





1 APPEARANCES:

2 LISA S. BLATT, ESQUIRE, Washington, D.C.; on behalf of  
3 the Petitioner.

4 AUSTIN RAYNOR, Assistant to the Solicitor General,  
5 Department of Justice, Washington, D.C.; on behalf  
6 of the Respondent.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	LISA S. BLATT, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	AUSTIN RAYNOR, ESQ.	
7	On behalf of the Respondent	33
8	REBUTTAL ARGUMENT OF:	
9	LISA S. BLATT, ESQ.	
10	On behalf of the Petitioner	64
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:39 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 23-367, Starbucks Corporation versus McKinney.

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT

ON BEHALF OF THE PETITIONER

MS. BLATT: Mr. Chief Justice, and may it please the Court:

Section 10(j) authorizes district courts to grant preliminary injunctions that they deem just and proper. 10(j) thus requires district courts to apply the traditional four factors as set out in Winter versus NRDC.

This Court should reverse. The court of appeals held that Winter's four factors do not apply under Section 10(j). All that mattered below was whether any facts supported a non-frivolous legal theory and whether there was harm, not whether that harm was irreparable.

The government argues that whether a two- or four-part test governs, the statutory context compels district courts to conduct "a less exacting and more deferential inquiry into

1 the merits without undertaking an intensive  
2 effort to resolve factual issues." But 10(j)  
3 contains no language, much less clear language,  
4 diluting the traditional standard.

5 Preliminary injunctions are  
6 extraordinary and drastic remedies. Here, the  
7 Board seeks a coercive injunction backed by  
8 contempt sanctions, and the Board seeks the very  
9 same injunctive relief that it would get if it  
10 won the case.

11 Such relief is highly inappropriate  
12 absent a clear showing under all four factors.  
13 The government justifies deference because the  
14 Board, not trial courts, ultimately decide the  
15 merits at the back end. But Congress directed  
16 trial courts, not the Board, to apply the Winter  
17 factors at the front end.

18 The Board hasn't even made any factual  
19 findings to defer to. Agencies have no  
20 expertise whatsoever in how courts should  
21 exercise their equitable discretion. Indeed,  
22 the Board in its adjudication will not even  
23 consider the four Winter factors. This Court  
24 has never deferred to an agency's litigation  
25 position, and it should not start here.

1 I welcome your questions.

2 JUSTICE THOMAS: Ms. Blatt, the  
3 government says that Petitioner's ahistorical,  
4 decontextualized approach is inconsistent with  
5 the statutory text, the basic premises of  
6 equity, and over a century of case law.

7 What's your reaction to that?

8 (Laughter.)

9 MS. BLATT: No.

10 (Laughter.)

11 MS. BLATT: I don't even know where  
12 they're getting that. I mean, this Court in  
13 Winter and a million other cases has said that  
14 these four factors are longstanding, and the  
15 clear statement rule goes back to Justice Story.  
16 But I just think the text on its face, you don't  
17 have to get too far, says "just and proper."  
18 That obviously harks to traditional equity.  
19 And, here, we have the four factors.

20 JUSTICE THOMAS: Do you think their  
21 real -- their -- the government argues that  
22 you're -- because they are protecting the  
23 Board's jurisdiction, as opposed to the courts'  
24 jurisdiction, that that's a difference.

25 MS. BLATT: Not at all. Not at all.

1 I mean, a preliminary injunction -- I mean, it's  
2 assigned to the district court. It has the same  
3 reasons. You have to show that there's a  
4 likelihood of success on the merits. And,  
5 obviously, if the harm is recoverable, you're  
6 not entitled to the injunction at all in balance  
7 of the equities.

8           There's no -- I don't even understand  
9 the Board's jurisdiction. There are a multitude  
10 of contexts where an agency has an adjudication,  
11 and if it wants a preliminary injunction, it's  
12 got to make the showing that every other party  
13 would have to make.

14           JUSTICE JACKSON: But this is not just  
15 the standard preliminary injunction that  
16 district courts do on a daily basis in regular,  
17 ordinary cases within their jurisdiction that  
18 they control. I mean, this is an injunction  
19 that is being provided for in a specific  
20 paragraph of this statute, which I'm sure you  
21 agree, does, the statute, require some  
22 consideration of the Board's prerogatives. The  
23 Board is the one that is ultimately making this  
24 unfair labor practice determination in the first  
25 instance. Congress is setting up a Board to



1 take care of these issues.

2 So it's -- it's not the ordinary PI  
3 that the -- that district courts see, correct?

4 MS. BLATT: No, not at all. It is an  
5 ordinary preliminary injunction, and this is an  
6 ordinary statute with a call to just and proper  
7 remedies. And we cite six statutes in the U.S.  
8 Code that use the "just and proper" standard and  
9 a multitude of statutes saying "necessary and  
10 proper" or just "proper."

11 JUSTICE JACKSON: No, I understand,  
12 but we are in a particular context, and I think  
13 the context has to inform how we understand what  
14 Congress intended with respect to this provision  
15 of the statute providing for this kind of  
16 injunction.

17 MS. BLATT: Well, maybe we should just  
18 talk about what we're talking about, and that is  
19 does anything in that statute or anything in  
20 common sense say the Board gets to walk in and  
21 get a coercive injunction on the notion that  
22 they have a non-frivolous legal theory and the  
23 district court is barred from finding facts,  
24 it's barred from weighing witness credibility,  
25 and all that matters is the government has not

1 presented a joke.

2 JUSTICE JACKSON: Well, I guess what  
3 I'm -- what I'm referring to is that we already  
4 have a very different context insofar as the  
5 Board is assigned by Congress with the  
6 requirement or duty to investigate unfair labor  
7 practices and make the decision in the first  
8 instance as to whether or not they occurred.

9 That doesn't happen in other PI  
10 contexts. So I get that in other PI contexts  
11 the district court is doing the fact finding and  
12 all of the things you're talking about. This is  
13 a different context.

14 MS. BLATT: So, on pages 42 and 44 of  
15 our brief, we cite SEC, FTC, CPFC -- I'm going  
16 to run out of the alphabet -- EEOC, a bunch of  
17 cases where agencies have adjudicatory  
18 processes. There's three that we cite on pages  
19 23 and 42 where it involves you can go to  
20 district court.

21 But, remember, neither the Board nor  
22 the court of appeals on -- on reviewing of a  
23 final agency will ever consent or -- consider  
24 the normal standards for preliminary injunction.

25 It -- I mean, just in terms of where

1 all this leads you is why would the Board get  
2 deference when the Board doesn't deserve any  
3 deference and has no expertise on how equity  
4 should be -- should be weighed? And in terms of  
5 -- we could talk about the four factors. At  
6 most, statutory context, like every other  
7 injunction, takes account of -- of the statutory  
8 context. If we were here because there was  
9 going to be a nuclear accident, I would think  
10 that's an important statutory context too.

11 JUSTICE KAGAN: So --

12 JUSTICE SOTOMAYOR: Ms. Blatt, you  
13 used in your brief 12 times the description of  
14 using the stringent version of the four-factor  
15 test. Is that different than the standard  
16 four-factor test?

17 MS. BLATT: This Court in *Pharma*  
18 versus *Walsh* and in *Winter* said clear showing,  
19 so -- but, yes, I think that is a stringent --

20 JUSTICE SOTOMAYOR: So it's different  
21 than the traditional?

22 MS. BLATT: Traditional factor test is  
23 a clear showing. And what I think --

24 JUSTICE SOTOMAYOR: Well, all right.  
25 Now you're doing something else.

1 MS. BLATT: Okay.

2 JUSTICE SOTOMAYOR: I understand very  
3 well why you say we don't give deference to the  
4 Board on the likelihood of success on the  
5 merits, which -- there's some language in some  
6 of the court's decisions below that they think  
7 they have to, and that's the stuff about not  
8 weighing credibility, et cetera.

