

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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

Pages: 1 through 93
Place: Washington, D.C.
Date: October 7, 2024

HERITAGE REPORTING CORPORATION

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

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

NANCY WILLIAMS, ET AL.,)

Petitioners,)

v.) No. 23-191

FITZGERALD WASHINGTON, ALABAMA)

SECRETARY OF LABOR,)

Respondent.)

- - - - -

Washington, D.C.

Monday, October 7, 2024

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

APPEARANCES:

ADAM G. UNIKOWSKY, ESQUIRE, Washington, D.C.; on behalf of the Petitioners.

EDMUND G. LaCOUR, JR., Solicitor General, Montgomery, Alabama; on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ADAM G. UNIKOWSKY, ESQ.	
4	On behalf of the Petitioners	3
5	EDMUND G. LaCOUR, JR., ESQ.	
6	On behalf of Respondent	51
7	REBUTTAL ARGUMENT OF:	
8	ADAM G. UNIKOWSKY, ESQ.	
9	On behalf of the Petitioners	89
10		
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

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this term in Case 23-191, Williams versus Fitzgerald.

Mr. Unikowsky.

ORAL ARGUMENT OF ADAM G. UNIKOWSKY

ON BEHALF OF THE PETITIONERS

MR. UNIKOWSKY: Mr. Chief Justice, and may it please the Court:

Patsy and Felder control this case.

In Patsy, this Court held that a failure to exhaust was not a defense to liability under Section 1983. In this case, however, the Supreme Court of Alabama dismissed Petitioners' claims because Petitioners failed to exhaust, contradicting Patsy's holding.

Felder confirms that Patsy applies in state court. This Court reasoned that the dominant characteristic of a civil rights claim is that it's judicially enforceable in the first instance, and that characteristic does not vary depending on whether the suit is filed in federal or state court. The same reasoning applies to this case.

1 Respondent characterizes Alabama's
2 statute as a neutral procedural rule. But
3 there's nothing neutral about it. A claimant
4 has to seek relief from the Secretary before
5 suing the Secretary. The claimant never -- the
6 Secretary never has to seek relief from the
7 claimant for anything and never has any reason
8 to exhaust any remedy.

9 Respondent also emphasizes that
10 Alabama's law is jurisdictional. But this Court
11 has held that a state cannot avoid preemption by
12 defining the jurisdiction of state courts to
13 exclude cases in which the defendant asserts an
14 affirmative defense that this Court has held is
15 not available. And that's exactly what happened
16 in this case.

17 Finally and at a minimum, the Alabama
18 statute is preempted as applied to this case in
19 which the Alabama Supreme Court reached the
20 Kafkaesque conclusion that Petitioners could not
21 challenge their inability to exhaust precisely
22 because of their inability to exhaust.

23 I welcome the Court's questions.

24 JUSTICE THOMAS: Mr. Unikowsky, would
25 you have the same objection if Alabama required

1 these claims to be made in a lower state court?

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

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

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

25 And that's the defect the Court

1 identified in the Felder case. I view that as
2 different as the state setting up its judicial
3 system to direct courts -- parties to a
4 third-party neutral.

5 CHIEF JUSTICE ROBERTS: What if,
6 instead of the requirement you're complaining --
7 the exhaustion requirement, what if the
8 requirement were simply that parties had to go
9 through a mediation process?

10 I think several jurisdictions have
11 that. I mean, it may -- it may not last long,
12 but before you can proceed with your suit, you
13 have to sit down, and there's a mediator that
14 sees -- tries to see if you can work it out.

15 MR. UNIKOWSKY: So I think that sounds
16 a little bit like the rule in Felder. So I -- I
17 probably would say that it's preempted, but I
18 think that would boil down as to whether it's
19 really an exhaustion requirement.

20 The rule I extract from -- from Patsy
21 is that exhaustion requirements are -- are
22 preempted. You know, I think there's some
23 borderline cases about whether something really
24 qualifies as an exhaustion requirement. I think
25 that that question is not presented here because

1 it pretty clearly is a requirement of that
2 nature.

3 CHIEF JUSTICE ROBERTS: Well, I would
4 have thought that your -- your complaint is
5 focusing on the sort of delay, which is what the
6 exhaustion requirement simply imposes, and if
7 simply you've got -- you've got to try mediation
8 for a while, I don't know why you would say
9 that's also objectionable.

10 MR. UNIKOWSKY: Well, I think it would
11 depend on exactly what the nuts and bolts of the
12 requirements are. I mean, if you have to
13 present some version of a notice of claim to the
14 state agency and then go through a mediation
15 process, I might say that looks like the notice
16 of claim requirement in Wisconsin. And you can
17 sue right away, and then the court just sends
18 the parties off to mediation while the claim is
19 pending. That doesn't sound like an exhaustion
20 requirement at all. It is judicially
21 enforceable in the first instance, and then the
22 court is just applying a particular procedure to
23 try to encourage a settlement.

24 So I think it would -- it would depend
25 on how the mediation rule worked.

1 JUSTICE BARRETT: Mr. Unikowsky, when
2 did the state statute of limitations start
3 running, or has it?

4 MR. UNIKOWSKY: So I think that's an
5 -- an unresolved question whether it would be
6 tolled or not. I think there is some risk that
7 it wouldn't be tolled, that the state might say
8 that, you know, it expired before you got the
9 chance to exhaust because that would be the rule
10 in federal court. But I don't think that the --
11 the lower courts decided whether there would be
12 tolling during the exhaustion process.

13 JUSTICE BARRETT: Has it expired for
14 federal purposes? You know, if your -- if your
15 plaintiffs -- if your plaintiffs -- if your
16 clients were to file in federal court --

17 MR. UNIKOWSKY: No, I don't think --

18 JUSTICE BARRETT: -- would they do so?

19 MR. UNIKOWSKY: We're seeking
20 forward-looking relief, injunctive relief, so
21 we're saying there's a continuing harm. So, no,
22 I think we could still file our -- our lawsuit
23 in federal court.

24 JUSTICE BARRETT: And just out of
25 curiosity, why didn't you file a lawsuit in

1 federal court? Why did you go to state?

2 MR. UNIKOWSKY: I think we felt the
3 state court was -- was best positioned to enter
4 an injunction against the -- the state agency.
5 State courts hear the overwhelming majority of
6 unemployment insurance claims. We just felt the
7 state court would be in the best position to
8 enter and administer an injunction, so that's
9 why we went to state court.

10 JUSTICE SOTOMAYOR: I'm -- I'm very
11 confused by this system. First of all, I'm not
12 sure what the exhaustion is. Is it just merely
13 of the claim for benefits, or do you also have
14 to -- the way I read the lower court's decision,
15 supreme court decision, which is you have to
16 exhaust your due process claim before the agency
17 as well.

18 MR. UNIKOWSKY: Right. So that --

19 JUSTICE SOTOMAYOR: They said both
20 things, not just that you have to exhaust trying
21 to get your remedies, but you have to go to the
22 very agency you're accusing of a due process
23 violation to cure it, correct?

24 MR. UNIKOWSKY: Correct. That was the
25 holding as a matter of state law. We argued

1 below that you had to exhaust your claim for
2 benefits but not the claim that the agency was
3 too slow. But we lost as a matter of state law
4 on that issue.

5 JUSTICE SOTOMAYOR: All right. Just
6 so I'm clear in my own mind, I think what
7 Justice Barrett was getting at, and I -- and I'm
8 not sure I understand this completely, how this
9 would work, can you go to state court? You
10 can't go to federal court to claim a due process
11 violation until you've been denied the process,
12 correct?

13 MR. UNIKOWSKY: That's correct.

14 JUSTICE SOTOMAYOR: So, if you -- do
15 you really have a workable alternative to go to
16 federal court as opposed to state court?

17 MR. UNIKOWSKY: Well --

18 JUSTICE SOTOMAYOR: You have to file
19 with the state to claim the benefits to start
20 with, correct?

21 MR. UNIKOWSKY: Correct.

22 JUSTICE SOTOMAYOR: And so you have to
23 be there. So how and when can you go to federal
24 court?

25 MR. UNIKOWSKY: Well, I think --

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

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

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

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

16 JUSTICE GORSUCH: So what's --

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

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

25 JUSTICE GORSUCH: Did you try a

1 futility exception argument?

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

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

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

10 JUSTICE GORSUCH: Yeah.

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

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

15 MR. UNIKOWSKY: Right.

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

24 MR. UNIKOWSKY: So I don't know the
25 answer to the question. Alabama does say this

1 is a jurisdictional limitation, which implies to
2 me that there aren't equitable exceptions like
3 futility, but I -- I'm not sure.

4 JUSTICE GORSUCH: You don't know?

5 MR. UNIKOWSKY: I don't know.

6 JUSTICE GORSUCH: Okay. And then,
7 if -- if one were challenging a benefits
8 decision by the federal -- by the federal
9 government, there -- there's almost assuredly
10 going to be an exhaustion requirement, Social
11 Security disability benefits or whatever, in --
12 in federal court, and I'm just curious what you
13 might say about the incongruity of refusing to
14 allow a state to have a similar exhaustion
15 requirement that the federal government imposes
16 on Americans.

17 MR. UNIKOWSKY: Well, I don't think
18 it's incongruous at all because I think the
19 practical effect of our rule is that most claims
20 would be dismissed in state court if you're just
21 seeking benefits for -- for lack of merit
22 because you've gotten enough process.

23 In other words, if you -- if you just
24 file a claim in a state agency saying, I want
25 benefits, and then you get a bad decision from

1 the hearing examiner, and then you just go
2 straight to federal court and say, well, that
3 was a due process violation, I didn't get a good
4 hearing before the examiner, you would lose in
5 federal court. The federal court would say
6 there's no due process violation. You have
7 plenty of process in --

8 JUSTICE GORSUCH: No, I -- I --

9 MR. UNIKOWSKY: -- state court.

10 JUSTICE GORSUCH: -- understand that.

11 I think we're speaking past each other.

12 So you -- you're -- you're saying that
13 Alabama can't have an exhaustion requirement,
14 correct?

15 MR. UNIKOWSKY: Only as applied to
16 Section 1983 claims.

17 JUSTICE GORSUCH: Right. Yeah. Yeah.
18 Right. Okay.

19 But, if I were to challenge my federal
20 disability benefit claim, identical claim, just
21 against a different government, here, instead of
22 the state, the federal government, you'd almost
23 assuredly have to exhaust your administrative
24 remedies before you could challenge that
25 decision, and I'm -- I'm just curious how you

1 reconcile that fact with -- with the relief you
2 seek here.

3 MR. UNIKOWSKY: So I'm actually not
4 sure that's the case if it's the type of claim
5 we're asserting here. Like, suppose you filed a
6 Social Security claim and it was stuck in the
7 agency for five, 10, 15 years.

8 JUSTICE GORSUCH: You'd have a
9 futility argument for sure.

10 MR. UNIKOWSKY: Yeah, you -- I think
11 you'd be able to go to federal court.

12 JUSTICE GORSUCH: Yeah.

13 MR. UNIKOWSKI: That's right.

14 JUSTICE GORSUCH: Right. But,
15 otherwise, you'd have to exhaust, right?

16 MR. UNIKOWSKY: Right, unless --

17 JUSTICE GORSUCH: And that's what I'm
18 getting at, okay?

19 So, on the federal system, you have an
20 exhaustion requirement with a futility
21 exception. Assuming Alabama recognizes a
22 futility exception -- and I'll have that
23 question for counsel, I've done a little
24 research on it, it seems to have one -- why
25 shouldn't the state be allowed to have the exact

1 parallel situation that you'd have on the
2 federal system?

3 MR. UNIKOWSKY: I guess I think that
4 argument is incompatible with -- with the Felder
5 case. I mean, look at all the reasoning of the
6 Felder case. I think it would rebut that --
7 that suggestion. I mean, the Court held that
8 it's -- the state is not permitted to put that
9 type of barrier in front of the vindication of
10 the full right.

11 JUSTICE KAVANAUGH: What -- what does
12 Felder -- because that is the linchpin of your
13 argument, is that we've already decided this.
14 So what does -- what kind of state procedural
15 rules or rules does Felder still leave, and how
16 would you define the scope of that?

17 MR. UNIKOWSKY: So Felder left two
18 categories of rules that the State could apply
19 in its own courts.

20 One are neutral procedural rules. So
21 it gave the example of rules governing
22 substitution of parties and service of process,
23 rules that don't just apply to plaintiffs who
24 sue governmental defendants.

25 And then the second category was

1 certain jurisdictional rules. And Haywood
2 elaborated on this. The Court said that
3 jurisdictional rules that reflect concerns over
4 competence over the subject matter and the power
5 over the person, that jurisdictional rules are
6 designed to protect.

7 So, you know, examples of such rules
8 would be like in the -- the Herb case, a
9 jurisdictional rule that a territory -- a city
10 court can only hear cases arising from its
11 territorial limits. The Court upheld such a
12 rule. Or a case saying that the state won't
13 exercise jurisdiction over out-of-state
14 defendants if it's an out-of-state plaintiff.
15 The Court upheld such a rule in the Douglas case
16 from 1929.

17 So those are the types of
18 jurisdictional rules --

19 JUSTICE KAVANAUGH: Do you --

20 MR. UNIKOWSKY: -- that would --

21 JUSTICE KAVANAUGH: -- and do you view
22 Felder as a preemption decision then?

23 MR. UNIKOWSKY: Yes, I view Felder as
24 a preemption decision.

25 JUSTICE KAVANAUGH: And what -- on

1 what basis was the preemption?

2 MR. UNIKOWSKY: So the Court talked
3 about purposes and objectives preemption in its
4 opinion. And we actually have no problem with
5 that. We agree with all of its analysis.

6 I actually think there would be a --
7 there's a straighter path to the result in
8 Felder. I just think there's a -- a direct
9 conflict because, when the Court holds -- holds
10 that an affirmative defense is not available, it
11 just means it's not available, regardless of
12 whether the adjudicator is a federal or state
13 judge.

14 So I view sort of direct -- I view
15 Felder as a direct conflict preemption case.
16 The Court did couch it in -- in purposes and
17 objectives language, possibly because, in that
18 case, it actually wasn't clear whether it was an
19 exhaustion requirement at all.

20 Unlike typical exhaustion
21 requirements, you don't have to wait for the
22 agency to rule. And so one of Wisconsin's
23 arguments in that case was this isn't exhaustion
24 like in Patsy. I think that's why the Court
25 walked through all of the -- the reasons that

1 the statute conflicted with, you know, the
2 purpose of Congress. And then it said, well,
3 actually, we think it is an exhaustion
4 requirement, and then Patsy's reasoning just --
5 just follows.

6 JUSTICE JACKSON: What -- what I guess
7 I'm confused about from your answer to Justice
8 Kavanaugh is how the jurisdictional and neutral
9 requirements relate to the -- the analysis in
10 Felder.

11 I mean, Felder's rule about whether or
12 not it was preempted didn't seem to have
13 anything to do with whether the rule was
14 jurisdictional or neutral.

15 So why do you suggest that that's
16 somehow a way to get out of Felder's analysis
17 about preemption?

18 MR. UNIKOWSKY: Well, I think -- so
19 Felder specifically said the rule in that case
20 wasn't neutral. So the Court has this whole
21 discussion about how, you know, it only applies
22 to -- to plaintiffs who sue the government. And
23 so that's -- that's not neutral as the Court --

24 JUSTICE JACKSON: Yeah, but that's not
25 what --

1 MR. UNIKOWSKY: -- understood the
2 question.

3 JUSTICE JACKSON: I mean, I'm looking
4 at the analysis in Felder and it -- as you said,
5 subsequently, it's a direct preemption case. It
6 says that the notice of claim statute undermines
7 the uniquely federal remedy that is Section 1983
8 in several interrelated ways.

9 And then it talks about three ways,
10 one of which is that it conditions the right of
11 recovery that Congress has authorized. The
12 second is that it discriminates against the
13 federal right. And the third is that it -- it
14 looks like an exhaustion requirement, all right?

15 But, really, the reason it's preempted
16 is because it undermines the federal right. And
17 it seems to me that Alabama's law is doing all
18 of those three interrelated things. So I don't
19 understand why we care whether or not it's
20 jurisdictional or whether or not it's neutral
21 in -- in any given sense. It's doing what
22 Felder says you can't do because it undermines
23 the federal right.

24 MR. UNIKOWSKY: So I agree the Court
25 doesn't have to care about any of that stuff.

1 In fact, there is language in Felder that says
2 that even if a rule is neutral and procedural,
3 it still -- if, you know, it -- it -- it -- if
4 it undermines a federal right, it's still
5 preempted. And we'd be perfectly fine if the
6 Court went in that direction.

7 JUSTICE ALITO: Well --

8 MR. UNIKOWSKY: I -- I don't think
9 it's neutral and procedural, but -- I'm sorry,
10 Your Honor.

11 JUSTICE ALITO: Well, do you contest
12 the principle that state courts are generally
13 completely free to define the jurisdiction of
14 their courts?

15 MR. UNIKOWSKY: No, I don't contest
16 that general principle.

17 JUSTICE ALITO: But there are some
18 exceptions, right?

19 MR. UNIKOWSKY: Yes.

20 JUSTICE ALITO: So why isn't that body
21 of case law the appropriate body of case law to
22 apply here since the Alabama Supreme Court tells
23 us that this rule is jurisdictional? We
24 assume -- presumably have to accept that. This
25 is a matter of state court jurisdiction.

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

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

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

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

22 And, in fact, in the Howlett case,
23 there's actually this language that says that
24 Felder would not have come out the other way if
25 Wisconsin had said that state courts lack

1 jurisdiction over claims in which the notice of
2 claim requirement wasn't satisfied.

3 JUSTICE ALITO: Well, in Haywood, the
4 courts -- the Court concluded that the New York
5 rule evinced hostility toward 1983.

6 Can that be said here, when the
7 Alabama courts will entertain the 1983 claim,
8 it's just a question of when they will do it?

9 MR. UNIKOWSKY: Well, I think that you
10 would -- I mean, "hostility" is too strong a
11 word. But I think the State has a policy
12 disagreement with Congress over the merit of
13 hearing unexhausted claims.

14 Respondent's brief emphasizes that
15 Alabama made the policy judgment that exhaustion
16 is a good idea, it really helps the claimant.
17 And that's the policy judgment that is
18 inconsistent with the policy judgment that
19 Congress made when it enacted Section 1983
20 without an exhaustion requirement.

21 JUSTICE KAGAN: You have a broad
22 argument, Mr. Unikowsky, that if it's an
23 exhaustion requirement it -- it -- it can't get
24 in the way of a lawsuit.

25 You also have a narrower argument that

1 has to do with this case. But what would be --
2 if you had to define a narrower class of cases
3 that are preempted so that if we wanted to avoid
4 the question of whether all preemption -- excuse
5 me, whether all exhaustion requirements were
6 preempted, what would that narrower class of
7 cases look like, and what justifies the
8 parameters?

