SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

\- - - - - - - - - - - - - - - - - - - -

DANIEL CAMERON, ATTORNEY GENERAL)

OF KENTUCKY,)

Petitioner,)

v.) No. 20-601

EMW WOMEN'S SURGICAL CENTER, P.S.C.,)

ET AL.,)

Respondents.)

\- - - - - - - - - - - - - - - - - - - -

Pages: 1 through 80

Place: Washington, D.C.

Date: October 12, 2021

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

www.hrccourtreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -

3 DANIEL CAMERON, ATTORNEY GENERAL)

4 OF KENTUCKY,)

5 Petitioner,)

6 v.) No. 20-601

7 EMW WOMEN'S SURGICAL CENTER, P.S.C.,)

8 ET AL.,)

9 Respondents.)

10 -

11

12 Washington, D.C.

13 Tuesday, October 12, 2021

14

15 The above-entitled matter came on for

16 oral argument before the Supreme Court of the

17 United States at 10:01 a.m.

18

19 APPEARANCES:

20

21 MATTHEW F. KUHN, Principal Deputy Solicitor General,

22 Frankfort, Kentucky; on behalf of the

23 Petitioner.

24 ALEXA KOLBI-MOLINAS, ESQUIRE, New York, New York; on

25 behalf of the Respondents.

1 C O N T E N T S

2 ORAL ARGUMENT OF: PAGE:
3 MATTHEW F. KUHN, ESQ.
4 On behalf of the Petitioner 3
5 ORAL ARGUMENT OF:
6 ALEXA KOLBI-MOLINAS, ESQ.
7 On behalf of the Respondents 38
8 REBUTTAL ARGUMENT OF:
9 MATTHEW F. KUHN, ESQ.
10 On behalf of the Petitioner 77
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S
2 (10:01 a.m.)
3 CHIEF JUSTICE ROBERTS: We will hear
4 argument first this morning in Case 20-601,
5 Cameron versus EMW Women's Surgical Center.
6 Mr. Kuhn.
7 ORAL ARGUMENT OF MATTHEW F. KUHN
8 ON BEHALF OF THE PETITIONER
9 MR. KUHN: Mr. Chief Justice, and may
10 it please the Court:
11 Two days after learning that another
12 state official had stopped defending Kentucky's
13 House Bill 454, the Attorney General moved to
14 intervene so that the Commonwealth could exhaust
15 all appeals in defense of its law.
16 The Sixth Circuit kept the Attorney
17 General out of court, and it made three
18 fundamental errors in doing so.
19 First, the panel overlooked that the
20 Attorney General simply sought to pick up where
21 the Secretary had left off in this litigation.
22 More to the point, the Attorney General, on
23 behalf of the Commonwealth, merely accepted a
24 handoff from another state official to exhaust
25 all appeals.

1 Second, the panel refused to consider
2 Kentucky's sovereign interests in enforcing and
3 defending its law. To be clear, the panel did
4 not merely weigh factors to arrive at its
5 timeliness holding. It affirmatively treated
6 Kentucky's sovereign interests as irrelevant to
7 that inquiry.
8 And, third, the panel expected the
9 Attorney General to have preemptively intervened
10 while the Secretary was vigorously defending
11 House Bill 454 with the Attorney General's
12 office as his counsel. That is contrary to what
13 this Court said in McDonald, and if accepted
14 more broadly, it would lead to a flood of
15 protective motions to intervene.
16 Before discussing the intervention
17 issue further, let me address the jurisdictional
18 argument that's been raised. This argument
19 overlooks that the Attorney General is here in
20 court today on behalf of the Commonwealth. This
21 Court's case law instructs that acting for a
22 state is a distinct capacity. Because everyone
23 agrees that the Attorney General did not
24 participate in that capacity in district court,
25 he is not jurisdictionally barred from doing so

1 now.

2 Even still, the Attorney General could

3 not have appealed the district court's judgment.

4 He had been dismissed from the case without

5 prejudice, he was not named in the district

6 court's judgment, and he had preserved his

7 ability to participate in any appeal and to

8 benefit from any favorable result on appeal.

9 I welcome the Court's questions.

10 JUSTICE THOMAS: Mr. Kuhn, you --

11 there isn't much law for appellate intervention,

12 so what do we rely on? Do we rely on Rule 24,

13 which doesn't really apply? Would you give us

14 -- what would be your strongest case that we

15 should have a basis for this intervention that's

16 not in the rules of appellate procedure?

17 MR. KUHN: So the best case is the

18 Scofield case that's discussed in our briefing,

19 and what Scofield says is that even though Rule

20 24 is not technically applicable in appellate

21 courts, it serves as essentially a helpful

22 analogy to -- so I think Rule 24 is perhaps the

23 starting point of what we're looking at.

24 And our position is not that

25 intervention in district courts under Rule 24 is

1 always the same as intervention in appellate
2 courts. Our point is -- is that when we have a
3 handoff from one state official to another only
4 to exhaust all appeals, it doesn't make sense to
5 draw a firm line between district court
6 intervention and appellate intervention.
7 And that's why we think there's such a
8 strong analogy in this case to McDonald, where
9 Ms. McDonald moved to intervene as soon as she
10 learned that her interests were unprotected, and
11 this Court said that that was timely, even
12 though it was post-judgment.
13 JUSTICE THOMAS: But you still -- we
14 need a standard for timeliness. We need a basis
15 for -- I think we're reviewing this on abuse of
16 discretion standards. We need a basis for
17 saying that the Sixth Circuit abused its
18 discretion. And I simply want to know if it's
19 -- Rule 24 does not apply on its own terms, what
20 does apply that would give us the authority to
21 find abuse of discretion?
22 MR. KUHN: So I -- I think it is a
23 general equitable standard. I don't take my
24 friend on the other side to -- to argue that we
25 are categorically prohibited from intervening in

1 an appellate court. So I think there is a
2 general equitable standard.
3 As we pointed out in page -- at page
4 27 of the blue brief, this Court, on occasion,
5 allows intervention on its own docket, and it
6 does so in circumstances that are very -- very
7 similar to what we have here, where another
8 party had been representing the real party in
9 interest's interests. Up to that point, the
10 party that had been in court declined to seek
11 certiorari, and this Court has, on occasion,
12 granted a motion to intervene on this docket to
13 allow the filing of a petition for certiorari.
14 JUSTICE THOMAS: Thank you.
15 CHIEF JUSTICE ROBERTS: You noted,
16 counsel, that the Attorney General intervened on
17 behalf of the Commonwealth of Kentucky. I -- I
18 don't quite understand if that's different than
19 simply representing the Commonwealth of Kentucky
20 as its -- its counsel or if the Attorney General
21 is intervent -- intervening in his own capacity
22 as distinct from the Commonwealth?
23 MR. KUHN: Mr. Chief Justice, we
24 followed the roadmap this Court laid in
25 Hollingsworth, which is to say that a state has

1 to have the power to act through its agent. And
2 so our position is that we are here as the agent
3 of Kentucky. And I think that's consistent with
4 how Hollingsworth talked about it; a state has
5 the power to act only through its agent.
6 I'll point this Court also to its
7 decision from last term in Brnovich, where the
8 Attorney General of Arizona came here for the
9 state, and the Court pointed out in discussing
10 it that the Arizona Attorney General "fits the
11 bill" of someone who can stand in for the state.
12 I also think it's consistent with what
13 this Court said in Bethune-Hill. In that case,
14 the -- the Virginia House of Delegates did not
15 have the authority that we have here, but the
16 Court talked about it as standing in for the
17 state.
18 And I think that's what we're doing
19 here. And I read Bethune-Hill to tell us that
20 when we are here on behalf of the state, that is
21 a distinct representational capacity that is
22 separate and apart from whatever institutional
23 interests the Attorney General may have.
24 CHIEF JUSTICE ROBERTS: Is it the
25 normal -- if you take a typical run-of-the-mine

1 case and the attorney general's representing,
2 you know, any state entity, do they appear on
3 behalf of the, you know, Department of Social
4 Services or whatever it is, or is -- is there no
5 separate designation of that on behalf sort?
6 MR. KUHN: I -- I think it's
7 different. If we are retained as counsel --
8 CHIEF JUSTICE ROBERTS: Uh-huh.
9 MR. KUHN: -- the Attorney General's
10 Office, as we were by the Secretary before the
11 Sixth Circuit, we just appeared as counsel for
12 the Secretary.
13 But, as a general matter, when
14 Kentucky's Attorney General comes into court for
15 the Commonwealth, we note that it's often
16 through a Commonwealth Ex Rel Attorney General
17 action.
18 If you look at the cases we cited at
19 pages 4 and 5 of our blue brief, they are
20 Commonwealth Ex Rel Attorney General on behalf
21 of the Commonwealth. And so, when we're
22 appearing for another state official, we're just
23 counsel.
24 And --
25 JUSTICE SOTOMAYOR: I --

1 MR. KUHN: -- from a Kentucky law
2 perspective, I think that makes sense because
3 the Attorney General is just not -- is not just
4 a lawyer for the Commonwealth. Kentucky law
5 tells us he is the chief law officer of the
6 Commonwealth. For that reason, there's a state
7 law reason as well as a federal law reason of
8 why we came in AG Cameron on behalf of the
9 Commonwealth.
10 JUSTICE SOTOMAYOR: Counsel, I -- I
11 understand that Virginia law permits the
12 Attorney General to step in but doesn't require
13 it to, and it permits state agencies like the
14 Department of State to hire its own attorneys or
15 hire the Attorney General.
16 In this case, I understand that four
17 of the lawyers who are now part of the Attorney
18 General's Office were working for the Department
19 of State but not as part of the Attorney
20 General's Office. The Secretary had hired his
21 or her own attorneys, correct?
22 MR. KUHN: That is correct, Justice
23 Sotomayor.
24 JUSTICE SOTOMAYOR: So, when you were
25 sued in the suit originally, you were sued as

1 the Attorney General, correct?
2 MR. KUHN: That's correct, as someone
3 who can enforce the challenged law.
4 JUSTICE SOTOMAYOR: And you said we
5 can't. And you signed a stipulation dismissing
6 yourself and saying that you would abide by the
7 decision of the Secretary of State, its
8 litigation, and abide by whatever judgment was
9 entered in this case, would be bound by any
10 final judgment in the action and -- is that
11 correct?
12 MR. KUHN: That is correct. There are
13 --
14 JUSTICE SOTOMAYOR: All right.
15 MR. KUHN: -- a couple qualifications
16 to that, but, yes, generally.
17 JUSTICE SOTOMAYOR: Generally. You
18 didn't appeal the judgment, correct?
19 MR. KUHN: That's correct.
20 JUSTICE SOTOMAYOR: Why would we call
21 it an abuse of discretion for a court of
22 appeals, after it's rendered its judgment, to
23 say we don't really care what has happened in
24 the political arena. We don't want to be
25 dragged into it.

1 You agreed to be bound by this
2 judgment. You didn't appeal, even though you
3 were a party. Are you telling me you're now
4 willing to waive the sovereign immunity of the
5 state? Because that's what it sounds like,
6 because, if you're coming in as yourself, you
7 were here and left, you agreed to be bound by
8 whatever the Secretary of State did.
9 Under what theory of law would we be
10 able to say that the Sixth Circuit abused its
11 discretion in just respecting the very
12 stipulation you signed?
13 MR. KUHN: Justice Sotomayor, let me
14 start with the stipulation, and then I want to
15 step back and talk about Bethune-Hill and state
16 sovereignty.
17 But, with respect to the stipulation,
18 it was entered into in our capacity as someone
19 who can enforce House Bill 454. We were sued on
20 an ex parte Young theory. At pages 40 and 41 of
21 the red brief, EMW acknowledges that the
22 Commonwealth was not before the district court.
23 That acknowledgment, I think,
24 overcomes the stipulation because the
25 stipulation --

1 JUSTICE SOTOMAYOR: Well, it couldn't
2 have been before the district court. The state
3 has sovereign immunity, correct?
4 MR. KUHN: That's --
5 JUSTICE SOTOMAYOR: So the state under
6 no circumstance, even now on appeal, unless it's
7 willing to waive sovereignty, and -- and you
8 haven't told me if you are or aren't or whether
9 you have or haven't. I don't think you put that
10 before the Sixth Circuit.
11 So I go back to my question: How do
12 we say it abused its discretion in saying that
13 an individual party who had an opportunity to be
14 in the litigation and chose to get out and chose
15 to bind itself to the decisions of the Secretary
16 of State -- how can we say it abused -- the
17 Sixth Circuit abused its discretion in honoring
18 that commitment by the Sec -- by the Attorney
19 General?
20 MR. KUHN: Justice Sotomayor, we don't
21 think that the Commonwealth is a party to the
22 stipulation because they had not been brought
23 before the court. They could have tried to sue
24 the Commonwealth, and at that point, we would
25 have been able to invoke sovereign immunity.

1 But we never got that chance.
2 And if I can just engage with you a
3 bit --
4 JUSTICE SOTOMAYOR: It would have been
5 almost actionable for them to have sued the
6 state, wouldn't it have been? I mean, it would
7 have been in bad faith. Everyone knows you
8 can't sue a state. You can sue the officers who
9 enforce a law, correct?
10 MR. KUHN: That's correct. They
11 brought it --
12 JUSTICE SOTOMAYOR: And now -- by the
13 way, you said you had no authority or duty to
14 enforce the provisions as enacted, but now you
15 come back and give a contrary representation
16 that you can enforce the provisions by defending
17 them, correct?
18 MR. KUHN: That's correct. The --
19 JUSTICE SOTOMAYOR: And so why
20 wouldn't that be judicial estoppel?
21 MR. KUHN: So one of the key elements
22 of judicial estoppel is that a court has to
23 accept your argument. The previous Attorney
24 General, we admit, took the position that he did
25 not have the authority to enforce House Bill

1 454.
2 The district court did not rule on
3 that issue. If you look at the stipulation, the
4 stipulation notes that we agreed not to enforce
5 House Bill 454. And so the stipulation, I
6 think, overcomes any suggestion that the
7 district court ruled on that issue.
8 And if I can point you to two
9 particular provisions of the stipulation that
10 even if the Court were to say that the
11 Commonwealth is bound by it, I think that it
12 protects exactly what we're doing here.
13 We reserved all rights to participate
14 in this action and any appeals arising out of
15 this action. And we preserved our ability to
16 benefit from any favorable result on appeal.
17 So those two provisions work together,
18 that even if the Attorney General --
19 JUSTICE SOTOMAYOR: But you didn't
20 appeal on time.
21 MR. KUHN: That's correct, but this
22 Court's general rule is that only a party or one
23 who becomes a party can file an appeal. That's
24 from --
25 JUSTICE SOTOMAYOR: You could have

1 filed an appeal if you lost, couldn't -- you
2 reserve the right to appeal if you -- if -- if
3 you won.
4 MR. KUHN: We -- we reserved the right
5 to -- we reserved all rights, claims, and
6 defenses --
7 JUSTICE SOTOMAYOR: But you didn't --
8 CHIEF JUSTICE ROBERTS: Counsel?
9 JUSTICE SOTOMAYOR: -- file a notice
10 of appeal on time.
11 MR. KUHN: We did not file a notice of
12 appeal, Justice Sotomayor. We had been
13 dismissed from the case without prejudice. We
14 were not mentioned in the judgment.
15 JUSTICE KAGAN: Mr. Kuhn --
16 CHIEF JUSTICE ROBERTS: Counsel, could
17 I ask you, the stipulation concerning being
18 bound by a final judgment, what do you
19 understand "final judgment" to mean?
20 It seems to me it can mean a number of
21 things. The district court ruling is a final
22 judgment, for example, for purposes of appeal.
23 On the other hand, there obviously are
24 subsequent proceedings that could take place, an
25 appeal, obviously, and -- and so on that would

1 undermine the finality of the judgment.
2 When -- when you signed that
3 stipulation to be bound by a final judgment,
4 what is -- what are you being bound by?
5 MR. KUHN: The -- the language is that
6 we're bound by the final judgment in this matter
7 disposing of all claims and the exhaustion of
8 any and all appeals that may arise in this
9 action.
10 So we get the benefit of any favorable
11 result on appeal. So the notion would be that,
12 yes, we're agreeing to be bound, but we're
13 preserving our rights to come back in.
14 I'll note that although the Sixth --
15 we disagree with most of what the Sixth Circuit
16 did, if you look at Joint Appendix 229, the
17 Sixth Circuit appears to have agreed with what
18 I'm saying here, where they noted that we had
19 preserved all claims and rights relating to
20 whether we -- claims and rights relating to
21 whether we can participate on appeal.
22 So I think that's one thing, reading
23 the stipulation, that the Sixth Circuit, in
24 fact, got right.
25 And if I can step back and talk about

1 Bethune-Hill, this Court has told us that
2 federal courts should respect how a state
3 structures itself when defending its laws.
4 Kentucky's put together a system where, as
5 Justice Sotomayor mentioned, state officials
6 oftentimes provide the front-line defense of
7 state laws, and this makes sense because they
8 have particular expertise in enforcing these
9 laws. But Kentucky, unlike Virginia had done in
10 Bethune-Hill, said it's not good enough for the
11 state that one official gets to make all
12 litigation decisions for the state.
13 What we as Kentuckians want is a
14 fail-safe, a fail-safe that if a state official
15 who enforces state law says, I'm not going to
16 appeal any further, Kentucky's Attorney General
17 can come in for the Commonwealth and say: No,
18 the Commonwealth wants to go farther.
19 This envisions a system of --
20 JUSTICE KAGAN: Mr. Kuhn -- I'm sorry.
21 Complete your sentence.
22 MR. KUHN: This -- this envisions a
23 system of state officials working together to
24 defend Kentucky's law, which is what happened
25 here.

1 JUSTICE KAGAN: Could -- could --
2 could I assume for a moment that the Attorney
3 General's Office could have appealed? Okay?
4 Just let's assume with me that it could have
5 because it was bound by the judgment, because of
6 the stipulation, because of the combination of
7 the two, because of any number of other things.
8 Just assume with me that the Attorney General's
9 Office could have appealed.
10 In that case, would the Petitioner's
11 jurisdictional argument be correct?
12 MR. KUHN: No, Justice Kagan, I don't
13 think it would, and let me explain why.
14 Let's assume, instead of putting the
15 power to defend Kentucky on the Attorney
16 General, the General Assembly of Kentucky had
17 given it to itself. If that had happened and
18 everything had stayed the same in your
19 hypothetical, this Court would not be having a
20 jurisdictional discussion then because everyone
21 would understand that the Attorney General, in
22 his enforcement capacity, who, in your
23 hypothetical, had gone to final judgment, is
24 different than the General Assembly coming in on
25 behalf of the Commonwealth.

