

# 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](http://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 PROCEEDINGS

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.

Gender identity does not matter in sports, and that's why Idaho's law does not classify on the basis of gender identity. It treats all males equally and all females equally regardless of identity, and its purpose 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 Skrmetti 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.

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.

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?

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 underestimate 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.

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?

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 Skrmetti, 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 Skrmetti, 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

<b>1</b>	<b>90-year-old</b> [1] 25:22 <b>99</b> [3] 5:20 51:16 56:13 <b>99.9</b> [1] 56:6 <b>99.9999</b> [1] 55:14	<b>2</b> <b>administrable</b> [2] 44:23 133:17 <b>admissions</b> [1] 62:11 <b>admit</b> [1] 19:9 <b>admitted</b> [1] 61:13 <b>admittedly</b> [1] 68:16 <b>admitting</b> [1] 95:11 <b>adopt</b> [3] 25:16 62:14,18 <b>adopted</b> [1] 90:7 <b>adoption</b> [1] 84:15 <b>advance</b> [1] 94:1 <b>advantage</b> [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 <b>advantages</b> [7] 41:5 49:23 65:24 80:6,8 101:1 132:3 <b>affected</b> [1] 88:13 <b>affidavit</b> [3] 6:3 20:12 26:13 <b>affirm</b> [2] 24:8 81:18 <b>affirmed</b> [1] 81:24 <b>affirming</b> [1] 100:19 <b>african</b> [1] 17:24 <b>age</b> [2] 40:1,6 <b>ago</b> [1] 131:20 <b>agree</b> [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 <b>agreed</b> [3] 25:12 80:12 132:24 <b>agrees</b> [1] 51:15 <b>ah</b> [1] 115:1 <b>a-ha</b> [1] 35:2 <b>ahead</b> [2] 10:23 18:9 <b>aimed</b> [1] 80:6 <b>aims</b> [1] 46:10 <b>alan</b> [1] 131:16 <b>alcohol</b> [1] 110:7 <b>align</b> [2] 93:20 120:9 <b>alike</b> [1] 18:4 <b>alito</b> [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 <b>alito's</b> [2] 17:14 113:9 <b>allegations</b> [1] 20:11 <b>allegedly</b> [1] 5:5 <b>allow</b> [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 <b>allowed</b> [8] 31:13 44:20,21
