

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

ENBRIDGE ENERGY, LP, ET AL.,)
 Petitioners,)
 v.) No. 24-783
DANA NESSEL, ATTORNEY GENERAL)
OF MICHIGAN, ON BEHALF OF THE)
PEOPLE OF THE STATE OF MICHIGAN,)
 Respondent.)

Pages: 1 through 70
Place: Washington, D.C.
Date: February 24, 2026

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

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 ENBRIDGE ENERGY, LP, ET AL.,)
4 Petitioners,)
5 v.) No. 24-783
6 DANA NESSEL, ATTORNEY GENERAL)
7 OF MICHIGAN, ON BEHALF OF THE)
8 PEOPLE OF THE STATE OF MICHIGAN,)
9 Respondent.)
10 - - - - -

11
12 Washington, D.C.
13 Tuesday, February 24, 2026

14
15 The above-entitled matter came on for
16 oral argument before the Supreme Court of the
17 United States at 10:09 a.m.

18
19 APPEARANCES:
20 JOHN J. BURSCH, ESQUIRE, Caledonia, Michigan; on
21 behalf of the Petitioners.
22 ANN M. SHERMAN, Solicitor General, Lansing, Michigan;
23 on behalf of the Respondent.

24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	JOHN J. BURSCH, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	ANN M. SHERMAN, ESQ.	
7	On behalf of the Respondent	39
8	REBUTTAL ARGUMENT OF:	
9	JOHN J. BURSCH, ESQ.	
10	On behalf of the Petitioners	64
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:09 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 24-783, Enbridge Energy versus Nessel.

Mr. Bursch.

ORAL ARGUMENT OF JOHN J. BURSCH

ON BEHALF OF THE PETITIONERS

MR. BURSCH: Thank you, Mr. Chief Justice, and may it please the Court:

This case arises from state officials' attempt to use state court proceedings to shut down an international pipeline that supplies energy to millions in the U.S. and Canada. The question is whether federal courts retain their traditional equitable authority to excuse the 30-day removal deadline. Under this Court's case law and statutory text, they do.

To begin, Section 1446(b) is a non-jurisdictional filing rule, a timing rule, that satisfies this Court's test in Young because it prescribes a period within which certain rights may be enforced. So, under Holland, the Court's presumption, it presumes that federal courts retain their traditional

1 equitable authority absent the clearest
2 command.

3 Next, the Michigan attorney general
4 cannot rebut that presumption. Like Boechler,
5 1446(b) does not expressly prohibit equitable
6 tolling, and its short 30-day time limit is
7 directed at the defendant, not the court, which
8 is why it's placed in a procedural section.

9 As in State Farm, Congress's decision
10 to expressly direct a remand for lack of
11 jurisdiction but not for procedural defects
12 suggests that courts retain their traditional
13 equitable authority to excuse procedural
14 defects. And other equitable exceptions like
15 waiver and estoppel apply to 1446(b). It would
16 be incongruous not to allow equitable tolling
17 too.

18 Finally, the attorney general points
19 to so-called exceptions to the 30-day timing
20 rule. None rebut the presumption. Some simply
21 define when the 30 days begins; others were
22 adopted years apart to govern discrete
23 categories of litigants or subject matter.
24 None provide what Holland demands: the
25 clearest command that courts are precluded from

1 exercising their traditional equitable
2 authority.

3 In sum, there's no need to break new
4 ground here. We ask that you apply the Court's
5 well-settled precedents and reverse.

6 I welcome the Court's questions.

7 JUSTICE THOMAS: You removed the case
8 against the governor to federal court.

9 MR. BURSCH: We did.

10 JUSTICE THOMAS: Why wasn't this
11 removed? They're basically the same case.

12 MR. BURSCH: Well, it was a similar
13 case, but what really changed the -- the ground
14 was that the Canadian government invoked the
15 1977 transit treaty while the governor's case
16 was up on appeal -- or, I'm sorry, was up on
17 removal. And, at that point, that's when the
18 common law -- federal common law of foreign
19 affairs suddenly burst into -- into force, and
20 it would have made sense for us to remove at
21 that time.

22 However, the state court had already
23 stayed all of its proceedings. Everybody, the
24 attorney general and Enbridge, assumed that the
25 proceedings would be going forward with the

1 dual federal cases, the -- the original case
2 that Enbridge filed and the governor's removed
3 case.

4 Once the governor dismissed her case
5 and the attorney general announced that she was
6 going to go back to the state court, we filed
7 our notice of removal within 15 days.

8 JUSTICE THOMAS: But --

9 JUSTICE JACKSON: So you talked -- oh,
10 go ahead.

11 JUSTICE THOMAS: But it seems to me
12 that if they were going to be paired in that
13 way, you would have removed them in pairs,
14 because that suggests that they were very much
15 similar.

16 MR. BURSCH: There were similarities,
17 but the Canadian government invoking the treaty
18 really changed what the state court case looked
19 like. I don't think it was clear to anyone
20 that there was necessarily federal jurisdiction
21 at the outset of the state court case that the
22 attorney general filed. But, by the time that
23 the governor invoked -- or, I'm sorry, that the
24 governor terminated the easement and then
25 Canada invoked the treaty, that really changed

1 the lay of the land.

2 Ultimately, however, the Court doesn't
3 need to get into any of that. You can do what
4 you did in Boechler, where the -- the law firm
5 clearly dropped the ball, in the Court's words,
6 simply decided that equitable tolling applied
7 and then remanded it to the lower courts.

8 JUSTICE THOMAS: So have we applied
9 the presumption in a removal case before?

10 MR. BURSCH: This will be the first
11 time. And I'm -- I'm glad you brought that up,
12 Justice Thomas, because I think that's one of
13 the linchpins of this case.

14 And I rely on three unanimous
15 decisions of this Court why you should apply it
16 here. First, in Lozano, the Court unanimously
17 announced that the statute of limitations
18 concept is a functional one. It's not a strict
19 one. So you don't need to have a claim being
20 cut off.

21 Second, a great example of that is
22 Young, also a unanimous decision. And, there,
23 the IRS's three-year look-back period was a
24 statute of limitations because it prescribed a
25 period within which certain rights may be

1 enforced. And that was true even though the
2 statute did not eliminate the IRS's claim, only
3 some of the IRS's mechanisms for enforcement,
4 just like removal.

5 And then, finally, the unanimous
6 opinion in *Nutraceutical*, where, again, the
7 plaintiff lost their -- their right to an
8 interlocutory appeal of the denial of class
9 certification, but they did not lose their
10 claim. And they could always bring up that
11 class certification issue later after final
12 judgment. And yet the Court looked for clear
13 intent to preclude tolling.

14 CHIEF JUSTICE ROBERTS: Well, there's
15 a different interest involved here. We --
16 we've obviously had a tendency, for example, in
17 filings recently to pay -- put more of a focus
18 on the interests of the plaintiffs and --
19 and -- and less on the interests of the
20 defendant in -- but, here, it's a state, right,
21 that would be in -- suffering to the extent the
22 complaint is allowed to go forward.

23 And isn't the fact that we're dealing
24 with a sovereign in this case cause the --
25 perhaps the weighing to go in a different

1 direction?

2 MR. BURSCH: Well, thank you,
3 Mr. Chief Justice. To begin, it's not
4 suffering for a state to have to litigate in
5 federal court, but I think what your -- your
6 question goes to --

7 (Laughter.)

8 MR. BURSCH: -- what your question
9 goes to --

10 CHIEF JUSTICE ROBERTS: We'll hear
11 about that shortly, but -- but anyway --

12 MR. BURSCH: -- what your question
13 goes to is the other side's contention that --
14 that because of the state/federal dynamic, this
15 federalism dynamic, that perhaps the removal
16 statute should be strictly construed. And I
17 have three responses to that.

18 First, as the Chamber brief explains
19 at pages 20 to 21, in Dart and Breuer, this
20 Court made clear that it doesn't provide any
21 kind of a strict construction in this context.

22 Second, to the extent that you have,
23 it's only for jurisdiction, not for procedural
24 matters.

25 And the third thing is that even if

1 you would construe 1446(b) strictly, they still
2 can't overcome the presumption.

3 And we have this long history of
4 courts having traditional equitable authority,
5 and what we don't want is to -- to assume that
6 Congress wanted to handcuff federal courts so
7 that they couldn't exercise equity. You need a
8 clear command or some other really compelling
9 statement to strip federal courts of that. And
10 that should apply equally to removal as it does
11 in other functional statutes of limitation.

12 JUSTICE SOTOMAYOR: I'm having a
13 problem understanding what you're losing, what
14 right you're losing. You call it a right to
15 have a federal court try the case, but I don't
16 know that that's a right. You have a right to
17 have recovery for a loss or a potential loss,
18 and the forum where that right is adjudicated
19 is not lost -- not lost. You have a forum.
20 You have the state court. None of your
21 remedies, like in some of our other cases,
22 would be lost forever. None of your claims or
23 defenses would be lost forever. Canada can
24 file whatever it filed in the federal action in
25 the state action.

1 I -- I've always thought of a statute
2 of limitations as something where you're losing
3 a part of your recovery --

4 MR. BURSCH: Mm-hmm.

5 JUSTICE SOTOMAYOR: -- a part of your
6 claim, but this is no loss of claim.

7 MR. BURSCH: Well, Justice Sotomayor,
8 that's why Lozano makes clear that this is a
9 functional test and why you crossed that
10 Rubicon of having to lose a claim in both --

11 JUSTICE SOTOMAYOR: But tell me what
12 the function is. Meaning, in Lozano, the
13 question was did the parent -- and we said no,
14 that even though the parent didn't get
15 automatic return of the child, it still got
16 circumstances in which the child wouldn't be
17 returned. If it's non-functional, I still
18 don't understand what right to your claim you
19 have lost.

20 MR. BURSCH: Right. That -- that's
21 why I point you to Young and also your opinion
22 in Nutraceutical because, in those cases too,
23 no one lost a claim.

24 In -- in Nutraceutical, there was no
25 right to interlocutory appeal other than that

1 granted by rule, and yet the Court looked for a
2 clear intent to preclude tolling.

3 JUSTICE SOTOMAYOR: Well, but wait a
4 minute, that -- that's a right to have someone
5 hear the case.

6 MR. BURSCH: Right.

7 JUSTICE SOTOMAYOR: So you're losing
8 that, all right, but, here, there is a court,
9 whether it's the state court or the federal
10 court, there is a forum for your claim.

11 MR. BURSCH: Yes. But, in
12 Nutraceutical, you still had the ability to
13 have an appeal at the end of final judgment.
14 You were just losing a mechanism to enforce
15 your arguments in the same way that we're
16 losing our right to removal.

17 And it was the same thing with the IRS
18 in Young. They didn't lose their ability to go
19 after the person who failed to pay taxes. They
20 simply lost the mechanisms of being able to
21 invoke non-dischargeability and priority.

22 But they could overcome those by, for
23 example, alleging fraud as a way to get around
24 dischargeability or maybe the -- the priority
25 wouldn't have affected them actually being able

1 to recover.

2 So -- so this Court in both of those
3 cases was very generous, really, capacious in
4 recognizing lower courts' equitable authority.
5 And I think that's why most recently in Harrow,
6 the 2024 case which also involved appeals, the
7 Court said the presumption applies to
8 non-jurisdictional timing rules.

9 And this -- this case fits exactly
10 within that.

11 JUSTICE SOTOMAYOR: Thank you.

12 JUSTICE JACKSON: So are you saying
13 that this particular deadline is functionally a
14 statute of limitations, or are you saying it
15 doesn't matter whether it's functionally a
16 statute of limitations for the purpose of our
17 analysis?

18 MR. BURSCH: I'm saying, under Lozano,
19 Young, Nutraceutical, and Harrow, it's
20 functionally a statute of limitations the way
21 the Court has defined that phrase for purposes
22 of these inquiries about traditional equitable
23 authority.

24 JUSTICE JACKSON: What do you do with
25 Arellano, which is a more recent, I think, or

1 one of the most recent cases that we have that
2 talk about this doctrine and comes out the
3 other way?

4 MR. BURSCH: Justice Jackson, I'm
5 delighted that you brought up Arellano.

6 JUSTICE JACKSON: Thank you, good.

7 MR. BURSCH: Yeah. That -- you start
8 with the fact that there were 16 reticulated
9 exceptions there, some of which included
10 equitable tolling-type language. But -- but
11 here's the important thing about Arellano. It
12 was the text.

13 It said, unless specifically provided
14 otherwise in this chapter, that is the clearest
15 command that Holland requires. And what the
16 Court said was that that was a textual book
17 "indicating that Congress enumerated an
18 exhaustive list of exceptions with each
19 confined to its specific terms."

20 We don't have anything like that in
21 the removal statute, anything like that in the
22 IRS statute.

23 JUSTICE JACKSON: Well, I understand.
24 But isn't that sort of a -- a little bit later
25 in the analysis? I mean, I -- I started you

1 with the question of is this functionally a
2 statute of limitations because I'm just trying
3 to get that pinned down.

4 MR. BURSCH: Yes.

5 JUSTICE JACKSON: And I think, in
6 Arellano, it may have functioned as that, but
7 then we looked at the statute and we said, you
8 know, the way this -- Congress has set this up,
9 we understand it not to want any additional
10 equitable considerations --

11 MR. BURSCH: Yes.

12 JUSTICE JACKSON: -- so we're not
13 going to consider it.

14 I think I'm sort of at the first step
15 with you, which is is what is happening here in
16 light of what Justice Sotomayor and others have
17 said really like a statute of limitations.
18 You're not losing the rights in the same way.
19 It seems like we're just shifting forums here.

20 So, on the very kind of threshold
21 consideration of does this function as a
22 statute of limitations, I -- I'm struggling to
23 see why it does.

24 MR. BURSCH: Yes. So, in Arellano, I
25 don't think the Court decided that question --

1 JUSTICE JACKSON: Okay.

2 MR. BURSCH: -- whether that was a
3 statute of limitations. It just assumed that
4 the presumption applied and then it found that
5 clear command that I -- I just quoted to you.

6 JUSTICE JACKSON: All right.

7 MR. BURSCH: And on the front end --

8 JUSTICE JACKSON: So why should we
9 assume, though, the presumption applies here?

10 MR. BURSCH: Because the functional
11 test that Young adopts and that Lozano then
12 recognizes is that a statute of limitations for
13 purposes of this inquiry, whether a presumption
14 of traditional equitable authority applies, is
15 whether the statute prescribes a period within
16 which certain rights may be enforced.

17 And so, in Young, you didn't lose a
18 claim. You simply lost some process
19 enforcement rights, non-dischargeability and
20 priority. In Nutraceutical, you didn't lose
21 any rights, you didn't lose your -- I'm sorry,
22 you didn't lose any claim, you simply lost the
23 right to an interlocutory appeal.

24 JUSTICE JACKSON: All right. So let's
25 move to the Arellano test. If we assume as

1 Arellano did that this functions as a statute
2 of limitations, why should we look at this
3 statute and believe that Congress wanted other
4 equitable tolling considerations to work here?

5 MR. BURSCH: Well, the -- the baseline
6 is that Holland says you need the clearest
7 command to rebut the presumption. So now
8 burden of proof shifts to the attorney general.
9 And, incidentally, the -- the Sixth Circuit did
10 apply the presumption below and so they're
11 actually the appellant on that as well.

12 And so you look at the statute. And
13 I -- I start with our affirmative case, which
14 is Boechler, just like 14 -- or, I'm sorry,
15 just like the statute in Boechler, 1446(b) does
16 not expressly prohibit equitable tolling, it's
17 got the short 30-day time deadline, and it's
18 directed at the defendant, not at the court.
19 It speaks -- speaks to removal procedures, not
20 the court's authority.

21 And then you have this curious thing
22 where, in 1447(c), you have to remand if there
23 is a lack of jurisdiction. But the statute
24 doesn't say that you have to remand for a lack
25 of procedural defects. So, for example, it's

1 not uncommon that someone who doesn't remove
2 very often may get their notice of removal in
3 within 30 days, but they'll -- they'll forget
4 to attach a copy of all the state court
5 pleadings, which 1446 also requires.

6 JUSTICE JACKSON: Isn't the broader
7 point that because there were these kinds of
8 exceptions in the statute, Congress was
9 thinking about this, they covered it, and --
10 and who are we now to believe that other things
11 should be taken into account on this equitable
12 basis?

13 MR. BURSCH: Well, we start with the
14 ground rule assumption that the Court maintains
15 its equitable authority, and so, when we look
16 at the exceptions, now we have to ask whether
17 Congress was clearly commanding, like did
18 Congress intend to handcuff federal court --

19 JUSTICE JACKSON: You don't see that
20 as -- as starting with the answer in this case?
21 I mean, you sort of -- you -- you say the
22 ground rule is that -- that you retain the --
23 the equitable authority, but the issue here is
24 whether --

25 MR. BURSCH: Has it been clearly

1 rebutted. Do you have the clearest command.