9 I -- I do understand why that needs to  
10 be corrected because, you're right, it's the  
11 court that has to decide the likelihood of  
12 merits.

13 But, with respect to the other three  
14 prongs -- irreparable harm, balance of the  
15 equities, public interest -- in Winter and Nken,  
16 we talked about that there has to be a  
17 recognition of the -- the public interest, the  
18 Navy's interest in doing what it needs to do,  
19 the -- here, I think it's in the NLRB's interest  
20 in making sure that its remedial power can be  
21 returned after the status quo.

22 We have to consider in the balance of  
23 equities the court below, the harm both to the  
24 employer but the harm to the union and the harm  
25 to the NLRB. And, finally, the public interest

1 is clear in the Board's requirement. So it's --  
2 I don't know that either Winter or Nken or  
3 anything else -- the word "deference" is just  
4 misplaced here.

5 MS. BLATT: Well, so we've gotten  
6 likelihood of success off the table, but both  
7 the court of appeals and the trial court refused  
8 to find any facts even on the irreparable harm.  
9 So all the Board cited the evidence and only one  
10 cited the evidence was considered on irreparable  
11 harm.

12 And in terms of irreparable harm,  
13 that's something that district courts do day in  
14 and day out. And what the Board has here and  
15 has been arguing in all these cases and what the  
16 court of appeals found is anytime there's an  
17 unfair labor practice, if you can show evidence  
18 of chill because people are afraid of being  
19 retaliated against if they support the union,  
20 then -- and I'm quoting from the NLRB -- that  
21 faith in workplace democracy can never be  
22 restored.

23 And so, in their manual, their 10(j)  
24 manual, it's basically a playbook and every case  
25 they say fill in the blank, they're always

1 saying, if there's evidence of chill, if anyone  
2 says --

3 JUSTICE SOTOMAYOR: I mean, firing all  
4 eight of the union organizers, I think --

5 MS. BLATT: Well, if all eight --

6 JUSTICE SOTOMAYOR: -- it's hard to  
7 see that, although I do understand that some of  
8 the organizers did different things than others.

9 MS. BLATT: Right.

10 JUSTICE SOTOMAYOR: And the ALJ who's  
11 made factual findings here to whom the Court  
12 will have to eventually give deference found  
13 that at least two of these union representatives  
14 should have been fired because they did  
15 something more than stay after hours.

16 MS. BLATT: Right.

17 JUSTICE SOTOMAYOR: There were  
18 employees there who were staying after hours  
19 that weren't fired.

20 MS. BLATT: Remember, we're here on  
21 the injunction. Obviously, the -- the ALJ's  
22 findings don't deserve any deference. If  
23 there's a final decision by the Board and that  
24 goes to a court of appeals, they get substantial  
25 evidence deference. But --

1 JUSTICE SOTOMAYOR: But I'm going back  
2 to the point.

3 MS. BLATT: But into the injunction  
4 standard, if all eight employees commit gross  
5 misconduct, then there's a -- you know, that's a  
6 basis for termination.

7 JUSTICE SOTOMAYOR: But there were two  
8 others who didn't union organize that weren't  
9 fired.

10 MS. BLATT: And one union organizer  
11 didn't engage in the misconduct and wasn't  
12 fired. But here's --

13 JUSTICE GORSUCH: You -- you don't  
14 dispute, though, the district court could take  
15 that fact that --

16 MS. BLATT: Sure.

17 JUSTICE GORSUCH: -- Justice Sotomayor  
18 mentioned into account in the course of weighing  
19 whether an injunction's warranted?

20 MS. BLATT: Absolutely. I mean, this  
21 is a classic case of burden-shifting, was there  
22 anti-union animus that justified -- that -- that  
23 prompted the terminations, and Starbucks'  
24 managers explained that -- and the employees  
25 conceded this violated company policy, so the

1 only issue is whether the policy was enforced in  
2 other stores.

3 JUSTICE GORSUCH: Yeah, pretextual,  
4 and a district court could make that  
5 determination the way the ALJ did perhaps.

6 MS. BLATT: Exactly. The problem  
7 in -- in the circuit split is, and in this case  
8 in particular, both the district court and the  
9 court of appeals said district courts are barred  
10 from considering the evidence. And if you count  
11 the Board's theory that whenever you have a harm  
12 to unionization, and their story is union  
13 support is very fragile, whether it's before the  
14 union's been voted in or after the union is  
15 voted in, and any type you -- anytime you have  
16 an unfair labor practice, that's irreparable  
17 harm. And we're just saying no.

18 JUSTICE BARRETT: But you'd be happy  
19 with weighing, right?

20 MS. BLATT: Yes.

21 JUSTICE BARRETT: You'd be happy with  
22 weighing the harm to the union organizing  
23 against the harm to Starbucks in retaining the  
24 employees who had violated store policy by  
25 staying after hours, with all the pretext



1 considerations that Justices Gorsuch and  
2 Sotomayor have referred to?

3 MS. BLATT: Factor --

4 JUSTICE BARRETT: You'd be happy with  
5 that, the balance?

6 MS. BLATT: Very happy for Factor 3.  
7 But Factor 2 is irreparable arm.

8 JUSTICE JACKSON: But wait. Before  
9 you leave Factor 3, why -- why is -- I'm sorry.  
10 Is that the irreparable harm factor you're  
11 talking about?

12 MS. BLATT: Balance of the equities  
13 was exactly what Justice Barrett said.

14 JUSTICE JACKSON: Oh, I see. All  
15 right. So irreparable harm, what -- what is the  
16 -- what is being addressed there? I thought it  
17 was the Board's -- whether the Board's remedial  
18 authority would be harmed, that that's why  
19 they're seeking a preliminary injunction.

20 MS. BLATT: Yeah, and that just is  
21 empty words without saying what -- what in the  
22 harm is irreparable, why can't an order of  
23 reinstatement matter. And the problem with the  
24 Board's theory in all these cases is they're  
25 always entitled to an injunction. There's

1 always irreparable harm --

2 JUSTICE JACKSON: But -- but --

3 MS. BLATT: -- by definition.

4 JUSTICE JACKSON: -- but you -- you --  
5 you've said that many times and you suggest that  
6 this is happening all the time. There's record  
7 evidence that in the last year the Board has  
8 sought 14, 14, 1-4, 10(j) injunctions. So it's  
9 not as though this is happening a lot.

10 MS. BLATT: Well, totally fair, just  
11 when it happens, but in terms of the --

12 JUSTICE JACKSON: Right. But what I'm  
13 saying is, if -- if we're -- if we're worried  
14 about an abusive Board doing things that it's  
15 not supposed to be, giving undue deference, it  
16 seems like the Board is pretty careful when it's  
17 determining whether or not to even seek these  
18 injunctions since it's only asked for it 14  
19 times.

20 MS. BLATT: Well, I'd like to take  
21 that on because I do think that they are relying  
22 on the fact that they've done a fair  
23 investigation. And no matter how much  
24 investigation and how much careful  
25 consideration, it's still a litigating position.

1 It's not the -- the fact finding, the  
2 adjudication that Congress assigned it.

3 And second of all, the Board is asking  
4 for more deference to a litigation position than  
5 it would get at the back end. The Board could  
6 never get this kind of deference even if it had  
7 gone through the full adjudication.

8 And, third, the Board can't have it  
9 both ways. Either they're spending so much time  
10 investigating, maybe they should spend that time  
11 adjudicating so you don't need these year-long  
12 injunctions, or if they're saying, well, it  
13 takes so long for us to adjudicate, maybe  
14 because it's a hard question.