9 MR. UNIKOWSKY: So I think the Court
10 could say that it's not going to rule on whether
11 all exhaustion requirements are preempted, but
12 it's going to say that this particular statute
13 is preempted as applied to all 1983 claims. And
14 that holding would avoid looking at the facts of
15 this particular case.

16 And I think the Court could reach that
17 conclusion by comparing the time limits here to
18 the time limits in Felder. So, in Felder, the
19 Court held that the statute undermines Section
20 1983 because the claimant only had 120 days to
21 bring the suit, and, therefore, the practical
22 effect of the notice of claim statute was to
23 immunize the state against many types of 1983
24 claims.

25 And so I think, you know, this case,

1 the time limits are actually much shorter. It's
2 -- it's seven days from receipt or 15 days from
3 mailing of a decision to file an internal appeal
4 to the appeals tribunal. It's also 15 days to
5 go to the board of appeals. One of the
6 Petitioners in this case alleges that he
7 couldn't appeal because that entire period came
8 and went when he was in the hospital on a
9 ventilator because of COVID.

10 So I think that the Court can hold
11 that this particular statute has the same type
12 of adverse effects on claimants as --

13 JUSTICE KAGAN: Just it -- so it would
14 be a line about the degree of burden that's
15 attached to the 1983 right?

16 MR. UNIKOWSKY: That -- that's right.
17 It could -- it could go in that direction
18 because that was part of Felder's reasoning, and
19 so I think the Court can incorporate that.

20 JUSTICE KAGAN: I mean, it was part of
21 Felder's reasoning. Felder has this -- some
22 language that suggests a very broad rule
23 applying to all exhaustion requirements, but
24 then it also goes into the time limits. It has
25 a lot to do with, like, how much burden there is

1 on the 1983 right, and it also discusses the
2 purposes of the statute and whether those
3 purposes suggest a conflict with the policy of
4 1983.

5 And the relationship between or among
6 all of those things is not particularly clear
7 from the language of the opinion. It sort of
8 suggests that they don't really believe that
9 there's an absolute bar when it comes to
10 exhaustion requirements.

11 Do you agree with that? Do you have
12 any, you know, views about the relationship
13 among those three aspects of the Court's
14 reasoning?

15 MR. UNIKOWSKY: Yeah, I -- I'm not
16 sure I agree with that because I think the
17 reason there were so many different arguments in
18 Felder was that it wasn't really clear that was
19 an exhaustion requirement in the typical way of
20 you file your claim to the agency, you wait for
21 a couple years, you're trapped in purgatory, and
22 then you leave the agency, right? Because it
23 was just a notice of claim requirement, you just
24 submit your claim, and if you wait a particular
25 period and they haven't answered, you get to

1 sue.

2 And, in fact, in -- in -- in the part
3 of the opinion talking about exhaustion and --
4 and -- and Patsy, the Court says, well, you
5 know, the State says it's de minimis, implying
6 that, you know, maybe some exhaustion
7 requirements fall under Patsy, but this just
8 isn't one. And the Court says no, no, no, this
9 really looks like an exhaustion requirement.
10 But, because of that dispute, I think the Court
11 felt the need to go through, you know, all of
12 the other doctrinal machinery.

13 I think this exhaustion requirement is
14 exactly like the ones in Patsy. It's an
15 absolutely classic exhaustion requirement. You
16 go to the agency. You have to wait for it to
17 rule. As this case illustrates, you might have
18 to wait for several years before getting a
19 chance to go to court. And so I think Patsy's
20 reasoning that this is just not an affirmative
21 defense to a Section 1983 claim carries over to
22 this case.

23 JUSTICE BARRETT: Mr. Unikowsky,
24 how -- you know, we've said in our own contexts
25 about jurisdiction it's a term of many, many

1 meanings, too many. How are we supposed to --
2 like, let's say I agree with you that the
3 definition of jurisdiction has to be a federal
4 one.

5 How are we supposed to decide?
6 Because a different test does apply, right, if
7 this is a jurisdictional requirement than if
8 it's just a straight-up, you know, more
9 Felder-like scheme. So what is the test? How
10 do we decide if a state rule is really
11 jurisdictional or not?

12 MR. UNIKOWSKY: So the words of this
13 Court's cases, which I'm sure Your Honor knows
14 very well, is that it's really jurisdictional if
15 it reflects concerns over the power over the
16 person or competence over the subject matter
17 that jurisdictional rules are designed to
18 protect.

19 I certainly understand that that
20 formulation will not resolve any or even many
21 cases, but I think that just looking at how the
22 Courts in Howlett and Haywood reached their
23 conclusions -- so, in both cases, the Court held
24 that, number one, the state courts have general
25 jurisdiction over 1983 claims.

1 JUSTICE BARRETT: Mm-hmm.

2 MR. UNIKOWSKY: Number two, the state
3 courts in general had authority over these
4 defendants as long as certain other, you know,
5 conditions were satisfied. So, for example, in
6 Haywood, the Court emphasizes that you can get
7 injunctive relief against these defendants. And
8 so the Court said, well, if there's power over
9 1983 claims in general, power over these
10 defendants in general, the rule is not a bona
11 fide jurisdictional rule.

12 I think that that's the -- the
13 reasoning in those cases. And, again, carried
14 over to this case, I think you'd have the same
15 reasoning. Alabama courts generally have
16 jurisdiction over Section 1983 claims. There is
17 jurisdiction over this defendant as long as the
18 claim is exhausted. There's claim --
19 jurisdiction over unexhausted claims when there
20 is no exhaustion requirement in the particular
21 scheme.

22 All that's happening here is that the
23 state is cutting out from jurisdiction claims in
24 which the -- the -- the defendant has this
25 particular affirmative defense, even though this

1 Court has held that that's not a defense under
2 Section 1983.

3 And so I don't think the Court really
4 has to elaborate the exact lines here. Its --
5 the lines are a little bit blurry, but I think
6 that, you know, as applied to these particular
7 facts, you can just --

8 JUSTICE BARRETT: It's like a claims
9 processing rule --

10 MR. UNIKOWSKY: Right. Exactly.

11 JUSTICE BARRETT: -- rather than a
12 jurisdictional rule?

13 MR. UNIKOWSKY: Exactly. So, I mean,
14 you know, I think there's going to be a lot of
15 borderline cases, but I don't think this is --
16 this is one.

17 JUSTICE BARRETT: And let me just ask
18 you one question about how this scheme works
19 because I agree it's very odd. Is there some
20 mechanism when you're before this intermediate
21 tribunal where you actually fill out a piece of
22 paper and say, I'm asserting a due process claim
23 in addition to my claim for benefits? How would
24 one even exhaust the due process portion of
25 this?

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

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

15 But what you just said in response to
16 Justice Barrett makes me think that this could
17 be much more important because, if we are going
18 to read into the general rule that state courts
19 can define their jurisdiction, what we have done
20 in determining whether federal statutes are
21 jurisdictional, which is pretty much to say,
22 boy, it's really hard for us to conclude that
23 anything is jurisdictional, then you are really
24 asking for a significant weakening of this
25 general rule, which has been a -- a -- a

1 landmark rule for hundreds of years.

2 MR. UNIKOWSKY: So I'm not sure the
3 Court should engage in the sort of statutory
4 interpretation of state statutes that it would
5 engage in for federal statutes. That's not the
6 rule we're asking for, All right?

7 We're not quarreling with the state
8 court that, as a matter of state law, this is a
9 jurisdictional statute.

10 JUSTICE ALITO: Okay. Fine. All
11 right.

12 MR. UNIKOWSKY: Okay? What we're just
13 saying is that not all jurisdictional rules are
14 created alike for purposes of federal law, and
15 that distinction might sort of match the
16 jurisdictional versus claim processing type of
17 distinction that this Court has articulated --

18 JUSTICE ALITO: Okay.

19 MR. UNIKOWSKY: -- in federal cases.

20 JUSTICE JACKSON: And are you saying
21 that, assuming this is a state jurisdictional
22 rule, it cannot or can be preempted? What is --
23 I thought this case was about preemption, not
24 about the characterization of the state law.

25 So, if we agree and assume that the

1 state law is jurisdictional, what implication
2 for whether or not it can be preempted by
3 federal law?

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

7 JUSTICE JACKSON: Why?

8 MR. UNIKOWSKY: Because this Court has
9 held as far back as, like, the Mondou case in
10 1912 that a state court cannot decline
11 jurisdiction over a federal claim because of a
12 disagreement with -- with the federal policy
13 allowing the claim to proceed.

14 And I think that's what's happening in
15 this case. Alabama has the view that exhaustion
16 is a good idea, and it has imposed that by
17 statute. But Congress has decided that that's
18 not the case, that you should be able to bring
19 1983 claims without having to exhaust. And so
20 the rule --

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

24 MR. UNIKOWSKY: Yeah. I think the
25 rule of decision applied by the state court in

1 this case is inconsistent with the rule of
2 decision that Section 1983 requires the state
3 court to adopt. So I think there's just direct
4 preemption in that way.

5 We're not disagreeing with the purpose
6 and objectives analysis in Felder. We agree
7 with that too. But I think there's an even more
8 straightforward way to get to the same outcome.

9 JUSTICE KAVANAUGH: Put aside Felder.
10 What is the problem with just going to federal
11 court?

12 MR. UNIKOWSKY: Well, we could have
13 gone to federal court, but there's a lot of
14 cases from this Court. I won't mention Felder,
15 but there's a lot of other cases --

16 JUSTICE KAVANAUGH: Well, what is the
17 real-world problem with just going to federal
18 court? Or maybe there aren't any and you're
19 just saying precedent says we can go to state
20 court. But do you have any real-world problems
21 with just going to federal court?

22 MR. UNIKOWSKY: Yeah, I think there's
23 a lot of reasons that you would want to go to
24 state court. So, first of all, the Pennhurst
25 doctrine sometimes prohibits plaintiffs from

1 bringing state law claims in federal court.
2 Federal courts also often talk -- have
3 abstention doctrines that prohibit bringing the
4 claim in federal court. There's a -- there's a
5 brief from two religious freedom organizations
6 that talks about the abstention doctrines in
7 some detail.

8 Also, there's practical concerns.
9 Like, in some cases, lawyers would just be more
10 familiar with the local state court. The vast
11 majority of unemployment insurance litigation in
12 Alabama happens in state court. And so, if a
13 lawyer may be more familiar with that tribunal,
14 they may spend their entire career practicing in
15 state court, and if they have a civil rights
16 claim from a claimant, then it makes sense for
17 them to go to state court.

18 JUSTICE KAVANAUGH: And you mentioned
19 this earlier, but a procedural due process claim
20 usually requires that you go through the state
21 processes first. Maybe that's how this case got
22 on the -- on the wrong track.

23 Do you agree with that?

24 MR. UNIKOWSKY: In general, yes. I
25 think that if you went to federal court and

1 asserted your due process claim without
2 exhausting, you'd usually lose, except in an
3 unusual case like this, where you're actually
4 challenging the inability to exhaust.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 I want to make sure I have your
8 complete answer to the line of questioning I --
9 I understood Justice Kagan to be pursuing, I
10 mean -- and I think why you called this
11 Kafkaesque, which is because you're being told
12 you have to go to the state -- your -- your
13 claim is the state doesn't handle these things
14 in a timely fashion, they lose the papers, you
15 can't answer the phone, so why send them back?
16 If you have to go back there, that's -- your
17 whole point is you -- you -- you can't go back
18 there because they do such a -- that's what
19 you're challenging.

20 And I just want to make sure
21 whether -- if you had the most efficient state
22 procedure imaginable, you know, they answer the
23 phone on the first ring, and they quickly give
24 you a decision, would your argument be the same,
25 that it doesn't matter?

1 MR. UNIKOWSKY: It would be the same.
2 We would definitely lose in that scenario, but
3 it would be the same argument, that you wouldn't
4 have to exhaust. So, if such a claim was --

5 CHIEF JUSTICE ROBERTS: I'm just --
6 you would lose? In other words --

7 MR. UNIKOWSKY: On the merits. On the
8 merits, we would lose.

9 CHIEF JUSTICE ROBERTS: You would not
10 -- then the ruling would be you do not -- you --
11 you do -- you do have to go to the state before
12 pursuing your 1983 action?

13 MR. UNIKOWSKY: We don't think that --

14 CHIEF JUSTICE ROBERTS: I mean the
15 state agency.

16 MR. UNIKOWSKY: So we don't think
17 there should ever be an exhaustion requirement.

18 If you filed a suit in federal court
19 and said, you know, even though they answered on
20 the first ring, they should have been even
21 faster, there wouldn't be an exhaustion problem.
22 The federal court would just say there's no due
23 process violation. It's a great state agency.
24 It's very effective.

25 And we just want the state court to

1 apply the same rule of decision, right? You
2 don't have to exhaust, but your claim loses
3 because you're getting plenty of process and
4 there's no problem with the process.

5 CHIEF JUSTICE ROBERTS: Okay. Well,
6 then what was Kafkaesque about the process? I
7 understood you to say that that was the problem,
8 that it was -- it imposed a burden on your --
9 the exercise of your -- your federal right.

10 MR. UNIKOWSKY: What was Kafkaesque is
11 the ruling that we couldn't challenge our
12 inability to exhaust precisely because we
13 haven't exhausted. That was the problem.

14 Like, our -- the problem was we can't
15 exhaust effectively, and the state court held
16 that because you didn't exhaust --

17 CHIEF JUSTICE ROBERTS: Well, but what
18 if you can --

19 MR. UNIKOWSKY: -- you can't challenge
20 that.

21 CHIEF JUSTICE ROBERTS: -- what if you
22 can exhaust effectively?

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

25 I mean, I -- the problem is, as

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

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

10 MR. UNIKOWSKY: Yes.

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

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

19 The problem with that is that as a
20 practical matter, you're immunizing the state in
21 the state court from the 1983 claim because you
22 can't exhaust. So you're incapable of
23 challenging your inability to exhaust because
24 the state is saying you have to exhaust until
25 you can bring the challenge.

1 So there's no way to challenge in
2 state court at all, and so it's a de facto
3 immunity akin to the immunities that were in the
4 Haywood and -- and the Howlett case. So that's
5 our -- our narrowest argument on this.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Justice Thomas?

9 Justice Alito?

10 JUSTICE ALITO: Could you have sought
11 mandamus in state court to get a ruling in these
12 cases?

13 MR. UNIKOWSKY: So --

14 JUSTICE ALITO: An administrative
15 ruling in these cases?

16 MR. UNIKOWSKY: So there's a dictum
17 that is cited by Respondent from a 1997
18 intermediate appellate court case that says
19 that, in principle, mandamus could be available
20 if an agency intentionally sits on a claim and
21 drags its feet, but no mandamus claim was
22 asserted there.

23 I -- I think mandamus wouldn't be very
24 effective in this case for a few reasons.

25 So, first of all, of course, you have

1 to show a clear and indisputable right to the
2 writ, which is a higher standard than in an
3 ordinary civil case.

4 Also, you wouldn't -- the only thing
5 the state court could do is tell the state
6 agency to rule. It couldn't enter the other
7 remedies that -- that we're seeking in this
8 case. Mandamus is also a discretionary remedy,
9 and so I just don't think it's an effective
10 substitute for the 1983 claims we're asserting
11 today.

12 JUSTICE ALITO: But what if a state
13 has a -- a regime under which the -- the -- the
14 person seeking the benefits first has to file
15 the claim and then there -- there's a -- there
16 are two levels of -- of appellate review,
17 administrative review, and after -- I assume
18 that you would admit that if the case were filed
19 in federal court, the -- the person would have
20 to seek the benefits in the first instance,
21 right?

22 MR. UNIKOWSKY: Yes. They wouldn't
23 have to -- it wouldn't be an exhaustion problem
24 under Patsy.

25 JUSTICE ALITO: No. Okay.

1 MR. UNIKOWSKY: They'd have to seek
2 the benefits because there's no violation if you
3 haven't tried the benefits.

4 JUSTICE ALITO: All right. And then
5 the -- then the -- the person says, oh, this
6 process is too long, I -- I want a quick
7 decision, they denied my claim. Then what?

8 MR. UNIKOWSKY: So --

9 JUSTICE ALITO: It's a violation of my
10 due process rights because this is more
11 elaborate than it needs to be.

12 MR. UNIKOWSKY: So, if your claim was
13 denied --

14 JUSTICE ALITO: Right.

15 MR. UNIKOWSKY: -- you can go to
16 federal court and you can file your claim and
17 you can say there was a due process violation,
18 and the court would adjudicate that.

19 If you jumped the gun and didn't wait
20 for all the process to wrap up, then probably
21 the federal court would say that there's no due
22 process problem. The state's given you plenty
23 of process. And we'd want the state court to
24 reach the same ruling.

25 And if that's not the case, if you

1 were collaterally attacking the state court
2 administrative process and you finished it and
3 there was still a due process violation, then
4 maybe you'd win in federal court. And if you'd
5 win in federal court, you should win in state
6 court too. We're just asking to align the
7 rules.

8 JUSTICE ALITO: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Sotomayor?

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

17 MR. UNIKOWSKY: That -- that's one
18 reason it's not neutral. And another reason is
19 Felder's reason, which is that it only applies
20 to plaintiffs who sue the government.

21 JUSTICE SOTOMAYOR: Plaintiffs who sue
22 the government but for this particular type of
23 benefit?

24 MR. UNIKOWSKY: Right.

25 JUSTICE SOTOMAYOR: So it is sui

1 generis to just one class of plaintiffs on one
2 potential constitutional violation?

3 MR. UNIKOWSKY: That's right.

4 JUSTICE SOTOMAYOR: Or take --

5 MR. UNIKOWSKI: It does apply to --
6 I -- it does apply to state law claims. I
7 acknowledge that. But it's not neutral in the
8 sense that it doesn't apply in private tort
9 litigation. It doesn't apply to other lawsuits
10 against the government.

11 JUSTICE SOTOMAYOR: I -- I guess I'm
12 having trouble with the jurisdictional argument
13 that my colleagues are concerned about.

14 This is not jurisdictional in the
15 sense of we're telling state courts that they
16 can't hear a claim, correct?

17 MR. UNIKOWSKY: That -- I agree with
18 that, Your Honor.

19 JUSTICE SOTOMAYOR: All right. We're
20 not saying this is a federal claim, so it has to
21 go to federal court. We're saying, no, you
22 state courts have the power to hear
23 constitutional -- 1983 constitutional claims
24 that your legislature permits you to do.

25 So it's not as if they're -- filed a

1 neutral rule that says you can't hear 1983
2 claims, correct?

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

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

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

13 JUSTICE SOTOMAYOR: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice Kagan?

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

21 In other words, if somebody goes in
22 and says, I got \$100, I really deserve \$200,
23 they didn't listen to a certain category of
24 evidence, that's a due process violation. You
25 know, you've not made the argument, they're just

1 going to throw you out, whether it's -- you call
2 it on the merits or for -- for -- because your
3 claim isn't ripe.

