SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - - -

DEPARTMENT OF AGRICULTURE RURAL   )

DEVELOPMENT RURAL HOUSING SERVICE,)

             Petitioner,   )

            v.   ) No. 22-846

REGINALD KIRTZ,   )

            Respondent.   )

- - - - - - - - - - - - - - - - - - - -

Pages: 1 through 94

Place: Washington, D.C.

Date: November 6, 2023

1

1   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - - - - - - - - - - - - - - - -

3   DEPARTMENT OF AGRICULTURE RURAL   )

4   DEVELOPMENT RURAL HOUSING SERVICE,)

5   Petitioner,   )

6   v.   ) No. 22-846

7   REGINALD KIRTZ,   )

8   Respondent.   )

9   - - - - - - - - - - - - - - - - - - -

10

11   Washington, D.C.

12   Monday, November 6, 2023

13

14   The above-entitled matter came on for

15   oral argument before the Supreme Court of the

16   United States at 10:04 a.m.

17

18   APPEARANCES:

19   BENJAMIN W. SNYDER, Assistant to the Solicitor

20   General, Department of Justice, Washington, D.C.;

21   on behalf of the Petitioner.

22   NANDAN M. JOSHI, ESQUIRE, Washington, D.C.; on behalf

23   of the Respondent.

24

25

1   C O N T E N T S

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   (10:04 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear

4   argument this morning in Case 22-846, Department

5   of Agriculture Rural Development Rural Housing

6   Service versus Kirtz.

7   Mr. Snyder.

8   ORAL ARGUMENT OF BENJAMIN W. SNYDER

9   ON BEHALF OF THE PETITIONER

10   MR. SNYDER: Mr. Chief Justice, and

11   may it please the Court:

12   The question in this case is whether

13   Congress unambiguously waived the sovereign

14   immunity of the United States when it amended

15   the Fair Credit Reporting Act in 1996 to provide

16   that any person who violates FCRA's requirements

17   is liable for money damages.

18   The answer to that question is no. To

19   start, there's no basis for claiming that

20   Congress has expressly waived sovereign

21   immunity. For all of Respondent's emphasis on

22   following the literal text of the statute, he

23   ultimately has to concede that nothing in FCRA

24   addresses sovereign immunity directly.

25   Instead, Respondent is asking this

 1   Court to read an unwritten waiver into the

 2   statute on the theory that every time Congress

 3   creates a cause of action that applies to both

 4   sovereign and non-sovereign defendants, it must

 5   implicitly intend to eliminate sovereign

 6   immunity.

 7   But that argument is wrong for two

 8   reasons. First, it's fundamentally inconsistent

 9   with the nature of sovereign immunity.

10   Sovereign immunity is a defense that, by

11   definition, has effect only when there is a

12   cause of action that would otherwise impose

13   liability. So, if every cause of action that

14   covers a sovereign also waived that sovereign's

15   immunity, the defense would never matter. That

16   cannot be right.

17   This Court has therefore followed a

18   narrower rule under which courts may infer a

19   waiver of sovereign immunity from a cause of

20   action only if Congress has referred to

21   sovereign defendants in the cause of action

22   itself using language that would be effectively

23   negated if sovereign immunity remained available

24   and that therefore shows Congress's intent to

25   displace the presumptively available defense.

1   But there's nothing like that here.

2   And as the Court's decision in Employees shows,

3   the mere use of a general term defined elsewhere

4   in the statute isn't enough to eliminate the

5   sovereign immunity defense.

6   Second, it's in any event far from

7   clear that these causes of action apply to the

8   United States at all. Even the court of appeals

9   recognized that FCRA's criminal provision uses

10   "person" in a sense that does not include

11   federal agencies, and it's plausible to

12   interpret the nearby civil causes of action in

13   the same way.

14   I welcome the Court's questions.

15   JUSTICE THOMAS: Mr. Snyder, the --

16   putting aside sovereign immunity, the statute

17   refers to -- defines a person as any individual,

18   et cetera, and any government or governmental

19   subdivision or agency. Putting aside the issue

20   of sovereign immunity, wouldn't that suggest

21   that it applies to the -- the U.S. Government?

22   MR. SNYDER: So we accept that that's

23   a plausible reading.

24   JUSTICE THOMAS: So, if -- if it does

25   that as explicitly as it does, why doesn't --

1   isn't that sufficient to waive sovereign

2   immunity?

3   MR. SNYDER: So -- so two answers to

4   that, Justice Thomas. We don't think that it

5   unambiguously covers the United States. And I

6   -- I'd say our argument on that front is under

7   the Court's decision in Utility Air. I would

8   say that's the best decision for that part of

9   our argument.

10   You're asking, even if I assume that

11   1681n and o use "person" in a sense that does

12   cover the United States, does that also take the

13   analytically distinct step of waiving sovereign

14   immunity.

15   And so putting aside the Utility Air

16   argument for a moment, on that argument, we

17   would say no because all the text of the statute

18   does is create a cause of action and it does so

19   using a general word that, on hypothesis, covers

20   both sovereign and non-sovereign defendants.

21   But there's nothing necessarily implicit in that

22   to show that Congress must have intended to

23   waive the defenses that all defendants covered

24   by that cause of action would have available

25   under ordinary background principles.

1   So I don't think anyone would think

2   it's strange, for example, if a defendant who's

3   covered by the plain text of the cause of action

4   but who violated FCRA more than five years ago

5   were to assert a statute of limitations defense.

6   That doesn't negate anything in the cause of

7   action.

8   And similarly here, the fact that,

9   again, on hypothesis, some defendants covered by

10 the cause of action would be able to assert a

11 sovereign immunity defense doesn't negate

12 anything in the statutory language that Congress

13 used in adopting that cause of action.

14   Now it is a different --

15   JUSTICE KAGAN: I'm not sure I

16 understand that, Mr. Snyder. I mean, suppose

17 that we just take the definition and we plug it

18 into n and o. What would your answer be then?

19   MR. SNYDER: So, if the Court were to

20 plug all of the words from the definition into n

21 and o specifically, then the only -- the only

22 purpose of those words in n and o, the words

23 referring to governmental entities, would be to

24 make clear that Congress is authorizing recovery

25 against sovereign defendants.

1   JUSTICE KAGAN: So your answer then

2   would be that there is not sovereign immunity?

3   MR. SNYDER: Yes. Our answer would be

4   that even though Congress has not directly

5   addressed sovereign immunity that unless --

6   JUSTICE KAGAN: Yeah, I mean, it falls

7   into the whole line of cases where Congress has

8   authorized a cause of action against the

9   government, and we say, well, that's

10   inconsistent with the recognition of sovereign

11   immunity. Sovereign immunity would negate the

12   very cause of action that Congress has created,

13   right? Those are the line of cases that we

14   discussed just last year.

15   And what you're saying to me is, yes,

16   if you plug the definition into n and o, the

17   liability provisions, those cases would -- you

18   know, the same answer would follow?

19   MR. SNYDER: Yes, that's correct.

20   JUSTICE KAGAN: Okay. So then -- then

21   why does it make a difference that they're not

22   plugged in to n and o but instead -- you know,

23   the definition has a lot, a lot, a lot of words,

24   right? There's a person, there's a corporation,

25   there's an association, there's an enterprise,

1   et cetera, et cetera. You can see why Congress

2   didn't want to say that every time Congress

3   meant to refer to a lot of different entities.

4   So -- but, you know, it's statutory

5   interpretation 101 that we take a defined term,

6   we plug the definition in, and that's what the

7   meaning of the statute is. So that's what the

8   meaning of the statute is.

9   MR. SNYDER: So, Justice Kagan, if the

10   question here were just what the meaning of the

11   words in the cause of action were, I -- I would

12   agree with you. So last term, in Lac du

13   Flambeau, for example, there was an express

14   waiver of sovereign immunity that made

15   absolutely clear that what Congress was

16   intending to do was waive sovereign immunity,

17   and it did so on behalf of governmental units

18   and then defined governmental units elsewhere in

19   the statute. And this sort of subbing in the --

20   the words from the definition into the waiver of

21   sovereign immunity would have worked perfectly

22   there because all you were asking was what do

23   the words that Congress used mean.

24   But, here, you're not asking just what

25   do the words mean; you're asking about the --

1   the necessary logical implication of what

2   Congress has done.

3   JUSTICE KAGAN: Well, the -- the

4   necessary logical implication of what Congress

5   has done is authorize a suit against people,

6   persons, as defined in the definitions section.

7   Then you go to the definitions section, and then

8   you discover that what Congress has done is

9   authorize a suit against natural persons,

10   enterprises, and governments.

11   MR. SNYDER: So, respectfully, Justice

12   Kagan, I don't think that's right. At the time

13   that Congress adopted that definition, the one

14   thing we know is that it wasn't doing so for

15   purposes of allowing civil recovery against

16   everyone covered by "persons" because the

17   statute didn't authorize recovery against

18   persons at the time.

19   JUSTICE JACKSON: Right, but then --

20   then there was the amendment. So why -- why

21   can't we assume from that that Congress was

22   trying to reach all of the defined entities?

23   MR. SNYDER: I -- so I think maybe

24   that would be a plausible reading of the

25   statute, but in order to find a waiver of

 1   sovereign immunity, you have to conclude that

 2   it's the only plausible reading of the statute.

 3   So just --

 4   JUSTICE JACKSON: And why -- why isn't

 5   it not the only plausible -- I mean, Congress

 6   amended the statute clearly to expand liability.

 7   Do you -- do you concede that?

 8   MR. SNYDER: Yes, we agree with that.

 9   JUSTICE JACKSON: All right. And

10   it -- and it expanded liability by substituting

11   the previous terms, which were narrower, you

12   know, specifically referencing only "any

13   consumer reporting agency or user of

14   information," it expanded liability by striking

15   that and putting in the word "person" and -- or

16   "any person," and "any person" is elsewhere

17   defined in the statute to include government.

18   So what is not clear about Congress's

19   intention to expand liability to include

20   government?

21   MR. SNYDER: So -- so we do have this

22   other argument about whether it's clear that

23   Congress actually intended "person" to include

24   the government, and I -- I do eventually want to

25   get to that.

1   But just, I think you're asking me to

2   assume that "person" takes the statutory

3   definition in 1681n and o and why isn't that

4   enough to show that Congress must have intended

5   to waive sovereign immunity.

6   And my answer is that it's not unusual

7   for Congress to create a cause of action that

8   applies to a range of defendants, some of whom

9   will still have defenses from other background

10   principles of the law.

11   Now, in the cases that this Court was

12   referring to in the Financial Oversight and

13   Management Board --

14   JUSTICE GORSUCH: Counsel, I -- I'm

15   sorry --

16   JUSTICE KAVANAUGH: Wouldn't --

17   JUSTICE GORSUCH: -- to interrupt, but

18   I -- I -- I just want to understand the nature

19   of your argument in responses to my colleagues.

20   It could be one of two things it seems

21   to me. One -- one, it might be that n and o

22   don't take the definition, or, two, they do take

23   the definition and that's still insufficient.

24   Which is it?

25   MR. SNYDER: We are making both of

 1   those arguments. The -- the argument --

 2   JUSTICE GORSUCH: Arguing in the

 3   alternative?

 4   MR. SNYDER: Yes, we're arguing --

 5   JUSTICE KAVANAUGH: Right.

 6   MR. SNYDER: -- in the alternative.

 7   So, if you -- even if you accept, as the -- the

 8   questions so far have asked me to assume, that

 9   "person" covers the United States, in that

10   circumstance, you're in exactly the same

11   situation that --

12   JUSTICE GORSUCH: Let's deal with the

13   first argument, just -- just that they don't

14   take the definition. I want to understand that

15   because this Court, as Justice Kagan has alluded

16   to, has said that it's virtually conclusive -- I

17   think Sturgeon a few years ago we said that --

18   virtually conclusive that the definition

19   applies.

20   MR. SNYDER: Yes. So we -- we accept

21   that ordinarily, statutory definitions make a

22   great deal of difference, but this Court has

23   also --

24   JUSTICE GORSUCH: More than a great

25   deal of difference. We've said they're

1   virtually conclusive.

2   MR. SNYDER: Yes. But this Court has

3   also rejected the idea that you always just plug

4   in the terms wherever the -- the defined term

5   appears in the statute. I think the Court's

6   decision in Utility Air is really significant on

7   this and, in particular, the structure of the

8   Court's reasoning in that decision.

9   So Utility Air involved provisions of

10   the Clean Air Act that applied to facilities

11   that emitted any air pollutant, and EPA had

12   concluded that those provisions unambiguously

13   applied to facilities that emitted greenhouse

14   gases because the Act-wide definition of "air

15   pollutant" included greenhouse gases.

16   JUSTICE GORSUCH: Why -- we -- we've

17   read all that. I -- I guess I'm wondering, why

18   isn't it virtually conclusive here?

19   MR. SNYDER: So the reason is that

20   just as in Utility Air, there were other

21   provisions of the Act that used "air pollutant"

22   in a sense narrower than its defined meaning.

23   JUSTICE GORSUCH: And there may be

24   other provisions in which it's more narrowly

25   applied here, but why does that pertain to n and

1   o, is my question.

2   MR. SNYDER: So I'm being too slow --

3   JUSTICE GORSUCH: I'm --

4   MR. SNYDER: -- in getting to this.

5   But --

6   JUSTICE GORSUCH: You are.

7   MR. SNYDER: -- in Utility Air --

8   JUSTICE GORSUCH: Let's get to the

9   statute before us.

10   MR. SNYDER: In -- so --

11   JUSTICE KAGAN: Utility Air -- may I?

12   JUSTICE GORSUCH: Please.

13   (Laughter.)

14   JUSTICE KAGAN: Utility Air was a very

15   special case in which the Court decided that if

16   you just plugged the definition in, the entire

17   regulatory scheme would collapse.

18   MR. SNYDER: So the first part of the

19   Court's decision --

20   JUSTICE KAGAN: So all I'm saying --

21   MR. SNYDER: -- in Utility Air --

22   JUSTICE KAGAN: -- is that that's, you

23   know, nowhere near this case. I mean, I

24   understand that the government likes sovereign

25   immunity and that waivers of sovereign immunity

1   are, you know, not all that common. But this is

2   not a Utility Air scheme where, essentially, the

3   Court found that it was inconsistent with the

4   entire rest of the statutory scheme.

5   Recognizing a cause of action here is

6   not inconsistent with the entire rest of the

7   statutory scheme.

8   I'm sorry about that, Justice Gorsuch.

9   JUSTICE GORSUCH: Well, no, that --

10   that -- no, I appreciate that. And -- and

11   that's -- that's my question too. So, please.

12   MR. SNYDER: So even the court of

13   appeals recognized that 1681q does not use

14   "person" in a sense --

15   JUSTICE GORSUCH: I -- I understand.

16   We're talking about n and o here, though,

17   counsel.

18   MR. SNYDER: So, if you accept that --

19   JUSTICE GORSUCH: And let me put it

20   this way. I'm sorry to repeat the question, but

21   this is where I get stuck.

22   It doesn't seem to me inconceivable --

23   maybe -- maybe -- maybe you've got an argument

24   -- that a rational Congress might, to protect

25   consumers, in FCRA, which is all about false

1   reporting about consumers' debts and

2   delinquencies, say that the government should

3   turn square corners too, just like other private

4   credit reporting agencies, and that when it

5   falsely reports a consumer's debt, it should --

6   it should pay that, n and o.

7   Again, let's talk about n and o.

8   Let's not talk about q. Let's not talk about

9   Utility Air. Let's talk about n and o. You

10   have to come up, it seems to me, with some

11   argument that it's inconceivable Congress would

12   have wanted to do that sort of thing.

13   MR. SNYDER: Respectfully, Justice

14   Gorsuch, I -- I think our task is to show that

15   it's plausible that that's not what Congress did

16   here. That's what the clear statement rule

17   requires. And we think that because Congress

18   has --

19   JUSTICE GORSUCH: That's the second

20   step. We're still on the first step. What do n

21   and o mean?

22   MR. SNYDER: So we don't think that n

23   and o clearly cover the United States. Congress

24   has used the word "person" in other parts of

25   the -- of the statute in ways that do not cover

 1   the United States, and we think it is therefore

 2   plausible to think that when Congress used the

 3   word "person" in n and o, it was also using n

 4   and o in a sense --

 5   JUSTICE KAVANAUGH: What are your best

 6   examples of that?

 7   MR. SNYDER: So we think 1681q, I know

 8   I've been asked not to talk about that, but --

 9   JUSTICE KAVANAUGH: You can talk about

10   it with me.

11   (Laughter.)

12   MR. SNYDER: We think that 1681q

13   clearly uses "person" in a sense that does not

14   use the Act-wide definition. Even the court of

15   appeals recognized that it would not be

16   reasonable to think that Congress authorized

17   criminal prosecutions of the United States just

18   through the bare use of the word "person" and

19   that it must have meant something narrower

20   there.

21   JUSTICE JACKSON: But why -- why --

22   why is that a definitional change? I mean, I

23   think the problem that I'm having is that A, in

24   the definitions, the text of this statute says

25   that the definitions apply throughout the entire

1   subchapter.

2   And I understand your point about q,

3   but why isn't that just a carve-out? They're

4   just saying that, you know, certain categories

5   of persons can't have criminal prosecution, but

6   it's not a change in the definition of "person."

7   MR. SNYDER: I -- I -- I guess that's

8   not the way I read that provision. I think that

9   the statutes in both Utility Air and Employees

10   had similar provisions that said this definition

11   applies everywhere. In Utility Air, the Court

12   said but we know that Congress didn't always use

13   the defined term in a sense that carried its

14   defined meaning, and so, when it appears in the

15   provision at issue, it's not unambiguous that --

16   JUSTICE KAVANAUGH: Counsel --

17   MR. SNYDER: -- it carries that

18   meaning.

19   JUSTICE SOTOMAYOR: Counsel --

20   JUSTICE KAVANAUGH: -- can I --

21   JUSTICE SOTOMAYOR: -- can I --

22   JUSTICE KAVANAUGH: Go ahead.

23   JUSTICE SOTOMAYOR: -- can I go back

24   to q? Because I was -- I don't know why it's

25   incongruous or why it suggests a problem. I

1   went back and researched the Clean Water Act,

2   the Safe Drinking Water Act, and the

3   Agricultural Adjustment Act. At least three --

4   I didn't canvass the universe -- include a

5   criminal provision that applies to the United

6   States that's nearly identical to this one. It

7   says imprisonment and/or fine.

8   So I don't know why copying what has

9   been used in other acts for which there's no

10   question that there's a waiver of sovereign

11   immunity, why the fact that they refer to

12   imprisonment or -- and fine means that somehow

13   sovereign immunity wasn't waived.

14   MR. SNYDER: So --

15   JUSTICE SOTOMAYOR: It's a common

16   provision written exactly like this one is, and

17   in those acts, we've never said their existence

18   calls into question the waiver of sovereign

19   immunity.

20   MR. SNYDER: So I -- I'm not sure, are

21   you referring to criminal provisions in those

22   other statutes?

23   JUSTICE SOTOMAYOR: Yes, yes.

24   MR. SNYDER: So I -- I think the

25   significant thing about the criminal provisions

1　　elsewhere in the -- the Code, my friend has

2　　pointed to just one, that when Congress has

3　　wanted to accomplish that really unusual result,

4　　it has been just crystal-clear that that's --

5　　　　　　　JUSTICE SOTOMAYOR: No. That's what

6　　I'm saying to you. Read the -- the best example

7　　is the Clean Air Act. It's virtually identical

8　　to this one. It basically says any person who

9　　violates the Act -- and there's no doubt that

10　　the person is the government -- is subject to

11　　imprisonment or a fine.

12　　　　　　　So it's written identically to this

13　　provision. So, if I have that as text and I see

14　　it in other statutes, I don't know why reading

15　　it here would be incongruous to me or suggest

16　　that somehow Congress didn't intend "person" to

17　　mean exactly what it means.

18　　　　　　　MR. SNYDER: So -- so, Justice

19　　Sotomayor, even the court of appeals recognized

20　　--

21　　　　　　　JUSTICE SOTOMAYOR: Well, it may --

22　　　　　　　MR. SNYDER: -- I mean, you did not

23　　recognize it --

24　　　　　　　JUSTICE SOTOMAYOR: -- it may have

25　　recognized it, but what I'm saying to you is I

1   don't.

2   MR. SNYDER: So accepting that, let

3   me -- let me maybe turn wisely to other -- other

4   points of our argument.

5   (Laughter.)

6   MR. SNYDER: 1681u(j), which is the

7   provision where Congress really did want to

8   authorize civil actions against the federal

9   agencies --

10   JUSTICE SOTOMAYOR: Is that the FBI

11   one?

12   MR. SNYDER: That's the FBI one. And

13   it refers explicitly to the FBI. Again, I'm not

14   going to suggest --

15   JUSTICE SOTOMAYOR: Well --

16   MR. SNYDER: -- that that's absolutely

17   --

18   JUSTICE SOTOMAYOR: -- yeah, that one

19   is also difficult for me because that provision

20   is an exemption from the Act basically

21   permitting the FBI to do things and consumer

22   agencies to do things that otherwise might

23   violate the statute, and it's now saying, okay,

24   we've given you an exemption, but we're going to

25   keep you liable if you step outside the terms of

1   this exemption, and it sets forth the terms of

2   that liability.

3   I don't know why that is the same

4   thing -- why that's illogical or suggests

5   incongruity with a waiver of sovereign immunity

6   for other violations of the Act.

7   MR. SNYDER: So, Justice Sotomayor,

8   the only -- the only point we're making about

9   that provision is that when we -- we know that

10   Congress wanted to address civil liability of

11   federal agencies, it said so expressly.

12   JUSTICE ALITO: Mr. Snyder --

13   MR. SNYDER: And that's --

14   JUSTICE ALITO: I'm sorry, finish your

15   answer.

16   MR. SNYDER: My answer is going to

17   have three more parts.

18   JUSTICE ALITO: Sure.

19   MR. SNYDER: So --

20   JUSTICE ALITO: Go ahead.

21   (Laughter.)

22   JUSTICE ALITO: I'll wait.

23   MR. SNYDER: -- the -- if you want to

24   jump in, but the -- the --

25   JUSTICE ALITO: I'll wait.

1   MR. SNYDER: -- the -- the next thing

2   that I'd point to is that reading 1681n and o to

3   use the Act-wide definition would render those

4   provisions plainly unconstitutional as applied

5   to unconsenting states under this Court's

6   decision --

7   JUSTICE SOTOMAYOR: Well, that's all

8   right. We had the same problem in the Kimel

9   case, and in the Kimel case, we had three layers

10   of reference to the waiver of sovereign

11   immunity, and we didn't require magic words. We

12   just figured out what the definition was, even

13   though it referred to another statute and the

14   other statute referred to a different provision.

15   And yet, no magic words were required.

16   And in Kimel, we had exactly the same

17   thing. The government argued that it was

18   incongruous to permit suits against the state

19   because the states hadn't waived their sovereign

20   immunity. But that's a different constitutional

21   provision.

