

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

BRADLEY LITTLE, GOVERNOR OF IDAHO,)

ET AL.,)

Petitioners,)

v.) No. 24-38

LINDSAY HECOX, ET AL.,)

Respondents.)

- - - - -

Pages: 1 through 134
Place: Washington, D.C.
Date: January 13, 2026

HERITAGE REPORTING CORPORATION
Official Reporters
1150 Connecticut Avenue, N.W., Suite 305
Washington, D.C. 20036
(202) 628-4888
www.hrcreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 BRADLEY LITTLE, GOVERNOR OF IDAHO,)
4 ET AL.,)
5 Petitioners,)
6 v.) No. 24-38
7 LINDSAY HECOX, ET AL.,)
8 Respondents.)
9 - - - - -

10
11 Washington, D.C.
12 Tuesday, January 13, 2026
13

14 The above-entitled matter came on for
15 oral argument before the Supreme Court of the
16 United States at 10:04 a.m.
17
18
19
20
21
22
23
24
25

1 APPEARANCES:
2 ALAN M. HURST, Solicitor General, Boise, Idaho; on
3 behalf of the Petitioners.
4 HASHIM M. MOOPPAN, Principal Deputy Solicitor General,
5 Department of Justice, Washington, D.C.; for the
6 United States, as amicus curiae, supporting the
7 Petitioners.
8 KATHLEEN R. HARTNETT, ESQUIRE, San Francisco,
9 California; on behalf of the Respondents.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ALAN M. HURST, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	HASHIM M. MOOPPAN, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioners	49
9	ORAL ARGUMENT OF:	
10	KATHLEEN R. HARTNETT, ESQ.	
11	On behalf of the Respondents	79
12	REBUTTAL ARGUMENT OF:	
13	ALAN M. HURST, ESQ.	
14	On behalf of the Petitioners	131
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (10:04 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument first this morning in Case 24-38,
5 Little versus Hecox.

6 Mr. Hurst.

7 ORAL ARGUMENT OF ALAN M. HURST
8 ON BEHALF OF THE PETITIONERS

9 MR. HURST: Thank you, Mr. Chief
10 Justice, and may it please the Court:

11 Idaho's law classifies on the basis of
12 sex because sex is what matters in sports. It
13 correlates strongly with countless athletic
14 advantages, like size, muscle mass, bone mass,
15 and heart and lung capacity. Tragically but
16 not surprisingly, male athletes have even
17 injured female athletes in many sports. If
18 women don't have their own competitions, they
19 won't be able to compete.

20 Gender identity does not matter in
21 sports, and that's why Idaho's law does not
22 classify on the basis of gender identity. It
23 treats all males equally and all females
24 equally regardless of identity, and its purpose
25 is exactly what the legislature said,

1 preserving women's equal opportunity.

2 In fact, it's our friends on the other
3 side who want to classify based on gender
4 identity. They're seeking special treatment
5 for males who allegedly lack an unfair
6 advantage but only if those males also identify
7 as transgender.

8 Denying special treatment isn't
9 classifying on the basis of transgender status.
10 It's consciously choosing not to. Idaho's
11 sex-based classification would get intermediate
12 scrutiny if Hecox challenged it. But Hecox's
13 requested relief presupposes separate women's
14 sports. All Hecox challenges is the law's
15 application to a tiny subset of males who
16 identify as transgender and suppress their
17 testosterone.

18 But that's not how intermediate
19 scrutiny works. Idaho's law is a substantial
20 fit for 99 percent of males, and a perfect fit
21 is not required. If it were, that would be the
22 end of all sex-based classifications.

23 Finally, a word about mootness. When
24 trying to avoid mootness below, Hecox told the
25 court: I intend to play women's club soccer

1 this semester, next semester, and through the
2 remainder of my time at B.S.U.

3 A contradictory post-cert affidavit
4 does not make it absolutely clear this
5 controversy is over, so Hecox's formidable
6 burden isn't met, and this case isn't moot.

7 I welcome the Court's questions.

8 JUSTICE THOMAS: There will probably
9 be some questions about mootness, but I'd like
10 you to, in focusing on the equal protection
11 analysis, the -- and, here, the sex
12 classifications in sports is not being
13 challenged.

14 MR. HURST: That's correct.

15 JUSTICE THOMAS: How does that work in
16 this -- in this case, when we're talking about
17 one individual being excepted from a
18 particular -- or included in a particular
19 category?

20 MR. HURST: There's no basis for
21 heightened scrutiny, intermediate scrutiny in
22 that situation, Your Honor. If the sex-based
23 line passes intermediate scrutiny, which no one
24 disputes that it does, then the edge cases, the
25 potential exceptions, that's all rational basis

1 review.

2 JUSTICE SOTOMAYOR: That makes no
3 sense to me, all right, and I don't know how
4 you can say sex classification is not being
5 challenged.

6 There's no question here that a male
7 who identifies as a female, but it's a male, is
8 being include -- excluded from a female sport,
9 correct?

10 MR. HURST: That's correct.

11 JUSTICE SOTOMAYOR: All right. By its
12 nature, that's a sex classification, and all
13 sex classifications we have said repeatedly in
14 our case law require intermediate scrutiny.

15 Now what you're saying is, well, she's
16 not challenging a -- males generally not
17 playing. She just doesn't want to be the one
18 male excluded. So it's a subclass of people
19 that she's challenging, correct?

20 MR. HURST: Yes, I think that is
21 correct.

22 JUSTICE SOTOMAYOR: All right. So how
23 do you square our various case law -- Caban,
24 Lehr, Cleburne, VMI in particular -- all of
25 whom involved a subclass of people who

1 challenged on equal protection grounds their
2 exclusion from a definition?

3 MR. HURST: I'm happy to take those
4 cases in order, Your Honor, starting with
5 Caban. There was no notion of as-applied
6 anything in Caban. In Caban, it was a facial
7 challenge to the statute, and individual
8 circumstances were used as examples to prove
9 that the statute was overbroad and lacked a
10 substantial fit.

11 JUSTICE SOTOMAYOR: That's the point.
12 That's what she's saying here, that the state
13 interest here is the safety of women, correct,
14 and promoting competitive -- competition?

15 MR. HURST: Fairness --

16 JUSTICE SOTOMAYOR: That's the state
17 interest.

18 MR. HURST: Fairness to safe --

19 JUSTICE SOTOMAYOR: In Caban, the
20 state interest was in ensuring that only
21 children with active parents, let's say, were
22 given a state benefit, correct?

23 MR. HURST: Yes. And Caban was a --
24 was struck down facially. The statute was
25 considered unjustified.

1 JUSTICE SOTOMAYOR: She's not -- how
2 about Lehr?

3 MR. HURST: In Lehr, we had the
4 same -- we had --

5 JUSTICE SOTOMAYOR: That's the
6 opposite. That's the subclass, the people who
7 were excluded.

8 MR. HURST: In Lehr, the Court said
9 the law would be justified with respect to you,
10 you know, plaintiff, and because the law would
11 be justified with respect to you, you are not
12 able to challenge the law elsewhere.

13 JUSTICE SOTOMAYOR: All right.

14 MR. HURST: So the Court says --

15 JUSTICE SOTOMAYOR: How about VMI?

16 MR. HURST: Well, V --

17 JUSTICE SOTOMAYOR: That distinction
18 doesn't make any sense to me. It's still an
19 exception. It's a subclass of people who are
20 covered by the law and others are not. That's
21 what we said.

22 MR. HURST: The VMI case is the flip
23 side of Idaho's law. The VMI case, equal
24 opportunity required letting women in to
25 previously single-sex spaces. In this case,

1 equal opportunity for women requires giving
2 women separate spaces. And VMI said that was
3 okay. VMI said separate housing --

4 JUSTICE SOTOMAYOR: Wait a minute.
5 That -- that's begging the very question at
6 issue here. You can have a sex classification
7 based on sex. You just have to have a reason
8 for it and one that matches your exclusion.

9 What you're trying to say is we don't
10 even look at the reason to see if it has a
11 scientific basis.

12 MR. HURST: The reason we don't look
13 at the reason in this case to see whether
14 there's a scientific basis is because no one
15 disputes that there is a scientific basis for
16 separate women's sports.

17 JUSTICE SOTOMAYOR: Oh, but there
18 is --

19 JUSTICE KAGAN: Are -- are --

20 JUSTICE SOTOMAYOR: -- a dispute of
21 that.

22 JUSTICE KAGAN: I'm sorry.

23 JUSTICE SOTOMAYOR: Go ahead.

24 JUSTICE KAGAN: Are you then saying,
25 Mr. Hurst, that there really is no such thing

1 as an as-applied equal protection challenge?

2 MR. HURST: No, Your Honor. But what
3 I'm saying is that equal protection, the
4 question is whether the classification is valid
5 and not whether it makes sense in individual
6 situations.

7 JUSTICE KAGAN: But that sounds to me
8 as though -- and, you know, I think our -- our
9 precedent is -- is actually very sparse in this
10 area, sort of surprisingly sparse. But it
11 sounds to me as what you're saying is, as long
12 as the -- the classification is facially valid,
13 a person does not get to come in and say that
14 with respect to some subclass, a small subclass
15 in this case, a person doesn't get to say, with
16 respect to some subclass, there's a mismatch,
17 that the justification has run out, that the
18 justification doesn't apply.

19 You're saying that that really is just
20 not an available argument.

21 MR. HURST: I -- I agree that is not
22 an available argument. And I think this Court
23 has taken that approach, our approach, in cases
24 from Kahn v. Shevin all the way to Nguyen. And
25 Nguyen is the best example because, there,

1 the -- the petitioner had been raised in the
2 United States by the U.S. citizen father, and
3 the Court said Congress's interest in making
4 sure there's a connection with the United
5 States is enough to justify the classification.

6 Well, it -- this Petitioner obviously
7 had the connection with the United States.
8 There was no basis to apply these
9 justifications to that petitioner, didn't
10 matter.

11 JUSTICE KAGAN: I mean, one thing that
12 this case could be about is -- and this case, I
13 mean generally this litigation -- is whether
14 the plaintiffs are right here that there is a
15 mismatch, right, you know, and -- and -- and
16 some of your briefing addresses that question,
17 right?

18 You can take all the hormones in the
19 world, you can take all the puberty blockers in
20 the world, you say, and there still will be a
21 competitive advantage. That's one thing that
22 this litigation could be about and one way to
23 resolve this litigation.

24 Another thing that this litigation
25 could be about is this deeper and, as I say,

1 surprisingly unanswered in my mind equal
2 protection question about what -- what -- what
3 an as-applied equal protection challenge is and
4 whether they exist.

5 And I -- I guess, you know, you're
6 suggesting that we should -- well, I don't
7 really know what you're suggesting because,
8 here, you're saying, look, just do it that way.
9 They could be right on the science and we would
10 still win. A lot of your briefing really
11 contests their view of the science.

12 So which way should we think about
13 this case?

14 MR. HURST: We think that equal
15 protection jurisprudence is about the validity
16 of classifications. It takes a classification
17 to trigger the doctrines to begin with, and
18 then you ask is the classification justified
19 under intermediate scrutiny.

20 And so we think that's the right
21 approach, is the classification justified, not
22 is it justified in each individual instance
23 because, as Nguyen said, the -- this Court has
24 never held, Nguyen said, that a law has to be
25 capable of achieving its ultimate objective in

1 every instance.

2 And as soon as that possibility of
3 forcing the legislature to justify the law with
4 respect to individual plaintiffs is on the
5 table, intermediate scrutiny is over.

6 JUSTICE JACKSON: But can I --

7 MR. HURST: That is strict scrutiny.

8 JUSTICE JACKSON: -- can -- can I --
9 can I question the premise that you are putting
10 forward?

11 Even if I agree with you that equal
12 protection is about is this classification
13 justified, I think that begs the question what
14 is the classification.

15 And so, to the extent that you have an
16 individual who says what is happening in this
17 law is that it is treating someone who is
18 transgender but who does not have, because of
19 the medical interventions and the things that
20 have been done, who does not have the same
21 threat to physical competition and safety and
22 all of the reasons that the state puts forward.
23 That's actually a different class, says this
24 individual.

25 So you're not treating the class the

1 same and you're not -- how do you respond to
2 that? In other words, the as-applied challenge
3 essentially redefines the class or one could
4 think of it as that. And so what's wrong with
5 that, number one?

6 And how do you square that with our
7 holdings in Caban, which Lehr later described
8 in this way. In other words, Lehr suggested
9 that Caban was establishing that as-applied
10 challenges of this nature do exist.

11 MR. HURST: Certainly. The -- the --
12 I'll take the second question first.

13 JUSTICE JACKSON: Yes.

14 MR. HURST: Caban says nothing about
15 as applied. I know that Lehr says later this
16 was an as-applied case, but simply reading
17 Caban, it does not say that. It simply applies
18 intermediate scrutiny.

19 JUSTICE JACKSON: No, I understand.
20 But those two cases --

21 MR. HURST: Uh-huh.

22 JUSTICE JACKSON: -- were in
23 juxtaposition with one another.

24 MR. HURST: Yes.

25 JUSTICE JACKSON: And Lehr comes out

1 the way it does distinguishing Caban on the
2 basis that it's an as-applied challenge. And
3 we in Lehr have a facial challenge. And it's
4 basically the same facts.

5 So, if those -- if you're right,
6 that -- those two cases can't come out the way
7 they do.

8 MR. HURST: Our -- I don't think so,
9 Your Honor. Again, Lehr was actually briefed
10 as a standing argument of maybe you might be
11 able to argue that this law is overbroad, but
12 you individually are not in the overbroad part,
13 and, therefore, you don't get to challenge it.

14 The Court didn't use standing
15 language, like express standing language in the
16 opinion, but that is the logic of the opinion.

17 JUSTICE GORSUCH: Mr. Hurst?

18 MR. HURST: Yes.

19 JUSTICE GORSUCH: There's another way
20 to think about the case that your friends on
21 the other side posit, and that is that
22 transgender status should be conceived of as a
23 discrete and insular class subject to scrutiny,
24 heightened scrutiny, in and of itself given the
25 history of de jure discrimination against

1 transgender individuals in this country over
2 history in immigration and family law,
3 cross-dressing statutes, they get a long
4 laundry list. And I'd like you to respond to
5 that.

6 MR. HURST: Certainly. On the de jure
7 discrimination point specifically, there has
8 been some discrimination against transgender
9 people, significant discrimination against
10 transgender people in the history of this
11 country. The same can be said of many groups.
12 The same could have been said of the mentally
13 disabled in Cleburne, et cetera, et cetera.

14 I think Justice Alito's concurrence in
15 Skrametti is helpful to this in saying this
16 quasi-suspect class or suspect class process,
17 what we're really looking for is classes that
18 look like race or like sex.

19 And if you compare the discrimination
20 in this case, where not one of the laws they
21 cite actually classifies expressly on the basis
22 of transgender status, if we look at that
23 history and we compare it to the history of
24 African Americans and women who were not able
25 to vote, who were not able to own property, who

1 had express classifications based on their
2 status written into the law for most of this
3 country's history, these things don't compare.
4 They're just not alike.

5 JUSTICE SOTOMAYOR: Well, how --

6 JUSTICE GORSUCH: Well, I --

7 JUSTICE SOTOMAYOR: I'm sorry.

8 JUSTICE GORSUCH: No, please.

9 JUSTICE SOTOMAYOR: No, go ahead.

10 JUSTICE GORSUCH: Okay. You -- you --
11 there are two things in that answer that are
12 kind of at odds with one another. You -- you
13 start by saying you don't question that there's
14 a history of discrimination, I assume de jure,
15 in this country.

16 MR. HURST: Mm-hmm.

17 JUSTICE GORSUCH: And then you say,
18 well, but they don't classify on that basis.

19 How should we think about that?

20 MR. HURST: The -- I think that the --
21 the, you know, famous Footnote 4 helps, right?
22 This has been a discrete and insular minority.
23 Has it been a group of people that were
24 recognized as a group where laws were passed on
25 the basis of their membership in that group

1 demonstrating that they lacked the political
2 power to protect themselves in the political
3 process? This is from Justice Barrett's
4 concurrence, of course.

5 We just don't have any of that here.
6 All they can point to is conduct. It says, you
7 know, no cross-dressing, no drag performances
8 in bars, these kinds of things. As I think our
9 friends on the other side would admit, people
10 cross-dress who aren't transgender. This is
11 not a classification on that basis.

12 JUSTICE SOTOMAYOR: What do you do
13 with the legislative history in this case where
14 the people who introduced the bill called it a
15 transgender bar? So you -- you -- in answering
16 Justice Gorsuch, you said there's no evidence
17 of that, but there's certainly a lot of
18 comments in this bill when it was passed.

19 MR. HURST: Your Honor, I respectfully
20 disagree. I am aware of nothing in the
21 legislative record that says that. I know that
22 the Ninth Circuit opinion says that, but if
23 you'll notice, the key quote that the Ninth
24 Circuit relies on puts the words "transgender
25 women" in brackets.

1 And if you look up that colloquy in
2 the legislative record, in their transcript
3 that they provided in the district court, the
4 word "transgender," "gender identity," et
5 cetera, do not appear in that -- in that
6 section of the transcript.

7 JUSTICE SOTOMAYOR: Can I go back to
8 the mootness question that Justice Thomas
9 talked about but not addressed here at all.

10 Yes, this Respondent made certain
11 allegations about her intent at a certain
12 point, but she signed an affidavit with this
13 Court attesting that she has permanently
14 stopped playing sports covered by the ban. She
15 will not try for any school-sponsored women's
16 sports. And, in fact, I think she'll finish
17 school very shortly.

18 And there's no reason to question the
19 sincerity of that belief given that dropping
20 out of sports puts you at a disadvantage where
21 you lose your competitive edge. And she's
22 going to graduate soon.

23 How is this different than Acheson
24 Hotel, where the person in the litigation made
25 representations that she intended to visit and

1 continue visiting hotels in the future, and
2 then, when the case got before us, she
3 voluntarily dismissed those suits, like here,
4 with prejudice, and we then directed that the
5 case be considered moot? How is that
6 different?

7 MR. HURST: To begin with --

8 JUSTICE SOTOMAYOR: I -- I add one
9 further difference between the two cases.

10 MR. HURST: Certainly.

11 JUSTICE SOTOMAYOR: Here, it's not
12 like she's attempting to avoid us reaching the
13 question. In just a little while, we're going
14 to reach the identical question in another
15 case. So we don't have a subterfuge in
16 attempting to stop the Court from reaching an
17 important legal question.

18 MR. HURST: I'll start with Acheson
19 Hotels, Your Honor. In Acheson Hotels, no one
20 disputed that plaintiff's plans going forward.
21 In this case, even the district court does not
22 credit the plaintiff's plans going forward.
23 The district court struck the notice of
24 dismissal and said Hecox's plans have changed
25 before; Hecox's plans could change again. And

1 also, the court feels that this is somewhat
2 manipulative in order to escape the Supreme
3 Court's jurisdiction.

4 None of that existed in Acheson
5 Hotels. And that puts us in City of Erie
6 territory, where, in that case, the premises
7 were sold, the business was closed, the owner
8 was in his 70s. And they said that's not
9 enough. You could still reopen this business.
10 Your company is still incorporated.

11 Under these circumstances, where it's
12 the Respondent seeking through post-certiorari
13 maneuvers to moot the case, that isn't enough.
14 This case isn't moot.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Justice Thomas?

18 JUSTICE THOMAS: Does a -- the
19 justification for a classification as you have
20 in Title IX, male/female sports, let's take,
21 for example, an individual male who is not a
22 good athlete, say, a lousy tennis player, and
23 does not make the women's -- and wants to try
24 out for the women's tennis team, and he said
25 there is no way I'm better than the women's

1 tennis players.

2 How is that different from what you're
3 being required to do here?

4 MR. HURST: It's not all different,
5 Your Honor, and that's exactly what we're
6 concerned about, that their arguments about
7 needing to make exceptions from intermediate --
8 from an otherwise valid classification for
9 people for whom that classification doesn't
10 make sense, those arguments don't limit
11 themselves to people who identify as
12 transgender. Many males could say: I can't
13 really compete with the women's basketball
14 team, and, therefore, I should be able to try
15 out.

16 And I haven't seen an answer from the
17 other side as to why they couldn't beyond -- I
18 correct myself. They say that, well, those
19 people don't face the same dignitary harm as
20 transgender people. But I don't see how that's
21 relevant to the intermediate scrutiny analysis.
22 The analysis is, is this classification
23 substantially related -- related to a
24 legitimate state interest? The person's
25 reasons for wanting to violate the

1 classification don't come into the analysis.

2 CHIEF JUSTICE ROBERTS: Justice Alito?

3 JUSTICE ALITO: Justice Sotomayor

4 raised the question whether the issues here are
5 identical to the issues in the case we're going
6 to hear in a couple of minutes, and I'd
7 appreciate your views on that.

8 Suppose we affirm or reverse in this
9 case -- I'm sorry, in the other case. Would
10 that leave something undecided with respect to
11 your case?

12 MR. HURST: Yes, Your Honor. Our case
13 involves the issue of the constitutional
14 definition of sex, which the Ninth Circuit made
15 a decision about, what sex means for
16 constitutional purposes. The Fourth Circuit
17 did not make that decision. We would be bound
18 by that decision going forward unless the Court
19 reaches that question.

20 That said, I would -- I would dispute
21 the -- the premise of the question because
22 whether or not the Court has Article III
23 jurisdiction in this case does not depend on
24 what the Court might do another day in a
25 different case.

1 JUSTICE ALITO: No, that wasn't the
2 premise of the question. It was just an
3 attempt to explore the consequences of deciding
4 the mootness issue one way or the other. Thank
5 you.

6 MR. HURST: Thank you, Your Honor.

7 CHIEF JUSTICE ROBERTS: Justice --

8 JUSTICE SOTOMAYOR: There's a
9 Munsingwear --

10 CHIEF JUSTICE ROBERTS: -- Sotomayor?

11 JUSTICE SOTOMAYOR: There's a
12 Munsingwear GVR that's being agreed to here, so
13 you're not bound by anything in this case, and
14 our decision there will inform any new decision
15 in the Ninth Circuit on this issue, correct?
16 Whatever analysis we adopt in the Little case
17 will control what happens in a new case.

18 MR. HURST: That is law, Your Honor,
19 yes.

20 JUSTICE SOTOMAYOR: All right. With
21 respect to the Erie case, there, the
22 90-year-old man never said he didn't intend to
23 open another business. He just said this
24 business. And that was a distinction we saw.
25 Here, she has said: I don't intend to

1 do this. Now every other promise that she made
2 in this litigation, that she was going to
3 continue trying out, that she was going to stay
4 in sports, held true until this case and the
5 negative attention she received, correct? To
6 say she misrepresented her intent is going a
7 little extreme when she honored all her
8 previous intent -- intents and only changed her
9 mind when new circumstances arose, i.e., the
10 notoriety of this case, correct?

11 MR. HURST: No, Your Honor, nothing
12 changed externally to -- to the plaintiff. The
13 plaintiff's affidavit filed in this Court says
14 that there has been negative attention and so
15 forth since the beginning of this case. The
16 only thing that changed is this Court granted
17 certiorari. And then, after that, the
18 plaintiff said: I want out and so I will stop
19 playing sports.

20 JUSTICE SOTOMAYOR: Do you dispute
21 that having a case named after you makes your
22 infamy -- infamy live forever? Think of --

23 MR. HURST: No, Your Honor.

24 JUSTICE SOTOMAYOR: No? You don't
25 think that Brown and any of the other named

1 plaintiffs that we have in famous cases draw an
2 attention to those people as people? Have you
3 studied your law cases? Students do all the
4 time. I think one of my colleagues had a
5 course where they looked at the lives of the
6 plaintiffs.

7 Do you doubt that having a named case
8 with such an eventful event is going to
9 continue attention on this person?

10 MR. HURST: I don't doubt there will
11 be attention. And I -- I confess I --

12 JUSTICE SOTOMAYOR: Negative
13 attention.

14 MR. HURST: I -- and I confess I have
15 studied a few law cases, but --

16 JUSTICE SOTOMAYOR: Have you studied
17 the people?

18 MR. HURST: To some degree, Your
19 Honor.

20 JUSTICE SOTOMAYOR: Okay.

21 MR. HURST: What I would disagree with
22 is there's no background principle of
23 plaintiffs get to leave the litigation whenever
24 they want. Even -- even Rule 41, even in just
25 the district court, the rule is that once the

1 litigation hits a certain point --

2 JUSTICE SOTOMAYOR: So what --

3 MR. HURST: -- you can't leave.

4 JUSTICE SOTOMAYOR: -- what you're
5 going -- assume, I know you don't want to, that
6 you were to lose this case. You would -- you
7 would say that we have to force an unwilling
8 plaintiff who has offered to dismiss with
9 prejudice, promised not to incur this activity
10 again, we would force that person to continue
11 prosecuting this case?

12 MR. HURST: The Court did in City of
13 Erie.

14 JUSTICE SOTOMAYOR: That -- it did
15 there, but is it the right thing to do? We
16 didn't do it in Acheson.

17 MR. HURST: In Acheson, no one
18 disputed that the case was moot. The only
19 question was which Article III question would
20 be decided first. In this case, we dispute the
21 case is moot. We dispute all of the facts that
22 this is based on.

23 This is a formidable burden that Hecox
24 bears -- that's from Nike, Already v. Nike --
25 to show that it is absolutely clear that this

1 conduct cannot be reasonably expected to
2 reoccur. We think, as the -- the district
3 court said in its -- in its striking order,
4 that based on the changing history here, based
5 on the past conduct, as Scalia mentioned in his
6 Footnote 3 of his City of Erie concurrence,
7 there is a reasonable basis to doubt whether
8 Hecox's current plans are the final plans.

9 And as long as there's a reasonable
10 basis not to credit the current plans, Article
11 III lets the Court hear the case.

12 CHIEF JUSTICE ROBERTS: Justice Kagan?

13 JUSTICE KAGAN: Mr. Hurst, I want to
14 take you back to our conversation about whether
15 there's such a thing as as-applied equal
16 protection challenges and ask you for two
17 things. The first is -- is I do think that
18 that runs counter to a couple of things that we
19 think of as basic principles of constitutional
20 law and maybe equal protection law
21 particularly.

22 In constitutional law, we often say
23 as-applied challenges are the preferred mode of
24 constitutional adjudication. Certainly, we
25 have not erected, like, bars to them in any

1 other area as far as I understand it.

2 And then, in equal protection law, we
3 say all the time things like people need to be
4 treated as individuals and not as -- just as
5 members of a group. And I'm wondering whether
6 both of those principles don't suggest that any
7 bar on equal protection -- as-applied equal
8 protection challenges is -- is just wrong, is
9 off.

10 And then the second thing I want you
11 to do after you do that is -- is assume for me
12 that there is such a thing and to tell me how
13 in your view an as-applied equal protection
14 challenge ought to work in this case.

15 MR. HURST: Certainly, Your Honor.
16 The -- the first answer would be I -- I
17 recognize those principles that -- that Your
18 Honor is alluding to. The -- the contrary
19 principle would be the very nature of
20 intermediate scrutiny analysis, that it is
21 always possible, if you only have a substantial
22 fit supporting -- supporting legislation, then
23 it is always possible to find people whom it
24 doesn't fit, and then we're in strict scrutiny.

25 JUSTICE KAGAN: So I completely take

1 that point --

2 MR. HURST: Yeah.

3 JUSTICE KAGAN: -- Mr. Hurst. I mean,
4 you're exactly right. And, of course,
5 intermediate scrutiny is different from strict
6 scrutiny. It doesn't require the, you know,
7 almost perfection that strict scrutiny does.
8 Completely take the point.

9 But isn't that point really addressed
10 to what we often consider in these areas, which
11 is to facial challenges, right? So, when you
12 bring a facial challenge, of course, that's
13 right, that you're allowed to have
14 over-inclusiveness and under-inclusiveness and
15 a lack of a perfect fit, but that the nature of
16 an as-applied challenge is different.

17 MR. HURST: Certainly, the Court could
18 do that, Your Honor. The Court has not done
19 that before, as -- as I think we both agree.

20 And the -- the result of that would be
21 judge-made exceptions to laws anytime judges
22 thought they didn't make sense for particular
23 classes of plaintiffs. And the deference to
24 the legislature that should exist to some
25 degree even under intermediate scrutiny

1 would -- would be done -- done away with. It
2 would be gone.

3 And then the administrability
4 justification for many sex-based
5 classifications, including this one, would also
6 be gone because you could no longer administer
7 the classification evenly. You would have to
8 make as many exceptions as courts thought you
9 needed to make. So it's really an
10 institutional competence thing or
11 institutional --

12 JUSTICE KAGAN: Yeah.

13 MR. HURST: -- power thing between
14 courts and legislatures.

15 JUSTICE KAGAN: So -- so you're
16 suggesting to me that the whole thing is just
17 unworkable and we shouldn't -- but flip to
18 my -- the second prong of my question, which is
19 suppose we said, yeah, we're -- as-applied
20 equal protection challenges exist as as-applied
21 anything challenges do.

22 What would it look like, do you think?
23 What should it look like?

24 MR. HURST: Yeah. I'm -- I'm not sure
25 what it should look like. I can say what it

1 does look like in this case and -- and why we
2 think there's a problem with it.

3 JUSTICE KAGAN: So you're not willing
4 to take me on my second path, which is, like,
5 let's assume that there is such a thing as this
6 challenge.

7 MR. HURST: Yes.

8 JUSTICE KAGAN: How should we view it?

9 MR. HURST: I mean, the most I can
10 say -- I doubt this is a satisfactory answer,
11 Your Honor, but the most I can say is that the
12 as-applied nature of a challenge might go to
13 the remedy. The legal analysis still focuses
14 on the classification and the justification for
15 the classification. And once we're talking
16 about individuals, we're not talking about a
17 classification anymore.

18 JUSTICE KAGAN: Yeah. I mean, that
19 doesn't seem like much of an as-applied
20 challenge, right? You have to prove the exact
21 same thing as you do in a facial challenge.