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

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

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

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

21 JUSTICE KAGAN: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice
23 Gorsuch?

24 JUSTICE GORSUCH: This new narrow
25 theory, what -- what exactly does it encompass?

1 What class of cases?

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

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

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

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

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

23 MR. UNIKOWSKY: I think applying this
24 rule, it's impossible to challenge the
25 exhaustion requirement in state court, yes.

1 JUSTICE GORSUCH: Okay. And what if
2 it's not impossible here because of mandamus,
3 because you might have a futility argument? We
4 just don't know. Then what?

5 MR. UNIKOWSKY: So I don't think
6 Respondent has argued in favor of futility
7 arguments.

8 JUSTICE GORSUCH: Well, I think all of
9 this is kind of new, to be honest with you,
10 this -- this narrow theory. I -- I read your
11 brief as pressing the broad theory, but here we
12 are. Let -- let's say we just don't know
13 whether it is truly impossible here. What do we
14 do then?

15 MR. UNIKOWSKY: Well, I -- even if
16 it's not truly --

17 JUSTICE GORSUCH: Putting aside your
18 broad theory.

19 MR. UNIKOWSKY: No, I understand, Your
20 Honor.

21 Even if it's not truly impossible, I
22 still think that at least it -- it -- it puts a
23 condition, a significant condition in front of
24 the vindication of the claim that's no less
25 significant than the condition in -- in the

1 Felder case.

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

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

11 JUSTICE GORSUCH: Okay.

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

18 JUSTICE GORSUCH: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Kavanaugh?

21 Justice Barrett?

22 JUSTICE BARRETT: I just want to
23 clarify your answer to Justice Gorsuch.

24 He asked you to stick to the narrow
25 theory, but to answer, you reverted to the broad

1 one, that Patsy just precludes exhaustion
2 requirements generally.

3 If we do not agree with your reading
4 of Patsy, can you articulate -- try one more
5 time to articulate that narrow theory that
6 doesn't rely on Patsy?

7 MR. UNIKOWSKY: Sure. I would say
8 that there is a significant barrier to the
9 vindication of a claim challenging the inability
10 to exhaust a remedy when the court holds that
11 you have to exhaust a remedy in order to bring
12 that claim.

13 I mean, what we're trying to do is get
14 the state agency to give us hearings and give us
15 adequate notice. And what the state court said
16 is that because you didn't exhaust those
17 remedies precisely because we didn't get the
18 hearing and the notice, you can't bring your
19 claim.

20 So, even if Justice Gorsuch is correct
21 that there's some theoretical way with mandamus,
22 which we don't think this is an adequate
23 substitute to bring the claim, I mean, there's
24 still a very significant barrier which is -- to
25 the bringing of the claim. So, you know, that

1 does place the type of barrier that I think
2 would conflict with Congress's objectives when
3 it enacted Section 1983.

4 JUSTICE BARRETT: Okay. Thanks.

5 CHIEF JUSTICE ROBERTS: Justice
6 Jackson?

7 Thank you, counsel.

8 Mr. LaCour.

9 ORAL ARGUMENT OF EDMUND G. LaCOUR, JR.

10 ON BEHALF OF THE RESPONDENT

11 MR. LaCOUR: Mr. Chief Justice, and
12 may it please the Court:

13 This Court finds historic state powers
14 to be preempted only when the text of federal
15 law makes that result clear. Nothing in 42
16 U.S.C. Section 1983 makes clear that it was
17 meant to preempt neutral jurisdictional rules
18 like the one at issue here.

19 Petitioners' reliance on Patsy ignores
20 the key difference between exhaustion rules
21 created by Congress and exhaustion doctrines
22 crafted by courts. The former may preempt, but
23 the latter do not. They are judge-made timing
24 rules, like ripeness and abstention, that do not
25 add elements to a federal right but merely

1 determine when a federal court is going to hear
2 it.

3 This Court's ripeness and abstention
4 holdings do not apply to state courts. Nor does
5 its determination that federal courts generally
6 should not send 1983 plaintiffs to the states.
7 Precedent confirms that 1983 does not contain a
8 categorical no-exhaustion element. In Johnson
9 v. Fankell, the Court did not require immediate
10 appellate review of a 1983 defense. In Ohio
11 Civil Rights Commission v. Dayton Christian
12 Schools from 1986, this Court applied Younger
13 abstention to force a 1983 plaintiff back into
14 state agency proceedings.

15 These decisions show that deferring
16 consideration of a federal right does not
17 necessarily alter or defeat it. Thus, while
18 some notice of claims rules, like the one in
19 Felder, are preempted as obstacles to
20 adjudication and liability, agency review is
21 typically a means of adjudication and does not
22 inherently conflict with 1983's remedial
23 purpose.

24 But, even if immediate judicial
25 consideration were an unwritten element of 1983,

1 neutral jurisdictional rules like Alabama's are
2 still a valid excuse for declining jurisdiction.
3 Reading 1983 to preempt such laws would raise
4 serious constitutional questions that are best
5 avoided.

6 I welcome the Court's questions.

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

12 So would you respond to that?

13 MR. LaCOUR: Yes, Your Honor. Two
14 points. One, as Justice Gorsuch was alluding
15 to, that is a new argument that was not
16 presented to the Alabama Supreme Court. It was
17 not passed upon by the Alabama Supreme Court.
18 It's not in the cert petition, and it's not
19 properly before this Court. Their only argument
20 is that even the most perfect agency
21 adjudication, if it has an exhaustion rule, is
22 preempted. And we think that, as Justice Kagan
23 was alluding to with Felder, that that rule has
24 already been rejected by this Court.

25 But looking at this as-applied

1 challenge to Alabama's law, we don't think that
2 it is the case that it functions as an immunity.
3 Mandamus is still available. There is still the
4 potential for a futility argument, one that was
5 not raised below.

6 And so it's simply not the case that
7 it is impossible to get an adjudication here.

8 JUSTICE SOTOMAYOR: I'm not sure how
9 it is possible given that, as I read the court's
10 decision below, you have to bring the due
11 process argument to the agency, and I don't see
12 any procedure to do that within the agency.

13 MR. LaCOUR: Well, Your Honor --

14 JUSTICE SOTOMAYOR: There's nothing
15 that -- there's no mandamus within the agency.
16 I don't know how the mandamus court would have
17 jurisdiction because it requires exhaustion.

18 So you're in a loop that I'm not sure
19 how this claimant gets out of.

20 MR. LaCOUR: Your Honor, I don't think
21 mandamus would require exhaustion. The point of
22 mandamus would be to break the sort of logjam
23 that Plaintiffs are complaining about here, but
24 they didn't take advantage of mandamus.

25 JUSTICE SOTOMAYOR: Well, Alabama --

1 Alabama ruled very broadly. It didn't say that
2 Mr. Williams, for example, who had a final
3 judgment that he was attacking, had a claim that
4 could be heard in court. And you seem to
5 concede in your briefs that he did. He got his
6 claim thrown out because he didn't file a notice
7 of claim.

8 Then he brought a due process argument
9 saying that the notice he received was
10 inadequate or the time limits were not proper
11 under due process. And the Alabama court
12 dismissed his action as unexhausted. That
13 sounds to me as if the due process claim has to
14 be exhausted within the agency.

15 MR. LaCOUR: Well, Your Honor, if --
16 if he had exhausted it and it was final, he had
17 the ability to file a direct appeal to the
18 circuit court.

19 JUSTICE SOTOMAYOR: He did.

20 MR. LaCOUR: No, Your Honor --

21 JUSTICE SOTOMAYOR: And the court --
22 he did. The court did what it did. And, all of
23 a sudden, he goes up to the Alabama Supreme
24 Court and it dismisses it as unexhausted.

25 MR. LaCOUR: Your Honor, I think it's

1 important to remember how this was actually
2 litigated before the state courts. Their
3 primary argument, if you go back to their briefs
4 before the state courts, was that this
5 exhaustion requirement didn't apply to sort of
6 procedural challenges whatsoever. There was no
7 1983 claim --

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

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

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

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

25 MR. LaCOUR: Correct, but we -- we

1 presume that state courts --

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

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

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

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

17 JUSTICE KAVANAUGH: Well, General, on
18 -- on that question, you started the day but
19 with the -- the text of federal law does not
20 preempt, you know, and that's a fair argument
21 and a good argument. It's just the argument
22 that was in the dissent in Felder. Justice
23 O'Connor made exactly those same points, but it
24 was a dissent in Felder. And in the majority in
25 Felder, it made clear that the exhaustion

1 requirement by Wisconsin's law was problematic.
2 It said it "doesn't involve lengthy or expensive
3 administrative proceedings, but it forces
4 injured persons to seek satisfaction from those
5 alleged to have caused the injury in the first
6 place. Such a dispute resolution system may
7 have much to commend it, but that is a judgment
8 the current Congress must make."

9 In other words, the language in Felder
10 does seem -- contra Justice O'Connor's dissent,
11 the language in the majority in Felder does
12 seem to suggest that exhaustion requirements
13 generally -- and we can talk about how to define
14 those -- but generally are preempted even though
15 there's no text.

16 MR. LaCOUR: Well, a few things on
17 that point, Your Honor.

18 First is Felder did not just say Patsy
19 ruled and then, in a two-page opinion, end the
20 case. There was a detailed, nearly 15-page
21 preemption analysis there. And the Court made
22 clear there were really two key problems with
23 Wisconsin law. One was that, in purpose and
24 effect, it minimized liability. And so there's
25 your clear conflict. You have a federal law

1 designed to impose liability and a state law
2 designed to minimize it. I think that is the
3 through line from Felder to Howlett to Haywood,
4 is those are immunity laws.

5 And, second, the Court said that the
6 law in Wisconsin frequently and predictably
7 defeated the 1983 claim. Now "defeat" means
8 that you're going to exercise jurisdiction over
9 it and then dismiss it with prejudice because it
10 is an affirmative defense that the defendants
11 were handed by Wisconsin, and that did result in
12 dismissals with prejudice.

13 A jurisdiction -- like the law at
14 issue in Alabama, jurisdiction's not an
15 affirmative defense. You would never say that
16 an amount in controversy requirement is an
17 affirmative defense. And it doesn't defeat the
18 right. It simply says we're not going to
19 consider it.

20 And so there's no way for Alabama to
21 alter the 1983 right --

22 JUSTICE JACKSON: But that's not all
23 that Felder --

24 MR. LaCOUR: -- by merely declining
25 jurisdiction over it.

1 JUSTICE JACKSON: Counsel, that -- I
2 appreciate that summary of what Felder said, but
3 in the section on page 141 where it talks about
4 what it means to undermine for preemption
5 purposes, it, first of all, has three things,
6 not just two. And the three things aren't just
7 minimizing liability and defeating the 1983
8 claim.

9 It says it conditions the right of
10 recovery that Congress has authorized and does
11 so for a reason manifestly inconsistent with the
12 purposes of the federal statute. So that's one
13 thing.

14 And I appreciate that it coloned to
15 minimize government liability --

16 MR. LaCOUR: Yes.

17 JUSTICE JACKSON: -- but the point is
18 that it's inconsistent with the purposes of the
19 federal statute.

20 Second, the notice provision
21 discriminates against the federal right, and it
22 talks about the differences in the time limits
23 in a way that discriminates.

24 And then, finally, it operates in part
25 as an exhaustion requirement.

1 Now I appreciate that your counsel on
2 the other side is just honing in on the
3 exhaustion requirement, but Felder seems to take
4 it even beyond that. So can you explain why
5 Alabama's law is not doing the three things that
6 mattered in Felder to the preemption analysis?

7 MR. LaCOUR: Yes. So agency
8 adjudication is not a means of minimizing
9 liability. It is a means of adjudicating
10 whether or not claimants are entitled to money.
11 I think that's far different from the notice of
12 claims requirement in Felder, which had no
13 benefit whatsoever to plaintiffs.

14 Unlike here, the exhaustion
15 requirement in Alabama law can be beneficial to
16 plaintiffs because it keeps their well-heeled
17 employers or the Secretary from taking them to
18 court immediately --

19 JUSTICE JACKSON: Right. But can you
20 talk about the purposes of the federal statute,
21 right?

22 MR. LaCOUR: Yes. And --

23 JUSTICE JACKSON: Because I understood
24 preemption to be about inconsistency --

25 MR. LaCOUR: Right.

1 JUSTICE JACKSON: -- with the reasons
2 or the goals the federal statute was there.

3 So isn't a requirement like Alabama's,
4 which prohibits the ability to bring a due
5 process claim under these circumstances,
6 inconsistent with Section 1983, which is
7 supposed to be giving people the ability to make
8 these kinds of claims?

9 MR. LaCOUR: Your Honor, we're not
10 prohibiting anyone from bringing them. You get
11 to raise those very claims in front of the
12 agency first. And I think that's a key
13 difference between the Wisconsin law --

14 JUSTICE JACKSON: But not if the
15 agency won't process your papers.

16 MR. LaCOUR: Well, and -- and, Your
17 Honor, that's why we have mandamus. That's why
18 the futility arguments are -- are present as
19 well.

20 And then, second, there's -- there's a
21 key difference between going to an agency for an
22 adjudication and just being forced to go park
23 your claim for 120 days with the police officers
24 who purportedly beat you up, the law at issue in
25 Felder. Again, that in no way can benefit

1 plaintiffs. But the exhaustion requirement can
2 benefit plaintiffs.

3 And also, my -- my friend is -- is
4 incorrect. The exhaustion requirement does
5 apply to the Secretary as it applies to
6 claimants as well.

7 JUSTICE JACKSON: So your argument at
8 bottom is that this is consistent with
9 Congress's objectives in 1983? Because I
10 understood that to be the sort of umbrella
11 consideration with respect to preemption, which
12 is what I thought we were talking about here.

13 MR. LaCOUR: Yes. I -- I don't see
14 any conflict with the way Alabama has structured
15 judicial administration and with the purposes of
16 1983, which are to impose liability.

17 This is not a liability-minimizing
18 scheme. It was not designed to do that. It was
19 invented in 1935 to make unemployment benefits
20 available to people.

21 No one would think that the --

22 JUSTICE JACKSON: Has anybody ever
23 recovered in 1983 making these kinds of claims
24 in Alabama state court that you're aware of?

25 MR. LaCOUR: Your Honor, I -- I'm not

1 aware. I have not -- not seen one cited by my
2 friends and have not found one myself.

3 But I don't think anyone would say
4 that the Social Security Administration is set
5 up as an obstacle to people who are trying to
6 get disability benefits. It is the avenue for
7 getting that.

8 And it's the same thing for Department
9 of Labor.

10 JUSTICE KAGAN: So can I ask about the
11 dimensions of your argument in two different
12 ways? I'll give you just a couple
13 hypotheticals.

14 So one is suppose we take this out of
15 the employment context. We're not talking about
16 a benefit of any kind. There's a person who
17 has, like, a quintessential 1983 claim, which is
18 the improper use of police force, and Alabama
19 sets up a scheme where you have to go to the
20 police department first and you have to go
21 through these three levels of review before you
22 can bring that to court.

23 Is that perfectly okay? Does -- or
24 does that change matters?

25 MR. LaCOUR: I think, Your Honor, if

1 we're talking about case by case, then I think
2 it's time to affirm the Alabama Supreme Court's
3 decision because it was just this categorical
4 argument.

5 But, second, to get to your question,
6 you need to look to see does this look like a
7 rule of judicial administration or not.

8 It may be looking a lot more like
9 Felder, and this might be more suspect, but --

10 JUSTICE KAGAN: I -- I don't
11 understand. What makes it more suspect?

12 MR. LaCOUR: Well, it -- it might be
13 what are -- like, who is it that's doing the
14 adjudication? What are the sort of requirements
15 that bind them?

16 JUSTICE KAGAN: Yeah, I mean, it's
17 sort of set up the same way, but there, it's a
18 police board. You know, police officers are on
19 these boards, and they make you go through
20 three -- three different stages, and we make you
21 do all that for police boards of different
22 levels before you can take the claim to court.

23 MR. LaCOUR: Your Honor, again, if
24 it's particularly stringent, you might run into
25 some problems like in the Brown case from 1949.

1 If it looks like it's designed to minimize
2 liability, you might run into some Felder
3 problems.

4 JUSTICE KAGAN: Well, if, if, if.

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

7 MR. LaCOUR: Your Honor --

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

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

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

22 JUSTICE ALITO: Well, why wouldn't --

23 JUSTICE KAGAN: Okay.

24 JUSTICE ALITO: -- that look an awful
25 lot like Haywood itself? A -- a rule that

1 evinces hostility to the 1983 claim? Because
2 there's no tradition of requiring this sort of
3 thing when a plaintiff wants to sue -- wants to
4 bring a classic Fourth Amendment 1983 claim.

5 MR. LaCOUR: Well, I think that
6 history could factor in. But, at the same time,
7 in Haywood, there was no way to get into state
8 court whatsoever.

9 I took it in Justice Kagan's
10 hypothetical that you -- you would get to court
11 eventually to raise your claim. And so -- and
12 this Court has said -- I think this Court's
13 rulings show that merely deferring consideration
14 of a claim is very different than defeating it.

15 So look at Johnson v. Fankell, where
16 you had a 1983 defense of qualified immunity
17 that was denied at summary judgment stage in the
18 Idaho trial court, and they wanted to take that
19 up immediately to the Idaho Supreme Court and
20 were not able to do so. 1983 did not give them
21 some right of interlocutory appeal. And I think
22 that's essentially what Petitioners are asking
23 for here, is a right of interlocutory appeal.

24 JUSTICE ALITO: Well, I -- I don't
25 want to derail -- Justice Kagan, I think, had a

1 number of hypotheticals, but -- so I -- I don't
2 want to interrupt that. But then, eventually, I
3 do want to ask you about Mr. Unikowsky's narrow
4 argument.

5 Did you want to --

6 JUSTICE KAGAN: It -- it doesn't
7 matter which way we do it.

8 JUSTICE ALITO: Okay. I'm not sure I
9 can capture exactly what his narrow argument is.
10 But suppose the narrow argument is that there's
11 no exhaustion requirement in a 1983 case in
12 state court, where it is, as a practical matter,
13 impossible or extraordinarily onerous to get a
14 decision. How would the State be hurt by that?
15 What would be wrong with that?

16 MR. LaCOUR: I think there might still
17 be some -- some sovereignty interest if you're
18 going to be reading the statute to require state
19 courts to exercise jurisdiction that the state
20 has never given them jurisdiction to exercise.

21 And that's why the Court has been
22 careful in -- even in Haywood to say that these
23 neutral and -- and truly jurisdictional rules
24 are a valid excuse for declining jurisdiction.

25 That's the nature of any

1 jurisdictional rule that's going to keep some
2 cases out of court, so that can't be the test.

3 JUSTICE GORSUCH: But it -- it --
4 couldn't it be, though, that in some of those
5 cases at least, where it's truly impossible and
6 it really is a Catch 22, that that is evincing
7 hostility to the plaintiffs' claims and a Felder
8 argument might be made there?