1 JUSTICE KAGAN: Yeah, I -- I guess I'm
2 not sure I understand the answer, so let me
3 reframe the question a little bit.
4 You know, take our decision in Torres,
5 right, which is the -- the case where we make
6 clear that the notice of appeal requirement is
7 jurisdictional and impose a very harsh rule
8 saying that if you don't appeal, even if it's
9 not your fault, you're out of luck. Okay?
10 So do you think if Torres had gone
11 further and Mr. Torres had filed a motion to
12 intervene that we would have said, oh, sure, go
13 ahead and intervene in the suit? Would we have
14 -- would the Court have said that?
15 MR. KUHN: Our -- our position is that
16 we do not think a notice of appeal for a party
17 who could have -- or, sorry, for a party who
18 could have appealed but failed to do so, we
19 don't think a motion to intervene in the ensuing
20 appeal that the party failed to take, we -- we
21 don't think that would be proper because of how
22 this Court talked about jurisdiction in Torres.
23 But my point is -- is that if you had
24 separated the power to represent the state from
25 the Attorney General, no one would think there's

1 a jurisdictional problem. The only reason we're
2 having a jurisdictional discussion here is
3 because two hats were put on the same official,
4 two hats, the language this Court use -- used in
5 Bethune-Hill.
6 And this Court told us in Bethune-Hill
7 that representing a state as the agent of the
8 state is distinct from your --
9 JUSTICE KAGAN: Well, but -- but you
10 --
11 MR. KUHN: -- institutional hat.
12 JUSTICE KAGAN: -- but that's just
13 contesting the premise, which is that the
14 Attorney General could have appealed. If I
15 understand your argument, it's the Attorney
16 General couldn't have appealed because he would
17 have been doing so in a different capacity than
18 he had taken in the first place.
19 MR. KUHN: That's not my position. My
20 position is that, stepping outside of your
21 hypothetical, because of the way the stipulation
22 was written, the Attorney General could have
23 appealed because it's consistent with him
24 reserving his rights to -- claims and rights to
25 participate in any subsequent appeal and to

1 benefit from any favorable ruling.
2 JUSTICE KAGAN: I apologize for
3 pressing on this. I'm just maybe just not
4 understanding it. It might be my fault
5 entirely, but I'll just -- if you agree that in
6 the main -- mine run of cases in a Torres-type
7 case where the person could have appealed,
8 didn't appeal, if you agree that it would then
9 be improper to grant intervention rights, which
10 I take you to agree --
11 MR. KUHN: Mm-hmm.
12 JUSTICE KAGAN: -- okay, so that's a
13 very simple case. And it seems to me that the
14 petitioners would say that's exactly what
15 happened here because the AG could have
16 appealed, didn't, and now is seeking
17 intervention.
18 And, you know, if -- if we assumed the
19 -- the point that the AG could have appealed,
20 why doesn't the same result follow?
21 MR. KUHN: Because this Court has told
22 us that different capacities should be treated
23 -- this Court's words are "different legal
24 personages." And, for example, in Bethune-Hill,
25 the fact that the Virginia House of Delegates

1 participated in that case to defend its
2 institutional interests did not mean that it
3 also brought any power it had to -- to appeal on
4 behalf of the state. The Court said the record
5 was silent about that issue.
6 The record here is silent as to the
7 Attorney General participating as an agent of
8 the state --
9 JUSTICE BARRETT: Mr. Kuhn --
10 MR. KUHN: -- and because we have --
11 JUSTICE BARRETT: -- could you have
12 intervened on behalf of the state qua state,
13 recognizing, as Justice Sotomayor pointed out,
14 that that would have waived the state's
15 sovereign immunity? Would -- we wouldn't be
16 even having this discussion if you had
17 intervened on behalf of Kentucky, with Kentucky
18 being the named party and you being the lawyer
19 for the state. Could you have done that?
20 MR. KUHN: I think that is essentially
21 what we did. The reason we came in on behalf of
22 the Commonwealth was because this Court told us
23 in Hollingsworth that we need -- that states
24 have to act through their agents. So we
25 identified ourselves as the agent of Kentucky,

1 and we came in on behalf of the Commonwealth,
2 just as Hollingsworth envisioned.
3 This Court noted in Hollingsworth that
4 state attorneys general are typically the people
5 who are tapped to defend the sovereign
6 interests, who speak for the people of Kentucky.
7 So, yes, I would agree with that, that
8 we could have come in as the Commonwealth, which
9 is essentially what we've done here. We were
10 just following this Court's direction from
11 Hollingsworth by identifying ourselves as the
12 agent of Kentucky.
13 JUSTICE SOTOMAYOR: So are you
14 answering yes? You've waived Kentucky's
15 sovereign immunity?
16 MR. KUHN: So I don't think this Court
17 has ever said that when we participate as an
18 agent of the Commonwealth or an agent of the
19 state, that that is, in fact, a waiver of
20 sovereign immunity.
21 JUSTICE SOTOMAYOR: If you're not a
22 party, you can't be the agent of anybody. You
23 can only be an agent of a party.
24 MR. KUHN: I think that's -- so I
25 agree that we're an agent of the party, and to

1 the extent that that does create a waiver of
2 sovereign immunity, I think it's a narrow waiver
3 related to whether House Bill 454 is
4 constitutional.
5 I -- it's not unprecedented for states
6 to come in and defend their laws. For example,
7 in Maine versus Taylor, this --
8 JUSTICE SOTOMAYOR: If you had stayed
9 in this litigation, would you have been
10 defending this law? What other capacity would
11 you have served if you had stayed in the
12 litigation when you were sued?
13 MR. KUHN: If we --
14 JUSTICE SOTOMAYOR: You were being
15 sued as an agent of the state, correct?
16 MR. KUHN: No. We were being sued
17 because we can enforce House Bill 454 under Ex
18 parte Young. If they had sued us as an agent of
19 the state, we would have been able to invoke
20 sovereign immunity.
21 Everybody agrees that Kentucky was not
22 there in district court. Pages 40 and 41 of the
23 red brief. That concession being made, it
24 cannot be the case that Kentucky is
25 jurisdictionally prohibited from coming in.

1 The only reason we're having this
2 discussion is because the Attorney General wears
3 two hats, just like the -- the state official
4 wore two hats in Karcher, just like the -- the
5 hats that were discussed in Bender. This is not
6 a novel thing. We followed the Court's
7 direction in -- in Bethune-Hill to -- to bring
8 us here.
9 If I can, in closing, just point out
10 that after reading the Sixth Circuit's decision,
11 I think one would for -- be forgiven for not
12 understanding the sovereign interests that are
13 at stake. We've had a discussion about state
14 sovereignty now, and that fact went unmentioned
15 in the -- in the court of appeals' ruling. It
16 wasn't mentioned anywhere. In fact, in Footnote
17 4 of the opinion, they -- they said they were
18 not going to consider the Attorney General's
19 ability to represent the state. We think that
20 that was a relevant factor that the court of
21 appeals should have considered.
22 Keep in mind that we had been
23 representing the Secretary before the Sixth
24 Circuit. We weren't sitting on the sidelines.
25 We stood up in the Sixth Circuit and argued in

1 defense of House Bill 454. The Secretary
2 informed the Attorney General's Office seven
3 days after that decision came down that he would
4 not appeal further.
5 Two days later, we filed a 20-page
6 motion to intervene on behalf of the
7 Commonwealth. That's how we titled it in both
8 our intro and our conclusion. We said that we
9 were on behalf of the Commonwealth more than a
10 dozen times in the motion. But that just went
11 unrepresented.
12 I think the only way we can understand
13 the Sixth Circuit's decision as making any sense
14 is to treat us as if we were bringing to bear a
15 new, previously unrepresented interest. We were
16 not doing that. The Secretary had been
17 defending Kentucky's interests. And we had been
18 counsel for some of that period. So, when we
19 stepped forward, we sought to defend the same
20 interests as the real party in interest that the
21 Secretary had been defending all along.
22 Under those circumstances, it was a
23 handoff of litigation authority to go the
24 distance.
25 And I'll point out that the Secretary

1 did not oppose our motion to intervene. The
2 Secretary said, I'm not going to appeal further,
3 but he let us go -- he said, I'm not going to
4 oppose you going further.
5 This is an example of Kentucky's
6 unique system of defending its sovereign
7 interests working as it was meant to: state
8 officials working together. One state official
9 says no further. We come in for the
10 Commonwealth and say we want to go the distance.
11 If there are no further questions.
12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.
14 Justice Thomas, anything further?
15 JUSTICE THOMAS: None for me, Chief.
16 CHIEF JUSTICE ROBERTS: Justice
17 Breyer?
18 JUSTICE KAGAN: If I understand your
19 argument -- was -- was it up to me? I'm sorry.
20 CHIEF JUSTICE ROBERTS: Yes, you're
21 up.
22 JUSTICE KAGAN: Okay. Correctly, Mr.
23 Kuhn, it really does all come down to this two
24 hats theory, is that correct?
25 MR. KUHN: I think we've got two

1 arguments on jurisdiction, the two hats theory
2 and the argument that even if you disagree with
3 us on two hats, the Attorney General could --
4 could not have appealed --
5 JUSTICE KAGAN: Okay.
6 MR. KUHN: -- because of the
7 stipulation.
8 JUSTICE KAGAN: Okay. Well, okay.
9 So, if you assume that the Attorney General
10 could have appealed, then it comes down to the
11 two -- two hats theory? Yes?
12 MR. KUHN: That's correct. If you
13 assume our second argument is wrong, we're
14 resting on our first.
15 JUSTICE KAGAN: Yes. So let -- just
16 -- just one question about the two hats theory,
17 which I -- I guess I'm just not sure I
18 understand because it seems to me that the
19 Secretary's role in this entire litigation
20 pretty much proves that the two hats theory
21 doesn't work because your theory is that the
22 Attorney General was stepping in to replace the
23 Secretary, who until that point was representing
24 the state's interest.
25 But the Secretary was sued in his

1 capacity as a state official who could enforce
2 state law. So doesn't it really come down to
3 the same thing? The Secretary was sued because
4 he could enforce state law. He was obviously
5 representing the state's interests. Nobody else
6 was doing that.
7 So the two seems completely
8 intertwined to me, and the Secretary's role in
9 the litigation prior to the Attorney General's
10 intervention motion proves that, doesn't it?
11 MR. KUHN: No, it doesn't. The
12 Secretary has the power as a matter of Kentucky
13 law to defend Kentucky law when challenged. But
14 he -- so their -- so the fact that he can take
15 actions consistent with -- with Kentucky's
16 interest in defending its law does not mean that
17 he has the power to stand in as the agent of
18 Kentucky.
19 Only the Attorney General under
20 Kentucky Revised Statute 15.020 has that power.
21 So I think the distinction to be drawn, Justice
22 Kagan, is that, yes, the Secretary took actions
23 consistent with Kentucky's interest by defending
24 Kentucky law.
25 When he said no further, that's when

1 we stepped in, which is what we think
2 Ms. McDonald did in this Court's McDonald
3 decision, and that's why we're consistent with
4 that.
5 CHIEF JUSTICE ROBERTS: Justice
6 Gorsuch?
7 JUSTICE GORSUCH: Counsel, do you
8 agree that abuse of discretion is a proper
9 standard of review for this Court in analyzing
10 the Sixth Circuit decision?
11 MR. KUHN: So, as I mentioned with
12 Justice Thomas earlier, this Court has not ruled
13 on --
14 JUSTICE GORSUCH: I understand that.
15 That's why I'm asking the question.
16 MR. KUHN: So we have not contested
17 that point because of what this Court said in
18 NAACP versus New York. And if the position is
19 that Rule 24 is a helpful analogy, I think it's
20 a helpful analogy in that -- in that
21 circumstance. But we think this is an obvious
22 abuse of discretion because we were not treated
23 as --
24 JUSTICE GORSUCH: Okay, okay.
25 MR. KUHN: Yeah.

1 JUSTICE GORSUCH: And then -- and then
2 second question briefly, you rest heavily on --
3 on the state's sovereignty interests here and --
4 and citing Bethune-Hill to us quite a lot.
5 Where do those interests run out?
6 When -- when would it be proper for a court of
7 appeals under an abuse of discretion standard to
8 deny intervention by a state entity?
9 MR. KUHN: If we had sought rehearing
10 like we did, tendered our rehearing petition,
11 but we had filed it after the deadline, I think
12 that a court of appeals would be within its
13 discretion to say, no, you're delaying this
14 litigation.
15 If we had come in and said, court of
16 appeals, please remand this case to the district
17 court to let us put on more facts, I think that
18 the Court would be within its discretion to deny
19 a state's intervention.
20 But our point is, where we moved to
21 intervene and did not delay this case by even a
22 day and where we merely sought to pick up where
23 the Secretary left off and to exhaust all
24 appeals, in that circumstance, we think that is
25 an abuse of discretion.

1 CHIEF JUSTICE ROBERTS: Justice
2 Kavanaugh?
3 JUSTICE KAVANAUGH: Does the same kind
4 of rule apply in private litigation? So suppose
5 a private plaintiff sues a private defendant
6 under state tort law. The state -- the private
7 defendant argues that the state tort law is
8 unconstitutional, and the court on appeal rules
9 that the tort law is unconstitutional, okay?
10 And the state -- the private plaintiff, sorry,
11 chooses not to seek en banc or cert.
12 Can a state AG intervene in that
13 circumstance even though the private plaintiff
14 has chosen not to seek en banc or cert to argue
15 that the state tort law is, in fact,
16 constitutional?
17 MR. KUHN: I think this Court told us
18 in Hollingsworth that a private party defending
19 state law is just a different matter than a
20 state official who has sworn an oath to defend
21 Kentucky's constitution who is popularly
22 elected.
23 So I think the state in that
24 circumstance would --
25 JUSTICE KAVANAUGH: The state tort law

1 in that circumstance will be declared
2 unconstitutional. And I think, by saying it's
3 different, you're saying the state AG in that
4 case could not seek en banc or cert even though
5 the state tort law had been declared
6 unconstitutional?
7 MR. KUHN: Our position is not that he
8 could not do so but that it would not be as easy
9 of an argument in that circumstance. I think it
10 matters that we have a handoff from one state
11 official to another, both of whom were sworn to
12 defend Kentucky law.
13 I think a lot of the things I'm saying
14 today would be consistent with the -- with the
15 hypothetical that you're talking about. But I
16 think we're perhaps a half step beyond that and
17 this is a much easier case than the one you've
18 hypothesized.
19 JUSTICE KAVANAUGH: Thank you.
20 CHIEF JUSTICE ROBERTS: Justice
21 Barrett?
22 JUSTICE BARRETT: I have a question
23 that's related to the question Justice Thomas
24 started out with and that Justice Gorsuch just
25 followed up on.

1 Justice Thomas asked you where we get
2 the authority to even impose these standards on
3 the courts of appeal. And I think we've treated
4 it as the lower court having some inherent
5 authority just pursuant to the judicial power to
6 manage its docket, and I heard you saying that
7 we have the authority to make sure that the
8 rules that the courts adopt and apply are not
9 abuses of their discretion, and that would be
10 true whether we're talking about pre-judgment or
11 post-judgment intervention. And -- and our role
12 in that regard is pretty limited.
13 I have a question specifically about
14 how we should think about that relationship in
15 the context of a post-judgment intervention
16 motion because we've also asserted that we have
17 some inherent supervisory authority over the
18 courts of appeal. And in the post-judgment
19 intervention context, we might also have some
20 concern that wouldn't be present in the
21 pre-judgment context about a court of appeals
22 trying to evade our review.
23 How, if at all, should we think about
24 that factoring into the analysis? Is that --
25 it's more than just equity to the litigants,

1 arguably. So how -- does that play a role at
2 all?
3 MR. KUHN: I think it -- it does. And
4 if this Court wants to look to the Day opinion
5 from the Ninth Circuit that dealt with that,
6 that was when Hawaii came in, and the court
7 noted that Hawaii had come in later than they
8 would have let a private litigant. But the
9 court talked about its discomfort with saying
10 that a sovereign state could not seek en banc
11 relief and could not seek certiorari from this
12 Court.
13 So I -- I read Day to basically create
14 a sovereignty tiebreaker when a state comes in
15 to seek further review.
16 JUSTICE BARRETT: But that's
17 sovereignty. I mean, you've emphasized
18 sovereignty, and I get that. But my question
19 was a little bit different because it's one that
20 might apply even in the context of private
21 parties, as Justice Kavanaugh was positing.
22 MR. KUHN: Mm-hmm. So I -- I think
23 so. And as you're thinking about the private
24 parties issue and the issue, Footnote 16 of this
25 Court's McDonald opinion talks about how its

1 analysis would apply outside of the
2 representational context, right?
3 Ms. McDonald there had been
4 represented by the non-named class members. The
5 Court gave two more examples of cases that would
6 apply post-judgment in the representational
7 context, but then it cited further cases and
8 said, outside of the representational context,
9 we think post-judgment intervention could be
10 allowed, and cited two cases and said this
11 Court's McDonald decision is consistent with
12 those other two cases to the extent the party
13 moves to intervene before any appellate
14 deadlines have run.
15 So I think the post-judgment part of
16 it and insulating a decision from further
17 review, especially for a sovereign state, is
18 something that matters quite a bit to the
19 analysis that we hope the Court adopts.
20 JUSTICE BARRETT: Thank you.
21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.
23 Ms. Kolbi-Molinas.
24
25

1 ORAL ARGUMENT OF ALEXA KOLBI-MOLINAS
2 ON BEHALF OF THE RESPONDENTS
3 MS. KOLBI-MOLINAS: Thank you, Mr.
4 Chief Justice, and may it please the Court:
5 The Attorney General agreed to be
6 bound by final judgment and chose not to appeal
7 it. Because he was expressly bound by the
8 judgment, he had a right to appeal, but he had
9 to do so within the 30-day timeframe set by
10 statute. He cannot now avoid his jurisdictional
11 failure by seeking to intervene instead.
12 The Attorney General does not directly
13 dispute that one who is bound by judgment and
14 fails to appeal cannot intervene. Instead, he
15 offers two responses, both insufficient.
16 First, he argues that he is exempt
17 from jurisdictional rules because he is wearing
18 a different hat on appeal than he wore when he
19 agreed to be bound. But the Attorney General
20 was sued and bound in his official capacity, and
21 the fact that a party has more than one job
22 responsibility does not allow it to evade a
23 jurisdictional bar.
24 Second, the Attorney General argues
25 that by reserving all rights, claims, and

1 defenses relating to whether he is a proper
2 party, he reserved the right to participate in
3 the appeal. But you can only reserve the rights
4 that are available to you, and there's no right
5 to join an appeal after failing to satisfy the
6 jurisdictional rules for doing so.
7 However, even if intervention were not
8 jurisdictionally barred, the court of appeals
9 should be affirmed. Intervention is not a
10 revolving door that allows a party to agree to
11 be bound, procure their dismissal, fail to
12 appeal, and then gain reentry to the suit after
13 the court of appeals has ruled.
14 Moreover, where the Attorney General
15 was on notice of his interest in preserving the
16 third-party standing argument nearly a year
17 before the court of appeals ruled and did
18 nothing about it, the court did not abuse its
19 discretion in denying post-judgment intervention
20 when it was based primarily on that argument.
21 Finally, it does not disrespectful to
22 the Attorney General's and Kentucky's sovereign
23 interests to hold the Attorney General to his
24 decision not to appeal, particularly when he can
25 make the same arguments he made in his

1 intervention motion through Rule 60(b).
2 I welcome the Court's questions but
3 will otherwise turn to the jurisdictional
4 argument first.
5 JUSTICE THOMAS: Just one brief
6 question. In your intro -- introduction --
7 introductory comments, you did not refer to
8 Eisenstein and how you would work around
9 Eisenstein if you think the Attorney General was
10 a party.
11 MS. KOLBI-MOLINAS: I don't think
12 Eisenstein changes the Attorney General's
13 obligation to appeal here because Eisenstein
14 recognized that what this Court held in Devlin
15 and what this Court held in Devlin and in the
16 three cases that it cited in Devlin is that when
17 a person participates in proceedings before the
18 district court in a manner that results in them
19 being bound, then they have a right to appeal.
20 And, of course, in Eisenstein, we were
21 talk -- you were talking specifically -- the
22 Court was talking specifically about the False
23 Claims Act context, where there is a statute
24 that says the United States can't participate
25 unless it first intervenes.