15 JUSTICE JACKSON: But I guess what I'm  
16 saying is they're only saying that in 14 cases.  
17 I mean, you're right, maybe -- maybe they should  
18 be going faster. But they have only asked for  
19 this kind of injunction in a very, very small  
20 number of cases. Twenty thousand complaints are  
21 filed with the Board. Seven hundred result in  
22 Board action, and of those 700 that the Board is  
23 investigating and doing and determining, they've  
24 asked for this kind of injunction 14 times.

25 So, I mean, I appreciate that maybe

1 the standards we need to look at and I  
2 understand four factors versus two factors, but  
3 this is not sounding like a huge problem.

4 MS. BLATT: Well, restraint is not a  
5 basis for deference. And whether or not it's a  
6 huge problem, what Petitioner wants is just a  
7 level playing field, the normal injunctive  
8 factors that agencies and private parties should  
9 get. So, even if the Board only sought one  
10 injunction, can -- can you please hold that the  
11 four factors apply?

12 JUSTICE KAGAN: So, when you said the  
13 normal process, so it's just the traditional  
14 four-factor test applied normally? That's what  
15 you want?

16 MS. BLATT: Yes. Yes. I hope I  
17 didn't -- that's not a trick question.

18 JUSTICE KAGAN: Yeah. No.

19 (Laughter.)

20 JUSTICE KAGAN: It's -- it's supposed  
21 to be a clarifying question.

22 MS. BLATT: Yeah, four factors with no  
23 deference and to please make sure that --

24 JUSTICE KAGAN: Maybe I'll take that  
25 as a compliment, that --

1 (Laughter.)

2 JUSTICE KAGAN: -- that you think I'm  
3 that crafty, but, really --

4 MS. BLATT: I -- I think we -- we  
5 definitely need a reversal with the four  
6 factors.

7 JUSTICE KAGAN: And -- and -- and just  
8 on -- on the -- on this -- on the irreparable  
9 harm part, you say in your reply brief that  
10 under that four-factor test applied normally,  
11 the Court is supposed to decide whether delay is  
12 going to frustrate -- I'm using your words --  
13 frustrate the Board's ability to remedy the  
14 alleged unfair labor practices. So you have no  
15 problem with that?

16 MS. BLATT: Right, as long as it's --  
17 it's actually irreparable, like there's some --  
18 so let me just see if I can try to be -- you  
19 know, help here. Chill can't be -- chill can be  
20 irreparable, but it has to be chilled from  
21 something that's about to happen, an event that  
22 can't be unscrambled.

23 And so, when we talk about the Board's  
24 remedial factors, it can't be faith in workplace  
25 democracy. It has to be -- there's -- there's

1 an event, there's an election that they've  
2 actually, you know, barricaded the store and  
3 employees can't get into vote. Unless we get  
4 this injunction, you can't recreate the  
5 conditions. So that's all we're talking about.

6 And, there, the Board's remedial power  
7 is being frustrated and there's irreparable  
8 harm, but all the more reason you've -- you  
9 know, balance of the equities, it may be that  
10 the employer had to shut down the store because  
11 it's not making money.

12 JUSTICE KAGAN: And on the equities  
13 and the public interest, I mean, I think also in  
14 your brief you acknowledge that when the -- a  
15 statute like this is involved and public  
16 interests are involved, a court is supposed to  
17 take that into account in a way that's different  
18 from what it might in a statute between private  
19 parties -- excuse me, in a case between private  
20 parties with only private interests.

21 MS. BLATT: I -- I think that's  
22 correct because, by definition, the public  
23 interest is broader than a breach of contract.  
24 And if you have, you know, the environment or --  
25 or, I don't know, voting rights, there's public

1 interests, but the case that this originates and  
2 in the Oakland Cannabis and the Virginia  
3 Railway, it's public interest as deliberately  
4 expressed in legislation. So where the Court  
5 has been on public interest is saying district  
6 courts can't reach out the confines of the  
7 statute either in going too far or too little.  
8 And that's -- that, I think, does go to public  
9 interest.

10 But I do think our point is this  
11 public interest wasn't even referenced below,  
12 except for the district court saying there's a  
13 public interest in the statute, is that if  
14 there's not a showing under all three factors,  
15 the public interest is not served by, you know,  
16 putting a scarlet letter on an employer and  
17 having them just live under an injunction that  
18 they violated the act based on a non-frivolous  
19 legal theory, with not even their side of the  
20 evidence being heard. That is very damaging to  
21 the public interest in my view.

22 JUSTICE BARRETT: Are you saying that  
23 chill is never enough for irreparable harm?

24 MS. BLATT: No, chill can be.

25 JUSTICE BARRETT: It can be. It can

1 be.

2 MS. BLATT: Yes.

3 JUSTICE BARRETT: It's just that it  
4 requires more of a showing than the Sixth  
5 Circuit required here?

6 MS. BLATT: Yeah. So the Sixth  
7 Circuit three times said, you know, there's  
8 inherent chill, but they also pointed to  
9 evidence of chill. And all we're saying is  
10 evidence of chill needs to be tied to something  
11 that can't be undone, like we -- we can't vote,  
12 now that we're chilled from voting, there's  
13 about to be a vote.

14 The court said two things here in  
15 terms of chill. They said no one was wearing  
16 union pins because they were scared, and, two,  
17 the terminated employees, although they're on  
18 the bargaining unit, it's not as convenient to  
19 talk to your -- the fellow employees if you're  
20 not on the shift.

21 And those are harms, but they're not  
22 harms that are -- they're not the harms that are  
23 irreparable unless you're going to say anytime  
24 that you have a allegation there's fear of  
25 retaliation or an encumbrance, somehow that's



1 not -- not reparable. There was not even a  
2 bargaining thing scheduled.

3 JUSTICE SOTOMAYOR: Now all you're  
4 doing is --

5 MS. BLATT: The union had just won the  
6 vote.

7 JUSTICE SOTOMAYOR: Now you're doing  
8 -- asking us in the opinion to weigh the factors  
9 ourself and say what the correct weighing is.

10 MS. BLATT: I wouldn't do that --

11 JUSTICE SOTOMAYOR: I thought you --

12 MS. BLATT: -- if I were you.

13 JUSTICE SOTOMAYOR: Right. All you  
14 came in here and said apply the traditional  
15 test, right?

16 MS. BLATT: Yeah, I -- I agree. I was  
17 just trying to explain to Justice Barrett that  
18 we concede that chill could definitely be  
19 relevant, but what we're concerned about is the  
20 Board's definition of chill automatically leads  
21 to, whenever there's something against  
22 unionization effort, that's irreparable harm.

23 But, yeah, if I were you, I would  
24 leave this a very short opinion, but please make  
25 clear --

1 JUSTICE JACKSON: But can I --

2 MS. BLATT: -- that irreparable harm  
3 means irreparable.

4 JUSTICE JACKSON: Can I ask you about  
5 likelihood of success in this situation? I know  
6 others may have taken it off the table, but I'm  
7 a little curious as to why the district court  
8 would not at least have to put itself in the  
9 shoes of the Board when making this predictive  
10 judgment.

11 I mean, this is why I said context  
12 matters in my view and that we're in the context  
13 of a statute in which Congress has given the  
14 Board the ability to determine the merits and --  
15 at least in the first instance, and the ability  
16 to make the investigation, to find the facts.  
17 And in this context, that body has made a  
18 preliminary determination in these 14 cases that  
19 an injunction is warranted.

20 So -- so is that relevant to the  
21 district court's determination, or it just comes  
22 in and handles this as though there was no Board  
23 or the Board is just one of the parties and it  
24 doesn't pay any attention --

25 MS. BLATT: So --

1 JUSTICE JACKSON: -- to those  
2 preliminary determinations?

3 MS. BLATT: -- it's totally irrelevant  
4 because, when the Board is --

5 JUSTICE JACKSON: Irrelevant or  
6 relevant?

7 MS. BLATT: Totally irrelevant because  
8 the Board is a prosecuting party. It is a party  
9 that -- the NLRB is the general counsel. He's  
10 an adversary even before the Board.