9 MR. LaCOUR: Absolutely. Or even a
10 Haywood argument.

11 JUSTICE GORSUCH: Or even a Haywood
12 argument. I mean, you -- we just don't know
13 whether that's the case here.

14 MR. LaCOUR: Right.

15 JUSTICE GORSUCH: Yeah. All right.

16 JUSTICE KAGAN: How about if -- you
17 know, in Felder, there is a lot of talk about
18 the time limits. Here, the time limits are even
19 more stringent than they were in Felder.

20 Suppose we make them even more
21 stringent still, and let's add another bunch of
22 things. Let's say that instead of three levels
23 of review, there are five levels of review.
24 Let's say between each level you have to proceed
25 within five days, and then you have to bring

1 your court claim at the very end within five
2 days.

3 Let's say we have empirical evidence
4 that suggests that because the state
5 administrative process is very slow, it takes an
6 average of 10 years to actually get to court.

7 At that point, can we say that this is
8 so -- so onerous a process that it has to be in
9 conflict with 1983?

10 MR. LaCOUR: Your Honor, that sounds
11 like it -- it could fall under Haywood and --
12 and potentially be in conflict with 1983 under a
13 Haywood theory. Even if it is a truly
14 jurisdictional rule, that starts to look like an
15 evasion rather than something that's really
16 about the competence over the subject matter.

17 But, here, this truly is about
18 competence over the subject matter. You have an
19 expert agency -- like, since these claims
20 existed for the first time in 1935, they've
21 always been adjudicated in the first instance by
22 these hearing officers. They have expertise
23 when it comes to hearing these types of claims
24 because they hear thousands or hundreds of
25 thousands a year. They're applying the statutes

1 and regs again and again.

2 It's the exact sort of situation that
3 this Court confronted in *Elgin v. Department of*
4 *Treasury*, a Thunder Basin case about the Merit
5 Systems Protection Board, where the Court
6 recognized that the MSPB has certain expertise
7 because they hear these personnel claims
8 again --

9 JUSTICE KAVANAUGH: You're making a --

10 JUSTICE BARRETT: But the expert --
11 oh.

12 The expertise is in adjudicating the
13 entitle -- entitlement to unemployment, not the
14 due process claim, right?

15 MR. LaCOUR: But, Your Honor, a
16 similar argument was made in *Elgin* that the MSPB
17 doesn't typically hear constitutional claims.
18 And what the Court recognized was well, no, they
19 are going to hear some similar types of claims
20 that are going to come up again and again in
21 this context. For example, it's not fair
22 because I didn't get my notice on time;
23 therefore, excuse my lack of -- of --

24 JUSTICE BARRETT: But --

25 MR. LaCOUR: -- of filing the appeal.

1 And then that can be considered by the board of
2 appeals, the appeals tribunal, or -- or the
3 circuit court eventually.

4 JUSTICE BARRETT: So tell me -- and
5 this is just the clarifying question I was
6 trying to ask Mr. Unikowsky -- how does one
7 assert these due process claims, say, before the
8 intermediate tribunal? Is there a mechanism for
9 doing that? It just seems like everything that
10 was a description in the briefs was talking
11 about how to pursue getting your unemployment
12 benefit.

13 How does one go about making this due
14 process argument before the agency?

15 MR. LaCOUR: Your Honor, my
16 understanding is it's a fairly informal process.
17 I -- I think it would be as simple as arguing
18 that this is not fair because the notice was
19 ineffective, for example.

20 But, again, ultimately, that issue was
21 not thoroughly briefed because that wasn't the
22 argument they were pressing before the state
23 supreme court.

24 JUSTICE KAVANAUGH: You're making your
25 position seem benign, but we have amicus briefs

1 from a wide variety of groups, from ACLU and
2 Public Citizen to religious liberty groups, to
3 the Chamber of Commerce, all of which say that
4 your rule will -- will really hinder federal
5 civil rights claims from getting into state
6 court.

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

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

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

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

1 going to be facing and you're going to lose.

2 Which I think is -- is far --

3 JUSTICE KAVANAUGH: Yeah, but every --
4 just to pause there, your answer suggests that
5 I'm misreading Felder. Every state supreme
6 court that has considered the issue, I think,
7 before the Alabama Supreme Court has read it
8 just the way I just said.

9 MR. LaCOUR: Your Honor, I think -- I
10 think South Dakota was on our side, and then in
11 some of those cases you're dealing with --

12 JUSTICE KAVANAUGH: The vast majority
13 of supreme courts.

14 MR. LaCOUR: We're definitely on the
15 short side of the split, but we also --

16 JUSTICE KAVANAUGH: And the short side
17 of the split is because those state supreme
18 courts, almost uniformly, have read Felder to
19 mean you can't have exhaustion requirements -- a
20 very simple rule, you can't have exhaustion
21 requirements for 1983 in federal or state court.

22 And you have good argument to the
23 contrary. The problem is it's in the O'Connor
24 dissent, not in the majority in Felder.

25 MR. LaCOUR: Your Honor, I -- I --

1 again, I think you have to read those statements
2 from Felder in their context, and of course
3 opinions are not statutes, but if they were, I
4 would invoke the presumption against
5 superfluity. There -- there's a lot more in
6 Felder to suggest that what was really the
7 problem was that it was trying to minimize
8 liability. And there the conflict couldn't be
9 clearer with 1983.

10 But I -- I cannot find in the text or
11 in Patsy this categorical no-exhaustion rule,
12 and I don't see how you square that with cases
13 like Ohio Civil Rights Commission, which I -- I
14 mentioned in my opening. And I apologize it's
15 not in the briefs, but it's a 1986 decision
16 where this Court applied Younger abstention to a
17 1983 claim to force that claimant back into a
18 state agency proceeding. Dayton Christian
19 Schools had fired a teacher on religious
20 grounds, sort of a precursor to Hosanna-Tabor.
21 The teacher went to the Civil Rights Commission
22 and said this was based on sex. And the
23 Commission opened an investigation. That 1983
24 plaintiff went to federal court and said we have
25 a free exercise right to be free from these

1 state proceedings altogether. And in an opinion
2 by the Justice Rehnquist, the Court said no,
3 take it up in the state agency, which again
4 shows that deferring consideration does not
5 defeat. And it also suggests that my friend's
6 position would lead to very strange outcomes,
7 where a federal court in Ohio did not have to
8 hear that particular 1983 claim but a state
9 court would have to. And that just simply
10 doesn't add up.

11 And I think that gets to the point --

12 JUSTICE KAVANAUGH: I have just one
13 more. You -- you've invoked federalism and
14 respect for states, but I think the practical
15 effect of your rule, if we were to adopt it,
16 would be everyone or most people would go more
17 quickly to federal court and haul the state
18 before federal court. I'm just -- the irony of
19 that, can you comment on that?

20 MR. LaCOUR: I don't think so, Your
21 Honor. I don't think there's an incentive for
22 states to structure their courts in a way that's
23 necessarily going to send everything to federal
24 court. If they do, then so be it, but at the
25 same time, that might be an incentive for --

1 JUSTICE KAVANAUGH: Well, these kinds
2 of claims, if you had problems, you know, a free
3 exercise problem or religion problem or a
4 procedural due process problem with the
5 unemployment scheme in Alabama, you're just
6 going to go to federal court, right?

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

11 JUSTICE JACKSON: Can I --

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

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

24 MR. LaCOUR: Your Honor, I think --

25 JUSTICE SOTOMAYOR: And -- and one

1 last question. Tell me where in your
2 regulations there is a process set out that --
3 that claimants can go through to speed up the
4 process?

5 MR. LaCOUR: Well, Your Honor --

6 JUSTICE SOTOMAYOR: All of them have
7 told me that they've appealed on time, they've
8 called a -- not all of them, but we have 21
9 plaintiffs here. Many of them filed their
10 appeal notices, letter after letter, phone call
11 after phone call, years and years that passed
12 before they received anything or, when they
13 received something, with no explanation.

14 So tell me where in your regulations
15 you tell claimants what they can do before the
16 agency if there's a due process violation?

17 MR. LaCOUR: Your Honor, I don't have
18 chapter and verse for you, because, again, this
19 was not raised --

20 JUSTICE SOTOMAYOR: You can provide a
21 letter. I don't want to hear about mandamus
22 or -- I want to hear where in the regulations
23 these people didn't do what the regulations said
24 they could have done.

25 MR. LaCOUR: Your Honor, mandamus is

1 not something they're required to do but it is
2 something that is available --

3 JUSTICE SOTOMAYOR: And it's --

4 MR. LaCOUR: -- to them.

5 JUSTICE SOTOMAYOR: -- discretionary,
6 correct?

7 JUSTICE JACKSON: Counsel, can --

8 MR. LaCOUR: Yes, Your Honor, but it
9 is one way to avoid due process problems.

10 JUSTICE KAGAN: In the --

11 JUSTICE JACKSON: Counsel, can I just
12 -- go ahead.

13 JUSTICE KAGAN: No, go ahead.

14 JUSTICE JACKSON: Can I just get you
15 to focus in quickly on Felder, and you -- you've
16 said many times you see that case as the problem
17 being about minimizing liability. But I'm
18 quoting from the case when it says that this is
19 "essentially" -- "the question is essentially
20 one of preemption. Is the application of the
21 state's law to Section 1983 actions brought in
22 state courts consistent with the goals of the
23 federal civil rights laws or does the
24 enforcement of such a requirement instead stand
25 as an obstacle to the accomplishment and

1 execution of the full purposes of the objectives
2 of Congress?"

3 I thought we were thinking about is it
4 an obstacle, is it consistent? And what I'm
5 worried about is that if we start moving away
6 from that conception of what it means to be
7 preempted, that same kind of thought process and
8 doctrine is used in other laws, not just 1983.
9 For example, we have the Federal Arbitration
10 Act, which has a preemption standard that is
11 almost identical to what Felder just said about
12 whether or not it's consistent. And we've
13 repeatedly said that state laws that do things
14 like -- you know, related to contracts, et
15 cetera, et cetera, are preempted by the FAA for
16 the very same reasons.

17 So can you help us not to be concerned
18 about shifting the standard of what it means to
19 preempt and the way in which that might actually
20 implicate other preemption doctrines and other
21 laws?

22 MR. LaCOUR: Your Honor, I think -- I
23 think the real concern would be adopting the
24 view of preemption from my friend, which doesn't
25 really seem to line up with the more disciplined

1 and text-based approach that this Court
2 traditionally --

3 JUSTICE JACKSON: No, I -- we could --

4 MR. LaCOUR: -- takes in the
5 preemption context.

6 JUSTICE JACKSON: Let's say we reject
7 saying there's something about Felder that is
8 focused on exhaustion. I'm looking at Felder as
9 a preemption case that has a standard that talks
10 about the inconsistency with the purposes of the
11 federal statute --

12 MR. LaCOUR: Mm-hmm.

13 JUSTICE JACKSON: -- is it an obstacle
14 to the accomplishment and execution?

15 And I got to tell you in the
16 Concepcion case in AT&T versus mobility, that
17 exact same concept is governing what the Court
18 is doing with respect to preemption. So if we
19 move from that, if we're focused more on
20 minimizing liability or whatever else you say
21 you think Felder means, I'm worried that that's
22 going to bleed over into these other kinds of
23 preemption areas.

24 MR. LaCOUR: Your Honor, what I'd say
25 to that is why was the law an obstacle? And the

1 text answers that question. State officials
2 shall be liable. What's the state law do?
3 Minimizes liability. So there is your
4 text-based preemption problem, right there on
5 the face of the statute.

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

8 MR. LaCOUR: Shall be liable --

9 JUSTICE JACKSON: Minimizing liability
10 is not in --

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

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

23 JUSTICE KAGAN: You don't believe that
24 plaintiffs here could have brought suit
25 immediately in federal court, is that right?

1 MR. LaCOUR: Yes, Your Honor.

2 JUSTICE KAGAN: So, I mean, this is
3 Felder's -- it seems to me there's a lot going
4 on in Felder. But one -- its most essential
5 holding is it quotes Patsy, and it says -- you
6 know, Patsy said, too bad about an exhaustion
7 requirement. You have to be able to bring suit
8 in federal court immediately.

9 And then -- and this is on page 147 --
10 it said should there be any different rule with
11 respect to state courts, and it says, given the
12 evil at which the federal civil rights
13 legislation was aimed, there's simply no reason
14 to suppose that Congress meant to have that kind
15 of distinction.

16 So, I mean, that seems just like a
17 very clear-cut understanding of Felder, that
18 once we say that the exhaustion requirement does
19 not preclude suit in state courts, we understand
20 1980 -- does not preclude suit in federal court,
21 we understand 1983 to do the same thing with
22 respect to state courts.

23 MR. LaCOUR: Your Honor, even if I
24 grant you that, this is still a jurisdictional
25 rule, and you've still said in Howlett and

1 Haywood that neutral jurisdictional rules are a
2 valid excuse to keeping federal claims out.

3 So, even if there is some
4 get-to-court-immediately element of 1983, our --
5 our courts do not exercise jurisdiction over
6 that type of claim.

7 JUSTICE KAGAN: Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Justice Thomas, anything further?

11 Justice Alito?

12 Justice Sotomayor?

13 Justice Kagan?

14 JUSTICE GORSUCH: Your friend on the
15 other side said, if it went to federal court,
16 there might be a ripeness issue and an
17 abstention issue. What are your thoughts?

18 MR. LaCOUR: I think that is -- that's
19 likely true. We've seen that in a lot of courts
20 of appeals decisions. We cited Cotton
21 v. Jackson as a -- I think it's a 2011 circuit
22 decision, where they lost on the merits for not
23 taking advantage of the process and running to
24 federal court too soon.

25 JUSTICE GORSUCH: Okay. And I take

1 your point that -- as I understand it, it's --
2 your argument is it's hard for this to be --
3 an exhaustion requirement of administrative
4 agency processes to be an obstacle that's
5 improper given that the federal government has
6 similar administrative exhaustion requirements.

7 But there does seem to be a tremendous
8 record of difficulty of individuals accessing
9 that administrative process here.

10 What assurance do you have or can you
11 give us that -- that -- that the State is
12 addressing these claims in -- in a proper and
13 timely manner?

14 MR. LaCOUR: Yes, Your Honor, two
15 points.

16 The reason we point to the federal
17 analog is to show that this really does concern
18 competence over the subject matter, like the
19 Court has discussed in Howlett and Haywood.

20 And then, as to assurances that the
21 State is taking this seriously -- this is
22 obviously outside of the record because we're at
23 the motion to dismiss stage -- but we have
24 tripled the number of hearing officers we have
25 from eight to 25, and we have greatly reduced

1 the backlog. I think, in -- in January of 2022,
2 that backlog of people who had waited at least
3 21 days for a hearing was up to over 131,000.
4 Today, it's down to about 7,410, and we
5 anticipate clearing that backlog by the end of
6 the year.

7 JUSTICE GORSUCH: Was some of that
8 backlog due to COVID or -- or other --

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

15 JUSTICE GORSUCH: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Kavanaugh?

18 Justice Barrett?

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

24 And to clarify, my concern is, if
25 somehow the state statute of limitations is

1 running, you know, because the due process
2 violation has already begun in the agency, is it
3 the case that that statute of limitations might
4 run in state, for purposes of state court,
5 before they can even get there?

6 MR. LaCOUR: Your Honor, of course,
7 this hasn't been briefed. I -- I don't think
8 that would be an issue because, I mean, the due
9 process violation is incomplete until the
10 process has run out.

11 So I -- I think -- and, certainly, if
12 they were to appeal out of the agency proceeding
13 directly to the circuit court, there wouldn't be
14 any statute of limitations problem in that
15 situation either.

16 JUSTICE BARRETT: Okay. My other
17 question is: So a couple times in your brief
18 you called the agency proceeding a proper
19 proceeding for redress under 1983, and you said
20 there's no reason for this Court to distinguish
21 between bringing a 1983 claim in something
22 that's called a court versus sending it to an
23 agency.

24 Is that somehow different than the
25 exhaustion requirement? Can you just --

1 MR. LaCOUR: I think, Your Honor --

2 JUSTICE BARRETT: -- explain to me
3 what you're saying?

4 MR. LaCOUR: -- our -- our point there
5 is that we think the language suggests that
6 there is a great deal of discretion for the
7 states in terms of structuring their
8 adjudicatory processes.

9 And, in this instance, we have the
10 agency first functioning sort of as an adjunct.
11 They compile a useful record. That can then go
12 up for the circuit court to -- to review with de
13 novo review.

14 And that -- that's particularly
15 helpful for uncounseled claimants who maybe
16 don't have a lot of means because they just lost
17 their job. They can go through this informal
18 process, have a record. They don't have to go
19 through formal discovery and have a lawyer to
20 have that record when they do get to the circuit
21 court.

22 JUSTICE BARRETT: So is the
23 argument -- I mean, I guess I'm trying to
24 distinguish between an exhaustion requirement,
25 which is almost kind of like a pregame thing,

1 you know, it's a -- it's a threshold.

2 And this makes it sound like, if
3 you're saying this is part of the 1983 claim
4 itself or part of the adjudication, it's
5 actually not a delay of the 1983 claim. But is
6 your argument instead that this is actually part
7 of adjudicating the constitutional violation?

8 MR. LaCOUR: Your Honor, we -- we do
9 think it's advancing the purposes of 1983, which
10 are sort of remedial in ensuring that federal
11 rights are not being violated. But it's not a
12 1983 claim inside of the agency.

13 JUSTICE BARRETT: Okay. So that's --
14 okay. I just wanted to make sure I understood
15 your argument. Thank you.

16 MR. LaCOUR: Yes.

17 CHIEF JUSTICE ROBERTS: Justice
18 Jackson?

19 Thank you, counsel.

20 MR. LaCOUR: Thank you.

21 CHIEF JUSTICE ROBERTS: Rebuttal,
22 Mr. Unikowsky?

23 REBUTTAL ARGUMENT OF ADAM G. UNIKOWSKY
24 ON BEHALF OF THE PETITIONERS

25 MR. UNIKOWSKY: Thank you, Your Honor.

1 I just wanted to clarify one answer I
2 gave to Justice Gorsuch about ripeness. I did
3 acknowledge that ripeness is in general a
4 defense that a federal court can vindicate in a
5 Section 1983 case.

6 I wasn't trying to suggest that in
7 this particular case, if we went to federal
8 court, there would be a ripeness defense. I
9 think we waited long enough and our -- our claim
10 is ripe. So it was more a general point about
11 federal courts' powers to dismiss cases.

12 I'd like to say a couple of words
13 about the Felder case.

14 There's a lot of discussion this
15 morning about whether or not exhaustion was an
16 independent holding or whether the decision was
17 partly based on exhaustion, partly on other
18 considerations.

19 Even if the latter formulation is
20 correct, I actually think that every single
21 consideration in Felder also applies to this
22 case.