2 JUSTICE JACKSON: I see. I see.

3 Okay.

4 MR. BURSCH: And so, if we start
5 walking down what they call the exceptions --

6 JUSTICE JACKSON: Mm-hmm.

7 MR. BURSCH: -- you know,
8 1446(b)(2)(B), 1446(b)(3), those are just
9 telling you when the 30 days accrues. If you
10 have multiple defendants, it doesn't accrue
11 until each defendant is served. If you've got
12 a complaint that's not initially removable, it
13 accrues when it becomes removable, as in this
14 case, with the treaty.

15 Then you start looking at the things
16 that they point to elsewhere. It's notable
17 that in the red brief they only spend one page
18 on how the text provides the clearest command,
19 and all the rest of it are exceptions that are
20 elsewhere.

21 And the problem with those is that
22 those involve distinct litigants and distinct
23 subject matter. They don't provide that
24 clearest command. And I would add that those
25 exceptions that they point to, some of them

1 make relief even broader than what equity would
2 provide.

3 So, for example, for suits against
4 members of the Armed Forces, this is 1442a, you
5 can allow removal at any time. That's not an
6 equitable exception. That's just completely
7 blowing up the 30-day removal period.

8 In 1441e, the multi-party, multi-forum
9 jurisdiction provision, it's at a later time
10 with leave of court. And so Congress created
11 some incredibly non-equitable capacious
12 exceptions in these other sections. None of
13 those suggest that Congress meant to handcuff
14 courts and their traditional equitable
15 authority --

16 JUSTICE ALITO: Mr. Bursch --

17 MR. BURSCH: -- when it comes --

18 JUSTICE ALITO: -- can I ask you this?
19 I understand that you and your amici allege
20 that the state engaged in some procedural moves
21 at a certain point that were inequitable.

22 But was the attorney general's suit
23 removable when it was filed and for the 30 days
24 following the filing of the suit?

25 MR. BURSCH: That -- that's a very

1 difficult question that the parties had trouble
2 answering from the outset and probably continue
3 to have trouble answering today. That's the
4 kind of thing that we would encourage the Sixth
5 Circuit to decide on remand as you did in
6 Boechler and also in Harrow, you know, sending
7 back that hard question.

8 All we're asking to you do is to
9 declare that the presumption applies, that it
10 hasn't been rebutted by the clearest command,
11 and -- and to reverse. I mean, it could be an
12 opinion that's 160 pages less than the tariffs
13 opinion last week.

14 JUSTICE ALITO: Well, if -- well --

15 (Laughter.)

16 JUSTICE ALITO: -- that's certainly a
17 goal to aim for.

18 (Laughter.)

19 JUSTICE ALITO: I felt very left out
20 in the tariffs case. Justice Sotomayor didn't
21 write and I didn't write opinions. But, if
22 the --

23 JUSTICE SOTOMAYOR: Maybe we'll have a
24 chance here.

25 (Laughter.)

1 JUSTICE ALITO: If the -- the
2 governor's suit was removable, on what basis
3 would it -- would we perhaps hold that the
4 original attorney general's suit was not
5 removable?

6 MR. BURSCH: Yeah. So, again,
7 something you don't have to decide, but the
8 argument we would make to the Sixth Circuit is
9 that the district court didn't abuse her
10 discretion because, as soon as the governor
11 declared that the easement was terminated and
12 then filed a lawsuit that asked for an
13 immediate shutdown of the pipeline -- I mean,
14 keeping in mind this means depriving millions
15 of people of -- of fuel and propane in Michigan
16 and Ohio and Canada -- that everything shifted
17 to that lawsuit and the affirmative lawsuit
18 that we filed.

19 And so the parties quickly agreed with
20 the state trial court that the state trial
21 court proceeding would just be stayed, and so
22 that kind of sat on the shelf while the two
23 federal claims went forward.

24 JUSTICE ALITO: Well, I understand
25 that, but what was the relief sought in the

1 attorney general's suit? It was an injunction,
2 wasn't it, against continuing operation of the
3 pipeline?

4 MR. BURSCH: It -- it could have been,
5 but there -- there were also a lot of other --
6 there were state law claims in there. They
7 didn't specifically invoke any federal
8 questions. And there were lots of relief that
9 could have been granted that would have stopped
10 short of an injunction. So it wasn't clear to
11 anyone that that was the type of case that the
12 federal courts would have taken jurisdiction of
13 in the first instance.

14 And so what the district court relies
15 on -- you know, this will be the abuse of
16 discretion review that the Sixth Circuit would
17 eventually give to this -- you know, is really
18 five things. She says that the dispute is best
19 heard in federal forum when you're involving
20 literally, you know, the ability to click and
21 provide heat to millions of people. Second,
22 that there was the gamesmanship that the AG
23 engaged in. Third, you have this race to
24 judgment between the state and federal courts,
25 which federal courts don't want. You've got

1 the national and international implications
2 of -- of now the treaty, you know, which has
3 now come into force by the time she rules on
4 the governor's removal action. And then,
5 finally, unusually in this case, the state
6 court hadn't done anything. Here we are seven
7 years later and the state court has not issued
8 any merit rulings, not any discovery rulings.

9 You know, so if the concern is that
10 somehow maintaining the federal courts'
11 traditional equitable authority is going to
12 open the barn door, that's not going to happen.
13 This is kind of a unicorn case. And that's why
14 you can see in the Eleventh and Fifth Circuit,
15 which have had this rule for more than 40 years
16 and more than 35 years, respectively, you're
17 not seeing a flood of people coming in and
18 succeeding on equitable tolling or equitable
19 arguments.

20 JUSTICE GORSUCH: Well, can I ask
21 about that, Mr. Bursch?

22 MR. BURSCH: Yes.

23 JUSTICE GORSUCH: So how that would be
24 policed effectively at the appellate level? I
25 mean, if it's all going to be done, equitable

1 tolling, at the beginning by a district court
2 judge, probably not going to certify that, not
3 going to be ever really an opportunity to have
4 appellate review in a way that would create
5 rules and uniformity.

6 MR. BURSCH: Well, to start, there
7 really hasn't been a need to do that because,
8 if you look at the district court decisions in
9 the -- the Fifth and the Eleventh Circuits
10 after the rule was established, in the -- the
11 mine-run case, they're just simply denied
12 because the court doesn't think that equitable
13 factors have been satisfied.

14 Now let's say over time you start to
15 see a few more of those being granted. There
16 will be examples like this case where something
17 is certified for appeal, and if it's necessary,
18 the circuits or this Court can lay down
19 standards.

20 But -- but one of the lessons of
21 Holland is that when it comes to equity, we
22 trust our district courts. We allow them to
23 consider all equitable factors, things like the
24 importance of the lawsuit to the federal
25 government and to the Canadian government,

1 things like gamesmanship, you know, whatever
2 that is.

3 And so, at least at the get-go,
4 there's no need to put hard-and-fast rules on
5 district courts that know how to apply equity.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 MR. BURSCH: Thank you.

9 CHIEF JUSTICE ROBERTS: Ms. Sherman.

10 JUSTICE SOTOMAYOR: I'm sorry.

11 CHIEF JUSTICE ROBERTS: Oh, I -- well,
12 okay, do you have anything further?

13 MR. BURSCH: Do you have a question?

14 JUSTICE SOTOMAYOR: Yes.

15 CHIEF JUSTICE ROBERTS: Yeah, I'm
16 sorry. Why don't you get back there. I was
17 jumping the gun.

18 MR. BURSCH: And I'm glad that the
19 Chief will exercise his traditional equitable
20 authority --

21 (Laughter.)

22 MR. BURSCH: -- to allow you to ask
23 this important question.

24 CHIEF JUSTICE ROBERTS: Justice
25 Thomas, anything further?

1 Justice Alito?

2 Justice Sotomayor?

3 JUSTICE SOTOMAYOR: Isn't fraud an
4 equitable ground for tolling?

5 MR. BURSCH: It can be, yes,
6 absolutely.

7 JUSTICE SOTOMAYOR: Yes. And for
8 causes, can also be equitable ground for
9 tolling?

10 MR. BURSCH: What was the word,
11 "causes"?

12 JUSTICE SOTOMAYOR: Causes.

13 MR. BURSCH: Oh, sure. Yeah.

14 JUSTICE SOTOMAYOR: Okay. So why did
15 Congress bother writing those exceptions into
16 the statute?

17 MR. BURSCH: They wrote those into
18 other portions of the -- the statute.

19 JUSTICE SOTOMAYOR: 13 -- 1446.

20 MR. BURSCH: Oh, oh, the -- yes. I'm
21 sorry. Yes, in 1446(c).

22 JUSTICE SOTOMAYOR: The diversity one
23 is under 1446(c). But even why bother writing
24 a separate one?

25 MR. BURSCH: Well, sometimes what

1 Congress will do is it'll have a
2 belt-and-suspenders approach where, even if
3 equitable principles apply, they want to make
4 sure that they will be applied in specific
5 circumstances.

6 JUSTICE SOTOMAYOR: All right. So --

7 MR. BURSCH: And there was a circuit
8 split.

9 JUSTICE SOTOMAYOR: -- you're saying
10 these are just redundancies?

11 MR. BURSCH: Well, there was a circuit
12 split.

13 JUSTICE SOTOMAYOR: What do I do with
14 the fact that 1455, just two provisions after
15 the last -- or one provision after 1554 on the
16 intellectual property claims, Congress actually
17 used the words "equitable tolling" and said, in
18 the criminal context, you apply equitable
19 tolling? So it knew how to use those terms.
20 Why didn't it use it here?

21 MR. BURSCH: Right. So, in the
22 criminal context, where they said that you
23 could, for good cause, excuse the deadline,
24 I -- I have two points on that.

25 First, generally, it's harder to

1 remove a criminal case from state court to
2 federal court, and so Congress may have wanted
3 a more capacious statutory standard to make
4 clear that federal courts have that authority.

5 But the main point I want to make --

6 JUSTICE SOTOMAYOR: I'm sorry, that
7 makes no sense to me. If it's capacious, why
8 not just leave it alone in 1446? Why not apply
9 it there?

10 MR. BURSCH: Well, the main point that
11 I want to make is that when Congress adopted
12 the good cause standard for criminal things and
13 didn't do it for the rest of it, there are two
14 inferences you could draw from that. One would
15 be Congress didn't want equity. The other one
16 would be that Congress assumed that equitable
17 exceptions applied and it didn't need to amend
18 1446 to do the same thing that it was doing in
19 1455.

20 And when you have competing
21 inferences --

22 JUSTICE SOTOMAYOR: But it needed --
23 it needed to add fraud as an exception to
24 removal within 30 days and needed to add it
25 with respect to intellectual property?

1 MR. BURSCH: Yeah. So just --

2 JUSTICE SOTOMAYOR: Just -- just --
3 just --

4 MR. BURSCH: -- let me finish my
5 answer and then walk through each one of those.

6 So, when you have these competing
7 inferences, what did Congress mean? Did it
8 intend to exclude equity or intend to include
9 equity? Competing inferences are not the
10 clearest command to cut off courts' traditional
11 equitable authority.

12 JUSTICE SOTOMAYOR: No, but I find
13 1445 is --

14 MR. BURSCH: So -- so that's there.
15 So -- so, with respect to intellectual, you
16 know, property, Congress was setting aside a
17 separate area of subject matter jurisdiction
18 and giving it separate rules. I mean, that's
19 why in all of these elsewhere things -- we're
20 talking about pure structure now, not text --
21 Congress cross-references 1446(b) to make it
22 clear that it doesn't apply, that you've got
23 literally different sets of rules depending on
24 subject matter and party.

25 So, as for the fraud exception, there

1 was a split among the lower federal courts
2 about whether fraud was an equitable reason
3 that courts could grant tolling. And so
4 Congress resolved that split, and what it did
5 is it made the fraud exception, and then, on
6 top of that, it made the -- you know, the
7 one-year limit.

8 But none of that provides the clearest
9 command that Congress intended to handcuff,
10 again, restrain, federal courts from exercising
11 their traditional equitable authority in all
12 other cases. That was simply solving a lower
13 court problem, Justice Sotomayor.

14 JUSTICE SOTOMAYOR: Thank you.

15 CHIEF JUSTICE ROBERTS: Justice Kagan?

16 JUSTICE KAGAN: I mean, I suppose the
17 question, Mr. Bursch, is whether these
18 provisions taken as a whole don't do the same
19 thing effectively as the Arellano provisions
20 do. And, obviously, they're not to that
21 extent. There are not very many statutes with,
22 like, 16 different exceptions.

23 So it's a little bit harder than
24 Arellano, but whether the same principle
25 basically applies, that there is enough

1 reference to equitable consideration in
2 different parts of the statute, that it
3 suggests that Congress did not have in mind
4 a -- the thought that equity would underlie the
5 whole thing.

6 MR. BURSCH: So, Justice Kagan, in
7 Arellano, all 16 of those exceptions applied to
8 the same class of litigants. It wasn't like in
9 1446, where you have one rule and then you have
10 a separate rule for criminal defendants and a
11 separate rule for members of -- of the
12 military.

13 So, on its face, that's one
14 difference. But the -- the -- the crux of the
15 Court's holding, again, is that textual hook
16 that we talked about, "unless specifically
17 provided otherwise in this chapter."

18 And there are a lot of things Congress
19 could have put in 1446 to make clear that they
20 were excluding equitable authority. They could
21 have used that language. They could have said
22 you have to remove within 30 days without
23 exception. They could have said this is the
24 list of exceptions and there are no others. It
25 could have said in 1447(c), we remand if

1 there's a lack of jurisdiction or if you fail
2 to remove within 30 days. You know, Congress
3 had a panoply of options to give the clearest
4 command, and it didn't do that. And when that
5 happens, we assume that Congress means to trust
6 courts.

7 And when we think about this
8 traditional equitable authority, this isn't
9 something that just developed in Irwin or the
10 Court's tolling cases. This goes all the way
11 back to before the statute was even passed.

12 You know, this Court's Porter decision
13 from 1946 says, unless a statute restricts a
14 court's equitable authority with a clear
15 command, then equitable principles apply with
16 full force. That was three years before
17 1446(b) was passed. Congress trusts courts to
18 get equity right, and this Court can trust
19 district courts to get equity right.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch?

22 JUSTICE KAVANAUGH: Why do you want to
23 be in federal court?

24 MR. BURSCH: That's a great question.
25 We have four reasons, two generally speaking

1 and two specific to this case.

2 The -- the two general, the first is I
3 can't do better than Paul Clement last month
4 quoting Daniel Webster in response to a similar
5 question. There's value in having your case
6 litigated in a forum that respects the federal
7 authority. We agree with that.

8 In addition, this case here is
9 important because federal courts are uniquely
10 qualified to decide federal common law foreign
11 affairs issues. That's just not something
12 state courts deal with very often.

13 The two specific reasons that we have
14 is that typically, there are no interlocutory
15 appeals from the state courts to this Court
16 except for, you know, very narrow exceptions.
17 And if the Michigan Supreme Court were to
18 uphold a preliminary injunction, a non-final
19 order that shut down the pipeline, you know,
20 took away half of the fuel for the Detroit
21 airport, resulted in no propane for heating for
22 the entire Upper Peninsula of Michigan and
23 two-thirds of the residents in the
24 Upper-Lower -- the Lower Peninsula, you know,
25 those are the types of things that we would

1 want a federal court to be able to weigh in,
2 and we wouldn't be able to do that at an
3 interlocutory stage.

4 And then, finally, because Enbridge
5 has its own affirmative lawsuit against the
6 governor in federal court and it's acknowledged
7 to have subject matter jurisdiction, as Judge
8 Neff talked about in -- in her orders, that
9 creates this race to judgment instead of a
10 single consolidated action. And that's one of
11 the reasons why she did not abuse her
12 discretion when she allowed the attorney
13 general's case to be removed.

14 JUSTICE KAVANAUGH: Are you concerned
15 that you would not get a fair shake in state
16 court?

17 MR. BURSCH: I'm not impugning --

18 JUSTICE KAVANAUGH: And if so, what's
19 the basis for that?

20 MR. BURSCH: Yeah. I'm not impugning
21 the state courts at all, but I -- I'm guessing
22 that the -- the Michigan state courts have not
23 dealt very often with the federal common law of
24 foreign affairs jurisdiction. That's something
25 that's uniquely situated to the federal system.

1 And then, you know, again, you have this race
2 to judgment problem.

3 JUSTICE KAVANAUGH: Doesn't come up
4 that often in regular federal district court
5 litigation either.

6 MR. BURSCH: Certainly, it does more
7 often than state court litigation. I'm -- I'm
8 guessing that from time to time at least
9 federal courts deal with issues involving the
10 United States and foreign sovereigns. And
11 that's one of the really unique things about
12 this case, which makes the exercise of equity
13 especially crucial, as the -- the district
14 court recognized.