22   MR. SNYDER: So, in Kimel, there was

23   language in the cause of action itself that was

24   there only for the purpose of authorizing

25   suits --

```
1                    JUSTICE SOTOMAYOR:  Well, assuming we
2        buy your first argument that any person who is
3        negligent doesn't mean the sovereign, if it's
4        negligent, is responsible.  We have to take that
5        first step, right?
6                    MR. SNYDER:  So that -- just to be
7        clear, that's not our first argument.  Our first
8        argument is that even if you think the cause of
9        action covers both sovereign and non-sovereign
10       defendants, as this Court recognized in
11       Employees, the -- the question of whether the
12       government -- or the Congress has lifted the
13       sovereign immunity defense is analytically
14       distinct from it.  So --
15                   JUSTICE SOTOMAYOR:  It is analytically
16       distinct.  It can't lift state sovereignty.  So
17       it can't do it here either.
18                   MR. SNYDER:  So, in Employees, the
19       Court assumed that Congress would be able to
20       lift sovereign immunity.  That was -- that was
21       before '75.
22                   JUSTICE SOTOMAYOR:  Well, that was --
23       Employees is an old case, 1973, analyzed in a
24       very different way with a lot of different
25       issues.
```

1   MR. SNYDER: So, Justice Sotomayor,

2   respectfully, I disagree with that. I mean, I

3   think this idea that Employees and Parden are

4   sort of of a piece in the bad old days, I just

5   don't think that's a plausible description of

6   those cases. So, if you --

7   JUSTICE SOTOMAYOR: We'll let the

8   other side answer that. I don't want to

9   monopolize you. So --

10   MR. SNYDER: Just briefly on that, I

11   mean, in College Savings Bank, the opinion for

12   the Court by Justice Scalia said -- points out

13   that Employees was written by one of the Parden

14   dissenters over the solitary dissent of Parden's

15   author and that it began the Court's retreat

16   from Parden. So I think Employees is entirely

17   consistent with this modern -- this Court's

18   modern approach to sovereign immunity.

19   The -- the other two parts of the

20   answer that I promised Justice Alito I was going

21   to get out, we would -- we think it's

22   significant that the 1996 amendments occurred

23   just months after Seminole Tribe. The idea that

24   Congress adopted this plainly unconstitutional

25   statute without saying anything at all in the

1   statute itself or the legislative history we

2   don't think is plausible.

3   We also think it's significant that

4   these were adopted at different points in time,

5   so you don't have Congress adopting a cause of

6   action applicable to persons and then saying at

7   the same time that for those purposes, we want

8   this -- "persons" to include the United States.

9   And then, finally, we think there are

10   a number of other statutes where, as with FCRA,

11   Congress has defined "person" to include the

12   United States, but then, in the causes of

13   action, when it's wanted to authorize recovery

14   against the United States, it hasn't just relied

15   on that general definition of "person." It has

16   said in RCRA, for example, that suit is

17   authorized against any person, comma, including

18   the United States.

19   And, Justice Kagan, to go back to

20   where we started with why that is different from

21   a case where Congress has just -- I realize I've

22   -- I skipped over Justice Alito, but --

23   JUSTICE ALITO: That's okay. That's

24   fine.

25   MR. SNYDER: -- that --

1   JUSTICE KAGAN: Long ago.

2   MR. SNYDER: -- that --

3   JUSTICE KAGAN: In fact, before you

4   start talking to me --

5   JUSTICE ALITO: This is a --

6   JUSTICE KAGAN: -- I'd like Justice

7   Alito to answer his quest- --

8   (Laughter.)

9   JUSTICE ALITO: Well, this is --

10   JUSTICE KAGAN: -- to ask his

11   question.

12   JUSTICE ALITO: -- this may be a

13   frolic and a detour, but have there been real

14   cases in which the United States has criminally

15   prosecuted itself?

16   MR. SNYDER: I am not aware of any.

17   JUSTICE ALITO: I mean, if -- if such

18   a case came here, what would -- it's Monday

19   morning.

20   (Laughter.)

21   JUSTICE ALITO: I'm having trouble

22   getting a grasp on this. How would this work?

23   You would be arguing on one side and one of your

24   colleagues would be on the other side, and you'd

25   be arguing against each other?

1   MR. SNYDER: I think that's right. I

2   mean, it's a pretty incongruous idea. We think

3   that if Congress wanted that result, it would

4   have made it much clearer than just using the

5   word "person."

6   Again, though, the reason that it

7   matters why Congress uses just "person" or

8   instead addresses the -- the sovereign in the

9   cause of action itself is that when Congress

10   uses references to the sovereign itself in the

11   cause of action, the only purpose those words

12   can serve is to authorize recovery against the

13   sovereign.

14   And so, in Financial Oversight and

15   Management Board, the Court said that when

16   Congress has expressly authorized suits in that

17   way, it would effectively negate the statutory

18   language to allow the assertion of a sovereign

19   immunity defense. And in that circumstance, the

20   Court has been willing to infer that Congress

21   must have intended to waive sovereign immunity.

22   JUSTICE KAGAN: Well, it does negate

23   the statutory language if you do the normal

24   thing that we do in interpreting statutes, which

25   is plug in the definition into the provision

1   that uses the defined term.

2   So, here, plug in the definition to n

3   and o, and then it negates the statutory

4   language in the same way that it does in all

5   those other cases. So I've said that before.

6   Here's what I really want to ask.

7   What does "person" mean if it doesn't mean that?

8   MR. SNYDER: So we think that, just as

9   we think in 1681q it means its ordinary

10   definition, so too in n and o, we think it has

11   -- it carries its ordinary --

12   JUSTICE KAGAN: What is its ordinary

13   definition? Does it include individuals?

14   MR. SNYDER: It includes individuals.

15   JUSTICE KAGAN: Does it include

16   partnerships?

17   MR. SNYDER: It includes partnerships.

18   JUSTICE KAGAN: Corporations?

19   MR. SNYDER: Yes.

20   JUSTICE KAGAN: Trusts?

21   MR. SNYDER: Yes.

22   JUSTICE KAGAN: Estates?

23   MR. SNYDER: Yes.

24   JUSTICE KAGAN: Cooperatives?

25   MR. SNYDER: Yes.

1   JUSTICE KAGAN: Associations?

2   MR. SNYDER: Yes.

3   JUSTICE KAGAN: Other entities?

4   MR. SNYDER: Yes, but not governments.

5   JUSTICE KAGAN: Just not government.

6   I mean, that's a strange way to read a defined

7   term, right? We'll take every part of the

8   defined term and plug it in but not plug in this

9   last listed thing before you get to the residual

10   term.

11   MR. SNYDER: So that's what we think

12   Congress did in 1861q, and we think it's

13   plausible to think that it did the same thing in

14   1861n and o.

15   But, to the point you made before

16   that, I mean, yes, if we --

17   JUSTICE KAGAN: Well, how about the

18   point I'm making now?

19   MR. SNYDER: That is my answer, that

20   we think that it carries a meaning other than

21   its defined one, just as "air pollutant" in

22   Utility Air carried a meaning other than its

23   defined one, just as "person" in 1681q carries a

24   meaning other than its defined one.

25   JUSTICE KAGAN: But we're taking the

1   entire definition, except we're striking

2   "government." We're taking the entire

3   definition, except for one word, two words,

4   "governmental subdivision or government," four

5   words.

6   MR. SNYDER: Yes, because that is the

7   ordinary meaning of "person." It is --

8   JUSTICE JACKSON: Okay. But --

9   JUSTICE KAVANAUGH: Why -- why are you

10   doing that? I mean, why -- put aside the

11   ordinary meaning of "person."

12   MR. SNYDER: We're doing that because

13   we think it's plausible to read the civil

14   liability provisions in the same way that it

15   would be plausible to read the criminal

16   liability provisions.

17   JUSTICE KAVANAUGH: Well, I thought

18   you were doing that because of sovereign

19   immunity and it's important to protect the fisc

20   of the United States against ambiguous

21   derogations of sovereign immunity.

22   MR. SNYDER: So we're also doing it

23   for that reason. We think that that's where

24   the -- the --

25   JUSTICE KAGAN: But Congress can waive

1   sovereign immunity, and the question is whether

2   Congress has done so.

3   MR. SNYDER: Yes. And nothing in the

4   statute -- may I finish?

5   CHIEF JUSTICE ROBERTS: Sure.

6   MR. SNYDER: Nothing in the statute

7   says anything about sovereign immunity. You can

8   only do that from implication. And we think,

9   logically, the fact that Congress didn't specify

10   sovereign defendants in the cause of action

11   itself means that implication is not available

12   here.

13   CHIEF JUSTICE ROBERTS: We'll afford

14   you a couple minutes for rebuttal.

15   MR. SNYDER: Thank you.

16   CHIEF JUSTICE ROBERTS: Thank you, Mr.

17   Snyder.

18   JUSTICE KAGAN: Wait.

19   JUSTICE KAVANAUGH: Whoa, whoa.

20   (Laughter.)

21   CHIEF JUSTICE ROBERTS: Justice

22   Thomas?

23   Justice Alito? No? Sure?

24   JUSTICE GORSUCH: I do have one

25   question. So putting aside what n and o mean --

```
 1    we've gone around that tree -- your -- your --

 2    your second argument was that Congress needs to

 3    be clearer than even that to waive sovereign

 4    immunity.  Even that wouldn't be enough.

 5              And I guess I wonder why.  I certainly

 6    understand -- this is kind of a first principles

 7    question.  I certainly understand the clear

 8    statement rule this Court has developed to

 9    protect the Eleventh Amendment and state

10    sovereign immunity, separate sovereigns.

11              But, here, we have the sovereign

12    itself speaking, right?  It's not waiving

13    someone else's immunity.  It's not purporting to

14    strip another entity of its protections under

15    the Constitution.  It's Congress, which has

16    control over the federal fisc, itself deciding.

17    And I -- so -- so I wonder why the clear

18    statement rule would be appropriate in those

19    circumstances.

20              MR. SNYDER:  So two answers to that,

21    Justice Gorsuch.  The first is that Respondent's

22    argument has exactly the same effect in terms of

23    Congress's meaning as to states and in terms of

24    its effect as to Indian tribes and foreign

25    nations.  If you rule against the United States
```

```
 1    here, you will necessarily be saying that it
 2    waived sovereign immunity for them too.
 3            JUSTICE GORSUCH:  You're -- you're --
 4    you're just fighting my question.  I'm saying it
 5    is different.  It is one thing to waive a tribe,
 6    a state, a foreign government's immunity.
 7    Congress purport to exercise that power under
 8    the Constitution, an extraordinary power.  It's
 9    permissible sometimes, but, generally, we think
10    of as inconsistent with the structure of our
11    Constitution, and that's why we have
12    traditionally required a clear statement rule.
13            It's less clear to me what
14    justifications we have for requiring magic words
15    to waive sovereign immunity when it's the
16    sovereign itself opening itself up to suit.
17            MR. SNYDER:  So we, of course, don't
18    think it's magic words, but that's not your
19    question.  This Court has repeatedly said that
20    it applies the same standard when evaluating --
21            JUSTICE GORSUCH:  I'm -- I'm -- I'm
22    asking why.
23            MR. SNYDER:  So the Court has
24    identified a number of justifications for --
25            JUSTICE GORSUCH:  What do you think
```

1   it's saying?

2   MR. SNYDER: -- the clear statement.

3   I'd combine two.

4   JUSTICE GORSUCH: Okay.

5   MR. SNYDER: First, as Federalist 81

6   said way back at the founding, it was well

7   established then that the sovereign could not be

8   haled into court without its consent.

9   And, second, tracing all the way back

10   to Blackstone, it was well settled that courts

11   should not interpret statutes to apply to the

12   sovereign unless that was the only permissible

13   reading.

14   And so, by the middle of the 19th

15   Century, courts had recognized that in light of

16   those two principles, you couldn't read a

17   congressional enactment to waive sovereign

18   immunity unless that was the only plausible

19   reading, and, of course, by now, this Court has

20   repeated that so many times that it's a

21   well-established background principle against

22   which Congress legislates.

23   JUSTICE GORSUCH: Thank you.

24   CHIEF JUSTICE ROBERTS: Justice

25   Kavanaugh?

```
1              JUSTICE KAVANAUGH:  Just on the clear

2    statement rule part of your argument, so that

3    part, I mean, we said that sometimes the better

4    interpretation of a statute will not necessarily

5    prevail because of the clear statement rule.

6              So even assuming the -- the

7    interpretation of the statute doesn't -- is

8    against you, the better interpretation, you can

9    still prevail under the clear statement rule?

10             MR. SNYDER:  Yes, that's absolutely

11   right.  We just need a --

12             JUSTICE KAVANAUGH:  Okay.  So that's

13   the starting point.  And then, for the why, you

14   know, ultimately, it's money that Congress has

15   the power to appropriate, right?  And we want to

16   be careful about that.

17             MR. SNYDER:  Yes, we think that's

18   correct.

19             JUSTICE KAVANAUGH:  Okay.  And that's

20   basic separation of powers?

21             MR. SNYDER:  Yes, absolutely.

22             JUSTICE KAVANAUGH:  Okay.  So how much

23   would it cost here if you were to lose this

24   case?

25             MR. SNYDER:  So we don't have a
```

1   precise estimate of that, Justice Kavanaugh. I

2   will say that there is a -- a case pending in

3   the Seventh Circuit right now that's being held

4   for this case in -- in which the plaintiff has

5   attempted to assert a class action.

6   We understand that the damages if they

7   were to prevail would be in the millions of

8   dollars. I don't know exactly what that would

9   be, but Congress would have anticipated that the

10 potential liability here would be significant, I

11 think.

12   JUSTICE KAVANAUGH: And punitive

13 damages too, right?

14   MR. SNYDER: So we, of course, don't

15 think those would be available. But I -- I

16 think, if you accepted that this is clear enough

17 --

18   JUSTICE KAVANAUGH: If you accept

19 their argument down the line, punitive damages

20 could be available?

21   MR. SNYDER: That's correct.

22   JUSTICE KAVANAUGH: Okay. And then,

23 on Employees, you've mentioned that case. And

24 that case seems structurally -- I mean, I'm

25 going to ask a lot to the other side about this

1   -- seems structurally similar to this statute,

2   how this one developed.

3   But the other side basically says

4   don't pay attention to Employees, and I think

5   Justice Sotomayor alluded to that, because it's

6   old, a 1973 case. So I want your response to

7   that.

8   MR. SNYDER: So, I mean, first, we

9   don't think this is how this Court treats

10   precedents. Again, as I said, we think that

11   this Court has reaffirmed Employees and

12   recognized that Employees began the retreat from

13   Parden, but even just looking at the text of

14   Employees, I think it's consistent with the

15   argument and the distinctions that I'm drawing

16   today.

17   The Court there said that the cause of

18   action by its literal terms covered state

19   agencies, but it recognized that the relevant

20   question was whether Congress had intend --

21   intended to bring the states to heel by lifting

22   their immunity. So it recognized that was a

23   distinct question, and then it said Congress

24   wouldn't have done that silently.

25   And, in particular, it said that if

1   Congress had intended to do that, it would have

2   done one of two things. It -- it either would

3   have addressed immunity expressly, or it would

4   have amended the cause of action, and in that

5   context, what that would have meant was adding a

6   specific reference to state agencies to the

7   cause of action.

8   And because Congress hadn't done

9   either of those things, the Court in Employees

10   found there wasn't a clear waiver. We think the

11   same thing is true here.

12   JUSTICE KAVANAUGH: So then, to pick

13   up on Justice Kagan's questions earlier, if you

14   see Employees on one side of the line and you

15   see cases like Kimel on the other side of the

16   line, where the -- where the reference to the

17   public entities is in the cause of action

18   itself, that's slicing it pretty thin.

19   Like, what sense does that make or

20   what principle would undergird sticking to

21   Employees in the way that you're advocating?

22   MR. SNYDER: So I think, in the cases

23   like Kimel, there's a superfluity argument that

24   unless you hold that Congress has waived

25   sovereign immunity, that text in the cause of

```
1    action will do absolutely no work.  And so the
2    Court has said Congress wouldn't have
3    effectively negated that and has been willing to
4    infer a waiver of immunity.
5              But Respondent has conceded that our
6    interpretation doesn't produce any superfluity
7    here.  So even if you think that probably
8    members of Congress intended to waive sovereign
9    immunity, there's no necessary implication that
10   they must have.  And under the clear statement
11   rule and under Employees, that's enough to rule
12   for us.
13             JUSTICE KAVANAUGH:  Can you give me
14   just one quick example of how it's not
15   superfluous --
16             MR. SNYDER:  So --
17             JUSTICE KAVANAUGH:  -- if you were to
18   prevail here?
19             MR. SNYDER:  -- so "person" would
20   cover entities other -- private parties other
21   than credit reporting agencies that furnish
22   information to those credit reporting agencies.
23             JUSTICE KAVANAUGH:  No, the coverage
24   of government, how the coverage of government
25   wouldn't be superfluous even if you were to
```

1   prevail here.

2   MR. SNYDER: So the coverage of

3   government ensures that the government can

4   obtain credit reports. I mean, the -- the

5   coverage of government was there before the

6   cause of action, so the one thing we know is

7   that the coverage of government is not there in

8   order to allow recovery under the cause of

9   action.

10   JUSTICE KAVANAUGH: Thank you.

11   CHIEF JUSTICE ROBERTS: Justice

12   Barrett?

13   JUSTICE BARRETT: In Employees, are we

14   bound as a part of the holding the methodology

15   applied by the case? Because it seems to me

16   like that's what you're arguing, that this is

17   the methodology that the case employed, and so

18   we must follow the same methodology as -- so is

19   that part of the holding?

20   MR. SNYDER: I -- I think that is part

21   of the holding. I mean, the other thing I would

22   say here is that when you're talking about

23   implications, the -- the cause of action doesn't

24   expressly say anything about sovereign immunity.

25   So you can only find a waiver by thinking that

1   in adopting that cause of action, Congress must

2   also have intended to create a waiver.

3   And if you were a member of Congress

4   and you looked at Employees and you said: All

5   right, I've got a -- a cause of action that

6   applies to a general term, if I define that

7   general term somewhere else in a way that it

8   covers sovereigns, will that lead to a waiver of

9   sovereign immunity.

10   JUSTICE BARRETT: So Employees is part

11   of the backdrop against which Congress

12   legislated in its methodology?

13   MR. SNYDER: So, I -- I mean, I think

14   it makes it plausible to think that members of

15   Congress would not have understood just the bare

16   creation of a broad cause of action as

17   sufficient to take the analytically distinct

18   step of waiving sovereign immunity.

19   JUSTICE BARRETT: Okay. Second

20   question. Q is your best argument. If it

21   wasn't in the statute, would you lose?

22   MR. SNYDER: No. If -- if it wasn't

23   in the statute, we would still have exactly the

24   same argument under Employees, and things like

25   the fact that 1681n and O would be

1   unconstitutional as applied to the states, I

2   think, would still give us a --

3   JUSTICE BARRETT: Well, unless the

4   states waive their sovereign immunity.

5   MR. SNYDER: Yes. I mean, of course,

6   you could say the same thing about application

7   to federal agencies, that there are some federal

8   agencies as to which Congress has waived all

9   immunity.

10   And so, if you want to just read 1681n

11   and o as creating causes of action that apply

12   when there's a waiver from someone else --

13   somewhere else, you can do that with the federal

14   government too.

15   But my understanding of Respondent's

16   argument is that Congress was intending to

17   eliminate sovereign immunity in 1681n and o, and

18   if that's right, then Congress is acting

19   blatantly unconstitutionally with respect to the

20   states and didn't say anything at all about the

21   Seminole Tribe decision from just a few months

22   earlier. We think that's unlikely.

23   JUSTICE BARRETT: Last question.

24   Where are you getting the definition that you

25   gave Justice Kagan when she asked you what

1   "person" would mean there? Is that just kind of

2   what ordinary people would understand? Is that

3   the Dictionary Act?

4   MR. SNYDER: It's both. I mean, I

5   think the Dictionary Act definition comports

6   with how an informed legal reader would

7   understand the word "person" in most places, and

8   we think that that -- that understanding makes

9   sense in 1681q, so we think it makes sense that

10   Congress could have plausibly used it in the

11   same sense nearby in n and o.

12   JUSTICE BARRETT: Thank you, Mr.

13   Snyder.

14   CHIEF JUSTICE ROBERTS: Justice

15   Jackson?

16   JUSTICE JACKSON: So I guess I

17   perceive Employees as being structurally

18   dissimilar in relevant ways in light of its

19   amendment history, and so I'm hoping that you

20   can comment on that.

21   I mean, it seems to me that what

22   happened in Employees, to the extent that there

23   was some uncertainty about what Congress did, it

24   was because Congress amended the definitions

25   section, right, to include governments, and that

         1   definitions section applied to a whole host of

         2   things in the statute, the duties, the

         3   liabilities, or whatnot, and so there was

         4   palpable uncertainty on the Court's part as to

         5   whether expanding -- what was it -- employers to

         6   include government actually affected a waiver of

         7   liability with respect to the liability section.

         8   It seems to me here, when we have the

         9   amendment to the liability section expanding, as

        10   you conceded previously, the liability section

        11   to include other entities by use of the term

        12   "person" that had been previously defined to

        13   include government, we're actually accomplishing

        14   a different result.

        15   It seems to me there isn't the same

        16   kind of uncertainty in the relevant situation of

        17   whether or not they intended to expand

        18   liability, which is what we need for the purpose

        19   of a waiver.

        20   Can you comment on that?

        21   MR. SNYDER: Sure. So -- so two

        22   things in response. The first is that I -- I

        23   think this Court has ordinarily said you just

        24   look at the statute as it exists. I mean,

        25   Respondent has said you should look at it as it

 1   exists today.

 2   JUSTICE JACKSON: But that's not what

 3   happened in Employees. So, if we're going to go

 4   with Employees, which -- which is what you --

 5   you're saying, we're going with that

 6   methodology, they didn't just do a plain text.

 7   They were talking about what Congress's intent

 8   was, isn't it strange that Congress amended it

 9   and didn't amend the liability provision. And

10   what I'm saying is, here, they did.

11   MR. SNYDER: So I -- I think, if you

12   want to look at that timing, I think the timing

13   actually cuts the other way because, in

14   Employ -- in Employees, what Congress was doing

15   was taking a statute that already authorized

16   civil liability against -- against employers and

17   saying we want state agencies to be employers

18   for purposes of this statute. We're going to --

19   we're going to cover them under the same

20   definition that until now has covered all

21   employers.

22   And so, in that circumstance, it might

23   have been reasonable to think that Congress

24   intended state agencies to be covered in exactly

25   the same way as all other employers because

1   Congress was specifically focused on state

2   agencies. And yet --

3   JUSTICE JACKSON: Yes, but it wasn't

4   focused on liability for this purpose. That's

5   my only point. Can I ask you another question?

6   I guess I hear you suggesting that

7   there has to be an express mention of the

8   federal government in the provision. So I'm

9   wondering, is the government not conceding that

10   we have said that you can satisfy the clear

11   statement rule by implication?

12   MR. SNYDER: No, we accept that you

13   can establish it by implication. As the Court

14   said in College Savings Bank, it has to be

15   overwhelming implication.

16   JUSTICE JACKSON: Right. But -- so an

17   implication could occur when what? In other

18   words, it seems to me here that there is no

19   mention of sovereign immunity, so we're

20   operating in implication land. The implication

21   is coming from the creation of a cause of action

22   that applies to the government. You're arguing

23   as to whether or not it applies to the

24   government. No, you're not?

25   MR. SNYDER: No, we're not arguing --

1   so --

2   JUSTICE JACKSON: Okay.

3   MR. SNYDER: -- we have a different

4   action about what whether the cause of action

5   applies to the government.

6   JUSTICE JACKSON: I see.

7   MR. SNYDER: But this part of the

8   argument --

9   JUSTICE JACKSON: Okay.

10   MR. SNYDER: -- we say even if you

11   think "person" includes the government, all that

12   does is show that the cause of action applies to

13   the government.

14   JUSTICE JACKSON: And isn't that

15   enough to be the implication?

16   MR. SNYDER: No.

17   JUSTICE JACKSON: Why?

18   MR. SNYDER: Because the fact that you

19   have a cause of action that covers a particular

20   defendant doesn't speak one way or the other to

21   whether that defendant may have particular

22   available defenses. No one would think it's

23   strange that this cause of action applies to

24   private parties that violated FCRA more than

25   five years ago. By its plain terms, it

1   absolutely permits that.

2   JUSTICE JACKSON: I -- I don't

3   understand that. I mean, we're -- we're talking

4   -- we start from the standpoint of, has there

5   been a waiver of sovereign immunity? That's the

6   question that we're asking to begin with.

7   That's why we're engaged in this exercise.

8   So, when we start there, I'm not sure

9   I understand whether or not there are other

10   defenses available doing any work with respect

11   to us trying to determine whether sovereign

12   immunity has been waived.