1 So, if this Court in Eisenstein had
2 held that the United States was a party even
3 though it had not done what Congress had
4 required it to do to become a party, then that
5 would have been undermining the statutory
6 interests.
7 But, here, and as Devlin recognized,
8 the situation is different. It's
9 context-specific. And, here, you have the
10 Attorney General, who moved for and obtained a
11 court order expressly binding him to the final
12 judgment, that final judgment was then entered
13 by the same district court that originally bound
14 him to it.
15 JUSTICE THOMAS: But what was the
16 effect of the order? Was the Attorney General
17 retained as a party or dismissed as a party?
18 MS. KOLBI-MOLINAS: The Attorney
19 General was dismissed as a named defendant but
20 not completely dismissed because, obviously,
21 when someone is completely dismissed, then they
22 have no more relation to the suit --
23 JUSTICE THOMAS: Can you give me --
24 MS. KOLBI-MOLINAS: -- and they
25 wouldn't be bound.

1 JUSTICE THOMAS: -- an example of
2 another case where a party was dismissed but
3 also remained a party?
4 MS. KOLBI-MOLINAS: I'm not sure that
5 this Court has ever considered such a case. I
6 do know that it's routine in the courts of
7 appeals for people who are bound by judgment,
8 even if they're not currently named defendants,
9 to be able to appeal. But I don't think there's
10 any court -- case that this Court has ever
11 considered.
12 JUSTICE THOMAS: And do you know of
13 any cases outside of class actions, for example?
14 MS. KOLBI-MOLINAS: Where one who is
15 bound by judgment but not a named party?
16 JUSTICE THOMAS: Yeah. Exactly.
17 MS. KOLBI-MOLINAS: Yes. We've cited
18 cases in the red brief and in the amici --
19 federal courts have cited decisions from the
20 courts of appeals -- I'm sorry if that was your
21 question -- but --
22 JUSTICE THOMAS: Yeah.
23 MS. KOLBI-MOLINAS: -- from the courts
24 of appeals, where people who are expressly bound
25 by the judgment but not named as defendants have

1 a right to appeal.
2 JUSTICE THOMAS: And, finally, the
3 Sixth Circuit seemed to rely primarily not on
4 the jurisdictional issue but on intervention,
5 that the reason it would not grant intervention
6 was because of prejudice, and it based that
7 prejudice to you on an argument, a third-party
8 standing argument, that the Attorney General was
9 raising.
10 Can you give me an example of a case
11 where a party wanting to -- who wants to
12 intervene is prevented from doing so based on
13 prejudice because that party wanted to raise a
14 jurisdictional argument?
15 MS. KOLBI-MOLINAS: Well, Your Honor,
16 at that time, under the -- in the Sixth Circuit,
17 that party -- that argument was not a
18 jurisdictional -- the third-party standing
19 argument was not jurisdictional.
20 So -- but I'm not aware of any case in
21 which someone has been denied intervention to
22 raise a jurisdictional argument, but that
23 wasn't -- under Sixth Circuit precedent, that
24 wasn't a jurisdictional argument.
25 JUSTICE THOMAS: So what's the

1 prejudice?
2 MS. KOLBI-MOLINAS: The prejudice was
3 that the argument had been waived. The
4 Secretary had not made the argument about
5 third-party standing on appeal. It had been
6 part of the district court judgment. The
7 district court had held that the plaintiffs had
8 third-party standing. The Secretary chose not
9 to appeal it.
10 And that was clear as of July 2019,
11 nearly a year before the court of appeals ruled.
12 The Secretary filed their brief and did not make
13 the third-party standing argument.
14 Yet, throughout this time, the
15 Attorney General did nothing to try to intervene
16 and make the argument. He was on notice as of
17 July 2019 that if someone else didn't make the
18 third-party standing argument before the Sixth
19 Circuit ruled, it would be waived.
20 And yet, even when he entered an
21 appearance on behalf of the Secretary, he
22 entered an appearance after briefing had been
23 completed. All he did was show up at argument.
24 But yet, he didn't request supplemental briefing
25 on the third-party standing question. He didn't

1 file a 28(j) about this Court's cert grant in
2 June Medical. He didn't ask the Sixth Circuit
3 to stay proceedings and at least wait for June
4 Medical so that there could be supplemental
5 briefing after that.
6 He was aware that the argument had
7 been waived and did nothing to try to raise it
8 before the court of appeals ruled. So it was
9 not an abuse of discretion for the Sixth
10 Circuit, under those circumstances, to hold that
11 when a party based virtually their entire
12 intervention motion on an argument that they
13 could have moved to intervene and made
14 beforehand and didn't was not an abuse of
15 discretion to hold that post-judgment
16 intervention in that context was untimely and
17 prejudicial.
18 JUSTICE THOMAS: Thank you.
19 MS. KOLBI-MOLINAS: Thank you.
20 Moving to the jurisdictional argument,
21 this Court has --
22 JUSTICE BREYER: Maybe I should ask a
23 question --
24 MS. KOLBI-MOLINAS: Okay.
25 JUSTICE BREYER: Can I? Is this --

1 CHIEF JUSTICE ROBERTS: Yes.
2 JUSTICE BREYER: -- appropriate?
3 Thank you.
4 Look, as I understand this -- and you
5 better correct me, please, because I'm not
6 certain I do -- look, there have been a lot of
7 party changes. First, the Republicans are in,
8 then the Democrats are in, and they have
9 different views on an abortion statute.
10 So -- so what happened was that, first
11 of all, the clinics sue to say Kentucky's
12 abortion statute's unconstitutional, and they're
13 defended -- it was defended by a person who
14 doesn't feel that strongly about it, and he
15 says, no, I can't -- the Secretary says, I can't
16 enforce this. And that's it.
17 But, eventually, when they get around
18 to deciding it, the lower court says, yeah, it
19 is unconstitutional. And then the court of
20 appeals says, yeah, it is unconstitutional. At
21 that point, for the first time, we have an
22 Attorney General who thinks it's a pretty good
23 statute. He wants to defend it.
24 So two days after he learns that
25 nobody's going to defend it, he comes in and

1 says, lets me defend it. And that's okay under
2 Kentucky law apparently. Nobody says it isn't.
3 And so, if there's no prejudice to
4 anybody, and I can't see where there is, why
5 can't he just come in and defend the law? How
6 does he defend it? One, he asks for rehearing.
7 It's still timely. And then, two, if they say
8 no, he comes to this Court.
9 Now he may lose on both those, and he
10 may lose for the reasons that you say, but I
11 don't see why he can't -- if Kentucky law allows
12 him to make the argument, why can't he make the
13 argument?
14 MS. KOLBI-MOLINAS: Well, Your Honor,
15 that would be -- that would be the case if we
16 were talking about a true stranger or outsider
17 to the case. There were four defendants who
18 were sued originally in this case. The Attorney
19 General, rather than defend or rather than take
20 a back seat, moved for and obtained a court
21 order expressly binding him to the judgment.
22 The Secretary did defend. It's not
23 that the statute wasn't defended. The
24 Secretary --
25 JUSTICE BREYER: Though he defended on

1 the ground I'm the wrong person.
2 MS. KOLBI-MOLINAS: No, that's not the
3 grounds on which the Secretary --
4 JUSTICE BREYER: What?
5 MS. KOLBI-MOLINAS: The defend -- the
6 Secretary defended the suit all the way up --
7 JUSTICE BREYER: All the way on
8 everything?
9 MS. KOLBI-MOLINAS: -- through
10 decision based on the -- defending the
11 constitutionality of the statute. The Attorney
12 General is the one who originally said he had no
13 enforcement authority but now admits that he
14 does. The Secretary -- it was vigorously
15 defended through the court of appeals' decision.
16 The Attorney General, it is well
17 settled in this Court, stands in the shoes of
18 his predecessors. It is well settled that one
19 who is bound -- one -- a successor in office is
20 bound by the stipulations made by and judgments
21 against their predecessors. It doesn't matter
22 that there's been a political party change.
23 So, here, we're not talking about a
24 run-of-the-mill intervention case where the
25 Attorney General had not been involved, someone

1 else had backed out, and then the Attorney
2 General wants to come in.
3 JUSTICE BREYER: I -- I thought -- was
4 I not right, then I'm -- I'm wrong, that -- that
5 before -- that there was still something to do,
6 but the Sixth Circuit says this is
7 unconstitutional. And somebody could have
8 filed, a defendant, a motion for rehearing, and
9 then they could have tried to come here.
10 But the Secretary of State said, I'm
11 not going to do that, because there had been a
12 political party change. And it's at that point
13 the Attorney General says, well, two days ago,
14 he says, nobody's going to defend this, so I
15 better.
16 Is -- is that happened, or am I
17 totally wrong?
18 MS. KOLBI-MOLINAS: The -- the
19 Secretary did make that decision not to continue
20 the defense, and the attorney --
21 JUSTICE BREYER: But was I right in my
22 statement?
23 MS. KOLBI-MOLINAS: In that the
24 Secretary -- there was a change in the
25 administration?

1 JUSTICE BREYER: I -- I don't want to
2 just repeat it again. I -- I -- I -- I -- did
3 -- did you take it in, or shall I repeat it
4 again?
5 MS. KOLBI-MOLINAS: I believe that it
6 is correct that the Secretary decided not to
7 appeal and the Attorney General then moved to
8 intervene.
9 The point is that the Attorney General
10 is a former named defendant in the suit. He's
11 not a stranger. He already is bound by the
12 judgment and never appealed.
13 JUSTICE BREYER: All right. But what
14 I read in the thing that he signed is he said
15 he'd be sign -- he would be bound by a final --
16 what is it called -- a final decision?
17 MS. KOLBI-MOLINAS: Final judgment,
18 paragraph 3d.
19 JUSTICE BREYER: Final judgment of
20 what?
21 MS. KOLBI-MOLINAS: Of the district
22 court.
23 JUSTICE BREYER: It says "final
24 judgment of the district court"? I mean, is
25 there a final -- I thought perhaps you could --

1 that if -- if you had a lot of appeals to go,
2 you know, an awful lot -- not very many, but,
3 occasionally, a district court is reversed.
4 And, occasionally -- I'm not saying it happens
5 very often -- but even a court of appeals
6 sometimes is reversed.
7 And so is it a final judgment if there
8 still are appeals to take?
9 MS. KOLBI-MOLINAS: It is, Your Honor,
10 in this Court's decision in Melkonyan, and the
11 term "final judgment" refers to final and
12 appealable. It is only unless -- unless you
13 clarify a final and unappealable judgment that
14 you're talking about a judgment that is not
15 final until all appeals have been exhausted.
16 JUSTICE BREYER: So, if he -- if he
17 goes and asks them to rehear, a motion to
18 rehear, which is what he wants to do, then just
19 -- the court will just write what you just said?
20 No. Denied. Why? Because. And then they give
21 your reason.
22 MS. KOLBI-MOLINAS: The court could --
23 JUSTICE BREYER: Is that what you --
24 MS. KOLBI-MOLINAS: I would assume the
25 court would deny it for being jurisdictionally

1 barred, but the court is, before that point,
2 jurisdictionally barred from allowing him to
3 intervene. He did the final.
4 CHIEF JUSTICE ROBERTS: Well, I
5 thought -- I thought your friend on the other
6 side read additional language after the
7 stipulation to be bound saying subject to
8 preservation of rights to appeal and so on and
9 so forth. Isn't that --
10 MS. KOLBI-MOLINAS: Well, he read two
11 different provisions, and so I think it's
12 important to clarify. Paragraph 3b, which is on
13 page 29 of the Joint Appendix, is not the
14 paragraph that binds him to final judgment.
15 That is a separate agreement not to enforce
16 until all appeals were exhausted.
17 Paragraph 3d is where the Attorney
18 General agreed that he would be bound by final
19 judgment and then says "subject to any vacating
20 or reversal of that judgment on appeal." But
21 that just means he wasn't being bound by the
22 judgment, the final judgment, and, even if it
23 was later changed, he would remain bound by the
24 original judgment.
25 CHIEF JUSTICE ROBERTS: Well, could

1 you -- I -- I don't -- I can look up the
2 language again, but it seems to me it's saying
3 he's being bound by the final judgment unless
4 it's reversed or vacated suggests that it's a
5 final judgment in the same way you have to have
6 a final judgment to appeal, but it's not
7 necessarily the last word on the subject.
8 MS. KOLBI-MOLINAS: But every
9 defendant is bound by the final judgment. And
10 then, if that final judgment no longer exists,
11 then they can't be bound by it anymore. I mean,
12 there's an -- there are other defendants in this
13 suit. So, for example, the local prosecutor was
14 a defendant in this suit who stayed in the case
15 through the district court and then became bound
16 by final judgment but opted not to appeal.
17 If that final judgment is vacated on
18 appeal, even though he never appealed, he would
19 no longer be bound by it anymore, but that
20 doesn't mean he wasn't bound by the final
21 judgment and, therefore, didn't have an
22 obligation to appeal it, and it didn't mean that
23 he didn't lose his right to appeal when he
24 failed to do so.
25 JUSTICE KAGAN: Counsel --

1 JUSTICE GORSUCH: Counsel --
2 JUSTICE KAGAN: -- could I take you
3 back to the original Justice Breyer question,
4 which does have to do with the change in party.
5 And I understand your answer that the
6 Attorney General remains the Attorney General,
7 and we have a lot of law saying that even though
8 the Attorney General, the person, has changed
9 and even the party has changed, it's still the
10 same legal entity.
11 And, indeed, I don't take Kentucky to
12 disagree with that. No place in its briefing
13 does it talk about the fact that, well, once
14 there was a Democrat and now there's a
15 Republican and he thinks completely different
16 things.
17 But there's a real-world way in which
18 that seems to matter a lot. I mean, that
19 creates the problem here, which is that there's
20 nobody left defending the state's law.
21 And I think what Justice Breyer was
22 saying is: Gosh, that would be an extremely
23 harsh jurisdictional rule or at least a
24 counterintuitive rule if it ended up in a place
25 where nobody was there to rep -- to -- to defend

1 Kentucky's law, even though there are
2 significant parts of Kentucky's government that
3 still want it law -- its law defended.
4 MS. KOLBI-MOLINAS: Well, Your Honor,
5 first of all, harsh results don't change whether
6 or not a jurisdictional rule is imposed. Of
7 course, as this Court has repeatedly recognized,
8 jurisdictional rules often result in harsh
9 results and those results are imposed by
10 Congress. That doesn't mean that there can be
11 an exception to the jurisdictional rule.
12 But, second, under Kentucky law, the
13 Attorney General has the authority to decline to
14 defend a statute. The Kentucky Supreme Court
15 has held that. And that is exactly what
16 happened when the Attorney General originally in
17 this case declined to defend the statute.
18 And it is not a violation of
19 Kentucky's sovereign authority to hold him to
20 that decision. As this Court recognized in
21 Bethune-Hill, the decision not to appeal is as
22 much an exercise of sovereign authority as the
23 decision to appeal. It wouldn't mean -- if a
24 subsequent Virginia Attorney General was to come
25 and say: Well, I would have made a different

1 decision than the Attorney General in
2 Bethune-Hill, that doesn't mean that this Court
3 was violating Virginia's sovereign authority
4 when it held that he had the authority to make
5 the decision not to appeal.
6 I think, if anything, the fact that
7 different political parties might choose to
8 exercise that sovereign authority differently
9 calls for this Court to be neutral in the face
10 of that differential exercise of sovereign
11 authority.
12 And so, again, I think what separates
13 this case is the fact that, if the Attorney
14 General had never exercised that sovereign
15 authority to decline to defend and to enter into
16 a court-ordered stipulation and dismissal
17 binding him to the judgment, then I think we
18 would be more in the case of what Justice Breyer
19 was describing, of a case in which the sovereign
20 authority had -- the sovereign had never been
21 given the chance perhaps to exercise or defend
22 the statute and then now it was being taken away
23 from it.
24 But, here, the Attorney General
25 exercised the authority he had not to defend and

1 to agree to be bound. Another defendant chose
2 to continue to defend, chose to appeal, saw that
3 appeal all the way through, and then decided at
4 that point to lay down his sword.
5 None of that is a violation of
6 Kentucky's sovereign interests, and so that's
7 what I think sets this case apart and why, even
8 if this Court is concerned about the harsh
9 results that a jurisdictional rule might impose,
10 this is not that case because this is a case in
11 which the jurisdictional rules are being applied
12 neutrally, as they should, to an appropriate
13 exercise of sovereign authority.
14 It just happens to be that a different
15 political party -- a different Attorney General
16 of a different political party after an election
17 would have exercised that authority differently.
18 But that's always the case when a successor in
19 office stands into the shoes of their
20 predecessor.
21 JUSTICE GORSUCH: Counsel --
22 MS. KOLBI-MOLINAS: And so --
23 JUSTICE GORSUCH: I'm -- I'm -- I'm --
24 I'm sorry. Finish your answer.
25 MS. KOLBI-MOLINAS: That's okay.

1 JUSTICE GORSUCH: That's a good
2 stopping point?
3 MS. KOLBI-MOLINAS: That's a good
4 stopping point.
5 JUSTICE GORSUCH: Okay. All right.
6 Thank you.
7 My first question is put aside the
8 stipulation order. I -- I want to press further
9 where Justice Kagan and Justice Breyer were.
10 Put aside the stipulation order here. Assume
11 the Attorney General hadn't been involved
12 initially.
13 Would it have been proper for the
14 Attorney General then to intervene on appeal two
15 days after getting notice?
16 MS. KOLBI-MOLINAS: Would not have
17 been jurisdictionally barred.
18 JUSTICE GORSUCH: Okay.
19 MS. KOLBI-MOLINAS: We cert -- we
20 certainly still think there's a timeliness
21 issue, but there would not be a jurisdictional
22 issue if he had not been bound and failed to
23 appeal.
24 JUSTICE GORSUCH: Okay. And then do
25 you give any weight -- should this Court give

1 any weight to the fact that we are dealing with
2 a sovereign with the interests of defending a --
3 a -- a duly-enacted state law along the lines
4 Justice Kagan and Justice Breyer articulated?
5 Does that -- should that bear on our
6 consideration of this case at all?
7 MS. KOLBI-MOLINAS: I think it's
8 certainly one of the considerations. I don't
9 think it gets dispositive weight. And I think
10 the D.C. Circuit in the Amador County case, I
11 think, struck the balance appropriately where it
12 said that it would be an abuse of discretion not
13 to consider the fact that a sovereign is -- the
14 sovereign purposes behind intervention, but it's
15 not an abuse of discretion to fail to give them
16 dispositive weight.
17 JUSTICE GORSUCH: And then -- and
18 then, finally, I -- I -- I hope, with respect to
19 the conditions of dismissal, as I read it at any
20 rate, the Attorney General specifically reserved
21 rights relating to whether he's a proper party
22 in this action and in any appeals arising out of
23 this action.
24 The Attorney General obviously argues
25 that includes the -- the argument that he can

1 later seek intervention, that that was expressly
2 reserved. What do you do about that?
3 MS. KOLBI-MOLINAS: Your Honor, that
4 -- he could only reserve the rights that were
5 available to him. And we believe he had a right
6 to appeal.
7 JUSTICE GORSUCH: Well, but if --
8 MS. KOLBI-MOLINAS: So what we believe
9 --
10 JUSTICE GORSUCH: But, counsel, I'm
11 sorry, let me just --
12 MS. KOLBI-MOLINAS: Yeah.
13 JUSTICE GORSUCH: -- intervene there.
14 I'm sorry.
15 But I think we agree that, absent the
16 stipulation, one of the rights the Attorney
17 General would have had is to seek intervention
18 on appeal. So why wasn't that one of the
19 reserved rights?
20 MS. KOLBI-MOLINAS: Well, Your Honor,
21 we don't believe that that's what the -- the
22 stipulation and dismissal contemplates because
23 there is no right to intervene on appeal.
24 JUSTICE GORSUCH: It's a right to seek
25 intervention on appeal as part of the bundle of

1 rights I think we've all just agreed on that the
2 Attorney General had and that may be
3 particularly powerful as a sovereign.
4 And why -- why didn't this language
5 adequately reserve those rights?
6 MS. KOLBI-MOLINAS: Because if he was
7 -- and I'm -- I'm not trying to resist the
8 hypothetical -- but if he was bound by the
9 judgment, then he had to appeal, and if he
10 didn't, he couldn't come back to the suit. If
11 he wasn't --
12 JUSTICE GORSUCH: So we should --
13 MS. KOLBI-MOLINAS: -- bound by the --
14 JUSTICE GORSUCH: -- ignore the
15 reservation of rights here? Is that -- is that
16 the argument?
17 MS. KOLBI-MOLINAS: Well, I'm saying,
18 if he wasn't bound by the judgment, he wouldn't
19 have needed a reservation of rights to reserve
20 the right to seek intervention. That's not
21 something you would need to reserve because any
22 stranger or outsider to the action could move to
23 intervene. That's just not the context in which
24 this stipulation and dismissal was entered, Your
25 Honor.