15 JUSTICE KAVANAUGH: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Jackson?

18 I'm sorry, Justice Barrett?

19 JUSTICE BARRETT: No.

20 CHIEF JUSTICE ROBERTS: Justice
21 Jackson?

22 JUSTICE JACKSON: So just to follow up
23 on Justice Kavanaugh's question, knowing the
24 various benefits of removal, as you've
25 articulated them, and maybe you said this

1 earlier and I missed it, why didn't you remove
2 at the same time as you removed the governor's
3 case?

4 MR. BURSCH: Because it wasn't clear
5 at the outset of the attorney general's case.
6 When the -- the governor filed her --

7 JUSTICE JACKSON: Wasn't clear that
8 she had a case or --

9 MR. BURSCH: Wasn't clear that there
10 was federal jurisdiction at that time. What
11 happened when the governor filed her case, that
12 was the first of two things that really changed
13 the landscape.

14 She terminated the easement, so now
15 we're trespassers in -- in her mind. She's
16 wrong about that, but that was her view. And,
17 second, she's asking for an immediate shutdown
18 order with her lawsuit.

19 And so, at that point, everybody's
20 attention shifts, once we remove it, away from
21 the state court and to the federal court, we're
22 proceeding with those things. The state court
23 case is put on ice. And then Canada invokes
24 its treaty, and that's what brings the federal
25 foreign affairs or the federal common law of

1 foreign affairs into the case.

2 JUSTICE JACKSON: When you say put on
3 ice, I'm sorry, was it stayed by the --

4 MR. BURSCH: It was stayed, yes --

5 JUSTICE JACKSON: It was stayed? All
6 right.

7 MR. BURSCH: -- with the consent of
8 both parties. Like, no one thought anything
9 was going to be happening in the state court
10 until the governor loses her remand motion, the
11 governor dismisses her lawsuit, and the
12 attorney general signals in a press conference
13 or a press release that they're going to go
14 back to the state court judge. And that's when
15 we acted within 15 days.

16 But we need the equity to -- to bridge
17 that gap between the 72 days between when
18 Canada invoked the treaty and when we finally
19 removed in order to -- to keep that case in
20 federal court.

21 JUSTICE JACKSON: Thank you.

22 MR. BURSCH: But -- but, again, you
23 don't need to resolve any of those issues in
24 this case. That's all appropriate for the
25 Sixth Circuit on remand.

1 Thank you.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Ms. Sherman.

5 ORAL ARGUMENT OF ANN M. SHERMAN

6 ON BEHALF OF THE RESPONDENT

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

9 Having missed Congress's express
10 mandatory 30-day removal deadline by over two
11 years, Enbridge seeks an atextual escape hatch.
12 This Court should reject that effort for two
13 reasons.

14 First, the presumption of equitable
15 tolling does not apply. The presumption is
16 justified by a historical tradition specific to
17 statutes of limitations which set a deadline by
18 which legal remedies must be pursued or are
19 lost. The history and function of the removal
20 deadline are different.

21 The deadline serves not to protect
22 defendants from stale claims but to officially
23 settle which of two courts will decide the
24 merits of a case. This allocation of judicial
25 power is a task for Congress, not courts, which

1 is why the traditional practice in the removal
2 context has always been strict enforcement, not
3 equitable tolling.

4 Second, even assuming the presumption
5 applies, it is overcome here. Congress created
6 at least six explicit exceptions to the 30-day
7 deadline, many of which already reflect
8 equitable concerns and some of which
9 specifically authorize courts to extend the
10 deadline for cause.

11 This comprehensive scheme shows that
12 Congress did not authorize courts to create
13 their own exceptions. Enforcing the rules that
14 Congress has set honors its choice to
15 prioritize efficiency and does not have a harsh
16 consequence of depriving defendants of their
17 day in court.

18 All told, Enbridge's approach
19 disregards the statute's text, structure, and
20 history and would inject messy, fact-found
21 questions into a forum selection process that
22 Congress intended to be short and predictable.

23 I welcome the Court's questions.

24 JUSTICE THOMAS: What do you see as a
25 difference between the removal time limits and

1 the statute of limitations?

2 MS. SHERMAN: There's a -- there's a
3 huge difference. The -- this Court in Lozano
4 talked about the functional test for statute of
5 limitations. The removal deadline doesn't meet
6 any aspect of that test. It's not establishing
7 the period of time with -- with which a
8 claimant must bring a claim. It doesn't foster
9 the elimination of stale claims.

10 It doesn't provide any certainty about
11 a plain -- plaintiff's opportunity to recovery,
12 a defendant's potential liabilities. And when
13 we talk about a statute of limitations in
14 the -- and -- and a presumption of statute of
15 limitations, the reason it's important there is
16 because we are trying to get at what Congress
17 intended.

18 And in the context of statute of
19 limitations, equity is sometimes important
20 because the result of missing a statute of
21 limitations is that the courthouse door closes
22 for that litigant. That is not true here.

23 The courthouse door doesn't close.
24 One of them might close, but there is another
25 courthouse door open for both litigants to

1 potentially have full recovery on claims.

2 And -- and so --

3 JUSTICE THOMAS: So how do you address
4 the argument of Petitioner with respect to this
5 being a functional statute of limitations in
6 this case?

7 MS. SHERMAN: It -- it's not a -- it's
8 not a functional statute of limitations in this
9 case at all. There is no -- Enbridge could
10 recover in state court just as it could recover
11 in -- in federal court.

12 And the -- the presumption of statute
13 of limitations doesn't do any work here because
14 the whole tradition of equitable tolling for
15 statute of limitations is a different tradition
16 than the unique tradition here for the removal
17 process.

18 The removal deadline, the whole
19 removal process is a creature of statute. It
20 is not a creature of common law. And only
21 Congress can set limits on when a case is going
22 to be taken from one sovereign, the state
23 court, and removed to another sovereign, the
24 federal court.

25 JUSTICE ALITO: Do you think there are

1 any grounds on which equity would allow a
2 district court to excuse non-compliance with a
3 30-day removal deadline other than the
4 exceptions that are set out in the statute?

5 Are there any equitable -- are there
6 any non-statutory equitable exceptions to the
7 30-day rule?

8 MS. SHERMAN: The -- it's -- it's
9 possible that there could be some estoppel.
10 There cannot be equitable tolling. There --
11 it's possible there could be estoppel, but that
12 isn't an issue here. It's not an issue that
13 Enbridge has raised for good reason.

14 JUSTICE ALITO: Well, if -- if
15 estoppel is -- I mean, if estoppel would permit
16 removal after the 30-day period on equitable
17 grounds, then that does seem to say that we
18 have to look beyond the statutory text and see
19 whether what is alleged here might possibly
20 qualify.

21 MS. SHERMAN: This Court has said that
22 equitable tolling and estoppel are distinct
23 doctrines. It said that in Beggerly. And this
24 Court has typically deferred, as it did in
25 Arellano, the question of estoppel because

1 it -- you know, especially if it's not raised
2 in a case. It was not raised here. It hasn't
3 been briefed before this Court.

4 And it's hard to see that equitable
5 estoppel would --

6 JUSTICE ALITO: No, I'm not suggesting
7 that this is a case in which equitable estoppel
8 would excuse non-compliance. I'm just asking
9 whether you have to agree, if you recognize
10 that equitable estoppel might excuse the late
11 filing of removal, that equity might possibly
12 extend further to other comparably egregious
13 situations.

14 MS. SHERMAN: I'm not suggesting that
15 equitable estoppel would apply. I don't think
16 it would apply to this removal statute. And
17 the reason I say that, I just bring it up as
18 it's not something the Court has considered.
19 It's a separate question.

20 I don't think it would apply here.
21 And I say that because there is so much --
22 there are so many equitable considerations that
23 are already built into this statute that this
24 Court might well decide if -- if estoppel was
25 briefed and before this Court that -- that it

1 didn't apply, that -- that --

2 JUSTICE ALITO: All right. Well,
3 thank you.

4 Let me ask you one other -- one other
5 question at least for now, and that is I would
6 be interested in your response to the arguments
7 that are made by some of the amici about the
8 consequences for U.S./Canadian relations if the
9 state court orders that operation of the -- of
10 the pipeline be terminated.

11 Those are spelled out in the West
12 Virginia brief. They're pretty severe. And
13 Mr. Bursch made the point that if this proceeds
14 in state court and the state court issues a
15 preliminary injunction against continued
16 operation of the pipeline, it could be a long
17 time before the issue could be -- this issue
18 involving treaty rights, which is a federal
19 question, could be reviewed here.

20 So what would you -- you don't really
21 address that. So what would you say to that?

22 MS. SHERMAN: When Congress wants a --
23 a kind of case or a kind of issue to be decided
24 in federal court, it mandates exclusive
25 jurisdiction. And, otherwise, state courts

1 have concurrent jurisdiction. They have
2 reserve power under the Constitution to
3 adjudicate -- adjudicate cases in their own
4 courts.

5 This is a state official, state claims
6 filed in a state court. Congress, when they
7 set up the -- the removal process --

8 JUSTICE ALITO: So the answer is it's
9 just too bad? And maybe that's the answer.
10 Sometimes the law produces consequences that
11 are not desirable. But what we're told -- this
12 is in the West Virginia brief; they're quoting
13 a Canadian source -- shutting down Line 5 would
14 result in a massive shortage of gas, diesel,
15 and jet fuel in both Ontario and Quebec, not to
16 mention end thousands of Canadian jobs. A
17 special committee of the Canadian Parliament
18 concluded that Line 5's shutdown could reduce
19 safety, create shortages of various energy
20 products on both sides of the border, et
21 cetera, et cetera.

22 Just --

23 MS. SHERMAN: The state's position is
24 that these are state law claims. None of those
25 considerations are at play here because we

1 trust state courts to adjudicate issues to even
2 federal questions. They've been doing that
3 since the founding.

4 And we trust them to do that with this
5 Court's backstop. If something goes really
6 awry in a state court and it's an important
7 matter of -- of federal treaty, it hasn't been
8 given exclusive jurisdiction in the district
9 court, this Court can -- can review that and
10 can -- can fix that.

11 But we trust state courts to do -- to
12 do their job and to have concurrent
13 jurisdiction. And one of the reasons this
14 is -- there has been a tradition of strict
15 enforcement of the removal deadline here is out
16 of respect for state courts.

17 And this Court had said over and over
18 in a long line of cases from *Babbitt* versus
19 *Clark* on that when the deadline is missed,
20 remand is necessary. The -- and this Court has
21 said that strict procedures -- the statutory
22 procedures for removal are to be strictly
23 construed.

24 JUSTICE SOTOMAYOR: Counsel, the state
25 court action here has been stayed for most of

1 its existence. We now have a separate federal
2 action. In that case, the district court
3 recently granted summary judgment to Enbridge,
4 finding that the attempt to revoke the easement
5 was preempted by federal law, correct?

6 MS. SHERMAN: Yes.

7 JUSTICE SOTOMAYOR: So, if we affirm
8 the Sixth Circuit, that -- that will result in
9 litigation in both state and federal court,
10 correct?

11 MS. SHERMAN: The -- the way that
12 stands now is that there has been an adverse
13 judgment in a -- in a federal district court,
14 including rejection --

15 JUSTICE SOTOMAYOR: If we reverse the
16 Sixth Circuit. I misspoke.

17 MS. SHERMAN: Yes.

18 JUSTICE SOTOMAYOR: There would be two
19 actions if we --

20 MS. SHERMAN: Yeah. Yes, the governor
21 has filed --

22 JUSTICE SOTOMAYOR: So wouldn't it
23 avoid waste to have these two actions proceed
24 together in the same court?

25 MS. SHERMAN: The -- the attorney

1 general and the governor has always been
2 concerned about these two -- about cases being
3 not on the same track. The attorney general in
4 another --

5 JUSTICE SOTOMAYOR: Right. So assume
6 you win here. Could you represent or are you
7 willing to represent that, on remand, you will
8 ask the state court to continue to stay this
9 action until the federal action finishes?

10 MS. SHERMAN: There has already been a
11 stay of --

12 JUSTICE SOTOMAYOR: I've asked you a
13 very different question. If you were to win
14 here, are you willing to commit that you will
15 ask the state court to continue its stay
16 pending resolution of the federal action?

17 MS. SHERMAN: I haven't talked to my
18 client to be able to confirm that, but that's
19 certainly something that we can talk about
20 strategically because --

21 JUSTICE SOTOMAYOR: And if the
22 strategic is you want the state court to beat
23 out the federal court, should we care about
24 that? That was --

25 MS. SHERMAN: She --

1 JUSTICE SOTOMAYOR: -- Justice Alito's
2 question.

3 MS. SHERMAN: The attorney general
4 does care about staying in state court. She
5 believes these are state --

6 JUSTICE SOTOMAYOR: Yeah, but didn't
7 act very expeditiously in state court.

8 MS. SHERMAN: It would be a strategic
9 decision. At this point, there has been a
10 second stay in order to see what the Sixth
11 Circuit is going to decide. And then --

12 JUSTICE SOTOMAYOR: One final
13 question. You give us two grounds to reverse.
14 The one is that this is not a statute of
15 limitations, and the other is that even if it
16 is, the presumption has been overcome.

17 If you were to win, which is the
18 easiest and most narrow ground to win?

19 MS. SHERMAN: I think the easiest for
20 this Court is to say -- not to deal with the
21 statute of limitations and the presumption
22 issue because we think that the text and the
23 structure and the history here absolutely mean
24 that congressional intent would say that even
25 if there was a presumption, it would be

1 rebutted. And --

2 JUSTICE SOTOMAYOR: Is there any
3 way -- some of them are clearer on how to
4 distinguish them. But he mentioned --
5 Bursch -- Mr. Bursch mentioned four cases that
6 talk about losing a procedural right to proceed
7 that we -- Lozano was one of them and there
8 were three others that he mentioned.

9 Can you distinguish each of those
10 cases?

11 MS. SHERMAN: I -- I think one of them
12 was Lozano.

13 JUSTICE SOTOMAYOR: Mm-hmm.

14 MS. SHERMAN: Definitely talked about
15 what is or isn't a statute of limitations.
16 There was no statute of limitations there
17 because there was the opportunity for recovery,
18 albeit adjudicated differently.

19 I believe another one of the cases was
20 Young. And, there, the Court said it was a
21 statute of limitations. It was albeit a
22 limited one, but the rights that were issued --
23 at issue in Young were priority and
24 non-dischargeability, and those are procedural
25 rights that -- that were connected to a

1 recovery and would have been lost.

2 And the Court did recognize the reason
3 it was limited is because there were some
4 equitable abilities to recover. Nevertheless,
5 that -- those very, very important rights for
6 the -- the United States would have been lost.
7 And --

8 JUSTICE SOTOMAYOR: How about the tax
9 case?

10 MS. SHERMAN: Boechler. Boechler was
11 a -- a statute of limitations. There was just
12 one exception. Boechler -- Boechler was also
13 a -- a case that was steeped in equity. It was
14 about the collection due process hearings in --
15 for state court for a particular kind of case
16 where the -- the tax court was going to be
17 levying property. And that really mattered
18 there because that was a context that was very
19 friendly to the -- to the lay filer, but it
20 involved --

21 JUSTICE SOTOMAYOR: Thank you,
22 counsel.

23 JUSTICE KAGAN: Haven't, though,
24 General, we been pretty generous in terms of
25 what we call functionally a statute of

1 limitations? I mean, take the Boechler case
2 that you ended on, which was just an appeals
3 deadline. You know, I bet, if you put 10
4 lawyers in a room and said is an appeals
5 deadline a statute of limitations, they would
6 kind of stare at you funny, you know? What it
7 is, it's a deadline.

8 I mean, a statute of limitations is
9 also a deadline, but we don't typically think
10 of every deadline, like an appeals deadline, as
11 a statute of limitations. But we've been
12 willing to call it that just because it's a
13 deadline, and if you don't meet the deadline,
14 consequential things matter -- consequential
15 things happen.

16 And -- and -- and so too here. This
17 is a deadline, and if you don't meet the
18 deadline, consequential things happen. Now, in
19 this case, it's the loss of a forum rather than
20 the loss of a claim. But I guess, when we're
21 being quite as generous and quite as
22 functional, if you will, as we have been in
23 this area, it -- it doesn't seem to me obvious
24 why we shouldn't say that this isn't
25 functionally a statute of limitations too.

1 MS. SHERMAN: It's very different
2 because, although there might be consequences
3 and there might be a right involved, the Court
4 in Young said it had to be a substantive right,
5 and it defines a subset of claims eligible for
6 certain remedies.

7 And, here, when you're talking -- it's
8 all about remedy and whether you're going to
9 lose the remedy. And the reason statute of
10 limitations doesn't apply here is because there
11 isn't the -- there isn't a harsh consequence.
12 The reason statutes of limitation apply to
13 cases is because -- and why there's equitable
14 tolling is because there are very harsh
15 consequences. Somebody's going to lose out
16 completely on their ability to bring a case.

17 That's not true here. They're going
18 to get one forum or another, and maybe they're
19 not going to get their preferred forum, but
20 they're going to get a forum to litigate their
21 case. And that would -- that's the biggest
22 thing that separates this from a statute of
23 limitations.