<b>2</b>	<b>2</b> <b>abandoned</b> [7] 58:4,6 59:2,4 63:9,11,15 <b>ability</b> [2] 36:15 38:21 <b>able</b> [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 <b>abroad</b> [1] 87:25 <b>absolute</b> [1] 109:3 <b>absolutely</b> [2] 6:4 28:25 <b>accept</b> [2] 62:4,20 <b>accepted</b> [1] 133:18 <b>access</b> [1] 83:7 <b>accommodation</b> [1] 49:17 <b>according</b> [3] 34:16,17 99:20 <b>accurate</b> [1] 117:21 <b>accusation</b> [1] 104:11 <b>acheson</b> [6] 20:23 21:18,19 22:4 28:16,17 <b>achieve</b> [2] 34:19,20 <b>achieving</b> [1] 13:25 <b>acknowledged</b> [1] 86:7 <b>across</b> [3] 39:16 88:15 90:8 <b>act</b> [1] 42:9 <b>active</b> [2] 8:21 117:23 <b>actively</b> [1] 71:3 <b>activity</b> [1] 28:9 <b>actual</b> [3] 58:18 91:7 95:24 <b>actually</b> [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 <b>add</b> [2] 21:8 132:16 <b>address</b> [7] 59:23 80:15 83:21 94:19,23 115:17 122:4 <b>addressed</b> [3] 20:9 31:9 54:2 <b>addresses</b> [1] 12:16 <b>addressing</b> [1] 101:16 <b>adequate</b> [1] 121:21 <b>adjudication</b> [1] 29:24 <b>administer</b> [1] 32:6 <b>administered</b> [1] 113:6 <b>administrability</b> [2] 32:3 45:	<b>84:24 87:21 88:10 97:8 117:10</b> <b>allowing</b> [7] 38:3 55:6 72:23 77:18 107:4 129:17,17 <b>allows</b> [3] 83:19 88:12 93:19 <b>alluded</b> [1] 50:11 <b>alluding</b> [1] 30:18 <b>almost</b> [4] 31:7 72:13 89:18 129:10 <b>already</b> [3] 28:24 73:10 105:17 <b>alternative</b> [1] 43:9 <b>although</b> [1] 103:23 <b>amazing</b> [1] 107:6 <b>amendment</b> [3] 42:5 68:17,18 <b>america</b> [1] 106:22 <b>americans</b> [2] 17:24 97:22 <b>amicus</b> [4] 49:7 104:22,23 105:11 <b>amount</b> [1] 117:9 <b>analogy</b> [1] 85:5 <b>analysis</b> [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 <b>analytical</b> [1] 69:16 <b>analytically</b> [3] 67:16 71:15 109:8 <b>analyze</b> [2] 48:10 67:9 <b>analyzing</b> [1] 61:18 <b>anatomy</b> [1] 114:13 <b>animus</b> [3] 104:3,12 109:17 <b>another</b> [10] 12:24 15:23 16:19 18:12 21:14 24:24 25:23 80:9 98:7 110:22 <b>answer</b> [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 <b>answered</b> [1] 123:13 <b>answering</b> [2] 19:15 92:24 <b>anybody</b> [1] 40:10 <b>anytime</b> [1] 31:21 <b>anyway</b> [1] 83:23 <b>apart</b> [2] 41:5 88:17 <b>appear</b> [1] 20:5 <b>application</b> [3] 5:15 37:6 46:15 <b>applications</b> [3] 54:14 61:21 62:1 <b>applied</b> [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
<b>3</b>	<b>3</b> <b>30</b> [1] 64:10	
<b>4</b>	<b>4</b> <b>41</b> [1] 27:24	
<b>5</b>	<b>5</b> <b>50</b> [1] 106:22 <b>50/50</b> [3] 123:11 127:2,5 <b>500</b> [5] 79:21 80:6,15,20 81:21	
<b>6</b>	<b>6</b> <b>600</b> [1] 131:24	
<b>7</b>	<b>70/20</b> [1] 127:5 <b>70s</b> [1] 22:8 <b>75</b> [1] 34:24	
<b>8</b>	<b>80/20</b> [1] 127:2 <b>890</b> [1] 131:25	
<b>9</b>		

