITO: Suppose it were
- 15 ultimately -- suppose it is ultimately decided
- 16 that the statute implicitly confers the
- 17 appointment power on the Secretary and that --
- and then how much more of the statute would have
- 19 to be jettisoned in order to make it
- 20 constitutional?
- 21 MR. MITCHELL: I don't think any --
- JUSTICE ALITO: Like the setup
- 23 constitutional?
- MR. MITCHELL: Yeah. None of the
- 25 statute needs to be jettisoned in order to make

- 1 it constitutional even under our reading of the
- 2 statute. If the Court decides that Congress has
- 3 vested the Secretary with appointment power over
- 4 the Task Force, the appointments are still
- 5 unconstitutional in our view because they're
- 6 principal officers. They have to be appointed
- 7 by the president and the Senate no matter what.
- 8 But, if the Court even rejects that
- 9 view, there's still the problem that the Task
- 10 Force was appointed by the AHRQ director for 13
- 11 years between 2010 in March and June of 2023,
- and there has to be some remedy issued for those
- 13 admitted constitutional violations.
- JUSTICE ALITO: So that would be --
- 15 that would be for the -- what was done before
- 16 Secretary Becerra. What about going forward?
- 17 What would need to be done?
- 18 MR. MITCHELL: Going forward, it will
- 19 depend on whether the Court thinks these are
- 20 principal officers. If the Court thinks they're
- 21 principal officers, then they have to be
- 22 appointed by the president and the Senate as
- 23 well.
- 24 JUSTICE ALITO: Suppose we thought
- 25 that they were inferior officers.

1	MR. MITCHELL: If the Court thinks
2	they're inferior officers, there should be a
3	remand, in our view, to the Fifth Circuit to
4	rule on the question whether Congress has vested
5	the Secretary of Health and Human Services with
6	appointment power.
7	I don't think it's appropriate for the
8	Court to decide that issue based on how cursory
9	the briefing is.
10	JUSTICE ALITO: Well, suppose that
11	suppose we do that, the Fifth Circuit goes back
12	and says that, or we tackle the question and we
13	say that the statute vests vests the
14	appointment power in the Secretary. Then what?
15	MR. MITCHELL: Then there has to be
16	some remedy or
17	JUSTICE ALITO: And what that's
18	what I'm asking. What would the remedy be?
19	MR. MITCHELL: The remedy would have
20	to be an injunction that restrains the Secretary
21	from enforcing any of the Task Force coverage
22	recommendations that issued between March of
23	2010 and June of 2023.
24	Even the government concedes the Task
25	Force was unconstitutionally appointed during

- 1 that time. So I don't see how the government
- 2 can deny that we're entitled to at least that
- 3 much.
- 4 JUSTICE ALITO: And what would be the
- 5 remedy going forward if we went along that --
- 6 MR. MITCHELL: If the Court -- the
- 7 remedy going forward if the Court concludes that
- 8 they're inferior officers and that the
- 9 Secretary's been vested with appointment power,
- 10 there should be no remedy going forward. We
- only can get a remedy for those past -- that
- 12 13-year window.
- 13 JUSTICE ALITO: Okay. Thank you.
- 14 CHIEF JUSTICE ROBERTS: Justice
- 15 Sotomayor?
- 16 JUSTICE SOTOMAYOR: I can look this up
- 17 later, but I thought that at a certain point the
- 18 Secretary had issued or -- something saying that
- 19 he was accepting --
- MR. MITCHELL: He did, yes.
- JUSTICE SOTOMAYOR: He did?
- MR. MITCHELL: Yes.
- JUSTICE SOTOMAYOR: So --
- MR. MITCHELL: It's on page --
- JUSTICE SOTOMAYOR: -- why do we need

- 1 a remedy if you're not questioning that he was
- 2 entitled to do that?
- 3 MR. MITCHELL: Oh, we are --
- 4 absolutely are questioning that he's entitled to
- 5 do that. The Fifth Circuit --
- 6 JUSTICE SOTOMAYOR: Well, for the same
- 7 grounds. But, if we say that they're inferior
- 8 officers, that --
- 9 MR. MITCHELL: Right. So here's why
- 10 that doesn't work. This is the ratification
- 11 memo. It appears on pages 34 to 35A of the
- 12 Joint Appendix.
- 13 The Fifth Circuit specifically held
- 14 that Secretary Becerra had no authority to issue
- that ratification memo. That's on pages 27A to
- 16 28A of the petition.
- 17 JUSTICE SOTOMAYOR: Is that because
- 18 he -- why?
- MR. MITCHELL: Because he has no
- 20 authority to impose preventive care coverage
- 21 mandates. Only the Task Force can do that.
- 22 The government -- the government did
- 23 not seek certiorari on that question. They have
- 24 not asked and they are not asking this Court to
- 25 reverse that part of the Fifth Circuit's ruling.

- So that is a closed issue.

 Even if it were properly --
- JUSTICE SOTOMAYOR: Then I'm going to
- 4 let the SG answer that --
- 5 MR. MITCHELL: All right.
- 6 JUSTICE SOTOMAYOR: -- okay? Thank
- 7 you.
- 8 MR. MITCHELL: But, even if it were
- 9 properly before this Court, that document is
- invalid because the Fifth Circuit's right,
- 11 Secretary Becerra doesn't have the authority.
- But, even if he did, that needs to go through
- 13 notice-and-comment rulemaking because it's a
- substantive rule, it's a legislative rule that
- imposes binding obligations on private insurers,
- and it's implementing delegated authority that's
- 17 been given to one of the agencies in the federal
- 18 government. So it has to go through notice and
- 19 comment under Section 553, and it didn't.
- 20 CHIEF JUSTICE ROBERTS: Justice Kagan?
- 21 JUSTICE KAGAN: It does seem,
- 22 Mr. Mitchell, as though, putting aside the
- vesting issue for now, that your argument really
- 24 does rise and fall on how we read that
- 25 "independence" language.

1 And, you know, just an alternative 2 view of that language is something along the 3 lines of: Look, the members of this Task Force are going to be subject to some kinds of 4 5 influence because somebody can remove them --6 MR. MITCHELL: Mm-hmm. 7 JUSTICE KAGAN: -- and also because they're subject to supervision. 8 9 MR. MITCHELL: Mm-hmm. 10 JUSTICE KAGAN: But we want them to 11 approach their jobs with a spirit of 12 independent-ness. 13 MR. MITCHELL: Right. 14 JUSTICE KAGAN: And -- and also, 15 Congress is saying to the people who -- you 16 know, who -- who do supervise and who have 17 discharge powers over them: You too should 18 think about the fact that this system works best 19 if the Task Force members are treated as 20 independent, but it's -- it's hortatory. It's 21 not saying that nobody can fire them. It's not 2.2 saying that nobody can supervise them and nobody 23 can, you know, prevent their recommendations 24 from going forward. It's hortatory. 25 So why shouldn't I read the statute

- 1 that way?
- 2 MR. MITCHELL: Well, even if Your
- 3 Honor reads the statute that way, they're still
- 4 principal officers under Arthrex because, under
- 5 that view that Your Honor is describing of
- 6 "independence," there's no authority in the
- 7 Secretary to formally review and formally
- 8 reverse the decisions the Task Force is making
- 9 in either direction.
- 10 And that's what Arthrex says is key.
- 11 There may be informal ways the Secretary can
- influence the Task Force, such as removal or
- 13 threatened removal or other types of tactics,
- 14 but Arthrex discusses all these types of
- informal means of influence -- again, pages 15
- and 16 of the opinion -- and it says that's not
- 17 good enough.
- 18 JUSTICE KAGAN: Okay. So then I'm
- 19 going to say then it -- then your argument
- 20 depends on a pretty aggressive read of
- 21 Arthrex --
- MR. MITCHELL: I --
- JUSTICE KAGAN: -- because I thought
- 24 Arthrex said: We're dealing here with
- 25 adjudicators. We're not dealing with every

- 1 circumstance, every scenario. You know, we're
- 2 dealing here with a particular kind of officer.
- 3 MR. MITCHELL: I just -- I don't think
- 4 that's an aggressive reading at all because
- 5 Arthrex says the touchstone for principal
- 6 officer status is whether there is formal review
- 7 available of the relevant official's
- 8 decisionmaking.
- 9 And even under the government's
- 10 construction of the statutes, the only formal
- 11 review that they're providing is formal review
- of an affirmative decision by the Task Force to
- issue an A or B rating.
- 14 They admit that the Secretary can't
- 15 reverse the Task Force if it makes a decision in
- 16 the opposite direction, a decision not to impose
- 17 an A or B rating. I mean, that alone is enough
- 18 to make them principal officers even under the
- 19 SG's view and even under Your Honor's proposed
- interpretation of the word "independent."
- 21 At the end of the day, when you go
- 22 back to Section 300gg-13(a)(1), it is the Task
- 23 Force recommendation that matters. That is what
- 24 is binding on insurers. It is not the
- 25 Secretary's decision that can bind insurers.

Τ	so, even if the secretary were to say:
2	I hereby disapprove this Task Force
3	recommendation, that's useless when it comes to
4	Section 300gg-13(a)(1) because what matters is
5	what the Task Force says. It's not what the
6	Secretary says.
7	JUSTICE KAGAN: Thank you.
8	CHIEF JUSTICE ROBERTS: Justice
9	Gorsuch?
10	JUSTICE GORSUCH: If I understood your
11	exchange with Justice Sotomayor and I just
12	want to make sure I do, Mr. Mitchell
13	MR. MITCHELL: Mm-hmm.
14	JUSTICE GORSUCH: your view is,
15	if if you should win either on the view that
16	they're principal officers or if we should
17	remand on the basis that they're inferior
18	officers who may not have been appointed by the
19	Secretary
20	MR. MITCHELL: Mm-hmm.
21	JUSTICE GORSUCH: that the
22	ratification of the Secretary of the Task Force
23	past actions must fall for a couple of reasons.
24	One, he has no authority. I want you
25	to spell that out a little further.

- 1 MR. MITCHELL: Right. That's correct.
- JUSTICE GORSUCH: And second, there
- 3 was no notice and comment.
- 4 And -- and I understand that one. I
- 5 want you to spell out the first one a little bit
- 6 further, make sure I --
- 7 MR. MITCHELL: Sure.
- 8 JUSTICE GORSUCH: -- I've summarized
- 9 it correctly first of all.
- 10 MR. MITCHELL: And just to be clear,
- 11 there's a third reason, which is that issue is
- 12 not properly before this Court. That's not --
- JUSTICE GORSUCH: That was my -- that
- 14 was my next question --
- MR. MITCHELL: Right. I mean, it's
- not within the scope of the question presented.
- 17 JUSTICE GORSUCH: -- which is I didn't
- 18 see that in -- in this case.
- MR. MITCHELL: Right.
- 20 JUSTICE GORSUCH: So what do we do
- 21 about it?
- MR. MITCHELL: Well, I'm happy to
- answer Your Honor's question, but, again, it's
- 24 not properly before this Court because it's not
- in the scope of the QP. The government did not

- 1 seek certiorari on the question. And at no
- 2 point anywhere in the briefing or in
- 3 Mr. Mooppan's oral presentation today has the
- 4 government asked this Court to reverse that part
- of the Fifth Circuit's ruling.
- 6 But the ruling is nonetheless correct
- 7 because the only entity that has the power to
- 8 impose preventive care coverage mandates is the
- 9 Task Force.
- The Secretary's role is only to
- 11 determine when those coverage mandates take
- 12 effect. So for the Secretary to go out and say:
- 13 I hereby ratify the Task Force recommendations,
- that has no more legal force than if I were to
- produce a memo that says I ratify the Task Force
- 16 recommendations.
- I don't have any authority to impose
- 18 preventive care coverage mandates either.
- 19 Neither does the Secretary. So the document has
- 20 no force -- that's what the Fifth Circuit said
- in its opinion, and that's completely right.
- The other reason is notice and
- 23 comment. The Fifth Circuit did not reach that
- 24 issue. But this is undoubtedly a substantive
- 25 rule. It's clearly a rule. And it's a

- 1 substantive rule as well because it's imposing
- 2 binding legal obligations on private insurers.
- 3 It's prescribing law and policy. So it has to
- 4 go through notice and comment unless some
- 5 exception applies. Maybe the good cause
- 6 exception if the government wants to argue for
- 7 that.
- But, again, they've waived this entire
- 9 issue, so I don't think they can possibly make
- 10 that type of argument now about how an exception
- 11 to notice and comment might kick in.
- 12 JUSTICE GORSUCH: Thank you.
- 13 CHIEF JUSTICE ROBERTS: Justice
- 14 Kavanaugh?
- 15 JUSTICE KAVANAUGH: Your theory, I
- think, depends on us treating the Task Force as
- this massively important agency that operates
- 18 with unreviewable authority --
- MR. MITCHELL: Mm-hmm.
- JUSTICE KAVANAUGH: -- to make really
- 21 critical decisions that are going to affect the
- 22 economy --
- MR. MITCHELL: Yeah, it is.
- 24 JUSTICE KAVANAUGH: -- and without any
- 25 supervision or direction by the Secretary. And,

- 1 normally, before that kind of thing would
- 2 happen, Congress would have provided stronger
- 3 indications that this Task Force is enormously
- 4 important in the American economy and would have
- 5 treated it such.
- 6 And I just don't see indications of
- 7 that. And it's a big-picture question
- 8 related --
- 9 MR. MITCHELL: Yeah.
- 10 JUSTICE KAVANAUGH: -- related to my
- 11 earlier question. But I just don't see the
- 12 indicators that: Oh, this Task Force, called a
- 13 Task Force, is more powerful than the Secretary
- of HHS or the president in terms of how these
- 15 recommendations are going to affect the
- 16 healthcare industry.
- 17 MR. MITCHELL: It is -- it is more
- 18 powerful than both of those individuals you
- 19 mentioned because that's --
- 20 JUSTICE KAVANAUGH: Under your
- 21 theory -- under your theory, yeah.
- MR. MITCHELL: -- that is how -- it's
- 23 not my theory, Justice Kavanaugh. It's how the
- 24 statute is written.
- JUSTICE KAVANAUGH: Well, I --

1 MR. MITCHELL: It says -- it says the 2 Task Force shall be independent and shielded 3 from political pressure to the extent practicable. It's hard for me to see stronger 4 5 language than that if Congress is trying to 6 create an --7 JUSTICE KAVANAUGH: This goes back to the history. You're -- I mean, when that was 8 9 originally drafted, that -- they weren't 10 binding. 11 MR. MITCHELL: Right. And I don't 12 think Your Honor should be surprised that Congress would write the statute this way 13 because it's perfectly consistent with this 14 15 Court's current doctrine. 16 They are not exercising executive 17 power. So Myers and those line -- and all those 18 lines of cases about how the president has to 19 remove executive officers --20 JUSTICE KAVANAUGH: What are -- what are they exercising? 21 2.2 MR. MITCHELL: They're exercising 23 quasi-legislative power. It's not 24 quasi-judicial. They're not adjudicating 25 anything. But they cannot enforce the law

- 1 against anyone. They are making recommendations
- 2 that have binding effect under another statute.
- 3 That's quasi-legislative power.
- 4 And it's a multi-member agency. It's
- 5 not headed by a single director. So the
- 6 holdings of Seila Law, Collins against Yellen,
- 7 none of that applies here. This is perfectly
- 8 constitutional under the Court's current
- 9 doctrine --
- JUSTICE KAVANAUGH: Okay. Thank you.
- 11 MR. MITCHELL: -- with respect to
- 12 Article II and the Vesting Clause. Thank you.
- 13 CHIEF JUSTICE ROBERTS: Justice
- 14 Barrett?
- 15 Justice Jackson?
- JUSTICE JACKSON: So I think your
- 17 argument might be circular, and I'm sitting here
- trying to figure out how that is happening, and
- it's a little frustrating, but maybe you can
- 20 help me to untangle it.
- 21 It goes -- it starts with Justice
- 22 Kagan's point, which is we're looking at the
- independence provision, and she says, okay, I'm
- 24 not reading that as independent of supervision.
- 25 I'm reading that as independent duty to make

- 1 your own judgment.
- 2 MR. MITCHELL: Right.
- JUSTICE JACKSON: Your response in
- 4 your discussion with her was: Well, even if
- 5 that's the case, it doesn't matter because these
- 6 folks are principal officers.
- 7 MR. MITCHELL: Right.
- 8 JUSTICE JACKSON: And you point to
- 9 Arthrex.
- 10 MR. MITCHELL: Right.
- 11 JUSTICE JACKSON: And you say that the
- 12 test in Arthrex is that there is -- there has to
- 13 be formal review available, and we don't have
- 14 that in the statute. Now Mr. --
- MR. MITCHELL: Right.
- JUSTICE JACKSON: -- Mooppan says,
- 17 well, we do have the provisions that make the
- 18 Secretary over this entire thing, and he says
- 19 that counts. You say it doesn't.
- MR. MITCHELL: Right.
- 21 JUSTICE JACKSON: To resolve that
- issue, who's right about whether there actually
- is formal review available, I took you to say
- the reason why you're right is because of the
- 25 independence provision.