24 And this Court has never applied
25 statute of limitations beyond -- the

1 presumption of equitable tolling beyond statute
2 of limitations, and I think that's one of the
3 reasons why. And if the Court was thinking of
4 expanding that at all, it wouldn't be here. It
5 shouldn't be here, where there's a whole
6 distinct tradition of strict enforcement.

7 We cite cases on pages 50 to 51 of our
8 briefs starting from Babbitt versus Clark in
9 1880 onward where this Court has strictly
10 enforced the deadline, and there's a reason for
11 that.

12 JUSTICE JACKSON: Counsel, can I ask
13 you about that context? Because I actually
14 kind of hear you making a slightly different
15 argument, and it -- it -- it is yes, the Court
16 has said that when these rules function as a
17 statute of limitations, the presumption
18 applies.

19 But, based on your original analysis
20 or your original statement and what you say in
21 the brief, I almost hear you suggesting that
22 whether or not this functions as a statute of
23 limitations, the presumption shouldn't apply
24 because this is the removal context. And you
25 say in your brief, the federal removal statute

1 provides a comprehensive scheme that governs
2 the allocation of judicial power in this way,
3 that Congress has made this decision.

4 And that seems to me almost to be like
5 a different or separate argument from whether
6 or not this functions as a statute of
7 limitations.

8 MS. SHERMAN: It's -- it's just we --
9 we've set forth a number of arguments for why
10 this doesn't function as a statute of
11 limitations. One of them is -- is history and
12 purpose. And, certainly, this doesn't function
13 as a statute of limitations because, if you
14 look at sort of there not being a historical
15 tradition that there is for statute of
16 limitations, the separate historical tradition
17 here is about strict construction, and,
18 respectfully --

19 JUSTICE JACKSON: But do you lose if
20 we disagree with you on the functioning of the
21 statute -- that's what I'm just -- lose the
22 presumption point?

23 My only point is I wonder if you have
24 to be right about whether or not this functions
25 as a statute of limitations in order to make

1 your presumption point, that if you lose on
2 that, then we do have to presume that Congress
3 wanted to -- courts to retain their equitable
4 authority, as your friend on the other side
5 says, in this area and so then we jump to, you
6 know, has that been rebutted? Is there a clear
7 command here?

8 But I kind of hear you suggesting --
9 and I don't know if this is right or wrong, I
10 just want -- I just want to put it out there --
11 I kind of hear you suggesting that in the
12 removal context, even if we look at a statute
13 that relates to removal and we say, boy, this
14 kind of functions like a statute of
15 limitations, there are good reasons to believe
16 why we shouldn't presume that nonetheless
17 Congress intended for this to be an area where
18 courts retain their equitable authority.

19 MS. SHERMAN: Yeah. No, I would say
20 the reverse is true.

21 JUSTICE JACKSON: Okay. Tell me.

22 MS. SHERMAN: Yes. If -- I would say
23 that this whole context of taking --
24 transferring jurisdiction from one sovereign to
25 another counsels for there -- there not to be

1 equitable tolling.

2 JUSTICE JACKSON: That's what I'm
3 saying.

4 MS. SHERMAN: Yes. To do --

5 JUSTICE JACKSON: What I'm saying is
6 regardless --

7 MS. SHERMAN: Yes.

8 JUSTICE JACKSON: We look at this
9 statute and we might go, oh, yes, this looks
10 like the rights are being transferred.

11 MS. SHERMAN: Yeah.

12 JUSTICE JACKSON: It looks like a
13 statute of limitations.

14 But does that necessarily mean that we
15 should presume that Congress intended for
16 equitable tolling to arise in this situation?
17 And you're saying regardless of how it
18 functions in this situation, we should not
19 presume that Congress wanted courts to have
20 equitable authority because this is a removal
21 context and that's a special kind of thing.

22 MS. SHERMAN: Yeah. Even if this
23 Court thought it was a statute of limitations,
24 in this context, that would butt up against
25 strict construction canons.

1 I also would disagree with my -- my --
2 my -- my friend, opposing counsel, that this
3 test is a clearest command test. There is not
4 a clear statement test here. The test is the
5 test that this Court has articulated in
6 Arellano, and that is we're looking at
7 congressional intent.

8 Is there reason to believe that
9 Congress didn't want equitable tolling? And
10 everything here from the text, the structure,
11 the history, and the purpose strongly suggests
12 that Congress would not have wanted tolling.

13 We haven't talked a lot today about
14 the -- the exceptions, but when you look at
15 the -- the clear mandatory language, "shall
16 file in 30 days," and that's supported by a
17 very comprehensive scheme that has at least six
18 exceptions, and those exceptions are
19 interrelated, they are -- the default deadline
20 of 30 days is repeated multiple times, similar
21 to in Brockamp and similar to in -- in
22 Arellano, you have these many exceptions that
23 are taking a situation outside of the default
24 rule.

25 JUSTICE KAVANAUGH: Can I ask a

1 question about state courts? I certainly
2 appreciate and agree with your respect for
3 state courts. Is there some particular reason
4 you want to be in state court in this case?

5 MS. SHERMAN: Yes, because this is a
6 state official, state law claims, and those
7 state law claims have to do with -- the primary
8 claim in the attorney general's case is public
9 trust and whether the -- the easement is
10 violating a public trust doctrine.

11 These are state lands and state bottom
12 lands in the Straits of Mackinac. And those
13 are reasons why the attorney general wants this
14 in state court.

15 Congress has given the parties sort of
16 the choice of forum. And they gave plaintiff
17 the first choice of forum. She was the
18 plaintiff. She chose the state forum.

19 Congress also gives defendants the
20 opportunity to choose a federal forum. And if
21 this had been a case where Enbridge looked at
22 it and said: Boy, there's a lot of really, you
23 know, important issues here, we don't think
24 this is state law, and we ought to have this in
25 federal court, they should have removed timely.

1 They missed every opportunity to move -- remove
2 timely.

3 JUSTICE KAVANAUGH: Can you respond to
4 the point that your opposing counsel made about
5 foreign affairs issues or the foreign -- you
6 heard that.

7 MS. SHERMAN: Yes. The foreign -- the
8 whole foreign affairs area is not a -- is not
9 an area where Congress said federal courts have
10 exclusive jurisdiction. So, again, we trust
11 state courts to decide big, important federal
12 cases.

13 And even if this turns out to be not a
14 case about state law claims but somehow, you
15 know, a case about a treaty, we trust the state
16 court to do it with this Court as a backdrop.

17 JUSTICE KAVANAUGH: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Thomas, anything further?

20 Justice Alito?

21 JUSTICE ALITO: Did the attorney
22 general represent the governor in the
23 governor's suit?

24 MS. SHERMAN: The department of
25 attorney general represents the governor in the

1 governor's suit, which we do often in that, you
2 know, sometimes the attorney general will take
3 one position and somebody in the department of
4 attorney general will represent a separate side
5 of an issue.

6 JUSTICE ALITO: Why was a separate
7 suit brought? Why didn't you simply move -- if
8 there were additional claims, why didn't you
9 simply move to add those claims to the case
10 that was already in state court?

11 MS. SHERMAN: The second suit, the
12 suit by the governor, was brought 14 months
13 after the attorney general's suit. And
14 although there are some overlapping issues,
15 the -- the -- the biggest distinction with the
16 governor's suit is it was based on a new
17 circumstance that occurred then, which was that
18 the governor issued a notice and revocation of
19 the easement over state land.

20 And, at that point, 14 months had
21 passed. Enbridge had already litigated this
22 case in state court for -- for over a year.
23 And it was a -- a prudent decision to say we're
24 going to file -- the governor is going to file
25 this in state court, assuming that it would be

1 consolidated with the attorney general's case
2 and -- and, frankly, because there were new
3 parties, new claims.

4 JUSTICE ALITO: Assuming that it --
5 assuming that it would be consolidated. Was it
6 ever consolidated?

7 MS. SHERMAN: No, they were -- because
8 Enbridge removed the governor's case timely.
9 So it -- it didn't stay in state court very
10 long. And to your -- to an earlier question,
11 Enbridge could have removed during the 30-day
12 period for the same reasons that they later
13 removed the governor's case. They also could
14 have removed this case when they removed the
15 governor's case.

16 And they could have -- whether that
17 would have been successful or not would have
18 depended on whether a court thought that they
19 could come under the (b)(3) exception for
20 initial non-removability.

21 And then they had a third potential on
22 October 4th, 2021, when Canada invoked the
23 dispute resolution, but they -- but they didn't
24 take any of those. And as the Sixth Circuit
25 held in this case, they had -- they missed

1 every opportunity. They were 850 days late.
2 They missed every potential opportunity. And
3 they -- that is now law of the case because
4 Enbridge has not sought to have this Court
5 review that -- that part of the Sixth Circuit's
6 decision.

7 CHIEF JUSTICE ROBERTS: Justice
8 Sotomayor?

9 Justice Kagan?

10 Justice Gorsuch?

11 Justice Kavanaugh?

12 Justice Barrett?

13 Justice Jackson?

14 Thank you, counsel.

15 MS. SHERMAN: Thank you.

16 CHIEF JUSTICE ROBERTS: Rebuttal,
17 Mr. Bursch?

18 REBUTTAL ARGUMENT OF JOHN J. BURSCH

19 ON BEHALF OF THE PETITIONERS

20 MR. BURSCH: Thank you, Mr. Chief
21 Justice.

22 First, I just want to level-set the
23 ground here again, and then I'm going to talk
24 about some concessions that we just heard that
25 maybe make this opinion even shorter than the

1 10 pages I suggested.

2 To level-set, why do we have this
3 presumption? Wong said it's likely to be a
4 realistic assessment of legislative intent, as
5 well as a practically useful rule of
6 interpretation. Why is that? Because going
7 all the way back to the beginning of the
8 republic, Justice Scalia's dissent in -- in
9 *McQuiggin* says that we've recognized equitable
10 tolling in statute of limitations periods going
11 all the way back to the colonial legislatures.
12 So we don't need an atextual escape hatch.

13 They need to explain why there is a
14 clearest command that Congress intended to take
15 away this Court and the lower courts'
16 traditional equitable authority.

17 And -- and that clearest command
18 requirement isn't just from *Holland*. That goes
19 back all the way to *Porter*, at least in the --
20 1943 or '46, three years before 1446(b) was
21 adopted. So this isn't a new standard that
22 suddenly started getting applied to statutes of
23 limitations in the modern day. It's been the
24 backdrop forever. So that's number one.

25 So, number two, how about this

1 presumption? And here's where the first two
2 concessions come in. Justice Alito, you were
3 asking my friend whether estoppel would apply.
4 All lower courts recognize that estoppel and
5 waiver apply in this context.

6 And this Court said in Zipes -- that
7 was a unanimous Justice White opinion -- that
8 those two equitable doctrines and the doctrine
9 of tolling travel together. And so we would
10 expect that if someone could lose their right
11 to remove because they did too much stuff in
12 the trial -- trial court, in the state court,
13 or someone could lose their right to resist
14 removal by failing to file a timely motion to
15 remand in the federal court, that there would
16 also be equitable tolling. So that -- that's a
17 huge problem for them.

18 And then, second concession, Justice
19 Sotomayor, when you were asking about whether
20 the presumption would apply, is this a statute
21 of limitations, and she was talking about
22 Young, and she admitted that in Young we were
23 talking about procedural rights, not
24 substantive rights. When you're talking about
25 something like non-dischargeability and

1 priority, those are simply mechanisms to get
2 you to the final judgment. The IRS did not
3 lose its claim to go and get back taxes. It
4 simply had a different burden that it had to
5 satisfy.

6 And the same thing is true here. And
7 so that's why, Justice Kagan, you're completely
8 right that this seems obvious to fit within
9 those types of statutes, because whether you're
10 talking about dischargeability and priority
11 mechanisms in Young or you're talking about
12 appeal deadlines in cases like Nutraceutical or
13 in -- in Boechler, this Court has not confined
14 the application of the presumption only to
15 those cases where you lose a cause of action.
16 That -- that's happened over and over and over
17 again.

18 Third point I want to make is about
19 this strict construction because of the
20 federalism. I mentioned this briefly. But the
21 two cases that they most rely on, Syngenta and
22 Shamrock Oil, those both strictly construed
23 jurisdiction. And, of course, we have to
24 strictly construe federal subject matter
25 jurisdiction when you're talking about state

1 courts' interests.

2 In the first case, it was whether the
3 All Writs Act would provide subject matter
4 jurisdiction to remove. The Court said no.
5 Shamrock Oil, it was whether the amount alleged
6 in a counterclaim could count towards the
7 diversity limit. And the Court said no.

8 But when you're talking about mere
9 procedural things, there is no strict
10 construction. And there is no construction of
11 this statute that provides that clear rebuttal
12 of the general equitable authority that courts
13 have.

14 Justice Kavanaugh, you -- you're
15 raising exactly the practical points that we're
16 concerned about here. Yes, they brought state
17 -- state court claims. But what we're talking
18 about is an international pipeline that not
19 only impacts the relationship between the
20 United States and Canada, but literally
21 millions of people within and with outside
22 Michigan. This is the paradigm case that
23 belongs in federal court.

24 It was a much different kind of
25 federal interest but one that I think was

1 significant in the Loftin case, which is the
2 Eleventh Circuit decision that created the
3 equitable tolling doctrine for removal statutes
4 in the Eleventh Circuit 40 years ago. There
5 the Navy had been subjected to garnishment,
6 final judgment, in a state court that exceeded
7 the federal statutory limit of the waiver of
8 sovereign immunity.

9 And when they removed late, there was
10 no excuse for it. The Navy just blew it. And
11 yet, the Eleventh Circuit said this is the kind
12 of case that belongs in federal court. We're
13 talking about an invalid judgment entered
14 against a branch of the military. So the fact
15 that the -- the federal government was not
16 diligent and didn't have any obstacles to
17 filing its removal action in time did not stop
18 the court from exercising its equity and
19 putting that case where it belonged, in federal
20 -- in front of federal judges. You should do
21 that here.

22 So, finally, as to the merits of
23 whether equity should apply here, we could go
24 very deep into those. We could have lots of
25 briefing on that. But the attorney general did

1 not raise that issue in the Sixth Circuit, as
2 we pointed out in our brief. The Sixth Circuit
3 did not decide it. And it's not part of the
4 question presented. You should simply remand
5 and allow that to be worked out.

6 Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 The case is submitted.