22 MR. HURST: Mm-hmm.

23 JUSTICE KAGAN: But don't worry
24 because you only get relief as to you. So
25 that's -- that's not a true as-applied

1 challenge.

2 MR. HURST: And this is -- I'm having
3 trouble coming up with what it could look like
4 because it will always be possible to carve the
5 class down further, right?

6 I mean, so, if they say that their
7 class, their subclass, I guess, subclass of
8 males is males who identify as transgender,
9 then we would come back and say: Well, only
10 something like 10 percent of males who identify
11 as transgender take the testosterone
12 suppression.

13 And then they might say: Well, okay,
14 no, the class is just the males who take the
15 testosterone suppression. And then we might
16 come back and say, well, according to the
17 record, according to their own expert, of males
18 who take testosterone suppression, only one
19 quarter of them are able to achieve the
20 appropriate -- you know, like, able to achieve
21 ordinary levels of testosterone for women. And
22 the other three quarters would still have an
23 advantage and, therefore, we'd be justified,
24 75 percent, pretty good fit under intermediate
25 scrutiny, and we'd be justified with the law.

1 But then they can just change the
2 class again and they can say: A-ha, no, our
3 class is males who identify as transgender who
4 suppress their testosterone and who suppress
5 their testosterone successfully and are able to
6 get it down to where they don't have a
7 competitive advantage.

8 And at that point, we can say, if --
9 if you can define the class so precisely,
10 you're going to force the state to -- you know,
11 to define the class that precisely. It's going
12 to be enormously burdensome for everyone. And
13 the state can't ever win because, whenever the
14 state points to the fit in the statute, they
15 just redefine their class as only the people
16 who are outside the fit.

17 JUSTICE KAGAN: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Gorsuch?

20 Justice Kavanaugh?

21 JUSTICE KAVANAUGH: To follow up on
22 something you were talking about with Justice
23 Sotomayor, would your constitutional position
24 be different if the law explicitly stated that
25 transgender women and girls cannot participate

1 in women's and girls' sports?

2 MR. HURST: My -- my answer to that
3 depends on what's in the rest of the law. So
4 I -- I would refer back to Skrmetti and say
5 it's not a magic words test. The mere presence
6 of the word "transgender" in the statute is not
7 enough to make it a transgender-based
8 classification.

9 JUSTICE KAVANAUGH: What would make
10 it?

11 MR. HURST: If the law either
12 expressly or through its effect let all males
13 except males who identify as transgender
14 participate in female sports but made it so
15 that somebody's ability to play in female
16 sports depended on transgender identity --

17 JUSTICE KAVANAUGH: No, assume that
18 the -- assume that the law does not allow males
19 to play in women's and girls' sports --

20 MR. HURST: Mm-hmm.

21 JUSTICE KAVANAUGH: -- and then
22 explicitly says in a separate provision
23 transgender women and girls, biological males
24 who identify as female, cannot play in women's
25 and girls' sports.

1 Would your constitutional position be
2 any different in that situation?

3 MR. HURST: No, Your Honor. I -- I
4 think that's Skrmetti. I think that would be a
5 reference to transgender identity, but the
6 law's application would never turn on
7 transgender identity, so it wouldn't be a
8 transgender status question.

9 JUSTICE KAVANAUGH: Even if it says
10 transgender?

11 MR. HURST: The word "transgender" in
12 the statute might be relevant to a pretext
13 analysis, but it wouldn't be relevant to the
14 facial classification if that word did not
15 change how the statute applied in practice.

16 JUSTICE KAVANAUGH: How many states
17 allow biological males who identify as females,
18 transgender, women and girls, to play in
19 women's and girls' sports?

20 MR. HURST: Statutorily, I'm aware of
21 27 states that take our side and do not permit
22 that and 23 states that take the other side and
23 do permit it.

24 JUSTICE KAVANAUGH: And those states
25 who do allow it, are they -- is your position

1 that they are violating the Constitution, the
2 Equal Protection Clause rights of biological
3 girls and women by allowing that, or do you say
4 that's up to each state to decide and that the
5 Constitution gives discretion to the state
6 whether to allow it or not to allow it?

7 MR. HURST: I have not yet been
8 persuaded by a constitutional theory that would
9 let us use the Equal Protection Clause to
10 impose our policy on other states in this
11 matter.

12 JUSTICE KAVANAUGH: Okay.

13 CHIEF JUSTICE ROBERTS: Justice
14 Barrett?

15 JUSTICE BARRETT: I have some
16 questions about the implications of your
17 theory.

18 So how would your theory play out if
19 we're talking about six-year-olds, where
20 there's no difference between boys and girls in
21 terms of athletic ability, testosterone levels,
22 et cetera.

23 Could you have sex-separated teams
24 then -- or, sorry, sex-separated teams by
25 biological sex and not allow trans girls on

1 them?

2 MR. HURST: Certainly, Your Honor.
3 First, I'd like to explain how the statute
4 applies to that situation so I can put my
5 answer in context.

6 JUSTICE BARRETT: Okay.

7 MR. HURST: There are no six-year-olds
8 in the state to whom the statute applies
9 because there are no school-sponsored sports
10 for six --

11 JUSTICE BARRETT: That's why it was a
12 hypothetical.

13 MR. HURST: Okay. Right. Yes. Like,
14 there would be the normal intermediate scrutiny
15 analysis. And are we saying it applies only to
16 six-year-olds or to everybody across the board?

17 JUSTICE BARRETT: Well, I'm just
18 trying to give you a hypo -- I mean, yours --

19 MR. HURST: Yeah.

20 JUSTICE BARRETT: -- is driven by
21 testosterone levels and differences in athletic
22 capability. So I'm asking you what if you try
23 to take that out of the equation and you're
24 just drawing the line based on biological sex
25 and saying that trans girls can't be on the

1 girls team in an age group that's prepubescent.

2 MR. HURST: The record in this case
3 does not support the notion that males lack an
4 athletic advantage at six years old. That --
5 that's about as early as the science goes from
6 what's in the record. And even at that age,
7 males have about a 5 percent athletic advantage
8 over girls in most situations.

9 Now, if this is not a level of
10 competition where anybody cares about that, the
11 simple solution is the solution you see in most
12 places, which is you have co-ed sports, you
13 don't divide the teams based on sex, and
14 everybody can play, and Idaho's law does
15 nothing to interfere with that.

16 JUSTICE BARRETT: And remind me
17 whether Idaho's law -- and I guess this --
18 this -- your -- your answer made me think of
19 this, and I guess this goes to the question of
20 whether the law discriminates on the basis of
21 trans status.

22 Is it true that biological girls,
23 trans boys, can play on boys' teams?

24 MR. HURST: Anyone can play on boys'
25 teams, Your Honor.

1 JUSTICE BARRETT: Anyone can play on
2 boys' teams, okay. And -- and to this point
3 about medical uncertainty and scientific
4 uncertainty, you were talking about what
5 advantages you might have even that are apart
6 from testosterone levels.

7 MR. HURST: Mm-hmm.

8 JUSTICE BARRETT: Your friends on the
9 other side say that, listen, science is
10 uncertain and so we need more factual
11 development, it's not really clear how much of
12 an athletic advantage boys and men have if
13 their testosterone levels are below a certain
14 point.

15 How does that play out? Tell me why
16 we don't need more fact finding or what is the
17 state's burden in -- in -- in showing what the
18 state of scientific certainty is.

19 Do we have to defer to the state?
20 Presumably, at some point, if deference is due,
21 the state would have too little scientific
22 evidence to really get that deference. Tell
23 me -- tell me how to think about that.

24 MR. HURST: The -- the first question
25 would be are we applying intermediate scrutiny,

1 and we argue that the Court shouldn't.

2 But leaving that aside, if the Court
3 is applying intermediate scrutiny, then we'd
4 say it's Turner Broadcasting that says the
5 legislature -- a First Amendment case applied
6 intermediate scrutiny and said, under
7 intermediate scrutiny, the legislature has to
8 draw reasonable inferences from substantial
9 evidence. It does not need to act only on
10 scientific consensus, which is what the
11 district court in this case assumed
12 incorrectly.

13 JUSTICE BARRETT: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Jackson?

16 JUSTICE JACKSON: So I guess I'm going
17 back to your discussion with Justice Kagan.
18 I -- I -- I'm not sure I understand why you're
19 characterizing the as-applied challenge in
20 practice as the individual coming back and
21 proposing a different classification, as though
22 we're doing an analysis of the classification
23 in the way that you suggest.

24 I thought that the state has a
25 classification that is its general rule, no

1 individuals who identify as female but were sex
2 at birth male can play in women's sports and
3 that the individual then is merely seeking an
4 exception based on their individual --
5 individual capacity because the state's general
6 rule is based on fairness and -- and medical
7 science and all of these things.

8 Do I have this -- like, they're not
9 proposing an alternative class necessarily.
10 They are just saying that I don't -- I should
11 be excepted from that general rule on this
12 basis.

13 MR. HURST: We -- we agree that an
14 exception is what they are seeking, Your Honor.
15 And -- and it's an exception based on
16 transgender status again.

17 JUSTICE JACKSON: But that's the way
18 the rule used to work, right? Am I -- I just
19 want to be clear about what we're talking about
20 here.

21 MR. HURST: Sure.

22 JUSTICE JACKSON: I -- I understood
23 that this law originally was exactly that, that
24 you -- you basically said no transgender women
25 in girls' sports, but we'll look at your

1 evidence and look at your circumstances and
2 decide whether or not you individually can be
3 included.

4 MR. HURST: So I --

5 JUSTICE JACKSON: Is that -- is that
6 what used to happen?

7 MR. HURST: As a matter of Idaho law,
8 there was no law whatsoever before this. It
9 was --

10 JUSTICE JACKSON: Is that what was
11 happening on the ground in Idaho law?

12 MR. HURST: That's what NCAA policy
13 permitted from 2010 to 2022. Before 2010, the
14 NCAA policy matched ours. Since 2025, the NCAA
15 policy has matched ours.

16 JUSTICE JACKSON: Okay.

17 MR. HURST: So --

18 JUSTICE JACKSON: But what I'm asking
19 is, if that is the -- if that's the ask here,
20 not that all transgender women be allowed but
21 that this particular plaintiff be allowed based
22 on their circumstances, why is that so not
23 administrable or proposing a different
24 classification that we're not going to be able
25 to sustain? I don't understand that.

1 MR. HURST: So, first -- first, as to
2 administrability, Your Honor, making sure that
3 a -- a transgender athlete does not lack an --
4 or does not have an unfair advantage would
5 require ongoing testosterone monitoring because
6 their testosterone can fluctuate. That is
7 invasive, that is intrusive, and that's
8 expensive.

9 JUSTICE JACKSON: No, but that's the
10 burden of the person. The person who wants to
11 play has to demonstrate to you to whatever
12 degree of scientific certainty that they don't
13 have a competitive advantage. Why -- why would
14 you not allow that? I guess I don't
15 understand.

16 MR. HURST: The -- the second answer
17 is that -- the second answer is that there's
18 nothing in that argument that limits itself to
19 transgender-identifying athletes. If this
20 athlete doesn't have an advantage over women
21 and therefore can compete safely, then there
22 are other athletes that could say for other
23 different -- for different reasons that they
24 don't have an unfair advantage and, therefore,
25 they could compete safely.

1 JUSTICE JACKSON: Yes.

2 MR. HURST: And --

3 JUSTICE JACKSON: I -- I -- I
4 understand that. And there are -- there are
5 legal arguments.

6 Let me ask you something about the
7 classification. I guess I'm struggling to
8 understand how you can say that this law
9 doesn't classify on the basis of transgender
10 status. The law expressly aims to ensure that
11 transgender women can't play on women's sports
12 teams. So why is that not a classification on
13 the basis of transgender status?

14 MR. HURST: I'd apply Skrmetti again.
15 The question is whether the application of law
16 turns on transgender status. And it doesn't.
17 It -- it turns on sex. The legislature did not
18 want to exclude transgender people from sports.
19 It wanted to keep women's sports women-only and
20 exclude males from women's sports.

21 JUSTICE JACKSON: No, I understand,
22 but with respect to two individuals, a cis
23 woman and a trans woman, who both want to play
24 on a team that reflects their gender identity,
25 this law operates differently based on their

1 sex, right?

2 MR. HURST: The law does separate
3 differently based on their sex, as Your Honor
4 just said. It does not operate differently
5 based on their transgender identity.

6 JUSTICE JACKSON: But it treats
7 transgender women different than tran --
8 than -- than cis women, doesn't it?

9 MR. HURST: It -- it has a disparate
10 impact because men who identify as -- as
11 transgender have a different reason for wanting
12 to play women's sports than -- than women --
13 you know, than biological females do, right?
14 But, if that were enough, then Skrmetti would
15 have come out a different way, Geduldig would
16 have come out a different way, other cases
17 would have gone a different way. I'm blanking
18 on the other ones.

19 JUSTICE JACKSON: All right. Finally,
20 let me just ask you about mootness because it's
21 a little odd, I think, that a defendant would
22 not want a case dismissed. Ordinarily, the
23 defendant is the one who's claiming mootness
24 because they've been sued.

25 So this plaintiff has brought a claim

1 against -- against you, and the claim relates
2 to your policy about college sports. And as I
3 understand, the plaintiff is about to graduate.
4 So wouldn't we have a mootness problem
5 potentially, notwithstanding any
6 representations that the plaintiff made?

7 MR. HURST: I don't think so, Your
8 Honor. I'd look to Camreta as the case that
9 tells us how we -- the best case for telling us
10 how we -- how we analyze mootness in this
11 situation. It's does the Petitioner still have
12 an interest in continuing the litigation? And
13 does the --

14 JUSTICE JACKSON: Only for a few more
15 months. What -- what if -- what if this
16 decision doesn't come out until June and she
17 graduates in May? Isn't -- what --

18 MR. HURST: It's -- it's my
19 understanding at this point -- I defer to my
20 friends here. It's my understanding at this
21 point that May graduation is not possible.

22 JUSTICE JACKSON: For this individual?

23 MR. HURST: For this individual,
24 that's correct.

25 JUSTICE JACKSON: All right. Thank

1 you.

2 MR. HURST: Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Mr. Mooppan.

6 ORAL ARGUMENT OF HASHIM M. MOOPPAN
7 FOR THE UNITED STATES, AS AMICUS
8 CURIAE SUPPORTING THE PETITIONERS

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

11 It is undisputed that states may
12 separate their sports teams based on sex in
13 light of the real biological differences
14 between males and females. States may equally
15 apply that valid sex-based rule to biological
16 males who self-identify as female.

17 Denying a special accommodation to
18 trans-identifying individuals does not
19 discriminate on the basis of sex or gender
20 identity or deny equal protection.

21 All of that remains true even assuming
22 a man could take drugs that eliminate his
23 sex-based physiological advantages.

24 The law is reasonably tailored,
25 regardless of whether it is perfectly tailored,

1 as applied to any such tiny subset of men. And
2 states are not required to redefine sex or
3 monitor the testosterone levels of female
4 athletes.

5 In short, male athletes who take
6 performance-altering drugs are not similarly
7 situated to female athletes, and states need
8 not treat them the same.

9 I welcome this Court's questions.

10 JUSTICE THOMAS: Would you -- would
11 you elaborate on what you alluded to, and that
12 is that -- whether or not a state has to -- its
13 asserted interest in classifications has to
14 bear out in each individual case? That seems
15 to be what the applied challenges in individual
16 cases would require.

17 MR. MOOPPAN: That's right. So
18 intermediate scrutiny requires a substantial
19 relation or a reasonable fit, which is not a
20 perfect fit. And this Court has recognized --
21 and I'd point this Court to Edge Broadcasting
22 in particular. It focused on this exact issue
23 of, if the law is substantially related in
24 general, can an individual come in and say,
25 well, as applied to me individually, it's not?

1 And the Court said no, we're not going to allow
2 you to do that because that would essentially
3 convert intermediate scrutiny into strict
4 scrutiny on an as-applied basis.

5 Now I'm not disputing that you can
6 sometimes bring as-applied claims under
7 intermediate scrutiny. So if, for example, you
8 had a law that applied -- this sort of law that
9 applied to sports but also math and also chess,
10 it might be that as applied to math or chess,
11 it was invalid, but it was valid as to sports
12 because it -- for math and chess, at the level
13 of the classification, it's not reasonably
14 tailored.

15 But, here, critically, everyone agrees
16 that for sports, for 99 percent of men, it's
17 reasonably tailored. It's just the 1 percent
18 of trans-identifying individuals who take drugs
19 and then those drugs are effective that it's a
20 problem. And this Court's decision in Michael
21 M. makes clear that that's not a viable
22 as-applied claim.

23 In Michael M., this Court upheld a
24 statutory rape law that applied differently to
25 men than women, and the rationale was because

1 women faced a unique risk of pregnancy. But,
2 of course, if either the male rapist or the
3 female victim was infertile, there would be no
4 pregnancy. So, on their theory, you could have
5 come in and said, well, I have an as-applied
6 claim that I was infertile, so it was okay to
7 rape the underage girl.

8 And this Court not only rejected that,
9 the Court said it would be ludicrous,
10 ludicrous, to say that you could bring an
11 as-applied claim for -- for pre-pubescent
12 girls. That's just not the way as-applied
13 scrutiny works in intermediate scrutiny cases.

14 That's equally true, as my friend
15 said, in Nguyen. In the Court's decision in
16 Nguyen, the justification for the law was
17 making sure that there -- the parent knew that
18 they were the parent and had an opportunity to
19 have a relationship with the parent. But
20 Nguyen -- Nguyen's father knew about the birth,
21 was present with Nguyen the whole time and
22 brought Nguyen to the United States.
23 Nevertheless, the Court held, for the class of
24 men overall, it was reasonably tailored and
25 they weren't going to focus on the specific

1 facts of Nguyen. You know --

2 JUSTICE KAGAN: You -- you started,
3 Mr. Mooppan, by saying that you can -- did
4 think that there were as-applied equal
5 protection challenges and giving an example of,
6 well, if it had also applied to the chess team
7 or something.

8 But that doesn't seem like an
9 as-applied challenge to me. That seems as
10 though there's just a provision of the law
11 that's facially invalid, right? So -- so let's
12 put those kinds of cases aside where you can
13 split the law up and say this part is facially
14 invalid, this part isn't, and -- and focus
15 instead on, like, real as-applied challenges.

16 Your classification is basically okay,
17 let's posit because it -- it -- it's -- there's
18 a substantial relationship to your goal. Is
19 there ever a time where a person can come in,
20 either on behalf of herself or on behalf of a
21 subclass, and say notwithstanding that there is
22 no valid facial challenge here, there is an
23 as-applied challenge, this subclass has to be
24 exempted?

25 MR. MOOPPAN: So it's a hard -- I

1 don't think this Court's cases have ever
2 squarely addressed that. I think, if it could
3 be brought, it would have to be a very
4 substantial percentage. So, to give you a
5 stylized hypothetical, if you had a law that
6 regulated on the basis of sex and you could
7 imagine three subgroups of males. For subgroup
8 1 and subgroup 2, each of whom were a third of
9 men, it was reasonably tailored. But, for
10 subgroup 3, which was a third of men, it
11 wasn't.

12 Maybe, in a circumstance like that,
13 the third subgroup could come in and say, for a
14 third of the applications of this law, it's not
15 reasonably tailored. That's not enough of a
16 substantial fit at least for us even if you're
17 going to uphold the law for the other two
18 thirds of men.

19 JUSTICE JACKSON: But why does it have
20 to be --

21 MR. MOOPPAN: But wherever you --

22 JUSTICE JACKSON: -- that many people?
23 Why, why? I don't understand why that subclass
24 can't make this showing and get the remedy as
25 to them.

1 MR. MOOPPAN: Because, if it's one
2 person, you're basically converting the law
3 into strict scrutiny.

4 JUSTICE JACKSON: But you're not,
5 you're not, I mean, because what you're doing
6 is you're allowing that individual to get the
7 remedy that we've said in cases like CASA is
8 the only thing that's available, that you can't
9 have this flow to everybody. It's just about
10 this individual and whether or not he's been
11 unconstitutionally treated.

12 MR. MOOPPAN: So, again, because, if
13 the law is reasonably tailored for
14 99.99999 percent of people and you come up with
15 a point fraction of percent and say that that
16 percent has a viable claim, that's -- that's
17 more than you would ever require under strict
18 scrutiny. I don't know of any claims that's
19 ever done that.

20 JUSTICE JACKSON: No, but, I mean,
21 what's the result of that? If you're making a
22 facial challenge, I understand that you're
23 saying that if the law has such a broad sweep
24 of constitutionality, then we're not going to
25 strike this thing down just because we can

1 identify one person for whom it doesn't apply.

2 But, if you are that one person and
3 you can show that this is unconstitutional as
4 applied to you, I guess I don't understand why
5 it matters that it's constitutional as applied
6 to 99.9 percent of the other people?

7 MR. MOOPPAN: Well, because I think
8 you're begging the question when you say it's
9 unconstitutional applied to you, laws that
10 classify on the basis of state -- sex only need
11 to be reasonably related. And so, if it's
12 reasonably related because it's tailored for
13 99 percent of people, then it is constitutional
14 even applied to you.

15 JUSTICE JACKSON: Even as applied?

16 MR. MOOPPAN: Yes.

17 JUSTICE JACKSON: So you are saying
18 there is no such thing as an as-applied
19 intermediate scrutiny challenge.

20 MR. MOOPPAN: I'm saying -- no, again,
21 if you -- if there was one where it was a third
22 of the people, I could maybe understand a claim
23 that the third of people, it's not reasonably
24 related for them even though it is for two
25 thirds of the people.

1 I'm just saying that when the numbers
2 get as small as they are here, that claim's not
3 viable. And we know that from this Court's
4 cases. Again, Michael M, every infertile man
5 and every victim --

6 JUSTICE JACKSON: No, I understand.
7 But we didn't do that same kind of quantitative
8 analysis in Caban, right?

9 MR. MOOPPAN: Right. So --

10 JUSTICE JACKSON: We didn't ask the --
11 the -- the -- the husband in Caban to figure
12 out where he stood relative to all husbands
13 who -- who --

14 MR. MOOPPAN: Right.

15 JUSTICE JACKSON: -- who were -- to
16 whom this was applied.

17 MR. MOOPPAN: Right. So, yeah, let me
18 talk about both Caban and Lehr.

19 JUSTICE JACKSON: Please. Please.

20 MR. MOOPPAN: So Caban is not an
21 as-applied challenge. Caban did not say that
22 there was some set of people for whom that law
23 was valid, the differential treatment on the
24 basis --

25 JUSTICE JACKSON: Itself. Lehr said

1 that about Caban.

2 MR. MOOPPAN: Right, right. But -- so
3 Lehr -- what Lehr held was the father in Lehr
4 had abandoned the child, and what Lehr
5 essentially said is, if the mother had
6 abandoned the child, the mother wouldn't get a
7 veto either.

8 JUSTICE JACKSON: Can I -- can I read
9 to you what Lehr said about Kahn? Discussing
10 Caban, Lehr explained: "We have held that
11 these statutes may not constitutionally be
12 applied in that class of cases where the mother
13 and father are, in fact, similarly situated
14 with regard to their relationship to the
15 child."

16 So Lehr is interpreting Caban as an
17 as-applied challenge, isolating a subset of
18 people where there's not actual similarly
19 situated circumstances, and Lehr is different.
20 It -- it is a facial challenge. It --

21 MR. MOOPPAN: I --

22 JUSTICE JACKSON: -- is in opposition.
23 No?

24 MR. MOOPPAN: What that sentence in
25 Lehr -- the facts of Lehr, there was no

1 differential treatment. The father in Lehr had
2 abandoned the child and the Court basically
3 rejected his claim because, if the mother had
4 abandoned the child, the mother also wouldn't
5 get a veto.

6 So Lehr is a case where the plaintiff
7 lost because there was no differential
8 treatment at all. Caban is a case where the
9 plaintiff won because the classification
10 couldn't be justified.

11 The only way those cases would support
12 their position is if either Caban or Lehr had
13 said there is some set of cases where the woman
14 gets a veto but the father doesn't and that's
15 fine. And neither Caban nor Lehr said that.

16 This Court has never said in those
17 line of cases that the mother could get a veto
18 but the father doesn't and that's perfectly
19 okay. So that's what they're arguing, and
20 neither of those cases support it.

21 JUSTICE SOTOMAYOR: Counsel, I -- I --

22 MR. MOOPPAN: You had also asked about
23 VMI, so let -- if I could just briefly address
24 why VMI doesn't support them either.

25 In VMI, the point was yes, lots of

1 women couldn't -- wouldn't want to go to VMI,
2 but also lots of men wouldn't want to go to
3 VMI.

4 As to the set of people who were
5 actually burdened by the exclusion, all of the
6 women the law was not fairly tailored. The
7 argument that VMI was -- that Virginia was
8 making VMI was essentially equivalent to the
9 following.

10 If MIT said, you know, most women and,
11 frankly, most men can't meet our math and
12 science standards, so we're just not going to
13 allow women to come to MIT at all, of course,
14 this Court would reject that argument. That
15 was the argument that they were making in VMI,
16 that just very few women wanted to attend.
17 But, for the set of women who wanted to attend,
18 the law was not properly tailored because there
19 was no justification for excluding them.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Justice Thomas?

23 Justice Alito?

24 JUSTICE ALITO: Under Title IX, what
25 does the term "sex" mean?

1 MR. MOOPPAN: We think it's properly
2 interpreted pursuant to its ordinary
3 traditional definition of biological sex and I
4 think probably, given the time it was enacted,
5 reproductive biology is probably the best way
6 of understanding that.

7 JUSTICE ALITO: All right. Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Sotomayor?

10 JUSTICE SOTOMAYOR: You know, the
11 problem I'm having with what you're doing now
12 is you're doing exactly what Justice Stevens
13 said should be done, and he admitted later in
14 O'Connor that the Court roundly rejected that
15 in Caban and Lehr. He wanted to do exactly
16 what you said.

17 He said, in dissent, this Court should
18 be -- should be analyzing equal protection,
19 contending that if the classification is
20 justified in those cases in which the rule has
21 its most frequent applications, then it doesn't
22 violate equal protection.

23 And then he said the Court should
24 presume that the law is entirely valid and
25 require a challenger to demonstrate that its

1 unjust applications are sufficiently numerous
2 and serious to render it invalid. It's exactly
3 what you said we should be doing.

4 So you want us to accept what the
5 dissent did and not what the majority said it
6 was doing in Caban or Majure.

7 In VMI, Justice Scalia said the same
8 thing, that taking the majority's logic to its
9 logical conclusion, a single woman who wanted
10 to attend could satisfy the -- and satisfy the
11 admissions requirement would be enough for an
12 as-applied challenge and that shouldn't be the
13 law.

14 You're asking the Court to adopt views
15 expressed by two minority dissenting judges in
16 this case. We've been doing an awful lot of
17 that lately, but -- you're smiling because it's
18 true. But you're asking us to adopt an
19 approach that we have rejected as a majority
20 court and accept what dissenters are doing,
21 correct?

22 MR. MOOPPAN: With all respect, no.
23 Again, in Caban, nowhere in the majority
24 opinion in Caban did they say this law is
25 reasonable for certain classes of men, but it's

1 not reasonable --

2 JUSTICE SOTOMAYOR: Oh, but it
3 exact -- it did exactly. It said it's
4 reasonable for -- it's reasonable for fathers
5 who -- who don't support their children and
6 won't be reasonable for fathers who don't.

7 MR. MOOPPAN: With all respect, Your
8 Honor, it did not. Caban did not uphold that
9 law as applied to any men who hadn't abandoned
10 their child. Now it is true Lehr upheld the
11 law for someone who had abandoned their child,
12 but the reason it upheld the law is because --

13 JUSTICE SOTOMAYOR: But the logic
14 of --

15 MR. MOOPPAN: -- women who abandoned
16 their child --

17 JUSTICE SOTOMAYOR: -- but the logic
18 of the -- of the opinion is that if the reverse
19 had been true, it would have ruled the way it
20 did.

21 MR. MOOPPAN: I don't think that's
22 true, but even if you thought that was --

23 JUSTICE SOTOMAYOR: Counsel, then I
24 have --

25 MR. MOOPPAN: Sorry.

1 JUSTICE SOTOMAYOR: No, I -- I just
2 have one last question.

3 What's percentage enough? There are
4 2.8 million transgender people in the United
5 States. That's an awfully big figure. I do
6 understand that in Idaho, this was the first
7 transgender child, but that just happenstance
8 as to location.

9 What makes a subclass meaningful to
10 you? Is it 1 percent, 5 percent, 30 percent,
11 15 percent? One is not enough for you, but
12 why?

13 MR. MOOPPAN: Well, so I'll say --

14 JUSTICE SOTOMAYOR: When the numbers,
15 this -- the numbers don't talk about the human
16 beings.

17 MR. MOOPPAN: So I'll say a couple
18 things about that, Your Honor. The first I'll
19 say is, if the distinction between intermediate
20 scrutiny and strict scrutiny is the difference
21 between a perfect fit and a reasonable fit,
22 1 percent surely has to be on the side that's
23 reasonable.

24 But, if you don't want to just take
25 the 1 percent on its own face, I would

1 point the Court -- if you want to focus on
2 majority opinions or opinions for the Court,
3 Michael M rejected the challenge even though
4 that law wouldn't, for an infertile couple,
5 infertile, either infertile rapists or
6 infertile victims, the justification didn't
7 apply. There are certainly more infertile
8 people --

9 JUSTICE SOTOMAYOR: But they did it --
10 they did it on a different basis, which had to
11 do with different harms to a previous --

12 MR. MOOPPAN: No, that's not true,
13 Your Honor. With all respect --

14 JUSTICE SOTOMAYOR: Well, I can read
15 the decision and tell you.

16 MR. MOOPPAN: With all respect, that
17 paragraph, it says, even setting aside the
18 physical differences, it is ludicrous to think
19 we have to exclude infertile children from this
20 rape law.

21 And there are certainly more infertile
22 people than there are trans-identifying
23 individuals who take these drugs and eliminate
24 all their physical advantages. So, if we just
25 focus on holdings of this Court, we know that

1 this percentage is too small.