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

25 128:1 <b>burdened</b> [1] 60:5 <b>burdens</b> [1] 113:25 <b>burdensome</b> [1] 35:12 <b>business</b> [4] 22:7,9 25:23, 24 <b>buy</b> [1] 92:25	<b>C</b> <b>caban</b> [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 <b>call</b> [1] 103:16 <b>called</b> [1] 19:14 <b>came</b> [2] 117:22 132:20 <b>camreta</b> [1] 48:8 <b>cannot</b> [6] 29:1 35:25 36:24 69:19 100:21 133:10 <b>capability</b> [1] 39:22 <b>capable</b> [1] 13:25 <b>capacity</b> [1] 43:5 <b>care</b> [1] 89:17 <b>career</b> [1] 118:7 <b>careful</b> [2] 119:17 124:7 <b>carefully</b> [1] 117:15 <b>cares</b> [1] 40:10 <b>carhart</b> [2] 122:5 130:20 <b>carve</b> [1] 34:4 <b>carving</b> [1] 87:8 <b>casa</b> [1] 55:7 <b>cases</b> [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 <b>cast</b> [1] 115:5 <b>categorical</b> [1] 125:1 <b>categorically</b> [5] 79:22 95: 21 99:18 100:7 106:17 <b>categories</b> [1] 92:11 <b>category</b> [4] 6:19 98:16,17 114:5 <b>cause</b> [1] 116:10 <b>cayetano</b> [1] 110:17 <b>cece</b> [1] 132:6 <b>certain</b> [6] 20:10,11 28:1 41: 13 62:25 120:17 <b>certainly</b> [15] 15:11 17:6 19:	17 21:10 29:24 30:15 31: 17 39:2 65:7,21 66:18 97: 20 116:21 129:10 133:10 <b>certainty</b> [2] 41:18 45:12 <b>certiorari</b> [2] 26:17 117:23 <b>cetera</b> [6] 17:13,13 20:5 38: 22 74:8 111:6 <b>challenge</b> [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 <b>challenged</b> [6] 5:12 6:13 7: 5 8:1 98:22 113:3 <b>challenger</b> [1] 61:25 <b>challenges</b> [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 <b>challenging</b> [5] 7:16,19 70: 9 83:6,12 <b>change</b> [4] 21:25 35:1 37:15 132:8 <b>changed</b> [4] 21:24 26:8,12, 16 <b>changing</b> [1] 29:4 <b>characterizing</b> [1] 42:19 <b>checking</b> [1] 113:8 <b>chess</b> [4] 51:9,10,12 53:6 <b>chicago</b> [1] 97:13 <b>chief</b> [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 <b>child</b> [11] 58:4,6,15 59:2,4 63:10,11,16 64:7 77:8 84: 22 <b>children</b> [10] 8:21 63:5 65: 19 84:18 85:23 86:11 91: 13 92:9 97:23 116:7 <b>child's</b> [1] 84:15 <b>choosing</b> [1] 5:10 <b>chromosomal</b> [1] 114:17 <b>chromosomes</b> [1] 114:16 <b>circuit</b> [5] 19:22,24 24:14,16 25:15 <b>circulating</b> [7] 80:12 81:1 108:19 110:24 111:7 113:	18 111:19 128:11 <b>cleburne</b> [4] 7:24 17:13 98: 6 125:11 <b>client</b> [6] 93:25 105:3 109:4 113:2 116:14 117:23 <b>close</b> [3] 67:22 128:5 133:3 <b>closed</b> [1] 22:7 <b>closely</b> [1] 79:25 <b>closer</b> [1] 97:24 <b>clothes</b> [1] 97:15 <b>club</b> [3] 5:25 105:5,6 <b>clubs</b> [1] 105:7 <b>co-ed</b> [1] 40:12 <b>coexist</b> [1] 130:11 <b>collapse</b> [1] 69:1 <b>collapsing</b> [1] 73:19 <b>colleague</b> [2] 105:9 111:10 <b>colleagues</b> [1] 27:4 <b>college</b> [9] 48:2 105:8 116: 14 118:1,9,9,24,25 125:4 <b>colloquy</b> [2] 20:1 132:23 <b>come</b> [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 <b>comes</b> [1] 15:25 <b>comfortable</b> [1] 84:2 <b>coming</b> [4] 34:3 42:20 93:8 108:9 <b>comments</b> [1] 19:18 <b>commissioned</b> [1] 112:20 <b>committee</b> [3] 107:2,18 112: 21 <b>common</b> [1] 96:25 <b>commonplace</b> [1] 82:12 <b>community</b> [1] 97:21 <b>company</b> [1] 22:10 <b>compare</b> [3] 17:19,23 18:3 <b>compared</b> [1] 80:23 <b>compelling</b> [2] 87:15,22 <b>compete</b> [3] 23:13 45:21,25 <b>competence</b> [1] 32:10 <b>competition</b> [6] 8:14 14:21 40:10 103:14 109:1 133:19 <b>competitions</b> [1] 103:9 <b>competitive</b> [7] 8:14 12:21 20:21 35:7 45:13 124:5,5 <b>competitiveness</b> [1] 74:8 <b>complete</b> [2] 109:18 122:8 <b>completely</b> [6] 30:25 31:8 75:9 84:14 107:16 124:3 <b>complexity</b> [1] 127:8 <b>concedes</b> [2] 79:21 121:14 <b>conceived</b> [1] 16:22
---	---	--	--