11 JUSTICE JACKSON: But not according to  
12 the statute. The statute -- it doesn't just  
13 relegate the Board to prosecuting party status.  
14 The statute says the Board is the one that's  
15 making the initial merits determination. And  
16 so, when you're asking in the context of the  
17 preliminary injunction what is the likelihood of  
18 success on the merits, it doesn't seem to me to  
19 be irrelevant that the Board has determined  
20 based on its preliminary investigation that an  
21 injunction is warranted.

22 MS. BLATT: Well, it's the general  
23 counsel, a separate authority under the statute.  
24 But I would be embarrassed if I were the Board  
25 to say, yeah, we've made up our mind and we hope

1 district courts --

2 JUSTICE JACKSON: No, it's not that  
3 they've made up their mind.

4 MS. BLATT: Well, they haven't.

5 JUSTICE JACKSON: The question is --  
6 the question is, given this unique statutory  
7 context in which we have the Board as a fact  
8 finder and a decisionmaker and also a  
9 prosecutor, as you pointed out, right, that's  
10 what makes this context different than when we  
11 would ordinarily apply the four factors as a  
12 court.

13 MS. BLATT: And all --

14 JUSTICE JACKSON: We have an authority  
15 here that has made a preliminary determination  
16 that these facts are such that there's a  
17 likelihood of success on the merits. So how can  
18 the district court ignore that?

19 MS. BLATT: Because that, what you  
20 just said, basically sums to a litigation memo  
21 that a lawyer wrote to the Board and the Board  
22 signs off not in its capacity as a fact finder,  
23 but it's just authorizing litigation.

24 JUSTICE GORSUCH: Is your --

25 MS. BLATT: There's nothing to defer

1 to. They haven't found any facts.

2 JUSTICE GORSUCH: Is your point here  
3 that the litigating arm of the Board has brought  
4 this action, but the Board in its adjudicative  
5 powers as the Board has not yet determined  
6 anything?

7 MS. BLATT: And they better not have  
8 because then they're going to look biased. But,  
9 more importantly, the Board -- the litigating  
10 arm can file this injunction and then turn  
11 around and change his or her theory before the  
12 ALJ and the Board. It's not certain --

13 JUSTICE JACKSON: I understand. But  
14 we're talking about a prediction, and so I would  
15 think that the litigating arm of the Board would  
16 have a pretty good predictive capacity in terms  
17 of assessing what the Board might do in this  
18 case.

19 MS. BLATT: Well --

20 JUSTICE JACKSON: And I just want to  
21 know why that's irrelevant to a district court  
22 in this situation also determining likelihood of  
23 success on the merits.

24 MS. BLATT: Okay. So, if you have a  
25 pure legal issue, this is completely irrelevant

1 because who cares what a lawyer in NLRB thinks.  
2 I mean, if there's a meaning of the statute, it  
3 just doesn't matter. In terms of this case,  
4 which is a question of burden-shifting in terms  
5 of what caused a termination, that is a mixed  
6 question of law and fact. And if it takes the  
7 Board two years to figure it out at the back  
8 end, it can't be that you would get deference  
9 when they haven't found any fact. But I --

10 JUSTICE GORSUCH: I suppose otherwise  
11 we -- a district court might take cognizance of  
12 the fact that agencies almost always win --

13 MS. BLATT: Well, that's what --

14 JUSTICE GORSUCH: -- before their --

15 MS. BLATT: -- I was going to say.

16 JUSTICE GORSUCH: -- their  
17 adjudicative bodies.

18 MS. BLATT: If they have a 90 percent  
19 success rate, we'll always lose. I mean,  
20 really, that can predict -- and the Board tells  
21 courts this, you should know we're going to win  
22 because we always win. That's in their manual.

23 JUSTICE SOTOMAYOR: I mean, the fact  
24 is the government cites at page 39 of its brief  
25 that applying the two-part test, that they --

1 that the success rate of the NLRB is only  
2 61 percent. So it's not a rubber stamp.

3 MS. BLATT: So --

4 JUSTICE SOTOMAYOR: Even the two-part  
5 test is not.

6 MS. BLATT: Right. And we're saying  
7 that's because, in the two-part test, the  
8 overwhelming cases settle. And so that takes --  
9 it's pretty -- the fortitude of those employers  
10 that fight on is probably because they have a  
11 good case.

12 JUSTICE GORSUCH: It's kind of --  
13 it's kind of --

14 MS. BLATT: But, whether or not they  
15 win or lose, it should be the right test.

16 JUSTICE GORSUCH: It's kind of  
17 interesting too that the government fights a  
18 test that it claims it does better under.

19 MS. BLATT: I don't understand the  
20 government's position except to say that --

21 JUSTICE GORSUCH: It points out it  
22 does better with the four-part test than the  
23 two-part test. But yet it's fighting the  
24 four-part test.

25 MS. BLATT: I think the government's

1 view is we'll take the traditional test if you  
2 apply it untraditionally.

3 JUSTICE JACKSON: Consistent with the  
4 untraditional context in which we are operating?

5 MS. BLATT: Yes, and all I'm trying to  
6 say it's not that untraditional to have an  
7 administrative agency. There's a lot of them in  
8 the federal government. And the -- and the  
9 Congress authorizes injunctions a lot, and when  
10 it uses terms like "just and proper," Congress  
11 knows how to -- and we cite examples in our  
12 brief -- to give the agencies a leg up. It does  
13 that -- or at least in the trademark context.  
14 It does in another context where they'll presume  
15 irreparable harm. I think, in the antitrust  
16 context, there's also special concerns. So  
17 Congress knows how to do that.

18 But the fact it went to the district  
19 court, which is completely outside the normal  
20 process of Board review, suggests that Congress  
21 expected district courts to do what they do all  
22 the time, and that is to apply -- to apply  
23 Winter.

24 JUSTICE JACKSON: Isn't the history of  
25 this that Congress originally took the district



1 courts completely out of it and that they just  
2 kind of brought them in in this one capacity?  
3 That's what I had understood.

4 MS. BLATT: Yeah, that -- that's  
5 correct, that Norris-LaGuardia basically put a  
6 -- almost an absolute categorical ban on  
7 injunctions because courts were too aggressive  
8 in stopping unions. And then it shifted in 1947  
9 pro-employers. So it's a little ironic that the  
10 government is relying on a statute that was  
11 supposed to help employers.

12 But the district court is, you know,  
13 supposed to exercise the just and proper  
14 discretion. Otherwise, it's banned under the  
15 stat -- Norris-LaGuardia from entering an  
16 injunction.

17 CHIEF JUSTICE ROBERTS: Justice  
18 Thomas?

19 Justice Alito?

20 Justice Kagan?

21 Justice Gorsuch?

22 Justice Barrett?

23 JUSTICE BARRETT: No.

24 CHIEF JUSTICE ROBERTS: And Justice  
25 Jackson? Okay.

1 Thank you, counsel.

2 Mr. Raynor.

3 ORAL ARGUMENT OF AUSTIN RAYNOR

4 ON BEHALF OF THE RESPONDENT

5 MR. RAYNOR: Mr. Chief Justice, and  
6 may it please the Court:

7 I think the question in this case has  
8 narrowed considerably, so I'll just walk through  
9 the factors.

10 First, on irreparable harm, in its  
11 opening brief, Petitioner fought the idea that  
12 the irreparable harm inquiry should focus on  
13 whether the Board is going to be able to remedy  
14 the harm at the end of its proceedings. At page  
15 2 of its reply, it now concedes the focus is on  
16 the Board's remedial power. And I understood my  
17 friend to further concede that point in her  
18 argument this morning.