10 (Whereupon, at 11:12 a.m., the case
11 was submitted.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	8	
<p>10 [2] 53:3 65:1 10:09 [1] 3:2 13 [1] 27:19 14 [3] 17:14 62:12,20 1441e [1] 20:8 1442a [1] 20:4 1445 [1] 30:13 1446 [6] 18:5 27:19 29:8,18 32:9,19 1446(b) [8] 3:19 4:5,15 10:1 17:15 30:21 33:17 65:20 1446(b)(2)(b) [1] 19:8 1446(b)(3) [1] 19:8 1446(c) [2] 27:21,23 1447(c) [2] 17:22 32:25 1455 [2] 28:14 29:19 15 [2] 6:7 38:15 1554 [1] 28:15 16 [3] 14:8 31:22 32:7 160 [1] 21:12 1880 [1] 55:9 1943 [1] 65:20 1946 [1] 33:13 1977 [1] 5:15</p>	<p>850 [1] 64:1</p>	<p>10,21 although [2] 54:2 62:14 amend [1] 29:17 amici [2] 20:19 45:7 among [1] 31:1 amount [1] 68:5 analysis [3] 13:17 14:25 55:19 ann [2] 2:6 39:5 announced [2] 6:5 7:17 another [6] 41:24 42:23 49:4 51:19 54:18 57:25 answer [4] 18:20 30:5 46:8,9 answering [2] 21:2,3 anyway [1] 9:11 apart [1] 4:22 appeal [7] 5:16 8:8 11:25 12:13 16:23 25:17 67:12 appeals [5] 13:6 34:15 53:2,4,10 appellant [1] 17:11 appellate [2] 24:24 25:4 application [1] 67:14 applied [8] 7:6,8 16:4 28:4 29:17 32:7 54:24 65:22 applies [7] 13:7 16:9,14 21:9 31:25 40:5 55:18 apply [23] 4:15 5:4 7:15 10:10 17:10 26:5 28:3,18 29:8 30:22 33:15 39:15 44:15,16,20 45:1 54:10,12 55:23 66:3,5,20 69:23 appreciate [1] 60:2 approach [2] 28:2 40:18 appropriate [1] 38:24 area [6] 30:17 53:23 57:5,17 61:8,9 arellano [13] 13:25 14:5,11 15:6,24 16:25 17:1 31:19,24 32:7 43:25 59:6,22 argument [11] 2:2,5,8 3:4,7 22:8 39:5 42:4 55:15 56:5 64:18 arguments [4] 12:15 24:19 45:6 56:9 arise [1] 58:16 arises [1] 3:11 armed [1] 20:4 around [1] 12:23 articulated [2] 36:25 59:5 aside [1] 30:16 aspect [1] 41:6 assessment [1] 65:4 assume [5] 10:5 16:9,25 33:5 49:5 assumed [3] 5:24 16:3 29:16 assuming [4] 40:4 62:25 63:4,5 assumption [1] 18:14 atextual [2] 39:11 65:12 attach [1] 18:4 attempt [2] 3:12 48:4 attention [1] 37:20 attorney [24] 4:3,18 5:24 6:5,22 17:8 20:22 22:4 23:1 35:12 37:5 38:12 48:25 49:3 50:3 60:8,13 61:21,25 62:2,4,13 63:1 69:25 authority [26] 3:16 4:1,13 5:2 10:4 13:</p>
2	A	
<p>20 [1] 9:19 2021 [1] 63:22 2024 [1] 13:6 21 [1] 9:19 24-783 [1] 3:4</p>	<p>a.m. [1] 3:2 abilities [1] 52:4 ability [4] 12:12,18 23:20 54:16 able [5] 12:20,25 35:1,2 49:18 absent [1] 4:1 absolutely [2] 27:6 50:23 abuse [3] 22:9 23:15 35:11 account [1] 18:11 accrue [1] 19:10 accrues [2] 19:9,13 acknowledged [1] 35:6 act [2] 50:7 68:3 acted [1] 38:15 action [11] 10:24,25 24:4 35:10 47:25 48:2 49:9,9,16 67:15 69:17 actions [2] 48:19,23 actually [4] 12:25 17:11 28:16 55:13 add [4] 19:24 29:23,24 62:9 addition [1] 34:8 additional [2] 15:9 62:8 address [2] 42:3 45:21 adjudicate [3] 46:3,3 47:1 adjudicated [2] 10:18 51:18 admitted [1] 66:22 adopted [3] 4:22 29:11 65:21 adopts [1] 16:11 adverse [1] 48:12 affairs [7] 5:19 34:11 35:24 37:25 38:1 61:5,8 affected [1] 12:25 affirm [1] 48:7 affirmative [3] 17:13 22:17 35:5 ag [1] 23:22 ago [1] 69:4 agree [3] 34:7 44:9 60:2 agreed [1] 22:19 ahead [1] 6:10 aim [1] 21:17 airport [1] 34:21 albeit [2] 51:18,21 alito [18] 20:16,18 21:14,16,19 22:1,24 27:1 42:25 43:14 44:6 45:2 46:8 61:20,21 62:6 63:4 66:2 alito's [1] 50:1 allege [1] 20:19 alleged [2] 43:19 68:5 alleging [1] 12:23 allocation [2] 39:24 56:2 allow [5] 4:16 20:5 25:22 26:22 43:1 allowed [2] 8:22 35:12 almost [2] 55:21 56:4 alone [1] 29:8 already [6] 5:22 40:7 44:23 49:10 62:</p>	
3		
<p>3 [1] 2:4 30 [9] 4:21 18:3 19:9 20:23 29:24 32:22 33:2 59:16,20 30-day [11] 3:17 4:6,19 17:17 20:7 39:10 40:6 43:3,7,16 63:11 35 [1] 24:16 39 [1] 2:7</p>		
4		
<p>40 [2] 24:15 69:4 46 [1] 65:20 4th [1] 63:22</p>		
5		
<p>5 [1] 46:13 50 [1] 55:7 51 [1] 55:7 5's [1] 46:18</p>		
6		
<p>64 [1] 2:10</p>		
7		
<p>72 [1] 38:17</p>		

<p>4,23 16:14 17:20 18:15,23 20:15 24:11 26:20 29:4 30:11 31:11 32:20 33:8,14 34:7 57:4,18 58:20 65:16 68:12</p> <p>authorize [2] 40:9,12</p> <p>automatic [1] 11:15</p> <p>avoid [1] 48:23</p> <p>away [3] 34:20 37:20 65:15</p> <p>awry [1] 47:6</p>	<p>branch [1] 69:14</p> <p>break [1] 5:3</p> <p>breuer [1] 9:19</p> <p>bridge [1] 38:16</p> <p>brief [6] 9:18 19:17 45:12 46:12 55:21, 25</p> <p>briefed [2] 44:3,25</p> <p>briefing [1] 69:25</p> <p>briefly [1] 67:20</p> <p>briefs [1] 55:8</p> <p>bring [4] 8:10 41:8 44:17 54:16</p> <p>brings [1] 37:24</p> <p>broader [2] 18:6 20:1</p> <p>brockamp [1] 59:21</p> <p>brought [5] 7:11 14:5 62:7,12 68:16</p> <p>built [1] 44:23</p> <p>burden [2] 17:8 67:4</p> <p>bursch [73] 2:3,9 3:6,7,9 5:9,12 6:16 7:10 9:2,8,12 11:4,7,20 12:6,11 13:18 14:4,7 15:4,11,24 16:2,7,10 17:5 18:13,25 19:4,7 20:16,17,25 22:6 23:4 24:21,22 25:6 26:8,13,18,22 27:5, 10,13,17,20,25 28:7,11,21 29:10 30:1,4,14 31:17 32:6 33:24 35:17,20 36:6 37:4,9 38:4,7,22 45:13 51:5,5 64:17,18,20</p> <p>burst [1] 5:19</p> <p>butt [1] 58:24</p>	<p>certification [2] 8:9,11</p> <p>certified [1] 25:17</p> <p>certify [1] 25:2</p> <p>cetera [2] 46:21,21</p> <p>chamber [1] 9:18</p> <p>chance [1] 21:24</p> <p>changed [4] 5:13 6:18,25 37:12</p> <p>chapter [2] 14:14 32:17</p> <p>chief [21] 3:3,9 8:14 9:3,10 26:6,9,11, 15,19,24 31:15 33:20 36:16,20 39:2, 7 61:18 64:7,16,20</p> <p>child [2] 11:15,16</p> <p>choice [3] 40:14 60:16,17</p> <p>choose [1] 60:20</p> <p>chose [1] 60:18</p> <p>circuit [15] 17:9 21:5 22:8 23:16 24:14 28:7,11 38:25 48:8,16 50:11 63:24 69:2,4,11</p> <p>circuits [2] 25:9,18</p> <p>circuit's [1] 64:5</p> <p>circumstance [1] 62:17</p> <p>circumstances [2] 11:16 28:5</p> <p>cite [1] 55:7</p> <p>claim [15] 7:19 8:2,10 11:6,6,10,18,23 12:10 16:18,22 41:8 53:20 60:8 67:3</p> <p>claimant [1] 41:8</p> <p>claims [17] 10:22 22:23 23:6 28:16 39:22 41:9 42:1 46:5,24 54:5 60:6,7 61:14 62:8,9 63:3 68:17</p> <p>clark [2] 47:19 55:8</p> <p>class [3] 8:8,11 32:8</p> <p>clear [19] 6:19 8:12 9:20 10:8 11:8 12:2 16:5 23:10 29:4 30:22 32:19 33:14 37:4,7,9 57:6 59:4,15 68:11</p> <p>clearer [1] 51:3</p> <p>clearest [14] 4:1,25 14:14 17:6 19:1, 18,24 21:10 30:10 31:8 33:3 59:3 65:14,17</p> <p>clearly [3] 7:5 18:17,25</p> <p>clement [1] 34:3</p> <p>click [1] 23:20</p> <p>client [1] 49:18</p> <p>close [2] 41:23,24</p> <p>closes [1] 41:21</p> <p>collection [1] 52:14</p> <p>colonial [1] 65:11</p> <p>come [4] 24:3 36:3 63:19 66:2</p> <p>comes [3] 14:2 20:17 25:21</p> <p>coming [1] 24:17</p> <p>command [18] 4:2,25 10:8 14:15 16:5 17:7 19:1,18,24 21:10 30:10 31:9 33:4,15 57:7 59:3 65:14,17</p> <p>commanding [1] 18:17</p> <p>commit [1] 49:14</p> <p>committee [1] 46:17</p> <p>common [6] 5:18,18 34:10 35:23 37:25 42:20</p> <p>comparably [1] 44:12</p> <p>compelling [1] 10:8</p>
<p style="text-align: center;">B</p> <p>b)(3 [1] 63:19</p> <p>babbitt [2] 47:18 55:8</p> <p>back [9] 6:6 21:7 26:16 33:11 38:14 65:7,11,19 67:3</p> <p>backdrop [2] 61:16 65:24</p> <p>backstop [1] 47:5</p> <p>bad [1] 46:9</p> <p>ball [1] 7:5</p> <p>barn [1] 24:12</p> <p>barrett [3] 36:18,19 64:12</p> <p>based [2] 55:19 62:16</p> <p>baseline [1] 17:5</p> <p>basically [2] 5:11 31:25</p> <p>basis [3] 18:12 22:2 35:19</p> <p>beat [1] 49:22</p> <p>becomes [1] 19:13</p> <p>beggerly [1] 43:23</p> <p>begin [2] 3:19 9:3</p> <p>beginning [2] 25:1 65:7</p> <p>begins [1] 4:21</p> <p>behalf [6] 2:4,7,10 3:8 39:6 64:19</p> <p>believe [5] 17:3 18:10 51:19 57:15 59:8</p> <p>believes [1] 50:5</p> <p>belonged [1] 69:19</p> <p>belongs [2] 68:23 69:12</p> <p>below [1] 17:10</p> <p>belt-and-suspenders [1] 28:2</p> <p>benefits [1] 36:24</p> <p>best [1] 23:18</p> <p>bet [1] 53:3</p> <p>better [1] 34:3</p> <p>between [5] 23:24 38:17,17 40:25 68:19</p> <p>beyond [3] 43:18 54:25 55:1</p> <p>big [1] 61:11</p> <p>biggest [2] 54:21 62:15</p> <p>bit [2] 14:24 31:23</p> <p>blew [1] 69:10</p> <p>blowing [1] 20:7</p> <p>boechler [11] 4:4 7:4 17:14,15 21:6 52:10,10,12,12 53:1 67:13</p> <p>book [1] 14:16</p> <p>border [1] 46:20</p> <p>both [8] 11:10 13:2 38:8 41:25 46:15, 20 48:9 67:22</p> <p>bother [2] 27:15,23</p> <p>bottom [1] 60:11</p> <p>boy [2] 57:13 60:22</p>	<p style="text-align: center;">C</p> <p>call [4] 10:14 19:5 52:25 53:12</p> <p>canada [8] 3:14 6:25 10:23 22:16 37:23 38:18 63:22 68:20</p> <p>canadian [6] 5:14 6:17 25:25 46:13,16, 17</p> <p>cannot [2] 4:4 43:10</p> <p>canons [1] 58:25</p> <p>capacious [4] 13:3 20:11 29:3,7</p> <p>care [2] 49:23 50:4</p> <p>case [76] 3:4,11,18 5:7,11,13,15 6:1,3, 4,18,21 7:9,13 8:24 10:15 12:5 13:6, 9 17:13 18:20 19:14 21:20 23:11 24:5,13 25:11,16 29:1 34:1,5,8 35:13 36:12 37:3,5,8,11,23 38:1,19,24 39:24 42:6,9,21 44:2,7 45:23 48:2 52:9,13, 15 53:1,19 54:16,21 60:4,8,21 61:14, 15 62:9,22 63:1,8,13,14,15,25 64:3 68:2,22 69:1,12,19</p> <p>cases [19] 6:1 10:21 11:22 13:3 14:1 31:12 33:10 46:3 47:18 49:2 51:5,10, 19 54:13 55:7 61:12 67:12,15,21</p> <p>categories [1] 4:23</p> <p>cause [5] 8:24 28:23 29:12 40:10 67:15</p> <p>causes [3] 27:8,11,12</p> <p>certain [5] 3:23 7:25 16:16 20:21 54:6</p> <p>certainly [5] 21:16 36:6 49:19 56:12 60:1</p> <p>certainty [1] 41:10</p>	

Official - Subject to Final Review

<p>competing [3] 29:20 30:6,9 complaint [2] 8:22 19:12 completely [3] 20:6 54:16 67:7 comprehensive [3] 40:11 56:1 59:17 concept [1] 7:18 concern [1] 24:9 concerned [3] 35:14 49:2 68:16 concerns [1] 40:8 concession [1] 66:18 concessions [2] 64:24 66:2 concluded [1] 46:18 concurrent [2] 46:1 47:12 conference [1] 38:12 confined [2] 14:19 67:13 confirm [1] 49:18 Congress [46] 10:6 14:17 15:8 17:3 18:8,17,18 20:10,13 27:15 28:1,16 29:2,11,15,16 30:7,16,21 31:4,9 32:3,18 33:2,5,17 39:25 40:5,12,14,22 41:16 42:21 45:22 46:6 56:3 57:2,17 58:15,19 59:9,12 60:15,19 61:9 65:14 congressional [2] 50:24 59:7 Congress's [2] 4:9 39:9 connected [1] 51:25 consent [1] 38:7 consequence [2] 40:16 54:11 consequences [4] 45:8 46:10 54:2,15 consequential [3] 53:14,14,18 consider [2] 15:13 25:23 consideration [2] 15:21 32:1 considerations [4] 15:10 17:4 44:22 46:25 considered [1] 44:18 consolidated [4] 35:10 63:1,5,6 constitution [1] 46:2 construction [6] 9:21 56:17 58:25 67:19 68:10,10 construe [2] 10:1 67:24 construed [3] 9:16 47:23 67:22 contention [1] 9:13 context [13] 9:21 28:18,22 40:2 41:18 52:18 55:13,24 57:12,23 58:21,24 66:5 continue [3] 21:2 49:8,15 continued [1] 45:15 continuing [1] 23:2 copy [1] 18:4 correct [2] 48:5,10 couldn't [1] 10:7 counsel [8] 26:7 39:3 47:24 52:22 55:12 59:2 61:4 64:14 counsels [1] 57:25 count [1] 68:6 counterclaim [1] 68:6 course [1] 67:23 courthouse [3] 41:21,23,25 courts [45] 3:15,25 4:12,25 7:7 10:4,6,9 20:14 23:12,24,25 25:22 26:5 29:4 31:1,3,10 33:6,17,19 34:9,12,15 35:</p>	<p>21,22 36:9 39:23,25 40:9,12 45:25 46:4 47:1,11,16 57:3,18 58:19 60:1,3 61:9,11 66:4 68:12 courts' [5] 13:4 24:10 30:10 65:15 68:1 court's [13] 3:17,21,24 5:4,6 7:5 17:20 32:15 33:10,12,14 40:23 47:5 covered [1] 18:9 create [3] 25:4 40:12 46:19 created [3] 20:10 40:5 69:2 creates [1] 35:9 creature [2] 42:19,20 criminal [5] 28:18,22 29:1,12 32:10 crossed [1] 11:9 cross-references [1] 30:21 crucial [1] 36:13 crux [1] 32:14 curious [1] 17:21 cut [2] 7:20 30:10</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daniel [1] 34:4 dart [1] 9:19 day [2] 40:17 65:23 days [13] 4:21 6:7 18:3 19:9 20:23 29:24 32:22 33:2 38:15,17 59:16,20 64:1 deadline [27] 3:17 13:13 17:17 28:23 39:10,17,20,21 40:7,10 41:5 42:18 43:3 47:15,19 53:3,5,7,9,10,10,13,13,17,18 55:10 59:19 deadlines [1] 67:12 deal [3] 34:12 36:9 50:20 dealing [1] 8:23 dealt [1] 35:23 decide [7] 21:5 22:7 34:10 39:23 44:24 50:11 61:11 decided [3] 7:6 15:25 45:23 decision [8] 4:9 7:22 33:12 50:9 56:3 62:23 64:6 69:2 decisions [2] 7:15 25:8 declare [1] 21:9 declared [1] 22:11 deep [1] 69:24 default [2] 59:19,23 defects [3] 4:11,14 17:25 defendant [4] 4:7 8:20 17:18 19:11 defendants [5] 19:10 32:10 39:22 40:16 60:19 defendant's [1] 41:12 defenses [1] 10:23 deferred [1] 43:24 define [1] 4:21 defined [1] 13:21 defines [1] 54:5 definitely [1] 51:14 delighted [1] 14:5 demands [1] 4:24 denial [1] 8:8</p>	<p>denied [1] 25:11 department [2] 61:24 62:3 depended [1] 63:18 depending [1] 30:23 depriving [2] 22:14 40:16 desirable [1] 46:11 detroit [1] 34:20 developed [1] 33:9 diesel [1] 46:14 difference [3] 32:14 40:25 41:3 different [13] 8:15,25 30:23 31:22 32:2 39:20 42:15 49:13 54:1 55:14 56:5 67:4 68:24 differently [1] 51:18 difficult [1] 21:1 diligent [1] 69:16 direct [1] 4:10 directed [2] 4:7 17:18 direction [1] 9:1 disagree [2] 56:20 59:1 dischargeability [2] 12:24 67:10 discovery [1] 24:8 discrete [1] 4:22 discretion [3] 22:10 23:16 35:12 dismissed [1] 6:4 dismisses [1] 38:11 dispute [2] 23:18 63:23 disregards [1] 40:19 dissent [1] 65:8 distinct [4] 19:22,22 43:22 55:6 distinction [1] 62:15 distinguish [2] 51:4,9 district [13] 22:9 23:14 25:1,8,22 26:5 33:19 36:4,13 43:2 47:8 48:2,13 diversity [2] 27:22 68:7 doctrine [4] 14:2 60:10 66:8 69:3 doctrines [2] 43:23 66:8 doing [2] 29:18 47:2 done [2] 24:6,25 door [4] 24:12 41:21,23,25 down [6] 3:13 15:3 19:5 25:18 34:19 46:13 draw [1] 29:14 dropped [1] 7:5 dual [1] 6:1 due [1] 52:14 during [1] 63:11 dynamic [2] 9:14,15</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each [4] 14:18 19:11 30:5 51:9 earlier [2] 37:1 63:10 easement [6] 6:24 22:11 37:14 48:4 60:9 62:19 easiest [2] 50:18,19 effectively [2] 24:24 31:19 efficiency [1] 40:15 effort [1] 39:12 egregious [1] 44:12</p>
--	---	---