13   MR. SNYDER: So this Court said in

14   Meyer that the question of the -- the cause of

15   action and the question of the defense of

16   sovereign immunity are analytically distinct.

17   And that's the --

18   JUSTICE JACKSON: So then there's no

19   implication on the basis of the cause of action.

20   MR. SNYDER: No, there can be

21   implication. I -- I know that I'm drawing fine

22   lines, but, logically, there is an implication

23   that Congress intends to waive sovereign

24   immunity if it creates a cause of action that

25   applies only to sovereign defendants or that

 1   expressly names sovereign defendants.

 2   JUSTICE JACKSON: So it has to be

 3   explicit with respect to -- it can't be that

 4   they do so by naming all these other entities

 5   and adding in government. Is that your point?

 6   It has to either be stand-alone just the word

 7   "government" in the "person" definition, or it

 8   has to be written "government" in the actual

 9   1618n?

10   MR. SNYDER: Yes, because that is the

11   only circumstance in which the statutory text

12   that -- that refers to "government" would have

13   no effect if the government were able to assert

14   sovereign immunity.

15   JUSTICE JACKSON: And where have we

16   said that before?

17   MR. SNYDER: So I read the Court's

18   decision in Financial Oversight and Management

19   Board to say that. I think that's the only way

20   that you can reconcile cases like Kimel on the

21   one hand and Employees on the other, is to say

22   that Congress distinguishes in this way.

23   And if you look at statutes like RCRA

24   and the MPRSA that we point to at pages 22 to 24

25   of our brief, Congress has done what we've said

```
1       it could have done here.  Congress has said it's

2       authorizing suit against any person, comma,

3       including the United States.  We agree --

4               JUSTICE JACKSON:  All right.

5               MR. SNYDER:  -- that that gives rise

6       to the implication.

7               JUSTICE JACKSON:  Thank you.

8               CHIEF JUSTICE ROBERTS:  Thank you,

9       counsel.

10              Mr. Joshi.

11                ORAL ARGUMENT OF NANDAN M. JOSHI

12                  ON BEHALF OF THE RESPONDENT

13              MR. JOSHI:  Mr. Chief Justice, and may

14      it please the Court:

15              The Fair Credit Reporting Act imposes

16      civil liability on any person that negligently

17      or willfully fails to comply with FCRA's

18      requirements.  It expressly defines "person" to

19      include any government agency.  The term

20      "person" is equivalent to its definition, and

21      when FCRA's definition of "person" is plugged

22      into FCRA's civil liability provisions, those

23      provisions create causes of action against

24      federal agencies that are clear and specific

25      enough to waive sovereign immunity.
```

1   Congress was not required to state

2   that "persons" include federal agencies a second

3   time in the cause of action to make its intent

4   clear. Congress knew what it was doing when it

5   amended FCRA in 1996. When it did so, it

6   consistently used the term "person" to describe

7   both who would be subject to FCRA's substantive

8   duties and who would be subject to FCRA's

9   enforcement mechanisms.

10   Interpreting "person" to mean

11   something different in the enforcement

12   provisions would make FCRA's substantive duties

13   completely unenforceable against governmental

14   furnishers.

15   Moreover, Congress knew how to and did

16   choose words to alter the scope of liability

17   where it wanted to do so. Thus, where

18   Section 1681n generally provides for damages

19   against "any person," 1681n(a)(1)(B) creates a

20   special remedy for certain violations by a

21   natural person. That was a -- an amendment in

22   1996 as well.

23   Congress also expressly limited the

24   government's liability in FCRA's sister statute

25   in the Consumer Credit Protection Act. It did

54

1   not do so in FCRA, indicating that Congress

2   intended no such limitation.

3   I welcome the Court's questions.

4   JUSTICE THOMAS: Counsel, the --

5   there's much discussion about Employees, and I'd

6   like you to address that, what the government

7   argued, but I'd also like you to consider

8   addressing whether or not the -- what's

9   necessary to -- for the government to abrogate

10   state sovereign immunity, whether that standard

11   is the same as the standard for waiving its own

12   sovereign immunity.

13   MR. JOSHI: Sure. So, on Employees, I

14   think the best sort of empirical evidence of its

15   continuing force are the five courts of appeals

16   that have addressed this very issue, the

17   question of whether FCRA waives sovereign

18   immunity.

19   That -- there's a 3-2 circuit split on

20   that. The government has raised Employees in

21   each one of those cases. Not one single court,

22   not even the two that agree with the

23   government's position, thought Employees was

24   worth discussing. It's too out -- I -- I

25   suggest that's because it's -- the analysis does

       1   not comport with how the Court reads statutes in
       2   the modern era.
       3   Employees, as I read it, was telling
       4   Congress how to craft an amendment to make its
       5   intent clear. The modern -- the -- sort of the
       6   current way the Court discerns congressional
       7   intent is to look at the provisions as a whole,
       8   the amending provisions, as well as the original
       9   provisions, and construe them together. And
      10   Employees is inconsistent with that.
      11   The other thing to point --
      12   JUSTICE KAVANAUGH: I'm sorry. I -- I
      13   -- I don't understand that, really, looking at
      14   Employees, because it relies on the text of the
      15   provision and says that because the addition of
      16   public employees -- employers was in a separate
      17   definitional provision, that wasn't good enough.
      18   And then the dissent echoes your
      19   argument. Justice Brennan's dissent says that
      20   it's the sheerest sort of ritualism to suggest
      21   that Congress excluded the states from 16(b)
      22   suits by not expressly referring to the states
      23   in 16(b). In other words, Justice Brennan was
      24   saying you're being too textualist, majority
      25   opinion, in -- in how you're going about this.

1   And the majority said -- I read it as

2   establishing a principle -- well, we're going to

3   draw the line here. If it's just in the

4   definitional section, that's not good enough for

5   a waiver.

6   MR. JOSHI: So Employees started off

7   by looking at the legislative history to discern

8   what Congress wanted to do when it amended the

9   FLSA in 1966.

10   JUSTICE KAVANAUGH: The -- the

11   principle rested on the text. I mean, I

12   acknowledge that then it went on to the

13   legislative history. It might have had an even

14   looser standard for waiver of sovereign immunity

15   than we now apply. But, even under that looser

16   standard, the Court said no, no waiver.

17   MR. JOSHI: Well, the -- the textual

18   part of Employees --

19   JUSTICE KAVANAUGH: And so a fortiori

20   --

21   MR. JOSHI: Yeah.

22   JUSTICE KAVANAUGH: -- you're in

23   trouble if -- if we take Employees seriously.

24   At least I want you to respond to that.

25   MR. JOSHI: Sure. I -- I do think the

1   text -- the textual part of Employees, which

2   indicated the Court would find it surprising, I

3   think that's the exact quote, if Congress chose

4   to amend the FLSA but did not amend it in this

5   way. Now the Court says that Congress does not

6   have -- have to use magic words and it doesn't

7   have to use a magic structure, I would say,

8   doesn't have to state its intent in any

9   particular way.

10   JUSTICE KAVANAUGH: Well, do you still

11   agree there's a clear statement rule that can

12   override the better reading of the text?

13   MR. JOSHI: There is a clear statement

14   rule. We don't fight that. I don't think --

15   JUSTICE KAVANAUGH: Can it -- can it

16   override the better reading of the text?

17   Because that is the meaning --

18   MR. JOSHI: Yes. No, we --

19   JUSTICE KAVANAUGH: -- of a clear

20   statement rule.

21   MR. JOSHI: -- we don't question that

22   there has to be one plausible meaning of the

23   text in order for us to prevail.

24   JUSTICE KAVANAUGH: Okay. I think --

25   MR. JOSHI: But let me just --

```
 1              JUSTICE KAVANAUGH:  -- I interrupted

 2    you before you answered Justice Thomas's --

 3              MR. JOSHI:  Yeah.  Well, the other --

 4              JUSTICE KAVANAUGH:  -- question about

 5    federal versus states, so you go ahead.

 6              MR. JOSHI:  Sure.  Well, the last

 7    thing I would point out about Employees before I

 8    turn to federal versus state is that a critical

 9    part of Employees was that the government could

10    -- the federal government could still enforce

11    the FLSA against the states.  The government's

12    argument here takes us a step further and says

13    no one, not even the federal government or the

14    state governments, can enforce Employees against

15    any governmental furnishers because the term

16    "person" does not apply -- the definition of

17    "person" does not apply to 1681s, which is the

18    administrative enforcement provision.  So this

19    would be a step beyond Employees.

20              On the federal versus state issue,

21    Congress -- I don't think there's a different

22    textual standard in this Court's cases between

23    waiving sovereign immunity and abrogating state

24    immunity.  It's simply that what Seminole Tribe

25    and its progeny hold is that where there's a
```

1   conflict between what Congress wants and what

2   the state wants, the state wins absent -- unless

3   the -- it's in a few discrete areas where the

4   Constitution abrogates state sovereign immunity

5   or it's a Fourteenth Amendment case.

6   But, if this statute were in the

7   Fourteenth Amendment context, I think this

8   language would be sufficient to abrogate state

9   sovereign immunity just as it waives federal

10   sovereign immunity.

11   CHIEF JUSTICE ROBERTS: Counsel, it --

12   I think it's an unavoidable consequence of your

13   interpretation that the statute authorizes

14   criminal prosecution of the United States.

15   Now, if there were such a prosecution

16   and the United States were convicted, what would

17   the pre-sentencing report look like?

18   (Laughter.)

19   MR. JOSHI: So, as a technical matter,

20   I -- I would say the proper defendant in a FCRA

21   action would be an agency, not the United States

22   itself. That said, I don't think this Court has

23   squarely held how far the federal -- the absence

24   of criminal liability for federal -- for

25   governmental entities extends. Last year, in

 1   Halk Bank, you -- I think you said that criminal

 2   law can apply to foreign states and their arms.

 3   I don't -- I don't think you've said that in the

 4   context of domestic agencies.

 5   In Bennett versus Spear, you suggested

 6   that perhaps agencies could be criminally --

 7   criminally liable or civilly liable for failing

 8   to -- to adhere to a biological opinion.

 9   CHIEF JUSTICE ROBERTS: So -- so you

10   agree that your -- your reading of the statute

11   leads to that result, that -- that a criminal

12   prosecution can be brought against the United

13   States, whether it's through a United States

14   agency or the nation as a whole?

15   MR. JOSHI: That -- that is one

16   reading. This -- this Court -- I mean, I can't

17   say it's absurd since this Court has not said it

18   -- it's absurd previously. That said, I -- I --

19   the easier path I think for this Court would be

20   to follow what Judge Katsas said in the D.C.

21   Circuit in the Mowrer decision, what Judge

22   Krause said below, which is that any contextual

23   reason you might have for disregarding an

24   otherwise controlling statutory definition in

25   the criminal context is unique to the criminal

1   context.

2   JUSTICE KAGAN: Well, but how --

3   JUSTICE KAVANAUGH: Why is that?

4   JUSTICE KAGAN: -- does that work? I

5   mean, n and o and q are all added at the same

6   time. We can add s to that too because s raises

7   its own anomalies. They're all -- they're all

8   enacted at the same time. And -- and they're

9   all different kinds of liability provisions.

10   And you're essentially saying -- and

11   you're right that Judge Krause said this below,

12   Judge Katsas said it, but you're saying, well,

13   you -- you know, it fits with n and o, so we'll

14   use one interpretation there. It doesn't fit

15   with q, so we'll use a different interpretation

16   there.

17   MR. JOSHI: So -- so one correction.

18   Q stems from the original 1970 act that enacted

19   the definition of "person." The 1996 Act,

20   Congress amended the civil liability provision

21   and amended the administrative enforcement

22   provision to extend -- authorize enforcement

23   against persons. But it didn't -- it didn't add

24   in the term "person" in 1681q in 1996. That's

25   --

```
1            JUSTICE KAGAN:  Okay.
2            MR. JOSHI:  It enhanced the penalties
3    in the definition.  With that said, each --
4    there's no -- I think, well, the civil -- q
5    rests as sort of a stand-alone self-contained
6    provision.  It doesn't interact with the rest of
7    the FC -- the rest of the FCRA in any way.
8            It contains its own substantive
9    prohibition and its own criminal penalties,
10   whereas you have the liability provisions and
11   the enforcement provisions, which are designed
12   to enforce the substantive --
13           JUSTICE KAVANAUGH:  But you're --
14           MR. JOSHI:  -- provisions of FCRA.
15           JUSTICE KAVANAUGH:  -- to pick up on
16   the Chief Justice's question, it's not just
17   criminal prosecution against the United States,
18   it's punitive damages against the United States,
19   very unusual.  State and federal enforcement
20   against the United States would be contemplated
21   if we took your interpretation.
22           There's an express waiver in another
23   provision that was enacted months earlier, the
24   government says that's an anomaly.  The Privacy
25   Act is a carefully reticulated scheme for
```

 1   imposing liability on the government for Privacy

 2   Act violations. They're saying that you would

 3   create this anomaly.

 4   So there's a string of anomalies that

 5   the other -- that the government says would be

 6   created by -- by your position.

 7   MR. JOSHI: Well, I think the only one

 8   that qualifies as even a debatable anomaly would

 9   be 1681q. The government -- it just doesn't --

10   I don't think they've made any --

11   JUSTICE JACKSON: I thought your --

12   MR. JOSHI: -- case about what --

13   JUSTICE JACKSON: -- I thought the

14   answer was that it's not that the definition is

15   shrinking or expanding provision by provision

16   the definition of "person," that you can have

17   this group of entities that are defined

18   statutorily as persons and that carries

19   throughout the whole statute.

20   But there may be various provisions in

21   which subsets of persons are carved out because

22   they have other defenses. I mean, just because

23   "person" is there doesn't mean that, you know,

24   every person will automatically and always be

25   subject to the entirety of that separate

 1   provision.

 2   As the government said, they could

 3   have separate defenses. They could have other

 4   reasons why they're not subject to criminal

 5   liability even though they're still persons for

 6   the purpose of the statute.

 7   So, if that's happening, then the

 8   government's observation that in certain parts

 9   of the statute persons are not going to -- to --

10   or governments, even though they're persons, are

11   not going to be subject to that part of the

12   statute, it seems to me, doesn't really help

13   their argument because, as Justice Gorsuch said,

14   we don't see even that happening in n and o,

15   which is really all that is at issue here.

16   MR. JOSHI: Right. I think the

17   government argument really tries to focus on

18   provisions away from n and o because there is no

19   textual basis in looking at n and o for not

20   applying the definition as written.

21   JUSTICE JACKSON: And there's no real

22   basis for suggesting that -- that

23   notwithstanding the statute saying that

24   "persons" is defined in this way throughout the

25   entirety of the provision, sometimes it's not

 1   really defined this way.

 2   It seems to me that is an implausible

 3   reading of the text of the statute that very

 4   clearly defines the term and says it applies

 5   everywhere.

 6   So, if it's not actually operative in

 7   certain places, it's not because the definition

 8   has changed. It's because something else is

 9   going on that would prevent that consequence

10   occurring in that particular circumstance.

11   MR. JOSHI: I think that's right. For

12   example, in 1681g, subsection g, Congress has an

13   expressed alternative definition of "person" for

14   purposes of that provision. That doesn't mean

15   somehow n and o become ambiguous in terms of

16   where the definition applies.

17   JUSTICE KAVANAUGH: Do you -- do you

18   --

19   CHIEF JUSTICE ROBERTS: Well, it's not

20   only --

21   JUSTICE KAVANAUGH: -- do you think --

22   CHIEF JUSTICE ROBERTS: -- that you

23   think that it's right, but under our sovereign

24   immunity precedent, that has to be the only way

25   of reading it?

1   In other words, there's no other way

2   and all these other areas where "person" doesn't

3   actually mean person the way it's defined in the

4   statute but means much less, and there's not

5   just one, there's two, there's three, and you

6   have to say that changing the reading of

7   "person" is the only way you could read that

8   because, if it isn't, then there is -- then

9   sovereign immunity, it seems, is implicit in the

10   statute in a way that other provisions may not

11   be.

12   MR. JOSHI: Well, I -- assuming the --

13   the hypothetical, which is that there are

14   variations in what "person" means throughout the

15   statute --

16   CHIEF JUSTICE ROBERTS: It's not my

17   hypothetical, but go ahead.

18   MR. JOSHI: Yes. The -- the fact

19   remains, if the Court's going to depart from the

20   otherwise controlling definition, it looks to

21   something else in the statute that provides a

22   countervailing argument.

23   For example, Utility Air was brought

24   up. The Court looked to provisions of the

25   statute that said, if we apply the definition of

 1   "air pollutant" to these provisions, we have an

 2   unworkable statute.

 3   And to the extent you conclude that

 4   "person" doesn't apply to 1681q because that's

 5   unworkable or improbable that Congress intended

 6   to extend criminal liability this far, that is a

 7   -- that is an argument, an interpretation that

 8   would be limited to 1681q.

 9   CHIEF JUSTICE ROBERTS: Well, you say

10   in the statute, but I guess the argument is that

11   there can be limitations outside the statute

12   that would apply as well.

13   And I'm thinking in particular of our

14   decision in the Bond case, the -- the -- the

15   chemical on the doorknob that is under one

16   interpretation, perhaps literal interpretation

17   of the statute would be covered by the Chemical

18   Weapons Treaty. And we said that sometimes

19   arguments like, well, that seems pretty

20   implausible can trump what would otherwise be a

21   pretty precise reading of the statutory

22   language.

23   MR. JOSHI: Well, that's right. I

24   think Bond -- Bond is a good foil for this case.

25   The Court found -- your opinion for the Court

 1   found that the statute was ambiguous. And, I

 2   mean, I agree that if this statute is ambiguous,

 3   then the -- the sovereign immunity canon favors

 4   the government.

 5   But if -- but the -- the -- there, the

 6   definition the Court called improbably broad,

 7   there's nothing improbably broad about defining

 8   "person" to include the government. The Court

 9   has said, if Congress wants to not have the

10   ordinary meaning of "person" applied --

11   CHIEF JUSTICE ROBERTS: Well, I -- I

12   would have thought -- sorry to interrupt, but

13   I -- I would have thought it's -- the

14   improbability comes from the argument that this

15   would mean you can prosecute the United States,

16   it can mean that you can get damages from the

17   United States and so on and so forth.

18   MR. JOSHI: Well, even if prosecuting

19   the United States is improbable, seek --

20   obtaining damages from the United States is not

21   improbable. Congress waived sovereign immunity

22   in a number of statutes.

23   CHIEF JUSTICE ROBERTS: Well, it's

24   pretty improbable for the statute to authorize

25   the FTC to seek damages from the United States,

1   which is what it does.

2   MR. JOSHI: Well, the Equal Credit

3   Opportunity Act, I think, does the same thing.

4   It set up the same sort of enforcement

5   mechanism. There are other -- there are other

6   statutory schemes that authorize

7   intergovernmental liability, our Resource

8   Conservation Recovery Act --

9   JUSTICE KAVANAUGH: You -- keep going.

10   MR. JOSHI: No. I -- I --

11   JUSTICE KAVANAUGH: Okay. You -- you

12   said at the beginning and I think just now that

13   Congress knew what it was doing when it amended

14   the Act. But I don't think it realized that it

15   was imposing this liability. If you look at the

16   CBO, Congressional Budget Office, reports,

17   there's no mention of anything, any liability

18   like this.

19   And they carefully analyze how much

20   the additional costs would be for the executive

21   branch in enforcement and the judicial branch in

22   handling the additional cases. So -- and the

23   CBA -- CBO score, as you know and anyone

24   familiar with that process knows, is very

25   important for Congress. So I -- I don't think

1   it's right to say Congress knew what it was

2   doing.

3   You may -- could still win without

4   that, but I think that's not -- not correct,

5   unless you want to respond to that in some way.

6   MR. JOSHI: Well -- well, I don't

7   think the CBO is itself Congress. And Congress

8   --

9   JUSTICE KAVANAUGH: Correct.

10   MR. JOSHI: I mean, what -- what is --

11   JUSTICE KAVANAUGH: But they do -- do

12   you challenge that Congress relies on the CBO

13   score when it's doing legislation?

14   MR. JOSHI: No, it's -- it's -- it's

15   part --

16   JUSTICE KAVANAUGH: Yeah.

17   MR. JOSHI: -- of the committee

18   reports.

19   JUSTICE KAVANAUGH: Yeah, I think you

20   have to acknowledge that.

21   MR. JOSHI: I -- I accept the

22   proposition that the legislative history doesn't

23   say one thing or another about sovereign

24   immunity.

25   The -- the -- the legislative history

1   does talk about the purpose of the statute, and

2   that is consistent with a conclusion that

3   Congress wanted to hold the government liable

4   just as any private furnisher of information

5   would be for -- for failing to comply with their

6   FCRA duties.

7   JUSTICE KAVANAUGH: Can I -- can I

8   also, on a different tack, Justice Gorsuch

9   raised an important question, I thought, about

10   federal versus state sovereign immunity, and you

11   heard I -- I mentioned separation of powers.

12   My understanding was that the reason

13   we have that is because taxpayer money is -- is

14   valuable and we should be sure it's been

15   appropriated before we funnel a bunch of money

16   out of the Treasury. That's both to ensure that

17   money can be spent on other programs because

18   it's not limitless money in the Treasury, and

19   it's to ensure otherwise that taxes aren't

20   raised. So we have to be very careful before we

21   overstep, as basic separation of powers.

22   Do you dispute any of that?

23   MR. JOSHI: Not at all. You have two

24   principles that are designed to protect that

25   interest. One is the sovereign immunity canon.

```
 1        So, if the -- a statute is ambiguous, the

 2   sovereign immunity canon would say even the

 3   government gets the benefit of ambiguities even

 4   if that's not the best reading of the statute.

 5        And the second one is the specificity

 6   requirement, so a broad statute cannot waive

 7   sovereign immunity.  The -- the statute must

 8   discuss governmental entities specifically,

 9   which the definition here does.

10        JUSTICE GORSUCH:  Counsel, I guess I'm

11   a little confused why -- I mean, I can

12   understand that you don't need to make the

13   argument to prevail in your view, but I -- I'm

14   not sure I understand your response to Justice

15   Kavanaugh from first principles.

16        Sovereign immunity serves many

17   important purposes in respecting other

18   institutions, states, tribes, foreign

19   governments.  It's inherent in our

20   constitutional design, embodied in the Tenth

21   Amendment even, for example.

22        But, when it comes -- if we're worried

23   about protecting the federal fisc, I would have

24   thought that the answer might be Congress is in

25   the best position to do that.  Article I gives
```

1   them power over the federal fisc. And we have

2   no license to expand or contract its

3   instructions artificially but follow them in --

4   instead faithfully.

5   MR. JOSHI: I mean, that's right. At

6   bottom, this is a policy choice for Congress to

7   make.

8   JUSTICE GORSUCH: One would have

9   thought.

10   JUSTICE KAVANAUGH: Why is there a

11   clear statement rule then?

12   MR. JOSHI: Well, just as with other

13   policy choices, the Court -- if the -- the area

14   is a particularly sensitive one, the Court wants

15   --

16   JUSTICE KAVANAUGH: Why -- why -- why

17   is it sensitive?

18   JUSTICE GORSUCH: What isn't

19   sensitive?

20   JUSTICE KAVANAUGH: Why -- why is it

21   sensitive? Focus on that if you could.

22   MR. JOSHI: Well, I -- I think the

23   Court takes holding the government liable,

24   especially for damages, seriously. So it wants

25   -- doesn't want to construe ambiguous text in --

1   in a way that may be different than Congress

2   understood ambiguous text. But, when the text

3   is clear, that's a different matter altogether.

4   When there's only one plausible

5   interpretation of the text under traditional

6   rules of statutory interpretation, the Court

7   shouldn't be applying a different interpretation

8   of the statute.