1 JUSTICE BARRETT: Counsel, can I ask
2 you a question about the premise of the
3 jurisdictional argument altogether? I guess I'm
4 struggling to see why 28 U.S.C. 2107 is the
5 right way to think about this, because it
6 doesn't seem to me that intervention necessarily
7 overlaps with 2107. I mean, he's not filing a
8 notice of appeal. He's seeking to intervene.
9 It seems like a different thing.
10 And it might be that the fact that he
11 styled -- signed this stipulation before might
12 be an equitable reason or one of the
13 considerations in this intervention calculation,
14 the Rule 24 analog for why the court might not
15 let him do it. Like a court might say: Hey,
16 you had your chance, you signed that away. No,
17 we're not letting you come in at this late date.
18 But I guess I don't understand why
19 it's jurisdictional, because it seems to me that
20 a motion to intervene is just a different way of
21 getting before the suit. So are you aware of
22 any other cases in which a court of appeals has
23 treated a motion to intervene as implicating
24 2107 at all? Because, I mean, after all, in the
25 language in 2107(a), it just says "unless notice

1 of appeal is filed within 30 days."
2 So, presumably, even if you came in as
3 a stranger to the suit, someone not in the
4 Attorney General's strange two-hat position
5 here, would anyone invoke 2107 saying, well,
6 hey, even though you weren't a party below and
7 you didn't have the right to appeal, it was 30
8 days and that 30 days has run? It just seems
9 like a mismatch between what happened and -- and
10 2107.
11 MS. KOLBI-MOLINAS: So three
12 responses. First, just to briefly point you to
13 a case, the Tenth Circuit in Hutchinson did say
14 that intervention cannot be used as an end-run
15 or substitute to the ordinary rules of appellate
16 procedure and the person who was seeking
17 intervention there could have appealed. They
18 didn't use the -- they didn't cite Section 2107,
19 so I don't want to suggest that that -- but they
20 did say that cannot -- intervention cannot be
21 used as a substitution or end-run around the
22 ordinary rules of appellate procedure.
23 But, second, as this Court held in
24 Torres, one who is jurisdictionally barred from
25 achieving something directly is equally

1 jurisdictionally barred from achieving it
2 indirectly. The reason that this Court gave in
3 Torres for why the Petitioner was
4 jurisdictionally barred from rejoining his suit
5 was that to allow him to do so would have
6 been -- and the term this Court used -- would
7 have been the equivalent of allowing him to file
8 an untimely notice of appeal.
9 And because this Court didn't have the
10 authority to allow him to file an untimely
11 notice of appeal, it couldn't allow him to
12 achieve the result any other way because to do
13 so would render jurisdictional rules
14 meaningless.
15 JUSTICE KAGAN: But -- but we didn't
16 talk about intervention in Torres, correct?
17 MS. KOLBI-MOLINAS: No, he was just
18 seeking to -- he was asking for an equitable
19 exception to rejoin his suit, though, of course
20 --
21 JUSTICE KAGAN: Yeah. And Mr. Kuhn
22 said that he would not have been allowed to
23 intervene. But maybe Mr. Kuhn was wrong about
24 that. Maybe the way around the harshness of
25 Torres is just to allow people who don't file

1 their notices of appeal in time to come back and
2 say you should allow me to intervene?
3 MS. KOLBI-MOLINAS: I disagree, Your
4 Honor, because the crux of the holding in Torres
5 was that anything that amounts to the equivalent
6 of filing an untimely notice of appeal is as
7 jurisdictionally barred as filing an untimely
8 notice of appeal.
9 So it wouldn't matter if it was asking
10 for an equitable exception to rejoin the suit or
11 asking for equitable intervention on appeal.
12 Both of those are an end-run around filing an
13 untimely -- filing a notice of appeal, and
14 that's why they're jurisdictionally barred. So
15 I don't think it would make a difference.
16 And the fact that intervention itself
17 requires some sort of threshold showing doesn't
18 change the fact that it would still be granting
19 an exception to someone who could have and
20 didn't file their notice of appeal and yet
21 letting them appeal anyway.
22 So I think that, at the end, it's this
23 anti-circumvention principle. If you are
24 jurisdictionally barred from achieving something
25 directly, you cannot achieve it through any

1 other means, regardless of what those means are.
2 Otherwise, a jurisdictional rule, as this Court
3 held in Torres, would be meaningless.
4 JUSTICE BARRETT: So do you represent
5 that if the Attorney General had, in fact, filed
6 a notice of appeal within the 30 days that you
7 wouldn't have contested his right to do so?
8 MS. KOLBI-MOLINAS: I don't see on
9 what grounds we could have, Your Honor.
10 JUSTICE BREYER: Well, now I'm
11 confused. I mean, I'm trying to find in your
12 brief where you make this jurisdictional
13 argument. Now, on page 15 or page, rather, 8 --
14 5, you say what it is. You say he agreed, the
15 Attorney General, that any final judgment about
16 the constitutionality will be binding on the
17 Attorney General subject to any modification,
18 reversal, or vacation of the judgment on appeal.
19 That's what we're talking about,
20 right?
21 MS. KOLBI-MOLINAS: Yes.
22 JUSTICE BREYER: Okay. Then I see
23 later that really they dismissed it on a
24 different ground, namely, that it was untimely.
25 And I don't see much argument about that point,

1 that -- that that bars him forever. Have I
2 missed something?
3 Where -- where is it argued that that
4 -- that that's a promise, that's a promise that
5 I won't intervene later or do anything else, I'm
6 out of it? Whatever the district court holds,
7 I'm out of it? That's what you're saying, I
8 think.
9 MS. KOLBI-MOLINAS: If you fail to
10 appeal, you are out. That's the jurisdictional
11 rule.
12 JUSTICE BREYER: Okay. No, no, okay.
13 So I got the argument right. Where do you
14 discuss it in your brief?
15 MS. KOLBI-MOLINAS: The jurisdictional
16 argument?
17 JUSTICE BREYER: Yeah. Yeah.
18 MS. KOLBI-MOLINAS: The brief, it is
19 -- it's the first argument.
20 JUSTICE BREYER: The first. Okay.
21 I've got it then. I know the first argument.
22 MS. KOLBI-MOLINAS: So it's -- yes.
23 JUSTICE BREYER: Okay. But they
24 didn't reach that as a ground, did they?
25 MS. KOLBI-MOLINAS: No, the Sixth

1 Circuit --
2 JUSTICE BREYER: I mean -- I mean,
3 because of this added language and so forth, it
4 -- what do you think of saying, look -- you --
5 you did it on a timeliness basis, but, really,
6 there's an argument here that they're barred
7 jurisdictionally because of this promise.
8 Effectively, they promise not to do it.
9 Please consider that.
10 MS. KOLBI-MOLINAS: It would be
11 appropriate to allow the Sixth Circuit to
12 consider the jurisdictional argument because I
13 agree they didn't consider it.
14 I wanted to address the point about
15 sovereignty and the waiver of sovereign immunity
16 that had been raised before because I think it
17 is very clear that we are dealing with the
18 Attorney General, who is the party who is
19 intervening here.
20 First, one need only look at pages 45
21 to 46 of the blue brief to see that the Attorney
22 General has cited his institutional interests.
23 He cited the fact that he has enforcement
24 authority under HB 454. He even cites that he
25 is bound by the judgment as a basis for

1 intervening.
2 But, second, every attorney general
3 knows the difference between moving for
4 intervention on behalf of himself and moving to
5 intervene for the state because, when a state
6 intervenes, it necessarily waives sovereign
7 immunity, which is significant and irreversible.
8 There is no such thing as essentially
9 waiving sovereign immunity. Sovereign immunity,
10 it must be unambiguously and expressly waived.
11 And this Court has held that voluntary
12 intervention is such a waiver.
13 And that's why I think it's not just a
14 mere technicality or formality that this case is
15 -- the intervenor is Attorney General Cameron
16 and this case is called Cameron v. EMW. The
17 intervenor here is the Attorney General; it is
18 not the State of Kentucky.
19 And this Court should not construe --
20 where there is ambiguity and where there is
21 question of who the intervenor is, should not
22 construe it as the Commonwealth of Kentucky,
23 because that would be an irreversible waiver of
24 Kentucky's sovereign immunity, and, indeed, the
25 parties in this case have not even briefed the

1 circumstances under which the Attorney General
2 in Kentucky can waive the Commonwealth's
3 immunity.
4 So I think that it's very clear that
5 what we are dealing with here is the same party
6 who was sued is now the party who is moving to
7 intervene. The same party who was bound is the
8 party who is moving to intervene. And it's not
9 the Commonwealth of Kentucky who's moving to
10 intervene here, and that's why the
11 jurisdictional issue cannot be ignored.
12 JUSTICE KAVANAUGH: I thought he said
13 that it could be construed as a limited waiver
14 of sovereign immunity.
15 MS. KOLBI-MOLINAS: Under this Court's
16 precedent, in a -- voluntary intervention is a
17 waiver of sovereign immunity. It's not a
18 limited waiver of sovereign immunity.
19 So I don't know what that limited
20 waiver is that he's discussing, but if -- if the
21 Commonwealth of Kentucky is intervening here, it
22 has waived its sovereign immunity irreversibly.
23 I also want to go to this hat point,
24 Your Honor, because I think it makes just a hash
25 of Ex parte Young and of jurisdictional rules.

1 We sued the Attorney General because -- in his
2 official capacity. There are only two
3 capacities, official capacity and personal
4 capacity. It doesn't matter how many job
5 responsibilities you have.
6 And it would make hash of Ex parte
7 Young if the Attorney General could say, well,
8 with my left hand, I'm exercising my authority
9 to defend the constitutionality of state law so
10 that, with my right hand, I can enforce that
11 same law, and then claim that he's two separate
12 legal personas, one immune, one not. That would
13 render both Ex parte Young and jurisdictional
14 rules meaningless.
15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.
17 Just one more question. In another
18 suit, the Friedlander litigation, your client
19 opposed the Attorney General intervening prior
20 to a panel opinion on the basis that the
21 Secretary adequately represented the -- the
22 Commonwealth.
23 And in your papers, you -- you said
24 that you criticized the Attorney General's
25 concern about rehearing and cert as -- as

1 speculative. Now, here, you're opposing the
2 intervention after the issuance of the prior --
3 of -- of a panel opinion.
4 And I wonder if that's -- I mean, I'm
5 familiar that lawyers argue in the alternative,
6 but I wonder if that's really putting him in a
7 catch-22. If it's prior to the opinion, the
8 Secretary will do it. If it's after the
9 opinion, he's waited too long.
10 MS. KOLBI-MOLINAS: Well --
11 CHIEF JUSTICE ROBERTS: So which --
12 which is it?
13 MS. KOLBI-MOLINAS: So three responses
14 to that, briefly, Your Honor.
15 First, we did lose the -- the adequate
16 representation argument in that case. He was
17 permitted to intervene before.
18 Second, that case actually was
19 different because there was not the previous --
20 the Attorney General had never been involved in
21 that suit and had never sought their dismissal
22 in that suit. So the question of adequate
23 representation was slightly different in that
24 suit.
25 But also, at the end of the day, we

1 would make whatever good-faith arguments were
2 available to us to oppose intervention under the
3 circumstances, but that doesn't ever relieve the
4 Attorney General from moving to intervene
5 timely. And the fact that we wouldn't have
6 consented to intervention doesn't relieve him of
7 his obligation to move timely.
8 CHIEF JUSTICE ROBERTS: Well, I think
9 you -- you should lose one of those, whether
10 it's this one or that one, but I wonder why it
11 doesn't make more sense to have the Attorney
12 General out of the case when the Secretary is
13 representing the state. You don't want the
14 state speaking through two different voices.
15 But, once the Secretary's out of it,
16 Kentucky ought to -- maybe ought to be there in
17 some form, and the Attorney General is the one
18 that wants to intervene.
19 MS. KOLBI-MOLINAS: Well, Your Honor,
20 I think that intervention law incentivizes early
21 intervention and penalizes late intervention.
22 And there is a significant thing that happens
23 when the court of appeals has ruled.
24 I mean, intervention is as much about
25 the court of appeals being able to control its

1 docket and to control entry of new parties into
2 the suit late in the game.
3 CHIEF JUSTICE ROBERTS: Yeah, well,
4 late in the game, yes, but, here, the Attorney
5 General filed a petition for rehearing on the
6 same date that it would have been due if the
7 Secretary had still been in the case.
8 So it seems a bit much to say that
9 they were delaying the proceedings.
10 MS. KOLBI-MOLINAS: No, I'm not
11 arguing and I don't think the court -- I don't
12 think I'm arguing that they were delaying the
13 proceedings. But, nevertheless, part of docket
14 control is ensuring that you have all the
15 parties who are going to be in the suit in as
16 early as possible.
17 I mean, as this Court --
18 CHIEF JUSTICE ROBERTS: Well, I guess
19 that's true, but, as Justice Breyer pointed out,
20 the situation changes a bit when the -- the
21 state representations are shuffled -- the -- the
22 deck is shuffled again after an election.
23 And the question is whether you want
24 to preclude the state from participating in the
25 litigation that is still ongoing in a way that

1 doesn't delay it to deny the state any
2 representation.
3 It's sort of an estoppel. I mean, if
4 you had one party's position being pressed in
5 the case and there was another election, well,
6 the -- the state's still stuck with what the --
7 the people have rejected in the election.
8 MS. KOLBI-MOLINAS: I don't think it
9 was an abuse of the court of appeals' discretion
10 to hold that under the circumstances that the
11 Attorney General did wait too long to intervene,
12 not, again, as -- a delay -- I'm not saying
13 that -- but that he had the opportunity to enter
14 the case and shape the decision before the court
15 of appeals ruled.
16 So I don't think it was an abuse of
17 the discretion for the court of appeals to say
18 that waiting until after judgment is entered to
19 try to make your arguments and to make a new
20 argument is waiting too long.
21 A different panel may have seen it
22 differently. But, as under the abuse of
23 discretion standard, I don't think there was an
24 abuse there.
25 CHIEF JUSTICE ROBERTS: Thank you.

1 Justice Thomas?
2 JUSTICE THOMAS: None for me, Chief.
3 CHIEF JUSTICE ROBERTS: Justice
4 Breyer, further?
5 JUSTICE SOTOMAYOR: I have a question.
6 Counsel, assuming there's no jurisdictional
7 argument, meaning that they didn't have to file
8 a notice of appeal, Justice Breyer and I think
9 Justice Gorsuch and Justice Barrett have all
10 been concerned about never having given the
11 State of Kentucky the opportunity adequately to
12 defend this law after it was declared
13 unconstitutional because the Secretary of State
14 walked away from it.
15 How do you address that concern --
16 MS. KOLBI-MOLINAS: Your Honor --
17 JUSTICE SOTOMAYOR: -- and that --
18 MS. KOLBI-MOLINAS: -- I don't -- I
19 don't think it's fair to characterize this case
20 as if there was some sort of default judgment or
21 some sort of abdication by the Secretary.
22 The Secretary was the sole defendant
23 who saw the case through to district court
24 judgment and then saw it all the way through on
25 appeal and defended it vigorously on appeal.

1 So it's not as if the state was denied
2 its opportunity to defend the law. That
3 Secretary defended it all the way up until the
4 court of appeals and then decided, based on the
5 decision and based on whatever other
6 considerations, not to seek extraordinary
7 further appeals.
8 The Attorney General who had --
9 putting aside whether or not he was bound --
10 still had the opportunity to defend earlier, had
11 an opportunity to intervene earlier.
12 I don't think it's disrespectful of
13 Kentucky's sovereign interests for the court of
14 appeals to have held that at this point the case
15 has gone on too long and it's too late for
16 someone new to join.
17 CHIEF JUSTICE ROBERTS: Justice Kagan?
18 Justice Gorsuch? Okay.
19 Okay. Thank you, counsel.
20 You have rebuttal, Mr. Kuhn?
21 REBUTTAL ARGUMENT OF MATTHEW F. KUHN
22 ON BEHALF OF THE PETITIONER
23 MR. KUHN: Thank you, Mr. Chief
24 Justice. Two quick points.
25 I want to start with Justice Breyer's

1 question and what the Chief Justice referred to
2 as the deck being reshuffled.
3 I think, after the elections in 2019
4 and the reversal of positions with various state
5 officials, we saw the wisdom of the way Kentucky
6 had structured its system of government, its way
7 of defending its sovereignty when its laws are
8 challenged, because the reversal of one party
9 was not good enough for Kentucky's law to go
10 away. It took two people. It took two
11 constitutionally elected, separately elected
12 officials to agree not to appeal further. The
13 Governor's administration said no further, but
14 Kentucky created that fail-safe.
15 I think the effect of the Sixth
16 Circuit's ruling is to say to a sovereign state
17 that you just can't structure your government
18 that way. You cannot defend your sovereign
19 interests the way that you want to do so.
20 I think that is directly contrary to
21 what this Court said in Bethune-Hill that we
22 respect how states structure their government.
23 The second and final point that I want
24 to make is to respond to some of the questions
25 that Justice Gorsuch and the Chief Justice asked

1 about the terms of the stipulation.
2 This Court has told us that a party is
3 bound -- that agrees to be bound by a -- a
4 non-party that agrees to be bound by a judgment
5 is bound in accordance with the terms of his or
6 her agreement. That's Taylor versus Sturgell.
7 So I think that we have to look very
8 closely at what the Attorney General agreed to
9 in his enforcement capacity.
10 And as the questions have pointed out,
11 we preserved our right to benefit from any
12 favorable result on appeal. That is in
13 Section 3d in response to the Chief Justice's
14 question, and we reserved our right to
15 participate in any appeal. We reserved all
16 claims and rights relating to whether we are a
17 proper party.
18 I think, by reserving that, that can
19 only be understood, to respond to Justice
20 Gorsuch's question, as to preserve our ability
21 to move to intervene if -- if circumstances
22 changed, which they did.
23 And so I think that if we're bound in
24 accordance with the terms of our agreement, I
25 think that we have the ability to come in and

1 protect Kentucky's interests when it became
2 unrepresented.
3 If there are no further questions, I
4 appreciate the Court's time.
5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel. The case is submitted.
7 (Whereupon, at 11:14 a.m., the case
8 was submitted.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