2 CHIEF JUSTICE ROBERTS: Justice Kagan?

3 JUSTICE KAGAN: Mr. Mooppan, just
4 assume with me that there is such a thing as an
5 as-applied equal protection challenge. What
6 would -- what would it take to bring that
7 challenge? What should the plaintiff have to
8 show?

9 MR. MOOPPAN: I think they would have
10 to show that, A, they are a substantial enough
11 percentage to be able to bring an as-applied
12 claim and then, as to that group, the law
13 wasn't reasonably tailored for them.

14 JUSTICE KAGAN: And they would have
15 the burden on that? It's not -- it's not for
16 the state to come back and say -- the state
17 does not have to satisfy that burden initially?

18 MR. MOOPPAN: I -- certainly not the
19 first of the two. As I said, I think, if you
20 thought that you could have a valid as-applied
21 claim and they had made it through the gate of
22 saying they were a big enough class, then I
23 think, consistent with normal intermediate
24 scrutiny, I think the state does bear the
25 burden of showing justification for that class.

1 So I think the state would have it on
2 the second step. The plaintiff would have it
3 on the first step.

4 JUSTICE KAGAN: I see. So they have
5 to sort of get through the gate of we're big
6 enough for you to take us seriously, but then
7 the state has it?

8 MR. MOOPPAN: I think -- I think that
9 would be how you would analyze it.

10 JUSTICE KAGAN: Uh-huh. And -- and I
11 think you were asked this, but big enough to be
12 taken seriously, like, how do we decide that?

13 MR. MOOPPAN: You know, again, the
14 Court's cases haven't really talked about it.
15 I think the way I would think about it
16 analytically is the difference between
17 intermediate scrutiny and strict scrutiny is
18 the difference between a perfect fit and a
19 reasonable fit. So is there enough of a group
20 here that we think that we're not essentially
21 holding the state to perfection?

22 If it's so close to perfection, then
23 you're really undermining the difference
24 between the two. If it's a big enough group
25 that it -- we're not asking for perfection --

1 JUSTICE KAGAN: I mean, are you really
2 undermining the difference between the two?
3 Because, usually, we think of the difference
4 between the two with respect to facial
5 challenges. So you have to do a whole lot less
6 to show that the facial classification that
7 you're making is okay.

8 MR. MOOPPAN: I don't think so. I do
9 think that you would very much be undermining
10 the difference between the two if you said that
11 even a single person could bring an as-applied
12 intermediate scrutiny case. And, again, I
13 would urge Your Honor to read Edge
14 Broadcasting. There's a whole section of the
15 opinion that's on this exact issue and says
16 exactly what I'm saying. Now, admittedly, it's
17 a First Amendment case, but it's an
18 intermediate scrutiny First Amendment case.

19 JUSTICE KAGAN: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch?

22 JUSTICE GORSUCH: If the class is big
23 enough, in your discussion, say, a third, as
24 you discussed, might it just fail intermediate
25 scrutiny facially? I mean, at some point, do

1 they collapse?

2 MR. MOOPPAN: So I -- I -- I -- I
3 agree that that's part of why these are so
4 unusual. If there's a big enough group that
5 you've excluded, you -- you're exactly right,
6 it -- it might not be reasonably related as a
7 whole and so then it facially fails. But I
8 could at least conceptualize a situation where
9 it covers enough people validly that a facial
10 challenge fails, but it covers enough -- a big
11 enough group that it -- it can't be justified
12 for, then maybe you could bring an as-applied
13 claim.

14 I -- I don't think this Court really
15 needs to grapple with these fairly tricky
16 analytical questions because this is the
17 world's easiest as-applied claim to reject. It
18 is a fraction of a percent. Whatever
19 as-applied claim you could bring, it cannot
20 possibly be a fraction of a percent. That
21 would be totally inconsistent with this Court's
22 decision in Michael M. and Nguyen, both of
23 which rejected claims by people who had a much
24 greater percentage than a fraction of a
25 percent.

1 JUSTICE KAVANAUGH: As you know, a lot
2 of states allow biological males who identify
3 as female, transgender women and girls, to play
4 in women's and girls' sports. And you heard
5 Idaho say that the states -- those states,
6 other states, constitutionally may allow that,
7 consistent with the Equal Protection Clause.

8 Do you agree with that?

9 MR. MOOPPAN: We have been challenging
10 those laws under Title IX in lower courts. And
11 as we said in our brief, we would urge the
12 Court to just reserve judgment on --

13 JUSTICE KAVANAUGH: Can you answer the
14 Equal Protection Clause question that I just
15 asked?

16 MR. MOOPPAN: I believe -- you know,
17 I'm not sure if we've taken a position on the
18 equal protection piece.

19 JUSTICE KAVANAUGH: Do you have a
20 position?

21 MR. MOOPPAN: I -- I don't right now.
22 I'm sorry.

23 JUSTICE KAVANAUGH: Okay. And on
24 Title IX, Footnote 2 of your brief seemed to
25 say that you don't have a position on how Title

1 IX applies to those states as well.

2 MR. MOOPPAN: No. So we do have -- we
3 are actively litigating in lower courts, and we
4 are saying that they are violating Title IX.
5 What the footnote said is it's a very different
6 question, and we would urge this Court to make
7 clear it's not resolving that question one way
8 or the other by what it says in this case.

9 JUSTICE KAVANAUGH: Okay. So you have
10 a position on it, but you don't want us to say
11 anything about that --

12 MR. MOOPPAN: Right.

13 JUSTICE KAVANAUGH: -- issue, correct?

14 MR. MOOPPAN: It's a very different
15 question analytically, and so we --

16 JUSTICE KAVANAUGH: I understand.
17 That's why I'm asking.

18 MR. MOOPPAN: Yes.

19 JUSTICE KAVANAUGH: Yeah. Okay.
20 Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Barrett?

23 JUSTICE BARRETT: So, Mr. Mooppan,
24 when Justice Kagan started asking the questions
25 early on about the as-applied equal protection

1 challenges, she pointed out that there was kind
2 of a surprising dearth in the case law really
3 grappling with this. But I think you wouldn't
4 be getting all the questions that you're
5 getting about Caban and Lehr and, you know,
6 Michael M. and VMI if it weren't the case that
7 you can read some lines of cases either way.

8 So let's say that there is this
9 uncertainty. We haven't really confronted it.
10 As far as I can tell, it's because it just
11 wouldn't be relevant in strict scrutiny because
12 it's often fatal in fact -- or typically or
13 almost always fatal in fact. So it's really an
14 intermediate scrutiny problem. Maybe it's a
15 rational basis problem too. I mean, maybe this
16 would have implications for all kinds of review
17 because it seems to me that if you're never
18 talking -- in -- in any case in which scrutiny
19 is not talking about a perfect fit, you might
20 have this problem.

21 What would it do essentially -- I'm
22 just trying to think about the ramifications of
23 allowing as-applied challenges. It seems like
24 it's at war with the theory of intermediate
25 scrutiny for some of the reasons that Idaho

1 said because all lines, all classifications
2 overshoot or undershoot, right?

3 So can you imagine how intermediate
4 scrutiny works? And this is -- I'm not -- I'm
5 not -- this isn't designed to be a lay-up or
6 something. It's honestly just something I'm --
7 I'm grappling with. How would it even work
8 going forward?

9 MR. MOOPPAN: Yeah. So I'm not sure I
10 can say a whole lot more than what I've already
11 said, which is I do think it's a problem. The
12 reason I think it's a problem is it's
13 conflating the difference between strict
14 scrutiny and a perfect fit --

15 JUSTICE BARRETT: Yeah.

16 MR. MOOPPAN: -- and intermediate
17 scrutiny and a reasonable fit. And I worry
18 that if you allow as-applied claims to a small
19 enough group, you're essentially collapsing the
20 difference because you're essentially requiring
21 a perfect fit because, whenever you have a
22 reasonable but not perfect fit, the subset who
23 falls within that will come in and bring an
24 as-applied claim. And so the state will
25 essentially have to have perfectly tailored

1 laws because any single person who -- for whom
2 you don't have a perfect fit could come in and
3 bring an as-applied challenge.

4 JUSTICE BARRETT: Including, say, you
5 know, boys who just couldn't make the team
6 because they weren't good enough, because the
7 law, to the extent that it's designed to
8 protect competitiveness and safety, et cetera,
9 wouldn't pose the same danger in the case of a
10 boy who just isn't good enough to make the male
11 team but perhaps could make the girl team.

12 MR. MOOPPAN: At least arguably,
13 depending on what their exact theory is for --

14 JUSTICE BARRETT: Definition is.

15 MR. MOOPPAN: -- the justification.

16 JUSTICE BARRETT: Thanks.

17 CHIEF JUSTICE ROBERTS: Justice
18 Jackson?

19 JUSTICE JACKSON: I guess I'm still
20 struggling to understand why the state would
21 have to have perfectly tailored laws. I would
22 think the state would just have to make
23 exceptions where people can demonstrate that
24 the justification that makes the state's
25 conduct constitutional doesn't apply to them.

1 MR. MOOPPAN: Right. So making
2 exceptions is tailoring your law. That's
3 literally what it means, to tailor your law --

4 JUSTICE JACKSON: No, but from --

5 MR. MOOPPAN: -- is --

6 JUSTICE JACKSON: Yes from the
7 standpoint of a facial challenge when we're
8 asking because whether this law has to be
9 stricken completely because it isn't, you know,
10 perfectly tailored. What we're doing is a
11 different exercise in the as-applied challenge.
12 We're asking whether -- even though this law is
13 overbroad, we're assuming it's overbroad now
14 because you've got in there some people to whom
15 it should not be applied.

16 What do we do about that? What is the
17 remedy that those people can get? And what I
18 hear you saying is they get no remedy unless
19 they can demonstrate that there are enough
20 people that this is sufficiently overbroad,
21 that it's no longer something the state can do.

22 MR. MOOPPAN: Right.

23 JUSTICE JACKSON: And I don't
24 understand why that is. Why wouldn't -- when
25 we identify people for whom this law operates

1 unconstitutionally -- that's the premise
2 because now I'm in remedy, right? The premise
3 is that you have a person who successfully made
4 an as-applied challenge. This, to me,
5 unconstitutional. You say too bad unless you
6 can show that it's also unconstitutional with
7 respect to a sizable number of other people.

8 And I don't understand why that's the
9 case.

10 MR. MOOPPAN: Because I don't agree
11 with the premise that the -- the law operates
12 unconstitutionally as to an individual person
13 just because it doesn't -- the justification
14 for the law doesn't apply to that person.
15 That's what this Court held in both *Nguyen* and
16 *Michael M.* It recognized that the
17 justification that was put forth for the law
18 might not be true for each and every person the
19 law applied to, but this Court said that's fine
20 because --

21 JUSTICE JACKSON: And if we read *Caban*
22 and *Lehr* to say something different, if I
23 disagree with you, then -- then we just --

24 MR. MOOPPAN: Well, *Nguyen* is the most
25 recent of the cases.

1 JUSTICE JACKSON: Okay.

2 MR. MOOPPAN: So even if you read the
3 cases that way, and Nguyen is explicit about
4 this. Nguyen explicitly says -- I believe
5 it's -- I'm not going to get the page number
6 right, but Nguyen explicitly says that we
7 recognize that there are some men who are
8 present at the birth of their child, who have a
9 DNA test to prove that they're the father, that
10 have been with their kids their entire life --

11 JUSTICE JACKSON: Yeah.

12 MR. MOOPPAN: In fact, that was
13 probably true of Nguyen's father. Tough luck.

14 JUSTICE JACKSON: Okay. So --

15 MR. MOOPPAN: You lose.

16 JUSTICE JACKSON: -- Justice Barrett
17 is worried, I think, she said, about the
18 implications of allowing as-applied challenges.
19 I guess I am worried about the implications of
20 not because, as Justice Kagan said, we have
21 consistently said that facial challenges are
22 really hard to get, that as-applied is really
23 all there is.

24 So now we're in a world in which you
25 are setting up new barriers, in my view, to

1 establishing an as-applied challenge. So, at
2 the end of the day, is your position that, you
3 know, no matter how clear it is that the
4 particular prescription is operating to
5 disadvantage a particular group that classifies
6 you, treats you differently, you're just not
7 going to be able to get a remedy for that
8 individually in -- anymore?

9 MR. MOOPPAN: Let me take a step back,
10 and then maybe this will help.

11 Laws that classify in general are
12 subject to rational basis review. Now there's
13 higher scrutiny for classifications on some
14 things. For race, we have strict scrutiny.
15 For sex, we only have intermediate scrutiny.

16 What that means is it is okay to have
17 a classification that doesn't operate perfectly
18 for each and every person. So it's not the
19 problem that it's unconstitutional but there's
20 no remedy. The point is that it is
21 constitutional even though it's overbroad.

22 JUSTICE JACKSON: I don't necessarily
23 think that's the take-away. I think what that
24 means is it's okay because we realize that in
25 some circumstances, maybe even in many

1 circumstances, this classification is
2 justified.

3 But, when we can identify a situation
4 in which it's not, I don't understand why a
5 person can't bring that challenge.

6 MR. MOOPPAN: Well, I can't say
7 anything better than, in both Michael M and
8 Nguyen, the Court recognized that there were
9 people who it wasn't tailored for.

10 JUSTICE JACKSON: Got it.

11 MR. MOOPPAN: They didn't give them a
12 remedy.

13 JUSTICE JACKSON: Thank you.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Ms. Hartnett.

17 ORAL ARGUMENT OF KATHLEEN R. HARTNETT

18 ON BEHALF OF THE RESPONDENTS

19 MS. HARTNETT: Mr. Chief Justice, and
20 may it please the Court:

21 Idaho concedes that H.B. 500 draws a
22 sex-based line by categorically excluding all
23 students with a biological sex of male from
24 women's teams. Sex classifications like that
25 are closely scrutinized under the Equal

1 Protection Clause to ensure they rest on
2 evidence, not supposition.

3 Idaho's articulated justification for
4 this line is to protect women's sports from
5 birth sex males because of their "biological
6 advantages." That means H.B. 500 is aimed at
7 controlling for sex-based biological
8 advantages, not for all the many reasons one
9 athlete may be better than another that have
10 nothing to do with sex.

11 On the preliminary record in this case
12 and as the experts below agreed, circulating
13 testosterone after puberty is the main
14 determinant of sex-based biological advantage
15 that H.B. 500 sought to address.

16 And on this record, Lindsay Hecox has
17 mitigated that advantage because she has
18 suppressed her testosterone for over a year and
19 taken estrogen.

20 H.B. 500 thus fails heightened
21 scrutiny as applied to Lindsay and transgender
22 women like her who have no sex-based biological
23 advantage as compared to birth sex females.
24 That analysis would come out the other way for
25 the untalented cisgender boy. He would have

1 the same sex-based advantage, the circulating
2 testosterone. He just would not be as good at
3 sports.

4 It also would come out the other way
5 here, for example, if a transgender woman had
6 gone through a male puberty and had not
7 mitigated that advantage.

8 This Court's cases have recognized
9 that when the government's justification for a
10 sex-based classification does not apply to a
11 discrete subgroup of those classified, that
12 classification is unconstitutional regarding
13 that subgroup.

14 And that holding in Caban, which I'm
15 sure we'll discuss further, has been repeatedly
16 referred to and reaffirmed, including more
17 recently than Nguyen and Morales-Santana.

18 Because the Court can affirm based on
19 sex discrimination, it's not necessary to reach
20 the question of transgender status
21 discrimination, but H.B. 500 also fails on that
22 basis. If the Court does not find the case
23 moot, the preliminary injunction should be
24 affirmed.

25 I welcome the Court's questions.

1 JUSTICE THOMAS: Couldn't you make a
2 similar argument with respect to Title IX
3 itself and the sex difference, the -- the --
4 the fact that you can have male and female
5 sports?

6 MS. HARTNETT: No, Your Honor. So I
7 think the point would be -- the question would
8 be would the sex line that's drawn in --

9 JUSTICE THOMAS: Yeah.

10 MS. HARTNETT: -- sports, and that's a
11 line that does exist, you know, as a
12 commonplace line, is that substantially related
13 to the important state interest particularly.

14 JUSTICE THOMAS: Well, you could have
15 individuals who, for example, don't present the
16 problem of physically out-matching women in a
17 particular sport or a group of people who
18 don't.

19 MS. HARTNETT: Right. And the
20 broader -- the broader goal here, of course, is
21 not sex separation for its own sake. The idea
22 is to have equality in sports, and that's the
23 ultimate objective that I think we're all
24 talking about, not separation for its own sake.

25 JUSTICE THOMAS: Well, I -- well, my

1 point is the argument that you're making now
2 with respect to this subcategory, could it not
3 also be made with respect to the sex separation
4 in Title IX generally?

5 MS. HARTNETT: Occasionally, there
6 have been examples of a -- of a boy challenging
7 the separate teams because they want access to
8 a team that's not available for the boys
9 because of the way Title IX works.

10 To be clear, we've never -- we have
11 not aware of an example of somebody, a boy,
12 challenging the sex separation so that they can
13 be on the girls team where there's a boys team
14 that exists.

15 In that case, they -- they -- the
16 courts do look at that under intermediate
17 scrutiny and they determine that the overall
18 goal of ensuring equality in sport opportunity
19 for women and men allows for the distinction.

20 CHIEF JUSTICE ROBERTS: Counsel, I
21 wonder if you could address what has been, I
22 think, the basic focus of the discussion up
23 until now, which is, as I see it anyway,
24 whether or not we should view your position as
25 a challenge to the distinction between boys and

1 girls on the basis of sex or whether or not you
2 are perfectly comfortable with the distinction
3 between boys and girls, you just want an
4 exception to the biological definition of
5 girls.

6 MS. HARTNETT: Thank you, Your Honor.

7 We're not asking for a particular
8 definition or even really an exception. I -- I
9 think what we're asking for, it is similar to
10 the -- the nature of the challenge that was
11 brought in Caban.

12 There, they were -- they were -- so
13 the situation there were they were unmarried
14 fathers that were barred completely from --
15 from objecting to their child's adoption. And,
16 there, the fathers said: We'd like to be able
17 to have that objection, we have a substantial
18 relationship with the children.

19 And in the -- in the group -- and
20 there was actually a pretty tailored group in
21 that case. In Justice Stevens' dissent, he
22 points out it has to be an older child and
23 there has to be participation in the rearing.
24 For that subgroup, they were allowed to
25 challenge that and get the relief.

1 And so I do note too that Justice
2 Stevens pointed out that it was an
3 indeterminately small subgroup of an unknown
4 number of fathers. So I think that's the
5 analogy that we would draw here to what we're
6 asking.

7 CHIEF JUSTICE ROBERTS: So what would
8 be the appropriate inquiry, and it's asking you
9 basically for your response to Mr. Mooppan
10 in -- in particular, that going sort of
11 challenge by challenge, whether it's based on
12 transgender status or anything else, in this
13 situation is really transforming intermediate
14 scrutiny to strict scrutiny.

15 MS. HARTNETT: We agree there would
16 have to be a group. I don't think -- in our
17 view, in a way, at least the way that the cases
18 have worked out, and this is Caban and Lehr, it
19 also goes through Nguyen and Sorales --
20 Morales-Santana.

21 I would also direct the Court to
22 the -- the illegitimacy or the non-marital
23 children case. Those are Trimble and Lalli.
24 They're cited in the B.P.J. brief in the same
25 way that I think the Court looks is there a

1 definable group that's not just a person who
2 happens to not meet the -- the fit but actually
3 a group where the rationale doesn't make sense
4 for the subgroup.

5 But the group can be somewhat
6 specific, like, in the case of Caban, it was
7 actually unmarried fathers who had acknowledged
8 paternity and had a substantial relationship.

9 CHIEF JUSTICE ROBERTS: Well, the --
10 MS. HARTNETT: In the Trimble case, it
11 was -- it was, you know, non-marital children
12 who had had confirmation of paternity and a
13 relationship with the father.

14 CHIEF JUSTICE ROBERTS: Well, that
15 sounds an awful lot like strict scrutiny. Or,
16 unless you're going to say whenever you can
17 come forward with anything that is an exception
18 to the boy/girl distinction, any case at all,
19 you have -- you -- you can go forward with --
20 with a strict scrutiny challenge, whether
21 it's -- whether it's, you know, 1 percent or
22 whether it's 12 people, and I'm just not quite
23 sure -- grasping why your position isn't really
24 an effort to apply strict scrutiny to a
25 distinction that we haven't applied it to.

1 MS. HARTNETT: Thank you, Your Honor.

2 I mean, all I can say, and I do agree
3 the cases are not that many in this context. I
4 think it's possibly because facial challenges
5 were more in vogue before and now as-applied
6 challenges are more preferred. And so that may
7 be explaining why a statute in Caban, for
8 example, wasn't viewed as carving out the
9 statute for the people it couldn't be applied
10 to versus facially invalidating it.

11 But I do think it matters because it's
12 not just a matter of fit that makes
13 intermediate scrutiny different. There also
14 has to be an important government interest, not
15 a compelling one. And this is really critical.
16 You can burden the right in intermediate
17 scrutiny.

18 So, in Nguyen, for example, that
19 person failed because he actually didn't take
20 the steps that would be needed to confirm the
21 paternity. So you're allowed to actually --
22 he -- he may have had a compelling case on a
23 one-off basis that, hey, I actually do have
24 that relationship with the citizen, father,
25 when I was born abroad, but he didn't take the

1 steps that he needed to do.

2 The same thing with Lehr and the same
3 thing with Lalli in the Trimble/Lalli line. So
4 you --

5 CHIEF JUSTICE ROBERTS: And --

6 MS. HARTNETT: -- you can actually
7 burden the right by saying Lindsay Hecox has to
8 actually submit testosterone tests or something
9 else different than other people and that would
10 not be allowed if it were strict scrutiny.

11 CHIEF JUSTICE ROBERTS: And if we
12 follow your approach, which allows a challenge
13 to even a fairly small group that's affected,
14 in what way would we not -- that would apply
15 across an entire range of things where there's
16 a distinction currently between boys and girls
17 quite apart from just athletics, is that
18 correct?

19 MS. HARTNETT: Your Honor, I -- I -- I
20 do think that the question would -- I -- I
21 think we're not trying to invent something
22 here. I think we were trying to draw from what
23 we understood to be precedent from the Court.

24 And I would direct you to the equal
25 protection scholars' brief. They have some

1 scholars that have actually focused on this
2 question of what does an as-applied challenge
3 mean in the equal protection context. But I
4 think taking a step back, the question always
5 would be looking at what the state's asserted
6 interest is here.

7 And, here, the state is not asserting
8 an interest of having the boys' teams be better
9 and the girls' teams be worse. What they're
10 trying to do is control for a sex-based
11 biological advantage. And so I think a lot of
12 the hypotheticals that you can -- maybe
13 understandably think about, what about the
14 untalented cisgender boy? What about the
15 transgender woman who didn't mitigate? You
16 know, what about this or that? That gets taken
17 care of because the testosterone is the
18 advantage on this record. And almost all the
19 people that might want to try to get an
20 as-applied challenge under some other
21 idiosyncratic framework would not be able to
22 show that their exclusion actually was --

23 JUSTICE KAGAN: And, Ms. Hartnett --

24 CHIEF JUSTICE ROBERTS: Okay. This --
25 and this will be my last question --

1 MS. HARTNETT: No, no, please.

2 CHIEF JUSTICE ROBERTS: -- for my --
3 my point was more that how we approach the
4 situation of looking at it not as boys versus
5 girls but whether or not there should be an
6 exception with respect to the definition of
7 girls, that would -- if we adopted that, that
8 would have to apply across the board and not
9 simply to the area of athletics.

10 MS. HARTNETT: I mean, I think, as a
11 general framework for equal protection
12 challenges that, again, predated this case,
13 this litigation, there have been boys that have
14 tried these challenges in the past. They
15 generally have failed because they actually
16 don't lack the opportunity or actually are
17 treated -- they're not being treated
18 differently than similarly situated
19 individuals.

20 JUSTICE KAGAN: You -- you said,
21 Ms. Hartnett, that you're not talking about
22 individual by individual by individual; it has
23 to be a defined group.

24 So how big does the group have to be?
25 How does it have to be defined? And why are

1 there those requirements? If what you're
2 saying is right about equal protection law, why
3 wouldn't it extend to individual by individual
4 by individual?

5 MS. HARTNETT: I don't think the Court
6 has foreclosed that other than this -- this
7 actual obvious conceptual question of, like,
8 when do we get towards strict scrutiny? I
9 think what I could tell you is that in the way
10 that the Court looked at it from Caban to Lehr
11 to Nguyen to Morales-Santana and then also
12 Trimble and Lalli for the case of non-marital
13 children, the Court seems to usually be trying
14 to figure out not just is this individual
15 somehow idiosyncratic, but are they part of a
16 group that actually doesn't make sense to
17 exclude? And that makes sense because usually
18 you're trying to figure out is the interest
19 served by the exclusion, and there's usually
20 some principle why a subgroup was not properly
21 included.

22 JUSTICE KAGAN: And what are the
23 requirements of -- what does that group have to
24 look like? Mr. Mooppan suggested that it has
25 to be, you know, fairly sizable. It can't be

1 1 percent or less.

2 You know, why not? Why? What are the
3 other requirements? Like, how do you go about
4 defining which group -- which -- which
5 subclasses get to make this challenge and which
6 subclasses don't?

7 MS. HARTNETT: That's a good question,
8 Your Honor. I think, in Trimble -- this is
9 again the non-marital children case cited in
10 the B.P.J. brief -- they said discrete
11 categories that were unnecessarily excluded,
12 that was the notion there.

13 So I think that's where we were trying
14 to make clear that we don't think it can just
15 be we have a person that is extraordinarily
16 idiosyncratic and they should get their case.
17 I don't think anything in your -- your cases
18 rules that out. I guess that's not actually
19 the case presented here. We think we have an
20 easier case because we actually have identified
21 a discrete subgroup, transgender women who do
22 not have an athletic advantage. I --

23 JUSTICE JACKSON: But I don't think
24 you're answering Justice Kagan's question,
25 which is fine if you -- if you buy into the you

1 have this subgroup as you've identified it.

2 Mr. Mooppan says that subgroup has to be big
3 enough.

4 Do you agree? And, if so, how do we
5 evaluate that?

6 MS. HARTNETT: I don't agree with
7 that. I think that is the -- I think, in a
8 way, this is the Caban dissent kind of coming
9 back after many decades because, there, Justice
10 Stevens said in the dissent he's assume -- that
11 the case in that -- in that case was assuming
12 that the case extended only to himself and, by
13 implication, to an unknown number of fathers
14 and went on to say "indeterminately small
15 part."

16 So I think there's never been a
17 numerical requirement. It's more of a question
18 of whether there's a principle that -- some
19 sort of a principle that allows for the
20 exception in light of the failure to align with
21 the interest that the state's asserting.

22 And, here, I think the record -- and,
23 again, we're at a preliminary injunction stage,
24 but the preliminary record was that the
25 exclusion of our client actually was not going

1 to advance the interests nor the exclusion of
2 other transgender women who do not -- who have
3 taken efforts to mitigate their testosterone,
4 which was -- on the record here, again, was the
5 main driver of differential athletic
6 performance.

7 JUSTICE GORSUCH: Counsel, one might
8 wonder whether the efforts to refashion our
9 equal protection jurisprudence here that we've
10 been discussing at length on sex discrimination
11 is really a fallback from what might be -- one
12 might wonder might have been your primary
13 argument, which is that transgender status is
14 itself a discreteness or a class.

15 And I -- I'm curious why you haven't
16 brought that up and what thoughts you want to
17 share with us?

18 Your friend on the other side said the
19 laws you pointed to in your brief don't address
20 transgender persons as such and that makes all
21 the difference. Thoughts?

22 MS. HARTNETT: Well, you're -- thank
23 you for the opportunity to address that. I
24 think we were trying to find the most
25 straightforward way to help the Court to an

1 answer here. And I think we do the --

2 JUSTICE GORSUCH: Well, I've been
3 wondering what's straightforward after all this
4 discussion.

5 (Laughter.)

6 MS. HARTNETT: No, I understand. I
7 think these are -- these are older cases, but
8 they are -- it's very interesting to see the
9 debate between the majority and Justice Stevens
10 and then Justice Stevens and O'Connor kind of
11 admitting that he was applying his dissent in
12 Caban. So these are cases from the Court. We
13 think they have some --

14 JUSTICE GORSUCH: Of course.

15 MS. HARTNETT: But, to the question
16 you've asked, I do think it's important to -- I
17 think, to begin with, you heard my friend on
18 the other side talk about -- not about
19 cross-dressing or other laws. They didn't have
20 any response to our point because there isn't
21 one, that transgender people were categorically
22 excluded from immigration to this country under
23 an overall umbrella of being a psychopath.
24 That was the way -- that was the actual
25 decision of this Court in the Boutilier case.

1 It was interpreting language of Congress that
2 determined that when Congress used the term
3 "psychopathic personality" to exclude people,
4 they meant to include homosexuals and other sex
5 perverts. And then that --

6 JUSTICE GORSUCH: Perhaps not our
7 finest hour.

8 MS. HARTNETT: Well, it's not your
9 fault, but I think that --

10 (Laughter.)

11 JUSTICE GORSUCH: Thank you for that.

12 (Laughter.)

13 MS. HARTNETT: No, no, no. Well, and
14 I -- and I -- it was by reference to a
15 congressional report. They were trying to
16 figure out what did Congress mean, and there
17 actually was a Public Health Service report. I
18 would direct your attention to it because I
19 think it really does go to the level -- I was
20 surprised when I read this document. It's 1952
21 U.S.C.C.A.N. 1653 at 1701, trying to explain
22 why sex perverts would include homosexuals,
23 transvestites, which was the name of the day
24 for transgender people. The term "transgender"
25 did not become more common until now. So I

1 think reading Boutilier and reading the
2 U.S.C.C.A.N. that's cited in Boutilier is
3 instructive.