- 1 MR. MITCHELL: Well, it's more than
- 2 just that.
- JUSTICE JACKSON: No, but wait.
- 4 MR. MITCHELL: Okay.
- 5 JUSTICE JACKSON: This is important.
- 6 MR. MITCHELL: Please.
- 7 JUSTICE JACKSON: Because this is the
- 8 circularity, right?
- 9 MR. MITCHELL: Right.
- 10 JUSTICE JACKSON: That if you come
- 11 back and you say the reason why I'm right that
- 12 there's not formal review under Arthrex is
- 13 because we have an independence provision that
- 14 has these people operating independent of the
- 15 Secretary or political pressure, then I'm back
- 16 to Justice Kagan, but that's not what the
- independence provision means.
- 18 So you both can't, I think, disclaim
- it on the front end, independence, it doesn't
- 20 matter, Justice Kagan might be right, and then
- 21 pick it up on the back end to say, ah, but it's
- 22 the independence provision that resolves the
- debate between and you Mr. Mooppan over whether
- there's sufficient control by the Secretary in
- 25 this statute.

_	MR. MITCHELL: THAC S HOC OUL
2	argument, Justice Jackson.
3	JUSTICE JACKSON: Okay.
4	MR. MITCHELL: We are not relying on
5	the word "independence" to preclude secretarial
6	review. We're relying on Section
7	300gg-13(a)(1), which says that it's the
8	recommendations of the Task Force that must be
9	given legal force and effect, not the
10	recommendations of the Secretary.
11	So, if we were to adopt Justice
12	Kagan's proposed interpretation of the word
13	"independent," the Task Force will make its
14	independent recommendations, but the Secretary
15	has no ability to veto them. He can try to veto
16	them. He can issue a document saying: I,
17	Secretary Kennedy, disapprove. But
18	JUSTICE JACKSON: But why do you say
19	he has no ability? Because
20	MR. MITCHELL: Because
21	JUSTICE JACKSON: of the one
22	provision because you read "independent" in
23	one as saying there's nothing in the statute
24	that says the Secretary can't veto. So where do
25	you get that construct?

1	MR. MITCHELL: We get it from
2	300gg-13(a)(1) because it the statute says
3	that it's the A or B ratings of the Task Force
4	that must be followed when determining what
5	preventive care insurers must cover.
6	JUSTICE JACKSON: Okay.
7	MR. MITCHELL: It is not the
8	recommendations of the Secretary.
9	JUSTICE JACKSON: Thank you.
10	MR. MITCHELL: So thank you, Your
11	Honors.
12	CHIEF JUSTICE ROBERTS: Thank you,
13	counsel.
14	Rebuttal, Mr. Mooppan?
15	REBUTTAL ARGUMENT OF HASHIM M. MOOPPAN
16	ON BEHALF OF THE PETITIONERS
17	MR. MOOPPAN: So I'll pick up right
18	there. So, on the question of whether the
19	Secretary has the power to review, gg-13 just
20	says that recommendations that are in effect are
21	binding. It doesn't say one word about whether
22	the Secretary could prevent the recommendation
23	from taking effect by directing the Task Force
24	to withdraw it.
25	His only argument on that is to rely

- on the language "independent," interpreting
- "independent" way more broadly than necessary,
- 3 and creating constitutional problems rather than
- 4 solving it. He recognizes that, and so he falls
- 5 back on the point that even we agree that the
- 6 Secretary can't force the Task Force to make
- 7 recommendations.
- 8 But, as Justice Gorsuch pointed out,
- 9 that was already decided in Free Enterprise
- 10 Fund. And my friend pointed out that in Free
- 11 Enterprise Fund, the Secretary -- the Commission
- had lots of power over the PCAOB, which is true,
- but, if you look at page 504 of Free Enterprise
- 14 Fund, this is what the Court said: The Act
- 15 nowhere gives the Commission effective power to
- 16 start, stop, or alter individual board
- 17 investigations.
- 18 That is exactly the argument he's
- making here, that because they didn't have that
- 20 power in this case, they are principal officers.
- 21 And Free Enterprise Fund says, even though they
- 22 didn't have that power, they were inferior
- 23 officers.
- 24 Turning to the removal question, I
- didn't really hear any argument for why, as a

- statutory matter, you should read "independent"
- 2 to create a removal restriction even though that
- 3 creates lots of constitutional problems. The
- 4 best he did was to suggest, well, maybe it's
- 5 just a question of timing.
- But, actually, the timing cuts against
- 7 him too. b -- b-4(a)(6), the provision that has
- 8 the "independence" language, it was added to the
- 9 statute with the ACA at the time that Congress
- 10 gave the Task Force these powers. That's when
- 11 they added the language about "independent" and
- 12 "free from political pressure to the maximum
- 13 extent possible."
- So, if they wanted to impose a removal
- 15 restriction, they would have done it using all
- 16 the language that Justice Kagan and Justice
- 17 Kavanaugh suggested. That's how they normally
- 18 say impose removal restrictions. They wouldn't
- 19 have just used the word "independent."
- 20 And Arthrex doesn't solve this problem
- 21 either because, as the case makes clear, there
- 22 was not at-will removal restriction -- power in
- 23 Arthrex. In Arthrex, the APJs were only subject
- 24 to removal for the efficiency of the service.
- 25 They had cause protection. So Arthrex doesn't

- 1 solve it for him either.
- 2 Turning to the appointments question,
- 3 I agree that it wasn't decided below and it
- 4 could be remanded, but I think the colloquy here
- 5 today makes clear why the answer is quite clear
- 6 and why it would be better to just resolve it
- 7 now. My friend says that the statute is
- 8 agnostic about who can appoint. I believe he
- 9 even said that the Secretary of Energy or a
- 10 private party could appoint these people.
- 11 That is obviously wrong on its face.
- 12 Among other things, it doesn't answer what
- happens if three different people all purport to
- 14 appoint the same -- appoint different people to
- 15 the Task Force. You cannot possibly read this
- 16 statute to say it's agnostic about who picks the
- 17 members of the Task Force. And given that
- someone has to pick them, the word "convened"
- 19 must suggest that the person doing the convening
- is the one who's doing the picking.
- 21 So then now all we have left is, is it
- 22 the director or is it the Secretary? And on
- 23 that, we have two points. The first is that
- 24 under the Reorg Act, all of the director's
- powers are the Secretary's powers.

1 The second point we have is, as 2 Justice Kavanaugh pointed out, under 299, the 3 Secretary exercises all the powers of that agency through the director. So we think that 4 that is pretty clear evidence that it is vested 5 6 by law in the Secretary. 7 To use a hypothetical that came up earlier, if the statute just said it shall be 8 9 appointed by either the director or the Secretary, it would plainly be constitutional if 10 11 the Secretary was the one that did the 12 appointing. We agree that if the director did 13 it instead and the Secretary had nothing to do 14 with it and didn't approve it on the back end or 15 on the front end, that would be unconstitutional 16 as applied. 17 But there's no question that the statute would be permissible if it purported to 18 vest the appointment authority in both the head 19 20 of the department permissibly and someone else. And that's exactly what this statute does two 21 2.2 different ways. 23 And if there was any doubt about this, Hartwell -- this is an easier case for us than 24 25 Hartwell. In Hartwell, as you pointed out,

- 1 there was an inferior officer who had the
- 2 ability to make the appointment with the
- 3 Secretary's approval on the back end. But the
- 4 decision in the first instance was vested in
- 5 someone who wasn't the head of the department.
- 6 And yet the Court still said that that was
- 7 enough to satisfy the Appointments Clause.
- 8 Here, the Secretary can and, in fact,
- 9 has exercised the appointment authority in the
- 10 first instance. So, if Hartwell is okay, this
- is a fortiori from that.
- So, for all those reasons, there's
- just no real good reason to remand this to the
- 14 Fifth Circuit on this appointments question.
- 15 There is no way you can read this statute to
- 16 vest the appointment in anyone other than the
- 17 director/Secretary, and the Secretary has
- 18 complete control in that situation.
- 19 A final point on remedy, we agree with
- 20 Mr. Mitchell on this: If we are right that
- 21 these are inferior officers, prospectively, he's
- 22 not entitled to any remedy, and retrospectively,
- there will need to be a remand to figure out
- 24 whether the old recommendations either have to
- 25 be enjoined or can be ratified by the Task

1	Force. Thank you.
2	CHIEF JUSTICE ROBERTS: Thank you,
3	counsel.
4	The case is submitted.
5	(Whereupon, at 11:30 a.m., the case
6	was submitted.)
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

accept [4] 15:1 36:8,17 73: 10 [1] 81:18 accepting [1] 91:19 10:03 [2] 1:18 3:2 accommodating [1] 47: 107 [1] 2:10 11:30 [1] 113:5 accountability [3] 16:11 13 [1] 89:10 19:21 82:7 13-year [4] 65:10,17 86:23 accountable [1] 14:21 91:12 Accounting [2] 51:24,24 14 [1] 68:8 accurate [1] 26:18 **15** [5] **67**:12,21 **71**:9 **81**:23 acknowledge [2] 38:24 59: 95.15 16 [2] 81:23 95:16 acknowledged [2] 28:25 1966 [1] 12:24 **47**:10 acknowledges [2] 50:8 86:22 2010 [4] 65:10 86:20 89:11 Act [16] 5:12,21 12:6,24 13: 90:23 20 33:10,14 38:1,4 58:19 **202** [5] **37**:5.6.23 **38**:3 **88**:7 **60**:8 **65**:11 **71**:13 **79**:1 **108**: 2023 [4] 65:12 86:21 89:11 14 110:24 90:23 act/omission [1] 52:20 2025 [1] 1:14 acting [3] 3:17 31:21 64:8 21 [1] 1:14 action [4] 21:15 52:14.17 24-316 [1] 3:4 71:24 27A [1] 92:15 actions [3] 31:5 52:23 97: 28A [1] 92:16 23 299 [5] 5:14,22,23 60:8 111: acts [1] 71:11 actual [2] 47:13 82:16 299(a [1] 58:19 actually [8] 24:5 44:1 60: 299a [1] 64:6 23 62:13 75:16 82:4 104: 299b-4(a)(1 [2] 45:9 47:1 22 109:6 299b-4(a)(6 6 19:11 37: added [2] 109:8.11 10 **45**:19 **49**:6 **55**:19 **88**:4 addition [3] 4:2 9:5 17:17 3 address [6] 9:25 11:17 46: 3 [1] 2:4 21 53:18 55:18 58:1 addressed [2] 10:25 11:3 300gg-13 [1] 83:14 addresses [1] 83:14 300gg-13(a)(1 5 45:4 96: adequate [3] 17:11 42:13 22 97:4 106:7 107:2 43:21 300gg-13(b)(1 [1] 39:12 adequately [1] 8:19 **300gg-92** [1] **17**:19 adjudicate [2] 29:12,13 **34** [1] **92**:11 adjudicating [1] 102:24 35A [1] 92:11 adjudication [4] 31:2,12, 4 15 **32**:10 44 [1] 2:7 adjudicators [7] 30:25 31: 3.8.10.19 32:5 95:25 adjudicatory [2] 29:11 50: **504** [2] **52**:8 **108**:13 16 553 [1] 93:19 administer [4] 38:9.11.16. A 18 administrative [2] 15:4 82: a)(1 [1] 64:13 a)(6 [6] 45:9 47:1,2,16,21, admit [1] 96:14 admitted [1] 89:13 a.m [3] 1:18 3:2 113:5 adopt [6] 41:7 44:8 49:6 76: ability [11] 7:14 9:13 10:11 11 **87**:15 **106**:11 **19**:6 **38**:10 **45**:24 **49**:7 **82**: advance [1] 40:8 2 106:15.19 112:2 advice [4] 14:6 36:16 62: above-entitled [1] 1:16 25 78:25 absence [1] 62:9 advise [1] 36:13 absolutely [1] 92:4 advisory [6] 6:24 13:21 61: abundant [1] 22:15