9   JUSTICE KAGAN: Some of our cases have

10   suggested that the reason we have a clear

11   statement rule is to, in this area, prevent the

12   waiver of sovereign immunity accidentally, you

13   know, that there has to be -- it can't be

14   through inadvertence that Congress has waived

15   sovereign immunity.

16   So you could look at this statute and

17   especially the q problem and so forth and say

18   that the waiver was -- was accidental, it was

19   inadvertent, and that's exactly what the clear

20   statement rule tries to prevent. So what would

21   -- what -- what would be your best counter to

22   that?

23   MR. JOSHI: So I have two counters.

24   One is about statutory interpretation. One is

25   FCRA-specific.

1   The first one is I -- I -- I don't see

2   how you have a workable principle of statutory

3   interpretation that looks behind clear text to

4   say, did Congress really mean this?

5   So, for example, if the 1996 Act had

6   reenacted the definition of "person" word for

7   word, if the committee report had said we're

8   doing this because we want to make clear the

9   government is liable, this -- the words of the

10   U.S. Code would be exactly the same. But, under

11   a rule that looks behind the text, the -- the

12   outcome would be completely different.

13   And the FCRA-specific argument is -- I

14   mean, here, you have a situation, as I mentioned

15   in my opening, Congress didn't just sort of make

16   a single amendment to the -- to FCRA. It

17   amended the civil liability provision to extend

18   to persons in Section 2412 of the 1996

19   amendment. On the very next page on the very

20   next section, 2413, it used the word "person" to

21   extend furnisher obligations onto those who

22   furnish information to consumer reporting

23   agencies.

24   And I think it -- it's fairly

25   implausible that when Congress turned the page,

```
 1       it somehow, using the same word, intended a

 2       different definition of the term to apply.

 3                 JUSTICE ALITO:  Could I ask you a

 4       couple questions about Employees?  First,

 5       suppose that Employees had decided the very

 6       issue that is before us now.  Would you say that

 7       we should disregard it because it used an

 8       outmoded method of statutory interpretation?

 9                 MR. JOSHI:  Well, if Employees had

10       decided the Fair Credit Reporting Act, I think

11       there was an argument for statutory stare

12       decisis that might still apply to the FLSA, but

13       since -- since that doesn't apply here, I -- I

14       would -- I think the Court should and has in the

15       past in the case of implied causes of action,

16       has rejected prior methods of interpretation

17       that -- that had become outmoded.

18                 JUSTICE ALITO:  And was that a "yes"

19       or a "no"?

20                 MR. JOSHI:  I --

21                 JUSTICE ALITO:  Or maybe?

22                 MR. JOSHI:  -- may have lost the

23       thought on the original question, but I --

24                 JUSTICE ALITO:  Yeah.  If it involved

25       the very question that is before us now --
```

1   MR. JOSHI: Yeah.

2   JUSTICE ALITO: -- would -- do you

3   think we should -- we would disregard it or we

4   should disregard it because we disagree with the

5   method of statutory interpretation?

6   MR. JOSHI: If it's the very question

7   in a different statute, my answer would be the

8   same. The Court should not follow Employees and

9   should instead apply -- read the statute the way

10   it currently reads statutes.

11   JUSTICE ALITO: Okay. That's my -- I

12   think you -- you went into my second question.

13   Suppose that the statute is different, but the

14   structure -- the wording and the structure in

15   all relevant respects is the same. Do you think

16   we should disregard it because of its method of

17   statutory interpretation?

18   MR. JOSHI: Yes, I think you should.

19   When -- now, when you say the same, there are a

20   lot of differences between the statute there and

21   here, but just to answer your hypothetical, you

22   shouldn't follow a method of interpretation that

23   you had rejected previously in -- in construing

24   a new statute.

25   JUSTICE ALITO: There are a lot of

1   important decisions from the 1970s and the 1980s

2   that use a method of statutory interpretation

3   that is probably not the one that we would use

4   if those questions came before us today. You

5   think we -- we should just disregard all those?

6   They're all fair game? Are they all fair game?

7   MR. JOSHI: I -- I -- I think the --

8   it's open to certainly litigants to argue that

9   the Court should -- the statutes say something

10   different.

11   JUSTICE KAGAN: Well, the answer to

12   that question has got to be no, right, Mr.

13   Joshi?

14   (Laughter.)

15   JUSTICE KAGAN: I mean, we're not

16   going to throw out all our precedents because

17   we've decided that there's a better way to

18   interpret statutes.

19   MR. JOSHI: No. No, that's right. I

20   mean, I'm not talking about an over --

21   JUSTICE KAGAN: So you have to be

22   saying that this is a different statute, and you

23   are saying that it has a different structure,

24   right?

25   MR. JOSHI: I'm saying both of those

 1   things. I -- I -- maybe I misread the --

 2   misunderstood the hypothetical.

 3   JUSTICE KAVANAUGH: I didn't think you

 4   said it had a different structure. I thought

 5   you said that the methodology used --

 6   MR. JOSHI: No, the statute had --

 7   JUSTICE KAVANAUGH: -- a methodology

 8   --

 9   MR. JOSHI: Well, the statute has a

10   different structure because, in Employees, the

11   government could still enforce the FLSA against

12   states. That was an important part of the

13   Employees decision.

14   JUSTICE KAVANAUGH: What do you do --

15   you've treated Employees as if it's this one-off

16   outlier, but then, in subsequent cases, like

17   Union Gas, it seems like the same principles,

18   accepted by all nine justices there, in other

19   words, the specific reference to states in the

20   original Act in Union Gas, the Court goes out of

21   its way to say that alone -- in the definitional

22   provisions, that alone would not have been good

23   enough to do it and cites -- cites Employees.

24   And then, in College Savings Bank, the

25   Court makes a big point that Employees started

1   the retreat from Parden, which was a much looser

2   standard for waiver of sovereign immunity. So

3   it's not an out -- you know, it's not just this

4   case has never been cited again.

5   MR. JOSHI: It hasn't been cited for

6   the statutory interpretation point, I think,

7   until -- in any subsequent -- since the late

8   '80s. I think, in -- in Union Gas, you're --

9   you're correct, the statute was written

10   differently. There was additional language in

11   the definitions section that -- that -- that was

12   dispositive to the Court's analysis there.

13   So the Court didn't have to sort of

14   reach out and, you know, try to address the

15   question the Court might have to address here,

16   which is how viable is that sort of method of

17   interpretation. And --

18   JUSTICE KAVANAUGH: By method of

19   interpretation -- I just want to get back to

20   this because I -- I -- it mentions the text and

21   it mentions this principle we don't lightly

22   interpret the text to waive sovereign immunity.

23   And then there's nothing else that would suggest

24   -- in the history of it, suggest a waiver

25   either. I don't -- that sounds like an opinion

```
 1     you could write now and has been written now.
 2                MR. JOSHI:  Well, there's nothing in
 3     Employees that sort of grapples with why the
 4     statutory definition in that case was not --
 5     does not meet the clear statement standard.
 6                JUSTICE KAVANAUGH:  I thought it said
 7     because the reference to government, to public
 8     employee -- employers was not in the -- in the
 9     cause of action provision.
10                MR. JOSHI:  Well, that -- that -- if
11     that's how Employees is read, then that is
12     inconsistent, I would argue, with what the Court
13     has said since, which is that Congress can state
14     its intent in any way it wants.
15                And if you simply foreclose use of
16     statutory definitions in -- in -- in Congress's
17     ability to state -- state its intent, I think --
18                JUSTICE KAVANAUGH:  It's a thin line,
19     but the line has been between in the cause of
20     action provision itself is the explicit
21     reference and in a separate definitional
22     provision, as in -- as in Employees and
23     mentioned in Union Gas as well, that's
24     different.
25                Now that's a thin line.  I might not
```

 1   have come up with that if I were starting from

 2   scratch, but --

 3   JUSTICE JACKSON: But is it -- is it

 4   really a line at all? I mean, what if -- what

 5   if we have the definition provision in -- the

 6   definition provision next to the cause of action

 7   provision?

 8   I mean, here, it's in a, fine. But

 9   you can imagine a world in which they write

10   1681n and 1 is the provision that says any

11   person willfully, et cetera, and 2 is "person"

12   means, and they list out the statute, list out

13   the entities.

14   I mean, I -- I think it's -- it's so

15   fine a line that it probably is nonexistent

16   from -- from the standpoint of really

17   understanding what's going on.

18   MR. JOSHI: I do think it's a fairly

19   arbitrary line if you hold onto it, if you can

20   say -- you try to refashion Employees into the

21   modern era and say this is the line we're going

22   to draw in terms of telling Congress how it

23   needs to write a statute, do not put your --

24   your -- identify your -- the government's -- any

25   governments in the statutory definition, put it

 1   in the cause of action, then that's -- that's --

 2   that's one thing.

 3   JUSTICE KAVANAUGH: It's a --

 4   MR. JOSHI: But --

 5   JUSTICE KAVANAUGH: -- it's a good

 6   point. It's exactly the Brennan dissent, but I

 7   said that before, but, yeah.

 8   MR. JOSHI: But the -- I mean, once

 9   again, I would point out that none of the courts

10   of appeals that have addressed this issue read

11   Employees that way. They --

12   JUSTICE KAVANAUGH: Well, two of --

13   MR. JOSHI: Two of them don't even --

14   JUSTICE KAVANAUGH: -- two of the --

15   MR. JOSHI: -- cite -- cite it.

16   JUSTICE KAVANAUGH: Yeah, they don't

17   cite it. And in at least one, D.C., it wasn't

18   even raised. I'm not sure what happened there.

19   MR. JOSHI: It -- it was raised in the

20   oral argument in D.C.

21   JUSTICE KAVANAUGH: Yeah, but not in

22   the briefs. It wasn't raised.

23   MR. JOSHI: Right. That's right.

24   That's the only court that it wasn't in the

25   briefs.

```
1            JUSTICE SOTOMAYOR:  Now us setting

2     forth a statement like that, you need to do

3     this, would be contrary to our -- all the

4     jurisprudence in which we say you don't need

5     magic words, correct?

6            MR. JOSHI:  I think so.  I mean, the

7     way I see it is that the Court is reluctant to

8     tell Congress how to craft legislative language

9     because that is inherently tied to policymaking,

10    which is inherently an Article I type of

11    function.

12           And so even though the Court, you

13    know, will interpret the words Congress does

14    use, it -- it's not going to tell Congress, for

15    example, if you list out sovereigns in a

16    definition, you better include Indian tribes or

17    else we're going to assume you don't mean it.

18           It's going to -- what -- what's --

19    what the Court's going to do, as it did in Lac

20    du Flambeau, is to say we're going to take the

21    words Congress has given us and we're going to

22    interpret it.  If it's ambiguous, the government

23    gets the benefit of the doubt.  If it's not

24    ambiguous, we're going to give the text its

25    plain meaning.
```

```
 1              And -- and this text is not ambiguous.
 2              JUSTICE JACKSON:  Do -- do you -- do
 3    you take any stock on the amendment history?  I
 4    mean, you know, I -- I appreciate the plain
 5    meaning, we just look at the statute and see
 6    what it says, and maybe, in that world, it is
 7    parallel to Employees.
 8              But Employees seemed to put some stock
 9    in the amendment history as it analyzed what was
10    going on, saying that it -- it was surprised
11    that Congress had not amended the cause of
12    action.
13              And, here, we have an amendment
14    history that shows that Congress was amending
15    the cause of action.  And so, if our ultimate
16    question is how do we -- how and whether we
17    should be implying some kind of intention on
18    Congress's part to extend the cause of action to
19    government, is the amendment history relevant at
20    all?
21              MR. JOSHI:  Well, I think it
22    definitely is relevant that Congress amended the
23    cause -- cause of action.  Even if you take
24    Employees at face value, that should be
25    sufficient.  I think the other things that go
```

1   along with that are the fact that Congress

2   amended the cause of action at the same time it

3   imposed substantive duties on governments.

4   And I think the other thing to keep in

5   mind is that governments are not strangers to

6   the FCRA. Congress accommodates the

7   government's interests throughout the statute,

8   creating exemptions for them, for example, in

9   the national security area, exemptions in terms

10   of the adverse action response requirements that

11   apply to persons, the government in the -- in

12   the -- in the context of national security,

13   Congress has created an exemption for them.

14   And then I would indicate again in --

15   in other -- other statutes in the Consumer

16   Credit Protection Act, Congress knew how -- it

17   showed it knows how to create exemptions for the

18   government. TILA, the -- the Truth in Lending

19   Act, extends liability to all creditors.

20   Congress said we don't want -- even though the

21   government is a creditor as defined in that

22   statute, we don't want liability to be imposed,

23   so we're going to create a carve-out for that

24   for the government.

25   In the Equal Credit Opportunity Act,

```
1      Congress enacted that without any exceptions for

2      the government two years later in 1976, and --

3      and that was an act two years -- one year after

4      Employees.

5                In 1976, they said we don't want

6      punitive damages to be imposed on the

7      government, so it carved out a --

8                JUSTICE JACKSON:  Thank you.

9                CHIEF JUSTICE ROBERTS:  Thank you,

10     counsel.

11               Justice Thomas?

12               Justice Alito?

13               JUSTICE ALITO:  Just assume for the

14     sake of argument that "person" in q does not

15     include the government.  Could you just give me

16     your best answer to the argument that n and o

17     should be treated the same way?

18               MR. JOSHI:  N and o deal with civil

19     liability, which deals with the substantive

20     provisions of the statute, all of which use

21     "person" consistently to include the government.

22     It's a different context entirely.

23               CHIEF JUSTICE ROBERTS:  Justice

24     Sotomayor?

25               JUSTICE SOTOMAYOR:  Do you think q
```

1   doesn't deal with the government because the

2   government can't be jailed, or do you think it

3   doesn't include the government for what other

4   reason?

5   MR. JOSHI: We would -- if that -- if

6   the case were before me, I would say it includes

7   the government because Congress did not create

8   an exemption like it did in the Truth in Lending

9   Act for governmental criminal liability.

10   JUSTICE SOTOMAYOR: Correct. And

11   there's all sorts of statutes that I mentioned

12   earlier, the Clean Water Act being the primary

13   one, where the government is included in the

14   criminal provision, and it speaks about jailing

15   and imprisonment.

16   MR. JOSHI: Right.

17   JUSTICE SOTOMAYOR: And we just

18   don't imply -- we just don't apply the jailing

19   part because you can't jail a corporate entity,

20   correct, or a --

21   MR. JOSHI: It would be the same

22   analysis for corporate entities and the

23   government. The --

24   JUSTICE SOTOMAYOR: So there's -- it's

25   not that you're reading "person" differently in

```
 1     q.  You're just saying that some remedies can't
 2     be applied?
 3               MR. JOSHI:  I think -- I think that's
 4     right.  There are a number of ways to deal with
 5     q.  I don't think it's just we have arguments in
 6     the alternative, including the ones adopted
 7     below which say that q is -- does not have --
 8     does not speak to the civil liability
 9     provisions.
10               JUSTICE SOTOMAYOR:  That --
11               MR. JOSHI:  But --
12               JUSTICE SOTOMAYOR:  -- that too, but
13     --
14               MR. JOSHI:  But, I mean, I -- I would
15     say the better reading is to apply the statute
16     as written.  If there are problematic
17     applications in a particular criminal
18     proceeding, a court can deal with that at that
19     time.  The court doesn't -- usually doesn't
20     avoid a plain language reading of the statute to
21     avoid -- to avoid potential pitfalls down the
22     line if that's what the statute says.
23               JUSTICE SOTOMAYOR:  All right.
24               MR. JOSHI:  However, the Court doesn't
25     have to address, I think, the complicated
```

          1   question of criminal liability because --

          2   because of the alternative that was adopted

          3   below, which is -- which is to say the concerns

          4   are unique to the criminal context and do not

          5   apply to civil liability or the substantive

          6   duties of FCRA.

          7   CHIEF JUSTICE ROBERTS: Justice Kagan?

          8   Justice Gorsuch?

          9   Justice Kavanaugh?

         10   JUSTICE KAVANAUGH: Just on that last

         11   point, I don't understand how we could not

         12   address it if the argument, as Justice Alito

         13   posited, is that -- that if "person" does not

         14   include government there, that shows that

         15   there's some plausible readings of "person" that

         16   would include government elsewhere. I mean --

         17   MR. JOSHI: Well, you would address it

         18   by saying, even if it doesn't include -- even if

         19   "person" doesn't include governments in 1681q,

         20   as the courts below have said, that has no

         21   bearing on 1681n and o.

         22   It's not plausible to infer the

         23   absence of -- of the definition in the criminal

         24   context -- I'm sorry, the absence of the

         25   application of the definition in the criminal

1   context to the -- to the civil context. You

2   need a -- you need a different reason.

3   JUSTICE KAVANAUGH: And that includes

4   punitive damages?

5   MR. JOSHI: Yes, punitive damages is

6   also a clear statement rule requirement. So,

7   if -- if the Court finds -- I don't think

8   there's a different standard there for punitive

9   damages. In fact, 1681u(j), which the

10   government relies on, has -- has a provision for

11   punitive damages.

12   JUSTICE KAVANAUGH: Thank you.

13   CHIEF JUSTICE ROBERTS: Justice

14   Barrett?

15   JUSTICE BARRETT: No.

16   CHIEF JUSTICE ROBERTS: Justice

17   Jackson?

18   JUSTICE JACKSON: No.

19   CHIEF JUSTICE ROBERTS: Thank you,

20   counsel.

21   MR. JOSHI: Thank you.

22   CHIEF JUSTICE ROBERTS: Mr. Snyder,

23   we'll give you three minutes.

24

25

1   REBUTTAL ARGUMENT OF BENJAMIN W. SNYDER

2   ON BEHALF OF THE PETITIONER

3   MR. SNYDER: Thank you. A few quick

4   points.

5   First, Justice Kagan -- as Justice

6   Kagan suggested, one of the purposes for the

7   clear statement rule is to make sure that

8   Congress has specifically considered the

9   question of whether it wants to waive sovereign

10   immunity and addressed that.

11   One of the reasons to require specific

12   references to sovereign entities in the cause of

13   action itself is to make sure that Congress has

14   made that conscious decision.

15   Now my friend acknowledged that there

16   is a specificity requirement. He just thinks

17   that it's satisfied here in the Act-wide

18   definition. The problem with that understanding

19   is that it -- it asks for specificity about the

20   wrong thing.

21   The definition that Congress adopted

22   in 1970 does make clear that in some references,

23   the FCRA does cover the government, but it

24   doesn't make clear that Congress was

25   specifically focused on waiving Congress -- the

 1   United States' sovereign immunity because it had

 2   nothing to do with liability at the time it was

 3   adopted.

 4   There was also a suggestion that

 5   perhaps the word "person" means every -- or

 6   means the same thing in all parts of the

 7   statute, but there are just defenses that exist

 8   under the criminal provision perhaps that would

 9   exempt the government from liability there.

10   We think that's right. We just think

11   that the same thing is true with 1681n and o,

12   that the fact that "person" in those provisions

13   might include the sovereign does not answer the

14   separate question of whether the sovereign has

15   defenses to civil liability any more than it

16   answers the question of whether the sovereign

17   might have defenses to criminal liability.

18   And, finally, my friend tried to

19   distinguish Employees. I -- I think, as Justice

20   Kavanaugh alluded to, his arguments sound a lot

21   like the dissent in Employees, which accused the

22   majority opinion of engaging in ritualism by

23   focusing very carefully on exactly what was and

24   was not in the statutory text. But, of course,

25   this Court's decisions today focus the -- follow

1   the approach that the majority took there, not

2   the dissent.

3   And -- and one other distinction that

4   he attempted to draw was that in Employees, the

5   statute allowed for enforcement by the FTC.

6   But, of course, that's Respondent's position as

7   well. He thinks that FCRA is enforceable by the

8   FTC.

9   So, if you decide that "person"

10   includes the United States throughout the rest

11   of the Act, FCRA is on all fours with Employees,

12   and -- and we would win even on that -- that

13   understanding.

14   Thank you.

15   CHIEF JUSTICE ROBERTS: Thank you,

16   counsel.

17   The case is submitted.

18   (Whereupon, at 11:22 a.m., the case

19   was submitted.)

20

21

22

23

24

25

1

1 [1] **82:**10
10:04 [2] **1:**16 **3:**2
101 [1] **9:**5
11:22 [1] **94:**18
16(b [2] **55:**21,23
1618n [1] **51:**9
1681g [1] **65:**12
1681n [10] **6:**11 **12:**3 **24:**2
  43:25 **44:**10,17 **53:**18 **82:**
  10 **90:**21 **93:**11
1681n(a)(1)(B [1] **53:**19
1681q [11] **16:**13 **18:**7,12
  30:9 **31:**23 **45:**9 **61:**24 **63:**
  9 **67:**4,8 **90:**19
1681s [1] **58:**17
1681u(j [2] **22:**6 **91:**9
1861n [1] **31:**14
1861q [1] **31:**12
1966 [1] **56:**9
1970 [2] **61:**18 **92:**22
1970s [1] **78:**1
1973 [2] **25:**23 **39:**6
1976 [2] **87:**2,5
1980s [1] **78:**1
1996 [8] **3:**15 **26:**22 **53:**5,22
  61:19,24 **75:**5,18
19th [1] **36:**14

2

2 [1] **82:**11
2023 [1] **1:**12
22 [1] **51:**24
22-846 [1] **3:**4
24 [1] **51:**24
2412 [1] **75:**18
2413 [1] **75:**20