23 It's true that Felder talked about
24 whether the state was trying to minimize
25 liability. And my colleague said that the

1 agency system in general wasn't trying to
2 minimize liability.

3 I don't think that's the question. I
4 think the question is whether the exhaustion
5 requirement in particular is trying to minimize
6 liability, and I think the answer has to be yes.

7 The sole function of the exhaustion
8 requirement is to cause claims to be dismissed
9 when they're brought in circuit court. And
10 because the time limits are so tight, claims are
11 going to be predictably dismissed a lot more
12 frequently than the notice of claim requirement
13 at issue in -- in Wisconsin. And so -- in -- in
14 the Felder case. And so, ultimately, I think
15 every single consideration in Felder really
16 applies with equal force to this case.

17 So the Court doesn't need to parse out
18 which aspects of -- of the holding were holding
19 and which were alternative holdings, which were
20 dicta, because I think the entire decision
21 applies to this fact pattern.

22 On the question of jurisdictional
23 rules, I think the Court would really have to
24 overrule a lot of cases dating back to 1912 to
25 vindicate the argument that this is a

1 jurisdictional argument that can survive
2 preemption.

3 I think it's notable that the amicus
4 brief by several states actually does advocate
5 overruling all these cases back to 1912.
6 Respondent doesn't ask for that. And I think,
7 if the Court keeps those cases, then the result
8 in this case follows.

9 As back -- as far back as 1912, the
10 Court said that to -- the Court -- state court
11 cannot decline jurisdiction based on
12 disagreement with the policy judgment of
13 Congress that a defense is unavailable. And
14 that's simply the principle we're asking to
15 carry forward today.

16 Finally, on this as-applied challenge,
17 I just wanted to point out that in the
18 proceedings below, immediately after asserting
19 our argument based on Patsy, we said it would be
20 absurd to make us wait for years in the
21 administrative process and then bring our
22 claims, which I think is reasonably construed as
23 the same type of as-applied argument we're
24 making this morning.

25 And we did make this argument in the

1 blue brief as well as the yellow brief, so I do
2 think it's teed up for the Court's
3 consideration.

4 If there's no further questions, we'd
5 ask the Court to reverse.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel. The case is submitted.

8 (Whereupon, at 11:21 a.m., the case
9 was submitted.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official - Subject to Final Review

<p style="text-align: center;">\$</p> <p>\$100 [1] 45:22 \$200 [1] 45:22</p> <hr/> <p style="text-align: center;">1</p> <p>10 [2] 15:7 70:6 10:05 [2] 1:16 3:2 11:21 [1] 93:8 120 [2] 24:20 62:23 131,000 [1] 86:3 141 [1] 60:3 147 [1] 83:9 15 [3] 15:7 25:2,4 15-page [1] 58:20 1912 [4] 33:10 91:24 92:5,9 1929 [1] 17:16 1935 [2] 63:19 70:20 1949 [1] 65:25 1980 [1] 83:20 1983 [69] 3:14 14:16 20:7 22:16 23:5,7,19 24:13,20, 23 25:15 26:1,4 27:21 28: 25 29:9,16 30:2 33:19 34: 2 37:12 39:21 41:10 44:23 45:1 49:9 51:3,16 52:6,7, 10,13,25 53:3,11 56:7 59:7, 21 60:7 62:6 63:9,16,23 64:17 66:13 67:1,4,16,20 68:11 70:9,12 73:19 74:21 75:9,17,23 76:8 79:21 80: 8 83:21 84:4 87:19,21 89: 3,5,9,12 90:5 1983's [1] 52:22 1986 [2] 52:12 75:15 1997 [1] 40:17</p> <hr/> <p style="text-align: center;">2</p> <p>2011 [1] 84:21 2022 [1] 86:1 2024 [1] 1:12 21 [2] 78:8 86:3 22 [2] 12:14 69:6 23-191 [1] 3:4 25 [1] 85:25 28(j) [1] 31:4</p> <hr/> <p style="text-align: center;">3</p> <p>3 [1] 2:4</p> <hr/> <p style="text-align: center;">4</p> <p>42 [1] 51:15</p> <hr/> <p style="text-align: center;">5</p> <p>51 [1] 2:6</p> <hr/> <p style="text-align: center;">7</p> <p>7 [1] 1:12 7,410 [1] 86:4</p> <hr/> <p style="text-align: center;">8</p> <p>89 [1] 2:9</p> <hr/> <p style="text-align: center;">A</p> <p>a.m [3] 1:16 3:2 93:8 ability [3] 55:17 62:4,7 able [6] 15:11 33:18 56:21</p>	<p>67:20 73:9 83:7 above-entitled [1] 1:14 absolute [1] 26:9 absolutely [3] 27:15 69:9 86:9 abstention [7] 35:3,6 51: 24 52:3,13 75:16 84:17 absurd [4] 12:8,12,14 92: 20 accept [1] 21:24 access [1] 49:14 accessing [1] 85:8 accomplishment [2] 79: 25 81:14 accusing [1] 9:22 acknowledge [2] 44:7 90: 3 acknowledged [1] 77:8 ACLU [1] 73:1 ACLU's [1] 73:11 Act [1] 80:10 acting [1] 56:10 action [2] 37:12 55:12 actions [1] 79:21 actually [17] 15:3 18:4,6,18 19:3 22:23 25:1 30:21 36: 3 56:1 57:6 70:6 80:19 89: 5,6 90:20 92:4 ADAM [5] 1:19 2:3,8 3:7 89: 23 add [3] 51:25 69:21 76:10 addition [1] 30:23 additional [1] 86:10 address [1] 12:19 addressing [2] 57:11 85: 12 adequate [2] 50:15,22 adjudicate [1] 42:18 adjudicated [1] 70:21 adjudicating [3] 61:9 71: 12 89:7 adjudication [9] 52:20,21 53:21 54:7 61:8 62:22 65: 14 73:22 89:4 adjudicator [1] 18:12 adjudicatory [1] 88:8 adjunct [1] 88:10 administer [1] 9:8 administration [4] 63:15 64:4 65:7 66:17 administrative [11] 14:23 40:14 41:17 43:2 49:4 58: 3 70:5 85:3,6,9 92:21 admit [1] 41:18 adopt [2] 34:3 76:15 adopting [1] 80:23 advancing [1] 89:9 advantage [2] 54:24 84:23 adverse [1] 25:12 advocate [1] 92:4 affirm [1] 65:2 affirmative [8] 4:14 18:10 27:20 29:25 59:10,15,17 73:25</p>	<p>agency [47] 5:12 7:14 9:4, 16,22 10:2 13:24 15:7 18: 22 26:20,22 27:16 37:15, 23 40:20 41:6 49:5,7,17 50:14 52:14,20 53:20 54: 11,12,15 55:14 56:12,13 61:7 62:12,15,21 70:19 72: 14 73:22 75:18 76:3 78:16 85:4 87:2,12,18,23 88:10 89:12 91:1 agency's [1] 43:14 agent [1] 43:14 agree [12] 18:5 20:24 26:11, 16 28:2 30:19 32:25 34:6 35:23 44:17 45:3 50:3 ahead [2] 79:12,13 aimed [1] 83:13 akin [1] 40:3 AL [1] 1:3 ALABAMA [35] 1:6,22 3: 15 4:17,19,25 12:5,20,25 14:13 15:21 21:22 23:7,15 29:15 33:15 35:12 53:9,16, 17 54:25 55:1,11,23 56:20 59:14,20 61:15 63:14,24 64:18 65:2 74:7 77:5,10 Alabama's [8] 4:1,10 5:18 20:17 53:1 54:1 61:5 62:3 align [1] 43:6 alike [1] 32:14 ALITO [22] 21:7,11,17,20 23:3 31:10 32:10,18 40:9, 10,14 41:12,25 42:4,9,14 43:8 66:22,24 67:24 68:8 84:11 alleged [1] 58:5 alleges [1] 25:6 allow [1] 13:14 allowed [2] 5:3 15:25 allowing [1] 33:13 alluding [1] 53:14,23 almost [5] 13:9 14:22 74: 18 80:11 88:25 already [3] 16:13 53:24 87: 2 alter [2] 52:17 59:21 alternative [2] 10:15 91:19 altogether [1] 76:1 Amendment [1] 67:4 Americans [1] 13:16 amicus [2] 72:25 92:3 among [2] 26:5,13 amount [1] 59:16 analog [1] 85:17 analysis [7] 18:5 19:9,16 20:4 34:6 58:21 61:6 another [3] 43:18 47:7 69: 21 answer [10] 12:25 19:7 36: 8,15,22 49:23,25 74:4 90:1 91:6 answered [2] 26:25 37:19 answers [1] 82:1 anticipate [1] 86:5</p>	<p>anybody [1] 63:22 anyhow [1] 46:6 anyway [1] 45:20 apologize [1] 75:14 appeal [9] 5:21 25:3,7 55: 17 67:21,23 71:25 78:10 87:12 appealed [1] 78:7 appeals [8] 5:22 25:4,5 31: 3 56:11 72:2,2 84:20 APPEARANCES [1] 1:18 appellate [3] 40:18 41:16 52:10 application [2] 47:4 79:20 applied [11] 4:18 14:15 24: 13 30:6 33:25 39:1,3,8 46: 13 52:12 75:16 applies [8] 3:18,25 19:21 43:19 63:5 90:21 91:16,21 apply [15] 16:18,23 21:22 28:6 38:1 39:2 44:5,6,8,9 46:10,12 52:4 56:5 63:5 applying [4] 7:22 25:23 47: 23 70:25 appreciate [3] 60:2,14 61: 1 approach [1] 81:1 appropriate [1] 21:21 Arbitration [1] 80:9 areas [1] 81:23 aren't [3] 13:2 34:18 60:6 argued [6] 9:25 12:8,11,13 48:6 57:12 arguing [1] 72:17 argument [58] 1:15 2:2,7 3: 4,7 12:1,3,21 15:9 16:4,13 23:22,25 36:24 37:3 40:5 44:12 45:17,25 46:5 47:3 48:3 49:6 51:9 53:8,15,19 54:4,11 55:8 56:3,15 57: 20,21,21 63:7 64:11 65:4 68:4,9,10 69:8,10,12 71:16 72:14,22 74:22 85:2 88:23 89:6,15,23 91:25 92:1,19, 23,25 arguments [5] 18:23 26: 17 48:7 56:22 62:18 arising [1] 17:10 articulate [2] 50:4,5 articulated [2] 32:17 47:3 as-applied [3] 53:25 92:16, 23 aside [2] 34:9 48:17 aspects [2] 26:13 91:18 assert [1] 72:7 asserted [3] 22:21 36:1 40: 22 asserting [4] 15:5 30:22 41:10 92:18 asserts [1] 4:13 assume [3] 21:24 32:25 41: 17 Assuming [2] 15:21 32:21 assurance [1] 85:10</p>	<p>assurances [1] 85:20 assuredly [2] 13:9 14:23 AT&T [1] 81:16 attached [1] 25:15 attacking [2] 43:1 55:3 attempted [1] 12:22 authority [1] 29:3 authorized [2] 20:11 60:10 available [8] 4:15 18:10,11 40:19 54:3 56:21 63:20 79: 2 avenue [1] 64:6 average [1] 70:6 avoid [6] 4:11 22:19 24:3, 14 31:13 79:9 avoided [1] 53:5 aware [3] 31:8 63:24 64:1 away [5] 7:17 47:14 80:5 82:15,16 awful [1] 66:24</p> <hr/> <p style="text-align: center;">B</p> <p>back [12] 31:2 33:9 36:15, 16,17 52:13 56:3 75:17 91: 24 92:5,9,9 backlog [4] 86:1,2,5,8 bad [2] 13:25 83:6 bar [1] 26:9 BARRETT [23] 8:1,13,18, 24 10:7 27:23 29:1 30:8, 11,17 31:16 49:21,22 51:4 71:10,24 72:4 86:18,19 87: 16 88:2,22 89:13 barrier [4] 16:9 50:8,24 51: 1 based [4] 75:22 90:17 92: 11,19 basically [1] 77:20 Basin [1] 71:4 basis [1] 18:1 beat [1] 62:24 becomes [2] 47:14,14 begun [1] 87:2 behalf [8] 1:20,22 2:4,6,9 3: 8 51:10 89:24 believe [3] 12:5 26:8 82:23 below [7] 10:1 12:3,8 54:5, 10 57:12 92:18 beneficial [1] 61:15 benefit [8] 14:20 43:23 49: 5 61:13 62:25 63:2 64:16 72:12 benefits [14] 9:13 10:2,19 13:7,11,21,25 30:23 41:14, 20 42:2,3 63:19 64:6 benign [1] 72:25 best [3] 9:3,7 53:4 between [8] 26:5 45:19 51: 20 62:13,21 69:24 87:21 88:24 beyond [1] 61:4 bind [1] 65:15 bit [2] 6:16 30:5 bleed [1] 81:22</p>
---	--	--	--	--

Official - Subject to Final Review

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

Official - Subject to Final Review

<p>1 42:7 49:16 54:10 65:3 68:14 75:15 84:22 90:16 91:20 decisions [2] 52:15 84:20 decline [2] 33:10 92:11 declining [3] 53:2 59:24 68:24 defeat [4] 52:17 59:7, 17 76: 5 defeated [1] 59:7 defeating [2] 60:7 67:14 defect [1] 5:25 defendant [3] 4:13 29:17, 24 defendants [7] 16:24 17: 14 22:18 29:4,7,10 59:10 defense [16] 3:13 4:14 18: 10 22:21 27:21 29:25 30:1 52:10 59:10,15,17 67:16 73:25 90:4,8 92:13 deferring [3] 52:15 67:13 76:4 define [6] 16:16 21:13 22:3 24:2 31:19 58:13 defining [2] 4:12 22:19 definitely [2] 37:2 74:14 definition [1] 28:3 degree [1] 25:14 delay [2] 7:5 89:5 delta [1] 45:19 denied [4] 10:11 42:7,13 67:17 Department [3] 64:8,20 71: 3 depend [2] 7:11,24 depending [1] 3:23 derail [1] 67:25 description [1] 72:10 deserve [2] 45:11,22 designed [6] 17:6 28:17 59:1,2 63:18 66:1 detail [1] 35:7 detailed [1] 58:20 determination [1] 52:5 determine [1] 52:1 determining [1] 31:20 dicta [1] 91:20 dictum [1] 40:16 difference [4] 5:7 51:20 62: 13,21 differences [1] 60:22 different [15] 5:11 6:2 14: 21 26:17 28:6 46:9 49:15 61:11 64:11 65:20,21 66: 12 67:14 83:10 87:24 difficult [1] 77:14 difficulty [1] 85:8 dimensions [1] 64:11 direct [8] 5:3 6:3 18:8,14, 15 20:5 34:3 55:17 direction [2] 21:6 25:17 directly [2] 43:15 87:13 disability [3] 13:11 14:20 64:6</p>	<p>disagreeing [1] 34:5 disagreement [3] 23:12 33:12 92:12 disciplined [1] 80:25 discovery [1] 88:19 discretion [1] 88:6 discretionary [3] 41:8 56: 23 79:5 discriminates [3] 20:12 60:21,23 discussed [1] 85:19 discusses [1] 26:1 discussion [2] 19:21 90: 14 dismiss [5] 11:13,22 59:9 85:23 90:11 dismissal [2] 11:8,15 dismissals [1] 59:12 dismissed [5] 3:15 13:20 55:12 91:8,11 dismisses [1] 55:24 dispute [2] 27:10 58:6 dissent [4] 57:22,24 58:10 74:24 distinction [3] 32:15,17 83: 15 distinguish [2] 87:20 88: 24 distinguishing [1] 46:15 doctrinal [1] 27:12 doctrine [2] 34:25 80:8 doctrines [4] 35:3,6 51:21 80:20 doing [10] 20:17,21 31:14 39:4 61:5 65:13 66:10 72: 9 81:18 82:22 dominant [1] 3:20 done [5] 15:23 31:19 78:24 82:15,16 Douglas [1] 17:15 down [4] 6:13,18 22:10 86: 4 drags [1] 40:21 due [35] 9:16,22 10:10 11: 24 14:3,6 30:22,24 31:5 35:19 36:1 37:22 42:10,17, 21 43:3,13 45:7,24 47:17 53:10 54:10 55:8,11,13 62: 4 71:14 72:7,13 77:4 78: 16 79:9 86:8 87:1,8 during [2] 8:12 86:13</p> <p style="text-align: center;">E</p> <p>each [2] 14:11 69:24 earlier [2] 35:19 57:11 EDMUND [3] 1:21 2:5 51:9 effect [4] 13:19 24:22 58: 24 76:15 effective [3] 37:24 40:24 41:9 effectively [3] 38:15,22 39: 4 effects [1] 25:12 efficient [1] 36:21</p>	<p>eight [1] 85:25 either [2] 57:13 87:15 elaborate [2] 30:4 42:11 elaborated [1] 17:2 element [3] 52:8,25 84:4 elements [1] 51:25 Elgin [2] 71:3,16 emphasizes [3] 4:9 23:14 29:6 empirical [1] 70:3 employers [1] 61:17 employment [1] 64:15 enacted [4] 23:19 51:3 82: 14,18 encompass [1] 46:25 encourage [1] 7:23 end [3] 58:19 70:1 86:5 ended [1] 45:17 enforceable [2] 3:21 7:21 enforcement [1] 79:24 engage [2] 32:3,5 enough [3] 13:22 31:4 90: 9 ensuring [1] 89:10 enter [3] 9:3,8 41:6 entertain [3] 11:24 23:7 66: 18 entire [3] 25:7 35:14 91:20 entitle [1] 71:13 entitled [1] 61:10 entitlement [1] 71:13 entity [1] 5:24 equal [1] 91:16 equitable [1] 13:2 equivalent [1] 5:9 ESQ [3] 2:3,5,8 ESQUIRE [1] 1:19 essential [1] 83:4 essentially [4] 47:16 67:22 79:19,19 ET [3] 1:3 80:14,15 evasion [1] 70:15 even [26] 21:2 28:20 29:25 30:24 34:7 37:19,20 46:11 48:15,21 50:20 52:24 53: 20 57:15 58:14 61:4 68:22 69:9,11,18,20 70:13 83:23 84:3 87:5 90:19 event [1] 12:23 eventually [3] 67:11 68:2 72:3 everyone [1] 76:16 everything [3] 66:9 72:9 76:23 evidence [2] 45:24 70:3 evil [1] 83:12 evinced [1] 23:5 evinces [1] 67:1 evincing [1] 69:6 exact [4] 15:25 30:4 71:2 81:17 exactly [8] 4:15 7:11 27:14 30:10,13 46:25 57:23 68:9 examiner [3] 5:20 14:1,4</p>	<p>example [6] 16:21 29:5 55: 2 71:21 72:19 80:9 examples [1] 17:7 except [1] 36:2 exception [5] 12:1,6,18 15: 21,22 exceptions [2] 13:2 21:18 exclude [2] 4:13 22:20 excuse [6] 24:4 53:2 66:17 68:24 71:23 84:2 execution [2] 80:1 81:14 exercise [8] 17:13 38:9 59: 8 68:19,20 75:25 77:3 84: 5 exhaust [31] 3:13,16 4:8, 21,22 8:9 9:16,20 10:1 14: 23 15:15 30:24 33:19 36:4 37:4 38:2,12,15,16,22 39: 16,18,22,23,24 47:7,11,12 50:10,11,16 exhausted [8] 29:18 38:13 39:18 47:13,14 55:14,16 56:14 exhausting [1] 36:2 exhaustion [79] 5:5,13,15 6:7,19,21,24 7:6,19 8:12 9: 12 11:9,15,23 13:10,14 14: 13 15:20 18:19,20,23 19:3 20:14 23:15,20,23 24:5,11 25:23 26:10,19 27:3,6,9,13, 15 29:20 31:14 33:15 37: 17,21 39:2 41:23 46:11,17 47:19,25 49:13 50:1 51:20, 21 53:9,21 54:17,21 56:5 57:8,25 58:12 60:25 61:3, 14 63:1,4 68:11 73:18 74: 19,20 81:8 83:6,18 85:3,6 87:25 88:24 90:15,17 91:4, 7 exist [1] 49:3 existed [1] 70:20 exists [1] 12:18 expensive [1] 58:2 expert [2] 70:19 71:10 expertise [3] 70:22 71:6, 12 expired [2] 8:8,13 explain [2] 61:4 88:2 explains [1] 22:2 explanation [1] 78:13 extolled [1] 82:20 extract [1] 6:20 extraordinarily [1] 68:13</p> <p style="text-align: center;">F</p> <p>FAA [1] 80:15 face [1] 82:5 facing [1] 74:1 fact [10] 15:1 21:1 22:22 27: 2 39:1,8,12,15,18 91:21 facto [2] 40:2 47:4 factor [1] 67:6 facts [2] 24:14 30:7 failed [2] 3:16 47:12</p>	<p>failure [4] 3:12 39:16,17 47: 10 fair [3] 57:20 71:21 72:18 fairly [1] 72:16 fall [2] 27:7 70:11 familiar [2] 35:10,13 Fankell [2] 52:9 67:15 far [4] 33:9 61:11 74:2 92:9 fashion [1] 36:14 faster [1] 37:21 favor [2] 46:19 48:6 federal [100] 3:24 8:10,14, 16,23 9:1 10:10,16,23 11:5, 13,21,22 13:8,8,12,15 14:2, 5,5,19,22 15:11,19 16:2 18: 12 20:7,13,16,23 21:4 28:3 31:13,20 32:5,14,19 33:3, 11,12 34:10,13,17,21 35:1, 2,4,25 37:18,22 38:9 41:19 42:16,21 43:4,5 44:20,21 49:4,5 51:14,25 52:1,5,16 57:5,19 58:25 60:12,19,21 61:20 62:2 66:18 73:4 74: 21 75:24 76:7,17,18,23 77: 6,13,21 79:23 80:9 81:11 82:25 83:8,12,20 84:2,15, 24 85:5,16 89:10 90:4,7,11 federalism [1] 76:13 feet [1] 40:21 Felder [71] 3:11,18 6:1,16 16:4,6,12,15,17 17:22,23 18:8,15 19:10,19 20:4,22 21:1 22:6,24 24:18,18 25: 21 26:18 34:6,9,14 46:8,9, 16 49:1 52:19 53:23 57:22, 24,25 58:9,11,18 59:3,23 60:2 61:3,6,12 62:25 65:9 66:2 69:7,17,19 73:14,21 74:5,18,24 75:2,6 79:15 80:11 81:7,8,21 82:13 83: 4,17 90:13,21,23 91:14,15 Felder's [3] 19:11,16 25:18, 21 43:19 83:3 Felder-like [1] 28:9 felt [3] 9:2,6 27:11 few [2] 40:24 58:16 fide [1] 29:11 file [15] 5:20 8:16,22,25 10: 18 13:24 25:3 26:20 31:4, 13 41:14 42:16 55:6,17 56: 11 filed [6] 3:23 15:5 37:18 41: 18 44:25 78:9 filing [1] 71:25 fill [1] 30:21 final [2] 55:2,16 Finally [3] 4:17 60:24 92: 16 find [1] 75:10 finds [1] 51:13 fine [3] 21:5 32:10 46:20 finished [1] 43:2 fired [1] 75:19 first [20] 3:4,21 7:21 9:11</p>
---	---	---	--	--