4 I also think that the laws on
5 cross-dressing, I think that's an interesting
6 point because what that actually means as a
7 practical matter for the transgender person was
8 that they weren't allowed to leave their home
9 as themselves to enjoy all of their civil
10 rights. And I don't think -- we don't want to
11 exaggerate it, but we also don't want to
12 understate it. There were major cities in the
13 country, Chicago, others, that actually barred
14 you under subject to criminal penalty for
15 leaving your house in clothes that weren't
16 matching your gender, and people were actually
17 prosecuted under those laws.

18 So, again, I appreciate it, and we're
19 not saying you have to have the same history.
20 We're certainly not equating the experience of
21 the transgender community to that of Black
22 Americans or women, but just as illegitimacy or
23 non-marital children has been recognized as a
24 class that gets a closer look, I think we
25 respectfully submit here it would make sense to

1 do so.

2 We appreciate, though, this is a
3 question that the Court hasn't recognized a
4 suspect class for a long time. They also
5 haven't shut the door to a suspect class since
6 Cleburne. So I think we'd prefer -- to the
7 extent the Court was still finding another path
8 forward, the reason why we tried to help you
9 find a way to answer the question here based on
10 sex discrimination.

11 JUSTICE ALITO: Well, to pick up on
12 the issue of discrimination on the basis of
13 transgender status, let me just go back to --
14 let me go to some basics.

15 Do you agree that a school may have
16 separate teams for a category of students
17 classified as boys and a category of students
18 classified as girls?

19 MS. HARTNETT: Yes, Your Honor.

20 JUSTICE ALITO: If it does that, then
21 is it not necessary for there to be, for equal
22 protection purposes, if that is challenged
23 under the Equal Protection Clause, an
24 understanding of what it means to be a boy or a
25 girl or a man or a woman?

1 MS. HARTNETT: Yes, Your Honor.

2 JUSTICE ALITO: And what is that
3 definition? For equal protection purposes,
4 what does -- what does it mean to be a boy or a
5 girl or a man or a woman?

6 MS. HARTNETT: Sorry, I misunderstood
7 your question. I think that the underlying
8 enactment, whatever it was, the policy, the
9 law, the -- would have to -- we'd have to have
10 an understanding of how the state or the
11 government was understanding that term to
12 figure out whether or not someone was excluded.

13 We do not have a definition for the
14 Court. And we don't take issue with the --
15 we're not disputing the definition here. What
16 we're saying is that the way it applies in
17 practice is to exclude birth-sex males
18 categorically from women's teams and that
19 there's a subset of those birth-sex males where
20 it doesn't make sense to do so according to the
21 state's own interest.

22 JUSTICE ALITO: Well, how can you --
23 how can a court determine whether there's
24 discrimination on the basis of sex without
25 knowing what sex means for equal protection

1 purposes?

2 MS. HARTNETT: I think, here, we just
3 know -- we -- we -- we basically know that
4 the -- that they've identified pursuant to
5 their own statute that Lindsay qualifies as a
6 birth-sex male and she's being excluded
7 categorically from the women's teams as the
8 statute -- so we're taking the statute's
9 definitions as we find them and we don't
10 dispute them. We're just trying to figure out,
11 do they create an equal protection problem?

12 JUSTICE ALITO: All right. Suppose
13 this school that has a boys', let's say, track
14 team and a girls' track team. The school has
15 that. And a student who has the genes and the
16 reproductive system of a male and had those at
17 birth and has never taken puberty blockers,
18 never taken female hormones, never had any
19 gender-altering or affirming surgery, says,
20 nevertheless, I am a woman. That's who I am.

21 Can the school say no, you cannot
22 participate on the girls' team?

23 MS. HARTNETT: Sorry. So your hypo --
24 just a birth-sex male who has all the --

25 JUSTICE ALITO: Right. Exactly.

1 MS. HARTNETT: -- advantages a
2 birth-sex male, hormones?

3 JUSTICE ALITO: Yes. Yes.

4 MS. HARTNETT: And can the school bar
5 him from the women's team?

6 JUSTICE ALITO: Yes, yes.

7 MS. HARTNETT: Yes, they can.

8 JUSTICE ALITO: But that person -- is
9 that person not a woman in your understanding?
10 If the person says, I sincerely believe I am
11 woman, I am, in fact, a woman --

12 MS. HARTNETT: I think we --

13 JUSTICE ALITO: -- is that person not
14 a woman?

15 MS. HARTNETT: I -- I would respect
16 their self-identity in addressing the person,
17 but in terms of the statute, I think the
18 question is, does that person have a sex-based
19 biological advantage that's going to make it
20 unfair for that person to be part of the
21 women's team. And that -- that's the rationale
22 for the regulation, and so that's the reason --
23 that's the way we would be testing that
24 hypothetical.

25 JUSTICE ALITO: Well, the -- the

1 reason I'm asking has to do with discrimination
2 on the basis of transgender status. So what
3 you seem to be saying is, yes, it is
4 permissible for the school to discriminate on
5 the basis of transgender status because, if
6 this person is a trans woman, a trans girl, and
7 is barred from the team, from the girls' team,
8 then that person is being subjected to
9 differential treatment based on transgender
10 status, right?

11 MS. HARTNETT: Well, that would be --
12 then the question would be whether it was --
13 the scrutiny would be satisfied. So, from our
14 perspective, that would be a transgender
15 classification. It would get heightened
16 scrutiny. And it may be satisfied here because
17 of the need to have -- to curtail unfair
18 athletic advantage. That would be the
19 analysis.

20 We are not pressing in this case the
21 notion and the case does not require the Court
22 to decide whether transgender women who have
23 gone through puberty and have not suppressed
24 their testosterone would be able to play on a
25 men's team. And the record here is a

1 preliminary one where that doesn't present that
2 question for the Court.

3 JUSTICE ALITO: I mean, this does
4 present a particular factual situation and we
5 have to decide that case, but looking to the
6 broader issue that a lot of people are
7 interested in, there are an awful lot of female
8 athletes who are strongly opposed to
9 participation by trans athletes in competitions
10 with them.

11 What -- what do you say about them?
12 Are they -- are they bigots? Are they deluded
13 in thinking that they are subjected to unfair
14 competition?

15 MS. HARTNETT: No, Your Honor. I
16 would never call anyone that. And I -- I think
17 what we're saying here is that you have to --
18 that's the reason why there is intermediate
19 scrutiny or, even in -- in rational review, you
20 don't legislate based on undifferentiated
21 fears. You base it on trying to make a
22 rational response to what is a perceived issue.

23 I think, here, although I would take
24 issue with the notion that there was no
25 reference to transgender individuals in the

1 creation of this law, I really would direct
2 your Court -- the Court to JA -- again, this is
3 not about animus. I'm just saying that if you
4 look at JA -- pardon me, I need my -- JA 105
5 through 112, there are numerous references
6 to -- from the sponsor of the law saying the
7 way we're going to try to protect women's
8 sports is to not have transgender women play on
9 the women's teams, and that was the fear that
10 they had at the time.

11 Again, that is not an accusation of
12 animus. It's just a question of what was the
13 statute doing. And then we go to the point of
14 does the statute survive heightened scrutiny.
15 That would be the inquiry.

16 JUSTICE ALITO: Do you think that the
17 success of trans athletes in women's sports is
18 proportional to the percentage of trans
19 athletes who participate in women's sports?

20 MS. HARTNETT: I think we -- I would
21 direct your attention to -- there's a -- let me
22 make sure I have the right amicus. There's an
23 amicus brief that talks about the -- actually,
24 some of the -- there are examples, obviously,
25 of some transgender people that have

1 participated and excelled. They actually are
2 few and far between.

3 You know we have our client here who
4 tried to make the NCAA team because of the
5 injunction. She was too slow. She played club
6 soccer, club running. She was even an officer
7 in one of those clubs, just doing what you
8 would hope a college student would do.

9 You'll hear from my colleague about
10 the other case, but I do think that -- and
11 there is a brief that you -- in the amicus
12 briefs that will share the examples of showing
13 that's a bit overstated.

14 JUSTICE KAVANAUGH: Would the analysis
15 be different if they were more successful?

16 MS. HARTNETT: No, I think it would
17 be, to the extent -- I mean, we've already
18 covered that transgender people are a slice --
19 a meaningful slice of the population but a
20 small slice.

21 I think the state, if there actually
22 were a concern of women's sports being fully
23 overrun by an outbreak of a huge new number of
24 transgender people, that might be a different
25 factual situation.

1 In the end of the day, we understand
2 that there were legislatures that --
3 legislators who were concerned about that. The
4 legislative history makes that clear here, but
5 that wasn't the factual basis before the court.

6 If there were actually a threat to
7 women's participation in women's sports, that
8 could be a different analysis because,
9 obviously, the goal of sex equality in sports
10 is a very important goal. We don't take issue
11 with that.

12 We just would say that I think this is
13 an important moment to just take a step back
14 and say is this law actually responding to a
15 problem in a rational manner, or is it actually
16 overreacting on the presumption that
17 transgender women are categorically going to be
18 strong athletes when that's not the case.

19 JUSTICE KAVANAUGH: Well, just to put
20 the big picture, and you know this table and
21 let you respond to it, but, obviously, one of
22 the great successes in America over the last 50
23 years has been the growth of women and girls'
24 sports, and it's inspiring.

25 And, there -- you know, some states

1 and the federal government and the NCAA and the
2 Olympic Committee, so these are a variety of
3 groups who study this issue, think that
4 allowing transgender women and girls to
5 participate will undermine or reverse that
6 amazing success and will, you know, create
7 unfairness because, you said, if large numbers.

8 Well, for the individual girl who does
9 not make the team or doesn't get on the stand
10 for the medal or doesn't make all league,
11 there's a -- there's a harm there, and I think
12 we can't sweep that aside.

13 And I just -- I think that's what's
14 undergirding some of the concerns. Big
15 picture, and there are harms on both sides, so
16 I completely understand that. But I just want
17 to let you respond to that because that is, you
18 know, the NCAA, the Olympic Committee, a lot of
19 states, federal government, that's a lot of
20 people who are concerned about women's sports
21 and think this raises a big problem, and I just
22 want to make sure you can explain that.

23 MS. HARTNETT: Thank you, Your Honor.

24 And just to be clear, Title IX is a
25 huge triumph, and I'm a veteran of women sports

1 myself. I'm glad it exists. It's made a huge
2 difference in our society. That's not what
3 we're talking about here.

4 But I do think to the point of, you
5 know, for the podium question, I think the
6 question is, is there an unfair biological
7 advantage. That would be the question.

8 So I understand the point, if there's
9 somebody who's coming in with an unfair
10 biological advantage, that would undermine the
11 entire point of separate sports in the first
12 place, which was to allow women to have a place
13 to thrive, to be strong, to win, not to just be
14 the B team.

15 The question in this case is, if the
16 person had actually mitigated their sex-based
17 advantage, which maybe interestingly, maybe
18 counter-intuitively actually is more about
19 circulating testosterone after puberty than a
20 lot of the other things we might think are
21 sex-related, then that -- that girl that's come
22 in second to a transgender person that's
23 mitigated actually may just have come in second
24 because the transgender person had not -- was
25 similarly situated but was stronger in that one

1 competition.

2 That's why we are here not proposing a
3 rule of absolute inclusion but saying that in
4 the case of people like our client who have
5 mitigated, their exclusion doesn't match the
6 statutory interest.

7 JUSTICE BARRETT: Counsel, can I ask
8 you a question about analytically, in the
9 discrimination on the basis of transgender
10 status, since trans boys can play on boys'
11 teams, how would we say this discriminates on
12 the basis of transgender status when its effect
13 really only runs towards trans girls and not
14 trans boys?

15 MS. HARTNETT: We -- we understand the
16 point. And I think that might be relevant to
17 a, for example, animus point, right, that we're
18 not a complete exclusion of transgender people.
19 There was an exclusion of transgender women.
20 But I think, on that piece, this Court has
21 never required the whole class to actually be
22 excluded to look at the case as to whether the
23 exclusion of a subclass was --

24 JUSTICE BARRETT: I'm talking about
25 for triggering intermediate scrutiny if

1 transgender status is a suspect class.

2 MS. HARTNETT: Right. So, like Craig
3 v. Boren, for example --

4 JUSTICE BARRETT: Yeah.

5 MS. HARTNETT: -- that's the one about
6 the men that couldn't get --

7 JUSTICE BARRETT: Alcohol here, yeah.

8 MS. HARTNETT: -- the 18- to
9 20-year-olds -- right. That wasn't all men, it
10 was a subset of men. And yet the Court still
11 viewed that as a sex classification subject to
12 heightened scrutiny. And likewise here, even
13 though it's just transgender women in our view
14 that are being barred and not transgender men,
15 that also would trigger heightened scrutiny.

16 And I think there's the Rice v.
17 Cayetano case from 2000, there's other examples
18 of the Court making clear that just because a
19 subset of the protected class is being
20 excluded, you still would apply heightened
21 scrutiny.

22 JUSTICE BARRETT: Another question
23 about the science. So you were talking about
24 circulating testosterone being kind of the
25 marker.

1 Idaho is saying, well, that's not the
2 only indication. There are other -- when I
3 asked the question about six-year-old teams
4 before that, that there are other just kind of
5 genetic hard-wired differences maybe in size,
6 et cetera, that don't have to do with
7 circulating testosterone.

8 Is it your understanding that
9 testosterone is it?

10 MS. HARTNETT: So my colleague --

11 JUSTICE BARRETT: Yeah.

12 MS. HARTNETT: -- who will present --

13 JUSTICE BARRETT: Yeah.

14 MS. HARTNETT: -- the argument in the
15 next case is that the record there was more
16 about prepubertal and puberty.

17 JUSTICE BARRETT: Right.

18 MS. HARTNETT: I think that the
19 5 percent even is not clear whether that's just
20 environmental or biological actually.

21 JUSTICE BARRETT: Right.

22 MS. HARTNETT: But I do think -- so
23 there are other things that I think, like
24 height, you know, bone size. There have been
25 some other discussions of this. This is an

1 underdeveloped record, by the way. This needs
2 to go back and have a full trial except that
3 it's moot.

4 (Laughter.)

5 MS. HARTNETT: But -- but I think the
6 point there is that -- no, I'm not trying to
7 make a point on that.

8 JUSTICE BARRETT: Yeah. No, no, no, I
9 know. I know. I take the point.

10 MS. HARTNETT: I just -- I'm not
11 trying to pretend that I'm going to have a
12 trial when we're not.

13 JUSTICE BARRETT: I take the point,
14 yeah.

15 MS. HARTNETT: But I think the point
16 is that sometimes counter-intuitively it's like
17 having a larger frame but not having the muscle
18 and the testosterone to drive it could actually
19 put the person in a worse position. And that's
20 a study that was commissioned by the Olympic
21 Committee -- it's Footnote 6 of our brief --
22 indicates that, actually, it could be actually
23 put the transgender woman at a disadvantage if
24 they happen to have larger bones and less
25 testosterone or muscle to drive those bones.

1 JUSTICE BARRETT: Last question. So
2 below, as I understand it, your client
3 challenged the verification procedures?

4 MS. HARTNETT: Yes.

5 JUSTICE BARRETT: Except when we were
6 talking about how this might be administered,
7 I -- I understood you to say that it would be
8 by checking testosterone levels because it
9 would be okay to say -- to Justice Alito's
10 hypothetical about the cisgender male who has
11 taken no steps and who is now trans, to exclude
12 that person.

13 But would that be an invasion -- would
14 that be a violation itself or too invasive to
15 require someone to -- and -- and -- and maybe
16 not just once but maybe to periodic testing to
17 make sure that the circulating testosterone was
18 low enough?

19 MS. HARTNETT: I appreciate --

20 JUSTICE BARRETT: Why wouldn't that be
21 invasive?

22 MS. HARTNETT: So that's an ordinary
23 blood work that a transgender person would get,
24 and that's why I think it's of the nature of
25 the minimal burdens like in Nguyen and the

1 other cases where the Court has said
2 intermediate scrutiny applies and you actually
3 can -- you know, if there is minimal things you
4 have to do to make yourself fall in the
5 category that we want to keep protected, you
6 can -- we can require that of you. But --

7 JUSTICE BARRETT: Didn't you challenge
8 it?

9 MS. HARTNETT: Well, that was
10 different, actually, because the three things
11 that you'd have to prove under the state's
12 novel verification thing would have to be your
13 genetic -- your reproductive anatomy, which
14 would require actually, like, a pelvic
15 examination or examination of someone's, you
16 know, nude area. It would be chromosomes,
17 which would require chromosomal testing.
18 That's not what we're talking about. Or it
19 would be endogenous testosterone. And the
20 reason why that wasn't a problem is not because
21 of a blood test, it's not invasive; it's
22 because it would have required the transgender
23 person to stop their hormone treatment to get
24 back to an endogenous level to be able to show
25 they're endogenous.

1 JUSTICE BARRETT: Ah, okay. So the
2 distinction between circulating and endogenous?

3 MS. HARTNETT: Right. The point was
4 that was actually in a way like -- and I'm not
5 trying to cast aspersions -- but kind of a
6 false requirement for transgender people
7 because they aren't on their endogenous
8 testosterone when they're on hormone therapy.
9 They're on a non-endogenous medical treatment.

10 JUSTICE BARRETT: Got it.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 Justice Thomas?

14 Justice Alito?

15 Justice Sotomayor?

16 JUSTICE SOTOMAYOR: I'd like you to
17 address mootness because you raised it with
18 Justice Barrett. Is this case moot? Could you
19 respond to the other side's positions or
20 arguments as to why it wasn't, and -- and how
21 do you respond to that?

22 Secondly, Justice Barrett did raise
23 earlier this law applies even to primary --
24 primary schools, correct?

25 MS. HARTNETT: Taking your second

1 question first, yes. I don't think it's in the
2 record whether or not there are any primary
3 schools, whether they sex-separate or not, but
4 that -- that is the law.

5 JUSTICE SOTOMAYOR: And -- and so, at
6 least as to that subgroup, no one could doubt
7 that primary school children might have the
8 strongest argument that there's no difference
9 in their -- in their physical makeup that would
10 cause harm or otherwise create an advantage,
11 correct?

12 MS. HARTNETT: That would be our
13 position, Your Honor. In this case, we had
14 both our client who was at college at the time,
15 and then we had a high school intervenor who
16 was worried about being subject to the sex
17 verification. So we didn't really get into the
18 building a record on the --

19 JUSTICE SOTOMAYOR: But the point is
20 that the law might be overbroad in many ways.

21 MS. HARTNETT: Oh, certainly. Yeah.

22 JUSTICE SOTOMAYOR: And there's
23 still -- as you noted, this is a very --
24 this -- Idaho was the first or the second state
25 to pass this law?

1 MS. HARTNETT: It was the first. I
2 mean, these cases come to you because --

3 JUSTICE SOTOMAYOR: The first.

4 MS. HARTNETT: -- they're early ones.

5 JUSTICE SOTOMAYOR: And the record
6 here was the most underdeveloped, correct?

7 MS. HARTNETT: Including because it
8 was a preliminary injunction. There was a
9 substantial amount of expert material in the
10 record that allowed the district court to make
11 appropriate findings, but it was not the level
12 that you build out for a trial.

13 JUSTICE SOTOMAYOR: And both courts
14 said that the record had to be looked at more
15 carefully.

16 MS. HARTNETT: Expressly they did.

17 JUSTICE SOTOMAYOR: All right. So
18 answer the mootness question.

19 MS. HARTNETT: I mean, Your Honor, all
20 I can say is that we've tried to provide the
21 Court with accurate information as soon as it
22 came to pass. In 2024, when we opposed
23 certiorari, our client still was active and
24 intending to play sports. The Court granted
25 the case. We were -- she was preparing for

1 what she hopes is her final year of college.
2 She was concerned about the increasing
3 hostility and the visibility. I mean, we're
4 here now and that's okay, she understands she
5 brought the case.

6 But that was the basis for her trying
7 to end her sports career, and it isn't contrary
8 to what she said before. She did intend to
9 play sports through college. Her college has
10 taken a long time. She has now sworn she will
11 never play sports that are covered again and
12 she won't do that even if she happens to
13 somehow win this case. So that -- that is just
14 the truth.

15 But whether the Court believes it's
16 moot, that's -- you know, we put the facts
17 before you for you to decide.

18 JUSTICE SOTOMAYOR: How -- how about
19 her graduating this year?

20 MS. HARTNETT: So, on that --

21 JUSTICE SOTOMAYOR: There was a
22 suggestion she might not.

23 MS. HARTNETT: As you can tell, we
24 have -- college students have their -- so she
25 is trying her best to get through college. I

1 think, at this point, and I'm just basing it on
2 what I know as of today, she's unlikely to
3 graduate by May, as my friend said, but is
4 hoping to make -- through summer credits, could
5 graduate in the fall.

6 JUSTICE SOTOMAYOR: Finally, in terms
7 of the sports teams, the Olympic team, that all
8 happened in 2025, after our president directed
9 them to --

10 MS. HARTNETT: We do think that's
11 worth parsing out. Again, there's been a lot
12 of contentions made on both sides that are
13 extra-record, but I do think a lot of those
14 things flowed from the executive order. There
15 were some other sports orgs that were doing
16 different things, but I think we have to be
17 careful not to broad-brush that because some of
18 it may have been political, some of it may have
19 been scientific, and the record really isn't
20 fully before the Court.

21 CHIEF JUSTICE ROBERTS: Justice Kagan?

22 JUSTICE KAGAN: Ms. Hartnett, I just
23 want to get your understanding of what
24 constitutional review would look like in this
25 context. So you said it's not individual by

1 individual. You have to come in and say
2 there's a class that's not being treated
3 appropriately.

4 What is that class here?

5 MS. HARTNETT: Thank you, Your Honor,
6 and I would say I haven't -- I don't think the
7 Court has ruled out the individual case. I
8 just think we weren't presenting it that way
9 because we were trying to align ourselves with
10 how the Court had looked at it.

11 I think we would say we represent the
12 group of people that do not have an athletic
13 advantage, that have mitigated their male --
14 their biological advantage of being born male.

15 JUSTICE KAGAN: So who do not have an
16 athletic advantage, I mean, for reasons of
17 taking certain medications or hormones or --

18 MS. HARTNETT: Yeah. No -- no
19 sex-based biological advantage. So that
20 would -- that would -- it would encompass both
21 people that had gone through the male puberty
22 and had mitigated; it would also encompass
23 others, like, that have not yet gone through
24 puberty or that staved off puberty with the
25 puberty blockers.

1 JUSTICE KAGAN: And as to those
2 people, who has the burden of -- of -- of
3 showing that the justification doesn't fit?

4 MS. HARTNETT: I think that is on
5 the -- that is the -- I think, once we've
6 identified the subclass, under intermediate
7 scrutiny, it is the state's burden to show a
8 substantial relationship for that group, and
9 they failed to, and that's how those other
10 cases proceeded.

11 JUSTICE KAGAN: You wouldn't think
12 that because we -- we are talking about an
13 as-applied challenge to a law that's -- that's
14 facially, everybody concedes, legitimate, that
15 the burden should shift to you?

16 MS. HARTNETT: I don't think that's
17 how the cases looked at it when they were
18 assessing. They were kind of assessing whether
19 the state had provided enough to allow the
20 exclusion. For example, in *Lehr*, the state had
21 made an adequate showing to show why the --
22 the -- the parent in that case was properly
23 excluded.

24 JUSTICE KAGAN: And how do you think
25 the question of scientific uncertainty should

1 play out in an analysis like this?

2 MS. HARTNETT: Thank you. That's a
3 good question. And I know this was something
4 the Court did address in Skrmetti, a rational
5 review case, but citing Carhart, which also
6 talked about that.

7 I think the one thing we definitely
8 want to have is complete findings, so that's
9 why we really were urging to have a full record
10 developed before there were a final judgment of
11 scientific uncertainty.

12 I think the Court has not fully
13 grappled with what does scientific uncertainty
14 mean and how does it come into conflict with
15 heightened equal protection scrutiny, but I
16 think we don't need to present that yet
17 because, on this record, there was not
18 uncertainty. This person had mitigated.
19 Testosterone was the determinant. Maybe, on a
20 later record, that would come out differently.

21 JUSTICE KAGAN: Yeah.

22 MS. HARTNETT: But I don't think
23 that --

24 JUSTICE KAGAN: Just play it out a
25 little bit, if there were scientific

1 uncertainty.

2 MS. HARTNETT: I mean, if it really
3 were in equipoise, then I think that that is a
4 situation where the -- I think it's -- it's
5 still heightened scrutiny. So, under
6 heightened equal protection scrutiny, the
7 burden is on the state to justify the law. And
8 if they haven't been able to justify that, that
9 usually fails.

10 If it's really a question of they're
11 at 50/50, do we give the -- do we allow the
12 state some leeway, I could see -- I don't think
13 that's been answered in the Court's cases.
14 Normally, the heightened scrutiny controls and
15 there's not a deference on top of that in the
16 equal protection context.

17 JUSTICE KAGAN: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Gorsuch?

20 JUSTICE GORSUCH: Just to follow up on
21 that, I wonder if that starts to sound like
22 strict scrutiny because, if there -- the point
23 of intermediate scrutiny, of course, is some
24 leeway for the state, not a perfect fit, at
25 least in the facial area.

1 But, if there's scientific uncertainty
2 about whether puberty blockers and testosterone
3 suppressants completely or mostly or some
4 percentage of the time eliminate all
5 competitive advantage, some competitive
6 advantage -- I mean, you -- you've been very
7 careful, I think, and rightly so to talk about
8 mitigating advantage.

9 But I don't know -- you know, does the
10 state have to show that it -- it eliminates
11 advantage and it doesn't eliminate -- you know,
12 some percentage of advantage remains in each
13 individual case or for the group as a -- I --
14 I'm -- I'm struggling to understand your
15 response to Justice Kagan on that score. Maybe
16 I'm inartfully posing the question, but I hope
17 you understand.

18 MS. HARTNETT: I do understand your
19 question. I think the question is at some
20 level -- I mean, I think the question is where
21 you have science that's developing in real time
22 at some level, what happens, how does that
23 dovetail with trying -- a state that's trying
24 to regulate and do that.

25 I think what we can say on this record

1 is the categorical exclusion is really not
2 supported, I don't think, by any science.
3 There's going to -- this, again, was from
4 kindergarten through college, and so there
5 would be some subgroups at least.

6 And I appreciate -- I think there has
7 to be an effort to try to tailor it. I think,
8 here, the problem was there was a reaction of
9 transgender women, a picture of what that would
10 be, kind of an undifferentiated fear, frankly,
11 from the Cleburne case. And so I think there's
12 a --

13 JUSTICE GORSUCH: I appreciate all of
14 that, but it seems to me from my glance at the
15 record, and quite a record it is, that there is
16 a healthy scientific dispute about the efficacy
17 of some of these treatments, and -- and that's
18 understandable.

19 And I'm just wondering how does that
20 fit with -- assume -- assume there is some
21 dispute, and I understand the record remains to
22 be developed further. But how does that fit
23 with intermediate versus strict scrutiny?

24 MS. HARTNETT: At the end of the day,
25 it's the -- it's the state's burden to show a

1 substantial relationship. And I think, in the
2 case of something where they're doing their
3 best and have the best evidence to -- some
4 evidence to support what they're doing --

5 JUSTICE GORSUCH: Some evidence? The
6 best evidence? Exactly. I mean, that's the --

7 MS. HARTNETT: A level of evidence
8 that wasn't met here. Let's put -- so the --
9 the one -- the study and the findings --

10 JUSTICE GORSUCH: Yeah.

11 MS. HARTNETT: -- I mean, the district
12 court made a really good point. That study had
13 actually been retracted and it --

14 JUSTICE GORSUCH: Right.

15 MS. HARTNETT: -- didn't pertain to
16 transgender athletes. So, in a way, this is
17 not the hardest case. I appreciate it as a
18 hypothetical. I guess what I would just urge
19 in this area that's sensitive, obviously,
20 politically but also as a matter of science --

21 JUSTICE GORSUCH: Yeah.

22 MS. HARTNETT: -- to at least let a
23 record develop in one of these cases that lets
24 you decide actually is this --

25 JUSTICE GORSUCH: No, I totally agree

1 with that.

2 MS. HARTNETT: -- 50/50 versus 80/20.

3 That's --

4 JUSTICE GORSUCH: Well, all right.

5 But 50/50, does the government win, does 70/20,
6 the government win? That's what I'm getting
7 at. That -- I -- I understand the -- the
8 complexity of the record and the difficulty of
9 the science, but if we're -- if we're going to
10 have individual cases brought, that's the kind
11 of question we're going to ultimately have to
12 answer, not the science question but the
13 percentage question, if you will.

14 MS. HARTNETT: No, I understand that.
15 I mean, VMI does provide some sort of a -- a --
16 a metric of what we would do there, which was
17 we look to see there were kind of evidentiary
18 debates on both sides of that, but even if you
19 could say that a lot of women may not have ever
20 made the cut, the fact that there were some
21 that did was enough to invalidate the entire
22 policy. So I -- I think there are ways for
23 courts to make those judgments.

24 And I think the Court has not yet, I
25 think, encountered a case where heightened

1 scrutiny puts a heavy burden on the state.

2 It's not an insurmountable one, like strict
3 scrutiny normally is.

4 And then what happens if it ends up
5 with the evidence being a tie or close to it
6 when we go back to the trial court? I think
7 that would be a -- that -- that -- that would
8 be breaking some new ground because I don't
9 think there's an equal protection case that
10 decides that issue. Usually, the evidence is
11 kind of clear on one side or the other about
12 whether the restriction is justified.

13 JUSTICE GORSUCH: So that would remain
14 for us to decide at a later point?

15 MS. HARTNETT: I -- I do think that's
16 the most prudent but definitely on a record
17 that's more developed because I think a lot of
18 the -- I think, in the end of the day, it might
19 end up being a surprise to -- we don't know
20 yet, but I think we have some good evidence
21 that, actually, at the end of the day, being a
22 transgender woman actually to the extent there
23 are -- and you repressed your testosterone,
24 you're at some somewhat of a disadvantage in
25 many ways because you have, again, this larger

1 frame with weaker muscles and no testosterone.