3

3 [1] **2:**4
3-2 [1] **54:**19

5

52 [1] **2:**7

6

6 [1] **1:**12

7

75 [1] **25:**21

8

80s [1] **80:**8
81 [1] **36:**5

9

92 [1] **2:**10

A

a.m [3] **1:**16 **3:**2 **94:**18
ability [1] **81:**17
able [3] **7:**10 **25:**19 **51:**13
above-entitled [1] **1:**14
abrogate [2] **54:**9 **59:**8

abrogates [1] **59:**4
abrogating [1] **58:**23
absence [3] **59:**23 **90:**23,
  24
absent [1] **59:**2
absolutely [6] **9:**15 **22:**16
  37:10,21 **41:**1 **50:**1
absurd [2] **60:**17,18
accept [7] **5:**22 **13:**7,20 **16:**
  18 **38:**18 **48:**12 **70:**21
accepted [2] **38:**16 **79:**18
accepting [1] **22:**2
accidental [1] **74:**18
accidentally [1] **74:**12
accommodates [1] **86:**6
accomplish [1] **21:**3
accomplishing [1] **46:**13
accused [1] **93:**21
acknowledge [2] **56:**12 **70:**
  20
acknowledged [1] **92:**15
Act [31] **3:**15 **14:**10,21 **20:**1,
  2,3 **21:**7,9 **22:**20 **23:**6 **45:**3,
  5 **52:**15 **53:**25 **61:**18,19 **62:**
  25 **63:**2 **69:**3,8,14 **75:**5 **76:**
  10 **79:**20 **86:**16,19,25 **87:**3
  88:9,12 **94:**11
Act-wide [4] **14:**14 **18:**14
  24:3 **92:**17
acting [1] **44:**18
action [62] **4:**3,12,13,20,21
  5:7,12 **6:**18,24 **7:**3,7,10,13
  8:8,12 **9:**11 **12:**7 **16:**5 **24:**
  23 **25:**9 **27:**6,13 **29:**9,11
  33:10 **38:**5 **39:**18 **40:**4,7,
  17 **41:**1 **42:**6,9,23 **43:**1,5,
  16 **44:**11 **48:**21 **49:**4,4,12,
  19,23 **50:**15,19,24 **52:**23
  53:3 **59:**21 **76:**15 **81:**9,20
  82:6 **83:**1 **85:**12,15,18,23
  86:2,10 **92:**13
actions [1] **22:**8
acts [2] **20:**9,17
actual [1] **51:**8
actually [6] **11:**23 **46:**6,13
  47:13 **65:**6 **66:**3
add [2] **61:**6,23
added [1] **61:**5
adding [2] **40:**5 **51:**5
addition [1] **55:**15
additional [3] **69:**20,22 **80:**
  10
address [7] **23:**10 **54:**6 **80:**
  14,15 **89:**25 **90:**12,17
addressed [5] **8:**5 **40:**3 **54:**
  16 **83:**10 **92:**10
addresses [2] **3:**24 **29:**8
addressing [1] **54:**8
adhere [1] **60:**8
Adjustment [1] **20:**3
administrative [2] **58:**18
  61:21

adopted [7] **10:**13 **26:**24
  27:4 **89:**6 **90:**2 **92:**21 **93:**3
adopting [3] **7:**13 **27:**5 **43:**
  1
adverse [1] **86:**10
advocating [1] **40:**21
affected [1] **46:**6
afford [1] **33:**13
agencies [19] **5:**11 **17:**4 **22:**
  9,22 **23:**11 **39:**19 **40:**6 **41:**
  21,22 **44:**7,8 **47:**17,24 **48:**2
  52:24 **53:**2 **60:**4,6 **75:**23
agency [5] **5:**19 **11:**13 **52:**
  19 **59:**21 **60:**14
ago [4] **7:**4 **13:**17 **28:**1 **49:**
  25
agree [7] **9:**12 **11:**8 **52:**3 **54:**
  22 **57:**11 **60:**10 **68:**2
Agricultural [1] **20:**3
AGRICULTURE [2] **1:**3 **3:**
  5
ahead [4] **19:**22 **23:**20 **58:**5
  66:17
Air [22] **6:**7,15 **14:**6,9,10,11,
  14,20,21 **15:**7,11,14,21 **16:**
  2 **17:**9 **19:**9,11 **21:**7 **31:**21,
  22 **66:**23 **67:**1
ALITO [26] **23:**12,14,18,20,
  22,25 **26:**20 **27:**22,23 **28:**5,
  7,9,12,17,21 **33:**23 **76:**3,18,
  21,24 **77:**2,11,25 **87:**12,13
  90:12
allow [2] **29:**18 **42:**8
allowed [1] **94:**5
allowing [1] **10:**15
alluded [3] **13:**15 **39:**5 **93:**
  20
alone [2] **79:**21,22
already [1] **47:**15
alter [1] **53:**16
alternative [5] **13:**3,6 **65:**
  13 **89:**6 **90:**2
altogether [1] **74:**3
ambiguities [1] **72:**3
ambiguous [10] **32:**20 **65:**
  15 **68:**1,2 **72:**1 **73:**25 **74:**2
  84:22,24 **85:**1
amend [3] **47:**9 **57:**4,4
amended [14] **3:**14 **11:**6 **40:**
  4 **45:**24 **47:**8 **53:**5 **56:**8 **61:**
  20,21 **69:**13 **75:**17 **85:**11,
  22 **86:**2
amending [2] **55:**8 **85:**14
amendment [15] **10:**20 **34:**
  9 **45:**19 **46:**9 **53:**21 **55:**4
  59:5,7 **72:**21 **75:**16,19 **85:**
  3,9,13,19
amendments [1] **26:**22
analysis [3] **54:**25 **80:**12
  88:22
analytically [5] **6:**13 **25:**13,
  15 **43:**17 **50:**16

analyze [1] **69:**19
analyzed [2] **25:**23 **85:**9
and/or [1] **20:**7
anomalies [2] **61:**7 **63:**4
anomaly [3] **62:**24 **63:**3,8
another [5] **24:**13 **34:**14 **48:**
  5 **62:**22 **70:**23
answer [19] **3:**18 **7:**18 **8:**1,
  3,18 **12:**6 **23:**15,16 **26:**8,20
  28:7 **31:**19 **63:**14 **72:**24 **77:**
  7,21 **78:**11 **87:**16 **93:**13
answered [1] **58:**2
answers [3] **6:**3 **34:**20 **93:**
  16
anticipated [1] **38:**9
appeals [6] **5:**8 **16:**13 **18:**
  15 **21:**19 **54:**15 **83:**10
APPEARANCES [1] **1:**18
appears [2] **14:**5 **19:**14
applicable [1] **27:**6
application [2] **44:**6 **90:**25
applications [1] **89:**17
applied [9] **14:**10,13,25 **24:**
  4 **42:**15 **44:**1 **46:**1 **68:**10
  89:2
applies [16] **4:**3 **5:**21 **12:**8
  13:19 **19:**11 **20:**5 **35:**20 **43:**
  6 **48:**22,23 **49:**5,12,23 **50:**
  25 **65:**4,16
apply [19] **5:**7 **18:**25 **36:**11
  44:11 **56:**15 **58:**16,17 **60:**2
  66:25 **67:**4,12 **76:**2,12,13
  77:9 **86:**11 **88:**18 **89:**15 **90:**
  5
applying [2] **64:**20 **74:**7
appreciate [2] **16:**10 **85:**4
approach [2] **26:**18 **94:**1
appropriate [2] **34:**18 **37:**
  15
appropriated [1] **71:**15
arbitrary [1] **82:**19
area [3] **73:**13 **74:**11 **86:**9
areas [2] **59:**3 **66:**2
aren't [1] **71:**19
argue [2] **78:**8 **81:**12
argued [2] **24:**17 **54:**7
Arguing [7] **13:**2,4 **28:**23,
  25 **42:**16 **48:**22,25
argument [48] **1:**15 **2:**2,5,8
  3:4,8 **4:**7 **6:**6,9,16,16 **11:**
  22 **12:**19 **13:**1,13 **16:**23 **17:**
  11 **22:**4 **25:**2,7,8 **34:**2,22
  37:2 **38:**19 **39:**15 **40:**23 **43:**
  20,24 **44:**16 **49:**8 **52:**11 **55:**
  19 **58:**12 **64:**13,17 **66:**22
  67:7,10 **68:**14 **72:**13 **75:**13
  76:11 **83:**20 **87:**14,16 **90:**
  12 **92:**1
arguments [4] **13:**1 **67:**19
  89:5 **93:**20
arms [1] **60:**2
around [1] **34:**1

Article [2] **72:**25 **84:**10
artificially [1] **73:**3
aside [5] **5:**16,19 **6:**15 **32:**
  10 **33:**25
asks [1] **92:**19
assert [4] **7:**5,10 **38:**5 **51:**
  13
assertion [1] **29:**18
Assistant [1] **1:**19
association [1] **8:**25
Associations [1] **31:**1
assume [6] **6:**10 **10:**21 **12:**
  2 **13:**8 **84:**17 **87:**13
assumed [1] **25:**19
assuming [3] **25:**1 **37:**6 **66:**
  12
attempted [2] **38:**5 **94:**4
attention [1] **39:**4
author [1] **26:**15
authorize [9] **10:**5,9,17 **22:**
  8 **27:**13 **29:**12 **61:**22 **68:**24
  69:6
authorized [5] **8:**8 **18:**16
  27:17 **29:**16 **47:**15
authorizes [1] **59:**13
authorizing [3] **7:**24 **24:**24
  52:2
automatically [1] **63:**24
available [8] **4:**23,25 **6:**24
  33:11 **38:**15,20 **49:**22 **50:**
  10
avoid [3] **89:**20,21,21
aware [1] **28:**16
away [1] **64:**18

B

back [6] **19:**23 **20:**1 **27:**19
  36:6,9 **80:**19
backdrop [1] **43:**11
background [3] **6:**25 **12:**9
  36:21
bad [1] **26:**4
Bank [4] **26:**11 **48:**14 **60:**1
  79:24
bare [2] **18:**18 **43:**15
Barrett [9] **42:**12,13 **43:**10,
  19 **44:**3,23 **45:**12 **91:**14,15
basic [2] **37:**20 **71:**21
basically [3] **21:**8 **22:**20 **39:**
  3
basis [4] **3:**19 **50:**19 **64:**19,
  22
bearing [1] **90:**21
become [2] **65:**15 **76:**17
began [2] **26:**15 **39:**12
begin [1] **50:**6
beginning [1] **69:**12
behalf [9] **1:**21,22 **2:**4,7,10
  3:9 **9:**17 **52:**12 **92:**2
behind [2] **75:**3,11
below [5] **60:**22 **61:**11 **89:**7
  90:3,20
benefit [2] **72:**3 **84:**23

BENJAMIN [5] **1:**19 **2:**3,9 **3:**8 **92:**1
Bennett [1] **60:**5
best [9] **6:**8 **18:**5 **21:**6 **43:**20 **54:**14 **72:**4,25 **74:**21 **87:**16
better [7] **37:**3,8 **57:**12,16 **78:**17 **84:**16 **89:**15
between [4] **58:**22 **59:**1 **77:**20 **81:**19
beyond [1] **58:**19
big [1] **79:**25
biological [1] **60:**8
Blackstone [1] **36:**10
blatantly [1] **44:**19
Board [3] **12:**13 **29:**15 **51:**19
Bond [3] **67:**14,24,24
both [9] **4:**3 **6:**20 **12:**25 **19:**9 **25:**9 **45:**4 **53:**7 **71:**16 **78:**25
bottom [1] **73:**6
bound [1] **42:**14
branch [2] **69:**21,21
Brennan [2] **55:**23 **83:**6
Brennan's [1] **55:**19
brief [1] **51:**25
briefly [1] **26:**10
briefs [2] **83:**22,25
bring [1] **39:**21
broad [4] **43:**16 **68:**6,7 **72:**6
brought [2] **60:**12 **66:**23
Budget [1] **69:**16
bunch [1] **71:**15
buy [1] **25:**2

C

called [1] **68:**6
calls [1] **20:**18
came [3] **1:**14 **28:**18 **78:**4
cannot [2] **4:**16 **72:**6
canon [3] **68:**3 **71:**25 **72:**2
canvass [1] **20:**4
careful [2] **37:**16 **71:**20
carefully [3] **62:**25 **69:**19 **93:**23
carried [2] **19:**13 **31:**22
carries [5] **19:**17 **30:**11 **31:**20,23 **63:**18
carve-out [2] **19:**3 **86:**23
carved [2] **63:**21 **87:**7
Case [27] **3:**4,12 **15:**15,23 **24:**9,9 **25:**23 **27:**21 **28:**18 **37:**24 **38:**2,4,23,24 **39:**6 **42:**15,17 **59:**5 **63:**12 **67:**14,24 **76:**15 **80:**4 **81:**4 **88:**6 **94:**17,18
cases [15] **8:**7,13,17 **12:**11 **26:**6 **28:**14 **30:**5 **40:**15,22 **51:**20 **54:**21 **58:**22 **69:**22 **74:**9 **79:**16
categories [1] **19:**4
cause [53] **4:**3,12,13,19,21

6:18,24 **7:**3,6,10,13 **8:**8,12 **9:**11 **12:**7 **16:**5 **24:**23 **25:**8 **27:**5 **29:**9,11 **33:**10 **39:**17 **40:**4,7,17,25 **42:**6,8,23 **43:**1,5,16 **48:**21 **49:**4,12,19,23 **50:**14,19,24 **53:**3 **81:**9,19 **82:**6 **83:**1 **85:**11,15,18,23,23 **86:**2 **92:**12
causes [6] **5:**7,12 **27:**12 **44:**11 **52:**23 **76:**15
CBA [1] **69:**23
CBO [4] **69:**16,23 **70:**7,12
Century [1] **36:**15
certain [4] **19:**4 **53:**20 **64:**8 **65:**7
certainly [3] **34:**5,7 **78:**8
cetera [4] **5:**18 **9:**1,1 **82:**11
challenge [1] **70:**12
change [2] **18:**22 **19:**6
changed [1] **65:**8
changing [1] **66:**6
chemical [2] **67:**15,17
CHIEF [28] **3:**3,10 **33:**5,13,16,21 **36:**24 **42:**11 **45:**14 **52:**8,13 **59:**11 **60:**9 **62:**16 **65:**19,22 **66:**16 **67:**9 **68:**11,23 **87:**9,23 **90:**7 **91:**13,16,19,22 **94:**15
choice [1] **73:**6
choices [1] **73:**13
choose [1] **53:**16
chose [1] **57:**3
Circuit [3] **38:**3 **54:**19 **60:**21
circumstance [5] **13:**10 **29:**19 **47:**22 **51:**11 **65:**10
circumstances [1] **34:**19
cite [3] **83:**15,15,17
cited [2] **80:**4,5
cites [2] **79:**23,23
civil [16] **5:**12 **10:**15 **22:**8 **23:**10 **32:**13 **47:**16 **52:**16,22 **61:**20 **62:**4 **75:**17 **87:**18 **89:**8 **90:**5 **91:**1 **93:**15
civilly [1] **60:**7
claiming [1] **3:**19
class [1] **38:**5
Clean [4] **14:**10 **20:**1 **21:**7 **88:**12
clear [36] **5:**7 **7:**24 **9:**15 **11:**18,22 **17:**16 **25:**7 **34:**7,17 **35:**12,13 **36:**2 **37:**1,5,9 **38:**16 **40:**10 **41:**10 **48:**10 **52:**24 **53:**4 **55:**5 **57:**11,13,19 **73:**11 **74:**3,10,19 **75:**3,8 **81:**5 **91:**6 **92:**7,22,24
clearer [2] **29:**4 **34:**3
clearly [4] **11:**6 **17:**23 **18:**13 **65:**4
Code [2] **21:**1 **75:**10
collapse [1] **15:**17
colleagues [2] **12:**19 **28:**

24
College [3] **26:**11 **48:**14 **79:**24
combine [1] **36:**3
come [2] **17:**10 **82:**1
comes [2] **68:**14 **72:**22
coming [1] **48:**21
comma [2] **27:**17 **52:**2
comment [2] **45:**20 **46:**20
committee [2] **70:**17 **75:**7
common [2] **16:**1 **20:**15
completely [2] **53:**13 **75:**12
complicated [1] **89:**25
comply [2] **52:**17 **71:**5
comport [1] **55:**1
comports [1] **45:**5
concede [2] **3:**23 **11:**7
conceded [2] **41:**5 **46:**10
conceding [1] **48:**9
concerns [1] **90:**3
conclude [2] **11:**1 **67:**3
concluded [1] **14:**12
conclusion [1] **71:**2
conclusive [4] **13:**16,18 **14:**1,18
conflict [1] **59:**1
confused [1] **72:**11
Congress [133] **3:**13,20 **4:**2,20 **6:**22 **7:**12,24 **8:**4,7,12 **9:**1,2,15,23 **10:**2,4,8,13,21 **11:**5,23 **12:**4,7 **16:**24 **17:**11,15,17,23 **18:**2,16 **19:**12 **21:**2,16 **22:**7 **23:**10 **25:**12,19 **26:**24 **27:**5,11,21 **29:**3,7,9,16,20 **31:**12 **32:**25 **33:**2,9 **34:**2,15 **35:**7 **36:**22 **37:**14 **38:**9 **39:**20,23 **40:**1,8,24 **41:**2,8 **43:**1,3,11,15 **44:**8,16,18 **45:**10,23,24 **47:**8,14,23 **48:**1 **50:**23 **51:**22,25 **52:**1 **53:**1,4,15,23 **54:**1 **55:**4,21 **56:**8 **57:**3,5 **58:**21 **59:**1 **61:**20 **65:**12 **67:**5 **68:**9,21 **69:**13,25 **70:**1,7,7,12 **71:**3 **72:**24 **73:**6 **74:**1,14 **75:**4,15,25 **81:**13 **82:**22 **84:**8,13,14,21 **85:**11,14,22 **86:**1,6,13,16,20 **87:**1 **88:**7 **92:**8,13,21,24,25
Congress's [6] **4:**24 **11:**18 **34:**23 **47:**7 **81:**16 **85:**18
congressional [3] **36:**17 **55:**6 **69:**16
conscious [1] **92:**14
consent [1] **36:**8
consequence [2] **59:**12 **65:**9
Conservation [1] **69:**8
consider [1] **54:**7
considered [1] **92:**8
consistent [3] **26:**17 **39:**14

71:2
consistently [2] **53:**6 **87:**21
Constitution [4] **34:**15 **35:**8,11 **59:**4
constitutional [2] **24:**20 **72:**20
construe [2] **55:**9 **73:**25
construing [1] **77:**23
consumer [5] **11:**13 **22:**21 **53:**25 **75:**22 **86:**15
consumer's [1] **17:**5
consumers [1] **16:**25
consumers' [1] **17:**1
contains [1] **62:**8
contemplated [1] **62:**20
context [11] **40:**5 **59:**7 **60:**4,25 **61:**1 **86:**12 **87:**22 **90:**4,24 **91:**1,1
contextual [1] **60:**22
continuing [1] **54:**15
contract [1] **73:**2
contrary [1] **84:**3
control [1] **34:**16
controlling [2] **60:**24 **66:**20
convicted [1] **59:**16
Cooperatives [1] **30:**24
copying [1] **20:**8
corners [1] **17:**3
corporate [2] **88:**19,22
corporation [1] **8:**24
Corporations [1] **30:**18
correct [9] **8:**19 **37:**18 **38:**21 **70:**4,9 **80:**9 **84:**5 **88:**10,20
correction [1] **61:**17
cost [1] **37:**23
costs [1] **69:**20
couldn't [1] **36:**16
Counsel [11] **12:**14 **16:**17 **19:**16,19 **52:**9 **54:**4 **59:**11 **72:**10 **87:**10 **91:**20 **94:**16
counter [1] **74:**21
counters [1] **74:**23
countervailing [1] **66:**22
couple [2] **33:**14 **76:**4
course [6] **35:**17 **36:**19 **38:**14 **44:**5 **93:**24 **94:**6
COURT [70] **1:**1,15 **3:**11 **4:**1,17 **5:**8 **7:**19 **12:**11 **13:**15,22 **14:**2 **15:**15 **16:**3,12 **18:**14 **19:**11 **21:**19 **25:**10,19 **26:**12 **29:**15,20 **34:**8 **35:**19,23 **36:**8,19 **39:**9,11,17 **40:**9 **41:**2 **46:**23 **48:**13 **50:**13 **52:**14 **54:**21 **55:**1,6 **56:**16 **57:**2,5 **59:**22 **60:**16,17,19 **66:**24 **67:**25,25 **68:**6,8 **73:**13,14,23 **74:**6 **76:**14 **77:**8 **78:**9 **79:**20,25 **80:**13,15 **81:**12 **83:**24 **84:**7,12 **89:**18,19,24

91:7
Court's [17] **5:**2,14 **6:**7 **14:**5,8 **15:**19 **24:**5 **26:**15,17 **46:**4 **51:**17 **54:**3 **58:**22 **66:**19 **80:**12 **84:**19 **93:**25
courts [6] **4:**18 **36:**10,15 **54:**15 **83:**9 **90:**20
cover [6] **6:**12 **17:**23,25 **41:**20 **47:**19 **92:**23
coverage [5] **41:**23,24 **42:**2,5,7
covered [8] **6:**23 **7:**3,9 **10:**16 **39:**18 **47:**20,24 **67:**17
covers [7] **4:**14 **6:**5,19 **13:**9 **25:**9 **43:**8 **49:**19
craft [2] **55:**4 **84:**8
create [8] **6:**18 **12:**7 **43:**2 **52:**23 **63:**3 **86:**17,23 **88:**7
created [3] **8:**12 **63:**6 **86:**13
creates [3] **4:**3 **50:**24 **53:**19
creating [2] **44:**11 **86:**8
creation [2] **43:**16 **48:**21
Credit [11] **3:**15 **17:**4 **41:**21,22 **42:**4 **52:**15 **53:**25 **69:**2 **76:**10 **86:**16,25
creditor [1] **86:**21
creditors [1] **86:**19
criminal [26] **5:**9 **18:**17 **19:**5 **20:**5,21,25 **32:**15 **59:**14,24 **60:**1,11,25,25 **62:**9,17 **64:**4 **67:**6 **88:**9,14 **89:**17 **90:**1,4,23,25 **93:**8,17
criminally [3] **28:**14 **60:**6,7
critical [1] **58:**8
crystal-clear [1] **21:**4
current [1] **55:**6
currently [1] **77:**10
cuts [1] **47:**13

D

D.C [6] **1:**11,20,22 **60:**20 **83:**17,20
damages [15] **3:**17 **38:**6,13,19 **53:**18 **62:**18 **68:**16,20,25 **73:**24 **87:**6 **91:**4,5,9,11
days [1] **26:**4
deal [7] **13:**12,22,25 **87:**18 **88:**1 **89:**4,18
deals [1] **87:**19
debatable [1] **63:**8
debt [1] **17:**5
debts [1] **17:**1
decide [1] **94:**9
decided [4] **15:**15 **76:**5,10 **78:**17
deciding [1] **34:**16
decision [13] **5:**2 **6:**7,8 **14:**6,8 **15:**19 **24:**6 **44:**21 **51:**18 **60:**21 **67:**14 **79:**13 **92:**14
decisions [2] **78:**1 **93:**25
decisis [1] **76:**12
defendant [4] **7:**2 **49:**20,21