Official - Subject to Final Review

<p> either [1] 36:5 eleventh [5] 24:14 25:9 69:2,4,11 eligible [1] 54:5 eliminate [1] 8:2 elimination [1] 41:9 elsewhere [3] 19:16,20 30:19 enbridge [13] 3:4 5:24 6:2 35:4 39:11 42:9 43:13 48:3 60:21 62:21 63:8,11 64:4 enbridge's [1] 40:18 encourage [1] 21:4 end [3] 12:13 16:7 46:16 ended [1] 53:2 energy [3] 3:5,14 46:19 enforce [1] 12:14 enforced [4] 3:23 8:1 16:16 55:10 enforcement [5] 8:3 16:19 40:2 47:15 55:6 enforcing [1] 40:13 engaged [2] 20:20 23:23 enough [1] 31:25 entered [1] 69:13 entire [1] 34:22 enumerated [1] 14:17 equally [1] 10:10 equitable [71] 3:16 4:1,5,13,14,16 5:1 7:6 10:4 13:4,22 14:10 15:10 16:14 17:4,16 18:11,15,23 20:6,14 24:11, 18,18,25 25:12,23 26:19 27:4,8 28:3, 17,18 29:16 30:11 31:2,11 32:1,20 33:8,14,15 39:14 40:3,8 42:14 43:5,6, 10,16,22 44:4,7,10,15,22 52:4 54:13 55:1 57:3,18 58:1,16,20 59:9 65:9,16 66:8,16 68:12 69:3 equity [18] 10:7 20:1 25:21 26:5 29:15 30:8,9 32:4 33:18,19 36:12 38:16 41: 19 43:1 44:11 52:13 69:18,23 escape [2] 39:11 65:12 especially [2] 36:13 44:1 esq [3] 2:3,6,9 established [1] 25:10 establishing [1] 41:6 estoppel [14] 4:15 43:9,11,15,15,22, 25 44:5,7,10,15,24 66:3,4 et [2] 46:20,21 even [15] 8:1 9:25 11:14 20:1 27:23 28:2 33:11 40:4 47:1 50:15,24 57:12 58:22 61:13 64:25 eventually [1] 23:17 everybody [1] 5:23 everybody's [1] 37:19 everything [2] 22:16 59:10 exactly [2] 13:9 68:15 example [5] 7:21 8:16 12:23 17:25 20: 3 examples [1] 25:16 exceeded [1] 69:6 except [1] 34:16 exception [7] 20:6 29:23 30:25 31:5 </p>	<p> 32:23 52:12 63:19 exceptions [24] 4:14,19 14:9,18 18:8, 16 19:5,19,25 20:12 27:15 29:17 31: 22 32:7,24 34:16 40:6,13 43:4,6 59: 14,18,18,22 exclude [1] 30:8 excluding [1] 32:20 exclusive [3] 45:24 47:8 61:10 excuse [7] 3:16 4:13 28:23 43:2 44:8, 10 69:10 exercise [3] 10:7 26:19 36:12 exercising [3] 5:1 31:10 69:18 exhaustive [1] 14:18 existence [1] 48:1 expanding [1] 55:4 expect [1] 66:10 expeditiously [1] 50:7 explain [1] 65:13 explains [1] 9:18 explicit [1] 40:6 express [1] 39:9 expressly [3] 4:5,10 17:16 extend [2] 40:9 44:12 extent [3] 8:21 9:22 31:21 </p> <hr/> <p style="text-align: center;">F</p> <hr/> <p> face [1] 32:13 fact [4] 8:23 14:8 28:14 69:14 fact-found [1] 40:20 factors [2] 25:13,23 fail [1] 33:1 failed [1] 12:19 failing [1] 66:14 fair [1] 35:15 farm [1] 4:9 federal [67] 3:15,25 5:8,18 6:1,20 9:5 10:6,9,15,24 12:9 18:18 22:23 23:7, 12,19,24,25 24:10 25:24 29:2,4 31:1, 10 33:23 34:6,9,10 35:1,6,23,25 36:4, 9 37:10,21,24,25 38:20 42:11,24 45: 18,24 47:2,7 48:1,5,9,13 49:9,16,23 55:25 60:20,25 61:9,11 66:15 67:24 68:23,25 69:7,12,15,19,20 federalism [2] 9:15 67:20 felt [1] 21:19 few [1] 25:15 fifth [2] 24:14 25:9 file [5] 10:24 59:16 62:24,24 66:14 filed [11] 6:2,6,22 10:24 20:23 22:12, 18 37:6,11 46:6 48:21 filer [1] 52:19 filing [4] 3:20 20:24 44:11 69:17 filings [1] 8:17 final [5] 8:11 12:13 50:12 67:2 69:6 finally [6] 4:18 8:5 24:5 35:4 38:18 69: 22 find [1] 30:12 finding [1] 48:4 finish [1] 30:4 </p>	<p> finishes [1] 49:9 firm [1] 7:4 first [13] 7:10,16 9:18 15:14 23:13 28: 25 34:2 37:12 39:14 60:17 64:22 66: 1 68:2 fit [1] 67:8 fits [1] 13:9 five [1] 23:18 fix [1] 47:10 flood [1] 24:17 focus [1] 8:17 follow [1] 36:22 following [1] 20:24 force [3] 5:19 24:3 33:16 forces [1] 20:4 foreign [10] 5:18 34:10 35:24 36:10 37:25 38:1 61:5,5,7,8 forever [3] 10:22,23 65:24 forget [1] 18:3 forth [1] 56:9 forum [14] 10:18,19 12:10 23:19 34:6 40:21 53:19 54:18,19,20 60:16,17,18, 20 forums [1] 15:19 forward [3] 5:25 8:22 22:23 foster [1] 41:8 found [1] 16:4 founding [1] 47:3 four [2] 33:25 51:5 frankly [1] 63:2 fraud [6] 12:23 27:3 29:23 30:25 31:2, 5 friend [3] 57:4 59:2 66:3 friendly [1] 52:19 front [2] 16:7 69:20 fuel [3] 22:15 34:20 46:15 full [2] 33:16 42:1 function [6] 11:12 15:21 39:19 55:16 56:10,12 functional [8] 7:18 10:11 11:9 16:10 41:4 42:5,8 53:22 functionally [6] 13:13,15,20 15:1 52: 25 53:25 functioned [1] 15:6 functioning [1] 56:20 functions [6] 17:1 55:22 56:6,24 57: 14 58:18 funny [1] 53:6 further [4] 26:12,25 44:12 61:19 </p> <hr/> <p style="text-align: center;">G</p> <hr/> <p> gamesmanship [2] 23:22 26:1 gap [1] 38:17 garnishment [1] 69:5 gas [1] 46:14 gave [1] 60:16 general [19] 4:3,18 5:24 6:5,22 17:8 34:2 38:12 49:1,3 50:3 52:24 60:13 61:22,25 62:2,4 68:12 69:25 </p>
--	--	---

<p>generally [2] 28:25 33:25 general's [8] 20:22 22:4 23:1 35:13 37:5 60:8 62:13 63:1 generous [3] 13:3 52:24 53:21 get-go [1] 26:3 getting [1] 65:22 give [3] 23:17 33:3 50:13 given [2] 47:8 60:15 gives [1] 60:19 giving [1] 30:18 glad [2] 7:11 26:18 goal [1] 21:17 gorsuch [4] 24:20,23 33:21 64:10 got [5] 11:15 17:17 19:11 23:25 30:22 govern [1] 4:22 government [5] 5:14 6:17 25:25,25 69:15 governor [17] 5:8 6:4,23,24 22:10 35:6 37:6,11 38:10,11 48:20 49:1 61:22,25 62:12,18,24 governor's [11] 5:15 6:2 22:2 24:4 37:2 61:23 62:1,16 63:8,13,15 governs [1] 56:1 grant [1] 31:3 granted [4] 12:1 23:9 25:15 48:3 great [2] 7:21 33:24 ground [8] 5:4,13 18:14,22 27:4,8 50:18 64:23 grounds [3] 43:1,17 50:13 guess [1] 53:20 guessing [2] 35:21 36:8 gun [1] 26:17</p>	<p>21 65:18 honors [1] 40:14 hook [1] 32:15 however [2] 5:22 7:2 huge [2] 41:3 66:17</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>ice [2] 37:23 38:3 immediate [2] 22:13 37:17 immunity [1] 69:8 impacts [1] 68:19 implications [1] 24:1 importance [1] 25:24 important [9] 14:11 26:23 34:9 41:15,19 47:6 52:5 60:23 61:11 impugning [2] 35:17,20 incidentally [1] 17:9 include [1] 30:8 included [1] 14:9 including [1] 48:14 incongruous [1] 4:16 incredibly [1] 20:11 indicating [1] 14:17 inequitable [1] 20:21 inferences [4] 29:14,21 30:7,9 initial [1] 63:20 initially [1] 19:12 inject [1] 40:20 injunction [4] 23:1,10 34:18 45:15 inquiries [1] 13:22 inquiry [1] 16:13 instance [1] 23:13 instead [1] 35:9 intellectual [3] 28:16 29:25 30:15 intend [3] 18:18 30:8,8 intended [6] 31:9 40:22 41:17 57:17 58:15 65:14 intent [5] 8:13 12:2 50:24 59:7 65:4 interest [2] 8:15 68:25 interested [1] 45:6 interests [3] 8:18,19 68:1 interlocutory [5] 8:8 11:25 16:23 34:14 35:3 international [3] 3:13 24:1 68:18 interpretation [1] 65:6 interrelated [1] 59:19 invalid [1] 69:13 invoke [2] 12:21 23:7 invoked [5] 5:14 6:23,25 38:18 63:22 invokes [1] 37:23 invoking [1] 6:17 involve [1] 19:22 involved [4] 8:15 13:6 52:20 54:3 involving [3] 23:19 36:9 45:18 irs [3] 12:17 14:22 67:2 irs's [3] 7:23 8:2,3 irwin [1] 33:9 isn't [12] 8:23 14:24 18:6 27:3 33:8 43:12 51:15 53:24 54:11,11 65:18,21</p>	<p>issue [10] 8:11 18:23 43:12,12 45:17,17,23 50:22 51:23 62:5 issued [3] 24:7 51:22 62:18 issues [8] 34:11 36:9 38:23 45:14 47:1 60:23 61:5 62:14 it'll [1] 28:1</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jackson [31] 6:9 13:12,24 14:4,6,23 15:5,12 16:1,6,8,24 18:6,19 19:2,6 36:17,21,22 37:7 38:2,5,21 55:12 56:19 57:21 58:2,5,8,12 64:13 jet [1] 46:15 job [1] 47:12 jobs [1] 46:16 john [4] 2:3,9 3:7 64:18 judge [3] 25:2 35:7 38:14 judges [1] 69:20 judgment [10] 8:12 12:13 23:24 35:9 36:2 48:3,13 67:2 69:6,13 judicial [2] 39:24 56:2 jump [1] 57:5 jumping [1] 26:17 jurisdiction [20] 4:11 6:20 9:23 17:23 20:9 23:12 30:17 33:1 35:7,24 37:10 45:25 46:1 47:8,13 57:24 61:10 67:23,25 68:4 justified [1] 39:16</p>
<p style="text-align: center;">H</p> <hr/> <p>half [1] 34:20 handcuff [4] 10:6 18:18 20:13 31:9 happen [3] 24:12 53:15,18 happened [2] 37:11 67:16 happening [2] 15:15 38:9 happens [1] 33:5 hard [2] 21:7 44:4 hard-and-fast [1] 26:4 harder [2] 28:25 31:23 harrow [3] 13:5,19 21:6 harsh [3] 40:15 54:11,14 hatch [2] 39:11 65:12 hear [7] 3:3 9:10 12:5 55:14,21 57:8,11 heard [3] 23:19 61:6 64:24 hearings [1] 52:14 heat [1] 23:21 heating [1] 34:21 held [1] 63:25 historical [3] 39:16 56:14,16 history [6] 10:3 39:19 40:20 50:23 56:11 59:11 hold [1] 22:3 holding [1] 32:15 holland [6] 3:24 4:24 14:15 17:6 25:</p>	<p>intellectual [3] 28:16 29:25 30:15 intend [3] 18:18 30:8,8 intended [6] 31:9 40:22 41:17 57:17 58:15 65:14 intent [5] 8:13 12:2 50:24 59:7 65:4 interest [2] 8:15 68:25 interested [1] 45:6 interests [3] 8:18,19 68:1 interlocutory [5] 8:8 11:25 16:23 34:14 35:3 international [3] 3:13 24:1 68:18 interpretation [1] 65:6 interrelated [1] 59:19 invalid [1] 69:13 invoke [2] 12:21 23:7 invoked [5] 5:14 6:23,25 38:18 63:22 invokes [1] 37:23 invoking [1] 6:17 involve [1] 19:22 involved [4] 8:15 13:6 52:20 54:3 involving [3] 23:19 36:9 45:18 irs [3] 12:17 14:22 67:2 irs's [3] 7:23 8:2,3 irwin [1] 33:9 isn't [12] 8:23 14:24 18:6 27:3 33:8 43:12 51:15 53:24 54:11,11 65:18,21</p>	<p style="text-align: center;">K</p> <hr/> <p>kagan [6] 31:15,16 32:6 52:23 64:9 67:7 kavanaugh [10] 33:22 35:14,18 36:3,15 59:25 61:3,17 64:11 68:14 kavanaugh's [1] 36:23 keep [1] 38:19 keeping [1] 22:14 kind [16] 9:21 15:20 21:4 22:22 24:13 45:23,23 52:15 53:6 55:14 57:8,11,14 58:21 68:24 69:11 kinds [1] 18:7 knowing [1] 36:23</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lack [4] 4:10 17:23,24 33:1 land [2] 7:1 62:19 lands [2] 60:11,12 landscape [1] 37:13 language [3] 14:10 32:21 59:15 last [3] 21:13 28:15 34:3 late [3] 44:10 64:1 69:9 later [5] 8:11 14:24 20:9 24:7 63:12 laughter [5] 9:7 21:15,18,25 26:21 law [17] 3:18 5:18,18 7:4 23:6 34:10 35:23 37:25 42:20 46:10,24 48:5 60:6,7,24 61:14 64:3 lawsuit [7] 22:12,17,17 25:24 35:5 37:18 38:11</p>