2 JUSTICE GORSUCH: Thank you.

3 CHIEF JUSTICE ROBERTS: Justice
4 Kavanaugh?

5 JUSTICE KAVANAUGH: Just to follow up
6 on Justice Gorsuch's question, a broader frame
7 about the role of this Court when there's
8 scientific uncertainty, I mean, there will be
9 different district courts who do different
10 things almost certainly in different cases,
11 and, in an area of scientific uncertainty,
12 where there's strong assertions of equality
13 interests on both sides, and so it's going to
14 come to this Court and we have to decide for
15 the whole country, constitutionalize this.

16 And I guess, given that half the
17 states are allowing it, allowing transgender
18 girls and women to participate, about half are
19 not, why would we at this point just the role
20 of this Court jump in and try to
21 constitutionalize a rule for the whole country
22 while there's still, as you say, uncertainty
23 and debate, while there's still strong interest
24 in the other side?

25 And I think one of the themes of your

1 argument's been the more people learn, the more
2 they'll agree with you. At least I -- I --
3 I've detected that theme in your argument.

4 So why would we get involved at this
5 point and constitutionalize?

6 MS. HARTNETT: I understand the
7 question, Your Honor, and I do think that the
8 Equal Protection Clause's demands have never
9 been viewed as kind of a -- you know, a
10 separate avenue from the legislative process.
11 They can and do often coexist. And, here, I
12 think the point is we have two as-applied
13 challenges to early laws. They have their
14 unique cases in their own right. I don't think
15 this Court needs to set rules forever in this
16 area.

17 I think the most important thing would
18 be to allow a record to develop even in areas
19 of controversy. And we look back, you cited
20 to, in Skrametti, you cited Carhart.

21 There, there were extensive findings.
22 There also were findings in VMI. There were
23 findings in Craig v. Boren. I'm learning
24 things by reading these cases over again.
25 There were findings in those cases.

1 And so I think that at least before
2 the Court decides to either step back fully or
3 to embrace its role here of providing the
4 scrutiny that should be attended to groups when
5 there's a worry that the democratic process
6 isn't actually going to fairly respond to their
7 concerns, I think the point at least at a
8 minimum would be get a full record, which we
9 don't have here. That would be my request.

10 JUSTICE KAVANAUGH: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Barrett?

13 Justice Jackson?

14 Thank you, counsel.

15 Rebuttal.

16 REBUTTAL ARGUMENT OF ALAN M. HURST

17 ON BEHALF OF THE PETITIONERS

18 MR. HURST: Thank you, Mr. Chief
19 Justice. A few points.

20 I heard just a moment ago that there
21 is no real threat to women's sports. We
22 strenuously disagree. We cite the Court -- we
23 cite Your Honors to the U.N. Special
24 Rapporteur's report that says 600 women have
25 lost 890 medals in 29 different sports. That's

1 what we're talking about. It is a real threat.

2 Medical transition does not reliably
3 suppress all male athletic advantages. I'd
4 cite Your Honors to our record in which our
5 expert, Dr. Brown, shows the experience of one
6 CeCe Telfer, an elite track athlete who -- who
7 underwent a medical transition and whose track
8 times did not change. That is the story in
9 many situations. And unless we can reliably
10 distinguish between those situations and the
11 situations in which testosterone suppression
12 does reliably eliminate the advantage, then we
13 can't do that. We need a broader
14 classification, and sex is the right one.

15 And if it were merely politically
16 motivated, I would add we wouldn't see this
17 same rule being implemented by World Athletics,
18 World Boxing, the NAIA, these different groups
19 that were not influenced by recent politics but
20 came to these decisions after studies, after
21 lengthy examination, and reached the same
22 decision that Idaho has.

23 Justice Gorsuch, in your colloquy with
24 Respondents' counsel, she agreed with us that
25 this is not the same as the -- as the

1 discrimination that has been faced on the basis
2 of race or on the basis of sex in this country.

3 We agree it's not close to the
4 discrimination that has -- that people have
5 faced on the basis of race or sex in this
6 country. That said, the Court does not need to
7 reach that answer here because, if there is no
8 quasi -- excuse me. If there is no transgender
9 status classification in Skrametti, there
10 certainly cannot be one in this case.

11 In fact, as our briefs argue, the
12 Court can and should avoid all these questions
13 by applying rational basis review.

14 Bottom line, sports are assigned by
15 sex because sex is what matters in sports. It
16 is the fairest and the safest and the most
17 administrable way to assign sports teams. It's
18 been widely accepted for many decades because
19 it's necessary for fair competition because,
20 where sports are concerned, men and women are
21 obviously not the same.

22 If Idaho can't enforce a sex-based
23 line here in sports, where nobody disputes that
24 biological differences matter, then no line
25 based on biological sex can survive

1 constitutional scrutiny. The Court should
2 uphold the Fairness in Women's Sports Act and
3 reverse.

4 CHIEF JUSTICE ROBERTS: Thank you,
5 counsel.

6 The case is submitted.

7 (Whereupon, at 11:57 a.m., the case
8 was submitted.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<p>1</p> <p>1 [7] 51:17 54:8 64:10,22,25 86:21 92:1 10 [1] 34:10 105 [1] 104:4 112 [1] 104:5 12 [1] 86:22 15 [1] 64:11 1653 [1] 96:21 1701 [1] 96:21 18 [1] 110:8 1952 [1] 96:20</p> <p>2</p> <p>2 [2] 54:8 70:24 2.8 [1] 64:4 2000 [1] 110:17 2010 [2] 44:13,13 2022 [1] 44:13 2024 [1] 117:22 2025 [2] 44:14 119:8 20-year-olds [1] 110:9 23 [1] 37:22 27 [1] 37:21 29 [1] 131:25</p> <p>3</p> <p>3 [2] 29:6 54:10 30 [1] 64:10</p> <p>4</p> <p>4 [1] 18:21 41 [1] 27:24</p> <p>5</p> <p>5 [3] 40:7 64:10 111:19 50 [1] 106:22 50/50 [3] 123:11 127:2,5 500 [5] 79:21 80:6,15,20 81:21</p> <p>6</p> <p>6 [1] 112:21 600 [1] 131:24</p> <p>7</p> <p>70/20 [1] 127:5 70s [1] 22:8 75 [1] 34:24</p> <p>8</p> <p>80/20 [1] 127:2 890 [1] 131:25</p> <p>9</p>	<p>90-year-old [1] 25:22 99 [3] 5:20 51:16 56:13 99.9 [1] 56:6 99.99999 [1] 55:14</p> <p>A</p> <p>abandoned [7] 58:4,6 59:2,4 63:9,11,15 ability [2] 36:15 38:21 able [16] 9:12 16:11 17:24,25 23:14 34:19,20 35:5 44:24 66:11 78:7 84:16 89:21 102:24 114:24 123:8 abroad [1] 87:25 absolute [1] 109:3 absolutely [2] 6:4 28:25 accept [2] 62:4,20 accepted [1] 133:18 access [1] 83:7 accommodation [1] 49:17 according [3] 34:16,17 99:20 accurate [1] 117:21 accusation [1] 104:11 acheson [6] 20:23 21:18,19 22:4 28:16,17 achieve [2] 34:19,20 achieving [1] 13:25 acknowledged [1] 86:7 across [3] 39:16 88:15 90:8 act [1] 42:9 active [2] 8:21 117:23 actively [1] 71:3 activity [1] 28:9 actual [3] 58:18 91:7 95:24 actually [48] 11:9 14:23 16:9 17:21 60:5 84:20 86:2,7 87:19,21,23 88:6,8 89:1,22 90:15,16 91:16 92:18,20 93:25 96:17 97:6,13,16 104:23 105:1,21 106:6,14,15 108:16,18,23 109:21 111:20 112:18,22,22 114:2,10,14 115:4 126:13,24 128:21,22 131:6 add [2] 21:8 132:16 address [7] 59:23 80:15 83:21 94:19,23 115:17 122:4 addressed [3] 20:9 31:9 54:2 addresses [1] 12:16 addressing [1] 101:16 adequate [1] 121:21 adjudication [1] 29:24 administer [1] 32:6 administered [1] 113:6 administrability [2] 32:3 45:</p>	<p>2</p> <p>administrable [2] 44:23 133:17 admissions [1] 62:11 admit [1] 19:9 admitted [1] 61:13 admittedly [1] 68:16 admitting [1] 95:11 adopt [3] 25:16 62:14,18 adopted [1] 90:7 adoption [1] 84:15 advance [1] 94:1 advantage [35] 5:6 12:21 34:23 35:7 40:4,7 41:12 45:4,13,20,24 80:14,17,23 81:1,7 89:11,18 92:22 101:19 102:18 108:7,10,17 116:10 120:13,14,16,19 124:5,6,8,11,12 132:12 advantages [7] 41:5 49:23 65:24 80:6,8 101:1 132:3 affected [1] 88:13 affidavit [3] 6:3 20:12 26:13 affirm [2] 24:8 81:18 affirmed [1] 81:24 affirming [1] 100:19 african [1] 17:24 age [2] 40:1,6 ago [1] 131:20 agree [15] 11:21 14:11 31:19 43:13 69:3 70:8 76:10 85:15 87:2 93:4,6 98:15 126:25 130:2 133:3 agreed [3] 25:12 80:12 132:24 agrees [1] 51:15 ah [1] 115:1 a-ha [1] 35:2 ahead [2] 10:23 18:9 aimed [1] 80:6 aims [1] 46:10 alan [1] 131:16 alcohol [1] 110:7 align [2] 93:20 120:9 alike [1] 18:4 alito [20] 24:2,3 25:1 60:23,24 61:7 98:11,20 99:2,22 100:12,25 101:3,6,8,13,25 103:3 104:16 115:14 alito's [2] 17:14 113:9 allegations [1] 20:11 allegedly [1] 5:5 allow [16] 36:18 37:17,25 38:6,6,25 45:14 51:1 60:13 70:2,6 73:18 108:12 121:19 123:11 130:18 allowed [8] 31:13 44:20,21</p>	<p>84:24 87:21 88:10 97:8 117:10 allowing [7] 38:3 55:6 72:23 77:18 107:4 129:17,17 allows [3] 83:19 88:12 93:19 alluded [1] 50:11 alluding [1] 30:18 almost [4] 31:7 72:13 89:18 129:10 already [3] 28:24 73:10 105:17 alternative [1] 43:9 although [1] 103:23 amazing [1] 107:6 amendment [3] 42:5 68:17,18 america [1] 106:22 americans [2] 17:24 97:22 amicus [4] 49:7 104:22,23 105:11 amount [1] 117:9 analogy [1] 85:5 analysis [16] 6:11 23:21,22 24:1 25:16 30:20 33:13 37:13 39:15 42:22 57:8 80:24 102:19 105:14 106:8 122:1 analytical [1] 69:16 analytically [3] 67:16 71:15 109:8 analyze [2] 48:10 67:9 analyzing [1] 61:18 anatomy [1] 114:13 animus [3] 104:3,12 109:17 another [10] 12:24 15:23 16:19 18:12 21:14 24:24 25:23 80:9 98:7 110:22 answer [15] 18:11 23:16 30:16 33:10 36:2 39:5 40:18 45:16,17 70:13 95:1 98:9 117:18 127:12 133:7 answered [1] 123:13 answering [2] 19:15 92:24 anybody [1] 40:10 anytime [1] 31:21 anyway [1] 83:23 apart [2] 41:5 88:17 appear [1] 20:5 application [3] 5:15 37:6 46:15 applications [3] 54:14 61:21 62:1 applied [24] 15:15 37:15 42:5 50:1,15,25 51:8,9,10,24 53:6 56:4,5,9,14,15 57:16 58:12 63:9 75:15 76:19 80:21 86:25 87:9</p>
---	--	--	--

<p>applies [8] 15:17 39:4,8,15 71:1 99:16 114:2 115:23</p> <p>apply [13] 11:18 12:8 46:14 49:15 56:1 65:7 74:25 76:14 81:10 86:24 88:14 90:8 110:20</p> <p>applying [4] 41:25 42:3 95:11 133:13</p> <p>appreciate [7] 24:7 97:18 98:2 113:19 125:6,13 126:17</p> <p>approach [6] 11:23,23 13:21 62:19 88:12 90:3</p> <p>appropriate [3] 34:20 85:8 117:11</p> <p>appropriately [1] 120:3</p> <p>area [8] 11:10 30:1 90:9 114:16 123:25 126:19 129:11 130:16</p> <p>areas [2] 31:10 130:18</p> <p>aren't [2] 19:10 115:7</p> <p>arguably [1] 74:12</p> <p>argue [3] 16:11 42:1 133:11</p> <p>arguing [1] 59:19</p> <p>argument [16] 11:20,22 16:10 45:18 49:6 60:7,14,15 79:17 82:2 83:1 94:13 111:14 116:8 130:3 131:16</p> <p>arguments [4] 23:6,10 46:5 115:20</p> <p>argument's [1] 130:1</p> <p>arose [1] 26:9</p> <p>article [3] 24:22 28:19 29:10</p> <p>articulated [1] 80:3</p> <p>as-applied [54] 8:5 11:1 13:3 15:2,9,16 16:2 29:15,23 30:7,13 31:16 32:19,20 33:12,19,25 42:19 51:4,6,22 52:5,11,12 53:4,9,15,23 56:18 57:21 58:17 62:12 66:5,11,20 68:11 69:12,17,19 71:25 72:23 73:18,24 74:3 75:11 76:4 77:18,22 78:1 87:5 89:2,20 121:13 130:12</p> <p>aside [4] 42:2 53:12 65:17 107:12</p> <p>aspersions [1] 115:5</p> <p>asserted [2] 50:13 89:5</p> <p>asserting [2] 89:7 93:21</p> <p>assertions [1] 129:12</p> <p>assessing [2] 121:18,18</p> <p>assign [1] 133:17</p> <p>assigned [1] 133:14</p> <p>assume [10] 18:14 28:5 30:11 33:5 36:17,18 66:4 93:10 125:20,20</p>	<p>assumed [1] 42:11</p> <p>assuming [3] 49:21 75:13 93:11</p> <p>athlete [5] 22:22 45:3,20 80:9 132:6</p> <p>athletes [11] 45:19,22 50:4,5,7 103:8,9 104:17,19 106:18 126:16</p> <p>athletic [11] 38:21 39:21 40:4,7 41:12 92:22 94:5 102:18 120:12,16 132:3</p> <p>athletics [3] 88:17 90:9 132:17</p> <p>attempt [1] 25:3</p> <p>attempting [2] 21:12,16</p> <p>attend [3] 60:16,17 62:10</p> <p>attended [1] 131:4</p> <p>attention [8] 26:5,14 27:2,9,11,13 96:18 104:21</p> <p>attesting [1] 20:13</p> <p>available [4] 11:20,22 55:8 83:8</p> <p>avenue [1] 130:10</p> <p>avoid [3] 5:24 21:12 133:12</p> <p>aware [3] 19:20 37:20 83:11</p> <p>away [1] 32:1</p> <p>awful [3] 62:16 86:15 103:7</p> <p>awfully [1] 64:5</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b.p.j [2] 85:24 92:10</p> <p>b.s.u [1] 6:2</p> <p>back [18] 20:7 29:14 34:9,16 36:4 42:17,20 66:16 78:9 89:4 93:9 98:13 106:13 112:2 114:24 128:6 130:19 131:2</p> <p>background [1] 27:22</p> <p>bad [1] 76:5</p> <p>ban [1] 20:14</p> <p>bar [3] 19:15 30:7 101:4</p> <p>barred [4] 84:14 97:13 102:7 110:14</p> <p>barrett [37] 38:14,15 39:6,11,17,20 40:16 41:1,8 42:13 71:22,23 73:15 74:4,14,16 77:16 109:7,24 110:4,7,22 111:11,13,17,21 112:8,13 113:1,5,20 114:7 115:1,10,18,22 131:12</p> <p>barrett's [1] 19:3</p> <p>barriers [1] 77:25</p> <p>bars [2] 19:8 29:25</p> <p>base [1] 103:21</p> <p>based [22] 5:3 10:7 18:1 28:22 29:4,4 39:24 40:13 43:4,6,15 44:21 46:25 47:3,5 49:</p>	<p>12 81:18 85:11 98:9 102:9 103:20 133:25</p> <p>basic [2] 29:19 83:22</p> <p>basically [7] 16:4 43:24 53:16 55:2 59:2 85:9 100:3</p> <p>basics [1] 98:14</p> <p>basing [1] 119:1</p> <p>basis [41] 5:9 6:20,25 10:11,14,15 12:8 16:2 17:21 18:18,25 19:11 29:7,10 40:20 43:12 46:9,13 49:19 51:4 54:6 56:10 57:24 65:10 72:15 78:12 81:22 84:1 87:23 98:12 99:24 102:2,5 106:5 109:9,12 118:6 133:1,2,5,13</p> <p>basketball [1] 23:13</p> <p>bear [2] 50:14 66:24</p> <p>bears [1] 28:24</p> <p>become [1] 96:25</p> <p>begging [2] 10:5 56:8</p> <p>begin [3] 13:17 21:7 95:17</p> <p>beginning [1] 26:15</p> <p>begs [1] 14:13</p> <p>behalf [4] 53:20,20 79:18 131:17</p> <p>beings [1] 64:16</p> <p>belief [1] 20:19</p> <p>believe [3] 70:16 77:4 101:10</p> <p>believes [1] 118:15</p> <p>below [4] 5:24 41:13 80:12 113:2</p> <p>benefit [1] 8:22</p> <p>best [7] 11:25 48:9 61:5 118:25 126:3,3,6</p> <p>better [4] 22:25 79:7 80:9 89:8</p> <p>between [20] 21:9 32:13 38:20 49:14 64:19,21 67:16,18,24 68:2,4,10 73:13 83:25 84:3 88:16 95:9 105:2 115:2 132:10</p> <p>beyond [1] 23:17</p> <p>big [13] 64:5 66:22 67:5,11,24 68:22 69:4,10 90:24 93:2 106:20 107:14,21</p> <p>bigots [1] 103:12</p> <p>bill [2] 19:14,18</p> <p>biological [26] 36:23 37:17 38:2,25 39:24 40:22 47:13 49:13,15 61:3 70:2 79:23 80:5,7,14,22 84:4 89:11 101:19 108:6,10 111:20 120:14,19 133:24,25</p> <p>biology [1] 61:5</p> <p>birth [6] 43:2 52:20 77:8 80:</p>	<p>5,23 100:17</p> <p>birth-sex [5] 99:17,19 100:6,24 101:2</p> <p>bit [2] 105:13 122:25</p> <p>black [1] 97:21</p> <p>blanking [1] 47:17</p> <p>blockers [4] 12:19 100:17 120:25 124:2</p> <p>blood [2] 113:23 114:21</p> <p>board [2] 39:16 90:8</p> <p>bone [1] 111:24</p> <p>bones [2] 112:24,25</p> <p>boren [2] 110:3 130:23</p> <p>born [2] 87:25 120:14</p> <p>both [14] 30:6 31:19 46:23 57:18 69:22 76:15 79:7 107:15 116:14 117:13 119:12 120:20 127:18 129:13</p> <p>bottom [1] 133:14</p> <p>bound [2] 24:17 25:13</p> <p>boutilier [3] 95:25 97:1,2</p> <p>boxing [1] 132:18</p> <p>boy [7] 74:10 80:25 83:6,11 89:14 98:24 99:4</p> <p>boy/girl [1] 86:18</p> <p>boys [14] 38:20 40:23 41:12 74:5 83:8,13,25 84:3 88:16 90:4,13 98:17 109:10,14</p> <p>boys' [6] 40:23,24 41:2 89:8 100:13 109:10</p> <p>brackets [1] 19:25</p> <p>breaking [1] 128:8</p> <p>brief [9] 70:11,24 85:24 88:25 92:10 94:19 104:23 105:11 112:21</p> <p>briefed [1] 16:9</p> <p>briefing [2] 12:16 13:10</p> <p>briefly [1] 59:23</p> <p>briefs [2] 105:12 133:11</p> <p>bring [11] 31:12 51:6 52:10 66:6,11 68:11 69:12,19 73:23 74:3 79:5</p> <p>broad [1] 55:23</p> <p>broad-brush [1] 119:17</p> <p>broadcasting [3] 42:4 50:21 68:14</p> <p>broader [5] 82:20,20 103:6 129:6 132:13</p> <p>brought [7] 47:25 52:22 54:3 84:11 94:16 118:5 127:10</p> <p>brown [2] 26:25 132:5</p> <p>build [1] 117:12</p> <p>building [1] 116:18</p> <p>burden [15] 6:6 28:23 41:17 45:10 66:15,17,25 87:16 88:7 121:2,7,15 123:7 125:</p>
--	--	--	---

<p>25 128:1 burdened [1] 60:5 burdens [1] 113:25 burdensome [1] 35:12 business [4] 22:7,9 25:23, 24 buy [1] 92:25</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>caban [37] 7:23 8:5,6,6,19, 23 15:7,9,14,17 16:1 57:8, 11,18,20,21 58:1,10,16 59: 8,12,15 61:15 62:6,23,24 63:8 72:5 76:21 81:14 84: 11 85:18 86:6 87:7 91:10 93:8 95:12 call [1] 103:16 called [1] 19:14 came [2] 117:22 132:20 camreta [1] 48:8 cannot [6] 29:1 35:25 36:24 69:19 100:21 133:10 capability [1] 39:22 capable [1] 13:25 capacity [1] 43:5 care [1] 89:17 career [1] 118:7 careful [2] 119:17 124:7 carefully [1] 117:15 cares [1] 40:10 carhart [2] 122:5 130:20 carve [1] 34:4 carving [1] 87:8 casa [1] 55:7 cases [43] 6:24 8:4 11:23 15: 20 16:6 21:9 27:1,3,15 47: 16 50:16 52:13 53:12 54:1 55:7 57:4 58:12 59:11,13, 17,20 61:20 67:14 72:7 76: 25 77:3 81:8 85:17 87:3 92: 17 95:7,12 114:1 117:2 121:10,17 123:13 126:23 127:10 129:10 130:14,24, 25 cast [1] 115:5 categorical [1] 125:1 categorically [5] 79:22 95: 21 99:18 100:7 106:17 categories [1] 92:11 category [4] 6:19 98:16,17 114:5 cause [1] 116:10 cayetano [1] 110:17 cece [1] 132:6 certain [6] 20:10,11 28:1 41: 13 62:25 120:17 certainly [15] 15:11 17:6 19:</p>	<p>17 21:10 29:24 30:15 31: 17 39:2 65:7,21 66:18 97: 20 116:21 129:10 133:10 certainty [2] 41:18 45:12 certiorari [2] 26:17 117:23 cetera [6] 17:13,13 20:5 38: 22 74:8 111:6 challenge [48] 8:7 9:12 11:1 13:3 15:2 16:2,3,13 30:14 31:12,16 33:6,12,20,21 34: 1 42:19 53:9,22,23 55:22 56:19 57:21 58:17,20 62: 12 65:3 66:5,7 69:10 74:3 75:7,11 76:4 78:1 79:5 83: 25 84:10,25 85:11,11 86: 20 88:12 89:2,20 92:5 114: 7 121:13 challenged [6] 5:12 6:13 7: 5 8:1 98:22 113:3 challenger [1] 61:25 challenges [21] 5:14 15:10 29:16,23 30:8 31:11 32:20, 21 50:15 53:5,15 68:5 72:1, 23 77:18,21 87:4,6 90:12, 14 130:13 challenging [5] 7:16,19 70: 9 83:6,12 change [4] 21:25 35:1 37:15 132:8 changed [4] 21:24 26:8,12, 16 changing [1] 29:4 characterizing [1] 42:19 checking [1] 113:8 chess [4] 51:9,10,12 53:6 chicago [1] 97:13 chief [32] 22:15 24:2 25:7, 10 29:12 35:18 38:13 42: 14 49:3,9 60:20 61:8 66:2 68:20 71:21 74:17 79:14, 19 83:20 85:7 86:9,14 88:5, 11 89:24 90:2 115:11 119: 21 123:18 129:3 131:11,18 child [11] 58:4,6,15 59:2,4 63:10,11,16 64:7 77:8 84: 22 children [10] 8:21 63:5 65: 19 84:18 85:23 86:11 91: 13 92:9 97:23 116:7 child's [1] 84:15 choosing [1] 5:10 chromosomal [1] 114:17 chromosomes [1] 114:16 circuit [5] 19:22,24 24:14,16 25:15 circulating [7] 80:12 81:1 108:19 110:24 111:7 113:</p>	<p>17 115:2 circumstance [1] 54:12 circumstances [8] 8:8 22: 11 26:9 44:1,22 58:19 78: 25 79:1 cis [2] 46:22 47:8 cisgender [3] 80:25 89:14 113:10 cite [4] 17:21 131:22,23 132: 4 cited [5] 85:24 92:9 97:2 130:19,20 cities [1] 97:12 citing [1] 122:5 citizen [2] 12:2 87:24 city [3] 22:5 28:12 29:6 civil [1] 97:9 claim [14] 47:25 48:1 51:22 52:6,11 55:16 56:22 59:3 66:12,21 69:13,17,19 73: 24 claiming [1] 47:23 claims [4] 51:6 55:18 69:23 73:18 claim's [1] 57:2 class [29] 14:23,25 15:3 16: 23 17:16,16 34:5,7,14 35:2, 3,9,11,15 43:9 52:23 58:12 66:22,25 68:22 94:14 97: 24 98:4,5 109:21 110:1,19 120:2,4 classes [3] 17:17 31:23 62: 25 classification [43] 5:11 7:4, 12 10:6 11:4,12 12:5 13:16, 18,21 14:12,14 19:11 22: 19 23:8,9,22 24:1 32:7 33: 14,15,17 36:8 37:14 42:21, 22,25 44:24 46:7,12 51:13 53:16 59:9 61:19 68:6 78: 17 79:1 81:10,12 102:15 110:11 132:14 133:9 classifications [10] 5:22 6: 12 7:13 13:16 18:1 32:5 50: 13 73:1 78:13 79:24 classified [3] 81:11 98:17, 18 classifies [2] 17:21 78:5 classify [5] 5:3 18:18 46:9 56:10 78:11 classifying [1] 5:9 clause [6] 38:2,9 70:7,14 80: 1 98:23 clause's [1] 130:8 clear [14] 6:4 28:25 41:11 43:19 51:21 71:7 78:3 83: 10 92:14 106:4 107:24 110:</p>	<p>18 111:19 128:11 cleburne [4] 7:24 17:13 98: 6 125:11 client [6] 93:25 105:3 109:4 113:2 116:14 117:23 close [3] 67:22 128:5 133:3 closed [1] 22:7 closely [1] 79:25 closer [1] 97:24 clothes [1] 97:15 club [3] 5:25 105:5,6 clubs [1] 105:7 co-ed [1] 40:12 coexist [1] 130:11 collapse [1] 69:1 collapsing [1] 73:19 colleague [2] 105:9 111:10 colleagues [1] 27:4 college [9] 48:2 105:8 116: 14 118:1,9,9,24,25 125:4 colloquy [2] 20:1 132:23 come [27] 11:13 16:6 24:1 34:9,16 47:15,16 48:16 50: 24 52:5 53:19 54:13 55:14 60:13 66:16 73:23 74:2 80: 24 81:4 86:17 108:21,23 117:2 120:1 122:14,20 129: 14 comes [1] 15:25 comfortable [1] 84:2 coming [4] 34:3 42:20 93:8 108:9 comments [1] 19:18 commissioned [1] 112:20 committee [3] 107:2,18 112: 21 common [1] 96:25 commonplace [1] 82:12 community [1] 97:21 company [1] 22:10 compare [3] 17:19,23 18:3 compared [1] 80:23 compelling [2] 87:15,22 compete [3] 23:13 45:21,25 competence [1] 32:10 competition [6] 8:14 14:21 40:10 103:14 109:1 133:19 competitions [1] 103:9 competitive [7] 8:14 12:21 20:21 35:7 45:13 124:5,5 competitiveness [1] 74:8 complete [2] 109:18 122:8 completely [6] 30:25 31:8 75:9 84:14 107:16 124:3 complexity [1] 127:8 concedes [2] 79:21 121:14 conceived [1] 16:22</p>
---	---	--	---