59:20

defendants [11] **4**:4,21 **6:**
20,23 **7**:9,25 **12**:8 **25**:10
33:10 **50**:25 **51**:1

defense [9] **4**:10,15,25 **5**:5
7:5,11 **25**:13 **29**:19 **50**:15

defenses [9] **6**:23 **12**:9 **49:**
22 **50**:10 **63**:22 **64**:3 **93**:7,
15,17

define [1] **43**:6

defined [23] **5**:3 **9**:5,18 **10:**
6,22 **11**:17 **14**:4,22 **19**:13,
14 **27**:11 **30**:1 **31**:6,8,21,23,
24 **46**:12 **63**:17 **64**:24 **65**:1
66:3 **86**:21

defines [3] **5**:17 **52**:18 **65**:4

defining [1] **68**:7

definitely [1] **85**:22

definition [58] **4**:11 **7**:17,
20 **8**:16,23 **9**:6,20 **10**:13
12:3,22,23 **13**:14,18 **14**:14
15:16 **18**:14 **19**:6,10 **24**:3,
12 **27**:15 **29**:25 **30**:2,10,13
32:1,3 **44**:24 **45**:5 **47**:20
51:7 **52**:20,21 **58**:16 **60**:24
61:19 **62**:3 **63**:14,16 **64**:20
65:7,13,16 **66**:20,25 **68**:6
72:9 **75**:6 **76**:2 **81**:4 **82**:5,6,
25 **84**:16 **90**:23,25 **92**:18,
21

definitional [5] **18**:22 **55:**
17 **56**:4 **79**:21 **81**:21

definitions [9] **10**:6,7 **13:**
21 **18**:24,25 **45**:24 **46**:1 **80:**
11 **81**:16

delinquencies [1] **17**:2

depart [1] **66**:19

DEPARTMENT [3] **1**:3,20
3:4

derogations [1] **32**:21

describe [1] **53**:6

description [1] **26**:5

design [1] **72**:20

designed [2] **62**:11 **71**:24

determine [1] **50**:11

detour [1] **28**:13

developed [2] **34**:8 **39**:2

DEVELOPMENT [2] **1**:4 **3:**
5

Dictionary [2] **45**:3,5

difference [3] **8**:21 **13**:22,
25

differences [1] **77**:20

different [32] **7**:14 **9**:3 **24:**
14,20 **25**:24,24 **27**:4,20 **35:**
5 **46**:14 **49**:3 **53**:11 **58**:21
61:9,15 **71**:8 **74**:1,3,7 **75:**
12 **76**:2 **77**:7,13 **78**:10,22,
23 **79**:4,10 **81**:24 **87**:22 **91:**
2,8

differently [2] **80**:10 **88**:25

difficult [1] **22**:19

directly [2] **3**:24 **8**:4

disagree [2] **26**:2 **77**:4

discern [1] **56**:7

discerns [1] **55**:6

discover [1] **10**:8

discrete [1] **59**:3

discuss [1] **72**:8

discussed [1] **8**:14

discussing [1] **54**:24

discussion [1] **54**:5

displace [1] **4**:25

dispositive [1] **80**:12

dispute [1] **71**:22

disregard [5] **76**:7 **77**:3,4,
16 **78**:5

disregarding [1] **60**:23

dissent [6] **26**:14 **55**:18,19
83:6 **93**:21 **94**:2

dissenters [1] **26**:14

dissimilar [1] **45**:18

distinct [6] **6**:13 **25**:14,16
39:23 **43**:17 **50**:16

distinction [1] **94**:3

distinctions [1] **39**:15

distinguish [1] **93**:19

distinguishes [1] **51**:22

doing [12] **10**:14 **32**:10,12,
18,22 **47**:14 **50**:10 **53**:4 **69:**
13 **70**:2,13 **75**:8

dollars [1] **38**:8

domestic [1] **60**:4

done [9] **10**:2,5,8 **33**:2 **39:**
24 **40**:2,8 **51**:25 **52**:1

doorknob [1] **67**:15

doubt [2] **21**:9 **84**:23

down [2] **38**:19 **89**:21

draw [3] **56**:3 **82**:22 **94**:4

drawing [2] **39**:15 **50**:21

Drinking [1] **20**:2

du [2] **9**:12 **84**:20

duties [6] **46**:2 **53**:8,12 **71:**
6 **86**:3 **90**:6

E

each [3] **28**:25 **54**:21 **62**:3

earlier [4] **40**:13 **44**:22 **62:**
23 **88**:12

easier [1] **60**:19

echoes [1] **55**:18

effect [4] **4**:11 **34**:22,24 **51:**
13

effectively [3] **4**:22 **29**:17
41:3

either [5] **25**:17 **40**:2,9 **51**:6
80:25

Eleventh [1] **34**:9

eliminate [3] **4**:5 **5**:4 **44**:17

else's [1] **34**:13

elsewhere [5] **5**:3 **9**:18 **11:**
16 **21**:1 **90**:16

embodied [1] **72**:20

emitted [2] **14**:11,13

emphasis [1] **3**:21

empirical [1] **54**:14

Employ [1] **47**:14

employed [1] **42**:17

employee [1] **81**:8

Employees [65] **5**:2 **19**:9
25:11,18,23 **26**:3,13,16 **38:**
23 **39**:4,11,12,14 **40**:9,14,
21 **41**:11 **42**:13 **43**:4,10,24
45:17,22 **47**:3,4,14 **51**:21
54:5,13,20,23 **55**:3,10,14,
16 **56**:6,18,23 **57**:1 **58**:7,9,
14,19 **76**:4,5,9 **77**:8 **79**:10,
13,15,23,25 **81**:3,11,22 **82:**
20 **83**:11 **85**:7,8,24 **87**:4
93:19,21 **94**:4,11

employers [7] **46**:5 **47**:16,
17,21,25 **55**:16 **81**:8

enacted [4] **61**:8,18 **62**:23
87:1

enactment [1] **36**:17

enforce [4] **58**:10,14 **62**:12
79:11

enforceable [1] **94**:7

enforcement [10] **53**:9,11
58:18 **61**:21,22 **62**:11,19
69:4,21 **94**:5

engaged [1] **50**:7

engaging [1] **93**:22

enhanced [1] **62**:2

enough [10] **5**:4 **12**:4 **34**:4
38:16 **41**:11 **49**:15 **52**:25
55:17 **56**:4 **79**:23

ensure [2] **71**:16,19

ensures [1] **42**:3

enterprise [1] **8**:25

enterprises [1] **10**:10

entire [6] **15**:16 **16**:4,6 **18:**
25 **32**:1,2

entirely [2] **26**:16 **87**:22

entirety [2] **63**:25 **64**:25

entities [14] **7**:23 **9**:3 **10**:22
31:3 **40**:17 **41**:20 **46**:11 **51:**
4 **59**:25 **63**:17 **72**:8 **82**:13
88:22 **92**:12

entity [2] **34**:14 **88**:19

EPA [1] **14**:11

Equal [2] **69**:2 **86**:25

equivalent [1] **52**:20

era [2] **55**:2 **82**:21

especially [2] **73**:24 **74**:17

ESQ [3] **2**:3,6,9

ESQUIRE [1] **1**:22

essentially [2] **16**:2 **61**:10

establish [1] **48**:13

established [1] **36**:7

establishing [1] **56**:2

Estates [1] **30**:22

estimate [1] **38**:1

et [4] **5**:18 **9**:1,1 **82**:11

evaluating [1] **35**:20

Even [36] **5**:8 **6**:10 **8**:4 **13**:7
16:12 **18**:14 **21**:19 **24**:12

25:8 **34**:3,4 **37**:6 **39**:13 **41:**
7,25 **49**:10 **54**:22 **56**:13,15
58:13 **63**:8 **64**:5,10,14 **68:**
18 **72**:2,3,21 **83**:13,18 **84:**
12 **85**:23 **86**:20 **90**:18,18
94:12

event [1] **5**:6

eventually [1] **11**:24

everyone [1] **10**:16

everywhere [2] **19**:11 **65**:5

evidence [1] **54**:14

exact [1] **57**:3

exactly [12] **13**:10 **20**:16 **21:**
17 **24**:16 **34**:22 **38**:8 **43**:23
47:24 **74**:19 **75**:10 **83**:6 **93:**
23

example [11] **7**:2 **9**:13 **21**:6
27:16 **41**:14 **65**:12 **66**:23
72:21 **75**:5 **84**:15 **86**:8

examples [1] **18**:6

except [2] **32**:1,3

exceptions [1] **87**:1

excluded [1] **55**:21

executive [1] **69**:20

exempt [1] **93**:9

exemption [5] **22**:20,24 **23:**
1 **86**:13 **88**:8

exemptions [3] **86**:8,9,17

exercise [2] **35**:7 **50**:7

exist [1] **93**:7

existence [1] **20**:17

exists [2] **46**:24 **47**:1

expand [4] **11**:6,19 **46**:17
73:2

expanded [2] **11**:10,14

expanding [3] **46**:5,9 **63:**
15

explicit [2] **51**:3 **81**:20

explicitly [2] **5**:25 **22**:13

express [3] **9**:13 **48**:7 **62:**
22

expressed [1] **65**:13

expressly [9] **3**:20 **23**:11
29:16 **40**:3 **42**:24 **51**:1 **52:**
18 **53**:23 **55**:22

extend [5] **61**:22 **67**:6 **75:**
17,21 **85**:18

extends [2] **59**:25 **86**:19

extent [2] **45**:22 **67**:3

extraordinary [1] **35**:8

F

face [1] **85**:24

facilities [2] **14**:10,13

fact [10] **7**:8 **20**:11 **28**:3 **33:**
9 **43**:25 **49**:18 **66**:18 **86**:1
91:9 **93**:12

failing [2] **60**:7 **71**:5

fails [1] **52**:17

Fair [5] **3**:15 **52**:15 **76**:10
78:6,6

fairly [2] **75**:24 **82**:18

faithfully [1] **73**:4

falls [1] **8**:6

false [1] **16**:25

falsely [1] **17**:5

familiar [1] **69**:24

far [4] **5**:6 **13**:8 **59**:23 **67**:6

favors [1] **68**:3

FBI [4] **22**:10,12,13,21

FC [1] **62**:7

FCRA [18] **3**:23 **7**:4 **16**:25
27:10 **49**:24 **53**:5 **54**:1,17
59:20 **62**:7,14 **71**:6 **75**:16
86:6 **90**:6 **92**:23 **94**:7,11

FCRA's [9] **3**:16 **5**:9 **52**:17,
21,22 **53**:7,8,12,24

FCRA-specific [2] **74**:25
75:13

federal [22] **5**:11 **22**:8 **23:**
11 **34**:16 **44**:7,7,13 **48**:8
52:24 **53**:2 **58**:5,8,10,13,20
59:9,23,24 **62**:19 **71**:10 **72:**
23 **73**:1

Federalist [1] **36**:5

few [4] **13**:17 **44**:21 **59**:3 **92:**
3

fight [1] **57**:14

fighting [1] **35**:4

figured [1] **24**:12

finally [2] **27**:9 **93**:18

Financial [3] **12**:12 **29**:14
51:18

find [3] **10**:25 **42**:25 **57**:2

finds [1] **91**:7

fine [7] **20**:7,12 **21**:11 **27**:24
50:21 **82**:8,15

finish [2] **23**:14 **33**:4

First [17] **4**:8 **13**:13 **15**:18
17:20 **25**:2,5,7,7 **34**:6,21
36:5 **39**:8 **46**:22 **72**:15 **75:**
1 **76**:4 **92**:5

fisc [4] **32**:19 **34**:16 **72**:23
73:1

fit [1] **61**:14

fits [1] **61**:13

five [3] **7**:4 **49**:25 **54**:15

Flambeau [2] **9**:13 **84**:20

FLSA [5] **56**:9 **57**:4 **58**:11
76:12 **79**:11

focus [3] **64**:17 **73**:21 **93:**
25

focused [3] **48**:1,4 **92**:25

focusing [1] **93**:23

foil [1] **67**:24

follow [7] **8**:18 **42**:18 **60**:20
73:3 **77**:8,22 **93**:25

followed [1] **4**:17

following [1] **3**:22

force [1] **54**:15

foreclose [1] **81**:15

foreign [4] **34**:24 **35**:6 **60**:2
72:18

forth [4] **23**:1 **68**:17 **74**:17
84:2

fortiori [1] **56**:19	19 **82**:25 **86**:3,5 **90**:19	**implication** [16] **10**:1,4 **33**: 8,11 **41**:9 **48**:11,13,15,17, 20,20 **49**:15 **50**:19,21,22 **52**:6	8 **43**:2 **46**:17 **47**:24 **54**:2 **67**:5 **76**:1	**Justice** [271] **1**:20 **3**:3,10 **5**: 15,24 **6**:4 **7**:15 **8**:1,6,20 **9**:

fortiori [1] **56**:19
found [4] **16**:3 **40**:10 **67**:25 **68**:1
founding [1] **36**:6
four [1] **32**:4
fours [1] **94**:11
Fourteenth [2] **59**:5,7
friend [3] **21**:1 **92**:15 **93**:18
frolic [1] **28**:13
front [1] **6**:6
FTC [3] **68**:25 **94**:5,8
function [1] **84**:11
fundamentally [1] **4**:8
funnel [1] **71**:15
furnish [2] **41**:21 **75**:22
furnisher [2] **71**:4 **75**:21
furnishers [2] **53**:14 **58**:15
further [1] **58**:12

G

game [2] **78**:6,6
Gas [4] **79**:17,20 **80**:8 **81**: 23
gases [2] **14**:14,15
gave [1] **44**:25
General [6] **1**:20 **5**:3 **6**:19 **27**:15 **43**:6,7
generally [2] **35**:9 **53**:18
gets [2] **72**:3 **84**:23
getting [3] **15**:4 **28**:22 **44**: 24
give [5] **41**:13 **44**:2 **84**:24 **87**:15 **91**:23
given [2] **22**:24 **84**:21
gives [2] **52**:5 **72**:25
GORSUCH [30] **12**:14,17 **13**:2,12,24 **14**:16,23 **15**:3,6, 8,12 **16**:8,9,15,19 **17**:14,19 **33**:24 **34**:21 **35**:3,21,25 **36**: 4,23 **64**:13 **71**:8 **72**:10 **73**: 8,18 **90**:8
got [3] **16**:23 **43**:5 **78**:12
government [77] **5**:18,21 **8**: 9 **11**:17,20,24 **15**:24 **17**:2 **21**:10 **24**:17 **25**:12 **31**:5 **32**: 2,4 **41**:24,24 **42**:3,3,5,7 **44**: 14 **46**:6,13 **48**:8,9,22,24 **49**: 5,11,13 **51**:5,7,8,12,13 **52**: 19 **54**:6,9,20 **58**:9,10,13 **62**: 24 **63**:1,5,9 **64**:2,17 **68**:4,8 **71**:3 **72**:3 **73**:23 **75**:9 **79**: 11 **81**:7 **84**:22 **85**:19 **86**:11, 18,21,24 **87**:2,7,15,21 **88**:1, 2,3,7,13,23 **90**:14,16 **91**:10 **92**:23 **93**:9
government's [7] **35**:6 **53**: 24 **54**:23 **58**:11 **64**:8 **82**:24 **86**:7
governmental [10] **5**:18 **7**: 23 **9**:17,18 **32**:4 **53**:13 **58**: 15 **59**:25 **72**:8 **88**:9
governments [10] **10**:10 **31**:4 **45**:25 **58**:14 **64**:10 **72**:

19 **82**:25 **86**:3,5 **90**:19
grapples [1] **81**:3
grasp [1] **28**:22
great [2] **13**:22,24
greenhouse [2] **14**:13,15
group [1] **63**:17
guess [7] **14**:17 **19**:7 **34**:5 **45**:16 **48**:6 **67**:10 **72**:10

H

haled [1] **36**:8
Halk [1] **60**:1
hand [1] **51**:21
handling [1] **69**:22
happened [3] **45**:22 **47**:3 **83**:18
happening [2] **64**:7,14
hear [2] **3**:3 **48**:6
heard [1] **71**:11
heel [1] **39**:21
held [2] **38**:3 **59**:23
help [1] **64**:12
history [11] **27**:1 **45**:19 **56**: 7,13 **70**:22,25 **80**:24 **85**:3,9, 14,19
hold [4] **40**:24 **58**:25 **71**:3 **82**:19
holding [4] **42**:14,19,21 **73**: 23
hoping [1] **45**:19
host [1] **46**:1
HOUSING [2] **1**:4 **3**:5
However [1] **89**:24
hypothesis [2] **6**:19 **7**:9
hypothetical [4] **66**:13,17 **77**:21 **79**:2

I

idea [4] **14**:3 **26**:3,23 **29**:2
identical [2] **20**:6 **21**:7
identically [1] **21**:12
identified [1] **35**:24
identify [1] **82**:24
illogical [1] **23**:4
imagine [1] **82**:9
immunity [91] **3**:14,21,24 **4**: 6,9,10,15,19,23 **5**:5,16,20 **6**:2,14 **7**:11 **8**:2,5,11,11 **9**: 14,16,21 **11**:1 **12**:5 **15**:25, 25 **20**:11,13,19 **23**:5 **24**:11, 20 **25**:13,20 **26**:18 **29**:19, 21 **32**:19,21 **33**:1,7 **34**:4,10, 13 **35**:2,6,15 **36**:18 **39**:22 **40**:3,25 **41**:4,9 **42**:24 **43**:9, 18 **44**:4,9,17 **48**:19 **50**:5,12, 16,24 **51**:14 **52**:25 **54**:10, 12,18 **56**:14 **58**:23,24 **59**:4, 9,10 **65**:24 **66**:9 **68**:3,21 **70**:24 **71**:10,25 **72**:2,7,16 **74**:12,15 **80**:2,22 **92**:10 **93**: 1
implausible [3] **65**:2 **67**:20 **75**:25

implication [16] **10**:1,4 **33**: 8,11 **41**:9 **48**:11,13,15,17, 20,20 **49**:15 **50**:19,21,22 **52**:6
implications [1] **42**:23
implicit [2] **6**:21 **66**:9
implicitly [1] **4**:5
implied [1] **76**:15
imply [1] **88**:18
implying [1] **85**:17
important [6] **32**:19 **69**:25 **71**:9 **72**:17 **78**:1 **79**:12
impose [1] **4**:12
imposed [3] **86**:3,22 **87**:6
imposes [1] **52**:15
imposing [2] **63**:1 **69**:15
imprisonment [4] **20**:7,12 **21**:11 **88**:15
improbability [1] **68**:14
improbable [4] **67**:5 **68**:19, 21,24
improbably [2] **68**:6,7
inadvertence [1] **74**:14
inadvertent [1] **74**:19
include [25] **5**:10 **11**:17,19, 23 **20**:4 **27**:8,11 **30**:13,15 **45**:25 **46**:6,11,13 **52**:19 **53**: 2 **68**:8 **84**:16 **87**:15,21 **88**: 3 **90**:14,16,18,19 **93**:13
included [2] **14**:15 **88**:13
includes [6] **30**:14,17 **49**: 11 **88**:6 **91**:3 **94**:10
including [3] **27**:17 **52**:3 **89**:6
inconceivable [2] **16**:22 **17**:11
incongruity [1] **23**:5
incongruous [4] **19**:25 **21**: 15 **24**:18 **29**:2
inconsistent [7] **4**:8 **8**:10 **16**:3,6 **35**:10 **55**:10 **81**:12
Indian [2] **34**:24 **84**:16
indicate [1] **86**:14
indicated [1] **57**:2
indicating [1] **54**:1
individual [1] **5**:17
individuals [2] **30**:13,14
infer [4] **4**:18 **29**:20 **41**:4 **90**: 22
information [4] **11**:14 **41**: 22 **71**:4 **75**:22
informed [1] **45**:6
inherent [1] **72**:19
inherently [2] **84**:9,10
Instead [5] **3**:25 **8**:22 **29**:8 **73**:4 **77**:9
institutions [1] **72**:18
instructions [1] **73**:3
insufficient [1] **12**:23
intend [3] **4**:5 **21**:16 **39**:20
intended [13] **6**:22 **11**:23 **12**:4 **29**:21 **39**:21 **40**:1 **41**:

8 **43**:2 **46**:17 **47**:24 **54**:2 **67**:5 **76**:1
intending [2] **9**:16 **44**:16
intends [1] **50**:23
intent [8] **4**:24 **47**:7 **53**:3 **55**: 5,7 **57**:8 **81**:14,17
intention [2] **11**:19 **85**:17
interact [1] **62**:6
interest [1] **71**:25
interests [1] **86**:7
intergovernmental [1] **69**: 7
interpret [6] **5**:12 **36**:11 **78**: 18 **80**:22 **84**:13,22
interpretation [26] **9**:5 **37**: 4,7,8 **41**:6 **59**:13 **61**:14,15 **62**:21 **67**:7,16,16 **74**:5,6,7, 24 **75**:3 **76**:8,16 **77**:5,17,22 **78**:2 **80**:6,17,19
interpreting [2] **29**:24 **53**: 10
interrupt [2] **12**:17 **68**:12
interrupted [1] **58**:1
involved [2] **14**:9 **76**:24
isn't [11] **5**:4 **6**:1 **11**:4 **12**:3 **14**:18 **19**:3 **46**:15 **47**:8 **49**: 14 **66**:8 **73**:18
issue [7] **5**:19 **19**:15 **54**:16 **58**:20 **64**:15 **76**:6 **83**:10
issues [1] **25**:25
itself [16] **4**:22 **24**:23 **27**:1 **28**:15 **29**:9,10 **33**:11 **34**:12, 16 **35**:16,16 **40**:18 **59**:22 **70**:7 **81**:20 **92**:13

J

JACKSON [29] **10**:19 **11**:4, 9 **18**:21 **32**:8 **45**:15,16 **47**: 2 **48**:3,16 **49**:2,6,9,14,17 **50**:2,18 **51**:2,15 **52**:4,7 **63**: 11,13 **64**:21 **82**:3 **85**:2 **87**: 8 **91**:17,18
jail [1] **88**:19
jailed [1] **88**:2
jailing [2] **88**:14,18
JOSHI [76] **1**:22 **2**:6 **52**:10, 11,13 **54**:13 **56**:6,17,21,25 **57**:13,18,21,25 **58**:3,6 **59**: 19 **60**:15 **61**:17 **62**:2,14 **63**: 7,12 **64**:16 **65**:11 **66**:12,18 **67**:23 **68**:18 **69**:2,10 **70**:6, 10,14,17,21 **71**:23 **73**:5,12, 22 **74**:23 **76**:9,20,22 **77**:1,6, 18 **78**:7,13,19,25 **79**:6,9 **80**: 5 **81**:2,10 **82**:18 **83**:4,8,13, 15,19,23 **84**:6 **85**:21 **87**:18 **88**:5,16,21 **89**:3,11,14,24 **90**:17 **91**:5,21
Judge [4] **60**:20,21 **61**:11, 12
judicial [1] **69**:21
jump [1] **23**:24
jurisprudence [1] **84**:4

Justice [271] **1**:20 **3**:3,10 **5**: 15,24 **6**:4 **7**:15 **8**:1,6,20 **9**: 9 **10**:3,11,19 **11**:4,9 **12**:14, 16,17 **13**:2,5,12,15,24 **14**: 16,23 **15**:3,6,8,11,12,14,20, 22 **16**:8,9,15,19 **17**:13,19 **18**:5,9,21 **19**:16,19,20,21, 22,23 **20**:15,23 **21**:5,18,21, 24 **22**:10,15,18 **23**:7,12,14, 18,20,22,25 **24**:7 **25**:1,15, 22 **26**:1,7,12,20 **27**:19,22, 23 **28**:1,3,5,6,6,9,10,12,17, 21 **29**:22 **30**:12,15,18,20, 22,24 **31**:1,3,5,17,25 **32**:8, 9,17,25 **33**:5,13,16,18,19, 21,21,23,24 **34**:21 **35**:3,21, 25 **36**:4,23,24,24 **37**:1,12, 19,22 **38**:1,12,18,22 **39**:5 **40**:12,13 **41**:13,17,23 **42**: 10,11,11,13 **43**:10,19 **44**:3, 23,25 **45**:12,14,14,16 **47**:2 **48**:3,16 **49**:2,6,9,14,17 **50**: 2,18 **51**:2,15 **52**:4,7,8,13 **54**:4 **55**:12,19,23 **56**:10,19, 22 **57**:10,15,19,24 **58**:1,2,4 **59**:11 **60**:9 **61**:2,3,4 **62**:1, 13,15 **63**:11,13 **64**:13,21 **65**:17,19,21,22 **66**:16 **67**:9 **68**:11,23 **69**:9,11 **70**:9,11, 16,19 **71**:7,8 **72**:10,14 **73**:8, 10,16,18,20 **74**:9 **76**:3,18, 21,24 **77**:2,11,25 **78**:11,15, 21 **79**:3,7,14 **80**:18 **81**:6,18 **82**:3 **83**:3,5,12,14,16,21 **84**: 1 **85**:2 **87**:8,9,11,12,13,23, 23,25 **88**:10,17,24 **89**:10, 12,23 **90**:7,7,8,9,10,12 **91**: 3,12,13,13,15,16,16,18,19, 22 **92**:5,5 **93**:19 **94**:15
Justice's [1] **62**:16
justices [1] **79**:18
justifications [2] **35**:14,24

K

KAGAN [42] **7**:15 **8**:1,6,20 **9**:9 **10**:3,12 **13**:15 **15**:11, 14,20,22 **27**:19 **28**:1,3,6,10 **29**:22 **30**:12,15,18,20,22, 24 **31**:1,3,5,17,25 **32**:25 **33**: 18 **44**:25 **61**:2,4 **62**:1 **74**:9 **78**:11,15,21 **90**:7 **92**:5,6
Kagan's [1] **40**:13
Katsas [2] **60**:20 **61**:12
KAVANAUGH [67] **12**:16 **13**:5 **18**:5,9 **19**:16,20,22 **32**:9,17 **33**:19 **36**:25 **37**:1, 12,19,22 **38**:1,12,18,22 **40**: 12 **41**:13,17,23 **42**:10 **55**: 12 **56**:10,19,22 **57**:10,15, 19,24 **58**:1,4 **61**:3 **62**:13,15 **65**:17,21 **69**:9,11 **70**:9,11, 16,19 **71**:7 **72**:15 **73**:10,16, 20 **79**:3,7,14 **80**:18 **81**:6,18