Official - Subject to Final Review

<p>34:24 35:21 36:23 37:20 40:25 41:14,20 45:7 58:5, 18 60:5 62:12 64:20 70:20, 21 88:10 FITZGERALD [2] 1:6 3:5 five [4] 15:7 69:23,25 70:1 focus [1] 79:15 focused [2] 81:8,19 focusing [1] 7:5 follow [1] 57:4 follows [2] 19:5 92:8 force [4] 52:13 64:18 75:17 91:16 forced [1] 62:22 forces [1] 58:3 form [5] 45:17,18,18 46:4 56:9 formal [1] 88:19 former [1] 51:22 formulation [2] 28:20 90: 19 forum [1] 49:14 forward [1] 92:15 forward-looking [1] 8:20 found [1] 64:2 four [1] 73:24 Fourth [1] 67:4 free [4] 21:13 75:25,25 77:2 freedom [1] 35:5 frequently [2] 59:6 91:12 friend [3] 63:3 80:24 84:14 friend's [1] 76:5 friends [1] 64:2 front [3] 16:9 48:23 62:11 full [2] 16:10 80:1 function [1] 91:7 functioning [1] 88:10 functions [1] 54:2 further [2] 84:10 93:4 futility [15] 12:1,6,18,20 13: 3 15:9,20,22 48:3,6 49:6 54:4 56:15,22 62:18</p> <hr/> <p style="text-align: center;">G</p> <p>gave [2] 16:21 90:2 General [16] 1:21 21:16 22: 2,16 28:24 29:3,9,10 31:18, 25 35:24 46:11 57:17 90:3, 10 91:1 generally [6] 21:12 29:15 50:2 52:5 58:13,14 generis [1] 44:1 get-to-court-immediatel y [1] 84:4 gets [2] 54:19 76:11 getting [7] 10:7 15:18 27: 18 38:3 64:7 72:11 73:5 give [6] 36:23 50:14,14 64: 12 67:20 85:11 given [6] 20:21 42:22 54:9 68:20 83:11 85:5 gives [1] 22:4 giving [1] 62:7 goals [2] 62:2 79:22</p>	<p>GORSUCH [37] 11:10,16, 25 12:4,10,13,16 13:4,6 14: 8,10,17 15:8,12,14,17 46: 23,24 47:6,20 48:1,8,17 49: 2,11,18,23 50:20 53:14 69: 3,11,15 84:14,25 86:7,15 90:2 got [8] 7:7,7 8:8 35:21 45: 22 47:21 55:5 81:15 gotten [1] 13:22 governing [2] 16:21 81:17 government [10] 13:9,15 14:21,22 19:22 43:20,22 44:10 60:15 85:5 governmental [1] 16:24 grant [1] 83:24 granting [1] 39:5 great [3] 31:11 37:23 88:6 greatly [1] 85:25 grind [1] 73:8 ground [1] 11:8 grounds [1] 75:20 groups [2] 73:1,2 guard [2] 73:15,18 guess [6] 16:3 19:6 44:11 46:7 49:8 88:23 gun [1] 42:19</p> <hr/> <p style="text-align: center;">H</p> <p>handed [1] 59:11 handle [1] 36:13 happened [1] 4:15 happening [2] 29:22 33:14 happens [1] 35:12 happy [1] 22:10 hard [2] 31:22 85:2 harder [2] 86:12,13 harm [1] 8:21 haul [1] 76:17 Haywood [18] 17:1 22:13 23:3 28:22 29:6 40:4 59:3 66:16,25 67:7 68:22 69:10, 11 70:11,13 73:15 84:1 85: 19 hear [17] 3:3 9:5 12:17 17: 10 22:16,17 44:16,22 45:1 52:1 70:24 71:7,17,19 76: 8 78:21,22 heard [3] 45:12 55:4 73:10 hearing [8] 14:1,4 23:13 50:18 70:22,23 85:24 86:3 hearings [1] 50:14 height [1] 86:14 held [11] 3:12 4:11,14 16:7 22:13 24:19 28:23 30:1 33: 9 38:15 49:10 helds [1] 18:9 Heller [1] 12:16 help [2] 73:15 80:17 helpful [1] 88:15 helps [1] 23:16 Herb [1] 17:8 higher [1] 41:2 hinder [1] 73:4</p>	<p>hire [1] 86:12 historic [1] 51:13 history [1] 67:6 hold [1] 25:10 holding [7] 3:17 9:25 24: 14 83:5 90:16 91:18,18 holdings [2] 52:4 91:19 holds [2] 18:9 50:10 honest [1] 48:9 honing [1] 61:2 Honor [41] 5:2 21:10 28:13 44:18 45:4 48:20 53:13 54: 13,20 55:15,20,25 56:19 58:17 62:9,17 63:25 64:25 65:23 66:7 70:10 71:15 72: 5,17,25 79:8 80:22 81:24 83:1,23 85:14 86:9 87:6 88:1 89:8,25 hoops [1] 77:14 Hosanna-Tabor [1] 75:20 hospital [1] 25:8 hostile [1] 77:21 hostility [4] 23:5,10 67:1 69:7 however [1] 3:14 Howlett [8] 22:12,22 28:22 40:4 59:3 66:16 83:25 85: 19 hundreds [2] 32:1 70:24 hurt [1] 68:14 hypothetical [1] 67:10 hypotheticals [2] 64:13 68:1</p> <hr/> <p style="text-align: center;">I</p> <p>Idaho [2] 67:18,19 idea [2] 23:16 33:16 identical [2] 14:20 80:11 identified [1] 6:1 ignores [1] 51:19 illustrates [1] 27:17 imaginable [1] 36:22 immediate [3] 49:14 52:9, 24 immediately [5] 61:18 67: 19 82:25 83:8 92:18 immunities [1] 40:3 immunity [9] 39:5 40:3 47: 4 54:2 59:4 67:16 82:15, 17,17 immunize [1] 24:23 immunizing [2] 39:20 47: 16 implicate [1] 80:20 implication [1] 33:1 implications [1] 33:5 implies [1] 13:1 implying [1] 27:5 important [2] 31:17 56:1 impose [2] 59:1 63:16 imposed [2] 33:16 38:8 imposes [2] 7:6 13:15 impossible [10] 47:6,21,24</p>	<p>48:2,13,21 53:9 54:7 68: 13 69:5 improper [2] 64:18 85:5 inability [6] 4:21,22 36:4 38:12 39:23 50:9 inadequate [1] 55:10 incapable [1] 39:22 incentive [2] 76:21,25 incompatible [1] 16:4 incomplete [1] 87:9 incongruity [1] 13:13 incongruous [1] 13:18 inconsistency [2] 61:24 81:10 inconsistent [5] 23:18 34: 1 60:11,18 62:6 incorporate [1] 25:19 incorrect [1] 63:4 independent [1] 90:16 indisputable [1] 41:1 individuals [1] 85:8 ineffective [1] 72:19 informal [2] 72:16 88:17 inherently [1] 52:22 injunction [2] 9:4,8 injunctive [2] 8:20 29:7 injured [1] 58:4 injury [1] 58:5 inside [1] 89:12 instance [6] 3:22 7:21 41: 20 45:7 70:21 88:9 instead [5] 6:6 14:21 69:22 79:24 89:6 insurance [2] 9:6 35:11 intentionally [1] 40:20 interest [1] 68:17 interlocutory [2] 67:21,23 intermediate [3] 30:20 40: 18 72:8 internal [1] 25:3 interpretation [1] 32:4 interrelated [2] 20:8,18 interrupt [1] 68:2 invented [1] 63:19 investigation [1] 75:23 invoke [1] 75:4 invoked [2] 46:17 76:13 involve [1] 58:2 involves [1] 22:7 irony [1] 76:18 Isn't [8] 5:12 18:23 21:20 27:8 46:3 56:24 62:3 77: 14 issue [12] 10:4 33:22 51:18 59:14 62:24 72:20 74:6 82: 12 84:16,17 87:8 91:13 itself [2] 66:25 89:4</p> <hr/> <p style="text-align: center;">J</p> <p>JACKSON [27] 19:6,24 20: 3 32:20 33:7,21 51:6 59: 22 60:1,17 61:19,23 62:1, 14 63:7,22 77:11 79:7,11, 14 81:3,6,13 82:6,9 84:21</p>	<p>89:18 January [1] 86:1 job [1] 88:17 Johnson [2] 52:8 67:15 JR [3] 1:21 2:5 51:9 judge [1] 18:13 judge-made [1] 51:23 judgment [7] 23:15,17,18 55:3 58:7 67:17 92:12 judicial [8] 6:2 49:14 52:24 63:15 65:7 66:17 82:15,16 judicially [2] 3:21 7:20 jumped [1] 42:19 jurisdiction [27] 4:12 17: 13 21:13,25 22:4,7,20 23:1 27:25 28:3,25 29:16,17,19, 23 31:19 33:11 53:2 54:17 59:8,13,25 68:19,20,24 84: 5 92:11 jurisdiction's [1] 59:14 jurisdictional [39] 4:10 13: 1 17:1,3,5,9,18 19:8,14 20: 20 21:23 22:9,13 28:7,11, 14,17 29:11 30:12 31:21, 23 32:9,13,16,21 33:1,6 44: 12,14 51:17 53:1 66:20 68: 23 69:1 70:14 83:24 84:1 91:22 92:1 jurisdictions [1] 6:10 JUSTICE [218] 3:3,9 4:24 5: 6 6:5 7:3 8:1,13,18,24 9: 10,19 10:5,7,14,18,22 11:1, 10,16,17,25 12:4,10,13,16 13:4,6 14:8,10,17 15:8,12, 14,17 16:11 17:19,21,25 19:6,7,24 20:3 21:7,11,17, 20 23:3,21 25:13,20 27:23 29:1 30:8,11,17 31:10,16 32:10,18,20 33:7,21 34:9, 16 35:18 36:5,9 37:5,9,14 38:5,17,21 39:7,11 40:6,8, 9,10,14 41:12,25 42:4,9,14 43:8,9,9,11,21,25 44:4,11, 19 45:5,13,14,14,15,16 46: 21,22,22,24 47:6,20 48:1,8, 17 49:2,11,18,19,19,21,22, 23 50:20 51:4,5,5,11 53:7, 14,22 54:8,14,25 55:19,21 56:8,23 57:2,6,17,22 58:10 59:22 60:1,17 61:19,23 62: 1,14 63:7,22 64:10 65:10, 16 66:4,8,22,23,24 67:9,24, 25 68:6,8 69:3,11,15,16 71: 9,10,24 72:4,24 73:17 74:3, 12,16 76:2,12 77:1,11,12, 25 78:6,20 79:3,5,7,10,11, 13,14 81:3,6,13 82:6,9,23 83:2 84:7,8,10,11,12,13,14, 25 86:7,15,16,16,18,19 87: 16 88:2,22 89:13,17,17,21 90:2 93:6 justifies [1] 24:7</p> <hr/> <p style="text-align: center;">K</p>
--	--	---	--	---