19 Second, on harm, the question is not  
20 whether there is a certainty of harm. The  
21 question is whether there's a likelihood of  
22 harm. The test used by the Sixth Circuit is  
23 reasonably necessary. That's the Ahearn case.  
24 We think that's fully consistent with this  
25 Court's precedents.

1           And as to whether all discharges  
2           count, we agree that not all unlawful discharges  
3           necessarily show irreparable harm. The question  
4           that the Board looks at and the question that we  
5           think the Court should look at is whether that  
6           extinguishes the momentum of the union drive or  
7           impairs it in such a serious way that an order  
8           from the Board a year or two down the road won't  
9           be able to restart the drive.

10           Second, on public interest and the  
11           equities, our basic point here is that when  
12           Congress makes a judgment about what is in the  
13           public interest, the court cannot override that  
14           judgment in weighing the equities at that stage.  
15           This is the Oakland Cannabis case. The Court  
16           says, if Congress has made a judgment that  
17           something is unlawful, you can't basically make  
18           that thing lawful at the equities stage by  
19           refusing to enforce Congress's judgment.

20           That doesn't mean that in some cases,  
21           at the preliminary stage, if there's extremely  
22           compelling interests on the other side or public  
23           interests on the other side, that an injunction  
24           will automatically be necessary. But we think  
25           that in a case like this one, where Congress has

1 made a judgment in -- in a run-of-the-mine case,  
2 there's only going to be purely private profit  
3 -- profit motive interests on the other side,  
4 injunctive relief is typically going to be  
5 warranted. Again, I think Petitioner concedes  
6 this basic point at page 13 of its reply. It  
7 says that courts are not entitled to revise  
8 Congress's judgment.

9 Third, that leaves the merits, which I  
10 think has been the subject of a lot of  
11 discussion this morning. We think that the  
12 Court should take into account all relevant  
13 context. One piece of context is the statistics  
14 that Justice Jackson mentioned. The Board  
15 receives 20,000 unfair labor charges every year.  
16 It issues 750 complaints. Last year, it  
17 authorized 14 petitions and filed seven. That's  
18 seven out of 20,000.

19 We think a court can properly take  
20 account of that in trying to make a predictive  
21 judgment about how the Board is going to come  
22 out. This ultimately is a predictive judgment.  
23 How is the Board going to come out? What is the  
24 likelihood of success before the Board? And  
25 it's relevant that there is substantial

1 winnowing that goes on before the complaint is  
2 filed in district court.

3 I think it's also relevant to note  
4 that the Board has approved the Section 10(j)  
5 petition. And just to clarify the separation of  
6 functions within the agency here, the general  
7 counsel is the prosecutorial arm to the Board.  
8 The Board members themselves are the  
9 adjudicative authority.

10 But the statute, Section 10(j) itself,  
11 vests in the Board the power to approve a  
12 Section 10(j) petition. So, before a 10(j)  
13 petition is filed in court, the Board itself has  
14 approved it. And that's relevant in making the  
15 predictive judgment about how this claim is  
16 likely to come out before the Board. The  
17 adjudicator has already preliminarily signaled  
18 its view of the merits.

19 That doesn't mean the Board has made  
20 up its mind. It hasn't seen all the evidence.  
21 But that's a relevant consideration for the  
22 district court to think about in determining  
23 whether there is a likelihood of success on the  
24 merits.

25 CHIEF JUSTICE ROBERTS: Counsel, you

1 mentioned that it's a small number of -- I  
2 forget exactly your framing -- that -- that,  
3 what, reach the question in court about the  
4 application of the factors?

5 MR. RAYNOR: Out of the 20,000 --

6 CHIEF JUSTICE ROBERTS: Yes.

7 MR. RAYNOR: -- there's only seven  
8 that get to court, right, last year. That was  
9 the -- those were the numbers.

10 CHIEF JUSTICE ROBERTS: And you said  
11 therefore we should assume what?

12 MR. RAYNOR: I think -- I think what  
13 the Court should do is just think about the fact  
14 that the Board has looked -- basically brought  
15 the cream-of-the-crop cases before the Board --  
16 this is -- before the court. This is an expert  
17 agency that has said we think these are the most  
18 deserving of relief. And --

19 CHIEF JUSTICE ROBERTS: Well --

20 MR. RAYNOR: -- as Justice Jackson was  
21 mentioning earlier, this isn't a case where the  
22 Board has engaged in abuse or bringing all sorts  
23 of claims before courts. It's been --

24 CHIEF JUSTICE ROBERTS: Well, I don't  
25 know why the inference --

1 MR. RAYNOR: -- highly selective.

2 CHIEF JUSTICE ROBERTS: I don't know  
3 why the inference isn't the exact opposite, that  
4 these are the ones you really feel that you've  
5 got to put, you know, the -- the -- the best  
6 behind them because these are the ones that are  
7 going to end up in court, the ones that are most  
8 vulnerable.

9 MR. RAYNOR: But the function of the  
10 Section 10(j) petition, Mr. Chief Justice, is to  
11 preserve the Board's remedial authority. So  
12 these are the cases where the Board is worried  
13 about irreparable harm accruing before the Board  
14 can issue its decision.

15 JUSTICE GORSUCH: I thought that --

16 JUSTICE ALITO: Mr. Raynor, I'm a  
17 little curious about your statistical argument.  
18 So let's say that the -- that your office files  
19 a motion for emergency relief, and you want to  
20 try to convince us that there's a probability  
21 that we're going to grant certiorari.

22 If -- if you, in making that argument,  
23 you say: Look, we're very selective in the  
24 solicitor general's office about when we're  
25 going to petition for certiorari, we get lots of

1 requests from the litigating divisions to file  
2 cert petitions, and we go along with that in a  
3 tiny minority of the cases, and we have quite a  
4 good record of success when we do petition for  
5 cert, is that something we should consider in  
6 that context?

7 MR. RAYNOR: Justice Alito, I don't  
8 think there's any bar to the Court considering  
9 it.

10 (Laughter.)

11 MR. RAYNOR: And just if I may?

12 JUSTICE ALITO: Seriously?

13 MR. RAYNOR: I certainly don't think  
14 there's a bar. This is an equitable analysis.  
15 But I think the context here is different in  
16 that Congress has --

17 JUSTICE ALITO: Yeah, I think it's --  
18 you're going to have to tell me why it's  
19 different.

20 MR. RAYNOR: The reason is that  
21 Congress has set up a scheme where the agency  
22 can seek 10(j) relief to protect its own  
23 adjudicative authority.

24 And as Justice Jackson mentioned, the  
25 history here is that initially there was pretty



1 widespread judicial intrusion into labor  
2 disputes, and in 1932, Congress cut that off and  
3 said we're not going to allow district courts to  
4 intervene. And in 1935, it centralized  
5 adjudication of disputes in the Board.

6 In 1947, it decided it had to walk  
7 back its restriction a little bit, and so it  
8 allowed Section 10(j) relief, but it didn't  
9 allow Section 10(j) relief for district courts  
10 to engage in a wide-ranging and intrusive  
11 involvement in labor disputes. It allowed  
12 courts to come in basically as ancillary to the  
13 agency proceedings and protect the integrity of  
14 those proceedings.

15 And in that context, I do think it is  
16 relevant that the Board is selective about the  
17 petitions that it files.

18 JUSTICE GORSUCH: I -- I appreciate  
19 that point, but would you agree that the  
20 likelihood of success on the merits inquiry  
21 means likelihood of success on the merits in  
22 this case?

23 MR. RAYNOR: As opposed to some other  
24 case, Justice Gorsuch?

25 JUSTICE GORSUCH: As opposed to other

1 cases.