<p>lawyers [1] 53:4 lay [3] 7:1 25:18 52:19 least [6] 26:3 36:8 40:6 45:5 59:17 65:19 leave [2] 20:10 29:8 left [1] 21:19 legal [1] 39:18 legislative [1] 65:4 legislatures [1] 65:11 less [2] 8:19 21:12 lessons [1] 25:20 level [1] 24:24 level-set [2] 64:22 65:2 levying [1] 52:17 liabilities [1] 41:12 light [1] 15:16 likely [1] 65:3 limit [4] 4:6 31:7 68:7 69:7 limitation [2] 10:11 54:12 limitations [51] 7:17,24 11:2 13:14,16, 20 15:2,17,22 16:3,12 17:2 39:17 41:1,5,13,15,19,21 42:5,8,13,15 50:15, 21 51:15,16,21 52:11 53:1,5,8,11,25 54:10,23,25 55:2,17,23 56:7,11,13, 16,25 57:15 58:13,23 65:10,23 66:21 limited [2] 51:22 52:3 limits [2] 40:25 42:21 linchpins [1] 7:13 line [3] 46:13,18 47:18 list [2] 14:18 32:24 literally [3] 23:20 30:23 68:20 litigant [1] 41:22 litigants [4] 4:23 19:22 32:8 41:25 litigate [2] 9:4 54:20 litigated [2] 34:6 62:21 litigation [3] 36:5,7 48:9 little [2] 14:24 31:23 loftin [1] 69:1 long [4] 10:3 45:16 47:18 63:10 look [9] 17:2,12 18:15 25:8 43:18 56:14 57:12 58:8 59:14 look-back [1] 7:23 looked [5] 6:18 8:12 12:1 15:7 60:21 looking [2] 19:15 59:6 looks [2] 58:9,12 lose [16] 8:9 11:10 12:18 16:17,20,21, 22 54:9,15 56:19,21 57:1 66:10,13 67:3,15 loses [1] 38:10 losing [8] 10:13,14 11:2 12:7,14,16 15:18 51:6 loss [5] 10:17,17 11:6 53:19,20 lost [13] 8:7 10:19,19,22,23 11:19,23 12:20 16:18,22 39:19 52:1,6 lot [4] 23:5 32:18 59:13 60:22 lots [2] 23:8 69:24 lower [7] 7:7 13:4 31:1,12 34:24 65:15 66:4 lozano [8] 7:16 11:8,12 13:18 16:11</p>	<p>41:3 51:7,12</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>mackinac [1] 60:12 made [8] 5:20 9:20 31:5,6 45:7,13 56:3 61:4 main [2] 29:5,10 maintaining [1] 24:10 maintains [1] 18:14 mandates [1] 45:24 mandatory [2] 39:10 59:15 many [4] 31:21 40:7 44:22 59:22 massive [1] 46:14 matter [10] 4:23 13:15 19:23 30:17,24 35:7 47:7 53:14 67:24 68:3 mattered [1] 52:17 matters [1] 9:24 mcquiggin [1] 65:9 mean [13] 14:25 18:21 21:11 22:13 24:25 30:7,18 31:16 43:15 50:23 53:1,8 58:14 meaning [1] 11:12 means [2] 22:14 33:5 meant [1] 20:13 mechanism [1] 12:14 mechanisms [4] 8:3 12:20 67:1,11 meet [3] 41:5 53:13,17 members [2] 20:4 32:11 mention [1] 46:16 mentioned [4] 51:4,5,8 67:20 mere [1] 68:8 merit [1] 24:8 merits [2] 39:24 69:22 messy [1] 40:20 michigan [6] 4:3 22:15 34:17,22 35:22 68:22 might [8] 41:24 43:19 44:10,11,24 54:2,3 58:9 military [2] 32:12 69:14 millions [4] 3:14 22:14 23:21 68:21 mind [3] 22:14 32:3 37:15 mine-run [1] 25:11 minute [1] 12:4 missed [6] 37:1 39:9 47:19 61:1 63:25 64:2 missing [1] 41:20 misspoke [1] 48:16 mm-hmm [3] 11:4 19:6 51:13 modern [1] 65:23 month [1] 34:3 months [2] 62:12,20 morning [1] 3:4 most [5] 13:5 14:1 47:25 50:18 67:21 motion [2] 38:10 66:14 move [4] 16:25 61:1 62:7,9 moves [1] 20:20 ms [38] 26:9 39:4,7 41:2 42:7 43:8,21 44:14 45:22 46:23 48:6,11,17,20,25 49:10,17,25 50:3,8,19 51:11,14 52:</p>	<p>10 54:1 56:8 57:19,22 58:4,7,11,22 60:5 61:7,24 62:11 63:7 64:15 much [4] 6:14 44:21 66:11 68:24 multi-forum [1] 20:8 multi-party [1] 20:8 multiple [2] 19:10 59:20 must [2] 39:18 41:8</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>narrow [2] 34:16 50:18 national [1] 24:1 navy [2] 69:5,10 necessarily [2] 6:20 58:14 necessary [2] 25:17 47:20 need [12] 5:3 7:3,19 10:7 17:6 25:7 26:4 29:17 38:16,23 65:12,13 needed [3] 29:22,23,24 neff [1] 35:8 nessel [1] 3:5 never [1] 54:24 nevertheless [1] 52:4 new [5] 5:3 62:16 63:2,3 65:21 next [1] 4:3 non-compliance [2] 43:2 44:8 non-dischargeability [4] 12:21 16:19 51:24 66:25 none [7] 4:20,24 10:20,22 20:12 31:8 46:24 non-equitable [1] 20:11 nonetheless [1] 57:16 non-final [1] 34:18 non-functional [1] 11:17 non-jurisdictional [2] 3:20 13:8 non-removability [1] 63:20 non-statutory [1] 43:6 notable [1] 19:16 notice [3] 6:7 18:2 62:18 number [3] 56:9 65:24,25 nutraceutical [7] 8:6 11:22,24 12:12 13:19 16:20 67:12</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>obstacles [1] 69:16 obvious [2] 53:23 67:8 obviously [2] 8:16 31:20 occurred [1] 62:17 october [1] 63:22 official [2] 46:5 60:6 officially [1] 39:22 officials' [1] 3:11 often [6] 18:2 34:12 35:23 36:4,7 62:1 ohio [1] 22:16 oil [2] 67:22 68:5 okay [5] 16:1 19:3 26:12 27:14 57:21 once [2] 6:4 37:20 one [37] 7:12,18,19 11:23 14:1 19:17 25:20 27:22,24 28:15 29:14,15 30:5 32:9,13 35:10 36:11 38:8 41:24 42:</p>
---	---	--

<p>22 45:4,4 47:13 50:12,14 51:7,11,19, 22 52:12 54:18 55:2 56:11 57:24 62: 3 65:24 68:25</p> <p>one-year [1] 31:7</p> <p>only [7] 8:2 9:23 19:17 42:20 56:23 67:14 68:19</p> <p>ontario [1] 46:15</p> <p>onward [1] 55:9</p> <p>open [2] 24:12 41:25</p> <p>operation [3] 23:2 45:9,16</p> <p>opinion [6] 8:6 11:21 21:12,13 64:25 66:7</p> <p>opinions [1] 21:21</p> <p>opportunity [7] 25:3 41:11 51:17 60: 20 61:1 64:1,2</p> <p>opposing [2] 59:2 61:4</p> <p>options [1] 33:3</p> <p>oral [4] 2:2,5 3:7 39:5</p> <p>order [5] 34:19 37:18 38:19 50:10 56: 25</p> <p>orders [2] 35:8 45:9</p> <p>original [4] 6:1 22:4 55:19,20</p> <p>other [20] 4:14 9:13 10:8,11,21 11:25 14:3 17:3 18:10 20:12 23:5 27:18 29: 15 31:12 43:3 44:12 45:4,4 50:15 57: 4</p> <p>others [4] 4:21 15:16 32:24 51:8</p> <p>otherwise [3] 14:14 32:17 45:25</p> <p>ought [1] 60:24</p> <p>out [9] 14:2 21:19 43:4 45:11 47:15 49:23 54:15 57:10 61:13</p> <p>outset [3] 6:21 21:2 37:5</p> <p>outside [2] 59:23 68:21</p> <p>over [9] 25:14 39:10 47:17,17 62:19, 22 67:16,16,16</p> <p>overcome [4] 10:2 12:22 40:5 50:16</p> <p>overlapping [1] 62:14</p> <p>own [3] 35:5 40:13 46:3</p>	<p>perhaps [3] 8:25 9:15 22:3</p> <p>period [8] 3:22 7:23,25 16:15 20:7 41: 7 43:16 63:12</p> <p>periods [1] 65:10</p> <p>permit [1] 43:15</p> <p>person [1] 12:19</p> <p>petitioner [1] 42:4</p> <p>petitioners [4] 2:4,10 3:8 64:19</p> <p>phrase [1] 13:21</p> <p>pinned [1] 15:3</p> <p>pipeline [7] 3:13 22:13 23:3 34:19 45: 10,16 68:18</p> <p>placed [1] 4:8</p> <p>plain [1] 41:11</p> <p>plaintiff [3] 8:7 60:16,18</p> <p>plaintiffs [1] 8:18</p> <p>plaintiff's [1] 41:11</p> <p>play [1] 46:25</p> <p>pleadings [1] 18:5</p> <p>pleasing [2] 3:10 39:8</p> <p>point [17] 5:17 11:21 18:7 19:16,25 20: 21 29:5,10 37:19 45:13 50:9 56:22, 23 57:1 61:4 62:20 67:18</p> <p>points [3] 4:18 28:24 68:15</p> <p>policed [1] 24:24</p> <p>porter [2] 33:12 65:19</p> <p>portions [1] 27:18</p> <p>position [2] 46:23 62:3</p> <p>possible [2] 43:9,11</p> <p>possibly [2] 43:19 44:11</p> <p>potential [4] 10:17 41:12 63:21 64:2</p> <p>potentially [1] 42:1</p> <p>power [3] 39:25 46:2 56:2</p> <p>practical [1] 68:15</p> <p>practically [1] 65:5</p> <p>practice [1] 40:1</p> <p>precedents [1] 5:5</p> <p>preclude [2] 8:13 12:2</p> <p>precluded [1] 4:25</p> <p>predictable [1] 40:22</p> <p>preempted [1] 48:5</p> <p>preferred [1] 54:19</p> <p>preliminary [2] 34:18 45:15</p> <p>prescribed [1] 7:24</p> <p>prescribes [2] 3:22 16:15</p> <p>press [2] 38:12,13</p> <p>presume [4] 57:2,16 58:15,19</p> <p>presumes [1] 3:24</p> <p>presumption [29] 3:24 4:4,20 7:9 10:2 13:7 16:4,9,13 17:7,10 21:9 39:14,15 40:4 41:14 42:12 50:16,21,25 55:1, 17,23 56:22 57:1 65:3 66:1,20 67:14</p> <p>pretty [2] 45:12 52:24</p> <p>primary [1] 60:7</p> <p>principle [1] 31:24</p> <p>principles [2] 28:3 33:15</p> <p>prioritize [1] 40:15</p> <p>priority [6] 12:21,24 16:20 51:23 67:1, 10</p>	<p>probably [2] 21:2 25:2</p> <p>problem [5] 10:13 19:21 31:13 36:2 66:17</p> <p>procedural [10] 4:8,11,13 9:23 17:25 20:20 51:6,24 66:23 68:9</p> <p>procedures [3] 17:19 47:21,22</p> <p>proceed [2] 48:23 51:6</p> <p>proceeding [2] 22:21 37:22</p> <p>proceedings [3] 3:12 5:23,25</p> <p>proceeds [1] 45:13</p> <p>process [6] 16:18 40:21 42:17,19 46: 7 52:14</p> <p>produces [1] 46:10</p> <p>products [1] 46:20</p> <p>prohibit [2] 4:5 17:16</p> <p>proof [1] 17:8</p> <p>propane [2] 22:15 34:21</p> <p>property [4] 28:16 29:25 30:16 52:17</p> <p>protect [1] 39:21</p> <p>provide [7] 4:24 9:20 19:23 20:2 23: 21 41:10 68:3</p> <p>provided [2] 14:13 32:17</p> <p>provides [4] 19:18 31:8 56:1 68:11</p> <p>provision [2] 20:9 28:15</p> <p>provisions [3] 28:14 31:18,19</p> <p>prudent [1] 62:23</p> <p>public [2] 60:8,10</p> <p>pure [1] 30:20</p> <p>purpose [3] 13:16 56:12 59:11</p> <p>purposes [2] 13:21 16:13</p> <p>pursued [1] 39:18</p> <p>put [7] 8:17 26:4 32:19 37:23 38:2 53: 3 57:10</p> <p>putting [1] 69:19</p>
<p style="text-align: center;">P</p> <hr/> <p>page [2] 2:2 19:17</p> <p>pages [4] 9:19 21:12 55:7 65:1</p> <p>paired [1] 6:12</p> <p>pairs [1] 6:13</p> <p>panoply [1] 33:3</p> <p>paradigm [1] 68:22</p> <p>parent [2] 11:13,14</p> <p>parliament [1] 46:17</p> <p>part [3] 11:3,5 64:5</p> <p>particular [3] 13:13 52:15 60:3</p> <p>parties [5] 21:1 22:19 38:8 60:15 63:3</p> <p>parts [1] 32:2</p> <p>party [1] 30:24</p> <p>passed [3] 33:11,17 62:21</p> <p>paul [1] 34:3</p> <p>pay [2] 8:17 12:19</p> <p>pending [1] 49:16</p> <p>peninsula [2] 34:22,24</p> <p>people [4] 22:15 23:21 24:17 68:21</p>	<p>qualified [1] 34:10</p> <p>qualify [1] 43:20</p> <p>quebec [1] 46:15</p> <p>question [24] 3:15 9:6,8,12 11:13 15:1, 25 21:1,7 26:13,23 31:17 33:24 34:5 36:23 43:25 44:19 45:5,19 49:13 50: 2,13 60:1 63:10</p> <p>questions [5] 5:6 23:8 40:21,23 47:2</p> <p>quickly [1] 22:19</p> <p>quite [2] 53:21,21</p> <p>quoted [1] 16:5</p> <p>quoting [2] 34:4 46:12</p>	<p style="text-align: center;">Q</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race [3] 23:23 35:9 36:1</p> <p>raised [3] 43:13 44:1,2</p> <p>raising [1] 68:15</p> <p>rather [1] 53:19</p> <p>realistic [1] 65:4</p> <p>really [15] 5:13 6:18,25 10:8 13:3 15: 17 23:17 25:3,7 36:11 37:12 45:20 47:5 52:17 60:22</p>