Official - Subject to Final Review

<p>Kafkaesque [5] 4:20 36:11 38:6,10 56:17 KAGAN [23] 23:21 25:13, 20 36:9 45:14,15 46:21 53:22 64:10 65:10,16 66:4,8, 23 67:25 68:6 69:16 79:10, 13 82:23 83:2 84:7,13 Kagan's [1] 67:9 KAVANAUGH [19] 16:11 17:19,21,25 19:8 34:9,16 35:18 49:20 57:17 71:9 72:24 73:17 74:3,12,16 76:12 77:1 86:17 keep [1] 69:1 keeping [1] 84:2 keeps [2] 61:16 92:7 key [4] 51:20 58:22 62:12, 21 kind [7] 16:14 48:9 64:16 66:5 80:7 83:14 88:25 kinds [4] 62:8 63:23 77:1 81:22 knows [1] 28:13</p>	<p>legislation [1] 83:13 legislature [1] 44:24 lengthy [1] 58:2 less [1] 48:24 letter [4] 31:4 78:10,10,21 level [1] 69:24 levels [5] 41:16 64:21 65:22 69:22,23 liability [19] 3:13 52:20 58:24 59:1 60:7,15 61:9 63:16 66:2 75:8 79:17 81:20 82:3,9,13,20 90:25 91:2,6 liability-minimizing [1] 63:17 liable [2] 82:2,8 liberty [2] 73:2,7 likely [1] 84:19 limitation [1] 13:1 limitations [6] 8:2 86:21, 23,25 87:3,14 limits [11] 17:11 24:17,18 25:1,24 55:10 60:22 66:9 69:18,18 91:10 linchpin [1] 16:12 line [4] 25:14 36:8 59:3 80:25 lines [2] 30:4,5 listen [1] 45:23 litigants [2] 56:10 73:9 litigated [1] 56:2 litigation [2] 35:11 44:9 little [3] 6:16 15:23 30:5 local [1] 35:10 logjam [1] 54:22 long [6] 5:4 6:11 29:4,17 42:6 90:9 look [8] 16:5 22:1 24:7 65:6,6 66:24 67:15 70:14 looking [6] 20:3 24:14 28:21 53:25 65:8 81:8 looks [4] 7:15 20:14 27:9 66:1 loop [2] 11:18 54:18 lose [10] 11:6 14:4 36:2,14 37:2,6,8 45:20 74:1 77:8 loses [1] 38:2 lost [3] 10:3 84:22 88:16 lot [15] 25:25 30:14 34:13, 15,23 65:8 66:25 69:17 75:5 83:3 84:19 88:16 90:14 91:11,24 lots [1] 46:9 lower [3] 5:1 8:11 9:14</p>	<p>21 54:3,15,16,21,22,24 56:15,20,24 57:7 62:17 78:21, 25 manifestly [1] 60:11 manner [1] 85:13 many [8] 24:23 26:17 27:25, 25 28:1,20 78:9 79:16 match [1] 32:15 matter [15] 1:14 9:25 10:3 17:4 21:25 28:16 32:8 36:25 39:20 68:7,12 70:16,18 77:23 85:18 mattered [1] 61:6 matters [1] 64:24 mean [24] 6:11 7:12 12:7 16:5,7 19:11 20:3 23:10 25:20 30:13 31:2 36:10 37:14 38:25 46:9 50:13,23 65:16 69:12 74:19 83:2,16 87:8 88:23 meanings [1] 28:1 means [10] 18:11 52:21 59:7 60:4 61:8,9 80:6,18 81:21 88:16 meant [2] 51:17 83:14 mechanism [3] 30:20 31:7 72:8 mediation [5] 6:9 7:7,14, 18,25 mediator [1] 6:13 mention [1] 34:14 mentioned [2] 35:18 75:14 merely [4] 9:12 51:25 59:24 67:13 merit [3] 13:21 23:12 71:4 merits [8] 11:6,24 37:7,8 45:20 46:2 77:9 84:22 might [18] 7:15 8:7 11:5,10 13:13 27:17 32:15 48:3 65:9,12,24 66:2 68:16 69:8 76:25 80:19 84:16 87:3 million [1] 86:10 mind [1] 10:6 mine-run [1] 49:15 minimis [1] 27:5 minimize [8] 59:2 60:15 66:1 75:7 82:20 90:24 91:2,5 minimized [1] 58:24 Minimizes [1] 82:3 minimizing [5] 60:7 61:8 79:17 81:20 82:9 minimum [1] 4:17 misreading [1] 74:5 Mm-hmm [3] 29:1 45:3 81:12 mobility [1] 81:16 Monday [1] 1:12 Mondou [1] 33:9 money [1] 61:10 Montgomery [1] 1:21 months [1] 73:24 moot [1] 47:14 morning [2] 90:15 92:24 most [6] 13:19 22:12 36:21</p>	<p>53:20 76:16 83:4 motion [1] 85:23 move [1] 81:19 moving [1] 80:5 MSPB [2] 71:6,16 much [6] 25:1,25 31:17,21 45:18 58:7 municipal [1] 5:10 must [1] 58:8 myself [1] 64:2</p>	<p>obviously [2] 46:19 85:22 October [1] 1:12 odd [1] 30:19 officers [4] 62:23 65:18 70:22 85:24 officials [1] 82:1 often [1] 35:2 Ohio [3] 52:10 75:13 76:7 Okay [20] 13:6 14:18 15:18 32:10,12,18 38:5 39:7 41:25 48:1 49:11 51:4 64:23 66:21,23 68:8 84:25 87:16 89:13,14 once [2] 47:12 83:18 one [35] 13:7 15:24 16:20 18:22 20:10 25:5 27:8 28:4,24 30:16,18,24 43:17 44:1,1 50:1,4 51:18 52:18 53:14 54:4 58:23 60:12 63:21 64:1,2,14 72:6,13 76:12 77:25 79:9,20 83:4 90:1 onerous [2] 68:13 70:8 ones [1] 27:14 Only [8] 14:15 17:10 19:21 24:20 41:4 43:19 51:14 53:19 opened [1] 75:23 opening [1] 75:14 operates [2] 57:7 60:24 opinion [5] 18:4 26:7 27:3 58:19 76:1 opinions [1] 75:3 opposed [1] 10:16 oral [4] 1:15 2:2 3:7 51:9 order [2] 50:11 56:12 ordinary [1] 41:3 organizations [1] 35:5 other [24] 11:2 13:23 14:11 22:24 27:12 29:4 34:15 37:3 6 39:13 41:6 43:13 44:9 45:21 46:16 58:9 61:2 80:8,20,20 81:22 84:15 86:8 87:16 90:17 others [1] 22:10 otherwise [1] 15:15 out [23] 6:14 8:24 11:6,19 12:17 19:16 22:24 29:23 30:21 46:1 54:19 55:6 57:10 64:14 69:2 77:16,16 78:2 84:2 87:10,12 91:17 92:17 out-of-state [2] 17:13,14 outcome [2] 33:23 34:8 outcomes [1] 76:6 outside [1] 85:22 over [27] 17:3,4,5,13 23:1, 12 27:21 28:15,15,16,25 29:3,8,9,14,16,17,19 33:11 59:8,25 70:16,18 81:22 84:5 85:18 86:3 overrule [1] 91:24 overruling [1] 92:5 overwhelming [1] 9:5 own [4] 10:6 16:19 22:4 27:</p>
L				
<p>LABOR [2] 1:7 64:9 lack [7] 11:9,10,13,22 13:21 22:25 71:23 LaCOUR [67] 1:21 2:5 51:8, 9,11 53:13 54:13,20 55:15, 20,25 56:19,25 57:4,9 58:16 59:24 60:16 61:7,22,25 62:9,16 63:13,25 64:25 65:12,23 66:7,15 67:5 68:16 69:9,14 70:10 71:15 72:15 73:13,21 74:9,14,25 76:20 77:7,24 78:5,17,25 79:4,8 80:22 81:4,12,24 82:8,11 83:1,23 84:18 85:14 86:9 87:6 88:1,4 89:8,16,20 LaCOURT [1] 71:25 landmark [1] 32:1 language [8] 18:17 21:1 22:23 25:22 26:7 58:9,11 88:5 last [3] 6:11 39:7 78:1 latter [2] 51:23 90:19 law [35] 4:10 9:25 10:3 12:20 20:17 21:21,21 22:2 32:8,14,24 33:1,3 35:1 44:6 51:15 54:1 56:20 57:19 58:1,23,25 59:1,6,13 61:5,15 62:13,24 73:23 79:21 81:25 82:2,12,22 laws [6] 53:3 59:4 79:23 80:8,13,21 lawsuit [3] 8:22,25 23:24 lawsuits [1] 44:9 lawyer [2] 35:13 88:19 lawyers [1] 35:9 lead [1] 76:6 least [3] 48:22 69:5 86:2 leave [2] 16:15 26:22 left [1] 16:17</p>	<p>lines [2] 30:4,5 listen [1] 45:23 litigants [2] 56:10 73:9 litigated [1] 56:2 litigation [2] 35:11 44:9 little [3] 6:16 15:23 30:5 local [1] 35:10 logjam [1] 54:22 long [6] 5:4 6:11 29:4,17 42:6 90:9 look [8] 16:5 22:1 24:7 65:6,6 66:24 67:15 70:14 looking [6] 20:3 24:14 28:21 53:25 65:8 81:8 looks [4] 7:15 20:14 27:9 66:1 loop [2] 11:18 54:18 lose [10] 11:6 14:4 36:2,14 37:2,6,8 45:20 74:1 77:8 loses [1] 38:2 lost [3] 10:3 84:22 88:16 lot [15] 25:25 30:14 34:13, 15,23 65:8 66:25 69:17 75:5 83:3 84:19 88:16 90:14 91:11,24 lots [1] 46:9 lower [3] 5:1 8:11 9:14</p>	<p>meanings [1] 28:1 means [10] 18:11 52:21 59:7 60:4 61:8,9 80:6,18 81:21 88:16 meant [2] 51:17 83:14 mechanism [3] 30:20 31:7 72:8 mediation [5] 6:9 7:7,14, 18,25 mediator [1] 6:13 mention [1] 34:14 mentioned [2] 35:18 75:14 merely [4] 9:12 51:25 59:24 67:13 merit [3] 13:21 23:12 71:4 merits [8] 11:6,24 37:7,8 45:20 46:2 77:9 84:22 might [18] 7:15 8:7 11:5,10 13:13 27:17 32:15 48:3 65:9,12,24 66:2 68:16 69:8 76:25 80:19 84:16 87:3 million [1] 86:10 mind [1] 10:6 mine-run [1] 49:15 minimis [1] 27:5 minimize [8] 59:2 60:15 66:1 75:7 82:20 90:24 91:2,5 minimized [1] 58:24 Minimizes [1] 82:3 minimizing [5] 60:7 61:8 79:17 81:20 82:9 minimum [1] 4:17 misreading [1] 74:5 Mm-hmm [3] 29:1 45:3 81:12 mobility [1] 81:16 Monday [1] 1:12 Mondou [1] 33:9 money [1] 61:10 Montgomery [1] 1:21 months [1] 73:24 moot [1] 47:14 morning [2] 90:15 92:24 most [6] 13:19 22:12 36:21</p>	<p>N</p> <p>NANCY [1] 1:3 narrow [8] 46:14,24 48:10 49:24 50:5 68:3,9,10 narrower [5] 23:25 24:2,6 45:18,18 narrowest [2] 40:5 47:2 narrowly [2] 46:12,19 nature [2] 7:2 68:25 nearly [1] 58:20 necessarily [3] 45:10 52:17 76:23 need [3] 27:11 65:6 91:17 needs [1] 42:11 neither [1] 22:6 neutral [20] 4:2,3 6:4 16:20 19:8,14,20,23 20:20 21:2,9 43:12,18 44:7 45:1 51:17 53:1 66:16 68:23 84:1 never [5] 4:5,6,7 59:15 68:20 New [5] 23:4 46:24 48:9 53:15 82:17 no-exhaustion [2] 52:8 75:11 nobody's [1] 46:5 non-benefits [1] 66:13 none [3] 12:22 57:11,12 Nor [1] 52:4 notable [1] 92:3 nothing [3] 4:3 51:15 54:14 notice [18] 7:13,15 20:6 23:1 24:22 26:23 50:15,18 52:18 55:6,9 60:20 61:11 71:22 72:18 77:17 82:19 91:2 notices [1] 78:10 novo [1] 88:13 number [4] 28:24 29:2 68:1 85:24 nuts [1] 7:11</p>	<p>O</p> <p>O'Connor [2] 57:23 74:23 O'Connor's [1] 58:10 objection [1] 4:25 objectionable [1] 7:9 objectives [6] 18:3,17 34:6 51:2 63:9 80:1 obstacle [6] 64:5 79:25 80:4 81:13,25 85:4 obstacles [1] 52:19</p>
M				

Official - Subject to Final Review

<p>24</p> <p style="text-align: center;">P</p> <p>PAGE [3] 2:2 60:3 83:9 pandemic [1] 86:14 paper [2] 30:22 66:10 papers [2] 36:14 62:15 parallel [1] 16:1 parameters [1] 24:8 park [2] 62:22 73:23 parse [1] 91:17 part [8] 25:18,20 27:2 60:24 82:12 89:3,4,6 particular [13] 7:22 22:18 24:12,15 25:11 26:24 29:20,25 30:6 43:22 76:8 90:7 91:5 particularly [3] 26:6 65:24 88:14 particulars [2] 39:12,14 parties [4] 6:3,8 7:18 16:22 partly [2] 90:17,17 passed [3] 31:5 53:17 78:11 past [1] 14:11 path [1] 18:7 Patsy [22] 3:11,12,18 6:20 11:23 18:24 22:5 27:4,7,14 41:24 49:12 50:1,4,6 51:19 57:15 58:18 75:11 83:5,6 92:19 Patsy's [3] 3:17 19:4 27:19 pattern [5] 39:1,9,12,15 91:21 pause [1] 74:4 pending [1] 7:19 Pennhurst [1] 34:24 people [9] 43:15 62:7 63:20 64:5 76:16 78:23 86:2,12,13 perfect [1] 53:20 perfectly [2] 21:5 64:23 perhaps [2] 11:11 31:11 period [2] 25:7 26:25 permits [2] 12:20 44:24 permitted [1] 16:8 person [8] 5:17,18 17:5 28:16 41:14,19 42:5 64:16 personnel [1] 71:7 persons [1] 58:4 perspective [1] 46:20 petition [1] 53:18 Petitioners [11] 1:4,20 2:4,9 3:8,16 4:20 25:6 39:15 67:22 89:24 Petitioners' [2] 3:15 51:19 phone [4] 36:15,23 78:10,11 piece [2] 30:21 66:10 place [2] 51:1 58:6 plaintiff [5] 17:14 31:12 52:13 67:3 75:24 plaintiffs [18] 8:15,15 16:23 19:22 31:12 34:25 43:</p>	<p>20,21 44:1 52:6 54:23 61:13,16 63:1,2 73:7 78:9 82:24</p> <p>plaintiffs' [1] 69:7 planning [1] 5:17 please [3] 3:10 51:12 56:8 plenty [3] 14:7 38:3 42:22 plus [1] 73:15 point [13] 36:17 47:15 54:21 58:17 60:17 70:7 76:11 77:12 85:1,16 88:4 90:10 92:17 points [4] 53:14 57:10,23 85:15 police [7] 62:23 64:18,20 65:18,18,21 66:6 policy [7] 23:11,15,17,18 26:3 33:12 92:12 portion [1] 30:24 position [4] 9:7 72:25 73:8 76:6 positioned [1] 9:3 possible [1] 54:9 possibly [1] 18:17 potential [2] 44:2 54:4 potentially [1] 70:12 power [5] 17:4 28:15 29:8,9 44:22 powers [2] 51:13 90:11 practical [6] 13:19 24:21 35:8 39:20 68:12 76:14 practicing [1] 35:14 precedent [2] 34:19 52:7 precedents [1] 73:14 precisely [3] 4:21 38:12 50:17 preclude [2] 83:19,20 precludes [1] 50:1 precursor [1] 75:20 predictably [2] 59:6 91:11 preempt [5] 51:17,22 53:3 57:20 80:19 preempted [20] 4:18 6:17,22 19:12 20:15 21:5 22:14 24:3,6,11,13 32:22 33:2,5 51:14 52:19 53:22 58:14 80:7,15 preemption [28] 4:11 17:22,24 18:1,3,15 19:17 20:5 22:19 24:4 32:23 34:4 47:5 58:21 60:4 61:6,24 63:11 79:20 80:10,20,24 81:5,9,18,23 82:4 92:2 pregame [1] 88:25 prejudice [2] 59:9,12 present [2] 7:13 62:18 presented [2] 6:25 53:16 pressing [2] 48:11 72:22 presumably [1] 21:24 presume [1] 57:1 presumption [1] 75:4 pretty [2] 7:1 31:21 prevent [1] 66:11 primary [1] 56:3</p>	<p>principle [5] 11:12 21:12,16 40:19 92:14 private [1] 44:8 probably [2] 6:17 42:20 problem [23] 5:13 18:4 34:10,17 37:21 38:4,7,13,14,25 39:19 41:23 42:22 47:5 74:23 75:7 77:3,3,4,10 79:16 82:4 87:14 problematic [1] 58:1 problems [7] 34:20 57:10 58:22 65:25 66:3 77:2 79:9 procedural [9] 4:2 16:14,20 21:2,9 31:7 35:19 56:6 77:4 procedure [4] 7:22 36:22 47:19 54:12 proceed [3] 6:12 33:13 69:24 proceeding [4] 75:18 87:12,18,19 proceedings [4] 52:14 58:3 76:1 92:18 process [66] 6:9 7:15 8:12 9:16,22 10:10,11 11:7,18,24 13:22 14:3,6,7 16:22 30:22,24 31:5 35:19 36:1 37:23 38:3,4,6 42:6,10,17,20,22,23 43:2,3,13,14 45:8,24 47:18 53:10 54:11 55:8,11,13 56:9,17 62:5,15 70:5,8 71:14 72:7,14,16 77:4,17 78:2,4,16 79:9 80:7 84:23 85:9 87:1,9,10 88:18 92:21 processes [3] 35:21 85:4 88:8 processing [2] 30:9 32:16 prohibit [1] 35:3 prohibiting [1] 62:10 prohibits [2] 34:25 62:4 proper [3] 55:10 85:12 87:18 properly [1] 53:19 protect [2] 17:6 28:18 Protection [1] 71:5 provide [1] 78:20 provision [1] 60:20 Public [1] 73:2 purgatory [1] 26:21 purportedly [1] 62:24 purpose [4] 19:2 34:5 52:23 58:23 purposes [15] 8:14 18:3,16 26:2,3 32:14 60:5,12,18 61:20 63:15 80:1 81:10 87:4 89:9 pursue [2] 53:10 72:11 pursuing [2] 36:9 37:12 put [2] 16:8 34:9 puts [1] 48:22 Putting [1] 48:17</p>	<p style="text-align: center;">Q</p> <p>qualified [1] 67:16 qualifies [1] 6:24 quarreling [1] 32:7 question [21] 6:25 8:5 12:25 15:23 20:2 23:8 24:4 30:18 39:8 57:18 65:5 72:5 78:1 79:19 82:1,21 86:22 87:17 91:3,4,22 questioning [1] 36:8 questions [4] 4:23 53:4,6 93:4 quick [1] 42:6 quickly [3] 36:23 76:17 79:15 quintessential [2] 64:17 66:13 quotes [1] 83:5 quoting [1] 79:18</p> <p style="text-align: center;">R</p> <p>raise [4] 53:3 56:21 62:11 67:11 raised [2] 54:5 78:19 rather [2] 30:11 70:15 rationales [3] 46:9,10,12 reach [2] 24:16 42:24 reached [2] 4:19 28:22 read [7] 9:14 31:18 48:10 54:9 74:7,18 75:1 reading [4] 46:8 50:3 53:3 68:18 real [1] 80:23 real-world [2] 34:17,20 really [26] 6:19,23 10:15 11:17 20:15 23:16 26:8,18 27:9 28:10,14 30:3 31:22,23 45:22 58:22 69:6 70:15 73:4 75:6 77:20 80:25 82:21 85:17 91:15,23 realm [1] 49:4 reason [11] 4:7 12:5 20:15 26:17 43:18,18,19 60:11 83:13 85:16 87:20 reasonably [1] 92:22 reasoned [1] 3:19 reasoning [9] 3:24 16:5 19:4 25:18,21 26:14 27:20 29:13,15 reasons [5] 18:25 34:23 40:24 62:1 80:16 rebut [1] 16:6 REBUTTAL [3] 2:7 89:21,23 receipt [1] 25:2 receive [1] 77:17 received [3] 55:9 78:12,13 recently [1] 22:12 recognize [1] 12:6 recognized [3] 71:6,18 82:13 recognizes [1] 15:21 reconcile [1] 15:1</p>	<p>record [5] 85:8,22 88:11,18,20 recovered [1] 63:23 recovery [2] 20:11 60:10 redress [1] 87:19 reduced [1] 85:25 reflect [1] 17:3 reflects [2] 28:15 refusing [2] 13:13 66:18 regardless [2] 18:11 33:6 regime [1] 41:13 regs [1] 71:1 regulations [4] 78:2,14,22,23 Rehnquist [1] 76:2 reject [1] 81:6 rejected [1] 53:24 relate [1] 19:9 related [1] 80:14 relationship [2] 26:5,12 reliance [1] 51:19 relief [9] 4:4,6 5:16,19,23 8:20,20 15:1 29:7 religion [1] 77:3 religious [5] 35:5 73:2,7,8 75:19 rely [1] 50:6 remedial [2] 52:22 89:10 remedies [4] 9:21 14:24 41:7 50:17 remedy [7] 4:8 20:7 41:8 50:10,11 77:15,19 remember [1] 56:1 repeatedly [1] 80:13 reports [2] 5:21,22 require [3] 52:9 54:21 68:18 required [3] 4:25 5:8 79:1 requirement [59] 5:5,15,16 6:6,7,8,19,24 7:1,6,16,20 12:6 13:10,15 14:13 15:20 18:19 19:4 20:14 23:2,20,23 26:19,23 27:9,13,15 28:7 29:20 31:14 37:17 39:2 46:17 47:25 49:13 56:5 57:8 58:1 59:16 60:25 61:3,12,15 62:3 63:1,4 68:11 73:19 79:24 82:19 83:7,18 85:3 87:25 88:24 91:5,8,12 requirements [16] 6:21 7:12 18:21 19:9 24:5,11 25:23 26:10 27:7 46:11 50:2 58:12 65:14 74:19,21 85:6 requires [3] 34:2 35:20 54:17 requiring [2] 31:9 67:2 research [1] 15:24 resolution [1] 58:6 resolve [1] 28:20 respect [6] 57:7 63:11 76:14 81:18 83:11,22 respond [2] 53:12 73:12 Respondent [9] 1:8,22 2:6</p>
---	---	---	--	---