10:01 [2] 1:17 3:2
11:14 [1] 80:7
12 [1] 1:13
15 [1] 66:13
15.020 [1] 30:20
16 [1] 36:24

2

20-601 [1] 3:4
20-page [1] 27:5
2019 [3] 44:10,17 78:3
2021 [1] 1:13
2107 [6] 62:4,7,24 63:5,10,18
2107(a [1] 62:25
229 [1] 17:16
24 [7] 5:12,20,22,25 6:19 31:19 62:14
27 [1] 7:4
28 [1] 62:4
28(j [1] 45:1
29 [1] 52:13

3

3 [1] 2:4
30 [4] 63:1,7,8 66:6
30-day [1] 38:9
38 [1] 2:7
3b [1] 52:12
3d [3] 50:18 52:17 79:13

4

4 [2] 9:19 26:17
40 [2] 12:20 25:22
41 [2] 12:20 25:22
45 [1] 68:20
454 [9] 3:13 4:11 12:19 15:1,5 25:3,17 27:1 68:24
46 [1] 68:21

5

5 [2] 9:19 66:14

6

60(b [1] 40:1

7

77 [1] 2:10

8

8 [1] 66:13

A

a.m [3] 1:17 3:2 80:7
abdication [1] 76:21
abide [2] 11:6,8
ability [5] 5:7 15:15 26:19 79:20,25
able [5] 12:10 13:25 25:19 42:9 73:25
abortion [2] 46:9,12
above-entitled [1] 1:15
absent [1] 60:15
abuse [16] 6:15,21 11:21 31:8,22 32:7,25 39:18 45:9,14 59:12,15 75:9,16,22,24
abused [5] 6:17 12:10 13:12,16,17
abuses [1] 35:9
accept [1] 14:23
accepted [2] 3:23 4:13
accordance [2] 79:5,24
achieve [2] 64:12 65:25
achieving [3] 63:25 64:1 65:24
acknowledges [1] 12:21
acknowledgment [1] 12:23
act [4] 8:1,5 23:24 40:23
acting [1] 4:21
action [8] 9:17 11:10 15:14,15 17:9 59:22,23 61:22
actionable [1] 14:5
actions [3] 30:15,22 42:13
actually [1] 72:18
added [1] 68:3
additional [1] 52:6
address [3] 4:17 68:14 76:15
adequate [2] 72:15,22
adequately [3] 61:5 71:21 76:11
administration [2] 49:25 78:13
admit [1] 14:24
admits [1] 48:13
adopt [1] 35:8
adopts [1] 37:19
affirmatively [1] 4:5
affirmed [1] 39:9
AG [5] 10:8 22:15,19 33:12 34:3
agencies [1] 10:13
agent [15] 8:1,2,5 21:7 23:7,25 24:12,18,18,22,23,25 25:15,18 30:17
agents [1] 23:24
ago [1] 49:13
agree [11] 22:5,8,10 24:7,25 31:8 39:10 57:1 60:15 68:13 78:12
agreed [10] 12:1,7 15:4 17:17 38:5,19 52:18 61:1 66:14 79:8
agreeing [1] 17:12
agreement [3] 52:15 79:6,24
agrees [4] 4:23 25:21 79:3,4
ahead [1] 20:13
AL [1] 1:8
ALEXA [3] 1:24 2:6 38:1
allow [8] 7:13 38:22 64:5,10,11,25 65:2 68:11
allowed [2] 37:10 64:22
allowing [2] 52:2 64:7
allows [3] 7:5 39:10 47:11
almost [1] 14:5
already [1] 50:11
alternative [1] 72:5
although [1] 17:14
altogether [1] 62:3
Amador [1] 59:10
ambiguity [1] 69:20
amici [1] 42:18
amounts [1] 65:5
analog [1] 62:14
analogy [4] 5:22 6:8 31:19,20
analysis [3] 35:24 37:1,19
analyzing [1] 31:9
another [10] 3:11,24 6:3 7:7 9:22 34:11 42:2 57:1 71:17 75:5
answer [3] 20:2 54:5 57:24
answering [1] 24:14
anti-circumvention [1] 65:23
anybody [2] 24:22 47:4
anyway [1] 65:21
apart [2] 8:22 57:7
apologize [1] 22:2
apparently [1] 47:2
appeal [84] 5:7,8 11:18 12:2 13:6 15:16,20,23 16:1,2,10,12,22,25 17:11,21 18:16 20:6,8,16,20 21:25 22:8 23:3 27:4 28:2 33:8 35:3,18 38:6,8,14,18 39:3,5,12,24 40:13,19 42:9 43:1 44:5,9 50:7 52:8,20 53:6,16,18,22,23 55:21,23 56:5 57:2,3 58:14,23 60:6,18,23,25 61:9 62:8 63:1,7 64:8,11 65:1,6,8,11,13,20,21 66:6,18 67:10 76:8,25,25 78:12 79:12,15
appealable [1] 51:12
appealed [15] 5:3 19:3,9 20:18 21:14,16,23 22:7,16,19 29:4,10 50:12 53:18 63:17
appeals [35] 3:15,25 6:4 11:22 15:14 17:8 26:21 32:7,12,16,24 35:21 39:8,13,17 42:7,20,24 44:11 45:8 46:20 51:1,5,8,15 52:16 59:22 62:22 73:23,25 75:15,17 77:4,7,14
appeals' [3] 26:15 48:15 75:9
appear [1] 9:2
appearance [2] 44:21,22
APPEARANCES [1] 1:19
appeared [1] 9:11
appearing [1] 9:22
appears [1] 17:17
appellate [9] 5:11,16,20 6:1,6 7:1 37:13 63:15,22
Appendix [2] 17:16 52:13
applicable [1] 5:20
applied [1] 57:11
apply [8] 5:13 6:19,20 33:4 35:8 36:20 37:1,6
appreciate [1] 80:4
appropriate [3] 46:2 57:12 68:11
appropriately [1] 59:11
aren't [1] 13:8
arena [1] 11:24
arguably [1] 36:1
argue [3] 6:24 33:14 72:5
argued [2] 26:25 67:3
argues [4] 33:7 38:16,24 59:24
arguing [2] 74:11,12
argument [52] 1:16 2:2,5,8 3:4,7 4:18,18 14:23 19:11 21:15 28:19 29:2,13 34:9 38:1 39:16,20 40:4 43:7,8,14,17,19,22,24 44:3,4,13,16,18,23 45:6,12,20 47:12,13 59:25 61:16 62:3 66:13,25 67:13,16,19,21 68:6,12 72:16 75:20 76:7 77:21
arguments [4] 29:1 39:25 73:1 75:19
arise [1] 17:8
arising [2] 15:14 59:22
Arizona [2] 8:8,10
around [5] 40:8 46:17 63:21 64:24 65:12
arrive [1] 4:4
articulated [1] 59:4
aside [3] 58:7,10 77:9
asks [2] 47:6 51:17
Assembly [2] 19:16,24
asserted [1] 35:16
assume [8] 19:2,4,8,14 29:9,13 51:24 58:10
assumed [1] 22:18
assuming [1] 76:6
ATTORNEY [110] 1:3 3:13,16,20,22 4:9,11,19,23 5:2 7:16,20 8:8,10,23 9:1,9,14,16,20 10:3,12,15,17,19 11:1 13:18 14:23 15:18 18:16 19:2,8,15,21 20:25 21:14,15,22 23:7 26:2,18 27:2 29:3,9,22 30:9,19 38:5,12,19,24 39:14,22,23 40:9,12 41:10,16,18 43:8 44:15 46:22 47:18 48:11,16,25 49:1,13,20 50:7,9 52:17 54:6,6,8 55:13,16,24 56:1,13,24 57:15 58:11,14 59:20,24 60:16 61:2 63:4 66:5,15,17 68:18,21 69:2,15,17 70:1 71:1,7,19,24 72:20 73:4,11,17 74:4 75:11 77:8 79:8
attorneys [3] 10:14,21 24:4
authority [25] 6:20 8:15 14:13,25 27:23 35:2,5,7,17 48:13 55:13,19,22 56:3,4,8,11,15,20,25 57:13,17 64:10 68:24 71:8
available [3] 39:4 60:5 73:2
avoid [1] 38:10
aware [3] 43:20 45:6 62:21
away [4] 56:22 62:16 76:14 78:10
awful [1] 51:2

B

back [9] 12:15 13:11 14:15 17:13,25 47:20 54:3 61:10 65:1
backed [1] 49:1
bad [1] 14:7
balance [1] 59:11
banc [4] 33:11,14 34:4 36:10
bar [1] 38:23
barred [12] 4:25 39:8 52:1,2 58:17 63:24 64:1,4 65:7,14,24 68:6
BARRETT [9] 23:9,11 34:21,22 36:16 37:20 62:1 66:4 76:9
bars [1] 67:1
based [7] 39:20 43:6,12 45:11 48:10 77:4,5
basically [1] 36:13
basis [6] 5:15 6:14,16 68:5,25 71:20
bear [2] 27:14 59:5
became [2] 53:15 80:1
become [1] 41:4
becomes [1] 15:23
beforehand [1] 45:14
behalf [26] 1:22,25 2:4,7,10 3:8,23 4:20 7:17 8:20 9:3,5,20 10:8 19:25 23:4,12,17,21 24:1 27:6,9 38:2 44:21 69:4 77:22
behind [1] 59:14
believe [4] 50:5 60:5,8,21
below [1] 63:6
Bender [1] 26:5
benefit [5] 5:8 15:16 17:10 22:1 79:11
best [1] 5:17
Bethune-Hill [13] 8:13,19 12:15 18:1,10 21:5,6 22:24 26:7 32:4 55:21 56:2 78:21
better [2] 46:5 49:15
between [3] 6:5 63:9 69:3
beyond [1] 34:16
Bill [9] 3:13 4:11 8:11 12:19 14:25 15:5 25:3,17 27:1
bind [1] 13:15
binding [4] 41:11 47:21 56:17 66:16
binds [1] 52:14
bit [6] 14:3 20:3 36:19 37:

18 **74**:8,20
blue [3] **7**:4 **9**:19 **68**:21
both [6] **27**:7 **34**:11 **38**:15 **47**:9 **65**:12 **71**:13
bound [49] **11**:9 **12**:1,7 **15**: 11 **16**:18 **17**:3,4,6,12 **19**:5 **38**:6,7,13,19,20 **39**:11 **40**: 19 **41**:13,25 **42**:7,15,24 **48**: 19,20 **50**:11,15 **52**:7,18,21, 23 **53**:3,9,11,15,19,20 **57**:1 **58**:22 **61**:8,13,18 **68**:25 **70**: 7 **77**:9 **79**:3,3,4,5,23
Breyer [30] **28**:17 **45**:22,25 **46**:2 **47**:25 **48**:4,7 **49**:3,21 **50**:1,13,19,23 **51**:16,23 **54**: 3,21 **56**:18 **58**:9 **59**:4 **66**: 10,22 **67**:12,17,20,23 **68**:2 **74**:19 **76**:4,8
Breyer's [1] **77**:25
brief [11] **7**:4 **9**:19 **12**:21 **25**: 23 **40**:5 **42**:18 **44**:12 **66**:12 **67**:14,18 **68**:21
briefed [1] **69**:25
briefing [5] **5**:18 **44**:22,24 **45**:5 **54**:12
briefly [3] **32**:2 **63**:12 **72**:14
bring [1] **26**:7
bringing [1] **27**:14
Brnovich [1] **8**:7
broadly [1] **4**:14
brought [3] **13**:22 **14**:11 **23**: 3
bundle [1] **60**:25

C

calculation [1] **62**:13
call [1] **11**:20
called [2] **50**:16 **69**:16
calls [1] **56**:9
came [8] **1**:15 **8**:8 **10**:8 **23**: 21 **24**:1 **27**:3 **36**:6 **63**:2
CAMERON [5] **1**:3 **3**:5 **10**: 8 **69**:15,16
cannot [9] **25**:24 **38**:10,14 **63**:14,20,20 **65**:25 **70**:11 **78**:18
capacities [2] **22**:22 **71**:3
capacity [14] **4**:22,24 **7**:21 **8**:21 **12**:18 **19**:22 **21**:17 **25**: 10 **30**:1 **38**:20 **71**:2,3,4 **79**: 9
care [1] **11**:23
Case [57] **3**:4 **4**:21 **5**:4,14, 17,18 **6**:8 **8**:13 **9**:1 **10**:16 **11**:9 **16**:13 **19**:10 **20**:5 **22**: 7,13 **23**:1 **25**:24 **32**:16,21 **34**:4,17 **42**:2,5,10 **43**:10,20 **47**:15,17,18 **48**:24 **53**:14 **55**:17 **56**:13,18,19 **57**:7,10, 10,18 **59**:6,10 **63**:13 **69**:14, 16,25 **72**:16,18 **73**:12 **74**:7 **75**:5,14 **76**:19,23 **77**:14 **80**: 6,7
cases [10] **9**:18 **22**:6 **37**:5,7, 10,12 **40**:16 **42**:13,18 **62**: 22
catch-22 [1] **72**:7
categorically [1] **6**:25
CENTER [2] **1**:7 **3**:5
cert [6] **33**:11,14 **34**:4 **45**:1 **58**:19 **71**:25
certain [1] **46**:6
certainly [2] **58**:20 **59**:8
certiorari [3] **7**:11,13 **36**:11
challenged [3] **11**:3 **30**:13 **78**:8
chance [3] **14**:1 **56**:21 **62**: 16
change [6] **48**:22 **49**:12,24 **54**:4 **55**:5 **65**:18
changed [4] **52**:23 **54**:8,9 **79**:22
changes [3] **40**:12 **46**:7 **74**: 20
characterize [1] **76**:19
CHIEF [35] **3**:3,9 **7**:15,23 **8**: 24 **9**:8 **10**:5 **16**:8,16 **28**:12, 15,16,20 **31**:5 **33**:1 **34**:20 **37**:21 **38**:4 **46**:1 **52**:4,25 **71**:15 **72**:11 **73**:8 **74**:3,18 **75**:25 **76**:2,3 **77**:17,23 **78**: 1,25 **79**:13 **80**:5
choose [1] **56**:7
chooses [1] **33**:11
chose [6] **13**:14,14 **38**:6 **44**: 8 **57**:1,2
chosen [1] **33**:14
Circuit [24] **3**:16 **6**:17 **9**:11 **12**:10 **13**:10,17 **17**:15,17, 23 **26**:24,25 **31**:10 **36**:5 **43**: 3,16,23 **44**:19 **45**:2,10 **49**:6 **59**:10 **63**:13 **68**:1,11
Circuit's [3] **26**:10 **27**:13 **78**:16
circumstance [7] **13**:6 **31**: 21 **32**:24 **33**:13,24 **34**:1,9
circumstances [7] **7**:6 **27**: 22 **45**:10 **70**:1 **73**:3 **75**:10 **79**:21
cite [1] **63**:18
cited [8] **9**:18 **37**:7,10 **40**: 16 **42**:17,19 **68**:22,23
cites [1] **68**:24
citing [1] **32**:4
claim [1] **71**:11
claims [8] **16**:5 **17**:7,19,20 **21**:24 **38**:25 **40**:23 **79**:16
clarify [2] **51**:13 **52**:12
class [2] **37**:4 **42**:13
clear [5] **4**:3 **20**:6 **44**:10 **68**: 17 **70**:4
client [1] **71**:18
clinics [1] **46**:11
closely [1] **79**:8
closing [1] **26**:9
combination [1] **19**:6
come [18] **14**:15 **17**:13 **18**: 17 **24**:8 **25**:6 **28**:9,23 **30**:2 **32**:15 **36**:7 **47**:5 **49**:2,9 **55**: 24 **61**:10 **62**:17 **65**:1 **79**:25
comes [5] **9**:14 **29**:10 **36**: 14 **46**:25 **47**:8
coming [3] **12**:6 **19**:24 **25**: 25
comments [1] **40**:7
commitment [1] **13**:18
Commonwealth [31] **3**:14, 23 **4**:20 **7**:17,19,22 **9**:15,16, 20,21 **10**:4,6,9 **12**:22 **13**:21, 24 **15**:11 **18**:17,18 **19**:25 **23**:22 **24**:1,8,18 **27**:7,9 **28**: 10 **69**:22 **70**:9,21 **71**:22
Commonwealth's [1] **70**: 2
Complete [1] **18**:21
completed [1] **44**:23
completely [4] **30**:7 **41**:20, 21 **54**:15
concern [3] **35**:20 **71**:25 **76**:15
concerned [2] **57**:8 **76**:10
concerning [1] **16**:17
concession [1] **25**:23
conclusion [1] **27**:8
conditions [1] **59**:19
confused [1] **66**:11
Congress [2] **41**:3 **55**:10
consented [1] **73**:6
consider [6] **4**:1 **26**:18 **59**: 13 **68**:9,12,13
consideration [1] **59**:6
considerations [3] **59**:8 **62**:13 **77**:6
considered [3] **26**:21 **42**:5, 11
consistent [8] **8**:3,12 **21**: 23 **30**:15,23 **31**:3 **34**:14 **37**: 11
constitution [1] **33**:21
constitutional [2] **25**:4 **33**: 16
constitutionality [3] **48**: 11 **66**:16 **71**:9
constitutionally [1] **78**:11
construe [2] **69**:19,22
construed [1] **70**:13
contemplates [1] **60**:22
contested [2] **31**:16 **66**:7
contesting [1] **21**:13
context [10] **35**:15,19,21 **36**:20 **37**:2,7,8 **40**:23 **45**: 16 **61**:23
context-specific [1] **41**:9
continue [2] **49**:19 **57**:2
contrary [3] **4**:12 **14**:15 **78**: 20
control [3] **73**:25 **74**:1,14
correct [21] **10**:21,22 **11**:1, 2,11,12,18,19 **13**:3 **14**:9,10, 17,18 **15**:21 **19**:11 **25**:15 **28**:24 **29**:12 **46**:5 **50**:6 **64**: 16
Correctly [1] **28**:22
couldn't [5] **13**:1 **16**:1 **21**: 16 **61**:10 **64**:11
counsel [22] **4**:12 **7**:16,20 **9**:7,11,23 **10**:10 **16**:8,16 **27**:18 **28**:13 **31**:7 **37**:22 **53**: 25 **54**:1 **57**:21 **60**:10 **62**:1 **71**:16 **76**:6 **77**:19 **80**:6
counterintuitive [1] **54**:24
County [1] **59**:10
couple [1] **11**:15
course [3] **40**:20 **55**:7 **64**: 19
COURT [125] **1**:1,16 **3**:10, 17 **4**:13,20,24 **6**:5,11 **7**:1,4, 10,11,24 **8**:6,9,13,16 **9**:14 **11**:21 **12**:22 **13**:2,23 **14**:22 **15**:2,7,10 **16**:21 **18**:1 **19**: 19 **20**:14,22 **21**:4,6 **22**:21 **23**:4,22 **24**:3,16 **25**:22 **26**: 15,20 **31**:9,12,17 **32**:6,12, 15,17,18 **33**:8,17 **35**:4,21 **36**:4,6,9,12 **37**:5,19 **38**:4 **39**:8,13,17,18 **40**:14,15,18, 22 **41**:1,11,13 **42**:5,10,10 **44**:6,7,11 **45**:8,21 **46**:18,19 **47**:8,20 **48**:15,17 **50**:22,24 **51**:3,5,19,22,25 **52**:1 **53**:15 **55**:7,14,20 **56**:2,9 **57**:8 **58**: 25 **62**:14,15,22 **63**:23 **64**:2, 6,9 **66**:2 **67**:6 **69**:11,19 **73**: 23,25 **74**:11,17 **75**:9,14,17 **76**:23 **77**:4,13 **78**:21 **79**:2
Court's [16] **4**:21 **5**:3,6,9 **15**:22 **22**:23 **24**:10 **26**:6 **31**: 2 **36**:25 **37**:11 **40**:2 **45**:1 **51**:10 **70**:15 **80**:4
court-ordered [1] **56**:16
courts [11] **5**:21,25 **6**:2 **18**: 2 **35**:3,8,18 **42**:6,19,20,23
create [2] **25**:1 **36**:13
created [1] **78**:14
creates [1] **54**:19
criticized [1] **71**:24
crux [1] **65**:4
currently [1] **42**:8