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

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

<p>held [6] 13:24 26:4 52:23 58:3,10 76:15 help [3] 78:10 94:25 98:8 helpful [1] 17:15 helps [1] 18:21 herself [1] 53:20 high [1] 116:15 higher [1] 78:13 himself [1] 93:12 history [11] 16:25 17:2,10,23,23 18:3,14 19:13 29:4 97:19 106:4 hits [1] 28:1 holding [2] 67:21 81:14 holdings [2] 15:7 65:25 home [1] 97:8 homosexuals [2] 96:4,22 honestly [1] 73:6 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 honored [1] 26:7 honors [2] 131:23 132:4 hope [2] 105:8 124:16 hopes [1] 118:1 hoping [1] 119:4 hormone [2] 114:23 115:8 hormones [4] 12:18 100:18 101:2 120:17 hostility [1] 118:3 hotel [1] 20:24 hotels [4] 21:1,19,19 22:5 hour [1] 96:7 house [1] 97:15 housing [1] 10:3 huge [3] 105:23 107:25 108:1 human [1] 64:15 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 husband [1] 57:11 husbands [1] 57:12 hypo [2] 39:18 100:23 hypothetical [5] 39:12 54:5 101:24 113:10 126:18 hypotheticals [1] 89:12</p> <hr/> <p>i.e [1] 26:9 idaho [10] 44:7,11 64:6 70:5 72:25 79:21 111:1 116:24 132:22 133:22 idaho's [6] 5:10,19 9:23 40:14,17 80:3 idea [1] 82:21 identical [2] 21:14 24:5 identified [4] 92:20 93:1 100:4 121:6 identifies [1] 7:7 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 identity [8] 5:4 20:4 36:16 37:5,7 46:24 47:5 49:20 idiosyncratic [3] 89:21 91:15 92:16 iii [3] 24:22 28:19 29:11 illegitimacy [2] 85:22 97:22 imagine [2] 54:7 73:3 immigration [2] 17:2 95:22 impact [1] 47:10 implemented [1] 132:17 implication [1] 93:13 implications [4] 38:16 72:16 77:18,19 important [7] 21:17 82:13 87:14 95:16 106:10,13 130:17 impose [1] 38:10 inartfully [1] 124:16 include [3] 7:8 96:4,22 included [3] 6:18 44:3 91:21 including [4] 32:5 74:4 81:16 117:7 inclusion [1] 109:3 inconsistent [1] 69:21 incorporated [1] 22:10 incorrectly [1] 42:12 increasing [1] 118:2 incur [1] 28:9 indeterminately [2] 85:3 93:14 indicates [1] 112:22 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 91:3,3,4,14 107:8 119:25 120:1,7 124:13 127:10 individually [4] 16:12 44:2 50:25 78:8 individuals [11] 17:1 30:4 33:16 43:1 46:22,23 52:13 55:6,10 65:23 82:15 93:23 infamy [2] 26:22,22 inferences [1] 42:8 infertile [10] 52:3,6 57:4 65:4,5,6,7,19,21 influenced [1] 132:19 inform [1] 25:14 information [1] 117:21 initially [1] 66:17 injunction [4] 81:23 93:23 105:5 117:8 inquiry [2] 85:8 104:15 inspiring [1] 106:24 instance [2] 13:22 14:1 instead [1] 53:15 institutional [2] 32:10,11 instructive [1] 97:3 insular [2] 16:23 18:22 insurmountable [1] 128:2 intend [4] 5:25 25:22,25 118:8 intended [1] 20:25 intending [1] 117:24 intent [3] 20:11 26:6,8 intents [1] 26:8 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 interested [1] 103:7 interesting [2] 95:8 97:5 interestingly [1] 108:17 interests [2] 94:1 129:13 interfere [1] 40:15 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 interpreted [1] 61:2</p>	<p>interpreting [2] 58:16 96:1 intervenor [1] 116:15 interventions [1] 14:19 introduced [1] 19:14 intrusive [1] 45:7 invalid [4] 51:11 53:11,14 62:2 invalidate [1] 127:21 invalidating [1] 87:10 invasion [1] 113:13 invasive [4] 45:7 113:14,21 114:21 invent [1] 88:21 involved [2] 7:25 130:4 involves [1] 24:13 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 isolating [1] 58:17 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 issues [2] 24:4,5 itself [6] 16:24 45:18 57:25 82:3 94:14 113:14 ix [10] 22:20 60:24 70:10,24 71:1,4 82:2 83:4,9 107:24</p> <hr/> <p><b>J</b></p> <p>ja [3] 104:2,4,4 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 judge-made [1] 31:21 judges [2] 31:21 62:15 judgment [2] 70:12 122:10 judgments [1] 127:23 jump [1] 129:20 june [1] 48:16 jure [3] 16:25 17:6 18:14 jurisdiction [2] 22:3 24:23 jurisprudence [2] 13:15 94:9 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 justifications [1] 12:9 justified [13] 9:9,11 13:18,</p>
---	---	---	--