2 MR. RAYNOR: Correct. It's a focus on  
3 this particular case.

4 JUSTICE GORSUCH: It has to be  
5 focused, and so we have to look at the merits of  
6 this case, right?

7 MR. RAYNOR: Correct.

8 JUSTICE GORSUCH: And so the Sixth  
9 Circuit's rule that you can't engage in fact  
10 finding has to be wrong.

11 MR. RAYNOR: Justice Gorsuch, we agree  
12 that some fact-finding is permissible. And I  
13 think there's been a tendency to caricature what  
14 the Sixth Circuit is doing. There was a two-day  
15 evidentiary hearing in this case and there was  
16 discovery.

17 JUSTICE GORSUCH: Well, the Sixth  
18 Circuit said fact-finding is inappropriate.

19 MR. RAYNOR: Correct. It did -- it  
20 did say that. And I agree that language, if  
21 taken out of context --

22 JUSTICE GORSUCH: And so -- and you've  
23 walked us --

24 MR. RAYNOR: -- could be read in that  
25 way.

1 JUSTICE GORSUCH: Okay. So that's  
2 wrong.

3 MR. RAYNOR: I -- I agree --

4 JUSTICE GORSUCH: That statement is  
5 wrong.

6 MR. RAYNOR: -- that that statement on  
7 its own is.

8 JUSTICE GORSUCH: Okay. Yeah. And --  
9 and -- and you've walked through the four  
10 factors, which seems to suggest you agree there  
11 are, indeed, four factors.

12 MR. RAYNOR: We agree that all four  
13 considerations from Winter are relevant to this  
14 analysis.

15 JUSTICE KAVANAUGH: Do we apply the  
16 test the same way we usually apply it as a  
17 general matter?

18 MR. RAYNOR: I think it -- no, I --

19 JUSTICE KAVANAUGH: Or does a district  
20 court apply it the same way as --

21 MR. RAYNOR: I think there has to be  
22 some translation to this context. And on --  
23 just focusing on likelihood of the merits for a  
24 moment, we think that there has to be a  
25 substantial legal theory and that there has to

1 be sufficient facts that a reasonable  
2 fact-finder could find for the Board. And we do  
3 think that --

4 JUSTICE KAVANAUGH: That doesn't sound  
5 like -- yeah.

6 JUSTICE GORSUCH: It doesn't sound  
7 like likelihood of success on the merits at all.

8 MR. RAYNOR: It -- it's likelihood of  
9 success of the merits in the sense that you're  
10 assessing how likely is the Board to succeed.  
11 And we think they have to show a reasonable  
12 probability of success. That's the standard  
13 that we think governs here. And we think that's  
14 consistent with --

15 JUSTICE GORSUCH: Not likelihood of  
16 success, reasonable? What's reasonable? Is  
17 that -- it's obviously -- is that above  
18 50 percent? Is that 30 percent?

19 MR. RAYNOR: I'm hesitant to put a  
20 percentage on it, Justice Gorsuch.

21 JUSTICE GORSUCH: I'm not surprised.

22 JUSTICE KAVANAUGH: It's lower than  
23 50.

24 MR. RAYNOR: I think it's consistent.  
25 For example, you know, Justice Kavanaugh, your

1 opinion in Labrador says fair prospect. I think  
2 that's generally along the lines of what we have  
3 in mind. We don't think reasonable probability  
4 necessarily needs a percentage to spell it out.

5 JUSTICE KAGAN: So, I'm sorry, are you  
6 saying it's the same or it's a lower bar than  
7 the usual likelihood of success standard as  
8 applied in courts every day under Winter?

9 MR. RAYNOR: We think that it is a  
10 lower standard, principally for the -- the  
11 factual part which I mentioned, which is we  
12 think, if a reasonable fact-finder can find for  
13 the Board, that is sufficient.

14 We do think that that's effectively  
15 the test that the Sixth Circuit has been  
16 applying. I could point you to Ozburn-Hessey,  
17 which is a decision where the Sixth Circuit  
18 says, look, the Board has put in evidence that  
19 this --

20 JUSTICE KAGAN: And is the reason for  
21 this lower standard only that the Board is, you  
22 know, generally restrained in asking for these  
23 along the lines that you said, or is there some  
24 other reason why we should apply -- why courts  
25 should apply a lower standard?

1                   MR. RAYNOR: I think it's a structural  
2 point, which is that Congress intended the Board  
3 to be the primary adjudicator here.

4                   JUSTICE KAGAN: Well, it did intend  
5 the Board to be the primary adjudicator, but it  
6 also gave this power over injunctions to the  
7 court.

8                   MR. RAYNOR: Right. But we think that  
9 power has to be exercised cognizant of the fact  
10 that the Board is going to be adjudicating this  
11 dispute. The court is not going to get out in  
12 front of the Board. It's going to protect the  
13 Board's authority.

14                   JUSTICE GORSUCH: I don't -- I don't  
15 see why that follows, because it's a preliminary  
16 analysis. It's just a quick look. And what  
17 happens at the merits happens at the merits.  
18 And in all sorts of alphabet soup agencies, we  
19 don't do this. District courts apply the  
20 likelihood of success test as we normally  
21 conceive it.

22                   So why is this particular statutory  
23 regime different than so many others that your  
24 friend points out?

25                   MR. RAYNOR: Well, Justice Gorsuch,

1 with respect to the statutes that they identify,  
2 the case law in the lower courts does not  
3 uniformly support them. It's actually quite  
4 mixed. There's a lot of it that supports our  
5 position.

6 JUSTICE GORSUCH: There's a lot on the  
7 other side too.

8 MR. RAYNOR: I acknowledge that it is.

9 JUSTICE GORSUCH: An awful lot. And  
10 -- and I -- I just struggle to understand what  
11 you're asking lower courts to do and how it  
12 would be unique to the NLRB context as opposed  
13 to others, cognizant as well that these  
14 injunctions often run against employers and for  
15 the benefit of unions too, so whatever standard  
16 we come up with here, you know, goose and  
17 gander, we have to be cognizant of that.

18 MR. RAYNOR: I think, to the extent  
19 you adopt a standard in this case, its  
20 generalizability will actually be fairly  
21 limited. There's only a handful of statutes  
22 they identify that allow injunctive relief  
23 pending administrative proceedings. There's  
24 three in particular: The FTC, the EEOC, the  
25 Department of Labor.

1 JUSTICE GORSUCH: Right.

2 MR. RAYNOR: But other statutes, for  
3 example, simply involving the federal  
4 government, the authority to sue to enforce  
5 federal law, we don't think it would generalize  
6 because there's not the structural concerns I  
7 raised with Justice Kagan.

8 JUSTICE JACKSON: Mr. Raynor, is that  
9 because what we're talking about here is a  
10 predictive judgment related to what the Board is  
11 likely to find, that there are predictive  
12 judgments or there's the preliminary relief  
13 determination that courts are used to making,  
14 which is who's going to win, you know, from my  
15 perspective as between the parties that are  
16 before me, right?

17 Someone's brought a complaint.  
18 Someone is defending. I'm looking at this  
19 preliminarily and making a judgment as to who's  
20 likely to win on the merits of the legal issue  
21 that they have brought.

22 That's the ordinary course of things.  
23 I think -- and maybe I'm wrong and you can --  
24 that -- that the predictive judgment here is not  
25 that.



1                   The predictive judgment here is the  
2 Board is seeking injunctive relief to protect  
3 its remedial authority and what -- to the extent  
4 we're applying the four factors, it's the  
5 likelihood that the Board is going to decide  
6 that there is an unfair labor practice in this  
7 situation and reverse the stakes on the ground  
8 or whatever. Is -- is that right?

9                   MR. RAYNOR: Yes, I do think that's  
10 correct. The Board is the principal adjudicator  
11 here. We're trying to predict how they're going  
12 to come out.