<p>conceptual ^[1] 91:7 conceptualize ^[1] 69:8 concern ^[1] 105:22 concerned ^[5] 23:6 106:3 107:20 118:2 133:20 concerns ^[2] 107:14 131:7 conclusion ^[1] 62:9 concurrence ^[3] 17:14 19:4 29:6 conduct ^[4] 19:6 29:1,5 74:25 confess ^[2] 27:11,14 confirm ^[1] 87:20 confirmation ^[1] 86:12 conflating ^[1] 73:13 conflict ^[1] 122:14 confronted ^[1] 72:9 congress ^[3] 96:1,2,16 congressional ^[1] 96:15 congress's ^[1] 12:3 connection ^[2] 12:4,7 consciously ^[1] 5:10 consensus ^[1] 42:10 consequences ^[1] 25:3 consider ^[1] 31:10 considered ^[2] 8:25 21:5 consistent ^[2] 66:23 70:7 consistently ^[1] 77:21 constitution ^[2] 38:1,5 constitutional ^[13] 24:13,16 29:19,22,24 35:23 37:1 38:8 56:5,13 74:25 78:21 119:24 constitutionality ^[1] 55:24 constitutionalize ^[3] 129:15,21 130:5 constitutionally ^[2] 58:11 70:6 contending ^[1] 61:19 contentions ^[1] 119:12 contests ^[1] 13:11 context ^[5] 39:5 87:3 89:3 119:25 123:16 continue ^[4] 21:1 26:3 27:9 28:10 continuing ^[1] 48:12 contradictory ^[1] 6:3 contrary ^[2] 30:18 118:7 control ^[2] 25:17 89:10 controlling ^[1] 80:7 controls ^[1] 123:14 controversy ^[2] 6:5 130:19 conversation ^[1] 29:14 convert ^[1] 51:3 converting ^[1] 55:2 correct ^[18] 6:14 7:9,10,19,21 8:13,22 23:18 25:15 26:</p>	<p>5,10 48:24 62:21 71:13 88:18 115:24 116:11 117:6 couldn't ^[7] 23:17 59:10 60:1 74:5 82:1 87:9 110:6 counsel ^[12] 22:16 49:4 59:21 60:21 63:23 79:15 83:20 94:7 109:7 115:12 131:14 132:24 counter ^[1] 29:18 counter-intuitively ^[2] 108:18 112:16 country ^[9] 17:1,11 18:15 95:22 97:13 129:15,21 133:2,6 country's ^[1] 18:3 couple ^[4] 24:6 29:18 64:17 65:4 course ^[9] 19:4 27:5 31:4,12 52:2 60:13 82:20 95:14 123:23 court ^[97] 5:25 9:8,14 11:22 12:3 13:23 16:14 20:3,13 21:16,21,23 22:1 24:18,22,24 26:13,16 27:25 28:12 29:3,11 31:17,18 42:1,2,11 49:10 50:20,21 51:1,23 52:8,9,23 59:2,16 60:14 61:14,17,23 62:14,20 65:1,2,25 69:14 70:12 71:6 76:15,19 79:8,20 81:18,22 85:21,25 88:23 91:5,10,13 94:25 95:12,25 98:3,7 99:14,23 102:21 103:2 104:2,2 106:5 109:20 110:10,18 114:1 117:10,21,24 118:15 119:20 120:7,10 122:4,12 126:12 127:24 128:6 129:7,14,20 130:15 131:2,22 133:6,12 courts ^[8] 32:8,14 70:10 71:3 83:16 117:13 127:23 129:9 court's ^[12] 6:7 22:3 50:9 51:20 52:15 54:1 57:3 67:14 69:21 81:8,25 123:13 covered ^[4] 9:20 20:14 105:18 118:11 covers ^[2] 69:9,10 craig ^[2] 110:2 130:23 create ^[3] 100:11 107:6 116:10 creation ^[1] 104:1 credit ^[2] 21:22 29:10 credits ^[1] 119:4 criminal ^[1] 97:14 critical ^[1] 87:15 critically ^[1] 51:15</p>	<p>cross-dress ^[1] 19:10 cross-dressing ^[4] 17:3 19:7 95:19 97:5 curiae ^[1] 49:8 curious ^[1] 94:15 current ^[2] 29:8,10 currently ^[1] 88:16 curtail ^[1] 102:17 cut ^[1] 127:20</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>danger ^[1] 74:9 day ^[7] 24:24 78:2 96:23 106:1 125:24 128:18,21 de ^[3] 16:25 17:6 18:14 dearth ^[1] 72:2 debate ^[2] 95:9 129:23 debates ^[1] 127:18 decades ^[2] 93:9 133:18 decide ^[9] 38:4 44:2 67:12 102:22 103:5 118:17 126:24 128:14 129:14 decided ^[1] 28:20 decides ^[2] 128:10 131:2 deciding ^[1] 25:3 decision ^[12] 24:15,17,18 25:14,14 48:16 51:20 52:15 65:15 69:22 95:25 132:22 decisions ^[1] 132:20 deeper ^[1] 12:25 defendant ^[2] 47:21,23 defer ^[2] 41:19 48:19 deference ^[4] 31:23 41:20,22 123:15 definable ^[1] 86:1 define ^[2] 35:9,11 defined ^[2] 90:23,25 defining ^[1] 92:4 definitely ^[2] 122:7 128:16 definition ^[10] 8:2 24:14 61:3 74:14 84:4,8 90:6 99:3,13,15 definitions ^[1] 100:9 degree ^[3] 27:18 31:25 45:12 deluded ^[1] 103:12 demands ^[1] 130:8 democratic ^[1] 131:5 demonstrate ^[4] 45:11 61:25 74:23 75:19 demonstrating ^[1] 19:1 deny ^[1] 49:20 denying ^[2] 5:8 49:17 depend ^[1] 24:23 depended ^[1] 36:16 depending ^[1] 74:13</p>	<p>depends ^[1] 36:3 described ^[1] 15:7 designed ^[2] 73:5 74:7 detected ^[1] 130:3 determinant ^[2] 80:14 122:19 determine ^[2] 83:17 99:23 determined ^[1] 96:2 develop ^[2] 126:23 130:18 developed ^[3] 122:10 125:22 128:17 developing ^[1] 124:21 development ^[1] 41:11 difference ^[15] 21:9 38:20 64:20 67:16,18,23 68:2,3,10 73:13,20 82:3 94:21 108:2 116:8 differences ^[5] 39:21 49:13 65:18 111:5 133:24 different ^[38] 14:23 20:23 21:6 23:2,4 24:25 31:5,16 35:24 37:2 42:21 44:23 45:23,23 47:7,11,15,16,17 58:19 65:10,11 71:5,14 75:11 76:22 87:13 88:9 105:15,24 106:8 114:10 119:16 129:9,9,10 131:25 132:18 differential ^[5] 57:23 59:1,7 94:5 102:9 differently ^[7] 46:25 47:3,4 51:24 78:6 90:18 122:20 difficulty ^[1] 127:8 dignitary ^[1] 23:19 direct ^[5] 85:21 88:24 96:18 104:1,21 directed ^[2] 21:4 119:8 disabled ^[1] 17:13 disadvantage ^[4] 20:20 78:5 112:23 128:24 disagree ^[4] 19:20 27:21 76:23 131:22 discrete ^[5] 16:23 18:22 81:11 92:10,21 discreteness ^[1] 94:14 discretion ^[1] 38:5 discriminate ^[2] 49:19 102:4 discriminates ^[2] 40:20 109:11 discrimination ^[16] 16:25 17:7,8,9,19 18:14 81:19,21 94:10 98:10,12 99:24 102:1 109:9 133:1,4 discuss ^[1] 81:15 discussed ^[1] 68:24 discussing ^[2] 58:9 94:10 discussion ^[4] 42:17 68:23</p>
---	--	--	---

<p>83:22 95:4 discussions [1] 111:25 dismiss [1] 28:8 dismissal [1] 21:24 dismissed [2] 21:3 47:22 disparate [1] 47:9 dispute [8] 10:20 24:20 26:20 28:20,21 100:10 125:16,21 disputed [2] 21:20 28:18 disputes [3] 6:24 10:15 133:23 disputing [2] 51:5 99:15 dissent [6] 61:17 62:5 84:21 93:8,10 95:11 dissenters [1] 62:20 dissenting [1] 62:15 distinction [10] 9:17 25:24 64:19 83:19,25 84:2 86:18,25 88:16 115:2 distinguish [1] 132:10 distinguishing [1] 16:1 district [9] 20:3 21:21,23 27:25 29:2 42:11 117:10 126:11 129:9 divide [1] 40:13 dna [1] 77:9 doctrines [1] 13:17 document [1] 96:20 doing [14] 42:22 55:5 61:11,12 62:3,6,16,20 75:10 104:13 105:7 119:15 126:2,4 done [6] 14:20 31:18 32:1,1 55:19 61:13 door [1] 98:5 doubt [5] 27:7,10 29:7 33:10 116:6 dovetail [1] 124:23 down [4] 8:24 34:5 35:6 55:25 drag [1] 19:7 draw [4] 27:1 42:8 85:5 88:22 drawing [1] 39:24 drawn [1] 82:8 draws [1] 79:21 drive [2] 112:18,25 driven [1] 39:20 driver [1] 94:5 dropping [1] 20:19 drugs [5] 49:22 50:6 51:18,19 65:23 due [1] 41:20</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each [7] 13:22 38:4 50:14 54:8 76:18 78:18 124:12</p>	<p>earlier [1] 115:23 early [4] 40:5 71:25 117:4 130:13 easier [1] 92:20 easiest [1] 69:17 edge [4] 6:24 20:21 50:21 68:13 effect [2] 36:12 109:12 effective [1] 51:19 efficacy [1] 125:16 effort [2] 86:24 125:7 efforts [2] 94:3,8 either [9] 36:11 52:2 53:20 58:7 59:12,24 65:5 72:7 131:2 elaborate [1] 50:11 eliminate [5] 49:22 65:23 124:4,11 132:12 eliminates [1] 124:10 elite [1] 132:6 elsewhere [1] 9:12 embrace [1] 131:3 enacted [1] 61:4 enactment [1] 99:8 encompass [2] 120:20,22 encountered [1] 127:25 end [8] 5:22 78:2 106:1 118:7 125:24 128:18,19,21 endogenous [5] 114:19,24,25 115:2,7 ends [1] 128:4 enforce [1] 133:22 enjoy [1] 97:9 enormously [1] 35:12 enough [28] 12:5 22:9,13 36:7 47:14 54:15 62:11 64:3,11 66:10,22 67:6,11,19,24 68:23 69:4,9,10,11 73:19 74:6,10 75:19 93:3 113:18 121:19 127:21 ensure [2] 46:10 80:1 ensuring [2] 8:20 83:18 entire [4] 77:10 88:15 108:11 127:21 entirely [1] 61:24 environmental [1] 111:20 equal [45] 5:1 6:10 8:1 9:23 10:1 11:1,3 13:1,3,14 14:11 29:15,20 30:2,7,13 32:20 38:2,9 49:20 53:4 61:18,22 66:5 70:7,14,18 71:25 79:25 88:24 89:3 90:11 91:2 94:9 98:21,23 99:3,25 100:11 122:15 123:6,16 128:9 130:8 equality [4] 82:22 83:18 106:9 129:12</p>	<p>equally [2] 49:14 52:14 equating [1] 97:20 equation [1] 39:23 equipoise [1] 123:3 equivalent [1] 60:8 erected [1] 29:25 erie [4] 22:5 25:21 28:13 29:6 escape [1] 22:2 essentially [9] 15:3 51:2 58:5 60:8 67:20 72:21 73:19,20,25 establishing [2] 15:9 78:1 estrogen [1] 80:19 et [6] 17:13,13 20:4 38:22 74:8 111:6 evaluate [1] 93:5 even [34] 10:10 14:11 21:21 27:24,24,24 31:25 37:9 40:6 41:5 49:21 54:16 56:14,15,24 63:22 65:3,17 68:11 73:7 75:12 77:2 78:21,25 84:8 88:13 103:19 105:6 110:12 111:19 115:23 118:12 127:18 130:18 evenly [1] 32:7 event [1] 27:8 eventful [1] 27:8 everybody [4] 39:16 40:14 55:9 121:14 everyone [2] 35:12 51:15 evidence [13] 19:16 41:22 42:9 44:1 80:2 126:3,4,5,6,7 128:5,10,20 evidentiary [1] 127:17 exact [5] 33:20 50:22 63:3 68:15 74:13 exactly [11] 23:5 31:4 43:23 61:12,15 62:2 63:3 68:16 69:5 100:25 126:6 exaggerate [1] 97:11 examination [3] 114:15,15 132:21 example [12] 11:25 22:21 51:7 53:5 81:5 82:15 83:11 87:8,18 109:17 110:3 121:20 examples [5] 8:8 83:6 104:24 105:12 110:17 excelled [1] 105:1 except [3] 36:13 112:2 113:5 excepted [2] 6:17 43:11 exception [9] 9:19 43:4,14,15 84:4,8 86:17 90:6 93:20 exceptions [6] 6:25 23:7 31:21 32:8 74:23 75:2 exclude [7] 46:18,20 65:19</p>	<p>91:17 96:3 99:17 113:11 excluded [11] 7:8,18 9:7 69:5 92:11 95:22 99:12 100:6 109:22 110:20 121:23 excluding [2] 60:19 79:22 exclusion [13] 8:2 10:8 60:5 89:22 91:19 93:25 94:1 109:5,18,19,23 121:20 125:1 excuse [1] 133:8 executive [1] 119:14 exempted [1] 53:24 exercise [1] 75:11 exist [5] 13:4 15:10 31:24 32:20 82:11 existed [1] 22:4 exists [2] 83:14 108:1 expected [1] 29:1 expensive [1] 45:8 experience [2] 97:20 132:5 expert [3] 34:17 117:9 132:5 experts [1] 80:12 explain [3] 39:3 96:21 107:22 explained [1] 58:10 explaining [1] 87:7 explicit [1] 77:3 explicitly [4] 35:24 36:22 77:4,6 explore [1] 25:3 express [2] 16:15 18:1 expressed [1] 62:15 expressly [4] 17:21 36:12 46:10 117:16 extend [1] 91:3 extended [1] 93:12 extensive [1] 130:21 extent [5] 14:15 74:7 98:7 105:17 128:22 externally [1] 26:12 extraordinarily [1] 92:15 extra-record [1] 119:13 extreme [1] 26:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face [2] 23:19 64:25 faced [3] 52:1 133:1,5 facial [16] 8:6 16:3 31:11,12 33:21 37:14 53:22 55:22 58:20 68:4,6 69:9 75:7 77:21 87:4 123:25 facially [8] 8:24 11:12 53:11,13 68:25 69:7 87:10 121:14 fact [11] 5:2 20:16 41:16 58:13 72:12,13 77:12 82:4 101:11 127:20 133:11</p>
--	--	--	--

<p>facts [5] 16:4 28:21 53:1 58:25 118:16 factual [4] 41:10 103:4 105:25 106:5 fail [1] 68:24 failed [3] 87:19 90:15 121:9 fails [5] 69:7,10 80:20 81:21 123:9 failure [1] 93:20 fair [1] 133:19 fairest [1] 133:16 fairly [5] 60:6 69:15 88:13 91:25 131:6 fairness [3] 8:15,18 43:6 fall [2] 114:4 119:5 fallback [1] 94:11 falls [1] 73:23 false [1] 115:6 family [1] 17:2 famous [2] 18:21 27:1 far [3] 30:1 72:10 105:2 fatal [2] 72:12,13 father [11] 12:2 52:20 58:3,13 59:1,14,18 77:9,13 86:13 87:24 fathers [7] 63:4,6 84:14,16 85:4 86:7 93:13 fault [1] 96:9 fear [2] 104:9 125:10 fears [1] 103:21 federal [2] 107:1,19 feels [1] 22:1 female [14] 7:7,8 36:14,15,24 43:1 49:16 50:3,7 52:3 70:3 82:4 100:18 103:7 females [4] 37:17 47:13 49:14 80:23 few [5] 27:15 48:14 60:16 105:2 131:19 figure [7] 57:11 64:5 91:14,18 96:16 99:12 100:10 filed [1] 26:13 final [3] 29:8 118:1 122:10 finally [3] 5:23 47:19 119:6 find [5] 30:23 81:22 94:24 98:9 100:9 finding [2] 41:16 98:7 findings [7] 117:11 122:8 126:9 130:21,22,23,25 fine [3] 59:15 76:19 92:25 finest [1] 96:7 finish [1] 20:16 first [20] 15:12 28:20 29:17 30:16 39:3 41:24 42:5 45:1,18 64:6,18 66:19 67:3 68:17,18 108:11 116:1,24 117:1,3</p>	<p>fit [28] 5:20,20 8:10 30:22,24 31:15 34:24 35:14,16 50:19,20 54:16 64:21,21 67:18,19 72:19 73:14,17,21,22 74:2 86:2 87:12 121:3 123:24 125:20,22 flip [2] 9:22 32:17 flow [1] 55:9 flowed [1] 119:14 fluctuate [1] 45:6 focus [5] 52:25 53:14 65:1,25 83:22 focused [2] 50:22 89:1 focuses [1] 33:13 focusing [1] 6:10 follow [4] 35:21 88:12 123:20 129:5 following [1] 60:9 footnote [5] 18:21 29:6 70:24 71:5 112:21 force [3] 28:7,10 35:10 forcing [1] 14:3 foreclosed [1] 91:6 forever [2] 26:22 130:15 formidable [2] 6:5 28:23 forth [2] 26:15 76:17 forward [9] 14:10,22 21:20,22 24:18 73:8 86:17,19 98:8 fourth [1] 24:16 fraction [4] 55:15 69:18,20,24 frame [3] 112:17 129:1,6 framework [2] 89:21 90:11 frankly [2] 60:11 125:10 frequent [1] 61:21 friend [4] 52:14 94:18 95:17 119:3 friends [5] 5:2 16:20 19:9 41:8 48:20 full [3] 112:2 122:9 131:8 fully [4] 105:22 119:20 122:12 131:2 further [4] 21:9 34:5 81:15 125:22 future [1] 21:1</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gate [2] 66:21 67:5 geduldig [1] 47:15 gender [5] 5:3 20:4 46:24 49:19 97:16 gender-altering [1] 100:19 general [6] 42:25 43:5,11 50:24 78:11 90:11 generally [4] 7:16 12:13 83:4 90:15</p>	<p>genes [1] 100:15 genetic [2] 111:5 114:13 gets [3] 59:14 89:16 97:24 getting [3] 72:4,5 127:6 girl [7] 52:7 74:11 98:25 99:5 102:6 107:8 108:21 girls [23] 35:25 36:23 37:18 38:3,20,25 39:25 40:1,8,22 52:12 70:3 83:13 84:1,3,5 88:16 90:5,7 98:18 107:4 109:13 129:18 girls' [11] 36:1,19,25 37:19 43:25 70:4 89:9 100:14,22 102:7 106:23 give [4] 39:18 54:4 79:11 123:11 given [5] 8:22 16:24 20:19 61:4 129:16 gives [1] 38:5 giving [2] 10:1 53:5 glad [1] 108:1 glance [1] 125:14 goal [5] 53:18 82:20 83:18 106:9,10 gorsuch [27] 16:17,19 18:6,8,10,17 19:16 35:19 68:21,22 94:7 95:2,14 96:6,11 123:19,20 125:13 126:5,10,14,21,25 127:4 128:13 129:2 132:23 gorsuch's [1] 129:6 got [4] 21:2 75:14 79:10 115:10 government [6] 87:14 99:11 107:1,19 127:5,6 government's [1] 81:9 graduate [4] 20:22 48:3 119:3,5 graduates [1] 48:17 graduating [1] 118:19 graduation [1] 48:21 granted [2] 26:16 117:24 grapple [1] 69:15 grappled [1] 122:13 grappling [2] 72:3 73:7 grasping [1] 86:23 great [1] 106:22 greater [1] 69:24 ground [2] 44:11 128:8 grounds [1] 8:1 group [28] 18:23,24,25 30:5 40:1 66:12 67:19,24 69:4,11 73:19 78:5 82:17 84:19,20 85:16 86:1,3,5 88:13 90:23,24 91:16,23 92:4 120:12 121:8 124:13 groups [4] 17:11 107:3 131:</p>	<p>4 132:18 growth [1] 106:23 guess [13] 13:5 34:7 40:17,19 42:16 45:14 46:7 56:4 74:19 77:19 92:18 126:18 129:16 gvr [1] 25:12</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>h.b [5] 79:21 80:6,15,20 81:21 half [2] 129:16,18 happen [2] 44:6 112:24 happened [1] 119:8 happening [2] 14:16 44:11 happens [5] 25:17 86:2 118:12 124:22 128:4 happenstance [1] 64:7 happy [1] 8:3 hard [2] 53:25 77:22 hardest [1] 126:17 hard-wired [1] 111:5 harm [3] 23:19 107:11 116:10 harms [2] 65:11 107:15 hartnett [86] 79:16,17,19 82:6,10,19 83:5 84:6 85:15 86:10 87:1 88:6,19 89:23 90:1,10,21 91:5 92:7 93:6 94:22 95:6,15 96:8,13 98:19 99:1,6 100:2,23 101:1,4,7,12,15 102:11 103:15 104:20 105:16 107:23 109:15 110:2,5,8 111:10,12,14,18,22 112:5,10,15 113:4,19,22 114:9 115:3,25 116:12,21 117:1,4,7,16,19 118:20,23 119:10,22 120:5,18 121:4,16 122:2,22 123:2 124:18 125:24 126:7,11,15,22 127:2,14 128:15 130:6 hashim [1] 49:6 health [1] 96:17 healthy [1] 125:16 hear [4] 24:6 29:11 75:18 105:9 heard [3] 70:4 95:17 131:20 heavy [1] 128:1 hecox [6] 5:12,14,24 28:23 80:16 88:7 hecox's [5] 5:12 6:5 21:24,25 29:8 height [1] 111:24 heightened [13] 6:21 16:24 80:20 102:15 104:14 110:12,15,20 122:15 123:5,6,14 127:25</p>
--	--	--	---

Official - Subject to Final Review

<p>held [6] 13:24 26:4 52:23 58:3,10 76:15</p> <p>help [3] 78:10 94:25 98:8</p> <p>helpful [1] 17:15</p> <p>helps [1] 18:21</p> <p>herself [1] 53:20</p> <p>high [1] 116:15</p> <p>higher [1] 78:13</p> <p>himself [1] 93:12</p> <p>history [11] 16:25 17:2,10,23,23 18:3,14 19:13 29:4 97:19 106:4</p> <p>hits [1] 28:1</p> <p>holding [2] 67:21 81:14</p> <p>holdings [2] 15:7 65:25</p> <p>home [1] 97:8</p> <p>homosexuals [2] 96:4,22</p> <p>honestly [1] 73:6</p> <p>honor [41] 6:22 8:4 11:2 16:9 19:19 21:19 23:5 24:12 25:6,18 26:11,23 27:19 30:15,18 31:18 33:11 37:3 39:2 40:25 43:14 45:2 47:3 48:8 63:8 64:18 65:13 68:13 82:6 84:6 87:1 88:19 92:8 98:19 99:1 103:15 107:23 116:13 117:19 120:5 130:7</p> <p>honored [1] 26:7</p> <p>honors [2] 131:23 132:4</p> <p>hope [2] 105:8 124:16</p> <p>hopes [1] 118:1</p> <p>hoping [1] 119:4</p> <p>hormone [2] 114:23 115:8</p> <p>hormones [4] 12:18 100:18 101:2 120:17</p> <p>hostility [1] 118:3</p> <p>hotel [1] 20:24</p> <p>hotels [4] 21:1,19,19 22:5</p> <p>hour [1] 96:7</p> <p>house [1] 97:15</p> <p>housing [1] 10:3</p> <p>huge [3] 105:23 107:25 108:1</p> <p>human [1] 64:15</p> <p>hurst [90] 6:14,20 7:10,20 8:3,15,18,23 9:3,8,14,16,22 10:12,25 11:2,21 13:14 14:7 15:11,14,21,24 16:8,17,18 17:6 18:16,20 19:19 21:7,10,18 23:4 24:12 25:6,18 26:11,23 27:10,14,18,21 28:3,12,17 29:13 30:15 31:2,3,17 32:13,24 33:7,9,22 34:2 36:2,11,20 37:3,11,20 38:7 39:2,7,13,19 40:2,24 41:7,24 43:13,21 44:4,7,12,17 45:1,16 46:2,14 47:2,9</p>	<p>48:7,18,23 49:2 131:16,18</p> <p>husband [1] 57:11</p> <p>husbands [1] 57:12</p> <p>hypo [2] 39:18 100:23</p> <p>hypothetical [5] 39:12 54:5 101:24 113:10 126:18</p> <p>hypotheticals [1] 89:12</p> <hr/> <p>I</p> <hr/> <p>i.e [1] 26:9</p> <p>idaho [10] 44:7,11 64:6 70:5 72:25 79:21 111:1 116:24 132:22 133:22</p> <p>idaho's [6] 5:10,19 9:23 40:14,17 80:3</p> <p>idea [1] 82:21</p> <p>identical [2] 21:14 24:5</p> <p>identified [4] 92:20 93:1 100:4 121:6</p> <p>identifies [1] 7:7</p> <p>identify [15] 5:6,16 23:11 34:8,10 35:3 36:13,24 37:17 43:1 47:10 56:1 70:2 75:25 79:3</p> <p>identity [8] 5:4 20:4 36:16 37:5,7 46:24 47:5 49:20</p> <p>idiosyncratic [3] 89:21 91:15 92:16</p> <p>iii [3] 24:22 28:19 29:11</p> <p>illegitimacy [2] 85:22 97:22</p> <p>imagine [2] 54:7 73:3</p> <p>immigration [2] 17:2 95:22</p> <p>impact [1] 47:10</p> <p>implemented [1] 132:17</p> <p>implication [1] 93:13</p> <p>implications [4] 38:16 72:16 77:18,19</p> <p>important [7] 21:17 82:13 87:14 95:16 106:10,13 130:17</p> <p>impose [1] 38:10</p> <p>inartfully [1] 124:16</p> <p>include [3] 7:8 96:4,22</p> <p>included [3] 6:18 44:3 91:21</p> <p>including [4] 32:5 74:4 81:16 117:7</p> <p>inclusion [1] 109:3</p> <p>inconsistent [1] 69:21</p> <p>incorporated [1] 22:10</p> <p>incorrectly [1] 42:12</p> <p>increasing [1] 118:2</p> <p>incur [1] 28:9</p> <p>indeterminately [2] 85:3 93:14</p> <p>indicates [1] 112:22</p> <p>indication [1] 111:2</p>	<p>individual [33] 6:17 8:7 11:5 13:22 14:4,16,24 22:21 42:20 43:3,4,5 48:22,23 50:14,15,24 55:6,10 76:12 90:22,22,22 91:3,3,4,14 107:8 119:25 120:1,7 124:13 127:10</p> <p>individually [4] 16:12 44:2 50:25 78:8</p> <p>individuals [11] 17:1 30:4 33:16 43:1 46:22 49:18 51:18 65:23 82:15 90:19 103:25</p> <p>infamy [2] 26:22,22</p> <p>inferences [1] 42:8</p> <p>infertile [10] 52:3,6 57:4 65:4,5,5,6,7,19,21</p> <p>influenced [1] 132:19</p> <p>inform [1] 25:14</p> <p>information [1] 117:21</p> <p>initially [1] 66:17</p> <p>injunction [4] 81:23 93:23 105:5 117:8</p> <p>inquiry [2] 85:8 104:15</p> <p>inspiring [1] 106:24</p> <p>instance [2] 13:22 14:1</p> <p>instead [1] 53:15</p> <p>institutional [2] 32:10,11</p> <p>instructive [1] 97:3</p> <p>insular [2] 16:23 18:22</p> <p>insurmountable [1] 128:2</p> <p>intend [4] 5:25 25:22,25 118:8</p> <p>intended [1] 20:25</p> <p>intending [1] 117:24</p> <p>intent [3] 20:11 26:6,8</p> <p>intents [1] 26:8</p> <p>interest [16] 8:13,17,20 12:3 23:24 48:12 50:13 82:13 87:14 89:6,8 91:18 93:21 99:21 109:6 129:23</p> <p>interested [1] 103:7</p> <p>interesting [2] 95:8 97:5</p> <p>interestingly [1] 108:17</p> <p>interests [2] 94:1 129:13</p> <p>interfere [1] 40:15</p> <p>intermediate [45] 5:11,18 6:21,23 7:14 13:19 14:5 15:18 23:7,21 30:20 31:5,25 34:24 39:14 41:25 42:3,6,7 50:18 51:3,7 52:13 56:19 64:19 66:23 67:17 68:12,18,24 72:14,24 73:3,16 78:15 83:16 85:13 87:13,16 103:18 109:25 114:2 121:6 123:23 125:23</p> <p>interpreted [1] 61:2</p>	<p>interpreting [2] 58:16 96:1</p> <p>intervenor [1] 116:15</p> <p>interventions [1] 14:19</p> <p>introduced [1] 19:14</p> <p>intrusive [1] 45:7</p> <p>invalid [4] 51:11 53:11,14 62:2</p> <p>invalidate [1] 127:21</p> <p>invalidating [1] 87:10</p> <p>invasion [1] 113:13</p> <p>invasive [4] 45:7 113:14,21 114:21</p> <p>invent [1] 88:21</p> <p>involved [2] 7:25 130:4</p> <p>involves [1] 24:13</p> <p>isn't [16] 5:8 6:6,6 22:13,14 31:9 48:17 53:14 73:5 74:10 75:9 86:23 95:20 118:7 119:19 131:6</p> <p>isolating [1] 58:17</p> <p>issue [15] 10:6 24:13 25:4,15 50:22 68:15 71:13 98:12 99:14 103:6,22,24 106:10 107:3 128:10</p> <p>issues [2] 24:4,5</p> <p>itself [6] 16:24 45:18 57:25 82:3 94:14 113:14</p> <p>ix [10] 22:20 60:24 70:10,24 71:1,4 82:2 83:4,9 107:24</p> <hr/> <p>J</p> <hr/> <p>ja [3] 104:2,4,4</p> <p>jackson [51] 14:6,8 15:13,19,22,25 42:15,16 43:17,22 44:5,10,16,18 45:9 46:1,3,21 47:6,19 48:14,22,25 54:19,22 55:4,20 56:15,17 57:6,10,15,19,25 58:8,22 74:18,19 75:4,6,23 76:21 77:1,11,14,16 78:22 79:10,13 92:23 131:13</p> <p>judge-made [1] 31:21</p> <p>judges [2] 31:21 62:15</p> <p>judgment [2] 70:12 122:10</p> <p>judgments [1] 127:23</p> <p>jump [1] 129:20</p> <p>june [1] 48:16</p> <p>jure [3] 16:25 17:6 18:14</p> <p>jurisdiction [2] 22:3 24:23</p> <p>jurisprudence [2] 13:15 94:9</p> <p>justification [16] 11:17,18 22:19 32:4 33:14 52:16 60:19 65:6 66:25 74:15,24 76:13,17 80:3 81:9 121:3</p> <p>justifications [1] 12:9</p> <p>justified [13] 9:9,11 13:18,</p>
--	--	---	--