9.14.16 78:22

15

affect [3] 31:23 100:21 101:

affiliated [1] 27:17 affiliations [2] 27:16.22 affirmative [2] 52:22 96:12 affirmatively [3] 55:9 58: 12 68:17 Affordable [2] 65:11 79:1 afraid [1] 35:10 agencies [5] 33:20 77:2 79: 9.10 93:17 agency [15] 14:9,21 32:22 **33**:4.24 **34**:12 **38**:11.12.13 77:21.22 79:15 100:17 103:4 111:4 aggravates [1] 82:5 aggressive [2] 95:20 96:4 agnostic [2] 110:8,16 ago [1] 81:18 agree [18] 6:8 11:24 12:4 **17**:12 **18**:8,19 **24**:2 **36**:25 37:23 64:15.18 65:8 66:17 **68**:22 **108**:5 **110**:3 **111**:12 **112:**19 agreeing [1] 73:22 agrees [5] 7:8 65:6,14,16 **72**:2 ah [1] 105:21 ahead [4] 16:15 21:19 69:2 84.9 AHRQ [9] 34:1 59:6,23 62: 4 **64**:14 **65**:4,5 **67**:3 **89**:10 AIDS-prevention [1] 20:5 AL [2] 1:5,9 ALITO [23] 15:6,11,22 16:2, 16 **17**:6.9 **18**:1.20 **20**:9 **34**: 21.22 87:9.10.17 88:14.22 **89**:14,24 **90**:10,17 **91:**4,13 allow [3] 59:17 76:4 88:6 allowed [5] 51:8 58:25 59: 1 62:16 66:17 allowing [1] 84:1 allows [2] 38:15 83:16 alone [5] 23:13 45:5 64:18 71:20 96:17 already [5] 20:14 21:13 22: 3 51:17 108:9 alter [2] 52:1 108:16 alternative [1] 94:1 although [1] 78:13 ambiguity [1] 43:9 American [1] 101:4 Among [1] 110:12 amount [2] 4:21 40:24 ample [2] 3:12 23:11 analogy [6] 18:16 29:4,7 31:8 32:4.8 anchor [1] 88:12 another [6] 7:17 25:17 48: 23 61:22 72:20 103:2 answer [8] 11:18 36:6 75:6 **86:4 93:4 98:23 110:**5.12 answering [1] 57:14 ante [1] 40:16 antecedent [1] 10:1 anybody [1] 59:5

apart [1] 40:14 APJs [1] 109:23 appeals [4] 44:18 53:10 54: 22 55:14 APPEARANCES [1] 1:20 appears [3] 46:25 75:12 92.11 Appendix [1] 92:12 applied [1] 111:16 applies [2] 100:5 103:7 apply [1] 61:12 appoint [44] 3:17 5:9 6:7, 11,19 **9**:23 **10**:2 **11**:25 **20**: 10 **43**:19 **44**:3 **53**:8 **55**:22 **58:**25 **59:**1,3,5,17,21,22,23, 23,24 60:24 61:3 62:5,20, 25 **63**:2,4,25 **65**:5 **66**:18 **67**:7,20 **69**:21,23 **76**:17 **77**: 25 78:24 110:8,10,14,14 appointed [19] 5:4 44:20 **45**:1 **53**:6.15 **55**:8 **56**:2 **57**: 5 **59**:6 **61**:11 **65**:9 **86**:17. 23 89:6.10.22 90:25 97:18 appointing [4] 13:13 26: 13 **62**:19 **111**:12 appointment [47] 6:10,21 **9**:22 **11**:22 **24**:5,18,20 **25**: 4,6,24 **26**:2,3,10 **33**:13,16 **43**:11 **54**:3 **55**:4 **57**:12 **58**: 5,7,13 **60**:7,18 **63**:9,19 **64**: 14 **65**:2,20 **69**:24 **71**:5 **72**: 13.19.21.23 86:15 87:2.5 88:17 89:3 90:6.14 91:9 **111**:19 **112**:2.9.16 Appointments [11] 26:1 **42**:12 **57**:1 **61**:12 **65**:15 **78**: 11 **82**:8 **89**:4 **110**:2 **112**:7, appoints [4] 13:13 59:5 60: 1.3 Appreciate [1] 39:6 approach [2] 22:12 94:11 appropriate [3] 5:3 13:6 90:7 approval [2] 17:22 112:3 approve [10] 17:23 20:11 **58**:5.12 **60**:17 **68**:17 **71**:5 72:11.13 111:14 approved [1] 46:13 approves [2] 19:25 45:7 April [1] 1:14 area [1] 79:17 aren't [3] 34:14 43:19 68:8 argue [1] 100:6 argument [37] 1:17 2:2,5,8 3:4.7 4:9 9:19 10:23 18:21 20:3 24:3 44:14 46:19 47: 11 **53**:21.25 **54**:2 **57**:18 **58**: 22 59:10 60:5 63:16 70:7 **74**:10 **81**:15 **82**:18 **87**:11 93:23 95:19 100:10 103:

17 106:2 107:15,25 108:18,

argument's [1] 60:6 arguments [1] 16:25 around [3] 16:24 68:9 79:8 arrangement [2] 22:4 51: Arthrex [23] 50:7,8,11 81: 17.18.22.23 **82:**10.14.17 **95**:4,10,14,21,24 **96**:5 **104**: 9.12 105:12 109:20.23.23. Article [5] 44:21 65:1 66: 23 76:25 103:12 articulated [1] 41:13 aside [3] 38:3 70:4 93:22 assess [1] 10:4 Assistant [3] 38:7,21 68: assume [1] 75:2 assumption [2] 9:20 54: at-will [25] 3:19 9:8 14 10: 18.18.22 20:25 21:4.23 22: 15 23:7,18,19,25 24:15,17, 22 26:15.22 29:11 31:18 **50**:25 **80**:15 **82**:24 **109**:22 atomic [1] 8:16 Austin [1] 1:24 authorities [3] 3:18 52:10 60.7 authority [62] 5:9,11,15,19 **6**:22 **7**:3,5,19 **8**:21,22 **9**:2 **18:**5,24 **20:**20 **22:**2 **24:**5, 18,20 25:5,6,24 33:16 37:4, 7 **39:**12.15.16 **45:**18.24 **48:** 7.14 **49**:10 **50**:13 **51**:23 **53**: 8.14 **55**:4.22 **57**:13 **58**:17. 18,20 60:2 66:12 67:2,3 **69**:24 **70**:20,23 **72**:4 **76**:15 **84:**13 **92:**14,20 **93:**11,16 95:6 97:24 99:17 100:18 111:19 112:9 authorizing [1] 13:7 automatically [1] 35:16 available [4] 20:5 96:7 104: 13 23 avoid [3] 43:13 47:21 74: avoidance [10] 4:20 30:2. 17.22 43:2 47:15.18 66:9 75:2 76:8 away [1] 39:17

В

b)(2 [1] 13:4 b-4(a)(6 [3] 38:20,24 109:7 back [25] 9:6 19:14 22:23 23:17,22 30:18,24 31:5 33: 1 36:4 39:5 41:2,19 57:25 58:16 85:18 90:11 96:22 102:7 105:11,15,21 108:5 111:14 112:3 back-end [1] 22:16 backdrop [2] 25:19,25

23.24 109:9

ACA [15] 6:17,17 7:3,8,8,13,

15 26:5,11,12 46:12 62:22,

Official - Subject to Final Review

balancing [1] 19:16 bar [2] 4:16 43:17 bare [1] 30:12 barely [1] 73:16 BARRETT [20] 20:1,22 39: 23,24 41:16,23 42:6,23 53: 16,24 54:6 68:20,24 69:2,8 74:9.13.21 76:9 103:14 based [5] 28:6,23 29:13 31: 24 90:8 basically [1] 79:25 basis [3] 37:9 85:4 97:17 Becerra [4] 65:13 89:16 92: 14 93:11 become [2] 18:19 53:4 began [1] 65:10 behalf [9] 1:22,25 2:4,7,10 3:8 44:15 51:7 107:16 belabor [1] 66:5 believe [3] 69:10 74:7 110: believes [1] 47:11 below [3] 42:22 73:14 110: bend [1] 47:16 benefits [6] 19:17 27:9 29: 8,9 **30:**25 **31:**17 best [17] 16:9,14 19:19 28: 6,18 **29**:18 **31**:25 **32**:20 **34**: 15 **37**:4,7 **40**:17,18 **41**:1 50:24 94:18 109:4 better [4] 41:11 43:6,8 110: between [7] 22:12 67:13 83:9 87:13 89:11 90:22 **105**:23 bicameralism [1] 18:17 bidding [2] 18:3,8 big [3] 20:4 63:21 77:19 big-picture [1] 101:7 bill [2] 18:18,19 bind [3] 3:14 4:7 96:25 binding [8] 45:17 83:24 93: 15 96:24 100:2 102:10 103:2 107:21 binds [1] 19:24 bit [4] 15:23 20:23 73:17 98: 5 blessed [1] 51:16 blesses [1] 22:4 block [5] 18:15 19:22 21:7 **37**:22 **41**:18 blocked [1] 39:5 blocks [1] 85:17 blurs [1] 82:6 board [19] 6:15 13:21 17: 13 27:10 29:8,10 31:1,17 **51:**25 **52:**2,4,6 **61:**23 **62:**2. 12,14,15,17 108:16 body [5] 7:17 19:17 29:11 **61:**9 **78:**22 both [11] 16:8 21:3 22:15 30:20 37:23 46:25 72:15. 15 **101**:18 **105**:18 **111**:19

bottom [1] 24:24 **BRAIDWOOD** [2] 1:8 3:5 branch [1] 38:23 brief [9] 20:24 22:6 31:9 38: 14 **52**:19 **57**:22,25 **73**:16, 18 briefed [1] 11:8 briefing [4] 54:13 73:15 90: 9 99.2 briefly [1] 33:9 bring [1] 41:2 broad-ranging [1] 22:21 broader [3] 46:19 58:17,18 broadly [1] 108:2 **bureaucrats** [2] **14:**17,18 Butz [1] 15:5

C

call [1] 27:8 called [1] 101:12 calling [1] 6:5 came [3] 1:16 57:25 111:7 cancel [1] 45:25 candid [1] 22:18 cannot [9] 4:6 18:9 26:9 37:1 44:21 45:14 65:17 102:25 110:15 canon [5] 4:19 30:21 43:2 **47:**15.18 capable [1] 11:9 care [16] 20:11 44:23 45:6 46:15 48:3 49:9 52:24 65: 11 76:16 79:1 83:18 86:24 92:20 99:8,18 107:5 carry [4] 58:18 64:7,8,23 Case [16] 3:4 7:4 10:4 22: 14 23:6 25:1 58:1 71:2 81: 18 98:18 104:5 108:20 109:21 111:24 113:4.5 cases [8] 4:13 9:16 22:10 29:12.13 32:11 50:16 102: catalogs [1] 81:23 cause [3] 52:23 100:5 109: censor [1] 75:25 certain [4] 52:23 81:10 84: 22 91:17 certainly [4] 4:18 10:9 36: 8 62:16 certiorari [2] 92:23 99:1 challenge [1] 42:12 chambers [1] 40:13 change [1] 84:5 changed [2] 7:15 26:12 characterize [1] 58:22 CHIEF [26] 3:3,9 6:7 8:8,10 **14:**1,4 **33:**6 **34:**21,23 **36:** 22 39:8,22 42:24 44:11,16 86:4,5 87:6 91:14 93:20 97:8 100:13 103:13 107: 12 113.2 choose [1] 36:18 chooses [2] 8:22.23

chosen [1] 46:5 Circuit [20] 9:25 10:24 53: 17 **54**:3,9,13 **56**:25 **57**:8,15 **69**:6 **70**:8 **73**:12,14 **90**:3, 11 **92**:5,13 **99**:20,23 **112**: Circuit's [3] 92:25 93:10 99.5 circular [1] 103:17 circularity [1] 105:8 circumstance [2] 71:9 96: circumstances [3] 30:7. 10.13 cite [1] 11:10 cited [1] 38:14 claim [2] 25:5 42:22 claims [1] 85:8 clarify [1] 39:25 Clause [7] 26:1 42:12 61: 12 **78**:11 **82**:8 **103**:12 **112**: clear [14] 4:14 6:18 11:19 **25**:7 **29**:24 **34**:15 **45**:4 **46**: 12 80:15 98:10 109:21 110:5.5 111:5 clearly [5] 4:18 6:16 8:21 12:24 99:25 clerk [2] 40:5,8 clerks [2] 14:7 36:5 closed [1] 93:1 co-exist [1] 45:14 code [1] 8:2 colleagues [1] 35:14 collective [1] 4:5 Collins [5] 15:18.24 35:2 77:9 103:6 colloguy [3] 11:20 74:22 colorable [3] 24:2.4 25:11 come [6] 14:11 29:15 47:8 61:7 83:4 105:10 comes [7] 7:19 9:21 26:22 **58**:16 **83**:4 **86**:10 **97**:3 comfortable [1] 23:14 coming [2] 37:10 76:24 comment [6] 87:10 93:19 98:3 99:23 100:4 11 Commission [4] 20:18.21 108:11.15 communication [1] 84:20 companies [1] 84:9 Company [1] 51:24 compelled [1] 62:24 competing [1] 19:16 complete [1] 112:18 completely [3] 76:2 88:8 99:21 conceded [1] 20:19 concedes [3] 51:11 52:25 90.24 conclude [1] 53:13 concluded [2] 55:1 58:6 concludes [1] 91:7

conclusion [3] 14:11 54: 17.20 confer [2] 11:22 49:8 conferred [2] 48:5 52:17 conferring [1] 18:4 confers [1] 88:16 confirm [3] 7:7 33:15 44:3 confirmation [4] 11:23 26: [1] 66:14 2810 confirmed [2] 5:5 25:24 confusina [1] 56:14 Congress [42] 5:23 18:2,7 19:15 30:6,11 38:11 43:23 **46**:3,5,11,12 **53**:7 **55**:4,9, 22,24 **57**:9 **60**:23 **61**:5,17, 20,22 65:2,3 67:1,1,10,16, 20 69:23 70:15 76:14 84: 10 86:14 89:2 90:4 94:15 **101:2 102:**5,13 **109:**9 congressional [1] 46:8 connote [1] 6:9 connotes [1] 6:5 consent [3] 62:25 77:24 78:25 consequences [1] 33:4 consider [2] 27:4 56:17 consideration 3 8:18 11: 5 48:20 considered [1] 56:4 consistent [2] 85:14 102: Constitution [5] 59:3 61: 11 72:6 76:14 84:19 constitutional [45] 4:19. 24 5:8 7:1.6.10 8:25 9:1 30:2.17.22 43:2.13 44:1.7 **47:**15.18.22 **55:**21 **64:**1.2 **65**:19 **66**:9.15 **70**:13 **71**:10 **72:**24 **74:**18 **75:**2 **76:**8,10, 13 **85**:25 **86**:2,7 **87**:3,4 **88**: 20,23 89:1,13 103:8 108:3 109:3 111:10 constitutionally [2] 53:15 **62**:24 construct [1] 106:25 construction [1] 96:10 construe [3] 7:12 74:18 25 construed [4] 8:1 11:21 64:13 76:11 construing [1] **79**:18 contemplates [1] 4:21 content [3] 26:16 31:11 41: 25 context [4] 21:23 27:13 41: 12 81:13 contexts [1] 81:11 continue [2] 43:23 70:11 contrary [1] 4:9 contribute [1] 14:19 control [14] 3:20 9:9.15 38: 13 **68**:7.12 **81**:2.3.4 **83**:8 85:6.24 105:24 112:18

convene [19] 5:15,24,25 6:

2,9,13,13,19 7:18 8:4 13:

12 25:13 62:4,5,12 63:3,18, 24 67:7 convened [4] 6:6 34:6,16 **110**:18 convenes [1] 68:10 convening [1] 110:19 convening/appointing correct [17] 13:9.18 15:1 **26:**19,23,24 **33:**21 **35:**4.5 36:11.14.20 37:5 39:20 77: 22 98:1 99:6 correctly [2] 44:18 98:9 couldn't [2] 22:22 30:14 Counsel [6] 12:8 33:7 44: 12 **87**:7 **107**:13 **113**:3 counting [1] 15:12 counts [1] 104:19 couple [2] 43:3 97:23 course [4] 25:3,14 41:20 74.6 COURT [81] 1:1,17 3:10,18 4:25 6:6 9:8.15 11:8.12.15. 17 **15**:3.3.18.18 **20**:14.17 22:9,10,16 23:3 40:12 42: 15,18 **43**:12 **44**:17,18 **45**: 18,20,22,23 **46**:2 **49**:6 **51**:4 **53**:3,10,12,19,21,23 **54**:6, 22 55:13,17 56:18 57:16, 19 63:23 67:5 69:11,13,14 70:2,5 73:12,20,24,25 74:4, 7 76:11 77:10 80:25 81:11 82:3 89:2,8,19,20 90:1,8 91:6.7 92:24 93:9 98:12. 24 99:4 108:14 112:6 Court's [8] 4:13 5:6 12:18 46:17 52:8 80:24 102:15 103:8 cover [2] 46:16 107:5 coverage [11] 44:23 45:6, 16 76:16 84:6 86:25 90:21 92:20 99:8 11 18 crack [1] 54:3 create [10] 4:14 17:18 43: 14 44:7 46:5 64:1 74:19 **77:1 102:6 109:**2 created [1] 61:13 creates [1] 109:3 creating [2] 79:8 108:3 critical [5] 9:3,9 10:22 23:7 100:21 critically [2] 18:6 21:6 curious [1] 70:11 current [2] 102:15 103:8 cursory [1] 90:8 cuts [1] 109:6 Cutter [1] 11:11 D D.C [2] 1:13,22

date [1] 39:15 day [1] 96:21 dealing [3] 95:24,25 96:2 dealt [1] 33:19

69:6 70:8 73:11.13 90:3.