13                   JUSTICE KAGAN: I -- I don't --

14                   JUSTICE KAVANAUGH: They're not the  
15 final --

16                   JUSTICE KAGAN: -- see how that could  
17 possibly be, Mr. Raynor, that, you know, a court  
18 is supposed to say, well, I have one view of the  
19 law, but I'm just going to assume that the Board  
20 has a different view of the law just because  
21 this case was brought?

22                   MR. RAYNOR: No. I took the --

23                   JUSTICE KAGAN: It's got to be the  
24 court's view of the law, right?

25                   MR. RAYNOR: Well, I took the premise

1 of Justice Jackson's question to be, for  
2 example, if there's NLRB precedent that the  
3 Court hasn't weighed in on yet. We -- but we  
4 know that precedent is going to apply before the  
5 Board. It would have to think about the fact  
6 that that precedent --

7 JUSTICE KAGAN: Yes, sure, if there's  
8 NLRB precedent, that -- you know, that's the  
9 reigning -- that's the governing law, the court  
10 is supposed to think about that.

11 MR. RAYNOR: Correct.

12 JUSTICE KAGAN: Because that's the  
13 governing law.

14 MR. RAYNOR: Correct.

15 JUSTICE KAGAN: But it's just supposed  
16 to think about that as a court doing what courts  
17 normally do, which is applying the law as the  
18 court finds it to a case.

19 MR. RAYNOR: Yes, Justice Kagan. And  
20 if you all were inclined just to think that the  
21 likelihood of success test applies exactly the  
22 same way in this case that it does in others, I  
23 still would submit that it would be easier for  
24 the Board to satisfy that test, principally  
25 because, as I mentioned earlier, the Board has

1 already approved the petition. It has signaled  
2 its preliminary view of the merits.

3 JUSTICE BARRETT: But that means we're  
4 giving the Board a boost because of the  
5 screening function that it's engaged in and  
6 we're saying, well, you know, the Board clearly  
7 thought it was meritorious when it had its  
8 prosecutorial hat on, so we should assume that  
9 when the Board has its adjudicatory hat on, that  
10 it's going to rule in favor of itself.

11 MR. RAYNOR: Justice Barrett, I  
12 acknowledge that the Board could change its mind  
13 once it has all the evidence before it. It  
14 doesn't have the evidence before it, the ALJ  
15 hearing evidence, for example, at the time it  
16 approves the petition.

17 But I would dispute the notion that  
18 it's acting in a prosecutorial role at this  
19 stage. It's approving the petition -- the 10(j)  
20 petition to protect its adjudicative authority.  
21 And Congress hasn't given it -- for example, the  
22 way that district courts have the authority to  
23 issue a PI to protect their own authority,  
24 Congress hasn't given that to the Board and said  
25 you have to ask the district court.

1 JUSTICE BARRETT: Because the district  
2 court is an independent check, right? Because  
3 this is a big deal --

4 MR. RAYNOR: Correct.

5 JUSTICE BARRETT: -- to have the  
6 injunction in place no matter who it enjoins.  
7 So the district court is an independent check,  
8 so it seems like it should be just doing what  
9 district courts do since it was given the  
10 authority to do it.

11 MR. RAYNOR: Yes. We -- we  
12 acknowledge this isn't a rubber stamp, and I  
13 think the success statistics in the various  
14 circuits bear that out. And we do think that  
15 there has to be an inquiry into the merits.  
16 Ozburn-Hessey, again, is an example where the  
17 Court said the evidence is overwhelming against  
18 the Board. We're not going to blind ourselves  
19 to that. We're not going to grant relief here.

20 There is some factual weighing that  
21 goes on. We're not disputing that it is a  
22 check. The only question is what -- to what  
23 extent it should be a check.

24 JUSTICE GORSUCH: Let me -- let me see  
25 if I can put it this way. So the district

1 court's supposed to ask likelihood of success on  
2 the merits. Is it supposed to ask what I think  
3 are the likelihood of success on the merits  
4 objectively as best I can come up with, as  
5 neutral judgment as I can muster? Or is it  
6 supposed to ask, well, I don't think you're  
7 likely to succeed, but I think the Board will?

8 Is that what -- is that -- is that --  
9 that seems to me the delta between the positions  
10 here. And, you know, I -- I -- gosh, it's clear  
11 to me that your -- you know, your -- your  
12 friend's going to win, but the Board's going to  
13 rule otherwise. Is -- is that -- you know, is  
14 that really supposed to be what a district judge  
15 is supposed to do?

16 MR. RAYNOR: Well, Justice Gorsuch,  
17 I'm not sure, I guess, in the hypothetical what  
18 would be the basis for the discrepancy.

19 JUSTICE GORSUCH: Nor would I, except  
20 for maybe the statistics you keep referencing,  
21 the fact that boards tend to win in front of  
22 boards. They sometimes lose in later review,  
23 but they win at least in front of the board.

24 And I guess, if we're going to take  
25 account of statistics, why not also ask how

1 often the NLRB gets reversed? You know, I mean,  
2 where -- where does it end? And -- and why,  
3 again, shouldn't a district judge just ask, as  
4 best they can muster, with relevant NLRB  
5 precedent in mind, all of the law, all of the  
6 facts? And it may have different facts before  
7 it too than -- than the Board did when it  
8 authorized the 10(j). It's going to hold a  
9 hearing.

10 MR. RAYNOR: Right.

11 JUSTICE GORSUCH: So it's going to be  
12 a different factual record. It's going to look  
13 at all the law. What's wrong with the best  
14 judgment a neutral magistrate can issue?

15 MR. RAYNOR: Justice Gorsuch, setting  
16 aside our front-line position about how we think  
17 it's a lower standard here, if you thought it  
18 was the same standard, then our position is  
19 simply that all contexts should be considered.  
20 We're -- we're not contending that any one  
21 particular characteristic should be dispositive.  
22 Ours is the pro-context position.

23 JUSTICE GORSUCH: Okay. Thank you.

24 JUSTICE JACKSON: But why -- so why do  
25 you think it's a lower standard?

1                   MR. RAYNOR: Justice Jackson, again, I  
2 think it's a couple things, but it's principally  
3 structural. We think the Board is -- is the  
4 adjudicator here. The role of the district  
5 court is to -- to protect and facilitate the  
6 Board's adjudication --

7                   JUSTICE JACKSON: And that's in the  
8 statute from your view -- it's not your view of  
9 just sort of how it should be?

10                  MR. RAYNOR: Correct.

11                  JUSTICE JACKSON: You -- you see --  
12 you read the statute as set -- as setting up  
13 this structure?

14                  MR. RAYNOR: Yes, exactly. This is  
15 the function of a Section 10(j) petition. The  
16 10(j) petition expires when the Board issues its  
17 order. At that point, there's a different  
18 statutory authority that allows the Board to  
19 enforce its order in court. And so all we're  
20 talking about is a petition that's specifically  
21 designed to protect the Board's adjudication.

22                  And, again, the historical record  
23 supports this in the sense that Congress didn't  
24 want wide-ranging district court involvement in  
25 labor disputes. It wanted to give a limited

1 district court authority to protect the Board's  
2 adjudicative authority.

3 JUSTICE KAVANAUGH: Why do you think  
4 Congress did that?

5 MR. RAYNOR: I think the reason is  
6 that in 1932, when it passed the  
7 Norris-LaGuardia Act, it imposed very stringent  
8 restrictions on district court ability to issue  
9 injunctions. And in the post-war period, there  
10 was essentially a lot of labor unrest that  
11 courts weren't able to step in expeditiously and  
12 stop. And the court thought that was necessary.  
13 And so, if you look at the legislative history,  
14 Congress says, look, it sometimes takes the  
15 Board a while to rule and there might be a lot  
16 of harm inflicted in the meantime, so we need to  
17 give district courts the authority to prevent  
18 that harm while Board proceedings are ongoing.