21,22 14:13 34:23,25 59: 10 61:20 69:11 79:2 128: 12 <b>justify</b> [4] 12:5 14:3 123:7,8 <b>juxtaposition</b> [1] 15:23	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 <b>75</b> :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 <b>laws</b> [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 <b>law's</b> [2] 5:14 37:6 <b>lay-up</b> [1] 73:5 <b>league</b> [1] 107:10 <b>learn</b> [1] 130:1 <b>learning</b> [1] 130:23 <b>least</b> [11] 54:16 69:8 74:12 85:17 116:6 123:25 125:5 126:22 130:2 131:1,7 <b>leave</b> [4] 24:10 27:23 28:3 97:8 <b>leaving</b> [2] 42:2 97:15 <b>leeway</b> [2] 123:12,24 <b>legal</b> [3] 21:17 33:13 46:5 <b>legislate</b> [1] 103:20 <b>legislation</b> [1] 30:22 <b>legislative</b> [5] 19:13,21 20:2 106:4 130:10 <b>legislators</b> [1] 106:3 <b>legislature</b> [5] 14:3 31:24 42:5,7 46:17 <b>legislatures</b> [2] 32:14 106:2 <b>legitimate</b> [2] 23:24 121:14 <b>lehr</b> [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 <b>length</b> [1] 94:10 <b>lengthy</b> [1] 132:21 <b>less</b> [3] 68:5 92:1 112:24 <b>letting</b> [1] 9:24 <b>level</b> [8] 40:9 51:12 96:19 114:24 117:11 124:20,22 126:7 <b>levels</b> [7] 34:21 38:21 39:21 41:6,13 50:3 113:8 <b>life</b> [1] 77:10 <b>light</b> [2] 49:13 93:20 <b>likewise</b> [1] 110:12 <b>limit</b> [1] 23:10 <b>limits</b> [1] 45:18 <b>lindsay</b> [4] 80:16,21 88:7 100:5 <b>line</b> [12] 6:23 39:24 59:17	79:22 80:4 82:8,11,12 88:3 133:14,23,24 <b>lines</b> [2] 72:7 73:1 <b>list</b> [1] 17:4 <b>listen</b> [1] 41:9 <b>literally</b> [1] 75:3 <b>litigating</b> [1] 71:3 <b>litigation</b> [10] 12:13,22,23, 24 20:24 26:2 27:23 28:1 48:12 90:13 <b>little</b> [6] 21:13 25:16 26:7 41: 21 47:21 122:25 <b>live</b> [1] 26:22 <b>lives</b> [1] 27:5 <b>location</b> [1] 64:8 <b>logic</b> [4] 16:16 62:8 63:13, 17 <b>logical</b> [1] 62:9 <b>long</b> [5] 11:11 17:3 29:9 98: 4 118:10 <b>longer</b> [2] 32:6 75:21 <b>look</b> [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 <b>looked</b> [5] 27:5 91:10 117: 14 120:10 121:17 <b>looking</b> [4] 17:17 89:5 90:4 103:5 <b>looks</b> [1] 85:25 <b>lose</b> [3] 20:21 28:6 77:15 <b>lost</b> [2] 59:7 131:25 <b>lot</b> [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 <b>lots</b> [2] 59:25 60:2 <b>lousy</b> [1] 22:22 <b>low</b> [1] 113:18 <b>lower</b> [2] 70:10 71:3 <b>luck</b> [1] 77:13 <b>ludicrous</b> [3] 52:9,10 65:18	<b>makeup</b> [1] 116:9 <b>male</b> [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 <b>male/female</b> [1] 22:20 <b>males</b> [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 <b>man</b> [5] 25:22 49:22 57:4 98: 25 99:5 <b>maneuvers</b> [1] 22:13 <b>manipulative</b> [1] 22:2 <b>manner</b> [1] 106:15 <b>many</b> [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 <b>marker</b> [1] 110:25 <b>match</b> [1] 109:5 <b>matched</b> [2] 44:14,15 <b>matches</b> [1] 10:8 <b>matching</b> [1] 97:16 <b>material</b> [1] 117:9 <b>math</b> [4] 51:9,10,12 60:11 <b>matter</b> [8] 12:10 38:11 44:7 78:3 87:12 97:7 126:20 133:24 <b>matters</b> [3] 56:5 87:11 133: 15 <b>mean</b> [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 <b>meaningful</b> [2] 64:9 105:19 <b>means</b> [8] 24:15 75:3 78:16, 24 80:6 97:6 98:24 99:25 <b>meant</b> [1] 96:4 <b>medal</b> [1] 107:10 <b>medals</b> [1] 131:25 <b>medical</b> [6] 14:19 41:3 43:6 115:9 132:2,7 <b>medications</b> [1] 120:17 <b>meet</b> [2] 60:11 86:2 <b>members</b> [1] 30:5 <b>membership</b> [1] 18:25 <b>men</b> [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 <b>men's</b> [1] 102:25 <b>mentally</b> [1] 17:12
--	---	---	---