D

D.C [2] **1**:12 **59**:10
DANIEL [1] **1**:3
date [2] **62**:17 **74**:6
day [4] **32**:22 **36**:4,13 **72**:25
days [10] **3**:11 **27**:3,5 **46**:24 **49**:13 **58**:15 **63**:1,8,8 **66**:6
deadline [1] **32**:11
deadlines [1] **37**:14
dealing [3] **59**:1 **68**:17 **70**:5
dealt [1] **36**:5
decided [3] **50**:6 **57**:3 **77**:4
deciding [1] **46**:18
decision [23] **8**:7 **11**:7 **20**:4 **26**:10 **27**:3,13 **31**:3,10 **37**: 11,16 **39**:24 **48**:10,15 **49**: 19 **50**:16 **51**:10 **55**:20,21, 23 **56**:1,5 **75**:14 **77**:5
decisions [3] **13**:15 **18**:12 **42**:19
deck [2] **74**:22 **78**:2
declared [3] **34**:1,5 **76**:12
decline [2] **55**:13 **56**:15
declined [2] **7**:10 **55**:17
default [1] **76**:20
defend [30] **18**:24 **19**:15 **23**: 1 **24**:5 **25**:6 **27**:19 **30**:13 **33**:20 **34**:12 **46**:23,25 **47**:1, 5,6,19,22 **48**:5 **49**:14 **54**:25 **55**:14,17 **56**:15,21,25 **57**:2 **71**:9 **76**:12 **77**:2,10 **78**:18
defendant [9] **33**:5,7 **41**:19 **49**:8 **50**:10 **53**:9,14 **57**:1 **76**:22
defendants [4] **42**:8,25 **47**: 17 **53**:12
defended [9] **46**:13,13 **47**: 23,25 **48**:6,15 **55**:3 **76**:25 **77**:3
defending [16] **3**:12 **4**:3,10 **14**:16 **18**:3 **25**:10 **27**:17,21 **28**:6 **30**:16,23 **33**:18 **48**:10 **54**:20 **59**:2 **78**:7
defense [4] **3**:15 **18**:6 **27**:1 **49**:20
defenses [2] **16**:6 **39**:1
delay [3] **32**:21 **75**:1,12
delaying [3] **32**:13 **74**:9,12
Delegates [2] **8**:14 **22**:25
Democrat [1] **54**:14
Democrats [1] **46**:8
denied [3] **43**:21 **51**:20 **77**: 1
deny [4] **32**:8,18 **51**:25 **75**:1
denying [1] **39**:19
Department [3] **9**:3 **10**:14, 18
Deputy [1] **1**:21
describing [1] **56**:19
designation [1] **9**:5
Devlin [4] **40**:14,15,16 **41**:7
difference [2] **65**:15 **69**:3
different [26] **7**:18 **9**:7 **19**: 24 **21**:17 **22**:22,23 **33**:19 **34**:3 **36**:19 **38**:18 **41**:8 **46**: 9 **52**:11 **54**:15 **55**:25 **56**:7 **57**:14,15,16 **62**:9,20 **66**:24 **72**:19,23 **73**:14 **75**:21
differential [1] **56**:10
differently [3] **56**:8 **57**:17 **75**:22
direction [2] **24**:10 **26**:7
directly [4] **38**:12 **63**:25 **65**: 25 **78**:20
disagree [4] **17**:15 **29**:2 **54**: 12 **65**:3
discomfort [1] **36**:9
discretion [22] **6**:16,18,21 **11**:21 **12**:11 **13**:12,17 **31**:8, 22 **32**:7,13,18,25 **35**:9 **39**: 19 **45**:9,15 **59**:12,15 **75**:9,

17,23
discuss [1] **67:**14
discussed [2] **5:**18 **26:**5
discussing [3] **4:**16 **8:**9 **70:**20
discussion [5] **19:**20 **21:**2 **23:**16 **26:**2,13
dismissal [6] **39:**11 **56:**16 **59:**19 **60:**22 **61:**24 **72:**21
dismissed [8] **5:**4 **16:**13 **41:**17,19,20,21 **42:**2 **66:**23
dismissing [1] **11:**5
disposing [1] **17:**7
dispositive [2] **59:**9,16
dispute [1] **38:**13
disrespectful [2] **39:**21 **77:**12
distance [2] **27:**24 **28:**10
distinct [4] **4:**22 **7:**22 **8:**21 **21:**8
distinction [1] **30:**21
district [22] **4:**24 **5:**3,5,25 **6:**5 **12:**22 **13:**2 **15:**2,7 **16:**21 **25:**22 **32:**16 **40:**18 **41:**13 **44:**6,7 **50:**21,24 **51:**3 **53:**15 **67:**6 **76:**23
docket [5] **7:**5,12 **35:**6 **74:**1,13
doing [9] **3:**18 **4:**25 **8:**18 **15:**12 **21:**17 **27:**16 **30:**6 **39:**6 **43:**12
done [4] **18:**9 **23:**19 **24:**9 **41:**3
door [1] **39:**10
down [5] **27:**3 **28:**23 **29:**10 **30:**2 **57:**4
dozen [1] **27:**10
dragged [1] **11:**25
draw [1] **6:**5
drawn [1] **30:**21
due [1] **74:**6
duly-enacted [1] **59:**3
duty [1] **14:**13

E

earlier [3] **31:**12 **77:**10,11
early [2] **73:**20 **74:**16
easier [1] **34:**17
easy [1] **34:**8
effect [2] **41:**16 **78:**15
Effectively [1] **68:**8
Eisenstein [6] **40:**8,9,12,13,20 **41:**1
elected [3] **33:**22 **78:**11,11
election [4] **57:**16 **74:**22 **75:**5,7
elections [1] **78:**3
elements [1] **14:**21
emphasized [1] **36:**17
EMW [4] **1:**7 **3:**5 **12:**21 **69:**16
en [4] **33:**11,14 **34:**4 **36:**10
enacted [1] **14:**14
end [2] **65:**22 **72:**25
end-run [3] **63:**14,21 **65:**12
ended [1] **54:**24
enforce [13] **11:**3 **12:**19 **14:**9,14,16,25 **15:**4 **25:**17 **30:**1,4 **46:**16 **52:**15 **71:**10
enforcement [4] **19:**22 **48:**13 **68:**23 **79:**9
enforces [1] **18:**15
enforcing [2] **4:**2 **18:**8
engage [1] **14:**2
enough [2] **18:**10 **78:**9
ensuing [1] **20:**19
ensuring [1] **74:**14
enter [2] **56:**15 **75:**13
entered [7] **11:**9 **12:**18 **41:**12 **44:**20,22 **61:**24 **75:**18
entire [2] **29:**19 **45:**11
entirely [1] **22:**5
entity [3] **9:**2 **32:**8 **54:**10
entry [1] **74:**1
envisioned [1] **24:**2
envisions [2] **18:**19,22
equally [1] **63:**25
equitable [6] **6:**23 **7:**2 **62:**12 **64:**18 **65:**10,11
equity [1] **35:**25
equivalent [2] **64:**7 **65:**5
errors [1] **3:**18
especially [1] **37:**17
ESQ [3] **2:**3,6,9
ESQUIRE [1] **1:**24
essentially [4] **5:**21 **23:**20 **24:**9 **69:**8
estoppel [3] **14:**20,22 **75:**3
ET [1] **1:**8
evade [2] **35:**22 **38:**22
Even [30] **5:**2,19 **6:**11 **12:**2 **13:**6 **15:**10,18 **20:**8 **23:**16 **29:**2 **32:**21 **33:**13 **34:**4 **35:**2 **36:**20 **39:**7 **41:**2 **42:**8 **44:**20 **51:**5 **52:**22 **53:**18 **54:**7,9 **55:**1 **57:**7 **63:**2,6 **68:**24 **69:**25
eventually [1] **46:**17
Everybody [1] **25:**21
everyone [3] **4:**22 **14:**7 **19:**20
everything [2] **19:**18 **48:**8
Ex [7] **9:**16,20 **12:**20 **25:**17 **70:**25 **71:**6,13
exactly [4] **15:**12 **22:**14 **42:**16 **55:**15
example [8] **16:**22 **22:**24 **25:**6 **28:**5 **42:**1,13 **43:**10 **53:**13
examples [1] **37:**5
exception [4] **55:**11 **64:**19 **65:**10,19
exempt [1] **38:**16
exercise [5] **55:**22 **56:**8,10,21 **57:**13
exercised [3] **56:**14,25 **57:**17
exercising [1] **71:**8
exhaust [4] **3:**14,24 **6:**4 **32:**23
exhausted [2] **51:**15 **52:**16
exhaustion [1] **17:**7
exists [1] **53:**10
expected [1] **4:**8
expertise [1] **18:**8
explain [1] **19:**13
expressly [6] **38:**7 **41:**11 **42:**24 **47:**21 **60:**1 **69:**10
extent [2] **25:**1 **37:**12
extraordinary [1] **77:**6
extremely [1] **54:**22

F

face [1] **56:**9
fact [19] **17:**24 **22:**25 **24:**19 **26:**14,16 **30:**14 **33:**15 **38:**21 **54:**13 **56:**6,13 **59:**1,13 **62:**10 **65:**16,18 **66:**5 **68:**23 **73:**5
factor [1] **26:**20
factoring [1] **35:**24
factors [1] **4:**4
facts [1] **32:**17
fail [3] **39:**11 **59:**15 **67:**9
fail-safe [3] **18:**14,14 **78:**14
failed [4] **20:**18,20 **53:**24 **58:**22
failing [1] **39:**5
fails [1] **38:**14
failure [1] **38:**11
fair [1] **76:**19
faith [1] **14:**7
False [1] **40:**22
familiar [1] **72:**5
farther [1] **18:**18
fault [2] **20:**9 **22:**4
favorable [5] **5:**8 **15:**16 **17:**10 **22:**1 **79:**12
federal [3] **10:**7 **18:**2 **42:**19
feel [1] **46:**14
file [9] **15:**23 **16:**9,11 **45:**1 **64:**7,10,25 **65:**20 **76:**7
filed [9] **16:**1 **20:**11 **27:**5 **32:**11 **44:**12 **49:**8 **63:**1 **66:**5 **74:**5
filing [6] **7:**13 **62:**7 **65:**6,7,12,13
final [35] **11:**10 **16:**18,19,21 **17:**3,6 **19:**23 **38:**6 **41:**11,12 **50:**15,16,17,19,23,25 **51:**7,11,11,13,15 **52:**3,14,18,22 **53:**3,5,6,9,10,16,17,20 **66:**15 **78:**23
finality [1] **17:**1
Finally [3] **39:**21 **43:**2 **59:**18
find [2] **6:**21 **66:**11
Finish [1] **57:**24
firm [1] **6:**5
first [18] **3:**4,19 **21:**18 **29:**14 **38:**16 **40:**4,25 **46:**7,10,21 **55:**5 **58:**7 **63:**12 **67:**19,20,21 **68:**20 **72:**15
fits [1] **8:**10
flood [1] **4:**14
follow [1] **22:**20
followed [3] **7:**24 **26:**6 **34:**25
following [1] **24:**10
Footnote [2] **26:**16 **36:**24
forever [1] **67:**1
forgiven [1] **26:**11
form [1] **73:**17
formality [1] **69:**14
former [1] **50:**10
forth [2] **52:**9 **68:**3
forward [1] **27:**19
four [2] **10:**16 **47:**17
Frankfort [1] **1:**22
Friedlander [1] **71:**18
friend [2] **6:**24 **52:**5
front-line [1] **18:**6
fundamental [1] **3:**18
further [19] **4:**17 **18:**16 **20:**11 **27:**4 **28:**2,4,9,11,14 **30:**25 **36:**15 **37:**7,16 **58:**8 **76:**4 **77:**7 **78:**12,13 **80:**3

G

gain [1] **39:**12
game [2] **74:**2,4
gave [2] **37:**5 **64:**2
GENERAL [103] **1:**3,21 **3:**13,17,20,22 **4:**9,19,23 **5:**2 **6:**23 **7:**2,16,20 **8:**8,10,23 **9:**13,14,16,20 **10:**3,12,15 **11:**1 **13:**19 **14:**24 **15:**18,22 **18:**16 **19:**16,16,21,24 **20:**25 **21:**14,16,22 **23:**7 **24:**4 **26:**2 **29:**3,9,22 **30:**19 **38:**5,12,19,24 **39:**14,23 **40:**9 **41:**10,16,19 **43:**8 **44:**15 **46:**22 **47:**19 **48:**12,16,25 **49:**2,13 **50:**7,9 **52:**18 **54:**6,6,8 **55:**13,16,24 **56:**1,14,24 **57:**15 **58:**11,14 **59:**20,24 **60:**17 **61:**2 **66:**5,15,17 **68:**18,22 **69:**2,15,17 **70:**1 **71:**1,7,19 **72:**20 **73:**4,12,17 **74:**5 **75:**11 **77:**8 **79:**8
General's [14] **4:**11 **9:**1,9 **10:**18,20 **19:**3,8 **26:**18 **27:**2 **30:**9 **39:**22 **40:**12 **63:**4 **71:**24
generally [2] **11:**16,17
gets [2] **18:**11 **59:**9
getting [2] **58:**15 **62:**21
give [9] **5:**13 **6:**20 **14:**15 **41:**23 **43:**10 **51:**20 **58:**25,25 **59:**15
given [3] **19:**17 **56:**21 **76:**10
good-faith [1] **73:**1
Gorsuch [23] **31:**6,7,14,24 **32:**1 **34:**24 **54:**1 **57:**21,23 **58:**1,5,18,24 **59:**17 **60:**7,10,13,24 **61:**12,14 **76:**9 **77:**18 **78:**25
Gorsuch's [1] **79:**20
Gosh [1] **54:**22
got [5] **14:**1 **17:**24 **28:**25 **67:**13,21
government [4] **55:**2 **78:**6,17,22
Governor's [1] **78:**13
grant [3] **22:**9 **43:**5 **45:**1
granted [1] **7:**12
granting [1] **65:**18
ground [3] **48:**1 **66:**24 **67:**24
grounds [2] **48:**3 **66:**9
guess [5] **20:**1 **29:**17 **62:**3,18 **74:**18

H

half [1] **34:**16
hand [3] **16:**23 **71:**8,10
handoff [4] **3:**24 **6:**3 **27:**23 **34:**10
happened [8] **11:**23 **18:**24 **19:**17 **22:**15 **46:**10 **49:**16 **55:**16 **63:**9
happens [3] **51:**4 **57:**14 **73:**22
harsh [5] **20:**7 **54:**23 **55:**5,8 **57:**8
harshness [1] **64:**24
hash [2] **70:**24 **71:**6
hat [3] **21:**11 **38:**18 **70:**23
hats [11] **21:**3,4 **26:**3,4,5 **28:**24 **29:**1,3,11,16,20
Hawaii [2] **36:**6,7
HB [1] **68:**24
hear [1] **3:**3
heard [1] **35:**6
heavily [1] **32:**2
held [10] **40:**14,15 **41:**2 **44:**7 **55:**15 **56:**4 **63:**23 **66:**3 **69:**11 **77:**14
helpful [3] **5:**21 **31:**19,20
himself [1] **69:**4
hire [2] **10:**14,15
hired [1] **10:**20
hold [5] **39:**23 **45:**10,15 **55:**19 **75:**10
holding [2] **4:**5 **65:**4
holds [1] **67:**6
Hollingsworth [7] **7:**25 **8:**4 **23:**23 **24:**2,3,11 **33:**18
Honor [13] **43:**15 **47:**14 **51:**9 **55:**4 **60:**3,20 **61:**25 **65:**4 **66:**9 **70:**24 **72:**14 **73:**19 **76:**16
honoring [1] **13:**17
hope [2] **37:**19 **59:**18
House [10] **3:**13 **4:**11 **8:**14 **12:**19 **14:**25 **15:**5 **22:**25 **25:**3,17 **27:**1
However [1] **39:**7
Hutchinson [1] **63:**13

hypothesized [1] 34:18
hypothetical [5] 19:19,23 21:21 34:15 61:8

I

identified [1] 23:25
identifying [1] 24:11
ignore [1] 61:14
ignored [1] 70:11
immune [1] 71:12
immunity [18] 12:4 13:3,25 23:15 24:15,20 25:2,20 68:15 69:7,9,9,24 70:3,14,17,18,22
implicating [1] 62:23
important [1] 52:12
impose [3] 20:7 35:2 57:9
imposed [2] 55:6,9
improper [1] 22:9
incentivizes [1] 73:20
includes [1] 59:25
indeed [2] 54:11 69:24
indirectly [1] 64:2
individual [1] 13:13
informed [1] 27:2
inherent [2] 35:4,17
initially [1] 58:12
inquiry [1] 4:7
instead [3] 19:14 38:11,14
institutional [4] 8:22 21:11 23:2 68:22
instructs [1] 4:21
insufficient [1] 38:15
insulating [1] 37:16
interest [6] 27:15,20 29:24 30:16,23 39:15
interest's [1] 7:9
interests [22] 4:2,6 6:10 7:9 8:23 23:2 24:6 26:12 27:17,20 28:7 30:5 32:3,5 39:23 41:6 57:6 59:2 68:22 77:13 78:19 80:1
intertwined [1] 30:8
intervene [39] 3:14 4:15 6:9 7:12 20:12,13,19 27:6 28:1 32:21 33:12 37:13 38:11,14 43:12 44:15 45:13 50:8 52:3 58:14 60:13,23 61:23 62:8,20,23 64:23 65:2 67:5 69:5 70:7,8,10 72:17 73:4,18 75:11 77:11 79:21
intervened [4] 4:9 7:16 23:12,17
intervenes [2] 40:25 69:6
intervening [6] 6:25 7:21 68:19 69:1 70:21 71:19
intervenor [3] 69:15,17,21
intervent [1] 7:21
intervention [50] 4:16 5:11,15,25 6:1,6,6 7:5 22:9,17 30:10 32:8,19 35:11,15,19 37:9 39:7,9,19 40:1 43:4,5,21 45:12,16 48:24 59:14 60:1,17,25 61:20 62:6,13 63:14,17,20 64:16 65:11,16 69:4,12 70:16 72:2 73:2,6,20,21,21,24
intro [2] 27:8 40:6
introduction [1] 40:6
introductory [1] 40:7
invoke [3] 13:25 25:19 63:5
involved [3] 48:25 58:11 72:20
irrelevant [1] 4:6
irreversible [2] 69:7,23
irreversibly [1] 70:22
isn't [3] 5:11 47:2 52:9
issuance [1] 72:2
issue [10] 4:17 15:3,7 23:5 36:24,24 43:4 58:21,22 70:11
itself [4] 13:15 18:3 19:17 65:16