Official - Subject to Final Review

debate [1] 105:23 decide [4] 46:15 48:3 55:3 90:8 decided [3] 88:15 108:9 110:3 decides [4] 49:13 52:13,15 89:2 deciding [4] 8:19 11:9 43: 5 48 1 decision [16] 14:20 16:13 **19:**24 **31:**24 **32:**8.12 **42:**22 **46**:8 **48**:5 **51**:7.12 **96**:12. 15.16.25 112:4 decisionmakers [1] 14:11 decisionmaking [5] 48:6 49:5 50:10 81:25 96:8 decisions [13] 22:21 47:9 49:8 50:13 51:3 76:16 80: 8,24 **82**:3 **85**:3 **86**:10 **95**:8 100:21 declare [1] 79:15 deem [1] 13:6 deemed [2] 35:3 51:5 default [2] 26:3 55:10 defeat [1] 25:5 defend [1] 54:21 defer [2] 8:23 84:1 deferring [1] 83:25 definition [1] 27:12 degree [1] 15:12 delay [2] 39:15 84:18 delegate [1] 5:19 delegated [1] 93:16 delegation [2] 5:17,21 demand [1] 18:22 denv [2] 45:16 91:2 Department [14] 1:22 25: 16 **29**:9.10 **38**:17 **63**:14 **65**: 5 **68**:3 **69**:25 **70**:16.19 **77**: 5 **111**:20 **112**:5 depend [1] 89:19 depends [3] 46:19 95:20 100:16 Deputy [1] 1:21 describe [2] 15:20 38:12 described [1] 15:4 describing [2] 85:11 95:5 designated [1] 34:12 destrov [1] 79:9 determine [2] 83:17 99:11 determined [1] 57:2 determines [1] 22:12 determining [1] 107:4 difference [2] 23:8 51:21 differences [1] 77:20 different [10] 8:17 27:13 32:17 46:24 60:11 71:9 76: 25 110:13 14 111:22 difficult [3] 20:2 24 73:3 direct [5] 3:24 17:12 33:16 **38:**22 **80:**8 directed [3] 38:9 44:24 49: directing [1] 107:23

direction [6] 40:8 48:7 76: 25 95:9 96:16 100:25 directive [1] 16:19 director [48] 5:14,14,23 6: 18 **7**:5,14 **12**:1,5 **13**:1,1,8, 13 14:3 25:12,13,15,19,20 43:12 58:23 59:6,23 62:4 **63:**19 **64:**9.14.24 **65:**4.5 66:10.12 67:3.11.12 68:6.9. 13 **69**:21.23 **71**:24 **72**:7 **81**: 24 89:10 103:5 110:22 **111:**4.9.12 director's [3] 3:18 68:18 110:24 director/Secretary [1] 112:17 disagree [3] 9:12 12:23 54: disagreed [1] 53:24 disagrees [5] 33:4 53:20 **57**:17 **70**:5 **84**:24 disapprove [2] 97:2 106: disapproves [1] 45:7 discharge [1] 94:17 disclaim [1] 105:18 discretion [3] 48:1,25 86: 10 discussed [2] 44:5 73:16 discusses [1] 95:14 discussing [1] 26:5 discussion [3] 73:17 82: 12 104:4 dispute [4] 24:4.21 85:7.20 disputed [1] 66:21 distinction [6] 37:9 52:20 **87:**12.19 **88:**1.12 district [2] 45:22.23 doctrine [2] 102:15 103:9 document [3] 93:9 99:19 **106**:16 doing [4] 29:22 84:14 110: 19.20 done [9] 16:10 52:1 62:22 79:17 84:11,21 89:15,17 109:15 doubt [2] 61:22 111:23 down [2] 8:14 85:13 drafted [1] 102:9 draw [2] 88:10,13 drugs [1] 20:5 due [1] 15:16 During [10] 3:23 53:11 65: 17 **74**:22 **76**:4 **84**:17 **85**:9 86:23.25 90:25 duties [2] 5:13 64:23 duty [6] 16:8 28:7 31:23 35: 16.18 103:25

Ε

earlier [7] 26:5,15 62:6 83:

easy [5] 12:4,8,9,14 78:20

16 **88**:6 **101**:11 **111**:8

easier [1] 111:24

Economou [1] 15:5 economy [2] 100:22 101:4 Edmond [4] 9:16 22:10 50: 20 51:4 effect [19] 3:23 17:4 22:22 23:9,9,12 32:10 37:16 38: 6 **45**:17 **60**:18 **76**:5 **83**:4, 18 99:12 103:2 106:9 107: 20.23 effective [2] 39:15 108:15 efficiency [1] 109:24 Either [8] 25:2 95:9 97:15 99:18 109:21 110:1 111:9 **112**:24 else's [1] 77:4 emphasized [1] 30:19 employee [1] 71:18 employees [2] 27:15,21 employers [1] 27:16 empowers [1] 38:5 enacted [6] 5:22 6:17 46:4. 11 65:11 88:6 end [18] 22:23 30:18 31:5 33:1 38:23 39:5 41:19 47: 9 56:17 59:18 80:20.25 96: 21 105:19,21 111:14,15 **112:**3 Energy [2] 59:22 110:9 enforce [1] 102:25 enforceable [1] 87:1 enforced [1] 65:18 enforcement [1] 65:25 enforcing [1] 90:21 engage [2] 30:3,15 enioined [1] 112:25 enormously [1] 101:3 enough [15] 4:19 20:22.25 **25**:7 **42**:19 **50**:12 **58**:7 **60**: 8 68:15 77:11 80:12 82:4 95:17 96:17 112:7 ensure [2] 4:1 23:11 ensuring [1] 21:24 entered [1] 45:22 entering [1] 45:25 Enterprise [14] 9:17 14:14 20:15.16 21:13 22:3.11 51: 16.22 52:9 108:9.11.13.21 entire [4] 38:10.16 100:8 **104**:18 entirely [3] 4:10 29:24 40: entitled [5] 65:24 91:2 92:2, 4 **112**:22 entity [4] 15:20 34:5,16 99: envisioned [1] 47:7 equates [1] 67:7 especially [3] 4:20 20:8 30: ESQ [3] 2:3.6.9 **ESQUIRE** [1] 1:24 essence [1] 81:2 essential [1] 14:13

establish [2] 83:2 84:13 established [2] 61:9 78:21 ET [2] 1:5.9 even [54] 9:10 12:22 14:6 **16**:22 **20**:19 **27**:5 **40**:6,16 **41**:5,9,14,16,21,22 **42**:1 **44**: 2 **46**:12 **53**:3 **55**:7 **56**:3 **61**: 2,15 **63**:11,14,15,16 **64**:2, 14 **65**:4.5 **67**:4.17 **76**:9.11 84:20 86:12.21 88:5 89:1. 8 90:24 93:2.8.12 95:2 96: 9.18.19 97:1 104:4 108:5. 21 109:2 110:9 events [1] 4:23 everyone [3] 7:8 65:14,15 everything [1] 79:17 evidence [1] 111:5 ex [1] 40:16 exact [1] 42:16 exactly [5] 15:2 18:23 31:2 **108**:18 **111**:21 examining [1] 57:5 example [6] 7:17 22:19 27: 9 40:5 72:7 76:1 examples [1] 36:4 exception [3] 100:5,6,10 exchange [1] 97:11 executive [2] 102:16,19 exercise [13] 5:13 8:22 15: 12 16:9,14 28:18,22 29:17 30:4 35:18 68:2 70:19.23 exercised [1] 112:9 exercises [2] 68:3 111:3 exercising [5] 31:4 85:23 102:16 21 22 exert [1] 82:16 expert [2] 8:24 19:17 expertise [1] 14:19 experts [1] 14:10 explain [4] 15:25 16:2 43:4 78:20 extent [12] 4:12 24:13 29: 22 **45**:12 **46**:3 **47**:4 **75**:9. 16 77:19 87:25 102:3 109: extreme [1] 76:7 F face [2] 33:3 110:11 fact [9] 14:14 21:14 27:6 28: 2 37:2 41:24 62:23 94:18

factor [2] 56:16.22

facts [2] 23:5 29:14

fair [2] 12:16,22

falls [1] 108:4

feel [1] 74:21

far [2] 22:9 68:22

feature [1] 31:3

fairly [2] 8:11 83:1

fall [3] 73:5 93:24 97:23

federal [2] 45:23 93:17

Fifth [23] 9:25 10:24 53:17

54:2,9,13 **56:**25 **57:**8,15

11 92:5,13,25 93:10 99:5, 20,23 112:14 figure [3] 64:19 103:18 112: final [7] 4:6 14:20 19:24 45: 21 48:6 51:7 112:19 find [1] 61:22 fire [4] 20:9 29:2 36:9 94: 21 fired [2] 29:16.17 first [22] 3:4 5:11 10:4 11:3. 15 **17**:23 **20**:13 **33**:13 **48**: 14 **53**:18 **61**:13 **65**:11 **70**: 20 74:1,5 79:2 87:15 98:5, 9 110:23 112:4.10 fix [2] 64:19 86:20 fixes [1] 64:22 flows [1] 3:16 focused [1] 13:20 focusing [1] 38:2 folks [2] 27:14 104:6 followed [1] 107:4 following [2] 10:9 29:1 for-cause [2] 77:14 78:13 forbid [1] 62:18 forbids [1] 63:1 Force [130] 3:11,15,22,24, 25 4:2,6,11,15 5:3,9,15,24, 25 8:5,6,11,24 13:21,24 14: 24 16:20 17:13,14 18:2,8, 10,11,14,17 19:6 20:6,10, 21 21:15.17 22:2 27:3 33: 11.17.19.23.25 **35**:7 **37**:1 **38:**22 **44:**19 **45:**5.8.10.16 **46:**6.15 **47:**3.9.24 **49:**8.11 **52:**13.15.22 **53:**3.9 **55:**2.23 **57:**13 **58:**13,25 **59:**2 **61:**13 62:5,21 65:9,13,18 66:3,18 71:25 72:14 75:8 76:15 79: 2 80:9 81:16 82:17 83:15 **84:**20 **85:**13 **86:**14,16,22 **87:**2,21,23 **89:**4,10 **90:**21, 25 **92**:21 **94**:3,19 **95**:8,12 96:12,15,23 97:2,5,22 99:9, 13.14.15.20 **100:**16 **101:**3. 12.13 102:2 106:8.9.13 107:3 23 108:6 6 109:10 110:15.17 113:1 Force's [2] 72:11 85:10 forcing [2] 21:9,10 form [1] 45:21 formal [8] 50:12 82:2 96:6. 10,11 104:13,23 105:12 formalistic [1] 82:13 formally [3] 45:24 95:7,7 forms [1] 30:18 forth [1] 82:14 fortiori [1] 112:11 forward [6] 89:16.18 91:5. 7.10 94:24 found [1] 51:1 Free [19] 9:16 14:13 16:10 20:14,16 21:12 22:3,11 28:

18 40:10,11 51:16,21 52:8 **108**:9,10,13,21 **109**:12 friend [4] 25:22 74:23 108: 10 110:7 front [4] 38:23 47:9 105:19 111:15 front-end [1] 22:24 frustrating [1] 103:19 fully [1] 11:8 function [1] 48:19 functions [2] 5:13 13:8 Fund [14] 9:17 14:14 20:15. 16 **21**:13 **22**:3.11 **51**:16.22 **52:**9 **108:**10.11.14.21 further [4] 23:5 33:8 97:25 98:6

G

gave [3] 79:2 84:12 109:10 General [3] 1:21 38:25 60:

General's [1] 73:18 generally [2] 31:1 38:12 gets [1] 21:25 getting [1] 85:3 gg-13 [1] 107:19 give [16] 7:16 14:24 17:2 29:4.8 35:20 36:5 40:8.17. 25 41:25 54:3 58:20 66:11 **76:**15 **85:**4 Given [6] 4:5 14:7 18:10 93:

17 106:9 110:17 gives [6] 26:15 37:7 39:14 45:4 68:11 108:15

giving [1] 72:6 GORSUCH [48] 9:18 10:12,

14.20 11:2.10.14.24 12:7. 12.17 24:19 36:23.24 37: 17.21.24 38:2 39:3.6 51:10. 15.19 **52:**5 **53:**11 **63:**3.11.