83:3,5,12,14,16,21 **90:**9,10 **91:**3,12 **93:**20 **keep** [3] **22:**25 **69:**9 **86:**4 **Kimel** [7] **24:**8,9,16,22 **40:**15,23 **51:**20 **kind** [4] **34:**6 **45:**1 **46:**16 **85:**17 **kinds** [1] **61:**9 **KIRTZ** [2] **1:**7 **3:**6 **knows** [2] **69:**24 **86:**17 **Krause** [2] **60:**22 **61:**11 **L** **Lac** [2] **9:**12 **84:**19 **land** [1] **48:**20 **language** [11] **4:**22 **7:**12 **24:**23 **29:**18,23 **30:**4 **59:**8 **67:**22 **80:**10 **84:**8 **89:**20 **last** [7] **8:**14 **9:**12 **31:**9 **44:**23 **58:**6 **59:**25 **90:**10 **late** [1] **80:**7 **later** [1] **87:**2 **Laughter** [9] **15:**13 **18:**11 **22:**5 **23:**21 **28:**8,20 **33:**20 **59:**18 **78:**14 **law** [2] **12:**10 **60:**2 **layers** [1] **24:**9 **lead** [1] **43:**8 **leads** [1] **60:**11 **least** [3] **20:**3 **56:**24 **83:**17 **legal** [1] **45:**6 **legislated** [1] **43:**12 **legislates** [1] **36:**22 **legislation** [1] **70:**13 **legislative** [6] **27:**1 **56:**7,13 **70:**22,25 **84:**8 **Lending** [2] **86:**18 **88:**8 **less** [2] **35:**13 **66:**4 **liabilities** [1] **46:**3 **liability** [45] **4:**13 **8:**17 **11:**6, 10,14,19 **23:**2,10 **32:**14,16 **38:**10 **46:**7,7,9,10,18 **47:**9, 16 **48:**4 **52:**16,22 **53:**16,24 **59:**24 **61:**9,20 **62:**10 **63:**1 **64:**5 **67:**6 **69:**7,15,17 **75:**17 **86:**19,22 **87:**19 **88:**9 **89:**8 **90:**1,5 **93:**2,9,15,17 **liable** [7] **3:**17 **22:**25 **60:**7,7 **71:**3 **73:**23 **75:**9 **license** [1] **73:**2 **lift** [2] **25:**16,20 **lifted** [1] **25:**12 **lifting** [1] **39:**21 **light** [2] **36:**15 **45:**18 **lightly** [1] **80:**21 **likes** [1] **15:**24 **limitation** [1] **54:**2 **limitations** [2] **7:**5 **67:**11 **limited** [2] **53:**23 **67:**8 **limitless** [1] **71:**18 **line** [14] **8:**7,13 **38:**19 **40:**14, 16 **56:**3 **81:**18,19,25 **82:**4, 15,19,21 **89:**22	**lines** [1] **50:**22 **list** [3] **82:**12,12 **84:**15 **listed** [1] **31:**9 **literal** [3] **3:**22 **39:**18 **67:**16 **litigants** [1] **78:**8 **little** [1] **72:**11 **logical** [2] **10:**1,4 **logically** [2] **33:**9 **50:**22 **Long** [1] **28:**1 **look** [9] **46:**24,25 **47:**12 **51:**23 **55:**7 **59:**17 **69:**15 **74:**16 **85:**5 **looked** [2] **43:**4 **66:**24 **looking** [4] **39:**13 **55:**13 **56:**7 **64:**19 **looks** [3] **66:**20 **75:**3,11 **looser** [3] **56:**14,15 **80:**1 **lose** [2] **37:**23 **43:**21 **lost** [1] **76:**22 **lot** [9] **8:**23,23,23 **9:**3 **25:**24 **38:**25 **77:**20,25 **93:**20 **M** **made** [5] **9:**14 **29:**4 **31:**15 **63:**10 **92:**14 **magic** [7] **24:**11,15 **35:**14, 18 **57:**6,7 **84:**5 **majority** [4] **55:**24 **56:**1 **93:**22 **94:**1 **Management** [3] **12:**13 **29:**15 **51:**18 **many** [2] **36:**20 **72:**16 **matter** [4] **1:**14 **4:**15 **59:**19 **74:**3 **matters** [1] **29:**7 **mean** [60] **7:**16 **8:**6 **9:**23,25 **11:**5 **15:**23 **17:**21 **18:**22 **21:**17,22 **25:**3 **26:**2,11 **28:**17 **29:**2 **30:**7,7 **31:**6,16 **32:**10 **33:**25 **37:**3 **38:**24 **39:**8 **42:**4,21 **43:**13 **44:**5 **45:**1,4,21 **46:**24 **50:**3 **53:**10 **56:**11 **60:**16 **61:**5 **63:**22,23 **65:**14 **66:**3 **68:**2,15,16 **70:**10 **72:**11 **73:**5 **75:**4,14 **78:**15,20 **82:**4,8,14 **83:**8 **84:**6,17 **85:**4 **89:**14 **90:**16 **meaning** [17] **9:**7,8,10 **14:**22 **19:**14,18 **31:**20,22,24 **32:**7,11 **34:**23 **57:**17,22 **68:**10 **84:**25 **85:**5 **means** [9] **20:**12 **21:**17 **30:**9 **33:**11 **66:**4,14 **82:**12 **93:**5,6 **meant** [3] **9:**3 **18:**19 **40:**5 **mechanism** [1] **69:**5 **mechanisms** [1] **53:**9 **meet** [1] **81:**5 **member** [1] **43:**3 **members** [2] **41:**8 **43:**14 **mention** [3] **48:**7,19 **69:**17 **mentioned** [5] **38:**23 **71:**11 **75:**14 **81:**23 **88:**11	**mentions** [2] **80:**20,21 **mere** [1] **5:**3 **method** [7] **76:**8 **77:**5,16,22 **78:**2 **80:**16,18 **methodology** [7] **42:**14,17, 18 **43:**12 **47:**6 **79:**5,7 **methods** [1] **76:**16 **Meyer** [1] **50:**14 **middle** [1] **36:**14 **might** [12] **12:**21 **16:**24 **22:**22 **47:**22 **56:**13 **60:**23 **72:**24 **76:**12 **80:**15 **81:**25 **93:**13,17 **millions** [1] **38:**7 **mind** [1] **86:**5 **minutes** [2] **33:**14 **91:**23 **misread** [1] **79:**1 **misunderstood** [1] **79:**2 **modern** [5] **26:**17,18 **55:**2, 5 **82:**21 **moment** [1] **6:**16 **Monday** [2] **1:**12 **28:**18 **money** [6] **3:**17 **37:**14 **71:**13,15,17,18 **monopolize** [1] **26:**9 **months** [3] **26:**23 **44:**21 **62:**23 **Moreover** [1] **53:**15 **morning** [2] **3:**4 **28:**19 **most** [1] **45:**7 **Mowrer** [1] **60:**21 **MPRSA** [1] **51:**24 **much** [6] **29:**4 **37:**22 **54:**5 **66:**4 **69:**19 **80:**1 **must** [9] **4:**4 **6:**22 **12:**4 **18:**19 **29:**21 **41:**10 **42:**18 **43:**1 **72:**7 **N** **names** [1] **51:**1 **naming** [1] **51:**4 **NANDAN** [3] **1:**22 **2:**6 **52:**11 **narrower** [4] **4:**18 **11:**11 **14:**22 **18:**19 **narrowly** [1] **14:**24 **nation** [1] **60:**14 **national** [2] **86:**9,12 **nations** [1] **34:**25 **natural** [2] **10:**9 **53:**21 **nature** [2] **4:**9 **12:**18 **near** [1] **15:**23 **nearby** [2] **5:**12 **45:**11 **nearly** [1] **20:**6 **necessarily** [3] **6:**21 **35:**1 **37:**4 **necessary** [4] **10:**1,4 **41:**9 **54:**9 **need** [7] **37:**11 **46:**18 **72:**12 **84:**2,4 **91:**2,2 **needs** [2] **34:**2 **82:**23 **negate** [5] **7:**6,11 **8:**11 **29:**17,22	**negated** [2] **4:**23 **41:**3 **negates** [1] **30:**3 **negligent** [2] **25:**3,4 **negligently** [1] **52:**16 **never** [3] **4:**15 **20:**17 **80:**4 **new** [1] **77:**24 **next** [4] **24:**1 **75:**19,20 **82:**6 **nine** [1] **79:**18 **non-sovereign** [3] **4:**4 **6:**20 **25:**9 **none** [1] **83:**9 **nonexistent** [1] **82:**15 **normal** [1] **29:**23 **nothing** [9] **3:**23 **5:**1 **6:**21 **33:**3,6 **68:**7 **80:**23 **81:**2 **93:**2 **notwithstanding** [1] **64:**23 **November** [1] **1:**12 **nowhere** [1] **15:**23 **number** [4] **27:**10 **35:**24 **68:**22 **89:**4 **O** **obligations** [1] **75:**21 **observation** [1] **64:**8 **obtain** [1] **42:**4 **obtaining** [1] **68:**20 **occur** [1] **48:**17 **occurred** [1] **26:**22 **occurring** [1] **65:**10 **Office** [1] **69:**16 **Okay** [16] **8:**20 **22:**23 **27:**23 **32:**8 **36:**4 **37:**12,19,22 **38:**22 **43:**19 **49:**2,9 **57:**24 **62:**1 **69:**11 **77:**11 **old** [3] **25:**23 **26:**4 **39:**6 **once** [1] **83:**8 **one** [55] **10:**13 **12:**20,21,21 **20:**6,16 **21:**2,8 **22:**11,12,18 **26:**13 **28:**23,23 **31:**21,23, 24 **32:**3 **33:**24 **35:**5 **39:**2 **40:**2,14 **41:**14 **42:**6 **49:**20, 22 **51:**21 **54:**21,21 **57:**22 **58:**13 **60:**15 **61:**14,17 **63:**7 **66:**5 **67:**15 **70:**23 **71:**25 **72:**5 **73:**8,14 **74:**4,24,24 **75:**1 **78:**3 **83:**2,17 **87:**3 **88:**13 **92:**6,11 **94:**3 **one-off** [1] **79:**15 **ones** [1] **89:**6 **only** [25] **4:**11,20 **7:**21,21 **11:**2,5,12 **23:**8,8 **24:**24 **29:**11 **33:**8 **36:**12,18 **42:**25 **48:**5 **50:**25 **51:**11,19 **63:**7 **65:**20,24 **66:**7 **74:**4 **83:**24 **open** [1] **78:**8 **opening** [2] **35:**16 **75:**15 **operating** [1] **48:**20 **operative** [1] **65:**6 **opinion** [6] **26:**11 **55:**25 **60:**8 **67:**25 **80:**25 **93:**22 **Opportunity** [2] **69:**3 **86:**	25 **oral** [6] **1:**15 **2:**2,5 **3:**8 **52:**11 **83:**20 **order** [3] **10:**25 **42:**8 **57:**23 **ordinarily** [2] **13:**21 **46:**23 **ordinary** [8] **6:**25 **30:**9,11, 12 **32:**7,11 **45:**2 **68:**10 **original** [4] **55:**8 **61:**18 **76:**23 **79:**20 **other** [59] **11:**22 **12:**9 **14:**20, 24 **17:**3,24 **20:**9,22 **21:**14 **22:**3,3 **23:**6 **24:**14 **26:**8,19 **27:**10 **28:**24,25 **30:**5 **31:**3, 20,22,24 **38:**25 **39:**3 **40:**15 **41:**20,20 **42:**21 **46:**11 **47:**13,25 **48:**17 **49:**20 **50:**9 **51:**4,21 **55:**11,23 **58:**3 **63:**5,22 **64:**3 **66:**1,1,2,10 **69:**5,5 **71:**17 **72:**17 **73:**12 **79:**18 **85:**25 **86:**4,15,15 **88:**3 **94:**3 **otherwise** [6] **4:**12 **22:**22 **60:**24 **66:**20 **67:**20 **71:**19 **out** [16] **24:**12 **26:**12,21 **54:**24 **58:**7 **63:**21 **71:**16 **78:**16 **79:**20 **80:**3,14 **82:**12,12 **83:**9 **84:**15 **87:**7 **outcome** [1] **75:**12 **outlier** [1] **79:**16 **outmoded** [2] **76:**8,17 **outside** [2] **22:**25 **67:**11 **over** [5] **26:**14 **27:**22 **34:**16 **73:**1 **78:**20 **override** [2] **57:**12,16 **Oversight** [3] **12:**12 **29:**14 **51:**18 **overstep** [1] **71:**21 **overwhelming** [1] **48:**15 **own** [4] **54:**11 **61:**7 **62:**8,9 **P** **PAGE** [3] **2:**2 **75:**19,25 **pages** [1] **51:**24 **palpable** [1] **46:**4 **parallel** [1] **85:**7 **Parden** [5] **26:**3,13,16 **39:**13 **80:**1 **Parden's** [1] **26:**14 **part** [19] **6:**8 **15:**18 **31:**7 **37:**2,3 **42:**14,19,20 **43:**10 **46:**4 **49:**7 **56:**18 **57:**1 **58:**9 **64:**11 **70:**15 **79:**12 **85:**18 **88:**19 **particular** [8] **14:**7 **39:**25 **49:**19,21 **57:**9 **65:**10 **67:**13 **89:**17 **particularly** [1] **73:**14 **parties** [2] **41:**20 **49:**24 **partnerships** [2] **30:**16,17 **parts** [5] **17:**24 **23:**17 **26:**19 **64:**8 **93:**6 **past** [1] **76:**15 **path** [1] **60:**19 **pay** [2] **17:**6 **39:**4

Official - Subject to Final Review

penalties [2] **62:**2,9	**position** [4] **54:**23 **63:**6 **72:**	**65:**14 **75:**17 **81:**9,20,22 **82:**	**really** [12] **14:**6 **21:**3 **22:**7	**requirements** [3] **3:**16 **52:**
pending [1] **38:**2	25 **94:**6	5,6,7,10 **88:**14 **91:**10 **93:**8	30:6 **55:**13 **64:**12,15,17 **65:**	18 **86:**10
people [2] **10:**5 **45:**2	**potential** [2] **38:**10 **89:**21	**provisions** [30] **8:**17 **14:**9,	1 **75:**4 **82:**4,16	**requires** [1] **17:**17
perceive [1] **45:**17	**power** [4] **35:**7,8 **37:**15 **73:**	12,21,24 **19:**10 **20:**21,25	**reason** [8] **14:**19 **29:**6 **32:**	**requiring** [1] **35:**14
perfectly [1] **9:**21	1	24:4 **32:**14,16 **52:**22,23 **53:**	23 **60:**23 **71:**12 **74:**10 **88:**4	**researched** [1] **20:**1
perhaps [4] **60:**6 **67:**16 **93:**	**powers** [3] **37:**20 **71:**11,21	12 **55:**7,8,9 **61:**9 **62:**10,11,	91:2	**residual** [1] **31:**9
5,8	**pre-sentencing** [1] **59:**17	14 **63:**20 **64:**18 **66:**10,24	**reasonable** [2] **18:**16 **47:**	**Resource** [1] **69:**7
permissible [2] **35:**9 **36:**12	**precedent** [1] **65:**24	67:1 **79:**22 **87:**20 **89:**9 **93:**	23	**respect** [4] **44:**19 **46:**7 **50:**
permit [1] **24:**18	**precedents** [2] **39:**10 **78:**	12	**reasoning** [1] **14:**8	10 **51:**3
permits [1] **50:**1	16	**public** [3] **40:**17 **55:**16 **81:**7	**reasons** [3] **4:**8 **64:**4 **92:**11	**respectfully** [3] **10:**11 **17:**
permitting [1] **22:**21	**precise** [2] **38:**1 **67:**21	**punitive** [8] **38:**12,19 **62:**18	**REBUTTAL** [3] **2:**8 **33:**14	13 **26:**2
person [73] **3:**16 **5:**10,17 **6:**	**presumptively** [1] **4:**25	87:6 **91:**4,5,8,11	92:1	**respecting** [1] **72:**17
11 **8:**24 **11:**15,16,16,23 **12:**	**pretty** [5] **29:**2 **40:**18 **67:**19,	**purport** [1] **35:**7	**recognition** [1] **8:**10	**respects** [1] **77:**15
2 **13:**9 **16:**14 **17:**24 **18:**3,	21 **68:**24	**purporting** [1] **34:**13	**recognize** [1] **21:**23	**respond** [2] **56:**24 **70:**5
13,18 **19:**6 **21:**8,10,16 **25:**2	**prevail** [7] **37:**5,9 **38:**7 **41:**	**purpose** [7] **7:**22 **24:**24 **29:**	**recognized** [10] **5:**9 **16:**13	**Respondent** [7] **1:**8,23 **2:**7
27:11,15,17 **29:**5,7 **30:**7	18 **42:**1 **57:**23 **72:**13	11 **46:**18 **48:**4 **64:**6 **71:**1	18:15 **21:**19,25 **25:**10 **36:**	3:25 **41:**5 **46:**25 **52:**12
31:23 **32:**7,11 **41:**19 **45:**1,	**prevent** [3] **65:**9 **74:**11,20	**purposes** [6] **10:**15 **27:**7	15 **39:**12,19,22	**Respondent's** [4] **3:**21 **34:**
7 **46:**12 **49:**11 **51:**7 **52:**2,	**previous** [1] **11:**11	47:18 **65:**14 **72:**17 **92:**6	**Recognizing** [1] **16:**5	21 **44:**15 **94:**6
16,18,20,21 **53:**6,10,19,21	**previously** [4] **46:**10,12 **60:**	**put** [5] **16:**19 **32:**10 **82:**23,	**reconcile** [1] **51:**20	**response** [4] **39:**6 **46:**22
58:16,17 **61:**19,24 **63:**16,	18 **77:**23	25 **85:**8	**recovery** [7] **7:**24 **10:**15,17	72:14 **86:**10
23,24 **65:**13 **66:**2,3,7,14 **67:**	**primary** [1] **88:**12	**putting** [5] **5:**16,19 **6:**15 **11:**	27:13 **29:**12 **42:**8 **69:**8	**responses** [1] **12:**19
4 **68:**8,10 **75:**6,20 **82:**11,11	**principle** [6] **36:**21 **40:**20	15 **33:**25	**reenacted** [1] **75:**6	**responsible** [1] **25:**4
87:14,21 **88:**25 **90:**13,15,	56:2,11 **75:**2 **80:**21		**refashion** [1] **82:**20	**rest** [5] **16:**4,6 **62:**6,7 **94:**10
19 **93:**5,12 **94:**9	**principles** [7] **6:**25 **12:**10	**Q**	**refer** [2] **9:**3 **20:**11	**rested** [1] **56:**11
persons [17] **10:**6,9,16,18	34:6 **36:**16 **71:**24 **72:**15 **79:**		**reference** [6] **24:**10 **40:**6,	**rests** [1] **62:**5
19:5 **27:**6,8 **53:**2 **61:**23 **63:**	17	**qualifies** [1] **63:**8	16 **79:**19 **81:**7,21	**result** [4] **21:**3 **29:**3 **46:**14
18,21 **64:**5,9,10,24 **75:**18	**prior** [1] **76:**16	**quest** [1] **28:**7	**references** [3] **29:**10 **92:**12,	60:11
86:11	**Privacy** [2] **62:**24 **63:**1	**question** [39] **3:**12,18 **9:**10	22	**reticulated** [1] **62:**25
pertain [1] **14:**25	**private** [4] **17:**3 **41:**20 **49:**	15:1 **16:**11,20 **20:**10,18 **25:**	**referencing** [1] **11:**12	**retreat** [3] **26:**15 **39:**12 **80:**
Petitioner [6] **1:**5,21 **2:**4,	24 **71:**4	11 **28:**11 **33:**1,25 **34:**7 **35:**	**referred** [3] **4:**20 **24:**13,14	1
10 **3:**9 **92:**2	**probably** [3] **41:**7 **78:**3 **82:**	4,19 **39:**20,23 **43:**20 **44:**23	**referring** [4] **7:**23 **12:**12 **20:**	**rise** [1] **52:**5
pick [2] **40:**12 **62:**15	15	48:5 **50:**6,14,15 **54:**17 **57:**	21 **55:**22	**ritualism** [2] **55:**20 **93:**22
piece [1] **26:**4	**problem** [5] **18:**23 **19:**25	21 **58:**4 **62:**16 **71:**9 **76:**23,	**refers** [3] **5:**17 **22:**13 **51:**12	**ROBERTS** [25] **3:**3 **33:**5,13,
pitfalls [1] **89:**21	24:8 **74:**17 **92:**18	25 **77:**6,12 **78:**12 **80:**15 **85:**	**REGINALD** [1] **1:**7	16,21 **36:**24 **42:**11 **45:**14
places [2] **45:**7 **65:**7	**problematic** [1] **89:**16	16 **90:**1 **92:**9 **93:**14,16	**regulatory** [1] **15:**17	52:8 **59:**11 **60:**9 **65:**19,22
plain [6] **7:**3 **47:**6 **49:**25 **84:**	**proceeding** [1] **89:**18	**questions** [6] **5:**14 **13:**8 **40:**	**rejected** [3] **14:**3 **76:**16 **77:**	66:16 **67:**9 **68:**11,23 **87:**9,
25 **85:**4 **89:**20	**process** [1] **69:**24	13 **54:**3 **76:**4 **78:**4	23	23 **90:**7 **91:**13,16,19,22 **94:**
plainly [2] **24:**4 **26:**24	**produce** [1] **41:**6	**quick** [2] **41:**14 **92:**3	**relevant** [6] **39:**19 **45:**18	15
plaintiff [1] **38:**4	**programs** [1] **71:**17	**quote** [1] **57:**3	46:16 **77:**15 **85:**19,22	**rule** [21] **4:**18 **17:**16 **34:**8,18,
plausible [18] **5:**11,23 **10:**	**prohibition** [1] **62:**9		**relied** [1] **27:**14	25 **35:**12 **37:**2,5,9 **41:**11,11
24 **11:**2,5 **17:**15 **18:**2 **26:**5	**promised** [1] **26:**20	**R**	**relies** [3] **55:**14 **70:**12 **91:**	48:11 **57:**11,14,20 **73:**11
27:2 **31:**13 **32:**13,15 **36:**18	**proper** [1] **59:**20		10	74:11,20 **75:**11 **91:**6 **92:**7
43:14 **57:**22 **74:**4 **90:**15,22	**proposition** [1] **70:**22	**raised** [6] **54:**20 **71:**9,20 **83:**	**reluctant** [1] **84:**7	**rules** [1] **74:**6
plausibly [1] **45:**10	**prosecute** [1] **68:**15	18,19,22	**remained** [1] **4:**23	**RURAL** [4] **1:**3,4 **3:**5,5
please [4] **3:**11 **15:**12 **16:**	**prosecuted** [1] **28:**15	**raises** [1] **61:**6	**remains** [1] **66:**19	
11 **52:**14	**prosecuting** [1] **68:**18	**range** [1] **12:**8	**remedies** [1] **89:**1	**S**
plug [9] **7:**17,20 **8:**16 **9:**6	**prosecution** [5] **19:**5 **59:**	**rational** [1] **16:**24	**remedy** [1] **53:**20	
14:3 **29:**25 **30:**2 **31:**8,8	14,15 **60:**12 **62:**17	**RCRA** [2] **27:**16 **51:**23	**render** [1] **24:**3	**Safe** [1] **20:**2
plugged [3] **8:**22 **15:**16 **52:**	**prosecutions** [1] **18:**17	**reach** [2] **10:**22 **80:**14	**repeat** [1] **16:**20	**sake** [1] **87:**14
21	**protect** [4] **16:**24 **32:**19 **34:**	**read** [16] **4:**1 **14:**17 **19:**8 **21:**	**repeated** [1] **36:**20	**same** [36] **5:**13 **8:**18 **13:**10
point [16] **19:**2 **23:**8 **24:**2	9 **71:**24	6 **31:**6 **32:**13,15 **36:**16 **44:**	**repeatedly** [1] **35:**19	23:3 **24:**8,16 **27:**7 **30:**4 **31:**
31:15,18 **37:**13 **48:**5 **51:**5,	**protecting** [1] **72:**23	10 **51:**17 **55:**3 **56:**1 **66:**7	**report** [2] **59:**17 **75:**7	13 **32:**14 **34:**22 **35:**20 **40:**
24 **55:**11 **58:**7 **79:**25 **80:**6	**Protection** [2] **53:**25 **86:**16	77:9 **81:**11 **83:**10	**repeated** [1] **36:**20	11 **42:**18 **43:**24 **44:**6 **45:**11
83:6,9 **90:**11	**protections** [1] **34:**14	**reader** [1] **45:**6	**Reporting** [9] **3:**15 **11:**13	46:15 **47:**19,25 **54:**11 **61:**5,
pointed [1] **21:**2	**provide** [1] **3:**15	**reading** [19] **5:**23 **10:**24 **11:**	17:1,4 **41:**21,22 **52:**15 **75:**	8 **69:**3,4 **75:**10 **76:**1 **77:**8,
points [4] **22:**4 **26:**12 **27:**4	**provides** [2] **53:**18 **66:**21	2 **21:**14 **24:**2 **36:**13,19 **57:**	22 **76:**10	15,19 **79:**17 **86:**2 **87:**17 **88:**
92:4	**provision** [37] **5:**9 **19:**8,15	12,16 **60:**10,16 **65:**3,25 **66:**	**reports** [4] **17:**5 **42:**4 **69:**16	21 **93:**6,11
policy [2] **73:**6,13	20:5,16 **21:**13 **22:**7,19 **23:**	6 **67:**21 **72:**4 **88:**25 **89:**15,	70:18	**satisfied** [1] **92:**17
policymaking [1] **84:**9	9 **24:**14,21 **29:**25 **47:**9 **48:**	20	**require** [2] **24:**11 **92:**11	**satisfy** [1] **48:**10
pollutant [5] **14:**11,15,21	8 **55:**15,17 **58:**18 **61:**20,22	**readings** [1] **90:**15	**required** [3] **24:**15 **35:**12	**Savings** [3] **26:**11 **48:**14
31:21 **67:**1	62:6,23 **63:**15,15 **64:**1,25	**reads** [2] **55:**1 **77:**10	53:1	79:24
posited [1] **90:**13		**reaffirmed** [1] **39:**11	**requirement** [3] **72:**6 **91:**6	**saying** [25] **8:**15 **15:**20 **19:**4
		real [2] **28:**13 **64:**21	92:16	21:6,25 **22:**23 **26:**25 **27:**6
		realize [1] **27:**21		35:1,4 **36:**1 **47:**5,10,17 **55:**
		realized [1] **69:**14		