J

job [2] 38:21 71:4
join [2] 39:5 77:16
Joint [2] 17:16 52:13
judgment [58] 5:3,6 11:8,10,18,22 12:2 16:14,18,19,22 17:1,3,6 19:5,23 38:6,8,13 41:12,12 42:7,15,25 44:6 47:21 50:12,17,19,24 51:7,11,13,14 52:14,19,20,22,22,24 53:3,5,6,9,10,16,17,21 56:17 61:9,18 66:15,18 68:25 75:18 76:20,24 79:4
judgments [1] 48:20
judicial [3] 14:20,22 35:5
July [2] 44:10,17
June [2] 45:2,3
jurisdiction [2] 20:22 29:1
jurisdictional [37] 4:17 19:11,20 20:7 21:1,2 38:10,17,23 39:6 40:3 43:4,14,18,19,22,24 45:20 54:23 55:6,8,11 57:9,11 58:21 62:3,19 64:13 66:2,12 67:10,15 68:12 70:11,25 71:13 76:6
jurisdictionally [13] 4:25 25:25 39:8 51:25 52:2 58:17 63:24 64:1,4 65:7,14,24 68:7
JUSTICE [171] 3:3,9 5:10 6:13 7:14,15,23 8:24 9:8,25 10:10,22,24 11:4,14,17,20 12:13 13:1,5,20 14:4,12,19 15:19,25 16:7,8,9,12,15,16 18:5,20 19:1,12 20:1 21:9,12 22:2,12 23:9,11,13 24:13,21 25:8,14 28:12,14,15,16,16,18,20,22 29:5,8,15 30:21 31:5,5,7,12,14,24 32:1 33:1,1,3,25 34:19,20,20,22,23,24 35:1 36:16,21 37:20,21 38:4 40:5 41:15,23 42:1,12,16,22 43:2,25 45:18,22,25 46:1,2 47:25 48:4,7 49:3,21 50:1,13,19,23 51:16,23 52:4,25 53:25 54:1,2,3,21 56:18 57:21,23 58:1,5,9,9,18,24 59:4,4,17 60:7,10,13,24 61:12,14 62:1 64:15,21 66:4,10,22 67:12,17,20,23 68:2 70:12 71:15 72:11 73:8 74:3,18,19 75:25 76:1,2,3,3,5,8,9,9,17 77:17,17,18,24,25 78:1,25,25 79:19 80:5
Justice's [1] 79:13

K

KAGAN [22] 16:15 18:20 19:1,12 20:1 21:9,12 22:2,12 28:18,22 29:5,8,15 30:22 53:25 54:2 58:9 59:4 64:15,21 77:17
Karcher [1] 26:4
Kavanaugh [6] 33:2,3,25 34:19 36:21 70:12
Keep [1] 26:22
Kentuckians [1] 18:13
KENTUCKY [37] 1:4,22 7:17,19 8:3 10:1,4 18:9 19:15,16 23:17,17,25 24:6,12 25:21,24 30:12,13,18,20,24 34:12 47:2,11 54:11 55:12,14 69:18,22 70:2,9,21 73:16 76:11 78:5,14
Kentucky's [23] 3:12 4:2,6 9:14 18:4,16,24 24:14 27:17 28:5 30:15,23 33:21 39:22 46:11 55:1,2,19 57:6 69:24 77:13 78:9 80:1
kept [1] 3:16
key [1] 14:21
kind [1] 33:3
knows [2] 14:7 69:3
KOLBI-MOLINAS [63] 1:24 2:6 37:23 38:1,3 40:11 41:18,24 42:4,14,17,23 43:15 44:2 45:19,24 47:14 48:2,5,9 49:18,23 50:5,17,21 51:9,22,24 52:10 53:8 55:4 57:22,25 58:3,16,19 59:7 60:3,8,12,20 61:6,13,17 63:11 64:17 65:3 66:8,21 67:9,15,18,22,25 68:10 70:15 72:10,13 73:19 74:10 75:8 76:16,18
KUHN [62] 1:21 2:3,9 3:6,7,9 5:10,17 6:22 7:23 9:6,9 10:1,22 11:2,12,15,19 12:13 13:4,20 14:10,18,21 15:21 16:4,11,15 17:5 18:20,22 19:12 20:15 21:11,19 22:11,21 23:9,10,20 24:16,24 25:13,16 28:23,25 29:6,12 30:11 31:11,16,25 32:9 33:17 34:7 36:3,22 64:21,23 77:20,21,23

L

laid [1] 7:24
language [7] 17:5 21:4 52:6 53:2 61:4 62:25 68:3
last [2] 8:7 53:7
late [5] 62:17 73:21 74:2,4 77:15
later [6] 27:5 36:7 52:23 60:1 66:23 67:5
law [46] 3:15 4:3,21 5:11 10:1,4,5,7,7,11 11:3 12:9 14:9 18:15,24 25:10 30:2,4,13,13,16,24 33:6,7,9,15,19,25 34:5,12 47:2,5,11 54:7,20 55:1,3,3,12 59:3 71:9,11 73:20 76:12 77:2 78:9
laws [5] 18:3,7,9 25:6 78:7
lawyer [2] 10:4 23:18
lawyers [2] 10:17 72:5
lay [1] 57:4
lead [1] 4:14
learned [1] 6:10
learning [1] 3:11
learns [1] 46:24
least [2] 45:3 54:23
left [5] 3:21 12:7 32:23 54:20 71:8
legal [3] 22:23 54:10 71:12
letting [2] 62:17 65:21
limited [4] 35:12 70:13,18,19
line [1] 6:5
lines [1] 59:3
litigant [1] 36:8
litigants [1] 35:25
litigation [13] 3:21 11:8 13:14 18:12 25:9,12 27:23 29:19 30:9 32:14 33:4 71:18 74:25
little [2] 20:3 36:19
local [1] 53:13
long [4] 72:9 75:11,20 77:15
longer [2] 53:10,19
look [10] 9:18 15:3 17:16 36:4 46:4,6 53:1 68:4,20 79:7
looking [1] 5:23
lose [5] 47:9,10 53:23 72:15 73:9
lost [1] 16:1
lot [7] 32:4 34:13 46:6 51:1,2 54:7,18
lower [2] 35:4 46:18
luck [1] 20:9

M

made [7] 3:17 25:23 39:25 44:4 45:13 48:20 55:25
main [1] 22:6
Maine [1] 25:7
manage [1] 35:6
manner [1] 40:18
many [2] 51:2 71:4
matter [9] 1:15 9:13 17:6 30:12 33:19 48:21 54:18 65:9 71:4
matters [2] 34:10 37:18
MATTHEW [5] 1:21 2:3,9 3:7 77:21
McDonald [8] 4:13 6:8,9 31:2,2 36:25 37:3,11
mean [23] 14:6 16:19,20 23:2 30:16 36:17 50:24 53:11,20,22 54:18 55:10,23 56:2 62:7,24 66:11 68:2,2 72:4 73:24 74:17 75:3
meaning [1] 76:7
meaningless [3] 64:14 66:3 71:14
means [3] 52:21 66:1,1
meant [1] 28:7
Medical [2] 45:2,4
Melkonyan [1] 51:10
members [1] 37:4
mentioned [4] 16:14 18:5 26:16 31:11
mere [1] 69:14
merely [3] 3:23 4:4 32:22
might [9] 22:4 35:19 36:20 56:7 57:9 62:10,11,14,15
mind [1] 26:22
mine [1] 22:6
mismatch [1] 63:9
missed [1] 67:2
Mm-hmm [2] 22:11 36:22
modification [1] 66:17
moment [1] 19:2
Moreover [1] 39:14
morning [1] 3:4
most [1] 17:15
motion [14] 7:12 20:11,19 27:6,10 28:1 30:10 35:16 40:1 45:12 49:8 51:17 62:20,23
motions [1] 4:15
move [3] 61:22 73:7 79:21
moved [7] 3:13 6:9 32:20 41:10 45:13 47:20 50:7
moves [1] 37:13
Moving [7] 45:20 69:3,4 70:6,8,9 73:4
Ms [63] 6:9 31:2 37:3,23 38:3 40:11 41:18,24 42:4,14,17,23 43:15 44:2 45:19,24 47:14 48:2,5,9 49:18,23 50:5,17,21 51:9,22,24 52:10 53:8 55:4 57:22,25 58:3,16,19 59:7 60:3,8,12,20 61:6,13,17 63:11 64:17 65:3 66:8,21 67:9,15,18,22,25 68:10 70:15 72:10,13 73:19 74:10 75:8 76:16,18
much [7] 5:11 29:20 34:17 55:22 66:25 73:24 74:8
must [1] 69:10

N

NAACP [1] **31:**18
named [7] **5:**5 **23:**18 **41:**19 **42:**8,15,25 **50:**10
namely [1] **66:**24
narrow [1] **25:**2
nearly [2] **39:**16 **44:**11
necessarily [3] **53:**7 **62:**6 **69:**6
need [6] **6:**14,14,16 **23:**23 **61:**21 **68:**20
needed [1] **61:**19
neutral [1] **56:**9
neutrally [1] **57:**12
never [8] **14:**1 **50:**12 **53:**18 **56:**14,20 **72:**20,21 **76:**10
nevertheless [1] **74:**13
New [7] **1:**24,24 **27:**15 **31:** 18 **74:**1 **75:**19 **77:**16
Ninth [1] **36:**5
Nobody [4] **30:**5 **47:**2 **54:** 20,25
nobody's [2] **46:**25 **49:**14
non-named [1] **37:**4
non-party [1] **79:**4
None [3] **28:**15 **57:**5 **76:**2
normal [1] **8:**25
note [2] **9:**15 **17:**14
noted [4] **7:**15 **17:**18 **24:**3 **36:**7
notes [1] **15:**4
nothing [3] **39:**18 **44:**15 **45:** 7
notice [17] **16:**9,11 **20:**6,16 **39:**15 **44:**16 **58:**15 **62:**8,25 **64:**8,11 **65:**6,8,13,20 **66:**6 **76:**8
notices [1] **65:**1
notion [1] **17:**11
novel [1] **26:**6
number [2] **16:**20 **19:**7

O

oath [1] **33:**20
obligation [3] **40:**13 **53:**22 **73:**7
obtained [2] **41:**10 **47:**20
obvious [1] **31:**21
obviously [5] **16:**23,25 **30:** 4 **41:**20 **59:**24
occasion [2] **7:**4,11
occasionally [2] **51:**3,4
October [1] **1:**13
offers [1] **38:**15
office [9] **4:**12 **9:**10 **10:**18, 20 **19:**3,9 **27:**2 **48:**19 **57:** 19
officer [1] **10:**5
officers [1] **14:**8
official [15] **3:**12,24 **6:**3 **9:** 22 **18:**11,14 **21:**3 **26:**3 **28:** 8 **30:**1 **33:**20 **34:**11 **38:**20 **71:**2,3
officials [5] **18:**5,23 **28:**8 **78:**5,12
often [3] **9:**15 **51:**5 **55:**8
oftentimes [1] **18:**6
Okay [23] **19:**3 **20:**9 **22:**12 **28:**22 **29:**5,8,8 **31:**24,24 **33:**9 **45:**24 **47:**1 **57:**25 **58:** 5,18,24 **66:**22 **67:**12,12,20, 23 **77:**18,19
once [2] **54:**13 **73:**15
one [35] **6:**3 **14:**21 **15:**22 **17:** 22 **18:**11 **20:**25 **26:**11 **28:**8 **29:**16 **34:**10,17 **36:**19 **38:** 13,21 **40:**5 **42:**14 **47:**6 **48:** 12,18,19 **59:**8 **60:**16,18 **62:** 12 **63:**24 **68:**20 **71:**12,12, 17 **73:**9,10,10,17 **75:**4 **78:**8
ongoing [1] **74:**25
only [14] **6:**3 **8:**5 **15:**22 **21:**1 **24:**23 **26:**1 **27:**12 **30:**19 **39:** 3 **51:**12 **60:**4 **68:**20 **71:**2 **79:**19
opinion [7] **26:**17 **36:**4,25 **71:**20 **72:**3,7,9
opportunity [6] **13:**13 **75:** 13 **76:**11 **77:**2,10,11
oppose [3] **28:**1,4 **73:**2
opposed [1] **71:**19
opposing [1] **72:**1
opted [1] **53:**16
oral [5] **1:**16 **2:**2,5 **3:**7 **38:**1
order [5] **41:**11,16 **47:**21 **58:** 8,10
ordinary [2] **63:**15,22
original [2] **52:**24 **54:**3
originally [5] **10:**25 **41:**13 **47:**18 **48:**12 **55:**16
other [11] **6:**24 **16:**23 **19:**7 **25:**10 **37:**12 **52:**5 **53:**12 **62:** 22 **64:**12 **66:**1 **77:**5
otherwise [2] **40:**3 **66:**2
ought [2] **73:**16,16
ourselves [2] **23:**25 **24:**11
out [20] **3:**17 **7:**3 **8:**9 **13:**14 **15:**14 **20:**9 **23:**13 **26:**9 **27:** 25 **32:**5 **34:**24 **49:**1 **59:**22 **67:**6,7,10 **73:**12,15 **74:**19 **79:**10
outside [4] **21:**20 **37:**1,8 **42:** 13
outsider [2] **47:**16 **61:**22
over [1] **35:**17
overcomes [2] **12:**24 **15:**6
overlaps [1] **62:**7
overlooked [1] **3:**19
overlooks [1] **4:**19
own [5] **6:**19 **7:**5,21 **10:**14, 21

P

P.S.C [1] **1:**7
PAGE [6] **2:**2 **7:**3,3 **52:**13 **66:**13,13
pages [4] **9:**19 **12:**20 **25:**22 **68:**20
panel [7] **3:**19 **4:**1,3,8 **71:** 20 **72:**3 **75:**21
papers [1] **71:**23
paragraph [4] **50:**18 **52:**12, 14,17
part [6] **10:**17,19 **37:**15 **44:** 6 **60:**25 **74:**13
parte [5] **12:**20 **25:**18 **70:**25 **71:**6,13
participate [9] **4:**24 **5:**7 **15:** 13 **17:**21 **21:**25 **24:**17 **39:**2 **40:**24 **79:**15
participated [1] **23:**1
participates [1] **40:**17
participating [2] **23:**7 **74:** 24
particular [2] **15:**9 **18:**8
particularly [2] **39:**24 **61:**3
parties [6] **36:**21,24 **56:**7 **69:**25 **74:**1,15
parts [1] **55:**2
party [50] **7:**8,8,10 **12:**3 **13:** 13,21 **15:**22,23 **20:**16,17, 20 **23:**18 **24:**22,23,25 **27:** 20 **33:**18 **37:**12 **38:**21 **39:**2, 10 **40:**10 **41:**2,4,17,17 **42:**2, 3,15 **43:**11,13,17 **45:**11 **46:** 7 **48:**22 **49:**12 **54:**4,9 **57:** 15,16 **59:**21 **63:**6 **68:**18 **70:** 5,6,7,8 **78:**8 **79:**2,17
party's [1] **75:**4
penalizes [1] **73:**21
people [7] **24:**4,6 **42:**7,24 **64:**25 **75:**7 **78:**10
perhaps [4] **5:**22 **34:**16 **50:** 25 **56:**21
period [1] **27:**18
permits [2] **10:**11,13
permitted [1] **72:**17
person [6] **22:**7 **40:**17 **46:** 13 **48:**1 **54:**8 **63:**16
personages [1] **22:**24
personal [1] **71:**3
personas [1] **71:**12
perspective [1] **10:**2
petition [3] **7:**13 **32:**10 **74:** 5
Petitioner [7] **1:**5,23 **2:**4, 10 **3:**8 **64:**3 **77:**22
Petitioner's [1] **19:**10
petitioners [1] **22:**14
pick [2] **3:**20 **32:**22
place [4] **16:**24 **21:**18 **54:**12, 24
plaintiff [3] **33:**5,10,13
plaintiffs [1] **44:**7
play [1] **36:**1
please [5] **3:**10 **32:**16 **38:**4 **46:**5 **68:**9
point [27] **3:**22 **5:**23 **6:**2 **7:**9 **8:**6 **13:**24 **15:**8 **20:**23 **22:** 19 **26:**9 **27:**25 **29:**23 **31:**17 **32:**20 **46:**21 **49:**12 **50:**9 **52:** 1 **57:**4 **58:**2,4 **63:**12 **66:**25 **68:**14 **70:**23 **77:**14 **78:**23
pointed [5] **7:**3 **8:**9 **23:**13 **74:**19 **79:**10
points [1] **77:**24
political [6] **11:**24 **48:**22 **49:** 12 **56:**7 **57:**15,16
popularly [1] **33:**21
positing [1] **36:**21
position [10] **5:**24 **8:**2 **14:** 24 **20:**15 **21:**19,20 **31:**18 **34:**7 **63:**4 **75:**4
positions [1] **78:**4
possible [1] **74:**16
post-judgment [9] **6:**12 **35:**11,15,18 **37:**6,9,15 **39:** 19 **45:**15
power [9] **8:**1,5 **19:**15 **20:** 24 **23:**3 **30:**12,17,20 **35:**5
powerful [1] **61:**3
pre-judgment [2] **35:**10,21
precedent [2] **43:**23 **70:**16
preclude [1] **74:**24
predecessor [1] **57:**20
predecessors [2] **48:**18, 21
preemptively [1] **4:**9
prejudice [8] **5:**5 **16:**13 **43:** 6,7,13 **44:**1,2 **47:**3
prejudicial [1] **45:**17
premise [2] **21:**13 **62:**2
present [1] **35:**20
preservation [1] **52:**8
preserve [1] **79:**20
preserved [4] **5:**6 **15:**15 **17:** 19 **79:**11
preserving [2] **17:**13 **39:**15
press [1] **58:**8
pressed [1] **75:**4
pressing [1] **22:**3
presumably [1] **63:**2
pretty [3] **29:**20 **35:**12 **46:** 22
prevented [1] **43:**12
previous [2] **14:**23 **72:**19
previously [1] **27:**15
primarily [2] **39:**20 **43:**3
Principal [1] **1:**21
principle [1] **65:**23
prior [4] **30:**9 **71:**19 **72:**2,7
private [10] **33:**4,5,5,6,10, 13,18 **36:**8,20,23
problem [2] **21:**1 **54:**19
procedure [3] **5:**16 **63:**16, 22
proceedings [5] **16:**24 **40:** 17 **45:**3 **74:**9,13
procure [1] **39:**11
prohibited [2] **6:**25 **25:**25
promise [4] **67:**4,4 **68:**7,8
proper [7] **20:**21 **31:**8 **32:**6 **39:**1 **58:**13 **59:**21 **79:**17
prosecutor [1] **53:**13
protect [1] **80:**1
protective [1] **4:**15
protects [1] **15:**12
proves [2] **29:**20 **30:**10
provide [1] **18:**6
provisions [5] **14:**14,16 **15:** 9,17 **52:**11
purposes [2] **16:**22 **59:**14
pursuant [1] **35:**5
put [6] **13:**9 **18:**4 **21:**3 **32:** 17 **58:**7,10
putting [3] **19:**14 **72:**6 **77:**9

Q

qua [1] **23:**12
qualifications [1] **11:**15
question [24] **13:**11 **20:**3 **29:**16 **31:**15 **32:**2 **34:**22,23 **35:**13 **36:**18 **40:**6 **42:**21 **44:** 25 **45:**23 **54:**3 **58:**7 **62:**2 **69:**21 **71:**17 **72:**22 **74:**23 **76:**5 **78:**1 **79:**14,20
questions [6] **5:**9 **28:**11 **40:** 2 **78:**24 **79:**10 **80:**3
quick [1] **77:**24
quite [3] **7:**18 **32:**4 **37:**18