15 **64:**12 **67:**9.17 **70:**10.17. 21 71:1.7 72:18 97:9.10.14. 21 98:2,8,13,17,20 100:12

108·8

Gorsuch's [2] 23:17 66:8 got [4] 8:17 30:19 60:6,13 govern [1] 38:15 governing [1] 45:3

government [25] 9:20 27: 15.20 **35**:10 **36**:25 **45**:20 47:7 51:11 52:25 53:23 55:

20 57:25 58:16 64:15.20 65:6 86:21 90:24 91:1 92: 22.22 93:18 98:25 99:4

100:6

government's [13] 46:9,20, 21 **47**:23 **49**:5 **52**:19 **53**:5 **55**:15,25 **57**:20 **65**:22 **88**:6

governs [1] 38:25 ground [1] 82:19 grounds [1] 92:7 guarantee [2] 85:10,15 guarantees [3] 87:18,21 guess [9] 10:8 23:20 56:6 58:15 74:13 76:18 83:24 84:25 85:18

Н hand [2] 19:17,20 happen [1] 101:2 happening [1] 103:18 happens [2] 4:1 110:13 happy [1] 98:22 hard [4] 65:21 82:18 84:5 102.4 hard-nosed [1] 82:15 harder [3] 22:19 23:2 41: Hartwell [15] 57:25 58:2.3. 6 60:11,16 68:19 71:6,16 **73**:5,6 **111**:24,25,25 **112**: Hartwell's [1] 60:11 HASHIM [5] 1:21 2:3,9 3:7 **107:**15 head [14] 7:22 14:21 25:16 32:22 33:4 63:14 65:4 68: 3 **69**:24 **70**:16.18 **77**:5 **111**: 19 112:5 head's [1] 38:12 headed [1] 103:5 HEALTH [16] 1:4 34:6,7,8, 17,18,18,19,20 38:8,10 44: 25 **53**:7 **57**:12 **58**:11 **90**:5 healthcare [1] 101:16 hear [4] 3:3 12:22 28:8 108: heavily [1] 37:2 held 5 15:18 20:17 44:18 56:19 92:13 help [5] 14:7.10 48:11 56: 14 103:20 hereby [2] 97:2 99:13 HHS [2] 33:20 101:14 hinges [1] 9:20 hire [1] 14:10 history [3] 40:25 79:7 102: Hmm [1] 57:10 hold [3] 5:1,3 52:21 holding [1] 14:13 holdings [1] 103:6 holds [2] 21:13 50:7 Honor [27] 5:11.21 6:3.8 7: 22 8:20 10:17 13:10 15:10. 17 17:2 20:13 21:3 24:1 26:20 29:4,24 33:22 36:11

37:9 41:8 42:10 52:11 72:

Honor's [6] 15:17 72:9 86:

HUMAN [6] 1:4 44:25 53:8

12 95:3,5 102:12

12,18 96:19 98:23

House [1] 18:17

honors [2] 46:8 107:11

hortatory [2] 94:20,24

huge [2] 40:24 54:12

57:12 **58**:11 **90**:5 hundred [1] 81:13 hypothetical [2] 72:17 111

ı idea [2] 55:21 79:13 identified [1] 77:18 ignore [2] 35:16 36:18 II [5] 44:21 65:1 66:23 76: 25 **103**:12 immediate [1] 22:22 immediately [1] 23:9 immune [1] 76:2 immunized [1] 87:24 implement [1] 17:20 implementing [1] 93:16 implication [1] 83:13 implicitly [1] 88:16 important [6] 10:14 22:21 **59**:9 **100**:17 **101**:4 **105**:5 importantly [4] 3:15 13:16 **19**:9 **46**:1

impose [14] 4:16 43:16,17, 18 45:5 53:21 57:19 86:11 92:20 96:16 99:8.17 109: 14.18 imposed [2] 48:16 52:3

imposes [1] 93:15

imposing [1] 100:1 inaction [2] 52:15,18 inapplicable [1] 47:19 INC [1] 1:8 includes [1] 13:3 incompatible [1] 87:17 inconsistent [1] 79:16 incredibly [2] 15:7 18:4 incremental [1] 22:11 indeed [1] 10:2

independence [25] 19:8 28:9 41:10.13.25 43:6.10 46:22 74:11.25 75:7 85:11 **87**:18,21 **88**:9 **93**:25 **95**:6 103:23 104:25 105:13,17, 19,22 106:5 109:8 independent [68] 4:11 14:

23,25 15:8,9,13,15,20 16:3, 7,17 19:10 27:1,12,13 28:4, 10,13,13,23 29:18 31:4 32: 19 **33**:2 **35**:3 **36**:5 **37**:12 39:1.25 40:6.6.9.14.22 41: 4.6 **42**:16 **43**:16 **45**:11 **46**:

6.14.20.25 **50**:23 **76**:12 **77**: 1.9.11.21.22 79:8.10.15.23 94:20 96:20 102:2 103:24, 25 105:14 106:13,14,22 108:1,2 109:1,11,19

independent-ness [1] 94:

independently [1] 35:23 indication [1] 77:2 indications [2] 101:3.6 indicators [1] 101:12 indicia [1] 83:7

individual [1] 108:16 individuals [4] 6:20 7:7 32: 15 **101**:18 industry [1] 101:16 inferior [34] 3:11 20:19 22: 13 **23**:15 **32**:21 **42**:20 **44**: 22 **50**:7 **51**:6 **53**:4 **55**:6.7 **56**:1,4 **58**:6 **63**:5,12,17 **65**: 6 **67**:4.18.19.20 **72**:22 **81**: 21 86:14 89:25 90:2 91:8 92:7 97:17 108:22 112:1. 21

inferiority [1] 20:3 influence [14] 26:16 31:11, 18 **36**:2 **40**:11,11 **47**:8 **50**: 10 79:22 81:25 82:17 94:5 **95**:12.15

influenced [1] 27:5 influences [1] 28:14 informal [4] 50:9 82:1 95: 11 15

initially [3] 61:9 78:21,23 injunction [2] 65:24 90:20 inauiry [1] 56:16 instance [4] 10:4 74:5 112: 4.10

instead [3] 5:3 8:23 111:13 instruction [1] 41:5 insubordinate [2] 32:18, 23

insulates [1] 20:8

insurance [1] 84:8 insurers [8] 45:6 46:15 84: 5 93:15 96:24,25 100:2 107:5

interesting [2] 12:2 82:11 interpret [4] 40:20 41:20. 24 77:1

interpretation [11] 15:7 40: 19 **41**:9 **47**:23 **53**:5 **63**:24 **67:**6 **74:**16 **75:**11 **96:**20 **106**:12

interpreting [2] 85:4 108:1

interrupt [1] 76:22 interval [11] 3:23 17:5,7 48: 15 **49:**24 **82:**21 **83:**3 **84:**7. 13 17 85:9

intervene [1] 84:1 invalid [1] 93:10 investigations [1] 108:17 investing [1] 68:6 invite [1] 43:4 invoking [2] 25:25 47:14 involved [2] 84:12 85:3 involvement [1] 4:22

irrelevant [1] 13:22 Isn't [8] 5:16 8:25 14:9 18:3 25:9 36:1 42:7 80:11 isolation [1] 66:11 issue [25] 4:3.6 6:22 9:11 **17**:21.23 **22**:20 **29**:18 **51**:6 **52:**13 **54:**6 **57:**3.16.17 **73:** 15 **90**:8 **92**:14 **93**:1.23 **96**:

13 98:11 99:24 100:9 104:

22 106:16 issued [7] 65:17 66:3 85: 13 86:25 89:12 90:22 91: issues [1] 73:11 issuing [1] 3:13 itself [4] 4:20 17:3 64:21

J

75:11

JACKSON [57] 23:16 24:6, 12.23 25:1.8 42:25 43:1 44:10 48:10.13.18.23 49: 12,14,17,20,23 50:2,15,19, 22 56:6.13.20.24 57:10 62: 8 **64:**5 **79:**4 **82:**20.23 **83:**6. 13.19.21 84:10.16 85:16 86:7 103:15,16 104:3,8,11, 16,21 105:3,5,7,10 106:2,3, 18,21 **107:**6,9 jerry-built [3] 16:25 17:16,

jettisoned [2] 88:19,25 iob [1] 35:10 jobs [1] 94:11

Joint [1] 92:12 JONATHAN [3] 1:24 2:6 44:14

JR [1] 1:3 judges [3] 15:4 51:5 82:1 judgment [20] 8:24 15:13 16:9,14 19:19 27:3 28:5,6, 18,23 29:18 31:4,25 32:20 **36**:6 **40**:10 **45**:21 **46**:1 **50**:

24 **104**:1 judgments [1] 33:3 June [4] 65:12 86:21 89:11

90.23

Justice [363] 1:22 3:3.9 5:7.

jurors [1] **76**:3

16 **6**:1.4.21 **7**:16.24 **8**:7.8. 9.10 9:18 10:5.5.12.14.20 **11:**2,10,14,20,24 **12:**7,12, 17 **13:**3,11,17 **14:**1,4,15,22 15:6,11,22 16:2,6,15,16 17: 6,9 **18**:1,20 **20**:1,9,22 **21**: 17,18,19,21 22:5 23:16,17 24:6,12,19,23 25:1,8 26:14, 21,25 27:11,24 28:8,24 29: 5.20.21 30:5.10 31:7.14.20 32:3,7 33:6,8,9,18,23 34:3, 10.21.21.22.23.24.25 35:6. 13.20.23 36:3.12.16.21.22. 22.23.24 37:17.21.24 38:2 39:3,6,8,8,10,18,21,22,22, 24 41:16,23 42:6,23,24,24 43:1 44:10,11,16 46:18 48: 10,13,18,23 49:12,14,17, 20,23 50:2,15,19,22 51:10, 15,19 52:5 53:11,16,24 54: 5,8,12,15,19,22,24 56:5,6, 13,20,24 57:7,10,21,23,24 **58:**15 **59:**8,12,15 **60:**4,10,

13,19,22 61:2,5,15,16,19

62:1,6,7,8,9,17 63:3,11,15 **64:**3,5,6,12,17 **66:**1,4,7,7, 16,19,22 67:9,17 68:5,15, 20,23,24 **69:**2,2,8,16,19,20 **70:**3,9,10,17,21 **71:**1,7,14, 16,17,22 **72:**5,6,15,18,25 **73**:2,4,9,19,22 **74**:2,9,13, 21 75:15,19,22 76:9,18,21, 24 77:7,13,16,18 78:3,8,12, 17 **79**:4,6,13,20,24 **80**:6,11, 15,18,23 81:10 82:20,23 **83**:6,13,15,19,21 **84**:10,16 **85**:16 **86**:4,5,7 **87**:6,8,9,10, 17 **88**:14,22 **89**:14,24 **90**: 10,17 **91:**4,13,14,14,16,21, 23,25 92:6,17 93:3,6,20,20, 21 94:7,10,14 95:18,23 97: 7,8,8,10,11,14,21 **98:**2,8, 13,17,20 100:12,13,13,15, 20,24 101:10,20,23,25 102: 7,20 **103**:10,13,13,15,16, 21 104:3,8,11,16,21 105:3, 5,7,10,16,20 **106:**2,3,11,18. 21 107:6,9,12 108:8 109: 16,16 111:2 113:2

KAGAN [44] 21:18 22:5 28: 8 **29:**21 **30:**5.10 **36:**22 **57:** 23 60:19,22 61:2,5,19 62:1 7,9,17 68:5,15 75:15,19,22 **77**:16 **79**:6,13,20,24 **80**:6, 11,15,18,23 **81:**10 **93:**20, 21 94:7,10,14 95:18,23 97: 7 **105**:16,20 **109**:16 Kagan's [5] 61:16 69:20 **72**:7 **103**:22 **106**:12 KAVANAUGH [76] 16:15 21:17.19.22 26:14.21.25 27:11,24 28:24 29:5,20 31: 7.14.20 **32:**3.7 **39:**9.10.18. 21 57:21.24 58:15 59:8.12. 15 **60**:4,10,13 **61**:15 **64**:3,6, 17 66:1,4,7,17,19,22 68:23 **69**:3,16,19 **70**:3,9 **71**:16 73:4,9,19,22 74:2 76:18,21, 24 77:8,13,18 78:3,8,12,17 83:16 100:14,15,20,24 101: 10,20,23,25 102:7,20 103: 10 109:17 111:2 KENNEDY [3] 1:3 3:5 106: kept [1] 45:11

kind [5] 8:16 59:18 87:16

kev [2] 66:24 95:10

kick [1] 100:11

96:2 101:1

kinds [1] 94:4

knows [1] 31:19

Labor [2] 29:9,10 language [25] 4:10,14,20, 24 5:1 6:10 19:11 29:22

30:16,21 32:24 37:11 38: 11,15 **47**:6,13 **75**:12 **77**:7 93:25 94:2 102:5 108:1 109:8,11,16 last [1] 21:20 later [1] 91:17 later-enacted [1] 88:9 Laughter [4] 12:10 16:1 36: 10 79:11 law [19] 14:7 15:4 18:19 23: 21.23 24:7.13 29:14 36:5 40:5.8.21 65:12 66:23 67: 1 100:3 102:25 103:6 111: laws [1] 46:4 leadership [1] 35:4 lean [1] 37:2 least [11] 12:5 17:8 23:10, 18 **30**:9 **65**:23 **67**:24 **70**:15 81:10 84:2 91:2 leave [2] 69:6 71:20 leaving [2] 61:6 72:1 left [1] 110:21

legal [4] 82:15 99:14 100:2 106:9 legislative [2] 40:24 93:14 lengths [1] 80:19 lens [1] 40:19 level [2] 30:15 42:16 light [3] 6:12 30:2 41:12 limit [1] 46:21 limited [2] 30:18 46:21 limits [1] 75:20 line [4] 8:14 22:12 88:10 102:17 lines [4] 41:10 82:7 94:3 **102**:18

litigating [1] 81:17 little [7] 15:23 20:23 73:15, 17 **97**:25 **98**:5 **103**:19 long [2] 21:13 76:16 look [11] 29:15,23 35:17 52: 4,7 **81**:22 **82**:15 **83**:8 **91**: 16 **94**:3 **108**:13

list [1] 51:12

lists [1] 52:9

looking [2] 62:11 103:22 lose [4] 59:8.10 63:16 69:9 losina [1] 35:10

lot [4] 9:20 36:7 74:23 81:

lots [2] 108:12 109:3

M

made [17] 18:21,23 19:10, 24 20:17 21:25 26:17 31: 15 36:4 37:12 41:14 50:14 **70**:16 **83**:4 **84**:22 **85**:8 **87**: 12

MANAGEMENT [2] 1:8 3:

mandates [7] 44:23 45:6 86:25 92:21 99:8.11.18 many [5] 15:19 47:19 73:25

78:12 81:1 March [4] 65:10 86:20 89: 11 90:22 massively [1] 100:17 matter [14] 1:16 7:1,1,23 9: 1.2 27:8 44:5 61:10 76:10 89:7 104:5 105:20 109:1 matters [3] 27:3 96:23 97: maximalist [5] 40:2 42:3 7 74:16 75:10 maximize [1] 79:21 maximum [2] 46:2 109:12 mean [54] 6:13 8:12,14 14: 23,25 15:11,24 16:10 20:7 **24**:7 **28**:13 **30**:5 **32**:25 **37**: 15 39:4,25 40:1,4,6,12,13, 14,23 41:23 42:1,4,17 43:2 **48**:14,24 **49**:15 **56**:15 **61**: 19,21 62:5 63:4,18 64:9 70:10.24 72:1 74:13 75:2. 6.16 76:21 79:7.24 80:18 **83**:22 **84**:25 **96**:17 **98**:15 **102:**8 meaning [2] 27:14 76:12 means [23] 9:9,14 16:12,18 **19:**23 **21:**24 **22:**1,15,23 **28:** 10 **35**:8,25 **36**:1 **37**:13 **42**: 17 **48**:6 **50**:10 **53**:1 **62**:12, 14 **63**:22 **95**:15 **105**:17 meant [1] 5:24 measures [1] 76:7 medically [1] 8:11 meetina [1] 6:5 members [29] 3:11.16 4:1. 15 5:4 6:12 16:22 18:2 33: 17 **35**:7 **44**:19 **45**:10 **47**:24 **53:**4 **55:**2 **58:**13 **62:**14,15, 17,21 **75**:8 **80**:9 **83**:10 **86**: 14 87:2,22 94:3,19 110:17 memo [3] 92:11,15 99:15 mentioned [4] 35:1 43:3 **62**:6 **101**:19 mere [1] 9:13 merely [1] 54:16 middle [3] 40:3 42:2 84:6 might [11] 14:6 27:7 28:25 29:16 39:10 40:12.13 76:3 100:11 103:17 105:20 minimal [1] 83:3 minimum [8] 3:23 17:5,7 30:12 42:6 84:7,8 85:9 missing [3] 18:25 78:18,21 misunderstood [1] 39:11 MITCHELL [184] 1:24 2:6 **12**:13,22 **40**:1 **41**:22 **42**:3 **44:**13,14,16 **46:**18,23 **48:** 12,17,22 49:2,13,16,19,22 **50**:1,6,18,21 **51**:2,10,14,18, 21 **52**:7 **53**:19 **54**:4,11,14, 18.21.25 **56:**12.15.22 **57:**7.