24 **61:**10,12 **63:**2 **64:**23 **78:** 22,23,25 **85:**10 **89:**1 **90:**18

says [15] **18:**24 **20:**7 **21:**8 **33:**7 **39:**3 **55:**15,19 **57:**5 **58:**12 **62:**24 **63:**5 **65:**4 **82:** 10 **85:**6 **89:**22

Scalia [1] **26:**12

scheme [5] **15:**17 **16:**2,4,7 **62:**25

schemes [1] **69:**6

scope [1] **53:**16

score [2] **69:**23 **70:**13

scratch [1] **82:**2

Second [8] **5:**6 **17:**19 **34:**2 **36:**9 **43:**19 **53:**2 **72:**5 **77:** 12

section [12] **10:**6,7 **45:**25 **46:**1,7,9,10 **53:**18 **56:**4 **75:** 18,20 **80:**11

security [2] **86:**9,12

see [9] **9:**1 **21:**13 **40:**14,15 **49:**6 **64:**14 **75:**1 **84:**7 **85:**5

seek [2] **68:**19,25

seem [1] **16:**22

seemed [1] **85:**8

seems [14] **12:**20 **17:**10 **38:** 24 **39:**1 **42:**15 **45:**21 **46:**8, 15 **48:**18 **64:**12 **65:**2 **66:**9 **67:**19 **79:**17

self-contained [1] **62:**5

Seminole [3] **26:**23 **44:**21 **58:**24

sense [11] **5:**10 **6:**11 **14:**22 **16:**14 **18:**4,13 **19:**13 **40:**19 **45:**9,9,11

sensitive [4] **73:**14,17,19, 21

separate [6] **34:**10 **55:**16 **63:**25 **64:**3 **81:**21 **93:**14

separation [3] **37:**20 **71:**11, 21

seriously [2] **56:**23 **73:**24

serve [1] **29:**12

serves [1] **72:**16

SERVICE [2] **1:**4 **3:**6

set [1] **69:**4

sets [1] **23:**1

setting [1] **84:**1

settled [1] **36:**10

Seventh [1] **38:**3

sheerest [1] **55:**20

shouldn't [2] **74:**7 **77:**22

show [4] **6:**22 **12:**4 **17:**14 **49:**12

showed [1] **86:**17

shows [4] **4:**24 **5:**2 **85:**14 **90:**14

shrinking [1] **63:**15

side [7] **26:**8 **28:**23,24 **38:** 25 **39:**3 **40:**14,15

significant [5] **14:**6 **20:**25 **26:**22 **27:**3 **38:**10

silently [1] **39:**24

similar [2] **19:**10 **39:**1

similarly [1] **7:**8

simply [2] **58:**24 **81:**15

since [5] **60:**17 **76:**13,13 **80:** 7 **81:**13

single [2] **54:**21 **75:**16

sister [1] **53:**24

situation [3] **13:**11 **46:**16 **75:**14

skipped [1] **27:**22

slicing [1] **40:**18

slow [1] **15:**2

SNYDER [120] **1:**19 **2:**3,9 **3:** 7,8,10 **5:**15,22 **6:**3 **7:**16,19 **8:**3,19 **9:**9 **10:**11,23 **11:**8, 21 **12:**25 **13:**4,6,20 **14:**2,19 **15:**2,4,7,10,18,21 **16:**12,18 **17:**13,22 **18:**7,12 **19:**7,17 **20:**14,20,24 **21:**18,22 **22:**2, 6,12,16 **23:**7,12,13,16,19, 23 **24:**1,22 **25:**6,18 **26:**1,10 **27:**25 **28:**2,16 **29:**1 **30:**8, 14,17,19,21,23,25 **31:**2,4, 11,19 **32:**6,12,22 **33:**3,6,15, 17 **34:**20 **35:**17,23 **36:**2,5 **37:**10,17,21,25 **38:**14,21 **39:**8 **40:**22 **41:**16,19 **42:**2, 20 **43:**13,22 **44:**5 **45:**4,13 **46:**21 **47:**11 **48:**12,25 **49:**3, 7,10,16,18 **50:**13,20 **51:**10, 17 **52:**5 **91:**22 **92:**1,3

Solicitor [1] **1:**19

solitary [1] **26:**14

somehow [4] **20:**12 **21:**16 **65:**15 **76:**1

someone [2] **34:**13 **44:**12

sometimes [4] **35:**9 **37:**3 **64:**25 **67:**18

somewhere [2] **43:**7 **44:**13

sorry [7] **12:**15 **16:**8,20 **23:** 14 **55:**12 **68:**12 **90:**24

sort [12] **9:**19 **17:**12 **26:**4 **54:** 14 **55:**5,20 **62:**5 **69:**4 **75:** 15 **80:**13,16 **81:**3

sorts [1] **88:**11

SOTOMAYOR [29] **19:**19, 21,23 **20:**15,23 **21:**5,19,21, 24 **22:**10,15,18 **23:**7 **24:**7 **25:**1,15,22 **26:**1,7 **39:**5 **84:** 1 **87:**24,25 **88:**10,17,24 **89:** 10,12,23

sound [1] **93:**20

sounds [1] **80:**25

sovereign [104] **3:**13,20,24 **4:**4,5,9,10,14,19,21,23 **5:**5, 16,20 **6:**1,13,20 **7:**11,25 **8:** 2,5,10,11 **9:**14,16,21 **11:**1 **12:**5 **15:**24,25 **20:**10,13,18 **23:**5 **24:**10,19 **25:**3,9,13,20 **26:**18 **29:**8,10,13,18,21 **32:** 18,21 **33:**1,7,10 **34:**3,10,11

35:2,15,16 **36:**7,12,17 **40:** 25 **41:**8 **42:**24 **43:**9,18 **44:** 4,17 **48:**19 **50:**5,11,16,23, 25 **51:**1,14 **52:**25 **54:**10,12, 17 **56:**14 **58:**23 **59:**4,9,10 **65:**23 **66:**9 **68:**3,21 **70:**23 **71:**10,25 **72:**2,7,16 **74:**12, 15 **80:**2,22 **92:**9,12 **93:**1,13, 14,16

sovereign's [1] **4:**14

sovereigns [3] **34:**10 **43:**8 **84:**15

sovereignty [1] **25:**16

speaking [1] **34:**12

speaks [1] **88:**14

Spear [1] **60:**5

special [2] **15:**15 **53:**20

specific [4] **40:**6 **52:**24 **79:** 19 **92:**11

specifically [6] **7:**21 **11:**12 **48:**1 **72:**8 **92:**8,25

specificity [3] **72:**5 **92:**16, 19

specify [1] **33:**9

spent [1] **71:**17

split [1] **54:**19

square [1] **17:**3

squarely [1] **59:**23

stand-alone [2] **51:**6 **62:**5

standard [9] **35:**20 **54:**10, 11 **56:**14,16 **58:**22 **80:**2 **81:** 5 **91:**8

standpoint [2] **50:**4 **82:**16

stare [1] **76:**11

start [4] **3:**19 **28:**4 **50:**4,8

started [3] **27:**20 **56:**6 **79:** 25

starting [2] **37:**13 **82:**1

state [25] **24:**18 **25:**16 **34:**9 **35:**6 **39:**18 **40:**6 **47:**17,24 **48:**1 **53:**1 **54:**10 **57:**8 **58:**8, 14,20,23 **59:**2,2,4,8 **62:**19 **71:**10 **81:**13,17,17

statement [20] **17:**16 **34:**8, 18 **35:**12 **36:**2 **37:**2,5,9 **41:** 10 **48:**11 **57:**11,13,20 **73:** 11 **74:**11,20 **81:**5 **84:**2 **91:** 6 **92:**7

STATES [48] **1:**1,16 **3:**14 **5:** 8 **6:**5,12 **13:**9 **17:**23 **18:**1, 17 **20:**6 **24:**5,19 **27:**8,12,14, 18 **28:**14 **32:**20 **34:**23,25 **39:**21 **44:**1,4,20 **52:**3 **55:** 21,22 **58:**5,11 **59:**14,16,21 **60:**2,13,13 **62:**17,18,20 **68:** 15,17,19,20,25 **72:**18 **79:** 12,19 **94:**10

States' [1] **93:**1

statute [83] **3:**22 **4:**2 **5:**4,16 **6:**17 **7:**5 **9:**7,8,19 **10:**17,25 **11:**2,6,17 **14:**5 **15:**9 **17:**25 **18:**24 **22:**23 **24:**13,14 **26:**

25 **27:**1 **33:**4,6 **37:**4,7 **39:**1 **43:**21,23 **46:**2,24 **47:**15,18 **53:**24 **59:**6,13 **60:**10 **63:**19 **64:**6,9,12,23 **65:**3 **66:**4,10, 15,21,25 **67:**2,10,11,17 **68:** 1,2,24 **71:**1 **72:**1,4,6,7 **74:** 8,16 **77:**7,9,13,20,24 **78:**22 **79:**6,9 **80:**9 **82:**12,23 **85:**5 **86:**7,22 **87:**20 **89:**15,20,22 **93:**7 **94:**5

statutes [14] **19:**9 **20:**22 **21:** 14 **27:**10 **29:**24 **36:**11 **51:** 23 **55:**1 **68:**22 **77:**10 **78:**9, 18 **86:**15 **88:**11

statutorily [1] **63:**18

statutory [26] **7:**12 **9:**4 **12:** 2 **13:**21 **16:**4,7 **29:**17,23 **30:**3 **51:**11 **60:**24 **67:**21 **69:** 6 **74:**6,24 **75:**2 **76:**8,11 **77:** 5,17 **78:**2 **80:**6 **81:**4,16 **82:** 25 **93:**24

stems [1] **61:**18

step [8] **6:**13 **17:**20,20 **22:** 25 **25:**5 **43:**18 **58:**12,19

sticking [1] **40:**20

still [12] **12:**9,23 **17:**20 **37:**9 **43:**23 **44:**2 **57:**10 **58:**10 **64:** 5 **70:**3 **76:**12 **79:**11

stock [2] **85:**3,8

strange [4] **7:**2 **31:**6 **47:**8 **49:**23

strangers [1] **86:**5

striking [2] **11:**14 **32:**1

string [1] **63:**4

strip [1] **34:**14

structurally [3] **38:**24 **39:**1 **45:**17

structure [8] **14:**7 **35:**10 **57:**7 **77:**14,14 **78:**23 **79:**4, 10

stuck [1] **16:**21

Sturgeon [1] **13:**17

subbing [1] **9:**19

subchapter [1] **19:**1

subdivision [2] **5:**19 **32:**4

subject [6] **21:**10 **53:**7,8 **63:** 25 **64:**4,11

submitted [2] **94:**17,19

subsection [1] **65:**12

subsequent [2] **79:**16 **80:** 7

subsets [1] **63:**21

substantive [7] **53:**7,12 **62:** 8,12 **86:**3 **87:**19 **90:**5

substituting [1] **11:**10

sufficient [4] **6:**1 **43:**17 **59:** 8 **85:**25

suggest [7] **5:**20 **21:**15 **22:** 14 **54:**25 **55:**20 **80:**23,24

suggested [3] **60:**5 **74:**10 **92:**6

suggesting [2] **48:**6 **64:**22

suggestion [1] **93:**4

suggests [2] **19:**25 **23:**4

suit [5] **10:**5,9 **27:**16 **35:**16 **52:**2

suits [4] **24:**18,25 **29:**16 **55:** 22

superfluity [2] **40:**23 **41:**6

superfluous [2] **41:**15,25

suppose [3] **7:**16 **76:**5 **77:** 13

SUPREME [2] **1:**1,15

surprised [1] **85:**10

surprising [1] **57:**2

T

tack [1] **71:**8

task [1] **17:**14

taxes [1] **71:**19

taxpayer [1] **71:**13

technical [1] **59:**19

Tenth [1] **72:**20

term [18] **5:**3 **9:**5,12 **14:**4 **19:**13 **30:**1 **31:**7,8,10 **43:**6, 7 **46:**11 **52:**19 **53:**6 **58:**15 **61:**24 **65:**4 **76:**2

terms [11] **11:**11 **14:**4 **22:** 25 **23:**1 **34:**22,23 **39:**18 **49:** 25 **65:**15 **82:**22 **86:**9

text [27] **3:**22 **6:**17 **7:**3 **18:** 24 **21:**13 **39:**13 **40:**25 **47:**6 **51:**11 **55:**14 **56:**11 **57:**1,12, 16,23 **65:**3 **73:**25 **74:**2,2,5 **75:**3,11 **80:**20,22 **84:**24 **85:** 1 **93:**24

textual [4] **56:**17 **57:**1 **58:** 22 **64:**19

textualist [1] **55:**24

theory [1] **4:**2

there's [37] **3:**19 **5:**1 **6:**21 **8:** 24,24,25,25 **20:**9,10 **21:**9 **40:**23 **41:**9 **44:**12 **50:**18 **54:** 5,19 **57:**11 **58:**21,25 **62:**4, 22 **63:**4 **64:**21 **66:**1,4,5,5 **68:**7 **69:**17 **74:**4 **78:**17 **80:** 23 **81:**2 **88:**11,24 **90:**15 **91:** 8

therefore [3] **4:**17,24 **18:**1

they've [1] **63:**10

thin [3] **40:**18 **81:**18,25

thinking [2] **42:**25 **67:**13

thinks [2] **92:**16 **94:**7

THOMAS [6] **5:**15,24 **6:**4 **33:**22 **54:**4 **87:**11

Thomas's [1] **58:**2

though [8] **8:**4 **16:**16 **24:**13 **29:**6 **64:**5,10 **84:**12 **86:**20

three [5] **20:**3 **23:**17 **24:**9 **66:**5 **91:**23

throughout [6] **18:**25 **63:** 19 **64:**24 **66:**14 **86:**7 **94:**10

throw [1] **78:**16

tied [1] **84:**9

TILA [1] **86:**18

timing [2] **47:**12,12
today [4] **39:**16 **47:**1 **78:**4
93:25
together [1] **55:**9
took [2] **62:**21 **94:**1
tracing [1] **36:**9
traditional [1] **74:**5
traditionally [1] **35:**12
Treasury [2] **71:**16,18
treated [2] **79:**15 **87:**17
treats [1] **39:**9
Treaty [1] **67:**18
tree [1] **34:**1
Tribe [4] **26:**23 **35:**5 **44:**21
58:24
tribes [3] **34:**24 **72:**18 **84:**
16
tried [1] **93:**18
tries [2] **64:**17 **74:**20
trouble [2] **28:**21 **56:**23
true [2] **40:**11 **93:**11
trump [1] **67:**20
Trusts [1] **30:**20
Truth [2] **86:**18 **88:**8
try [2] **80:**14 **82:**20
trying [2] **10:**22 **50:**11
turn [3] **17:**3 **22:**3 **58:**8
turned [1] **75:**25
two [20] **4:**7 **6:**3 **12:**20,22
26:19 **32:**3 **34:**20 **36:**3,16
40:2 **46:**21 **54:**22 **66:**5 **71:**
23 **74:**23 **83:**12,13,14 **87:**2,
3
type [1] **84:**10

U

U.S [2] **5:**21 **75:**10
ultimate [1] **85:**15
ultimately [2] **3:**23 **37:**14
unambiguous [1] **19:**15
unambiguously [3] **3:**13
6:5 **14:**12
unavoidable [1] **59:**12
uncertainty [3] **45:**23 **46:**4,
16
unconsenting [1] **24:**5
unconstitutional [3] **24:**4
26:24 **44:**1
unconstitutionally [1] **44:**
19
under [18] **4:**18 **6:**6,25 **24:**5
34:14 **35:**7 **37:**9 **41:**10,11
42:8 **43:**24 **47:**19 **56:**15 **65:**
23 **67:**15 **74:**5 **75:**10 **93:**8
undergird [1] **40:**20
understand [17] **7:**16 **12:**
18 **13:**14 **15:**24 **16:**15 **19:**2
34:6,7 **38:**6 **45:**2,7 **50:**3,9
55:13 **72:**12,14 **90:**11
understanding [6] **44:**15
45:8 **71:**12 **82:**17 **92:**18 **94:**
13
understood [2] **43:**15 **74:**2

unenforceable [1] **53:**13
Union [4] **79:**17,20 **80:**8 **81:**
23
unique [2] **60:**25 **90:**4
UNITED [34] **1:**1,16 **3:**14 **5:**
8 **6:**5,12 **13:**9 **17:**23 **18:**1,
17 **20:**5 **27:**8,12,14,18 **28:**
14 **32:**20 **34:**25 **52:**3 **59:**14,
16,21 **60:**12,13 **62:**17,18,
20 **68:**15,17,19,20,25 **93:**1
94:10
units [2] **9:**17,18
universe [1] **20:**4
unless [7] **8:**5 **36:**12,18 **40:**
24 **44:**3 **59:**2 **70:**5
unlikely [1] **44:**22
until [2] **47:**20 **80:**7
unusual [3] **12:**6 **21:**3 **62:**
19
unworkable [2] **67:**2,5
unwritten [1] **4:**1
up [7] **17:**10 **35:**16 **40:**13 **62:**
15 **66:**24 **69:**4 **82:**1
user [1] **11:**13
uses [5] **5:**9 **18:**13 **29:**7,10
30:1
using [5] **4:**22 **6:**19 **18:**3 **29:**
4 **76:**1
Utility [15] **6:**7,15 **14:**6,9,20
15:7,11,14,21 **16:**2 **17:**9
19:9,11 **31:**22 **66:**23

V

valuable [1] **71:**14
value [1] **85:**24
variations [1] **66:**14
various [1] **63:**20
versus [6] **3:**6 **58:**5,8,20 **60:**
5 **71:**10
viable [1] **80:**16
view [1] **72:**13
violate [1] **22:**23
violated [2] **7:**4 **49:**24
violates [2] **3:**16 **21:**9
violations [3] **23:**6 **53:**20
63:2
virtually [5] **13:**16,18 **14:**1,
18 **21:**7

W

wait [3] **23:**22,25 **33:**18
waive [17] **6:**1,23 **9:**16 **12:**5
29:21 **32:**25 **34:**3 **35:**5,15
36:17 **41:**8 **44:**4 **50:**23 **52:**
25 **72:**6 **80:**22 **92:**9
waived [11] **3:**13,20 **4:**14
20:13 **24:**19 **35:**2 **40:**24 **44:**
8 **50:**12 **68:**21 **74:**14
waiver [26] **4:**1,19 **9:**14,20
10:25 **20:**10,18 **23:**5 **24:**10
40:10 **41:**4 **42:**25 **43:**2,8
44:12 **46:**6,19 **50:**5 **56:**5,
14,16 **62:**22 **74:**12,18 **80:**2,

24
waivers [1] **15:**25
waives [2] **54:**17 **59:**9
waiving [6] **6:**13 **34:**12 **43:**
18 **54:**11 **58:**23 **92:**25
wanted [8] **17:**12 **21:**3 **23:**
10 **27:**13 **29:**3 **53:**17 **56:**8
71:3
wants [7] **59:**1,2 **68:**9 **73:**
14,24 **81:**14 **92:**9
Washington [3] **1:**11,20,
22
Water [3] **20:**1,2 **88:**12
way [37] **5:**13 **16:**20 **19:**8 **25:**
24 **29:**17 **30:**4 **31:**6 **32:**14
36:6,9 **40:**21 **43:**7 **47:**13,
25 **49:**20 **51:**19,22 **55:**6 **57:**
5,9 **62:**7 **64:**24 **65:**1,24 **66:**
1,3,7,10 **70:**5 **74:**1 **77:**9 **78:**
17 **79:**21 **81:**14 **83:**11 **84:**7
87:17
ways [3] **17:**25 **45:**18 **89:**4
Weapons [1] **67:**18
welcome [2] **5:**14 **54:**3
well-established [1] **36:**
21
whatnot [1] **46:**3
whereas [1] **62:**10
Whereupon [1] **94:**18
wherever [1] **14:**4
whether [20] **3:**12 **11:**22 **25:**
11 **33:**1 **39:**20 **46:**5,17 **48:**
23 **49:**4,21 **50:**9,11 **54:**8,10,
17 **60:**13 **85:**16 **92:**9 **93:**14,
16
who's [1] **7:**2
Whoa [2] **33:**19,19
whole [5] **8:**7 **46:**1 **55:**7 **60:**
14 **63:**19
whom [1] **12:**8
will [8] **12:**9 **35:**1 **37:**4 **38:**2
41:1 **43:**8 **63:**24 **84:**13
willfully [2] **52:**17 **82:**11
willing [2] **29:**20 **41:**3
win [2] **70:**3 **94:**12
wins [1] **59:**2
wisely [1] **22:**3
without [4] **26:**25 **36:**8 **70:**
3 **87:**1
wonder [2] **34:**5,17
wondering [2] **14:**17 **48:**9
word [14] **6:**19 **11:**15 **17:**24
18:3,18 **29:**5 **32:**3 **45:**7 **51:**
6 **75:**6,7,20 **76:**1 **93:**5
wording [1] **77:**14
words [25] **7:**20,22,22 **8:**23
9:11,20,23,25 **24:**11,15 **29:**
11 **32:**3,5 **35:**14,18 **48:**18
53:16 **55:**23 **57:**6 **66:**1 **75:**
9 **79:**19 **84:**5,13,21
work [4] **28:**22 **41:**1 **50:**10
61:4

workable [1] **75:**2
worked [1] **9:**21
world [2] **82:**9 **85:**6
worried [1] **72:**22
worth [1] **54:**24
write [3] **81:**1 **82:**9,23
written [8] **20:**16 **21:**12 **26:**
13 **51:**8 **64:**20 **80:**9 **81:**1
89:16

Y

year [3] **8:**14 **59:**25 **87:**3
years [5] **7:**4 **13:**17 **49:**25
87:2,3