R

raise [3] **43:**13,22 **45:**7
raised [2] **4:**18 **68:**16
raising [1] **43:**9
rate [1] **59:**20
rather [3] **47:**19,19 **66:**13
reach [1] **67:**24
read [6] **8:**19 **36:**13 **50:**14 **52:**6,10 **59:**19
reading [2] **17:**22 **26:**10
real [2] **7:**8 **27:**20
real-world [1] **54:**17
really [7] **5:**13 **11:**23 **28:**23 **30:**2 **66:**23 **68:**5 **72:**6
reason [10] **10:**6,7,7 **21:**1 **23:**21 **26:**1 **43:**5 **51:**21 **62:** 12 **64:**2
reasons [1] **47:**10
REBUTTAL [3] **2:**8 **77:**20, 21
recognized [4] **40:**14 **41:**7 **55:**7,20
recognizing [1] **23:**13
record [2] **23:**4,6
red [3] **12:**21 **25:**23 **42:**18
reentry [1] **39:**12
refer [1] **40:**7
referred [1] **78:**1
refers [1] **51:**11
reframe [1] **20:**3
refused [1] **4:**1
regard [1] **35:**12
regardless [1] **66:**1
rehear [2] **51:**17,18
rehearing [6] **32:**9,10 **47:**6 **49:**8 **71:**25 **74:**5
rejected [1] **75:**7
rejoin [2] **64:**19 **65:**10

rejoining [1] 64:4
Rel [2] 9:16,20
related [2] 25:3 34:23
relating [5] 17:19,20 39:1 59:21 79:16
relation [1] 41:22
relationship [1] 35:14
relevant [1] 26:20
relief [1] 36:11
relieve [2] 73:3,6
rely [3] 5:12,12 43:3
remain [1] 52:23
remained [1] 42:3
remains [1] 54:6
remand [1] 32:16
render [2] 64:13 71:13
rendered [1] 11:22
rep [1] 54:25
repeat [2] 50:2,3
repeatedly [1] 55:7
replace [1] 29:22
represent [3] 20:24 26:19 66:4
representation [4] 14:15 72:16,23 75:2
representational [4] 8:21 37:2,6,8
representations [1] 74:21
represented [2] 37:4 71:21
representing [8] 7:8,19 9:1 21:7 26:23 29:23 30:5 73:13
Republican [1] 54:15
Republicans [1] 46:7
request [1] 44:24
require [1] 10:12
required [1] 41:4
requirement [1] 20:6
requires [1] 65:17
reservation [2] 61:15,19
reserve [6] 16:2 39:3 60:4 61:5,19,21
reserved [9] 15:13 16:4,5 39:2 59:20 60:2,19 79:14,15
reserving [3] 21:24 38:25 79:18
reshuffled [1] 78:2
resist [1] 61:7
respect [4] 12:17 18:2 59:18 78:22
respecting [1] 12:11
respond [2] 78:24 79:19
Respondents [4] 1:9,25 2:7 38:2
response [1] 79:13
responses [3] 38:15 63:12 72:13
responsibilities [1] 71:5
responsibility [1] 38:22
rest [1] 32:2
resting [1] 29:14
result [7] 5:8 15:16 17:11 22:20 55:8 64:12 79:12
results [5] 40:18 55:5,9,9 57:9
retained [2] 9:7 41:17
reversal [4] 52:20 66:18 78:4,8
reversed [3] 51:3,6 53:4
review [4] 31:9 35:22 36:15 37:17
reviewing [1] 6:15
Revised [1] 30:20
revolving [1] 39:10
rights [20] 15:13 16:5 17:13,19,20 21:24,24 22:9 38:25 39:3 52:8 59:21 60:4,16,19 61:1,5,15,19 79:16
roadmap [1] 7:24
ROBERTS [25] 3:3 7:15 8:24 9:8 16:8,16 28:12,16,20 31:5 33:1 34:20 37:21 46:1 52:4,25 71:15 72:11 73:8 74:3,18 75:25 76:3 77:17 80:5
role [4] 29:19 30:8 35:11 36:1
routine [1] 42:6
Rule [19] 5:12,19,22,25 6:19 15:2,22 20:7 31:19 33:4 40:1 54:23,24 55:6,11 57:9 62:14 66:2 67:11
ruled [9] 15:7 31:12 39:13,17 44:11,19 45:8 73:23 75:15
rules [12] 5:16 33:8 35:8 38:17 39:6 55:8 57:11 63:15,22 64:13 70:25 71:14
ruling [4] 16:21 22:1 26:15 78:16
run [4] 22:6 32:5 37:14 63:8
run-of-the-mill [1] 48:24
run-of-the-mine [1] 8:25

S

same [15] 6:1 19:18 21:3 22:20 27:19 30:3 33:3 39:25 41:13 53:5 54:10 70:5,7 71:11 74:6
satisfy [1] 39:5
saw [4] 57:2 76:23,24 78:5
saying [20] 6:17 11:6 13:12 17:18 20:8 34:2,3,13 35:6 36:9 51:4 52:7 53:2 54:7,22 61:17 63:5 67:7 68:4 75:12
says [16] 5:19 18:15 28:9 40:24 46:15,15,18,20 47:1,2 49:6,13,14 50:23 52:19 62:25
Scofield [2] 5:18,19
seat [1] 47:20
Sec [1] 13:18
Second [9] 4:1 29:13 32:2 38:24 55:12 63:23 69:2 72:18 78:23
Secretary [42] 3:21 4:10 9:10,12 10:20 11:7 12:8 13:15 26:23 27:1,16,21,25 28:2 29:23,25 30:3,12,22 32:23 44:4,8,12,21 46:15 47:22,24 48:3,6,14 49:10,19,24 50:6 71:21 72:8 73:12 74:7 76:13,21,22 77:3
Secretary's [3] 29:19 30:8 73:15
Section [2] 63:18 79:13
see [7] 47:4,11 62:4 66:8,22,25 68:21
seek [12] 7:10 33:11,14 34:4 36:10,11,15 60:1,17,24 61:20 77:6
seeking [5] 22:16 38:11 62:8 63:16 64:18
seem [1] 62:6
seemed [1] 43:3
seems [10] 16:20 22:13 29:18 30:7 53:2 54:18 62:9,19 63:8 74:8
seen [1] 75:21
sense [5] 6:4 10:2 18:7 27:13 73:11
sentence [1] 18:21
separate [4] 8:22 9:5 52:15 71:11
separated [1] 20:24
separately [1] 78:11
separates [1] 56:12
served [1] 25:11
serves [1] 5:21
Services [1] 9:4
set [1] 38:9
sets [1] 57:7
settled [2] 48:17,18
seven [1] 27:2
shall [1] 50:3
shape [1] 75:14
shoes [2] 48:17 57:19
show [1] 44:23
showing [1] 65:17
shuffled [2] 74:21,22
side [2] 6:24 52:6
sidelines [1] 26:24
sign [1] 50:15
signed [6] 11:5 12:12 17:2 50:14 62:11,16
significant [3] 55:2 69:7 73:22
silent [2] 23:5,6
similar [1] 7:7
simple [1] 22:13
simply [3] 3:20 6:18 7:19
sitting [1] 26:24
situation [2] 41:8 74:20
Sixth [25] 3:16 6:17 9:11 12:10 13:10,17 17:14,15,17,23 26:10,23,25 27:13 31:10 43:3,16,23 44:18 45:2,9 49:6 67:25 68:11 78:15
slightly [1] 72:23
Social [1] 9:3
sole [1] 76:22
Solicitor [1] 1:21
somebody [1] 49:7
someone [10] 8:11 11:2 12:18 41:21 43:21 44:17 48:25 63:3 65:19 77:16
sometimes [1] 51:6
soon [1] 6:9
sorry [8] 18:20 20:17 28:19 33:10 42:20 57:24 60:11,14
sort [5] 9:5 65:17 75:3 76:20,21
SOTOMAYOR [28] 9:25 10:10,23,24 11:4,14,17,20 12:13 13:1,5,20 14:4,12,19 15:19,25 16:7,9,12 18:5 23:13 24:13,21 25:8,14 76:5,17
sought [5] 3:20 27:19 32:9,22 72:21
sounds [1] 12:5
sovereign [42] 4:2,6 12:4 13:3,25 23:15 24:5,15,20 25:2,20 26:12 28:6 36:10 37:17 39:22 55:19,22 56:3,8,10,14,19,20 57:6,13 59:2,13,14 61:3 68:15 69:6,9,9,24 70:14,17,18,22 77:13 78:16,18
sovereignty [9] 12:16 13:7 26:14 32:3 36:14,17,18 68:15 78:7
speaking [1] 73:14
specifically [4] 35:13 40:21,22 59:20
speculative [1] 72:1
stake [1] 26:13
stand [2] 8:11 30:17
standard [6] 6:14,23 7:2 31:9 32:7 75:23
standards [2] 6:16 35:2
standing [9] 8:16 39:16 43:8,18 44:5,8,13,18,25
stands [2] 48:17 57:19
start [2] 12:14 77:25
started [1] 34:24
starting [1] 5:23
state [86] 3:12,24 4:22 6:3 7:25 8:4,9,11,17,20 9:2,22 10:6,13,14,19 11:7 12:5,8,15 13:2,5,16 14:6,8 18:2,5,7,11,12,14,15,23 20:24 21:7,8 23:4,8,12,12,19 24:4,19 25:15,19 26:3,13,19 28:7,8 30:1,2,4 32:8 33:6,6,7,10,12,15,19,20,23,25 34:3,5,10 36:10,14 37:17 49:10 59:3 69:5,5,18 71:9 73:13,14 74:21,24 75:1 76:11,13 77:1 78:4,16
state's [7] 23:14 29:24 30:5 32:3,19 54:20 75:6
statement [1] 49:22
STATES [7] 1:1,17 23:23 25:5 40:24 41:2 78:22
Statute [10] 30:20 38:10 40:23 46:9,23 47:23 48:11 55:14,17 56:22
statute's [1] 46:12
statutory [1] 41:5
stay [1] 45:3
stayed [4] 19:18 25:8,11 53:14
step [4] 10:12 12:15 17:25 34:16
stepped [2] 27:19 31:1
stepping [2] 21:20 29:22
still [13] 5:2 6:13 47:7 49:5 51:8 54:9 55:3 58:20 65:18 74:7,25 75:6 77:10
stipulation [26] 11:5 12:12,14,17,24,25 13:22 15:3,4,5,9 16:17 17:3,23 19:6 21:21 29:7 52:7 56:16 58:8,10 60:16,22 61:24 62:11 79:1
stipulations [1] 48:20
stood [1] 26:25
stopped [1] 3:12
stopping [2] 58:2,4
strange [1] 63:4
stranger [4] 47:16 50:11 61:22 63:3
strong [1] 6:8
strongest [1] 5:14
strongly [1] 46:14
struck [1] 59:11
structure [2] 78:17,22
structured [1] 78:6
structures [1] 18:3
struggling [1] 62:4
stuck [1] 75:6
Sturgell [1] 79:6
styled [1] 62:11
subject [4] 52:7,19 53:7 66:17
submitted [2] 80:6,8
subsequent [3] 16:24 21:25 55:24
substitute [1] 63:15
substitution [1] 63:21
successor [2] 48:19 57:18
sue [4] 13:23 14:8,8 46:11
sued [14] 10:25,25 12:19 14:5 25:12,15,16,18 29:25 30:3 38:20 47:18 70:6 71:1
sues [1] 33:5
suggest [1] 63:19
suggestion [1] 15:6
suggests [1] 53:4
suit [20] 10:25 20:13 39:12 41:22 48:6 50:10 53:13,14 61:10 62:21 63:3 64:4,19

65:10 71:18 72:21,22,24 74:2,15
supervisory [1] **35:**17
supplemental [2] **44:**24 **45:**4
suppose [1] **33:**4
SUPREME [3] **1:**1,16 **55:** 14
SURGICAL [2] **1:**7 **3:**5
sword [1] **57:**4
sworn [2] **33:**20 **34:**11
system [5] **18:**4,19,23 **28:**6 **78:**6

T

talked [4] **8:**4,16 **20:**22 **36:** 9
talks [1] **36:**25
tapped [1] **24:**5
Taylor [2] **25:**7 **79:**6
technicality [1] **69:**14
technically [1] **5:**20
tells [1] **10:**5
tendered [1] **32:**10
Tenth [1] **63:**13
term [3] **8:**7 **51:**11 **64:**6
terms [4] **6:**19 **79:**1,5,24
theory [8] **12:**9,20 **28:**24 **29:** 1,11,16,20,21
there's [14] **6:**7 **10:**6 **20:**25 **39:**4 **42:**9 **47:**3 **48:**22 **53:** 12 **54:**14,17,19 **58:**20 **68:**6 **76:**6
therefore [1] **53:**21
thinking [1] **36:**23
thinks [2] **46:**22 **54:**15
third [1] **4:**8
third-party [8] **39:**16 **43:**7, 18 **44:**5,8,13,18,25
THOMAS [20] **5:**10 **6:**13 **7:** 14 **28:**14,15 **31:**12 **34:**23 **35:**1 **40:**5 **41:**15,23 **42:**1, 12,16,22 **43:**2,25 **45:**18 **76:** 1,2
though [12] **5:**19 **6:**12 **12:**2 **33:**13 **34:**4 **41:**3 **47:**25 **53:** 18 **54:**7 **55:**1 **63:**6 **64:**19
three [4] **3:**17 **40:**16 **63:**11 **72:**13
threshold [1] **65:**17
throughout [1] **44:**14
tiebreaker [1] **36:**14
timeframe [1] **38:**9
timeliness [4] **4:**5 **6:**14 **58:** 20 **68:**5
timely [4] **6:**11 **47:**7 **73:**5,7
titled [1] **27:**7
today [2] **4:**20 **34:**14
together [4] **15:**17 **18:**4,23 **28:**8
took [4] **14:**24 **30:**22 **78:**10, 10
Torres [10] **20:**4,10,11,22 **63:**24 **64:**3,16,25 **65:**4 **66:** 3
Torres-type [1] **22:**6
tort [6] **33:**6,7,9,15,25 **34:**5
totally [1] **49:**17
treat [1] **27:**14
treated [5] **4:**5 **22:**22 **31:**22 **35:**3 **62:**23
tried [2] **13:**23 **49:**9
true [3] **35:**10 **47:**16 **74:**19
try [3] **44:**15 **45:**7 **75:**19
trying [3] **35:**22 **61:**7 **66:**11
Tuesday [1] **1:**13
turn [1] **40:**3
Two [33] **3:**11 **15:**8,17 **19:**7 **21:**3,4 **26:**3,4 **27:**5 **28:**23, 25 **29:**1,3,11,11,16,20 **30:**7 **37:**5,10,12 **38:**15 **46:**24 **47:** 7 **49:**13 **52:**10 **58:**14 **71:**2, 11 **73:**14 **77:**24 **78:**10,10
two-hat [1] **63:**4
typical [1] **8:**25
typically [1] **24:**4

U

U.S.C [1] **62:**4
unambiguously [1] **69:**10
unappealable [1] **51:**13
unconstitutional [9] **33:**8, 9 **34:**2,6 **46:**12,19,20 **49:**7 **76:**13
under [19] **5:**25 **12:**9 **13:**5 **25:**17 **27:**22 **30:**19 **32:**7 **33:** 6 **43:**16,23 **45:**10 **47:**1 **55:** 12 **68:**24 **70:**1,15 **73:**2 **75:** 10,22
undermine [1] **17:**1
undermining [1] **41:**5
understand [14] **7:**18 **10:** 11,16 **16:**19 **19:**21 **20:**2 **21:** 15 **27:**12 **28:**18 **29:**18 **31:** 14 **46:**4 **54:**5 **62:**18
understanding [2] **22:**4 **26:**12
understood [1] **79:**19
unique [1] **28:**6
UNITED [4] **1:**1,17 **40:**24 **41:**2
unless [6] **13:**6 **40:**25 **51:** 12,12 **53:**3 **62:**25
unlike [1] **18:**9
unmentioned [1] **26:**14
unprecedented [1] **25:**5
unprotected [1] **6:**10
unrepresented [3] **27:**11, 15 **80:**2
until [5] **29:**23 **51:**15 **52:**16 **75:**18 **77:**3
untimely [7] **45:**16 **64:**8,10 **65:**6,7,13 **66:**24
up [12] **3:**20 **7:**9 **26:**25 **28:** 19,21 **32:**22 **34:**25 **44:**23 **48:**6 **53:**1 **54:**24 **77:**3

V

vacated [2] **53:**4,17
vacating [1] **52:**19
vacation [1] **66:**18
various [1] **78:**4
versus [4] **3:**5 **25:**7 **31:**18 **79:**6
views [1] **46:**9
vigorously [3] **4:**10 **48:**14 **76:**25
violating [1] **56:**3
violation [2] **55:**18 **57:**5
Virginia [5] **8:**14 **10:**11 **18:** 9 **22:**25 **55:**24
Virginia's [1] **56:**3
virtually [1] **45:**11
voices [1] **73:**14
voluntary [2] **69:**11 **70:**16

W

wait [2] **45:**3 **75:**11
waited [1] **72:**9
waiting [2] **75:**18,20
waive [3] **12:**4 **13:**7 **70:**2
waived [7] **23:**14 **24:**14 **44:** 3,19 **45:**7 **69:**10 **70:**22
waiver [10] **24:**19 **25:**1,2 **68:** 15 **69:**12,23 **70:**13,17,18, 20
waives [1] **69:**6
waiving [1] **69:**9
walked [1] **76:**14
wanted [2] **43:**13 **68:**14
wanting [1] **43:**11
wants [7] **18:**18 **36:**4 **43:**11 **46:**23 **49:**2 **51:**18 **73:**18
Washington [1] **1:**12
way [19] **14:**13 **21:**21 **27:**12 **48:**6,7 **53:**5 **54:**17 **57:**3 **62:** 5,20 **64:**12,24 **74:**25 **76:**24 **77:**3 **78:**5,6,18,19
wearing [1] **38:**17
wears [1] **26:**2
weigh [1] **4:**4
weight [4] **58:**25 **59:**1,9,16
welcome [2] **5:**9 **40:**2
whatever [7] **8:**22 **9:**4 **11:**8 **12:**8 **67:**6 **73:**1 **77:**5
Whereupon [1] **80:**7
whether [12] **13:**8 **17:**20,21 **25:**3 **35:**10 **39:**1 **55:**5 **59:** 21 **73:**9 **74:**23 **77:**9 **79:**16
who's [1] **70:**9
whom [1] **34:**11
will [6] **3:**3 **34:**1 **40:**3 **51:**19 **66:**16 **72:**8
willing [2] **12:**4 **13:**7
wisdom [1] **78:**5
within [5] **32:**12,18 **38:**9 **63:** 1 **66:**6
without [2] **5:**4 **16:**13
WOMEN'S [2] **1:**7 **3:**5
won [1] **16:**3
wonder [3] **72:**4,6 **73:**10
word [1] **53:**7
words [1] **22:**23
wore [2] **26:**4 **38:**18
work [3] **15:**17 **29:**21 **40:**8
working [4] **10:**18 **18:**23 **28:**7,8
write [1] **51:**19
written [1] **21:**22

Y

year [2] **39:**16 **44:**11
York [3] **1:**24,24 **31:**18
Young [5] **12:**20 **25:**18 **70:** 25 **71:**7,13
yourself [2] **11:**6 **12:**6