25 66:2,6,16,20,25 67:14, 23 **68:**14,21,25 **69:**7,10,18, 22 **70**:5,15,18,25 **71**:3,12, 21 **72:**3,9,16 **73:**1,7,10,20, 24 **74:**3,12,20 **75:**5,18,21, 24 76:19,23 77:6,17 78:1,5, 10,15,19 79:12,18,21 80:4, 14,17,22 **81:**9,15 **82:**20,22 **83**:5,12,20 **84**:4,15 **85**:7 **86**:1.6 **87**:16 **88**:21.24 **89**: 18 **90**:1,15,19 **91**:6,20,22, 24 **92:**3,9,19 **93:**5,8,22 **94:** 6,9,13 95:2,22 96:3 97:12, 13,20 98:1,7,10,15,19,22 100:19,23 101:9,17,22 102: 1,11,22 103:11 104:2,7,10, 15,20 **105**:1,4,6,9 **106**:1,4, 20 107:1,7,10 112:20

Mitchell's [2] 13:19 43:24 Mm-hmm [12] 49:19 50:1 **59**:11 **71**:21 **74**:12 **75**:18 **80:**17 **94:**6.9 **97:**13.20 **100:**

moment [2] 38:4 54:22 Monday [1] 1:14 MOOPPAN [111] 1:21 2:3, 9 **3**:6,7,9 **5**:10,20 **6**:3,8,25 7:21,25 8:20 9:18 10:8,13, 16 **11:**1,7,13,16 **12:**3,11,16, 21 **13:**9,15,18 **14:**3,12,16 **15**:2,10,16 **16**:6 **17**:1,7,10 18:6 19:5 20:1,12 21:2,20 **22**:8 **23**:16 **24**:1,11,16,25 **25**:2.10 **26**:19.24 **27**:2.18 **28**:1,16 **29**:3,7,23 **30**:8,12 **31:**13.16.21 **32:**6.13 **33:**12. 21.25 34:5.13 35:5.11.17. 22,24 **36**:11,15,20 **37**:8,19, 22,25 38:7 39:4,14,20 41:8, 18 **42**:5,9 **43**:7 **47**:10,14 **50**:17 **53**:12 **74**:15,17 **80**: 21 **84**:16 **85**:8,11 **88**:3 **104**: 16 **105**:23 **107**:14,15,17 Mooppan's [3] 47:20 87:

Moreover [1] 3:21 morning [2] 3:4 6:6 Most [5] 3:14 6:13 8:3 17:2 move [1] 25:22 much [7] 23:5 46:19 50:8

11 99:3

65:7 **80**:19 **88**:18 **91**:3 multi-member [1] 103:4 must [12] 5:4 44:20 45:21 46:2,16 60:17 68:16 97:23 **106**:8 **107**:4,5 **110**:19 Myers [1] 102:17

myself [1] 40:5

Ν

narrower [2] 41:9 42:1 narrowly [2] 41:21 74:25 natural [2] 8:3 62:10 naturally [1] 6:13

nature [2] 14:9 36:13 near [1] 81:14 necessarily [5] 6:9 28:21 **37**:14 **42**:15 **85**:1 necessary [8] 5:2 42:8 69: 12 **73**:12 **74**:6,7 **85**:24 **108**: need [22] 11:14 19:20 21: 12 **23**:22 **24**:24 **25**:3 **32**:25 39:16 42:15,21 54:25 55:3, 5.7.11.17 **57**:15.17 **61**:1 **89**: 17 91:25 112:23 needed [1] 4:1 needs [7] 22:9.17 23:3 42: 18 **72**:20 **88**:25 **93**:12

neither [3] 5:2 44:24 99:19 never [4] 23:12 56:19 66: 20 71:1 nevertheless [1] 15:21

new [1] 87:2 newspaper [1] 76:5 next [2] 84:9 98:14 nine [1] 6:16 nobody [4] 62:13 94:21,22,

non-action [2] 52:6.12 non-maximalist [1] 75:17 non-officer [1] 7:11 None [2] 88:24 103:7 nonetheless [1] 99:6 nor [2] 5:2 44:24 Normally [9] 5:17 6:5 11: 11 31:9 74:17 77:20.21 101:1 109:17

noted [1] 53:11 nothing [6] 7:14 26:11 58: 10 **88**:11 **106**:23 **111**:13 notice [5] 93:18 98:3 99:22 100:4.11

notice-and-comment [1] 93:13 notion [2] 28:9 85:19 nowhere [1] 108:15 number [8] 35:1 47:20 55: 2 **73**:13 **81**:6 **86**:8,12,18

0

oath [1] 35:9 object [2] 11:5,16 objection [1] 12:19 objectives [1] 19:16 obligation [3] 14:24 16:13 obligations [2] 93:15 100: obtain [1] 4:3 Obviously [3] 36:3 43:13 110:11 occasions [2] 81:1,6 occurred [2] 47:22 86:20 odd [4] 5:16 18:4 27:11 61:

officer [25] 5:18 22:20 31: 11 **45**:2 **49**:3,3 **50**:9 **51**:4,9

11 58:2.24 59:11.14.19 60:

9,12,15,20,25 **61:**4,8,25 **62:**

Official - Subject to Final Review

53:21.25 54:2 56:18 58:6 **59**:10 **63**:5.10 **67**:21 **69**:9 70:6 80:7 82:13 96:2,6 112:1 officers [57] 3:12 7:9 20:19 **22**:13 **23**:15.21 **26**:6.7 **27**: 19 32:21 42:20 44:19.22 47:25 50:7 53:1.4 55:3.6.7. 11 **56**:2.4.8.9 **57**:2.4.18 **63**: 17 **65**:6 **67**:5.15.18 **70**:2 **72**:22 **76**:20 **79**:3 **81**:21 **83**: 23 86:9.14 89:6.20.21.25 90:2 91:8 92:8 95:4 96:18 97:16.18 102:19 104:6 **108**:20,23 **112**:21 official [2] 50:11 79:23 official's [1] 96:7 often [3] 19:15 79:9 80:24 okay [16] 16:17 29:5 38:2 **39**:21 **51**:1 **60**:4 **73**:9 **91**: 13 93:6 95:18 103:10 23 **105**:4 **106**:3 **107**:6 **112**:10 old [1] 112:24 once [4] 16:10 20:17 44:5 **47**:10 one [37] 10:24 13:12 17:8. 10 **19**:16 **22**:25 **29**:15 **31**: 19 **32**:1,13 **41**:12 **42**:11 **47**: 20 48:21 55:2 56:23 58:22 60:1 62:11 64:20 65:8 66: 8 70:12 73:13 74:13 79:15 84:7 86:8 93:17 97:24 98: 4,5 106:21,23 107:21 110: 20 111:11 ones [1] 28:15 only [26] 7:12 16:23 17:22 **22:**23 **23:**6 **24:**4 **25:**11 **31:** 14 **43**:24 **55**:5 **56**:22 **57**:3 **61**:13 **79**:1 **82**:3 **83**:16 **84**: 17 85:2 87:20 91:11 92:21 96:10 99:7,10 107:25 109: 23 open [1] 54:7 operate [1] 43:23 operates [1] 100:17 operating [1] 105:14 operative [1] 7:18 opinion [10] 14:25 15:17 35:2.2 52:8 81:17.18.23 95:16 99:21 opposed [1] 12:1 opposite [3] 32:17 83:13 96:16 opted [1] 55:9 options [1] 49:23 oral [7] 1:16 2:2,5 3:7 44: 14 47:10 99:3 order [3] 72:23 88:19,25 ordinary [1] 15:15 originally [1] 102:9 other [23] 6:10 8:1 12:15 19:19 23:1 25:11.22 27:21 **39**:16 **49**:21,23 **62**:18 **66**: 11 **67**:12 **68**:1,8 **70**:24 **73**:

1 **74:**23 **95:**13 **99:**22 **110:** 12 112:16 other's [1] 70:13 others [1] 6:23 otherwise [2] 68:11 78:7 out [22] 10:6 11:4 29:15 50: 5 **55**:9 **58**:18 **61**:18 **62**:13 **64**:7.8.19.21.23 **97**:25 **98**:5 99:12 103:18 108:8 10 111:2 25 112:23 outlined [1] 18:24 outside [4] 27:15 40:11.12. 13 over [12] 51:23 57:13 66:12 **68**:12 **79**:22,22 **86**:16 **89**:3 **94**:17 **104**:18 **105**:23 **108**: 12 overcome [1] 4:19 overrule [4] 45:15 49:8,10 **52**:2 Oversight [2] 51:25 52:10

Р

own [4] 16:9 33:2 50:24

104:1

PAGE [5] 2:2 52:4.8 91:24 pages [5] 73:19 81:23 92: 11.15 95:15 paid [2] 27:24 35:8 paper [1] 71:23 part [10] 24:8 27:22 28:3 34: 12,20 54:12 56:10 75:5 92: particular [6] 8:15 18:22 24:10 38:3 48:2 96:2 particularly [1] 28:14 party [2] 46:1 110:10 pass [1] 18:18 passed [2] 5:23 12:18 past [2] 91:11 97:23 patent [1] 82:1 PCAOB [4] 20:17,21 51:23 108:12 people [20] 6:14 8:3,5 14: 23 17:15 24:14 36:13 50: 23 62:19 67:13,21 68:1,8 75:25 78:25 94:15 105:14 110:10,13,14 percent [1] 81:13 perfect [1] 19:13 perfectly [5] 17:25 23:14 44:1 102:14 103:7 performance [1] 13:7 perhaps [4] 21:21 31:23 32:1 84:20 period [8] 3:24 17:5,8 23: 10 48:15 49:25 65:10,17 permissible [3] 30:19 67: 22 111:18 permissibly [1] 111:20 permits [1] 4:8

person [7] 15:14 24:19 62:

11 **68**:10 **70**:24 **72**:20 **110**:

pertinent [1] 8:18 petition [1] 92:16 Petitioners [6] 1:6,23 2:4, 10 3:8 107:16 phrase [7] 15:19 19:8,9 28: 3 43:15 47:2 77:15 PHS [1] 34:1 pick [8] 8:2 61:16 62:14.15. 17 **105**:21 **107**:17 **110**:18 picking [1] 110:20 picks [1] 110:16 piece [1] 71:23 place [5] 5:22 17:23 49:24 72:1 87:15 places [2] 70:12 71:9 plainly [1] 111:10 plaintiffs' [1] 46:7 plan [3] 84:6,9 88:8 plausible [2] 75:3 88:5 plausibly [1] 11:21 play [2] 23:25 46:24 played [1] 33:10 please [5] 3:10 44:17 57: 23 76:23 105:6 plus [3] 21:4 22:15 67:21 point [38] 9:3 10:5,16 11:4 **13**:19 **15**:3 **18**:13 **21**:11 **27**: 9,21 30:1,17 32:1,14 48:9 **51**:11 **55**:18 **58**:3 **61**:17 **66**: 8,24 **69**:4,9,17,20 **73**:13 **74**: 11 **79**:6 **83**:25 **84**:3.4 **91**: 17 99:2 103:22 104:8 108: 5 111:1 112:19 pointed [4] 108:8.10 111:2. points [3] 20:12 64:21 110: 23 policy [1] 100:3 political [14] 4:12,21 19:21 28:14 40:10 45:13 46:7 47: 3 75:9 76:2 87:24 102:3 **105**:15 **109**:12 politically [1] 14:20 politicians [1] 46:14 position [4] 8:13 20:23 22: 25 60:2 possible [4] 46:3 75:23 24 109:13 possibly [2] 100:9 110:15 potential [1] 82:24 power [76] 3:16,17,19 5:13 **6**:19 **7**:10 **9**:6,8,14,21,22, 23,24 10:2,22 13:1,2,5 14: 20 16:8 17:18,20 21:4,23 22:7.20 24:22 25:21 26:16, 23 28:5 31:24 32:19 35:4 **36:**1.9 **37:**7.20 **38:**13 **43:** 11 **47**:17 **55**:23,24 **58**:7 **63**: 19 **64**:14 **65**:2 **67**:20 **68**:2 4 **72**:19 **77**:5 **80**:2 3 6 12 16 **81:**2.7 **82:**24 **86:**16 **88:** 17 89:3 90:6.14 91:9 99:7