Official - Subject to Final Review

4:1,9 40:17 48:6 51:10 92:6 Respondent's ^[1] 23:14 response ^[1] 31:15 result ^[4] 18:7 51:15 59:11 92:7 retain ^[1] 86:13 reverse ^[1] 93:5 reverted ^[1] 49:25 review ^[9] 41:16,17 52:10, 20 64:21 69:23,23 88:12, 13 rights ^[10] 3:20 35:15 42:10 52:11 73:5 75:13,21 79:23 83:12 89:11 ring ^[2] 36:23 37:20 ripe ^[2] 46:3 90:10 ripeness ^[8] 11:11,14 51:24 52:3 84:16 90:2,3,8 risk ^[1] 8:6 ROBERTS ^[23] 3:3 6:5 7:3 36:5 37:5,9,14 38:5,17,21 39:7,11 40:6 43:9 45:14 46:22 49:19 51:5 84:8 86:16 89:17,21 93:6 rule ^[56] 4:2 6:16,20 7:25 8:9 13:19 17:9,12,15 18:22 19:11,13,19 21:2,23 22:2, 15 23:5 24:10 25:22 27:17 28:10 29:10,11 30:9,12 31:18,25 32:1,6,22 33:20,25 34:1 38:1 41:6 43:12 45:1 47:5,24 49:6 53:21,23 57:14,16 65:7 66:20,25 69:1 70:14 73:4 74:20 75:11 76:15 83:10,25 ruled ^[2] 55:1 58:19 rules ^[27] 16:15,15,18,20, 21,23 17:1,3,5,7,18 22:9, 14 28:17 32:13 43:7 46:18 51:17,20,24 52:18 53:1,9 66:16 68:23 84:1 91:23 ruling ^[5] 37:10 38:11 40:11,15 42:24 rulings ^[1] 67:13 run ^[4] 65:24 66:2 87:4,10 running ^[4] 8:3 84:23 86:23 87:1	23 27:4,5,8 34:19 40:18 42:5 45:1,22 59:18 60:9 66:10 79:18 83:5,11 scenario ^[1] 37:2 scheme ^[7] 28:9 29:21 30:18 63:18 64:19 77:5 82:13 Schools ^[2] 52:12 75:19 scope ^[1] 16:16 second ^[6] 16:25 20:12 59:5 60:20 62:20 65:5 SECRETARY ^[9] 1:7 4:4,5, 6 5:20,21,23 61:17 63:5 Section ^[16] 3:14 14:16 20:7 23:19 24:19 27:21 29:16 30:2 34:2 49:9 51:3,16 60:3 62:6 79:21 90:5 Security ^[4] 13:11 15:6 49:17 64:4 see ^[8] 6:14 46:15 54:11 63:13 65:6 73:10 75:12 79:16 seek ^[9] 4:4,6 5:16,19 15:2 41:20 42:1 56:15 58:4 seeking ^[5] 5:23 8:19 13:21 41:7,14 seem ^[7] 19:12 31:8 55:4 58:10 72:25 80:25 85:7 seems ^[8] 15:24 20:17 45:19 58:12 61:3 72:9 83:3, 16 seen ^[2] 64:1 84:19 sees ^[1] 6:14 send ^[3] 36:15 52:6 76:23 sending ^[1] 87:22 sends ^[1] 7:17 sense ^[5] 20:21 35:16 39:2 44:8,15 serious ^[2] 53:4 77:10 seriously ^[1] 85:21 service ^[1] 16:22 set ^[4] 64:4 65:17 66:20 78:2 sets ^[1] 64:19 setting ^[1] 6:2 settlement ^[1] 7:23 seven ^[1] 25:2 several ^[4] 6:10 20:8 27:18 92:4 sex ^[1] 75:22 shall ^[2] 82:2,8 shifting ^[1] 80:18 short ^[2] 74:15,16 shorter ^[1] 25:1 shouldn't ^[1] 15:25 show ^[4] 41:1 52:15 67:13 85:17 shows ^[1] 76:4 side ^[6] 11:2 61:2 74:10,15, 16 84:15 significant ^[5] 31:24 48:23, 25 50:8,24 similar ^[5] 5:12 13:14 71:16,19 85:6 simple ^[2] 72:17 74:20 simply ^[8] 6:8 7:6,7 54:6	59:18 76:9 83:13 92:14 since ^[9] 21:22 31:12 70:19 single ^[2] 90:20 91:15 sit ^[1] 6:13 sits ^[1] 40:20 situation ^[3] 16:1 71:2 87:15 situations ^[1] 39:13 slow ^[2] 10:3 70:5 Social ^[4] 13:10 15:6 49:17 64:4 sole ^[1] 91:7 Solicitor ^[1] 1:21 somebody ^[1] 45:21 somehow ^[3] 19:16 86:25 87:24 sometimes ^[2] 22:17 34:25 soon ^[1] 84:24 sorry ^[1] 21:9 sort ^[15] 7:5 18:14 26:7 32:3,15 54:22 56:5 63:10 65:14,17 67:2 71:2 75:20 88:10 89:10 sorts ^[1] 49:3 SOTOMAYOR ^[33] 9:10,19 10:5,14,18,22 11:1,17 43:10,11,21,25 44:4,11,19 45:5,13 54:8,14,25 55:19,21 56:8,23 57:2,6 77:12,25 78:6,20 79:3,5 84:12 sought ^[1] 40:10 sound ^[2] 7:19 89:2 sounds ^[3] 6:15 55:13 70:10 South ^[1] 74:10 sovereignty ^[1] 68:17 speaking ^[1] 14:11 special ^[1] 49:9 specifically ^[1] 19:19 speculating ^[1] 5:8 speed ^[1] 78:3 spend ^[1] 35:14 split ^[2] 74:15,17 square ^[1] 75:12 stage ^[2] 67:17 85:23 stages ^[1] 65:20 stake ^[1] 31:12 stand ^[1] 79:24 standard ^[4] 41:2 80:10,18 81:9 start ^[4] 8:2 10:19 80:5 86:23 started ^[2] 45:16 57:18 starts ^[1] 70:14 state ^[144] 3:19,24 4:11,12 5:1,3 6:2 7:14 8:2,7 9:1,3, 4,5,7,9,25 10:3,9,16,19 11:7,18 13:14,20,24 14:9,22 15:25 16:8,14,18 17:12 18:12 21:12,25 22:3,15,16,18, 20,25 23:11 24:23 27:5 28:10,24 29:2,23 31:9,18 32:4, 7,8,21,24 33:1,10,25 34:2,	19,24 35:1,10,12,15,17,20 36:12,13,21 37:11,15,23, 25 38:15 39:5,5,20,21,24 40:2,11 41:5,5,12 42:23 43:1,5,15 44:6,15,22 45:6 47:11,17,25 50:14,15 51:13 52:4,14 56:2,4,16 57:1 59:1 63:24 67:7 68:12,14, 18,19 70:4 72:22 73:5,20 74:5,17,21 75:18 76:1,3,8, 17 77:13,17,19 79:22 80:13 82:1,2 83:11,19,22 85:11,21 86:20,22,25 87:4,4 90:24 92:10 state's ^[2] 42:22 79:21 statements ^[1] 75:1 STATES ^[7] 1:1,16 52:6 76:14,22 88:7 92:4 statute ^[29] 4:2,18 8:2 19:1 20:6 24:12,19,22 25:11 26:2 32:9 33:17 39:4 46:13 49:9 60:12,19 61:20 62:2 68:18 81:11 82:5,7,17 86:20,22,25 87:3,14 statutes ^[5] 31:20 32:4,5 70:25 75:3 statutory ^[1] 32:3 stick ^[1] 49:24 still ^[15] 8:22 11:7 16:15 21:3,4 43:3 48:22 50:24 53:2 54:3,3 68:16 69:21 83:24, 25 straight ^[1] 14:2 straight-up ^[1] 28:8 straighter ^[1] 18:7 straightforward ^[1] 34:8 strange ^[1] 76:6 stringent ^[3] 65:24 69:19, 21 strong ^[1] 23:10 struck ^[1] 22:10 structure ^[1] 76:22 structured ^[1] 63:14 structuring ^[1] 88:7 stuck ^[2] 11:18 15:6 stuff ^[1] 20:25 subject ^[5] 17:4 28:16 70:16,18 85:18 submission ^[1] 73:9 submit ^[1] 26:24 submitted ^[2] 93:7,9 subsequently ^[1] 20:5 substitute ^[2] 41:10 50:23 substitution ^[1] 16:22 sudden ^[1] 55:23 sue ^[9] 5:17,24 7:17 16:24 19:22 27:1 43:20,21 67:3 suggest ^[5] 19:15 26:3 58:12 75:6 90:6 suggestion ^[1] 16:7 suggests ^[6] 25:22 26:8 70:4 74:4 76:5 88:5 sui ^[1] 43:25 suing ^[2] 4:5 5:17	suit ^[9] 3:23 6:12 24:21 37:18 73:19 82:24 83:7,19,20 summary ^[2] 60:2 67:17 superfluity ^[1] 75:5 supports ^[1] 57:15 suppose ^[5] 15:5 64:14 68:10 69:20 83:14 supposed ^[3] 28:1,5 62:7 suppressing ^[1] 77:13 Supremacy ^[1] 33:22 SUPREME ^[17] 1:1,15 3:15 4:19 9:15 21:22 53:16,17 55:23 65:2 67:19 72:23 74:5,7,13,17 82:16 survive ^[1] 92:1 suspect ^[2] 65:9,11 system ^[7] 5:18 6:3 9:11 15:19 16:2 58:6 91:1 Systems ^[1] 71:5
T				
talked ^[2] 18:2 90:23 talks ^[5] 20:9 35:6 60:3,22 81:9 teacher ^[2] 75:19,21 teed ^[1] 93:2 tells ^[2] 21:22 56:10 term ^[2] 3:4 27:25 terms ^[2] 33:22 88:7 territorial ^[1] 17:11 territory ^[1] 17:9 test ^[3] 28:6,9 69:2 text ^[6] 51:14 57:19 58:15 75:10 82:1,6 text-based ^[2] 81:1 82:4 Thanks ^[1] 51:4 theoretical ^[1] 50:21 theory ^[7] 46:25 48:10,11, 18 49:25 50:5 70:13 there's ^[60] 4:3 5:4 6:13,22 8:21 13:9 14:6 18:7,8 22:23 26:9 29:8,18 30:14 31:5,6 33:5 34:3,7,13,15,22 35:4,4,8 37:22 38:4 40:1, 16 41:15 42:2,21 43:13 47:3,5,17 49:13,13 50:21,23 54:14,15 58:15,24 59:20 62:20,20 64:16 66:9 67:2 68:10 75:5 76:21 78:16 81:7 83:3,13 87:20 90:14 93:4 therefore ^[2] 24:21 71:23 they've ^[3] 70:20 78:7,7 thinking ^[2] 31:11 80:3 third ^[1] 20:13 third-party ^[1] 6:4 THOMAS ^[5] 4:24 5:6 40:8 53:7 84:10 thoroughly ^[1] 72:21 though ^[5] 11:11 29:25 37:19 58:14 69:4 thoughts ^[1] 84:17 thousands ^[2] 70:24,25 three ^[10] 20:9,18 26:13 60:				

Official - Subject to Final Review

<p>5,6 61:5 64:21 65:20,20 69:22 threshold ^[1] 89:1 throw ^[1] 46:1 thrown ^[2] 55:6 77:16 Thunder ^[1] 71:4 tight ^[1] 91:10 timely ^[2] 36:14 85:13 timing ^[1] 51:23 today ^[3] 41:11 86:4 92:15 tolled ^[2] 8:6,7 tolling ^[1] 8:12 took ^[1] 67:9 tort ^[1] 44:8 toward ^[1] 23:5 track ^[1] 35:22 tradition ^[1] 67:2 traditionally ^[1] 81:2 trapped ^[1] 26:21 Treasury ^[1] 71:4 tremendous ^[1] 85:7 trial ^[2] 5:11 67:18 tribunal ^[7] 5:22 25:4 30:21 31:3 35:13 72:2,8 tried ^[2] 11:6 42:3 tries ^[1] 6:14 tripled ^[1] 85:24 trotted ^[1] 12:16 trouble ^[1] 44:12 true ^[2] 84:19 90:23 truly ^[7] 48:13,16,21 68:23 69:5 70:13,17 try ^[5] 7:7,23 11:25 47:21 50:4 trying ^[10] 9:20 50:13 64:5 72:6 75:7 88:23 90:6,24 91:1,5 two ^[10] 16:17 29:2 35:5 41:16 45:19 53:13 58:22 60:6 64:11 85:14 two-page ^[1] 58:19 type ^[9] 15:4 16:9 25:11 32:16 43:22 51:1 56:17 84:6 92:23 types ^[4] 17:17 24:23 70:23 71:19 typical ^[2] 18:20 26:19 typically ^[2] 52:21 71:17</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S.C ^[1] 51:16 ultimately ^[3] 5:24 72:20 91:14 umbrella ^[1] 63:10 unavailable ^[1] 92:13 unconscious ^[1] 77:18 uncounseled ^[1] 88:15 under ^[12] 3:13 11:23 27:7 30:1 41:13,24 53:11 55:11 62:5 70:11,12 87:19 undermine ^[1] 60:4 undermines ^[5] 20:6,16, 22 21:4 24:19 understand ^[13] 10:8 11:2,</p>	<p>3 12:22 14:10 20:19 28:19 48:19 53:8 65:11 83:19,21 85:1 understanding ^[2] 72:16 83:17 understood ^[6] 20:1 36:9 38:7 61:23 63:10 89:14 unemployment ^[7] 9:6 35:11 63:19 71:13 72:11 77:5 86:10 unexhausted ^[4] 23:13 29:19 55:12,24 uniformly ^[1] 74:18 UNIKOWSKI ^[2] 15:13 44:5 UNIKOWSKY ^[107] 1:19 2:3,8 3:6,7,9 4:24 5:2,14 6:15 7:10 8:1,4,17,19 9:2,18, 24 10:13,17,21,25 11:4,12, 20 12:2,7,11,15,24 13:5,17 14:9,15 15:3,10,16 16:3,17 17:20,23 18:2 19:18 20:1, 24 21:8,15,19 22:8 23:9,22 24:9 25:16 26:15 27:23 28:12 29:2 30:10,13 31:1 32:2,12,19 33:4,8,24 34:12,22 35:24 37:1,7,13,16 38:10, 19,23 39:10,14 40:13,16 41:22 42:1,8,12,15 43:17, 24 44:3,17 45:3,9 46:7 47:2,9,23 48:5,15,19 49:8,12 50:7 72:6 77:8 86:20 89:22,23,25 Unikowsky's ^[2] 53:7 68:3 uniquely ^[1] 20:7 UNITED ^[2] 1:1,16 unless ^[1] 15:16 Unlike ^[2] 18:20 61:14 unresolved ^[1] 8:5 until ^[4] 10:11 39:18,24 87:9 unusual ^[1] 36:3 unwritten ^[1] 52:25 up ^[19] 6:2 42:20 45:17 55:23 57:11 62:24 64:5,19 65:17 66:20 67:19 71:20 76:3, 10 78:3 80:25 86:3 88:12 93:2 upheld ^[3] 17:11,15 22:9 useful ^[1] 88:11</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid ^[5] 53:2 66:17,19 68:24 84:2 variety ^[1] 73:1 vary ^[1] 3:22 vast ^[2] 35:10 74:12 ventilator ^[1] 25:9 verse ^[1] 78:18 version ^[1] 7:13 versus ^[4] 3:5 32:16 81:16 87:22 view ^[8] 6:1 11:20 17:21,23 18:14,14 33:15 80:24</p>	<p>views ^[1] 26:12 vindicate ^[2] 90:4 91:25 vindication ^[3] 16:9 48:24 50:9 violated ^[1] 89:11 violation ^[19] 9:23 10:11 14:3,6 31:6 37:23 42:2,9, 17 43:3,13 44:2 45:8,24 47:18 78:16 87:2,9 89:7</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait ^[7] 18:21 26:20,24 27:16,18 42:19 92:20 waited ^[2] 86:2 90:9 waiver ^[1] 57:10 walked ^[1] 18:25 wanted ^[5] 24:3 67:18 89:14 90:1 92:17 wants ^[2] 67:3,3 WASHINGTON ^[3] 1:6,11, 19 way ^[25] 9:14 19:16 22:4,24 23:24 26:19 34:4,8 40:1 43:15 46:15 47:7 50:21 59:20 60:23 62:25 63:14 65:17 67:7 68:7 74:8 76:22 79:9 80:19 82:20 ways ^[3] 20:8,9 64:12 weakening ^[1] 31:24 welcome ^[2] 4:23 53:6 well-heeled ^[1] 61:16 whatever ^[2] 13:11 81:20 whatsoever ^[3] 56:6 61:13 67:8 whenever ^[1] 46:13 Whereupon ^[1] 93:8 whether ^[32] 3:23 6:18,23 8:5,11 12:19,20 18:12,18 19:11,13 20:19,20 24:4,5, 10 26:2 31:20 33:2,6,22 36:21 45:7 46:1 48:13 61:10 69:13 80:12 90:15,16, 24 91:4 whole ^[2] 19:20 36:17 wide ^[1] 73:1 will ^[6] 3:3 23:7,8 28:20 73:4,4 WILLIAMS ^[4] 1:3 3:5 55:2 77:16 win ^[6] 43:4,5,5 45:11 46:5 77:22 Wisconsin ^[10] 7:16 22:25 58:23 59:6,11 62:13 82:14, 15,19 91:13 Wisconsin's ^[2] 18:22 58:1 within ^[5] 54:12,15 55:14 69:25 70:1 without ^[3] 23:20 33:19 36:1 wondering ^[1] 31:1 word ^[1] 23:11 words ^[6] 13:23 28:12 37:6 45:21 58:9 90:12</p>	<p>work ^[2] 6:14 10:9 workable ^[1] 10:15 worked ^[1] 7:25 works ^[2] 5:19 30:18 worried ^[2] 80:5 81:21 wrap ^[1] 42:20 writ ^[1] 41:2</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year ^[2] 70:25 86:6 years ^[8] 15:7 26:21 27:18 32:1 70:6 78:11,11 92:20 yellow ^[1] 93:1 York ^[1] 23:4 Younger ^[2] 52:12 75:16</p>
--	--	--	--