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	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	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	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: 15 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:
---	---	--	--

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

13	qualifies [1] 100:5	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 1 126:12	58:14 84:18 86:8,13 87:24 121:8 126:1
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	quantitative [1] 57:7	relative [1] 57:12	relative [1] 57:12
proceeded [1] 121:10	quarter [1] 34:19	relevant [5] 23:21 37:12,13 72:11 109:16	relevant [5] 23:21 37:12,13 72:11 109:16
process [4] 17:16 19:3 130:10 131:5	quarters [1] 34:22	reliably [3] 132:2,9,12	reliably [3] 132:2,9,12
promise [1] 26:1	quasi [1] 133:8	relief [3] 5:13 33:24 84:25	relief [3] 5:13 33:24 84:25
promised [1] 28:9	quasi-suspect [1] 17:16	relies [1] 19:24	relies [1] 19:24
promoting [1] 8:14	question [7] 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	remain [1] 128:13	remain [1] 128:13
properly [4] 60:18 61:1 91:20 121:22	questions [9] 6:7,9 38:16 50:9 69:16 71:24 72:4 81:25 133:12	remainder [1] 6:2	remainder [1] 6:2
property [1] 17:25	quite [3] 86:22 88:17 125:15	remains [3] 49:21 124:12 125:21	remains [3] 49:21 124:12 125:21
proportional [1] 104:18	quote [1] 19:23	remedy [9] 33:13 54:24 55:7 75:17,18 76:2 78:7,20 79:12	remedy [9] 33:13 54:24 55:7 75:17,18 76:2 78:7,20 79:12
proposing [4] 42:21 43:9 44:23 109:2	<b>R</b>	remind [1] 40:16	remind [1] 40:16
prosecuted [1] 97:17	race [4] 17:18 78:14 133:2,5	render [1] 62:2	render [1] 62:2
prosecuting [1] 28:11	raise [1] 115:22	reoccur [1] 29:2	reoccur [1] 29:2
protect [4] 19:2 74:8 80:4 104:7	raised [3] 12:1 24:4 115:17	reopen [1] 22:9	reopen [1] 22:9
protected [2] 110:19 114:5	raises [1] 107:21	repeatedly [2] 7:13 81:15	repeatedly [2] 7:13 81:15
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	ramifications [1] 72:22	report [3] 96:15,17 131:24	report [3] 96:15,17 131:24
prove [4] 8:8 33:20 77:9 114:11	range [1] 88:15	represent [1] 120:11	represent [1] 120:11
provide [2] 117:20 127:15	rape [3] 51:24 52:7 65:20	representations [2] 20:25 48:6	representations [2] 20:25 48:6
provided [2] 20:3 121:19	rapist [1] 52:2	repressed [1] 128:23	repressed [1] 128:23