<p>reason [10] 31:2 41:15 43:13 44:17 52:2 54:9,12 55:10 59:8 60:3</p> <p>reasons [9] 33:25 34:13 35:11 39:13 47:13 55:3 57:15 60:13 63:12</p> <p>rebut [3] 4:4,20 17:7</p> <p>rebuttal [4] 2:8 64:16,18 68:11</p> <p>rebutted [4] 19:1 21:10 51:1 57:6</p> <p>recent [2] 13:25 14:1</p> <p>recently [3] 8:17 13:5 48:3</p> <p>recognize [3] 44:9 52:2 66:4</p> <p>recognized [2] 36:14 65:9</p> <p>recognizes [1] 16:12</p> <p>recognizing [1] 13:4</p> <p>recover [4] 13:1 42:10,10 52:4</p> <p>recovery [6] 10:17 11:3 41:11 42:1 51:17 52:1</p> <p>red [1] 19:17</p> <p>reduce [1] 46:18</p> <p>redundancies [1] 28:10</p> <p>reference [1] 32:1</p> <p>reflect [1] 40:7</p> <p>regardless [2] 58:6,17</p> <p>regular [1] 36:4</p> <p>reject [1] 39:12</p> <p>rejection [1] 48:14</p> <p>relates [1] 57:13</p> <p>relations [1] 45:8</p> <p>relationship [1] 68:19</p> <p>release [1] 38:13</p> <p>relief [3] 20:1 22:25 23:8</p> <p>relies [1] 23:14</p> <p>rely [2] 7:14 67:21</p> <p>remand [10] 4:10 17:22,24 21:5 32:25 38:10,25 47:20 49:7 66:15</p> <p>remanded [1] 7:7</p> <p>remedies [3] 10:21 39:18 54:6</p> <p>remedy [2] 54:8,9</p> <p>removable [5] 19:12,13 20:23 22:2,5</p> <p>removal [39] 3:17 5:17 6:7 7:9 8:4 9:15 10:10 12:16 14:21 17:19 18:2 20:5,7 24:4 29:24 36:24 39:10,19 40:1,25 41:5 42:16,18,19 43:3,16 44:11,16 46:7 47:15,22 55:24,25 57:12,13 58:20 66:14 69:3,17</p> <p>remove [10] 5:20 18:1 29:1 32:22 33:2 37:1,20 61:1 66:11 68:4</p> <p>removed [15] 5:7,11 6:2,13 35:13 37:2 38:19 42:23 60:25 63:8,11,13,14,14 69:9</p> <p>repeated [1] 59:20</p> <p>represent [4] 49:6,7 61:22 62:4</p> <p>represents [1] 61:25</p> <p>republic [1] 65:8</p> <p>requirement [1] 65:18</p> <p>requires [2] 14:15 18:5</p> <p>reserve [1] 46:2</p> <p>residents [1] 34:23</p> <p>resist [1] 66:13</p> <p>resolution [2] 49:16 63:23</p>	<p>resolve [1] 38:23</p> <p>resolved [1] 31:4</p> <p>respect [5] 29:25 30:15 42:4 47:16 60:2</p> <p>respectfully [1] 56:18</p> <p>respectively [1] 24:16</p> <p>respects [1] 34:6</p> <p>respond [1] 61:3</p> <p>respondent [2] 2:7 39:6</p> <p>response [2] 34:4 45:6</p> <p>responses [1] 9:17</p> <p>rest [2] 19:19 29:13</p> <p>restrain [1] 31:10</p> <p>restricts [1] 33:13</p> <p>result [3] 41:20 46:14 48:8</p> <p>resulted [1] 34:21</p> <p>retain [6] 3:15,25 4:12 18:22 57:3,18</p> <p>reticulated [1] 14:8</p> <p>return [1] 11:15</p> <p>returned [1] 11:17</p> <p>reverse [5] 5:5 21:11 48:15 50:13 57:20</p> <p>review [4] 23:16 25:4 47:9 64:5</p> <p>reviewed [1] 45:19</p> <p>revocation [1] 62:18</p> <p>revoke [1] 48:4</p> <p>rights [13] 3:23 7:25 15:18 16:16,19,21 45:18 51:22,25 52:5 58:10 66:23,24</p> <p>roberts [16] 3:3 8:14 9:10 26:6,9,11,15,24 31:15 33:20 36:16,20 39:2 61:18 64:7,16</p> <p>room [1] 53:4</p> <p>rubicon [1] 11:10</p> <p>rule [14] 3:20,20 4:20 12:1 18:14,22 24:15 25:10 32:9,10,11 43:7 59:24 65:5</p> <p>rules [8] 13:8 24:3 25:5 26:4 30:18,23 40:13 55:16</p> <p>rulings [2] 24:8,8</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safety [1] 46:19</p> <p>same [13] 5:11 12:15,17 15:18 29:18 31:18,24 32:8 37:2 48:24 49:3 63:12 67:6</p> <p>sat [1] 22:22</p> <p>satisfied [1] 25:13</p> <p>satisfies [1] 3:21</p> <p>satisfy [1] 67:5</p> <p>saying [7] 13:12,14,18 28:9 58:3,5,17</p> <p>says [5] 17:6 23:18 33:13 57:5 65:9</p> <p>scalia's [1] 65:8</p> <p>scheme [3] 40:11 56:1 59:17</p> <p>second [8] 7:21 9:22 23:21 37:17 40:4 50:10 62:11 66:18</p> <p>section [2] 3:19 4:8</p> <p>sections [1] 20:12</p> <p>see [10] 15:23 18:19 19:2,2 24:14 25:</p>	<p>15 40:24 43:18 44:4 50:10</p> <p>seeing [1] 24:17</p> <p>seeks [1] 39:11</p> <p>seem [2] 43:17 53:23</p> <p>seems [4] 6:11 15:19 56:4 67:8</p> <p>selection [1] 40:21</p> <p>sending [1] 21:6</p> <p>sense [2] 5:20 29:7</p> <p>separate [11] 27:24 30:17,18 32:10,11 44:19 48:1 56:5,16 62:4,6</p> <p>separates [1] 54:22</p> <p>served [1] 19:11</p> <p>serves [1] 39:21</p> <p>set [7] 15:8 39:17 40:14 42:21 43:4 46:7 56:9</p> <p>sets [1] 30:23</p> <p>setting [1] 30:16</p> <p>settle [1] 39:23</p> <p>seven [1] 24:6</p> <p>severe [1] 45:12</p> <p>shake [1] 35:15</p> <p>shall [1] 59:15</p> <p>shamrock [2] 67:22 68:5</p> <p>shelf [1] 22:22</p> <p>sherman [40] 2:6 26:9 39:4,5,7 41:2 42:7 43:8,21 44:14 45:22 46:23 48:6,11,17,20,25 49:10,17,25 50:3,8,19 51:11,14 52:10 54:1 56:8 57:19,22 58:4,7,11,22 60:5 61:7,24 62:11 63:7 64:15</p> <p>she's [2] 37:15,17</p> <p>shifted [1] 22:16</p> <p>shifting [1] 15:19</p> <p>shifts [2] 17:8 37:20</p> <p>short [4] 4:6 17:17 23:10 40:22</p> <p>shortage [1] 46:14</p> <p>shortages [1] 46:19</p> <p>shorter [1] 64:25</p> <p>shortly [1] 9:11</p> <p>shouldn't [4] 53:24 55:5,23 57:16</p> <p>shows [1] 40:11</p> <p>shut [2] 3:12 34:19</p> <p>shutdown [3] 22:13 37:17 46:18</p> <p>shutting [1] 46:13</p> <p>side [2] 57:4 62:4</p> <p>sides [1] 46:20</p> <p>side's [1] 9:13</p> <p>signals [1] 38:12</p> <p>significant [1] 69:1</p> <p>similar [5] 5:12 6:15 34:4 59:20,21</p> <p>similarities [1] 6:16</p> <p>simply [11] 4:20 7:6 12:20 16:18,22 25:11 31:12 62:7,9 67:1,4</p> <p>since [1] 47:3</p> <p>single [1] 35:10</p> <p>situated [1] 35:25</p> <p>situation [3] 58:16,18 59:23</p> <p>situations [1] 44:13</p> <p>six [2] 40:6 59:17</p>
--	--	---

<p>sixth ^[10] 17:9 21:4 22:8 23:16 38:25 48:8,16 50:10 63:24 64:5</p> <p>slightly ^[1] 55:14</p> <p>so-called ^[1] 4:19</p> <p>solving ^[1] 31:12</p> <p>somebody ^[1] 62:3</p> <p>somebody's ^[1] 54:15</p> <p>somehow ^[2] 24:10 61:14</p> <p>someone ^[4] 12:4 18:1 66:10,13</p> <p>sometimes ^[4] 27:25 41:19 46:10 62:2</p> <p>soon ^[1] 22:10</p> <p>sorry ^[10] 5:16 6:23 16:21 17:14 26:10,16 27:21 29:6 36:18 38:3</p> <p>sort ^[5] 14:24 15:14 18:21 56:14 60:15</p> <p>sotomayor ^[45] 10:12 11:5,7,11 12:3,7 13:11 15:16 21:20,23 26:10,14 27:2,3,7,12,14,19,22 28:6,9,13 29:6,22 30:2,12 31:13,14 47:24 48:7,15,18,22 49:5,12,21 50:1,6,12 51:2,13 52:8,21 64:8 66:19</p> <p>sought ^[2] 22:25 64:4</p> <p>source ^[1] 46:13</p> <p>sovereign ^[5] 8:24 42:22,23 57:24 69:8</p> <p>sovereigns ^[1] 36:10</p> <p>speaking ^[1] 33:25</p> <p>speaks ^[2] 17:19,19</p> <p>special ^[2] 46:17 58:21</p> <p>specific ^[5] 14:19 28:4 34:1,13 39:16</p> <p>specifically ^[4] 14:13 23:7 32:16 40:9</p> <p>spelled ^[1] 45:11</p> <p>spend ^[1] 19:17</p> <p>split ^[4] 28:8,12 31:1,4</p> <p>stage ^[1] 35:3</p> <p>stale ^[2] 39:22 41:9</p> <p>standard ^[3] 29:3,12 65:21</p> <p>standards ^[1] 25:19</p> <p>stands ^[1] 48:12</p> <p>stare ^[1] 53:6</p> <p>start ^[7] 14:7 17:13 18:13 19:4,15 25:6,14</p> <p>started ^[2] 14:25 65:22</p> <p>starting ^[2] 18:20 55:8</p> <p>state ^[78] 3:11,12 4:9 5:22 6:6,18,21 8:20 9:4 10:20,25 12:9 18:4 20:20 22:20,20 23:6,24 24:5,7 29:1 34:12,15 35:15,21,22 36:7 37:21,22 38:9,14 42:10,22 45:9,14,14,25 46:5,5,6,24 47:1,6,11,16,24 48:9 49:8,15,22 50:4,5,7 52:15 60:1,3,4,6,6,7,11,11,14,18,24 61:11,14,15 62:10,19,22,25 63:9 66:12 67:25 68:16,17 69:6</p> <p>state/federal ^[1] 9:14</p> <p>statement ^[3] 10:9 55:20 59:4</p> <p>states ^[3] 36:10 52:6 68:20</p> <p>state's ^[1] 46:23</p> <p>statute ^[74] 7:17,24 8:2 9:16 11:1 13:</p>	<p>14,16,20 14:21,22 15:2,7,17,22 16:3,12,15 17:1,3,12,15,23 18:8 27:16,18 32:2 33:11,13 41:1,4,13,14,18,20 42:5,8,12,15,19 43:4 44:16,23 50:14,21 51:15,16,21 52:11,25 53:5,8,11,25 54:9,22,25 55:1,17,22,25 56:6,10,13,15,21,25 57:12,14 58:9,13,23 65:10 66:20 68:11</p> <p>statutes ^[7] 10:11 31:21 39:17 54:12 65:22 67:9 69:3</p> <p>statute's ^[1] 40:19</p> <p>statutory ^[5] 3:18 29:3 43:18 47:21 69:7</p> <p>stay ^[5] 49:8,11,15 50:10 63:9</p> <p>stayed ^[6] 5:23 22:21 38:3,4,5 47:25</p> <p>staying ^[1] 50:4</p> <p>steeped ^[1] 52:13</p> <p>step ^[1] 15:14</p> <p>still ^[4] 10:1 11:15,17 12:12</p> <p>stop ^[1] 69:17</p> <p>stopped ^[1] 23:9</p> <p>straits ^[1] 60:12</p> <p>strategic ^[2] 49:22 50:8</p> <p>strategically ^[1] 49:20</p> <p>strict ^[10] 7:18 9:21 40:2 47:14,21 55:6 56:17 58:25 67:19 68:9</p> <p>strictly ^[6] 9:16 10:1 47:22 55:9 67:22,24</p> <p>strip ^[1] 10:9</p> <p>strongly ^[1] 59:11</p> <p>structure ^[4] 30:20 40:19 50:23 59:10</p> <p>struggling ^[1] 15:22</p> <p>stuff ^[1] 66:11</p> <p>subject ^[7] 4:23 19:23 30:17,24 35:7 67:24 68:3</p> <p>subjected ^[1] 69:5</p> <p>subset ^[1] 54:5</p> <p>substantive ^[2] 54:4 66:24</p> <p>succeeding ^[1] 24:18</p> <p>successful ^[1] 63:17</p> <p>suddenly ^[2] 5:19 65:22</p> <p>suffering ^[2] 8:21 9:4</p> <p>suggest ^[1] 20:13</p> <p>suggested ^[1] 65:1</p> <p>suggesting ^[5] 44:6,14 55:21 57:8,11</p> <p>suggests ^[4] 4:12 6:14 32:3 59:11</p> <p>suit ^[12] 20:22,24 22:2,4 23:1 61:23 62:1,7,11,12,13,16</p> <p>suits ^[1] 20:3</p> <p>sum ^[1] 5:3</p> <p>summary ^[1] 48:3</p> <p>supplies ^[1] 3:13</p> <p>supported ^[1] 59:16</p> <p>suppose ^[1] 31:16</p> <p>supreme ^[1] 34:17</p> <p>syngenta ^[1] 67:21</p> <p>system ^[1] 35:25</p>	<p style="text-align: center;">T</p> <p>talked ^[7] 6:9 32:16 35:8 41:4 49:17 51:14 59:13</p> <p>tariffs ^[2] 21:12,20</p> <p>task ^[1] 39:25</p> <p>tax ^[2] 52:8,16</p> <p>taxes ^[2] 12:19 67:3</p> <p>tendency ^[1] 8:16</p> <p>terminated ^[4] 6:24 22:11 37:14 45:10</p> <p>terms ^[3] 14:19 28:19 52:24</p> <p>test ^[11] 3:21 11:9 16:11,25 41:4,6 59:3,3,4,4,5</p> <p>text ^[8] 3:18 14:12 19:18 30:20 40:19 43:18 50:22 59:10</p> <p>textual ^[2] 14:16 32:15</p> <p>there's ^[11] 5:3 8:14 26:4 33:1 34:5 41:2,2 54:13 55:5,10 60:22</p> <p>they'll ^[2] 18:3,3</p> <p>they've ^[1] 47:2</p> <p>thinking ^[2] 18:9 55:3</p> <p>third ^[4] 9:25 23:23 63:21 67:18</p> <p>thomas ^[10] 5:7,10 6:8,11 7:8,12 26:25 40:24 42:3 61:19</p> <p>though ^[4] 8:1 11:14 16:9 52:23</p> <p>thousands ^[1] 46:16</p> <p>three ^[5] 7:14 9:17 33:16 51:8 65:20</p> <p>three-year ^[1] 7:23</p> <p>threshold ^[1] 15:20</p> <p>timely ^[4] 60:25 61:2 63:8 66:14</p> <p>timing ^[3] 3:20 4:19 13:8</p> <p>today ^[2] 21:3 59:13</p> <p>together ^[2] 48:24 66:9</p> <p>tolling ^[30] 4:6,16 7:6 8:13 12:2 17:4,16 24:18 25:1 27:4,9 28:17,19 31:3 33:10 39:15 40:3 42:14 43:10,22 54:14 55:1 58:1,16 59:9,12 65:10 66:9,16 69:3</p> <p>tolling-type ^[1] 14:10</p> <p>took ^[1] 34:20</p> <p>top ^[1] 31:6</p> <p>towards ^[1] 68:6</p> <p>track ^[1] 49:3</p> <p>tradition ^[8] 39:16 42:14,15,16 47:14 55:6 56:15,16</p> <p>traditional ^[15] 3:16,25 4:12 5:1 10:4 13:22 16:14 20:14 24:11 26:19 30:10 31:11 33:8 40:1 65:16</p> <p>transferred ^[1] 58:10</p> <p>transferring ^[1] 57:24</p> <p>transit ^[1] 5:15</p> <p>travel ^[1] 66:9</p> <p>treaty ^[10] 5:15 6:17,25 19:14 24:2 37:24 38:18 45:18 47:7 61:15</p> <p>trespassers ^[1] 37:15</p> <p>trial ^[4] 22:20,20 66:12,12</p> <p>trouble ^[2] 21:1,3</p> <p>true ^[5] 8:1 41:22 54:17 57:20 67:6</p> <p>trust ^[10] 25:22 33:5,18 47:1,4,11 60:9,</p>
---	--	--

<p>10 61:10,15 trusts [1] 33:17 try [1] 10:15 trying [2] 15:2 41:16 turns [1] 61:13 two [20] 22:22 28:14,24 29:13 33:25 34:1,2,13 37:12 39:10,12,23 48:18, 23 49:2 50:13 65:25 66:1,8 67:21 two-thirds [1] 34:23 type [1] 23:11 types [2] 34:25 67:9 typically [3] 34:14 43:24 53:9</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>u.s [1] 3:14 u.s./canadian [1] 45:8 ultimately [1] 7:2 unanimous [4] 7:14,22 8:5 66:7 unanimously [1] 7:16 uncommon [1] 18:1 under [6] 3:17,23 13:18 27:23 46:2 63: 19 underlie [1] 32:4 understand [5] 11:18 14:23 15:9 20: 19 22:24 understanding [1] 10:13 unicorn [1] 24:13 uniformity [1] 25:5 unique [2] 36:11 42:16 uniquely [2] 34:9 35:25 united [3] 36:10 52:6 68:20 unless [3] 14:13 32:16 33:13 until [3] 19:11 38:10 49:9 unusually [1] 24:5 up [12] 5:16,16 7:11 8:10 14:5 15:8 20: 7 36:3,22 44:17 46:7 58:24 uphold [1] 34:18 upper [1] 34:22 upper-lower [1] 34:24 useful [1] 65:5</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value [1] 34:5 various [2] 36:24 46:19 versus [3] 3:5 47:18 55:8 view [1] 37:16 violating [1] 60:10 virginia [2] 45:12 46:12</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait [1] 12:3 waiver [3] 4:15 66:5 69:7 walk [1] 30:5 walking [1] 19:5 wanted [6] 10:6 17:3 29:2 57:3 58:19 59:12 wants [2] 45:22 60:13 waste [1] 48:23</p>	<p>way [15] 6:13 12:15,23 13:20 14:3 15: 8,18 25:4 33:10 48:11 51:3 56:2 65:7, 11,19 webster [1] 34:4 week [1] 21:13 weigh [1] 35:1 weighing [1] 8:25 welcome [2] 5:6 40:23 well-settled [1] 5:5 west [2] 45:11 46:12 whatever [2] 10:24 26:1 whether [26] 3:15 12:9 13:15 16:2,13, 15 18:16,24 31:2,17,24 43:19 44:9 54:8 55:22 56:5,24 60:9 63:16,18 66: 3,19 67:9 68:2,5 69:23 white [1] 66:7 whole [7] 31:18 32:5 42:14,18 55:5 57: 23 61:8 will [14] 3:3 7:10 23:15 25:16 26:19 28:1,4 39:23 48:8 49:7,14 53:22 62:2, 4 willing [3] 49:7,14 53:12 win [4] 49:6,13 50:17,18 within [12] 3:22 6:7 7:25 13:10 16:15 18:3 29:24 32:22 33:2 38:15 67:8 68: 21 without [1] 32:22 wonder [1] 56:23 wong [1] 65:3 word [1] 27:10 words [2] 7:5 28:17 work [2] 17:4 42:13 write [2] 21:21,21 writing [2] 27:15,23 writs [1] 68:3 wrote [1] 27:17</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year [1] 62:22 years [8] 4:22 24:7,15,16 33:16 39:11 65:20 69:4 young [13] 3:21 7:22 11:21 12:18 13: 19 16:11,17 51:20,23 54:4 66:22,22 67:11</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zipes [1] 66:6</p>
--	---