<p>21,22 14:13 34:23,25 59:10 61:20 69:11 79:2 128:12</p> <p>justify ^[4] 12:5 14:3 123:7,8</p> <p>juxtaposition ^[1] 15:23</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kagan ^[40] 10:19,22,24 11:7 12:11 29:12,13 30:25 31:3 32:12,15 33:3,8,18,23 35:17 42:17 53:2 66:2,3,14 67:4,10 68:1,19 71:24 77:20 89:23 90:20 91:22 119:21,22 120:15 121:1,11,24 122:21,24 123:17 124:15</p> <p>kagan's ^[1] 92:24</p> <p>kahn ^[2] 11:24 58:9</p> <p>kathleen ^[1] 79:17</p> <p>kavanaugh ^[22] 35:20,21 36:9,17,21 37:9,16,24 38:12 70:1,13,19,23 71:9,13,16,19 105:14 106:19 129:4,5 131:10</p> <p>keep ^[2] 46:19 114:5</p> <p>key ^[1] 19:23</p> <p>kids ^[1] 77:10</p> <p>kind ^[14] 18:12 57:7 72:1 93:8 95:10 110:24 111:4 115:5 121:18 125:10 127:10,17 128:11 130:9</p> <p>kindergarten ^[1] 125:4</p> <p>kinds ^[3] 19:8 53:12 72:16</p> <p>knowing ^[1] 99:25</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lack ^[5] 5:5 31:15 40:3 45:3 90:16</p> <p>lacked ^[2] 8:9 19:1</p> <p>lalli ^[3] 85:23 88:3 91:12</p> <p>language ^[3] 16:15,15 96:1</p> <p>large ^[1] 107:7</p> <p>larger ^[3] 112:17,24 128:25</p> <p>last ^[4] 64:2 89:25 106:22 113:1</p> <p>lately ^[1] 62:17</p> <p>later ^[5] 15:7,15 61:13 122:20 128:14</p> <p>laughter ^[4] 95:5 96:10,12 112:4</p> <p>laundry ^[1] 17:4</p> <p>law ^[86] 5:19 7:14,23 9:9,10,12,20,23 13:24 14:3,17 16:11 17:2 18:2 25:18 27:3,15 29:20,20,22 30:2 34:25 35:24 36:3,11,18 40:14,17,20 43:23 44:7,8,11 46:8,10,15,25 47:2 49:24 50:23 51:8,8,</p>	<p>24 52:16 53:10,13 54:5,14,17 55:2,13,23 57:22 60:6,18 61:24 62:13,24 63:9,11,12 65:4,20 66:12 72:2 74:7 75:2,3,8,12,25 76:11,14,17,19 91:2 99:9 104:1,6 106:14 115:23 116:4,20,25 121:13 123:7</p> <p>laws ^[13] 17:20 18:24 31:21 56:9 70:10 74:1,21 78:11 94:19 95:19 97:4,17 130:13</p> <p>law's ^[2] 5:14 37:6</p> <p>lay-up ^[1] 73:5</p> <p>league ^[1] 107:10</p> <p>learn ^[1] 130:1</p> <p>learning ^[1] 130:23</p> <p>least ^[11] 54:16 69:8 74:12 85:17 116:6 123:25 125:5 126:22 130:2 131:1,7</p> <p>leave ^[4] 24:10 27:23 28:3 97:8</p> <p>leaving ^[2] 42:2 97:15</p> <p>leeway ^[2] 123:12,24</p> <p>legal ^[3] 21:17 33:13 46:5</p> <p>legislate ^[1] 103:20</p> <p>legislation ^[1] 30:22</p> <p>legislative ^[5] 19:13,21 20:2 106:4 130:10</p> <p>legislators ^[1] 106:3</p> <p>legislature ^[5] 14:3 31:24 42:5,7 46:17</p> <p>legislatures ^[2] 32:14 106:2</p> <p>legitimate ^[2] 23:24 121:14</p> <p>lehr ^[34] 7:24 9:2,3,8 15:7,8,15,25 16:3,9 57:18,25 58:3,3,3,4,9,10,16,19,25,25 59:1,6,12,15 61:15 63:10 72:5 76:22 85:18 88:2 91:10 121:20</p> <p>length ^[1] 94:10</p> <p>lengthy ^[1] 132:21</p> <p>less ^[3] 68:5 92:1 112:24</p> <p>letting ^[1] 9:24</p> <p>level ^[8] 40:9 51:12 96:19 114:24 117:11 124:20,22 126:7</p> <p>levels ^[7] 34:21 38:21 39:21 41:6,13 50:3 113:8</p> <p>life ^[1] 77:10</p> <p>light ^[2] 49:13 93:20</p> <p>likewise ^[1] 110:12</p> <p>limit ^[1] 23:10</p> <p>limits ^[1] 45:18</p> <p>lindsay ^[4] 80:16,21 88:7 100:5</p> <p>line ^[12] 6:23 39:24 59:17</p>	<p>79:22 80:4 82:8,11,12 88:3 133:14,23,24</p> <p>lines ^[2] 72:7 73:1</p> <p>list ^[1] 17:4</p> <p>listen ^[1] 41:9</p> <p>literally ^[1] 75:3</p> <p>litigating ^[1] 71:3</p> <p>litigation ^[10] 12:13,22,23,24 20:24 26:2 27:23 28:1 48:12 90:13</p> <p>little ^[6] 21:13 25:16 26:7 41:21 47:21 122:25</p> <p>live ^[1] 26:22</p> <p>lives ^[1] 27:5</p> <p>location ^[1] 64:8</p> <p>logic ^[4] 16:16 62:8 63:13,17</p> <p>logical ^[1] 62:9</p> <p>long ^[5] 11:11 17:3 29:9 98:4 118:10</p> <p>longer ^[2] 32:6 75:21</p> <p>look ^[22] 10:10,12 13:8 17:18,22 20:1 32:22,23,25 33:1 34:3 43:25 44:1 48:8 83:16 91:24 97:24 104:4 109:22 119:24 127:17 130:19</p> <p>looked ^[5] 27:5 91:10 117:14 120:10 121:17</p> <p>looking ^[4] 17:17 89:5 90:4 103:5</p> <p>looks ^[1] 85:25</p> <p>lose ^[3] 20:21 28:6 77:15</p> <p>lost ^[2] 59:7 131:25</p> <p>lot ^[17] 13:10 19:17 62:16 68:5 70:1 73:10 86:15 89:11 103:6,7 107:18,19 108:20 119:11,13 127:19 128:17</p> <p>lots ^[2] 59:25 60:2</p> <p>lousy ^[1] 22:22</p> <p>low ^[1] 113:18</p> <p>lower ^[2] 70:10 71:3</p> <p>luck ^[1] 77:13</p> <p>ludicrous ^[3] 52:9,10 65:18</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made ^[15] 20:10,24 24:14 26:1 36:14 40:18 48:6 66:21 76:3 83:3 108:1 119:12 121:21 126:12 127:20</p> <p>magic ^[1] 36:5</p> <p>main ^[2] 80:13 94:5</p> <p>major ^[1] 97:12</p> <p>majority ^[5] 62:5,19,23 65:2 95:9</p> <p>majority's ^[1] 62:8</p> <p>majure ^[1] 62:6</p>	<p>makeup ^[1] 116:9</p> <p>male ^[20] 7:6,7,18 22:21 43:2 50:5 52:2 74:10 79:23 81:6 82:4 100:6,16,24 101:2 113:10 120:13,14,21 132:3</p> <p>male/female ^[1] 22:20</p> <p>males ^[27] 5:5,6,15,20 7:16 23:12 34:8,8,10,14,17 35:3 36:12,13,18,23 37:17 40:3,7 46:20 49:14,16 54:7 70:2 80:5 99:17,19</p> <p>man ^[5] 25:22 49:22 57:4 98:25 99:5</p> <p>maneuvers ^[1] 22:13</p> <p>manipulative ^[1] 22:2</p> <p>manner ^[1] 106:15</p> <p>many ^[14] 17:11 23:12 32:4,8 37:16 54:22 78:25 80:8 87:3 93:9 116:20 128:25 132:9 133:18</p> <p>marker ^[1] 110:25</p> <p>match ^[1] 109:5</p> <p>matched ^[2] 44:14,15</p> <p>matches ^[1] 10:8</p> <p>matching ^[1] 97:16</p> <p>material ^[1] 117:9</p> <p>math ^[4] 51:9,10,12 60:11</p> <p>matter ^[8] 12:10 38:11 44:7 78:3 87:12 97:7 126:20 133:24</p> <p>matters ^[3] 56:5 87:11 133:15</p> <p>mean ^[32] 12:11,13 31:3 33:9,18 34:6 39:18 55:5,20 60:25 68:1,25 72:15 87:2 89:3 90:10 96:16 99:4 103:3 105:17 117:2,19 118:3 120:16 122:14 123:2 124:6,20 126:6,11 127:15 129:8</p> <p>meaningful ^[2] 64:9 105:19</p> <p>means ^[8] 24:15 75:3 78:16,24 80:6 97:6 98:24 99:25</p> <p>meant ^[1] 96:4</p> <p>medal ^[1] 107:10</p> <p>medals ^[1] 131:25</p> <p>medical ^[6] 14:19 41:3 43:6 115:9 132:2,7</p> <p>medications ^[1] 120:17</p> <p>meet ^[2] 60:11 86:2</p> <p>members ^[1] 30:5</p> <p>membership ^[1] 18:25</p> <p>men ^[20] 41:12 47:10 50:1 51:16,25 52:24 54:9,10,18 60:2,11 62:25 63:9 77:7 83:19 110:6,9,10,14 133:20</p> <p>men's ^[1] 102:25</p> <p>mentally ^[1] 17:12</p>
--	--	--	---

<p>mentioned ^[1] 29:5 mere ^[1] 36:5 merely ^[2] 43:3 132:15 met ^[2] 6:6 126:8 metric ^[1] 127:16 michael ^[8] 51:20,23 57:4 65:3 69:22 72:6 76:16 79:7 might ^[25] 16:10 24:24 33: 12 34:13,15 37:12 41:5 51: 10 68:24 69:6 72:19 76:18 89:19 94:7,11,12,12 105: 24 108:20 109:16 113:6 116:7,20 118:22 128:18 million ^[1] 64:4 mind ^[2] 13:1 26:9 minimal ^[2] 113:25 114:3 minimum ^[1] 131:8 minority ^[2] 18:22 62:15 minute ^[1] 10:4 minutes ^[1] 24:6 mismatch ^[2] 11:16 12:15 misrepresented ^[1] 26:6 misunderstood ^[1] 99:6 mit ^[2] 60:10,13 mitigate ^[2] 89:15 94:3 mitigated ^[8] 80:17 81:7 108:16,23 109:5 120:13,22 122:18 mitigating ^[1] 124:8 mm-hmm ^[4] 18:16 33:22 36:20 41:7 mode ^[1] 29:23 moment ^[2] 106:13 131:20 monitor ^[1] 50:3 monitoring ^[1] 45:5 months ^[1] 48:15 mooppan ^[63] 49:5,6,9 50: 17 53:3,25 54:21 55:1,12 56:7,16,20 57:9,14,17,20 58:2,21,24 59:22 61:1 62: 22 63:7,15,21,25 64:13,17 65:12,16 66:3,9,18 67:8,13 68:8 69:2 70:9,16,21 71:2, 12,14,18,23 73:9,16 74:12, 15 75:1,5,22 76:10,24 77:2, 12,15 78:9 79:6,11 85:9 91: 24 93:2 moot ^[10] 6:6 21:5 22:13,14 28:18,21 81:23 112:3 115: 18 118:16 mootness ^[11] 5:23,24 6:9 20:8 25:4 47:20,23 48:4,10 115:17 117:18 morales-santana ^[3] 81:17 85:20 91:11 most ^[14] 18:2 33:9,11 40:8, 11 60:10,11 61:21 76:24</p>	<p>94:24 117:6 128:16 130:17 133:16 mostly ^[1] 124:3 mother ^[6] 58:5,6,12 59:3,4, 17 motivated ^[1] 132:16 ms ^[85] 79:16,19 82:6,10,19 83:5 84:6 85:15 86:10 87:1 88:6,19 89:23 90:1,10,21 91:5 92:7 93:6 94:22 95:6, 15 96:8,13 98:19 99:1,6 100:2,23 101:1,4,7,12,15 102:11 103:15 104:20 105: 16 107:23 109:15 110:2,5, 8 111:10,12,14,18,22 112:5, 10,15 113:4,19,22 114:9 115:3,25 116:12,21 117:1, 4,7,16,19 118:20,23 119:10, 22 120:5,18 121:4,16 122: 2,22 123:2 124:18 125:24 126:7,11,15,22 127:2,14 128:15 130:6 much ^[4] 33:19 41:11 68:9 69:23 munsingwear ^[2] 25:9,12 muscle ^[2] 112:17,25 muscles ^[1] 129:1 myself ^[2] 23:18 108:1</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>naia ^[1] 132:18 name ^[1] 96:23 named ^[3] 26:21,25 27:7 nature ^[7] 7:12 15:10 30:19 31:15 33:12 84:10 113:24 naaa ^[6] 44:12,14,14 105:4 107:1,18 necessarily ^[2] 43:9 78:22 necessary ^[3] 81:19 98:21 133:19 need ^[11] 30:3 41:10,16 42: 9 50:7 56:10 102:17 104:4 122:16 132:13 133:6 needed ^[3] 32:9 87:20 88:1 needing ^[1] 23:7 needs ^[3] 69:15 112:1 130: 15 negative ^[3] 26:5,14 27:12 neither ^[2] 59:15,20 never ^[14] 13:24 25:22 37:6 59:16 72:17 83:10 93:16 100:17,18,18 103:16 109: 21 118:11 130:8 nevertheless ^[2] 52:23 100: 20 new ^[6] 25:14,17 26:9 77:25 105:23 128:8</p>	<p>next ^[2] 6:1 111:15 nguyen ^[22] 11:24,25 13:23, 24 52:15,16,20,21,22 53:1 69:22 76:15,24 77:3,4,6 79: 8 81:17 85:19 87:18 91:11 113:25 nguyen's ^[2] 52:20 77:13 nike ^[2] 28:24,24 ninth ^[4] 19:22,23 24:14 25: 15 nobody ^[1] 133:23 none ^[1] 22:4 non-endogenous ^[1] 115:9 non-marital ^[5] 85:22 86:11 91:12 92:9 97:23 nor ^[2] 59:15 94:1 normal ^[2] 39:14 66:23 normally ^[2] 123:14 128:3 note ^[1] 85:1 noted ^[1] 116:23 nothing ^[6] 15:14 19:20 26: 11 40:15 45:18 80:10 notice ^[2] 19:23 21:23 notion ^[5] 8:5 40:3 92:12 102:21 103:24 notoriety ^[1] 26:10 notwithstanding ^[2] 48:5 53:21 novel ^[1] 114:12 nowhere ^[1] 62:23 nude ^[1] 114:16 number ^[6] 15:5 76:7 77:5 85:4 93:13 105:23 numbers ^[4] 57:1 64:14,15 107:7 numerical ^[1] 93:17 numerous ^[2] 62:1 104:5</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>objecting ^[1] 84:15 objection ^[1] 84:17 objective ^[2] 13:25 82:23 obvious ^[1] 91:7 obviously ^[6] 12:6 104:24 106:9,21 126:19 133:21 occasionally ^[1] 83:5 o'connor ^[2] 61:14 95:10 odd ^[1] 47:21 odds ^[1] 18:12 offered ^[1] 28:8 officer ^[1] 105:6 often ^[4] 29:22 31:10 72:12 130:11 okay ^[24] 10:3 18:10 27:20 34:13 38:12 39:6,13 41:2 44:16 52:6 53:16 59:19 68: 7 70:23 71:9,19 77:1,14 78:</p>	<p>16,24 89:24 113:9 115:1 118:4 old ^[1] 40:4 older ^[2] 84:22 95:7 olympic ^[4] 107:2,18 112:20 119:7 once ^[4] 27:25 33:15 113:16 121:5 one ^[48] 6:17,23 7:17 10:8, 14 12:11,21,22 15:3,5,23 17:20 18:12 21:8,19 25:4 27:4 28:17 32:5 34:18 47: 23 55:1 56:1,2,21 64:2,11 71:7 80:8 87:15 94:7,11 95: 21 103:1 105:7 106:21 108: 25 110:5 116:6 122:7 126: 9,23 128:2,11 129:25 132: 5,14 133:10 one-off ^[1] 87:23 ones ^[2] 47:18 117:4 ongoing ^[1] 45:5 only ^[21] 5:6 8:20 26:8,16 28:18 30:21 33:24 34:9,18 35:15 39:15 42:9 48:14 52: 8 55:8 56:10 59:11 78:15 93:12 109:13 111:2 open ^[1] 25:23 operate ^[2] 47:4 78:17 operates ^[3] 46:25 75:25 76: 11 operating ^[1] 78:4 opinion ^[6] 16:16,16 19:22 62:24 63:18 68:15 opinions ^[2] 65:2,2 opportunity ^[7] 5:1 9:24 10: 1 52:18 83:18 90:16 94:23 opposed ^[2] 103:8 117:22 opposite ^[1] 9:6 opposition ^[1] 58:22 oral ^[2] 49:6 79:17 order ^[4] 8:4 22:2 29:3 119: 14 ordinarily ^[1] 47:22 ordinary ^[3] 34:21 61:2 113: 22 orgs ^[1] 119:15 originally ^[1] 43:23 other ^[48] 5:2 15:2,8 16:21 19:9 23:17 24:9 25:4 26:1, 25 30:1 34:22 37:22 38:10 41:9 45:22,22 47:16,18 54: 17 56:6 70:6 71:8 76:7 80: 24 81:4 88:9 89:20 91:6 92: 3 94:2,18 95:18,19 96:4 105:10 108:20 110:17 111: 2,4,23,25 114:1 115:19 119:15 121:9 128:11 129:</p>
--	---	---	--

Official - Subject to Final Review

<p>24 others [3] 9:20 97:13 120:23 otherwise [2] 23:8 116:10 ought [1] 30:14 ourselves [1] 120:9 out [35] 11:17 15:25 16:6 20:20 22:24 23:15 26:3,18 38:18 39:23 41:15 47:15,16 48:16 50:14 57:12 72:1 80:24 81:4 84:22 85:2,18 87:8 91:14,18 92:18 96:16 99:12 100:10 117:12 119:11 120:7 122:1,20,24 outbreak [1] 105:23 out-matching [1] 82:16 outside [1] 35:16 over [8] 6:5 14:5 17:1 40:8 45:20 80:18 106:22 130:24 overall [3] 52:24 83:17 95:23 overbroad [8] 8:9 16:11,12 75:13,13,20 78:21 116:20 over-inclusiveness [1] 31:14 overreacting [1] 106:16 overrun [1] 105:23 overshoot [1] 73:2 overstated [1] 105:13 own [8] 17:25 34:17 64:25 82:21,24 99:21 100:5 130:14 owner [1] 22:7</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page [1] 77:5 paragraph [1] 65:17 pardon [1] 104:4 parent [4] 52:17,18,19 121:22 parents [1] 8:21 parsing [1] 119:11 part [7] 16:12 53:13,14 69:3 91:15 93:15 101:20 participate [6] 35:25 36:14 100:22 104:19 107:5 129:18 participated [1] 105:1 participation [3] 84:23 103:9 106:7 particular [12] 6:18,18 7:24 31:22 44:21 50:22 78:4,5 82:17 84:7 85:10 103:4 particularly [2] 29:21 82:13 pass [2] 116:25 117:22 passed [2] 18:24 19:18 passes [1] 6:23</p>	<p>past [2] 29:5 90:14 paternity [3] 86:8,12 87:21 path [2] 33:4 98:7 pelvic [1] 114:14 penalty [1] 97:14 people [64] 7:18,25 9:6,19 17:9,10 18:23 19:9,14 23:9,11,19,20 27:2,2,17 30:3,23 35:15 46:18 54:22 55:14 56:6,13,22,23,25 57:22 58:18 60:4 64:4 65:8,22 69:9,23 74:23 75:14,17,20,25 76:7 79:9 82:17 86:22 87:9 88:9 89:19 95:21 96:3,24 97:16 103:6 104:25 105:18,24 107:20 109:4,18 115:6 120:12,21 121:2 130:1 133:4 perceived [1] 103:22 percent [23] 5:20 34:10,24 40:7 51:16,17 55:14,15,16 56:6,13 64:10,10,10,11,22,25 69:18,20,25 86:21 92:1 111:19 percentage [9] 54:4 64:3 66:1,11 69:24 104:18 124:4,12 127:13 perfect [11] 5:20 31:15 50:20 64:21 67:18 72:19 73:14,21,22 74:2 123:24 perfection [4] 31:7 67:21,22,25 perfectly [7] 49:25 59:18 73:25 74:21 75:10 78:17 84:2 performance [1] 94:6 performance-altering [1] 50:6 performances [1] 19:7 perhaps [2] 74:11 96:6 periodic [1] 113:16 permanently [1] 20:13 permissible [1] 102:4 permit [2] 37:21,23 permitted [1] 44:13 person [40] 11:13,15 20:24 27:9 28:10 45:10,10 53:19 55:2 56:1,2 68:11 74:1 76:3,12,14,18 78:18 79:5 86:1 87:19 92:15 97:7 101:8,9,10,13,16,18,20 102:6,8 108:16,22,24 112:19 113:12,23 114:23 122:18 personality [1] 96:3 persons [1] 94:20 person's [1] 23:24 perspective [1] 102:14 persuaded [1] 38:8</p>	<p>pertain [1] 126:15 perverts [2] 96:5,22 petitioner [4] 12:1,6,9 48:11 petitioners [2] 49:8 131:17 physical [4] 14:21 65:18,24 116:9 physically [1] 82:16 physiological [1] 49:23 pick [1] 98:11 picture [3] 106:20 107:15 125:9 piece [2] 70:18 109:20 place [2] 108:12,12 places [1] 40:12 plaintiff [12] 9:10 26:12,18 28:8 44:21 47:25 48:3,6 59:6,9 66:7 67:2 plaintiffs [6] 12:14 14:4 27:1,6,23 31:23 plaintiff's [3] 21:20,22 26:13 plans [7] 21:20,22,24,25 29:8,8,10 play [25] 5:25 36:15,19,24 37:18 38:18 40:14,23,24 41:1,15 43:2 45:11 46:11,23 47:12 70:3 102:24 104:8 109:10 117:24 118:9,11 122:1,24 played [1] 105:5 player [1] 22:22 players [1] 23:1 playing [3] 7:17 20:14 26:19 please [6] 18:8 49:10 57:19,19 79:20 90:1 podium [1] 108:5 point [46] 8:11 17:7 19:6 20:12 28:1 31:1,8,9 35:8 41:2,14,20 48:19,21 50:21 55:15 59:25 65:1 68:25 78:20 82:7 83:1 90:3 95:20 97:6 104:13 108:4,8,11 109:16,17 112:6,7,9,13,15 115:3 116:19 119:1 123:22 126:12 128:14 129:19 130:5,12 131:7 pointed [3] 72:1 85:2 94:19 points [3] 35:14 84:22 131:19 policy [7] 38:10 44:12,14,15 48:2 99:8 127:22 political [3] 19:1,2 119:18 politically [2] 126:20 132:15 politics [1] 132:19 population [1] 105:19 pose [1] 74:9 posing [1] 124:16 posit [2] 16:21 53:17</p>	<p>position [13] 35:23 37:1,25 59:12 70:17,20,25 71:10 78:2 83:24 86:23 112:19 116:13 positions [1] 115:19 possibility [1] 14:2 possible [4] 30:21,23 34:4 48:21 possibly [2] 69:20 87:4 post-cert [1] 6:3 post-certiorari [1] 22:12 potential [1] 6:25 potentially [1] 48:5 power [2] 19:2 32:13 practical [1] 97:7 practice [3] 37:15 42:20 99:17 precedent [2] 11:9 88:23 precisely [2] 35:9,11 predated [1] 90:12 prefer [1] 98:6 preferred [2] 29:23 87:6 pregnancy [2] 52:1,4 prejudice [2] 21:4 28:9 preliminary [6] 80:11 81:23 93:23,24 103:1 117:8 premise [6] 14:9 24:21 25:2 76:1,2,11 premises [1] 22:6 preparing [1] 117:25 prepubertal [1] 111:16 prepubescent [1] 40:1 pre-pubescent [1] 52:11 prescription [1] 78:4 presence [1] 36:5 present [7] 52:21 77:8 82:15 103:1,4 111:12 122:16 presented [1] 92:19 presenting [1] 120:8 preserving [1] 5:1 president [1] 119:8 pressing [1] 102:20 presumably [1] 41:20 presume [1] 61:24 presumption [1] 106:16 presupposes [1] 5:13 pretend [1] 112:11 pretext [1] 37:12 pretty [2] 34:24 84:20 previous [2] 26:8 65:11 previously [1] 9:25 primary [5] 94:12 115:23,24 116:2,7 principle [5] 27:22 30:19 91:20 93:18,19 principles [3] 29:19 30:6,17 probably [4] 6:8 61:4,5 77:</p>
--	--	---	---

<p>13 problem [16] 33:2 48:4 51:20 61:11 72:14,15,20 73:11,12 78:19 82:16 100:11 106:15 107:21 114:20 125:8 procedures [1] 113:3 proceeded [1] 121:10 process [4] 17:16 19:3 130:10 131:5 promise [1] 26:1 promised [1] 28:9 promoting [1] 8:14 prong [1] 32:18 properly [4] 60:18 61:1 91:20 121:22 property [1] 17:25 proportional [1] 104:18 proposing [4] 42:21 43:9 44:23 109:2 prosecuted [1] 97:17 prosecuting [1] 28:11 protect [4] 19:2 74:8 80:4 104:7 protected [2] 110:19 114:5 protection [42] 6:10 8:1 11:1,3 13:2,3,15 14:12 29:16,20 30:2,7,8,13 32:20 38:2,9 49:20 53:5 61:18,22 66:5 70:7,14,18 71:25 80:1 88:25 89:3 90:11 91:2 94:9 98:22,23 99:3,25 100:11 122:15 123:6,16 128:9 130:8 prove [4] 8:8 33:20 77:9 114:11 provide [2] 117:20 127:15 provided [2] 20:3 121:19 providing [1] 131:3 provision [2] 36:22 53:10 prudent [1] 128:16 psychopath [1] 95:23 psychopathic [1] 96:3 puberty [12] 12:19 80:13 81:6 100:17 102:23 108:19 111:16 120:21,24,24,25 124:2 public [1] 96:17 purposes [4] 24:16 98:22 99:3 100:1 pursuant [2] 61:2 100:4 put [8] 39:4 53:12 76:17 106:19 112:19,23 118:16 126:8 puts [5] 14:22 19:24 20:20 22:5 128:1 putting [1] 14:9</p>	<p>qualifies [1] 100:5 quantitative [1] 57:7 quarter [1] 34:19 quarters [1] 34:22 quasi [1] 133:8 quasi-suspect [1] 17:16 question [71] 7:6 10:5 11:4 12:16 13:2 14:9,13 15:12 18:13 20:8,18 21:13,14,17 24:4,19,21 25:2 28:19,19 32:18 37:8 40:19 41:24 46:15 56:8 64:2 70:14 71:6,7,15 81:20 82:7 88:20 89:2,4,25 91:7 92:7,24 93:17 95:15 98:3,9 99:7 101:18 102:12 103:2 104:12 108:5,6,7,15 109:8 110:22 111:3 113:1 116:1 117:18 121:25 122:3 123:10 124:16,19,19,20 127:11,12,13 129:6 130:7 questions [9] 6:7,9 38:16 50:9 69:16 71:24 72:4 81:25 133:12 quite [3] 86:22 88:17 125:15 quote [1] 19:23</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race [4] 17:18 78:14 133:2,5 raise [1] 115:22 raised [3] 12:1 24:4 115:17 raises [1] 107:21 ramifications [1] 72:22 range [1] 88:15 rape [3] 51:24 52:7 65:20 rapist [1] 52:2 rapists [1] 65:5 rapporteur's [1] 131:24 rational [8] 6:25 72:15 78:12 103:19,22 106:15 122:4 133:13 rationale [3] 51:25 86:3 101:21 reach [3] 21:14 81:19 133:7 reached [1] 132:21 reaches [1] 24:19 reaching [2] 21:12,16 reaction [1] 125:8 read [7] 58:8 65:14 68:13 72:7 76:21 77:2 96:20 reading [4] 15:16 97:1,1 130:24 reaffirmed [1] 81:16 real [5] 49:13 53:15 124:21 131:21 132:1 realize [1] 78:24 really [34] 10:25 11:19 13:7,10 17:17 23:13 31:9 32:9</p>	<p>41:11,22 67:14,23 68:1 69:14 72:2,9,13 77:22,22 84:8 85:13 86:23 87:15 94:11 96:19 104:1 109:13 116:17 119:19 122:9 123:2,10 125:1 126:12 rearing [1] 84:23 reason [13] 10:7,10,12,13 20:18 47:11 63:12 73:12 98:8 101:22 102:1 103:18 114:20 reasonable [14] 29:7,9 42:8 50:19 62:25 63:1,4,4,6 64:21,23 67:19 73:17,22 reasonably [13] 29:1 49:24 51:13,17 52:24 54:9,15 55:13 56:11,12,23 66:13 69:6 reasons [6] 14:22 23:25 45:23 72:25 80:8 120:16 rebuttal [2] 131:15,16 received [1] 26:5 recent [2] 76:25 132:19 recently [1] 81:17 recognize [2] 30:17 77:7 recognized [7] 18:24 50:20 76:16 79:8 81:8 97:23 98:3 record [33] 19:21 20:2 34:17 40:2,6 80:11,16 89:18 93:22,24 94:4 102:25 111:15 112:1 116:2,18 117:5,10,14 119:19 122:9,17,20 124:25 125:15,15,21 126:23 127:8 128:16 130:18 131:8 132:4 redefine [2] 35:15 50:2 redefines [1] 15:3 refashion [1] 94:8 refer [1] 36:4 reference [3] 37:5 96:14 103:25 references [1] 104:5 referred [1] 81:16 reflects [1] 46:24 regard [1] 58:14 regarding [1] 81:12 regardless [1] 49:25 regulate [1] 124:24 regulated [1] 54:6 regulation [1] 101:22 reject [2] 60:14 69:17 rejected [6] 52:8 59:3 61:14 62:19 65:3 69:23 related [8] 23:23,23 50:23 56:11,12,24 69:6 82:12 relates [1] 48:1 relation [1] 50:19 relationship [9] 52:19 53:18</p>	<p>58:14 84:18 86:8,13 87:24 121:8 126:1 relative [1] 57:12 relevant [5] 23:21 37:12,13 72:11 109:16 reliably [3] 132:2,9,12 relief [3] 5:13 33:24 84:25 relies [1] 19:24 remain [1] 128:13 remainder [1] 6:2 remains [3] 49:21 124:12 125:21 remedy [9] 33:13 54:24 55:7 75:17,18 76:2 78:7,20 79:12 remind [1] 40:16 render [1] 62:2 reoccur [1] 29:2 reopen [1] 22:9 repeatedly [2] 7:13 81:15 report [3] 96:15,17 131:24 represent [1] 120:11 representations [2] 20:25 48:6 repressed [1] 128:23 reproductive [3] 61:5 100:16 114:13 request [1] 131:9 requested [1] 5:13 require [11] 7:14 31:6 45:5 50:16 55:17 61:25 102:21 113:15 114:6,14,17 required [6] 5:21 9:24 23:3 50:2 109:21 114:22 requirement [3] 62:11 93:17 115:6 requirements [3] 91:1,23 92:3 requires [2] 10:1 50:18 requiring [1] 73:20 reserve [1] 70:12 resolve [1] 12:23 resolving [1] 71:7 respect [19] 9:9,11 11:14,16 14:4 24:10 25:21 46:22 62:22 63:7 65:13,16 68:4 76:7 82:2 83:2,3 90:6 101:15 respectfully [2] 19:19 97:25 respond [7] 15:1 17:4 106:21 107:17 115:19,21 131:6 respondent [2] 20:10 22:12 respondents [1] 79:18 respondents' [1] 132:24 responding [1] 106:14 response [4] 85:9 95:20 103:22 124:15 rest [2] 36:3 80:1</p>
---	---	--	---