providing [1] 131:3	rapists [1] 65:5	reproductive [3] 61:5 100:16 114:13	reproductive [3] 61:5 100:16 114:13
provision [2] 36:22 53:10	rapporteur's [1] 131:24	request [1] 131:9	request [1] 131:9
prudent [1] 128:16	rational [8] 6:25 72:15 78:12 103:19,22 106:15 122:4 133:13	requested [1] 5:13	requested [1] 5:13
psychopath [1] 95:23	rationale [3] 51:25 86:3 101:21	require [1] 7:14 31:6 45:5 50:16 55:17 61:25 102:21 113:15 114:6,14,17	require [1] 7:14 31:6 45:5 50:16 55:17 61:25 102:21 113:15 114:6,14,17
psychopathic [1] 96:3	reach [3] 21:14 81:19 133:7	required [6] 5:21 9:24 23:3 50:2 109:21 114:22	required [6] 5:21 9:24 23:3 50:2 109:21 114:22
puberty [12] 12:19 80:13 81:6 100:17 102:23 108:19 111:16 120:21,24,24,25 124:2	reached [1] 132:21	requirement [3] 62:11 93:17 115:6	requirement [3] 62:11 93:17 115:6
public [1] 96:17	reaches [1] 24:19	requirements [3] 91:1,23 92:3	requirements [3] 91:1,23 92:3
purposes [4] 24:16 98:22 99:3 100:1	reaching [2] 21:12,16	requires [2] 10:1 50:18	requires [2] 10:1 50:18
pursuant [2] 61:2 100:4	reaction [1] 125:8	requiring [1] 73:20	requiring [1] 73:20
put [8] 39:4 53:12 76:17 106:19 112:19,23 118:16 126:8	read [7] 58:8 65:14 68:13 72:7 76:21 77:2 96:20	reserve [1] 70:12	reserve [1] 70:12
puts [5] 14:22 19:24 20:20 22:5 128:1	reading [4] 15:16 97:1,1 130:24	resolve [1] 12:23	resolve [1] 12:23
putting [1] 14:9	reaffirmed [1] 81:16	resolving [1] 71:7	resolving [1] 71:7
<b>Q</b>	real [5] 49:13 53:15 124:21 131:21 132:1	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	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
really [34] 10:25 11:19 13:7,10 17:17 23:13 31:9 32:9	realize [1] 78:24	respectfully [2] 19:19 97:25	respectfully [2] 19:19 97:25
	really [34] 10:25 11:19 13:7,10 17:17 23:13 31:9 32:9	respond [7] 15:1 17:4 106:21 107:17 115:19,21 131:6	respond [7] 15:1 17:4 106:21 107:17 115:19,21 131:6
	related [8] 23:23,23 50:23 56:11,12,24 69:6 82:12	respondent [2] 20:10 22:12	respondent [2] 20:10 22:12
	relates [1] 48:1	respondents [1] 79:18	respondents [1] 79:18
	relation [1] 50:19	respondents' [1] 132:24	respondents' [1] 132:24
	relationship [9] 52:19 53:18	responding [1] 106:14	responding [1] 106:14
		response [4] 85:9 95:20 103:22 124:15	response [4] 85:9 95:20 103:22 124:15
		rest [2] 36:3 80:1	rest [2] 36:3 80:1