108:12.15.20.22 109:22 powerful [5] 3:20 9:14 81: 20 101:13.18 powers [15] 4:5 12:25 13: 24 **21**:4.6 **25**:20 **61**:14 **78**: 22 79:2 82:16 94:17 109: 10 110:25.25 111:3 practicable [10] 4:12 29: 22 30:7 45:12 47:4 75:10. 16 77:19 87:25 102:4 pre-approval [2] 4:3 17:18 precatory [1] 16:18 preclude [1] 106:5 premise [4] 10:23,24 59:13 **72**:23 premised [1] 55:20 prerogative [1] 45:5 prescribed [1] 45:20 prescribing [1] 100:3 present [1] 51:25 presentation [1] 99:3 presented [1] 98:16 preserves [1] 17:25 president [24] 5:4 7:6 11: 22 **15**:9 **16**:5 **18**:25 **20**:4 25:23 32:22 35:3 44:2.20 55:8 56:3 59:22 62:20 63: 2 76:17 77:23 78:24 89:7. 22 101:14 102:18 presidential [6] 26:1,10 28:15 77:4.12 79:22 pressure [14] 4:13 45:13 **46**:7 **47**:3 **75**:9 **76**:2 **85**:12 **87**:13.14.16.24 **102**:3 **105**: 15 109:12 presume [1] 36:19 presumes [1] 23:23 presumption [2] 24:15,16 presumptions [1] 23:20 pretty [7] 10:22 12:13 79: 16 **80**:19 **81**:14 **95**:20 **111**: prevent [5] 3:22 19:12 85: 23 94:23 107:22 preventative [1] 20:11 preventive [13] 44:23 45:5 46:15 48:3 49:9 52:23 76: 16 **83**:17 **86**:24 **92**:20 **99**:8 18 **107**:5 previous [1] 48:4 previously [3] 52:16 66:2 85:13 Principal [46] 1:21 5:18 7: 20 22:13 44:19 45:2 47:25 **49**:3 **50**:9 **51**:3,8 **53**:1,20, 25 **54**:1 **55**:2,11 **56**:7,9,18 **57:**2,4,18 **59:**9,10 **63:**9 **67:** 15 **69**:9 **70**:1,6 **74**:10 **76**: 19 80:6.10 82:12 83:23 86: 8 **89:**6.20.21 **95:**4 **96:**5.18 97:16 104:6 108:20

principle [1] 25:25

prior [2] 48:5 62:22

priority [1] 20:4

private [4] 59:24 93:15 100: 2 110:10 probably [2] 12:14 73:11 problem [23] 4:24 19:23 **24:**8 **53:**2 **63:**5,7,20,21 **64:** 18.20.22 **66**:15 **67**:13.14. 19 76:13 78:11 80:4 82:5. 6 86:20 89:9 109:20 problems [6] 5:8 43:14 44: 7 47:22 108:3 109:3 produce [1] 99:15 properly [5] 42:20 93:2,9 98:12.24 proposed [11] 45:19 46:7. 9 47:20 55:15,20 57:20 86: 13,19 96:19 106:12 prospectively [1] 112:21 protected [5] 33:1 45:12 **47**:3 **75**:9 **77**:4 protection [3] 77:14 78:14 109:25 prove [1] 69:4 provide [2] 82:9 88:12 provided [1] 101:2 providing [2] 4:10 96:11 provision [12] 8:1,4 28:10 45:25 75:7 103:23 104:25 105:13,17,22 106:22 109:7 provisions [6] 13:6 58:18 64:8 66:11 83:18 104:17 prudent [1] 74:4 psychoanalyze [1] 35:12 PTO [1] 81:24 public [14] 3:14 4:7 19:25 **34:**6.7.8.17.17.18.19.20 **38:** 10 51:23.24 pull [2] 64:6 85:13 purely [3] 61:9,16 78:22 purport [1] 110:13 purported [1] 111:18 put [2] 40:24 85:12 puts [2] 49:24 80:2 putting [4] 38:3 70:3 80:1 93:22 Q

QP [1] 98:25 quasi-judicial [1] 102:24 quasi-legislative [2] 102: 23 103:3 question [59] 7:2 8:25 9:10 **10:**1.7.15.17 **11:**6.18 **12:**2. 4.18 **13**:22.23 **14**:5 **20**:14 23:2 24:18 27:14 33:13 38: 20 42:13 48:21 49:4 53:11 55:1,5,12 57:7,14 59:2 64: 1,12 65:1 66:21 69:12,14, 15 70:7 72:10 73:14 74:5 80:5,9 90:4,12 92:23 98: 14,16,23 99:1 101:7,11 107:18 108:24 109:5 110: 2 111:17 112:14 questioning [3] 53:12 92: 1.4

102:17.23 103:3 107:19

questions [7] 5:6 10:5 22: 19 23:17 46:17 69:5 74:19 quite [4] 11:18 12:14 37:8 110:5

R rates [1] 16:20 rather [6] 43:12,14 46:14 **52:**14,17 **108:**3 ratification [3] 92:10,15 97:22 ratified [1] 112:25 ratify [2] 99:13,15 rating [9] 48:4 52:13,14,16, 24 85:14 86:11 96:13.17 ratings [4] 48:2 49:9 87:4 **107:**3 reach [15] 53:10 54:9 55:1, 5,11 **57:**3,16,17 **69:**12,13, 14 73:13 74:6,8 99:23 read [22] 6:13 25:17 26:9 30:1,22 43:15,20 59:16 63: 18 66:10,11 76:5 80:1,24 85:22 93:24 94:25 95:20 106:22 109:1 110:15 112: reading [21] 8:4 25:11 34: 15 40:2 41:1.11 43:6.8 44: 6.9 **46**:19 **47**:21 **49**:5 **62**: 10 85:19 86:13.19 89:1 96: 4 103:24,25 reads [2] 43:13 95:3 real [5] 41:6 43:24 78:22 79: 2 112:13 realist [1] 82:15 realistic [1] 81:8 really [18] 8:12 11:3 16:24, 24 **18:**2 **23:**22 **42:**3.18 **56:** 25 76:1 77:3 80:5 81:2 82: 18 85:1 93:23 100:20 108: reappointed [1] 65:13 reason [15] 10:6 25:17 26: 4 28:3 51:5 55:13 76:8 78: 16 **81**:20 **83**:22 **98**:11 **99**: 22 **104**:24 **105**:11 **112**:13 reasoning [2] 14:13 54:20 reasons [6] 11:19 44:5 47: 19 **86:**3 **97:**23 **112:**12 REBUTTAL [3] 2:8 107:14. receive [2] 52:24 87:2

3 107:22 recommendations [46] 3: 14,22 **4:**7,17 **9:**3,7 **17:**21 19:10,18 21:7 23:8 26:17 **32**:9 **37**:3,12,14,15 **39**:2 **45**:11,16 **48**:20 **50**:24 **65**: 16,19 66:3 71:25 72:11 83: 11.24 84:18.22 87:22.23 90:22 94:23 99:13.16 101: 15 **103**:1 **106**:8.10.14 **107**: 8.20 **108**:7 **112**:24 reconciled [1] 87:19 reference [1] 60:16 reflected [2] 19:18 46:4 refused [1] 55:14 regarding [2] 23:24 84:21 regardless [1] 45:6 regime [3] 45:15 46:13 47: reinforce [1] 43:21 reissue [1] 87:3 reissues [1] 65:18 reject [6] 39:13 42:21 63: 23 67:6 70:6 72:22 rejected [2] 49:21 55:15 rejects [1] 89:8 related [3] 23:21 101:8,10 relationship [1] 83:9 relevant [3] 8:25 76:9 96:7 reluctant [1] 22:6 rely [4] 8:7 43:1 52:20 107: relying [4] 28:9 39:12 106: 4.6 remand [15] 10:3 11:5 12: 20 25:3 45:22 53:17.20 54: 2.5 69:8 70:8 90:3 97:17 112:13.23 remanded [3] 69:11 73:11 110.4 remedy [20] 45:20 46:2,8,9 **53**:22 **55**:16,19 **56**:1 **65**:22 **89:**12 **90:**16,18,19 **91:**5,7, 10,11 92:1 112:19,22 reminding [1] 11:12 remotely [1] 60:21 removability [5] 23:21 24: 14 **56**:8 16 **57**:1 removable [9] 15:14 16:4. 17.23 **20**:18 **21**:14 **29**:12 50:25 56:10 removal [49] 3:19 9:8,14, 21 10:10,18,18,19,22 15: 21 20:25 21:4,23 22:7,15, 24 23:7,18,19,25 24:3,15, 17,22 26:15,22 31:18 33:1 35:25 43:16 77:5,12 78:14 **80:**2.3.5.12.16 **81:**1.7 **82:** 24 95:12.13 108:24 109:2, 14 18 22 24 removal-at-will [1] 9:19

remove [9] 3:15.16 9:24 19:

3.5 **35**:4 **50**:3 **94**:5 **102**:19

removed [3] 27:7 35:15 57:

removes [1] 13:17 removing [1] 4:15 render [1] 25:14 Reorg [2] 58:19 110:24 Reorganization [12] 5:12, 21 12:5,24 13:19 33:10,14, 19 38:1,4 60:8 88:8 repeatedly [2] 3:19 9:9 replace [3] 3:25 17:15 19:3 replacing [1] 22:1 reply [4] 38:14 57:21,24 73: require [3] 4:2 6:23 45:10 required [3] 21:1 44:21 58: requirement [2] 17:19 83: requirements [1] 84:6 requires [2] 58:11 72:6 requiring [2] 63:9 71:17 rescind [4] 3:24 17:13,13, resolution [1] 23:23 resolve [3] 73:14 104:21 **110**:6 resolved [2] 20:14 70:8 resolves [1] 105:22 respect [8] 15:17 21:12 33: 11,16 46:3 52:11 84:23 103:11 respond [1] 58:23 **Respondents** [4] 1:10,25 2:7 44:15 Respondents' [1] 4:9 response [4] 43:24 64:10 87:4 104:3 restrains [2] 65:24 90:20 restriction [7] 4:15 10:10 **24:**3 **43:**16 **109:**2,15,22 restrictions [4] 43:18 80:2, 3 109:18 rests [1] 4:9 result [1] 50:3 retrospectively [1] 112:22 reverse [5] 42:22 92:25 95: 8 96:15 99:4 review [29] 3:21 9:2 7 11: 15 **27**:9 **29**:8.9 **30**:4.18.25 **31**:15,17 **32**:12 **43**:17 **50**: 13 **51**:3 **52**:1,2 **73**:25 **82**:2 95:7 96:6,11,11 104:13,23 **105**:12 **106**:6 **107**:19 reviewed [2] 31:6 32:9 reviewing [1] 4:16 reviews [1] 49:25 revoke [1] 45:24 rewrite [1] 46:10 rid [1] 87:14 rise [1] 93:24 road [2] 40:3 42:2 **ROBERT** [1] 1:3

22 42:24 44:11 86:5 87:6 91:14 93:20 97:8 100:13 103:13 107:12 113:2 robust [1] 73:17 role [6] 7:10 26:8 33:10 83: 15 88:4 99:10 roles [1] 33:12 root [1] 38:23 rule [11] 26:3 55:10.14 57:9 **74**:4 **90**:4 **93**:14,14 **99**:25, 25 **100**:1 ruled [1] 14:17 rulemaking [3] 17:19 52:1 93:13 ruling [4] 29:19 92:25 99:5, S sake [1] 75:1 salvage [1] 88:4 sanction [1] 52:3

same [3] 18:23 92:6 110:14 satisfy [1] 112:7 saw [5] 54:10 71:24,24,25, saving [22] 8:14 18:7 20:24 21:3 23:14 35:14 53:16 59: 13 60:23 61:3 62:12.18 66: 9 67:9 71:8 76:6 91:18 94: 15.21.22 106:16.23 says [45] 8:2,4 19:1 20:6 **25**:13,18 **30**:22 **31**:17 **34**: 14 37:11 47:2 50:2,11,17 51:15 58:16 64:7,22 68:23 **69**:22 **71**:23 **75**:8 **78**:9 **82**: 3,4 84:16 87:22 90:12 95: 10.16 96:5 97:5.6 99:15 102:1.1 103:23 104:16.18 106:7.24 107:2.20 108:21 110:7 scenario [1] 96:1 scheme [2] 19:15 31:2 science [2] 9:13 28:23 scientific [4] 16:14 19:19 28:6,18 scientifically [1] 8:12 scope [3] 43:10 98:16,25 score [1] 9:19 SEC [4] 51:22 52:1,2,10 second [5] 48:9 53:2 55:13 98:2 111:1 secondly [1] 75:13 secretarial [4] 47:17 83:8 85:6 106:5 **SECRETARY** [171] **1:4 3:** 13,15,21 4:8 5:12,25 6:18 **7**:4,13 **8**:12,21 **9**:22 **10**:1, 21 **12**:2,25 **13**:2,5,25 **15**:1 17:4,11,17 18:3,9,15,22 19: 22,25 23:11 25:4,6,9,21,21 26:15 27:5 28:21,24 29:15 30:3.14 32:15 33:15 37:1. 2.7 38:5.8.9.15.17.21.22 40:7 41:15,17,19 43:11,21

44:25 **45:**7,15 **47:**8,11 **49:** 7,9,24 53:7,14 55:5,21,23, 25 57:11 58:4,8,11,17,20, 24 59:17,21 60:17 64:7,23 **65**:12 **66**:12,13,17 **67**:12, 21,25 68:8,11,12,16,17 69: 20,23 70:23 71:4,11,12,23 72:2.4.8.10.13.19.20 77:5 80:7 82:16 83:2,10,17 84: 1,11,12,17,23 **85:**8,12,20, 23 86:15 87:13 88:17 89:3. 16 **90**:5.14.20 **91**:18 **92**:14 93:11 95:7,11 96:14 97:1, 6,19,22 **99:**12,19 **100:**25 **101:**13 **104:**18 **105:**15,24 **106**:10,14,17,24 **107**:8,19, 22 108:6,11 110:9,22 111: 3,6,10,11,13 112:8,17 Secretary's [9] 18:8 83:14 84:14 85:2 91:9 96:25 99: 10 110:25 112:3 Section [12] 37:5 45:4.9.19 47:1 49:6 55:18 88:7 93: 19 96:22 97:4 106:6 sector [1] 59:24 see [12] 40:21,23 47:5,12 77:20 87:19,25 91:1 98:18 101:6,11 102:4 seek [2] 92:23 99:1 seem [4] 17:16 20:7 56:11 93:21 seems [8] 10:6 35:7 40:7 54:15 75:16 79:12 80:24 82:25 seen [1] 40:19 Seila [1] 103:6 select [3] 6:14 7:6 8:5 selected [3] 7:17 34:7.17 selection [1] 7:11 Senate [19] 5:5 7:7,9 11:23 **18**:17,18 **25**:25 **26**:2,8,10 **44**:3,21 **55**:8 **56**:3 **63**:1 **76**: 17 77:24 89:7.22 Senate's [1] 78:25 send [1] 23:22 sense [6] 15:15 16:7 19:13 **41:**6 **42:**1 **50:**23 **separate** [1] **56**:16 **separated** [1] **56**:13 separating [1] 56:7 sequester [1] 76:3 sequestered [1] 76:4 serious [2] 24:21 44:7 seriously [1] 35:9 serve [2] 6:14 8:6 Service [12] 34:6,7,8,17,18, 19,20,20 **38**:10 **48**:3 **53**:8 109.24 **SERVICES** [5] 1:5 44:25 57:12 58:12 90:5 set [3] 61:23 79:14 84:7 sets [2] 17:5 82:14

ROBERTS [20] 3:3 8:8.10

receiving [1] 65:19

recognizes [1] 108:4

recommend [1] 48:2

recognized [3] 3:19 9:16

recommendation [37] 3:

25 4:4 9:11 17:4,12 18:10,

12,13,14,23 19:1,2,4,7 21:

9,11,25 28:17 29:2 32:17

35:21 37:1 38:5 39:13.17

41:14 45:8 49:1.18.21 68:

18 83:3 87:14,15 96:23 97:

setup [1] 88:22

sever [2] 45:19 55:18

true [5] 6:16 14:6 29:14 78:

try [4] 16:21 74:17 83:9 106:

tries [1] 52:19

19 **108**:12

Official - Subject to Final Review

severable [1] 5:2 several [1] 33:12 severance [6] 53:22 55:15, 19,25 **57**:20 **65**:23 SG [1] 93:4 SG's [1] 96:19 shadow [1] 31:22 shall [13] 4:11 8:4 13:6 19: 10 25:13 37:11 38:9 17 62: 4 64:7 77:24 102:2 111:8 shield [1] 46:6 shielded [1] 102:2 shoes [1] 58:21 shouldn't [5] 28:19.21 43: 15 69:5 94:25 shows [1] 42:7 shut [1] 54:7 side [2] 25:22 74:23 sign [2] 71:23 72:20 similar [1] 32:10 simply [2] 18:13 64:1 since [1] 4:20 single [1] 103:5 sittina [1] 103:17 situation [5] 24:7 52:12 54: 5 **85:**25 **112:**18 situations [2] 50:8 52:21 Solicitor [2] 1:21 73:18 solution [2] 4:25 82:6 solve [2] 109:20 110:1 solves [2] 19:23 66:14 solving [1] 108:4 somebody [4] 16:3 19:4 80:20 94:5 somebody's [1] 15:13 Someone [6] 59:24 63:13 77:4 110:18 111:20 112:5 something's [1] 60:6 **sometimes** [1] **75**:23 sorry [4] 8:9 48:11 69:1 71: sorts [2] 51:22 86:2 **SOTOMAYOR** [45] **8:**7,9 **13:**3,11,17 **14:**1,4,15,22 **16:** 7 **34**:24,25 **35**:6,13,20,23 **36**:3,12,16,21 **54**:8,12,15, 19,23,24 **56**:5 **57**:8 **71**:14, 17.22 **72**:5.15.25 **73**:2 **91**: 15,16,21,23,25 **92**:6,17 **93**: 3.6 97:11 source [1] 39:16 sources [1] 5:10 specific [3] 38:25 60:15 85: specifically [4] 58:5 60:6 83:14 92:13 specified [1] 78:2 specifies [1] 6:11 spell [2] 97:25 98:5 spirit [1] 94:11 square [1] 27:1 squared [3] 47:6.12 88:1 stand [1] 58:21 start [2] 22:3 108:16

starts [1] 103:21 State [3] 38:16,16,17 statement [1] 23:24 STATES [5] 1:1,18 27:20 51:7 79:3 status [5] 49:3 56:18 80:7 82:13 96:6 statute [94] 6:11 7:13,25 10:10 11:21 17:3.20 24:9 **25:**7.11.13.15.18.19 **26:**9. 12 30:1.13.20 34:15 40:18 **41**:1.12.21 **43**:20.22 **44**:8 **46**:10 **48**:16 **53**:5 **58**:3 **59**: 2,4,17,21,25 **60**:2,16,23 **61**: 21 62:18 63:1,8,22 64:21 67:2 68:1,11,16,21 72:18 **75**:11,13 **76**:10,13 **78**:4,6, 24 79:14 82:25 84:11 85:5, 16,19,21,22 86:2,7,13,19 87:20 88:2,11,16,18,25 89: 2 90:13 94:25 95:3 101:24 102:13 103:2 104:14 105: 25 106:23 107:2 109:9 **110**:7.16 **111**:8.18.21 **112**: 15 statute's [1] 44:1 statutes [15] 15:19 40:20, 23 43:13 45:3,14 58:10,10 74:18 77:1,23 79:19 85:10 88:7 96:10 statutorily [1] 34:12 statutory [26] 4:10,23 5:8 7:1,3,23 9:1 19:14 20:20 22:2 27:8 31:2 32:19 33:2 35:16.18 37:11.19 44:4 45: 25 47:6.13 64:8 85:14 87: 18 **109:**1 stay [1] 69:17 step [2] 9:5 19:14 steps [2] 84:19,21 Still [25] 16:20 21:22 27:2,7 29:17 31:24 35:3 36:9 47: 25 50:12,25 53:1,6 55:7 **56:2 68:2 69:25 79:7 86:**8, 16,19 89:4,9 95:3 112:6 stock [1] 40:24 stop [3] 37:3 38:5 108:16 stopped [1] 22:23 straightforward [2] 4:25 17:2 strained [1] 15:7 strikes [1] 79:16 stronger [6] 77:2,7,14,15 101:2 102:4 structurally [2] 34:11,11 **structure** [1] **8**:16 struggling [2] 74:14 83:24 stuff [1] 8:17 subdivision [1] 13:4 subject [12] 3:12 4:12 15: 21 16:4 48:7 51:3 68:7.10 72:7 94:4.8 109:23 submit [1] 17:21 submitted [2] 113:4.6

subordinate [2] 7:20 50: subordinates [1] 5:19 subsection [4] 47:2,16,21, substantive [3] 93:14 99: 24 100:1 sufficient [3] 22:7 23:15 105:24 suggest [5] 25:18 30:6 85: 1 109:4 110:19 suggested [5] 23:18 53:22 **81:**1 **83:**16 **109:**17 suggesting [3] 41:11 65: 22 74:15 suggests [2] 47:14 75:19 summarized [1] 98:8 **superior** [1] **5:17** supervise [3] 80:8 94:16, supervised [6] 8:19 34:8. 18 38:8 44:24 49:4 supervising [3] 14:5 31: 11 32:11 supervision [18] 3:13 4:6 21:5.6.12 22:16.24 30:15 **36:1 42:14,19 43:22 48:8 68**:7 **72**:8 **94**:8 **100**:25 **103**: supervisor [1] 32:12 supervisory [2] 51:23 68: supported [2] 34:9,19 supports [1] 34:4 suppose [8] 27:12 58:21 80:12 88:14.15 89:24 90: supposed [2] 8:13 82:9 **SUPREME** [2] 1:1.17 surprised [1] 102:12 swallow [1] 88:8 synonymous [1] 63:25 system [1] 94:18

Т table [1] 44:6 tackle [1] 90:12 tactics [1] 95:13 talked [1] 21:5 tank [1] 28:11 Task [121] 3:11.15.22.24.25 4:2.6.11.15 5:3.9.15.24.25 8:5.6.10.24 13:20.24 14:24 16:20 17:14 18:2.7.9.10.11 14 **20**:5,10 **27**:3 **33**:11,17, 18,23,25 35:7 38:22 44:19, 22 45:4,8,10,16 46:6,14 47 2,8,24 49:8,11 52:13,15,22 **53**:3,9 **55**:2,22 **57**:13 **58**: 13,25 59:2 61:12 62:4,21 65:9,13,18 66:3,18 71:25 **72**:11.14 **75**:8 **76**:15 **79**:2

23 89:4,9 90:21,24 92:21 94:3,19 95:8,12 96:12,15, 22 **97:**2,5,22 **99:**9,13,15 **100**:16 **101**:3,12,13 **102**:2 **106**:8,13 **107**:3,23 **108**:6 109:10 110:15,17 112:25 tasked [1] 31:4 technical [3] 8:11 9:13 14: tells [5] 28:20.22 29:15 32: 15.22 term [3] 7:18 15:7.15 terms [6] 10:17 43:5 61:18 79:18.20 101:14 test [5] 49:2 80:6 82:12,13 104:12 Texas [1] 1:24 text [4] 26:11 87:20 88:2,11 theory [6] 44:2 63:5 100:15 101:21,21,23 there's [27] 6:10 22:15 24: 2 3 5 21 30:8 32:11 34:13 42:19 53:2 55:3 62:13 72: 18 73:15.16 78:1.10 88:11 89:9 95:6 98:11 105:12.24 **106**:23 **111**:17 **112**:12 therefore [5] 9:23 11:4 21: 24 38:21 63:23 they'll [1] 36:7 they've [2] 16:10 100:8 thinking [5] 30:6,11 40:5 42:11 61:2 thinks [10] 12:8.14 44:2 61: 20 69:11 73:12 74:5 89:19 20 90:1 third [1] 98:11 THOMAS [17] 5:7.16 6:1.4. 21 7:16,24 11:20 33:8,9,18, 23 34:3,10 46:18 62:6 87: 8 Thomas's [1] 10:5 though [10] 9:5 10:15 20: 19 32:4 41:5 70:22 77:7 93:22 108:21 109:2 thoughts [1] 51:20 threatened [1] 95:13 three [2] 86:18 110:13

throwing [1] 61:18

timing [2] 109:5,6

today [2] 99:3 110:5

took [4] 7:2 22:22 71:24

together [1] 58:20

104:23

tool [1] 3:20

top [1] 7:21

totally [1] 64:18

touchstone [1] 96:5

transparency [1] 82:8

treated [2] 94:19 101:5

treating [1] 100:16

trial [1] 76:4

Treasury [3] 58:4,8 60:17

transfers [1] 13:4

time-related [1] 85:2

trying [6] 84:25 88:3,10,13 102:5 103:18 Turning [2] 108:24 110:2 turns [2] 56:10 80:7 two [10] 5:10 20:12 23:13 46:23 70:12 73:19 77:19 86:12 110:23 111:21 type [3] 45:12 52:23 100:10 types [4] 30:4 76:7 95:13, 14 U ultimate [3] 27:3 32:12 72: ultimately [7] 14:19 27:8 **42:**10 **68:**3 **71:**10 **88:**15,15 unconstitutional [11] 25: 15 26:7 30:14 63:22 64:16 **65**:15 **67**:4 **70**:1,14 **89**:5 **111:**15 unconstitutionally [5] 53: 6 65:9 86:17.23 90:25 under [37] 5:12.14 17:3.19 18:20 25:19 26:1 30:20 31: 1,22 47:23 53:4 59:2,3,21 61:10,10 65:1 66:23 71:5, 8,8 **87**:12 **89**:1 **93**:19 **95**:4, 4 96:9,18,19 101:20,21 103:2,8 105:12 110:24 111.2 undermines [1] 82:7 underscore [1] 28:4 underscores [2] 29:25 30: understand [17] 10:20 12: 7 **31**:7 **36**:24 **37**:17 **40**:1 48:11 56:7.20 60:5 65:21 67:10 75:22 83:9,19,25 98: understanding [4] 40:17 73:3 81:7 87:12 understood [2] 42:20 97: undoubtedly [1] 99:24 unenforceable [1] 5:1 unfair [1] 15:23 UNITED [5] 1:1.17 27:19 51:7 79:3 university [2] 28:11,20 unless [9] 4:7 19:25 53:20 **54**:6 **55**:8 **57**:17,19 **80**:2 100:4 unlikely [1] 61:17 unrecognizable [1] 46:11 unreviewable [7] 48:1,14, 25 **51**:13 **52**:25 **86**:9 **100**: untangle [1] 103:20 untested [1] 10:23

80:9 82:17 83:15 84:20 85:

10,12 86:13,16,22 87:1,21,

until [3] 17:4 65:18 87:1 unusual [1] 83:1 up [11] 52:21 61:7,16,23 62: 1 79:15 88:8 91:16 105:21 **107**:17 **111**:7 useful [1] 41:2 useless [1] 97:3 uses [3] 27:23 28:3 38:12 using 5 6:2 7:18 18:23 50: 24 109:15

valid [1] 71:5 versus [2] 3:5 15:5 vest [6] 11:21 58:7 64:13 67:11 111:19 112:16 vested [24] 13:24 43:11 53: 7 **55**:4,22,24 **57**:9 **60**:1 **65**: 2,3 66:25 67:1,11,20,24 69: 24 **70**:12 **71**:9 **86**:15 **89**:3 90:4 91:9 111:5 112:4 vesting [9] 53:13 59:20 63: 19 66:23 67:2 68:22 70:16 93:23 103:12 vests [6] 12:1,25 25:20 72: 19 90:13.13 veto [3] 106:15.15.24 view [24] 8:17 11:15 25:10 **29**:13 **41**:7 **42**:3.7 **46**:22 **47**:17 **49**:7 **60**:22 **74**:1 **76**: 12 84:19 87:17 88:6 89:5, 9 90:3 94:2 95:5 96:19 97: 14,15 violate [1] 76:14 violation [1] 64:2 violations [1] 89:13 vis-à-vis [3] 41:14,16 83: void [1] 44:8

W

volunteers [1] 28:2

wait [2] 64:5 105:3 waived [1] 100:8 wandering [1] 68:9 wanted [6] 18:2,7 19:17,18 76:1 109:14 wants [6] 27:5,6 53:21 55: 18 **57**:19 **100**:6 **Washington** [2] **1:**13,22 way [33] 7:12,17 8:3 12:15 16:23 18:4 22:25 25:18 29: 16 30:23 32:1,14 33:14 35: 12 40:2,20,20 42:11 47:5, 15 **56**:14 **58**:22 **64**:20 **71**: 13 74:22 76:3 81:13 82:1 95:1,3 102:13 108:2 112: ways [5] 52:9 74:24 81:24 **95**:11 **111**:22

welcome [2] 5:6 46:17 whatever [1] 61:6 whatsoever [1] 20:20 Whereupon [1] 113:5

wherever [1] 27:16 whether [34] 8:19,22,23 10: 1 **11:**25,25,25 **13:**20,24 **24:** 4 **39**:19 **42**:13 **43**:10 **45**:7 **49**:3 **55**:3 **56**:9,10 **57**:4,9 **72**:10,12 **80**:7,9 **82**:12,14 **89**:19 **90**:4 **96**:6 **104**:22 105:23 107:18,21 112:24 whim [1] 16:4 who's [3] 63:13 104:22 110: 20 whoever [4] 10:11,12 24: 17,21 whole [2] 38:13 54:19 will [24] 3:3,16 6:11,14 8:2, 6 **15**:14 **16**:17,23 **17**:15 **19**: 4 **20**:11,18 **21**:14 **27**:4 **35**: 18 **46**:3 **52**:21 **55**:17 **56**:11 **59**:13 **89**:18 **106**:13 **112**: 23 win [1] 97:15 window [2] 86:24 91:12 withdraw [4] 48:4,5 52:16 107:24 within [7] 23:10 33:20 34:1, 1.2 73:6 98:16 without [7] 51:8 60:23 61: 2 77:2 82:2 84:11 100:24 wonder [1] 40:4 wondering [1] 23:20 word [19] 6:2,2 14:23 27:1 28:12 39:25 41:6,25 46:25 **63**:24 **67**:6 **75**:6 **77**:8 **96**: 20 106:5,12 107:21 109:19 110:18 words [1] 46:24 work [7] 26:4 43:5 44:4 56: 1 **61**:1 **84**:14 **92**:10 works [3] 64:12,25 94:18 write [1] 102:13

written [2] 43:22 101:24 wrote [1] 60:23

year [8] 17:8,10 23:10,10 49:15 84:2,7,8 years [2] 81:18 89:11 Yellen [2] 77:10 103:6