Q

restriction ^[1] 128:12 result ^[2] 31:20 55:21 retracted ^[1] 126:13 reverse ^[3] 24:8 63:18 107:5 review ^[7] 7:1 72:16 78:12 103:19 119:24 122:5 133:13 rice ^[1] 110:16 rightly ^[1] 124:7 rights ^[2] 38:2 97:10 risk ^[1] 52:1 roberts ^[29] 22:15 24:2 25:7, 10 29:12 35:18 38:13 42:14 49:3 60:20 61:8 66:2 68:20 71:21 74:17 79:14 83:20 85:7 86:9,14 88:5,11 89:24 90:2 115:11 119:21 123:18 129:3 131:11 role ^[3] 129:7,19 131:3 roundly ^[1] 61:14 rule ^[11] 27:24,25 42:25 43:6,11,18 49:15 61:20 109:3 129:21 132:17 ruled ^[2] 63:19 120:7 rules ^[2] 92:18 130:15 run ^[1] 11:17 running ^[1] 105:6 runs ^[2] 29:18 109:13 <hr/> <p style="text-align: center;">S</p> <hr/> safe ^[1] 8:18 safely ^[2] 45:21,25 safest ^[1] 133:16 safety ^[3] 8:13 14:21 74:8 sake ^[2] 82:21,24 same ^[21] 9:4 14:20 15:1 16:4 17:11,12 23:19 33:21 50:8 57:7 62:7 74:9 81:1 85:24 88:2,2 97:19 132:17,21,25 133:21 satisfactory ^[1] 33:10 satisfied ^[2] 102:13,16 satisfy ^[3] 62:10,10 66:17 saw ^[1] 25:24 saying ^[31] 7:15 8:12 10:24 11:3,11,19 13:8 17:15 18:13 39:15,25 43:10 53:3 55:23 56:17,20 57:1 66:22 68:16 71:4 75:18 88:7 91:2 97:19 99:16 102:3 103:17 104:3,6 109:3 111:1 says ^[21] 9:14 14:16,23 15:14,15 19:6,21,22 26:13 36:22 37:9 42:4 65:17 68:15 71:8 77:4,6 93:2 100:19 101:10 131:24 scalia ^[2] 29:5 62:7	scholars ^[1] 89:1 scholars' ^[1] 88:25 school ^[9] 20:17 98:15 100:13,14,21 101:4 102:4 116:7,15 schools ^[2] 115:24 116:3 school-sponsored ^[2] 20:15 39:9 science ^[12] 13:9,11 40:5 41:9 43:7 60:12 110:23 124:21 125:2 126:20 127:9,12 scientific ^[17] 10:11,14,15 41:3,18,21 42:10 45:12 119:19 121:25 122:11,13,25 124:1 125:16 129:8,11 score ^[1] 124:15 scrutinized ^[1] 79:25 scrutiny ^[83] 5:12,19 6:21,21,23 7:14 13:19 14:5,7 15:18 16:23,24 23:21 30:20,24 31:5,6,7,25 34:25 39:14 41:25 42:3,6,7 50:18 51:3,4,7 52:13,13 55:3,18 56:19 64:20,20 66:24 67:17,17 68:12,18,25 72:11,14,18,25 73:4,14,17 78:13,14,15 80:21 83:17 85:14,14 86:15,20,24 87:13,17 88:10 91:8 102:13,16 103:19 104:14 109:25 110:12,15,21 114:2 121:7 122:15 123:5,6,14,22,23 125:23 128:1,3 131:4 second ^[11] 15:12 30:10 32:18 33:4 45:16,17 67:2 108:22,23 115:25 116:24 secondly ^[1] 115:22 section ^[2] 20:6 68:14 see ^[10] 10:10,13 23:20 40:11 67:4 83:23 95:8 123:12 127:17 132:16 seeking ^[4] 5:4 22:12 43:3,14 seem ^[3] 33:19 53:8 102:3 seemed ^[1] 70:24 seems ^[6] 50:14 53:9 72:17,23 91:13 125:14 seen ^[1] 23:16 self-identify ^[1] 49:16 self-identity ^[1] 101:16 semester ^[2] 6:1,1 sense ^[10] 7:3 9:18 11:5 23:10 31:22 86:3 91:16,17 97:25 99:20 sensitive ^[1] 126:19 sentence ^[1] 58:24 separate ^[11] 5:13 10:2,3,16	36:22 47:2 49:12 83:7 98:16 108:11 130:10 separation ^[4] 82:21,24 83:3,12 serious ^[1] 62:2 seriously ^[2] 67:6,12 served ^[1] 91:19 service ^[1] 96:17 set ^[5] 57:22 59:13 60:4,17 130:15 setting ^[2] 65:17 77:25 sex ^[51] 6:11 7:4,12,13 10:6,7 17:18 24:14,15 38:25 39:24 40:13 43:1 46:17 47:1,3 49:12,19 50:2 54:6 56:10 60:25 61:3 78:15 79:23,24 80:5,10,23 81:19 82:3,8,21 83:3,12 84:1 94:10 96:4,22 98:10 99:24,25 106:9 110:11 116:16 132:14 133:2,5,15,15,25 sex-based ^[17] 5:11,22 6:22 32:4 49:15,23 79:22 80:7,14,22 81:1,10 89:10 101:18 108:16 120:19 133:22 sex-related ^[1] 108:21 sex-separate ^[1] 116:3 sex-separated ^[2] 38:23,24 share ^[2] 94:17 105:12 she'll ^[1] 20:16 she's ^[8] 7:15,19 8:12 9:1 20:21 21:12 100:6 119:2 shevin ^[1] 11:24 shift ^[1] 121:15 short ^[1] 50:5 shortly ^[1] 20:17 shouldn't ^[3] 32:17 42:1 62:12 show ^[12] 28:25 56:3 66:8,10 68:6 76:6 89:22 114:24 121:7,21 124:10 125:25 showing ^[6] 41:17 54:24 66:25 105:12 121:3,21 shows ^[1] 132:5 shut ^[1] 98:5 side ^[13] 5:3 9:23 16:21 19:9 23:17 37:21,22 41:9 64:22 94:18 95:18 128:11 129:24 sides ^[4] 107:15 119:12 127:18 129:13 side's ^[1] 115:19 signed ^[1] 20:12 significant ^[1] 17:9 similar ^[2] 82:2 84:9 similarly ^[5] 50:6 58:13,18 90:18 108:25	simple ^[1] 40:11 simply ^[3] 15:16,17 90:9 since ^[4] 26:15 44:14 98:5 109:10 sincerely ^[1] 101:10 sincerity ^[1] 20:19 single ^[3] 62:9 68:11 74:1 single-sex ^[1] 9:25 situated ^[5] 50:7 58:13,19 90:18 108:25 situation ^[12] 6:22 37:2 39:4 48:11 69:8 79:3 84:13 85:13 90:4 103:4 105:25 123:4 situations ^[5] 11:6 40:8 132:9,10,11 six ^[2] 39:10 40:4 six-year-old ^[1] 111:3 six-year-olds ^[3] 38:19 39:7,16 sizable ^[2] 76:7 91:25 size ^[2] 111:5,24 skrmetti ^[8] 17:15 36:4 37:4 46:14 47:14 122:4 130:20 133:9 slice ^[3] 105:18,19,20 slow ^[1] 105:5 small ^[8] 11:14 57:2 66:1 73:18 85:3 88:13 93:14 105:20 smiling ^[1] 62:17 soccer ^[2] 5:25 105:6 society ^[1] 108:2 sold ^[1] 22:7 solution ^[2] 40:11,11 somebody ^[2] 83:11 108:9 somebody's ^[1] 36:15 somehow ^[2] 91:15 118:13 someone ^[4] 14:17 63:11 99:12 113:15 someone's ^[1] 114:15 sometimes ^[2] 51:6 112:16 somewhat ^[3] 22:1 86:5 128:24 soon ^[3] 14:2 20:22 117:21 sorales ^[1] 85:19 sorry ^[8] 10:22 18:7 24:9 38:24 63:25 70:22 99:6 100:23 sort ^[6] 11:10 51:8 67:5 85:10 93:19 127:15 sotomayor ^[59] 7:2,11,22 8:11,16,19 9:1,5,13,15,17 10:4,17,20,23 18:5,7,9 19:12 20:7 21:8,11 24:3 25:8,10,11,20 26:20,24 27:12,16,20 28:2,4,14 35:23 59:21 61:9,
---	---	---	---

<p>10 63:2,13,17,23 64:1,14 65:9,14 115:15,16 116:5,19,22 117:3,5,13,17 118:18,21 119:6</p> <p>sought [1] 80:15</p> <p>sound [1] 123:21</p> <p>sounds [3] 11:7,11 86:15</p> <p>spaces [2] 9:25 10:2</p> <p>sparse [2] 11:9,10</p> <p>special [4] 5:4,8 49:17 131:23</p> <p>specific [2] 52:25 86:6</p> <p>specifically [1] 17:7</p> <p>split [1] 53:13</p> <p>sponsor [1] 104:6</p> <p>sport [3] 7:8 82:17 83:18</p> <p>sports [58] 5:14 6:12 10:16 20:14,16,20 22:20 26:4,19 36:1,14,16,19,25 37:19 39:9 40:12 43:2,25 46:11,18,19,20 47:12 48:2 49:12 51:9,11,16 70:4 80:4 81:3 82:5,10,22 104:8,17,19 105:22 106:7,9,24 107:20,25 108:11 117:24 118:7,9,11 119:7,15 131:21,25 133:14,15,17,20,23</p> <p>square [2] 7:23 15:6</p> <p>squarely [1] 54:2</p> <p>stage [1] 93:23</p> <p>stand [1] 107:9</p> <p>standards [1] 60:12</p> <p>standing [3] 16:10,14,15</p> <p>standpoint [1] 75:7</p> <p>start [2] 18:13 21:18</p> <p>started [2] 53:2 71:24</p> <p>starting [1] 8:4</p> <p>starts [1] 123:21</p> <p>state [41] 8:12,16,20,22 14:22 23:24 35:10,13,14 38:4,5 39:8 41:18,19,21 42:24 50:12 56:10 66:16,16,24 67:1,7,21 73:24 74:20,22 75:21 82:13 89:7 99:10 105:21 116:24 121:19,20 123:7,12,24 124:10,23 128:1</p> <p>stated [1] 35:24</p> <p>states [23] 12:2,5,7 37:16,21,22,24 38:10 49:7,11,14 50:2,7 52:22 64:5 70:2,5,5,6 71:1 106:25 107:19 129:17</p> <p>state's [9] 41:17 43:5 74:24 89:5 93:21 99:21 114:11 121:7 125:25</p> <p>status [21] 5:9 16:22 17:22 18:2 37:8 40:21 43:16 46:</p>	<p>10,13,16 81:20 85:12 94:13 98:13 102:2,5,10 109:10,12 110:1 133:9</p> <p>statute [16] 8:7,9,24 35:14 36:6 37:12,15 39:3,8 87:7,9 100:5,8 101:17 104:13,14</p> <p>statutes [2] 17:3 58:11</p> <p>statute's [1] 100:8</p> <p>statutorily [1] 37:20</p> <p>statutory [2] 51:24 109:6</p> <p>staved [1] 120:24</p> <p>stay [1] 26:3</p> <p>step [6] 67:2,3 78:9 89:4 106:13 131:2</p> <p>steps [3] 87:20 88:1 113:11</p> <p>stevens [5] 61:12 85:2 93:10 95:9,10</p> <p>stevens' [1] 84:21</p> <p>still [17] 9:18 12:20 13:10 22:9,10 33:13 34:22 48:11 74:19 98:7 110:10,20 116:23 117:23 123:5 129:22,23</p> <p>stood [1] 57:12</p> <p>stop [3] 21:16 26:18 114:23</p> <p>stopped [1] 20:14</p> <p>story [1] 132:8</p> <p>straightforward [2] 94:25 95:3</p> <p>strenuously [1] 131:22</p> <p>stricken [1] 75:9</p> <p>strict [21] 14:7 30:24 31:5,7 51:3 55:3,17 64:20 67:17 72:11 73:13 78:14 85:14 86:15,20,24 88:10 91:8 123:22 125:23 128:2</p> <p>strike [1] 55:25</p> <p>striking [1] 29:3</p> <p>strong [4] 106:18 108:13 129:12,23</p> <p>stronger [1] 108:25</p> <p>strongest [1] 116:8</p> <p>strongly [1] 103:8</p> <p>struck [2] 8:24 21:23</p> <p>struggling [3] 46:7 74:20 124:14</p> <p>student [2] 100:15 105:8</p> <p>students [5] 27:3 79:23 98:16,17 118:24</p> <p>studied [3] 27:3,15,16</p> <p>studies [1] 132:20</p> <p>study [4] 107:3 112:20 126:9,12</p> <p>stylized [1] 54:5</p> <p>subcategory [1] 83:2</p> <p>subclass [15] 7:18,25 9:6,19 11:14,14,16 34:7,7 53:21,</p>	<p>23 54:23 64:9 109:23 121:6</p> <p>subclasses [2] 92:5,6</p> <p>subgroup [14] 54:7,8,10,13 81:11,13 84:24 85:3 86:4 91:20 92:21 93:1,2 116:6</p> <p>subgroups [2] 54:7 125:5</p> <p>subject [5] 16:23 78:12 97:14 110:11 116:16</p> <p>subjected [2] 102:8 103:13</p> <p>submit [2] 88:8 97:25</p> <p>subset [7] 5:15 50:1 58:17 73:22 99:19 110:10,19</p> <p>substantial [14] 5:19 8:10 30:21 42:8 50:18 53:18 54:4,16 66:10 84:17 86:8 117:9 121:8 126:1</p> <p>substantially [3] 23:23 50:23 82:12</p> <p>subterfuge [1] 21:15</p> <p>success [2] 104:17 107:6</p> <p>successes [1] 106:22</p> <p>successful [1] 105:15</p> <p>successfully [2] 35:5 76:3</p> <p>sued [1] 47:24</p> <p>sufficiently [2] 62:1 75:20</p> <p>suggest [2] 30:6 42:23</p> <p>suggested [2] 15:8 91:24</p> <p>suggesting [3] 13:6,7 32:16</p> <p>suggestion [1] 118:22</p> <p>suits [1] 21:3</p> <p>summer [1] 119:4</p> <p>support [6] 40:3 59:11,20,24 63:5 126:4</p> <p>supported [1] 125:2</p> <p>supporting [3] 30:22,22 49:8</p> <p>suppose [3] 24:8 32:19 100:12</p> <p>supposition [1] 80:2</p> <p>suppress [4] 5:16 35:4,4 132:3</p> <p>suppressants [1] 124:3</p> <p>suppressed [2] 80:18 102:23</p> <p>suppression [4] 34:12,15,18 132:11</p> <p>supreme [1] 22:2</p> <p>surely [1] 64:22</p> <p>surgery [1] 100:19</p> <p>surprise [1] 128:19</p> <p>surprised [1] 96:20</p> <p>surprising [1] 72:2</p> <p>surprisingly [2] 11:10 13:1</p> <p>survive [2] 104:14 133:25</p> <p>suspect [4] 17:16 98:4,5 110:1</p>	<p>sustain [1] 44:25</p> <p>sweep [2] 55:23 107:12</p> <p>sworn [1] 118:10</p> <p>system [1] 100:16</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table [2] 14:5 106:20</p> <p>tailor [2] 75:3 125:7</p> <p>tailored [17] 49:24,25 51:14,17 52:24 54:9,15 55:13 56:12 60:6,18 66:13 73:25 74:21 75:10 79:9 84:20</p> <p>tailoring [1] 75:2</p> <p>take-away [1] 78:23</p> <p>talked [3] 20:9 67:14 122:6</p> <p>talks [1] 104:23</p> <p>team [23] 22:24 23:14 40:1 46:24 53:6 74:5,11,11 83:8,13,13 100:14,14,22 101:5,21 102:7,7,25 105:4 107:9 108:14 119:7</p> <p>teams [20] 38:23,24 40:13,23,25 41:2 46:12 49:12 79:24 83:7 89:8,9 98:16 99:18 100:7 104:9 109:11 111:3 119:7 133:17</p> <p>telfer [1] 132:6</p> <p>tells [1] 48:9</p> <p>tennis [3] 22:22,24 23:1</p> <p>term [4] 60:25 96:2,24 99:11</p> <p>terms [3] 38:21 101:17 119:6</p> <p>territory [1] 22:6</p> <p>test [3] 36:5 77:9 114:21</p> <p>testing [3] 101:23 113:16 114:17</p> <p>testosterone [36] 5:17 34:11,15,18,21 35:4,5 38:21 39:21 41:6,13 45:5,6 50:3 80:13,18 81:2 88:8 89:17 94:3 102:24 108:19 110:24 111:7,9 112:18,25 113:8,17 114:19 115:8 122:19 124:2 128:23 129:1 132:11</p> <p>tests [1] 88:8</p> <p>thanks [1] 74:16</p> <p>theme [1] 130:3</p> <p>themes [1] 129:25</p> <p>themselves [3] 19:2 23:11 97:9</p> <p>theory [6] 38:8,17,18 52:4 72:24 74:13</p> <p>therapy [1] 115:8</p> <p>therefore [5] 16:13 23:14 34:23 45:21,24</p> <p>there's [53] 6:20 7:6 10:14 11:16 12:4 16:19 18:13 19:</p>
---	--	--	---

<p>16,17 20:18 25:8,11 27:22 29:9,15 33:2 38:20 45:17 53:10,17 58:18 68:14 69:4 78:12,19 83:13 88:15 91: 19 93:16,18 99:19,23 104: 21,22 107:11,11 108:8 110: 16,17 116:8,22 119:11 120: 2 123:15 124:1 125:3,11 128:9 129:7,12,22,23 131: 5 they'll [1] 130:2 they've [2] 47:24 100:4 thinking [1] 103:13 third [7] 54:8,10,13,14 56:21, 23 68:23 thirds [2] 54:18 56:25 thomas [12] 6:8,15 20:8 22: 17,18 50:10 60:22 82:1,9, 14,25 115:13 though [9] 11:8 42:21 53:10 56:24 65:3 75:12 78:21 98: 2 110:13 thoughts [2] 94:16,21 threat [4] 14:21 106:6 131: 21 132:1 three [3] 34:22 54:7 114:10 thrive [1] 108:13 tie [1] 128:5 tiny [2] 5:15 50:1 title [10] 22:20 60:24 70:10, 24,25 71:4 82:2 83:4,9 107: 24 today [1] 119:2 top [1] 123:15 totally [2] 69:21 126:25 tough [1] 77:13 towards [2] 91:8 109:13 track [4] 100:13,14 132:6,7 traditional [1] 61:3 tran [1] 47:7 trans [14] 38:25 39:25 40:21, 23 46:23 102:6,6 103:9 104:17,18 109:10,13,14 113:11 transcript [2] 20:2,6 transforming [1] 85:13 transgender [89] 5:7,9,16 14:18 16:22 17:1,8,10,22 19:10,15,24 20:4 23:12,20 34:8,11 35:3,25 36:6,13,16, 23 37:5,7,8,10,11,18 43:16, 24 44:20 45:3 46:9,11,13, 16,18 47:5,7,11 64:4,7 70: 3 80:21 81:5,20 85:12 89: 15 92:21 94:2,13,20 95:21 96:24,24 97:7,21 98:13 102:2,5,9,14,22 103:25</p>	<p>104:8,25 105:18,24 106:17 107:4 108:22,24 109:9,12, 18,19 110:1,13,14 112:23 113:23 114:22 115:6 125:9 126:16 128:22 129:17 133: 8 transgender-based [1] 36:7 transgender-identifying [1] 45:19 trans-identifying [3] 49:18 51:18 65:22 transition [2] 132:2,7 transvestites [1] 96:23 treat [1] 50:8 treated [5] 30:4 55:11 90:17, 17 120:2 treating [2] 14:17,25 treatment [8] 5:4,8 57:23 59: 1,8 102:9 114:23 115:9 treatments [1] 125:17 treats [2] 47:6 78:6 trial [4] 112:2,12 117:12 128: 6 tricky [1] 69:15 tried [4] 90:14 98:8 105:4 117:20 trigger [2] 13:17 110:15 triggering [1] 109:25 trimble [4] 85:23 86:10 91: 12 92:8 trimble/lalli [1] 88:3 triumph [1] 107:25 trouble [1] 34:3 true [12] 26:4 33:25 40:22 49:21 52:14 62:18 63:10, 19,22 65:12 76:18 77:13 truth [1] 118:14 try [8] 20:15 22:23 23:14 39: 22 89:19 104:7 125:7 129: 20 trying [24] 5:24 10:9 26:3 39: 18 72:22 88:21,22 89:10 91:13,18 92:13 94:24 96: 15,21 100:10 103:21 112:6, 11 115:5 118:6,25 120:9 124:23,23 turn [1] 37:6 turner [1] 42:4 turns [2] 46:16,17 two [15] 15:20 16:6 18:11 21:9 29:16 46:22 54:17 56: 24 62:15 66:19 67:24 68:2, 4,10 130:12 typically [1] 72:12</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>u.n [1] 131:23</p>	<p>u.s [1] 12:2 u.s.c.c.a.n [2] 96:21 97:2 ultimate [2] 13:25 82:23 ultimately [1] 127:11 umbrella [1] 95:23 unanswered [1] 13:1 uncertain [1] 41:10 uncertainty [12] 41:3,4 72:9 121:25 122:11,13,18 123:1 124:1 129:8,11,22 unconstitutional [6] 56:3,9 76:5,6 78:19 81:12 unconstitutionally [3] 55: 11 76:1,12 undecided [1] 24:10 under [19] 13:19 22:11 31: 25 34:24 42:6 51:6 55:17 60:24 70:10 79:25 83:16 89:20 95:22 97:14,17 98: 23 114:11 121:6 123:5 underage [1] 52:7 underdeveloped [2] 112:1 117:6 undergirding [1] 107:14 under-inclusiveness [1] 31: 14 underlying [1] 99:7 undermine [2] 107:5 108:10 undermining [3] 67:23 68:2, 9 undershoot [1] 73:2 understand [33] 15:19 30:1 42:18 44:25 45:15 46:4,8, 21 48:3 54:23 55:22 56:4, 22 57:6 64:6 71:16 74:20 75:24 76:8 79:4 95:6 106:1 107:16 108:8 109:15 113:2 124:14,17,18 125:21 127:7, 14 130:6 understandable [1] 125:18 understandably [1] 89:13 understanding [9] 48:19,20 61:6 98:24 99:10,11 101:9 111:8 119:23 understands [1] 118:4 understate [1] 97:12 understood [3] 43:22 88:23 113:7 underwent [1] 132:7 undifferentiated [2] 103:20 125:10 undisputed [1] 49:11 unfair [8] 5:5 45:4,24 101: 20 102:17 103:13 108:6,9 unfairness [1] 107:7 unique [2] 52:1 130:14 united [6] 12:2,4,7 49:7 52:</p>	<p>22 64:4 unjust [1] 62:1 unjustified [1] 8:25 unknown [2] 85:3 93:13 unless [5] 24:18 75:18 76:5 86:16 132:9 unlikely [1] 119:2 unmarried [2] 84:13 86:7 unnecessarily [1] 92:11 untalented [2] 80:25 89:14 until [4] 26:4 48:16 83:23 96: 25 unusual [1] 69:4 unwilling [1] 28:7 unworkable [1] 32:17 up [14] 20:1 34:3 35:21 38:4 53:13 55:14 77:25 83:22 94:16 98:11 123:20 128:4, 19 129:5 upheld [3] 51:23 63:10,12 uphold [2] 54:17 63:8 urge [4] 68:13 70:11 71:6 126:18 urging [1] 122:9</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid [9] 11:4,12 23:8 49:15 51:11 53:22 57:23 61:24 66:20 validity [1] 13:15 validly [1] 69:9 variety [1] 107:2 various [1] 7:23 verification [3] 113:3 114: 12 116:17 versus [4] 87:10 90:4 125: 23 127:2 veteran [1] 107:25 veto [4] 58:7 59:5,14,17 viable [3] 51:21 55:16 57:3 victim [2] 52:3 57:5 victims [1] 65:6 view [7] 13:11 30:13 33:8 77:25 83:24 85:17 110:13 viewed [3] 87:8 110:11 130: 9 views [2] 24:7 62:14 violate [2] 23:25 61:22 violating [2] 38:1 71:4 violation [1] 113:14 virginia [1] 60:7 visibility [1] 118:3 visit [1] 20:25 visiting [1] 21:1 vmi [18] 7:24 9:15,22,23 10: 2,3 59:23,24,25 60:1,3,7,8, 15 62:7 72:6 127:15 130:</p>
--	---	--	---

22	without ^[1] 99:24
vogue ^[1] 87:5	woman ^[16] 46:23,23 59:13
voluntarily ^[1] 21:3	62:9 81:5 89:15 98:25 99:5
vote ^[1] 17:25	100:20 101:9,11,11,14 102:
<hr/>	
W	
<hr/>	
wait ^[1] 10:4	women ^[48] 8:13 9:24 10:1,
wanted ^[5] 46:19 60:16,17	2 17:24 19:25 34:21 35:25
61:15 62:9	36:23 37:18 38:3 43:24 44:
wanting ^[2] 23:25 47:11	20 45:20 46:11 47:7,8,12
wants ^[2] 22:23 45:10	51:25 52:1 60:1,6,10,13,16,
war ^[1] 72:24	17 63:15 70:3 80:22 82:16
way ^[43] 11:24 12:22 13:8,	83:19 92:21 94:2 97:22
12 15:8 16:1,6,19 22:25 25:	102:22 104:8 106:17,23
4 42:23 43:17 47:15,16,17	107:4,25 108:12 109:19
52:12 59:11 61:5 63:19 67:	110:13 125:9 127:19 129:
15 71:7 72:7 77:3 80:24 81:	18 131:24 133:20
4 83:9 85:17,17,25 88:14	women-only ^[1] 46:19
91:9 93:8 94:25 95:24 98:9	women's ^[34] 5:1,13,25 10:
99:16 101:23 104:7 112:1	16 20:15 22:23,24,25 23:
115:4 120:8 126:16 133:17	13 36:1,19,24 37:19 43:2
ways ^[3] 116:20 127:22 128:	46:11,19,20 47:12 70:4 79:
25	24 80:4 99:18 100:7 101:5,
weaker ^[1] 129:1	21 104:7,9,17,19 105:22
welcome ^[3] 6:7 50:9 81:25	106:7,7 107:20 131:21
whatever ^[4] 25:16 45:11 69:	won ^[1] 59:9
18 99:8	wonder ^[4] 83:21 94:8,12
whatsoever ^[1] 44:8	123:21
whenever ^[4] 27:23 35:13	wondering ^[3] 30:5 95:3
73:21 86:16	125:19
wherever ^[1] 54:21	word ^[5] 5:23 20:4 36:6 37:
whether ^[41] 10:13 11:4,5	11,14
12:13 13:4 24:4,22 29:7,14	words ^[4] 15:2,8 19:24 36:5
30:5 38:6 40:17,20 44:2 46:	work ^[5] 6:15 30:14 43:18
15 49:25 50:12 55:10 75:8,	73:7 113:23
12 83:24 84:1 85:11 86:20,	worked ^[1] 85:18
21,22 90:5 93:18 94:8 99:	works ^[4] 5:19 52:13 73:4
12,23 102:12,22 109:22	83:9
111:19 116:2,3 118:15 121:	world ^[5] 12:19,20 77:24
18 124:2 128:12	132:17,18
whole ^[9] 32:16 52:21 68:5,	world's ^[1] 69:17
14 69:7 73:10 109:21 129:	worried ^[3] 77:17,19 116:16
15,21	worry ^[3] 33:23 73:17 131:5
whom ^[11] 7:25 23:9 30:23	worse ^[2] 89:9 112:19
39:8 54:8 56:1 57:16,22 74:	worth ^[1] 119:11
1 75:14,25	written ^[1] 18:2
who's ^[2] 47:23 108:9	<hr/>
widely ^[1] 133:18	Y
will ^[19] 6:8 12:20 20:15 25:	<hr/>
14,17 26:18 27:10 34:4 73:	year ^[3] 80:18 118:1,19
23,24 78:10 89:25 105:12	years ^[2] 40:4 106:23
107:5,6 111:12 118:10 127:	yourself ^[1] 114:4
13 129:8	
willing ^[1] 33:3	
win ^[6] 13:10 35:13 108:13	
118:13 127:5,6	
within ^[1] 73:23	