restriction [1] 128:12	scholars [1] 89:1	36:22 47:2 49:12 83:7 98:16 108:11 130:10	simple [1] 40:11
result [2] 31:20 55:21	scholars' [1] 88:25	separation [4] 82:21,24 83:3,12	simply [3] 15:16,17 90:9
retracted [1] 126:13	school [9] 20:17 98:15 100:13,14,21 101:4 102:4 116:7,15	serious [1] 62:2	since [4] 26:15 44:14 98:5 109:10
reverse [3] 24:8 63:18 107:5	schools [2] 115:24 116:3	seriously [2] 67:6,12	sincerely [1] 101:10
review [7] 7:1 72:16 78:12 103:19 119:24 122:5 133:13	school-sponsored [2] 20:15 39:9	served [1] 91:19	sincerity [1] 20:19
rice [1] 110:16	science [12] 13:9,11 40:5 41:9 43:7 60:12 110:23 124:21 125:2 126:20 127:9,12	service [1] 96:17	single [3] 62:9 68:11 74:1
rightly [1] 124:7	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	set [5] 57:22 59:13 60:4,17 130:15	single-sex [1] 9:25
rights [2] 38:2 97:10	score [1] 124:15	setting [2] 65:17 77:25	situated [5] 50:7 58:13,19 90:18 108:25
risk [1] 52:1	scrutinized [1] 79:25	sex [5] 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	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
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	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	situations [5] 11:6 40:8 132:9,10,11
role [3] 129:7,19 131:3	sex-separate [1] 116:3	sex-separated [2] 38:23,24	six [2] 39:10 40:4
roundly [1] 61:14	sex-separated [2] 38:23,24	share [2] 94:17 105:12	six-year-old [1] 111:3
rule [11] 27:24,25 42:25 43:6,11,18 49:15 61:20 109:3 129:21 132:17	she'll [1] 20:16	she'll [1] 20:16	six-year-olds [3] 38:19 39:7,16
ruled [2] 63:19 120:7	she's [8] 7:15,19 8:12 9:1 20:21 21:12 100:6 119:2	she's [8] 7:15,19 8:12 9:1 20:21 21:12 100:6 119:2	sizable [2] 76:7 91:25
rules [2] 92:18 130:15	shevin [1] 11:24	shevin [1] 11:24	size [2] 111:5,24
run [1] 11:17	shift [1] 121:15	shift [1] 121:15	skrmetti [8] 17:15 36:4 37:4 46:14 47:14 122:4 130:20 133:9
running [1] 105:6	short [1] 50:5	short [1] 50:5	slice [3] 105:18,19,20
runs [2] 29:18 109:13	shortly [1] 20:17	shortly [1] 20:17	slow [1] 105:5
<b>S</b>			
safe [1] 8:18	shouldn't [3] 32:17 42:1 62:12	shouldn't [3] 32:17 42:1 62:12	small [8] 11:14 57:2 66:1 73:18 85:3 88:13 93:14 105:20
safely [2] 45:21,25	show [12] 28:25 56:3 66:8,10 68:6 76:6 89:22 114:24 121:7,21 124:10 125:25	show [12] 28:25 56:3 66:8,10 68:6 76:6 89:22 114:24 121:7,21 124:10 125:25	smiling [1] 62:17
safest [1] 133:16	showing [6] 41:17 54:24 66:25 105:12 121:3,21	showing [6] 41:17 54:24 66:25 105:12 121:3,21	soccer [2] 5:25 105:6
safety [3] 8:13 14:21 74:8	shows [1] 132:5	shows [1] 132:5	society [1] 108:2
sake [2] 82:21,24	shut [1] 98:5	shut [1] 98:5	sold [1] 22:7
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	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	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	solution [2] 40:11,11
satisfactory [1] 33:10	sides [4] 107:15 119:12 127:18 129:13	sides [4] 107:15 119:12 127:18 129:13	somebody [2] 83:11 108:9
satisfied [2] 102:13,16	side's [1] 115:19	side's [1] 115:19	somebody's [1] 36:15
satisfy [3] 62:10,10 66:17	signed [1] 20:12	signed [1] 20:12	somehow [2] 91:15 118:13
saw [1] 25:24	significant [1] 17:9	significant [1] 17:9	someone [4] 14:17 63:11 99:12 113:15
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	similar [2] 82:2 84:9	similar [2] 82:2 84:9	someone's [1] 114:15
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	similarly [5] 50:6 58:13,18 90:18 108:25	similarly [5] 50:6 58:13,18 90:18 108:25	sometimes [2] 51:6 112:16
scalia [2] 29:5 62:7			somewhat [3] 22:1 86:5 128:24

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

16,17 <b>20:18 25:8,11 27:22</b> <b>29:9,15 33:2 38:20 45:17</b> <b>53:10,17 58:18 68:14 69:4</b> <b>78:12,19 83:13 88:15 91:</b> <b>19 93:16,18 99:19,23 104:</b> <b>21,22 107:11,11 108:8 110:</b> <b>16,17 116:8,22 119:11 120:</b> <b>2 123:15 124:1 125:3,11</b> <b>128:9 129:7,12,22,23 131:</b> 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	104:8,25 <b>105:18,24 106:17</b> <b>107:4 108:22,24 109:9,12,</b> 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 trumble [4] 85:23 86:10 91: 12 92:8 trumble/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	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:	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
<b>V</b>			
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:			

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