19 JUSTICE GORSUCH: It's certainly true,  
20 though, that Congress was not eager to  
21 resuscitate the labor injunction and Debs,  
22 right?

23 MR. RAYNOR: Correct. And --

24 JUSTICE GORSUCH: Yeah. And -- and  
25 that was not a particularly glorious era for



1 courts, and you would think, therefore, maybe a  
2 more restrictive injunctive test rather than a  
3 looser one might apply?

4 MR. RAYNOR: Well, Justice Gorsuch, I  
5 think I would actually frame the --

6 JUSTICE GORSUCH: Traditional rules of  
7 equity might -- you -- you -- you might want  
8 them.

9 MR. RAYNOR: I would frame it actually  
10 a little differently. I think what Congress was  
11 concerned about doing was restricting the power  
12 of district courts and protecting --

13 JUSTICE GORSUCH: Yes.

14 MR. RAYNOR: -- the centralized  
15 adjudicative authority --

16 JUSTICE GORSUCH: And in --

17 MR. RAYNOR: -- of the Board.

18 JUSTICE GORSUCH: -- restricting the  
19 power of district courts, you'd maybe want the  
20 full considerations of equity brought to bear  
21 rather than a looser standard that results in  
22 more judicial interference in labor affairs.

23 MR. RAYNOR: I recognize that that's  
24 one way to think about it, but our view is that  
25 ours is actually a more modest conception of the

1       judicial role, which is that it's protecting the  
2       Board's adjudicative authority rather than  
3       engaging in its own free-ranging exploration of  
4       the merits.

5                   JUSTICE JACKSON: In this context,  
6       consistent with the kind of injunction that  
7       we're talking about here, it's not sort of  
8       protecting the parties in general; it's  
9       protecting this particular interest, which is  
10      the Board's authority?

11                   MR. RAYNOR: Exactly. And there's  
12      public -- we are not suing on behalf of any  
13      private parties. The Board is suing to protect  
14      public rights only. And we do think, to the  
15      extent this is generalizable, it's actually a  
16      relatively limited set of statutes to which our  
17      rule here would apply.

18                   If the Court has no further questions?

19                   CHIEF JUSTICE ROBERTS: Thank you,  
20      counsel.

21                   Do you agree with your friend on the  
22      other side that we can dispose of this in a  
23      short opinion?

24                   (Laughter.)

25                   MR. RAYNOR: Yeah.

1 (Laughter.)

2 CHIEF JUSTICE ROBERTS: Thank you.  
3 Justice Thomas?

4 JUSTICE THOMAS: Mr. Raynor, if the  
5 injunction -- the -- if the approach here is to  
6 protect the interests of the Board, do -- do  
7 other agencies benefit from the same -- from  
8 this approach?

9 MR. RAYNOR: Justice --

10 JUSTICE THOMAS: And if they don't,  
11 why?

12 MR. RAYNOR: Justice Thomas, as I  
13 acknowledged earlier, I think other agencies  
14 that have a specific statutory authority to seek  
15 injunctive relief pending agency proceedings  
16 likely could benefit from a similar kind of  
17 rule.

18 We don't think that the rule that  
19 we're requesting here would reply -- would apply  
20 to all the statutes that they cite where, for  
21 example, the government simply has the ability  
22 to sue to enforce federal law. That doesn't  
23 have the same type of ancillary quality that we  
24 think the injunctive relief in this case does.

25 CHIEF JUSTICE ROBERTS: Justice Alito?

1 Justice Sotomayor?

2 JUSTICE SOTOMAYOR: The ALJ ruled last  
3 May. Exceptions have been filed. How -- how  
4 long is this going to take?

5 MR. RAYNOR: The statistics are that,  
6 typically, from complaint to final Board order  
7 is about two -- two years. It varies somewhat  
8 every fiscal year, but about two years. So  
9 we're coming up on when you might expect the  
10 Board to rule on that basis.

11 The -- the complaint --

12 JUSTICE SOTOMAYOR: And the injunction  
13 lasts until then or lasts until what?

14 MR. RAYNOR: It lasts until the Board  
15 issues its order. At that point, there's a  
16 different statutory authority in 10(e) where the  
17 Board can go get preliminary relief --

18 JUSTICE SOTOMAYOR: Are we sure that  
19 before we rule, the Board isn't going to have  
20 issued its preliminary injunction so that this  
21 case is mooted?

22 MR. RAYNOR: I'm not sure about that.  
23 I'm not privy to what the Board's timing will  
24 be, so I can't make any representations. If --  
25 if the Board were to rule before this Court were

1 to rule, I think that there would be a question  
2 of mootness because the petition would expire --  
3 the injunction would expire by its own terms.  
4 So we --

5 JUSTICE SOTOMAYOR: That's why I was  
6 asking. Thank you.

7 MR. RAYNOR: And we would obviously  
8 make a submission on that point if that were to  
9 occur.

10 CHIEF JUSTICE ROBERTS: Justice Kagan?

11 JUSTICE KAGAN: I just want to make  
12 sure I completely understand how you think that  
13 this case is narrowed. You started, you said --  
14 you quoted Ms. Blatt's reply brief as to  
15 irreparable harm as to the equities and the  
16 public interest.

17 I -- I take it that you -- and I don't  
18 think that Ms. Blatt at all retreated from her  
19 reply brief today. So I take it that that's  
20 pretty much not at issue now and that the real  
21 question in dispute is whether the likelihood of  
22 success inquiry is ratcheted down somewhat.

23 Is that what you understand the only  
24 issue in dispute to be?

25 MR. RAYNOR: I think so, Justice

1 Kagan, assuming that the way we understand  
2 irreparable harm is that it focuses on the  
3 Board's remedial authority and there only has to  
4 be a reasonably likely showing of irreparable  
5 harm. And then, on the public interest, our  
6 view is simply that Congress has said what the  
7 public interest here is. If you think there's  
8 been a likelihood of success on the violation,  
9 however you want to define that, by the time we  
10 get to public interest and weighing of the  
11 equities, it's going to have to be a pretty  
12 compelling private interest on the other side to  
13 overcome Congress's judgment that this kind of  
14 conduct should be illegal.

15 JUSTICE KAGAN: And then, with respect  
16 to the likelihood of success, you're not arguing  
17 as I understand it that somehow the Court is  
18 supposed to say, well, let's pretend I'm not a  
19 court, let's pretend that I'm the Board. A  
20 court is supposed to do what a court does.

21 Is that correct?

22 MR. RAYNOR: Yes, Justice Kagan.

23 JUSTICE KAGAN: Look at the law and  
24 make the best decision on the law.

25 Now you have a different standard that

1 you think that the court ought to apply when the  
2 court looks at the law and makes the best  
3 decision on the law, and I understand that  
4 difference, but this isn't something where  
5 you're saying, like, the court is supposed to  
6 pretend to be the Board?

7 MR. RAYNOR: Justice Kagan, I think  
8 that's generally correct with a caveat we do  
9 think it's relevant that the Board has approved  
10 the petition. And we do think, in circumstances  
11 where there may be a law or a rule that applies  
12 to the Board but not to the district court, the  
13 district court would have to take that into  
14 account, for example, NLRB precedent.

15 JUSTICE KAGAN: Okay. Thank you.

16 CHIEF JUSTICE ROBERTS: Justice  
17 Barrett?

18 JUSTICE KAVANAUGH: Just one thing on  
19 irreparable harm. You just said reasonably  
20 likely, and I think they say likelihood. Are  
21 those the same things?

22 MR. RAYNOR: Yes. I -- I -- I know --  
23 I think, basically, what we think, it has to be  
24 reasonably necessary. And --

25 JUSTICE KAVANAUGH: Okay.

1                   MR. RAYNOR: -- that's the way the  
2 Sixth Circuit framed it and that's the test we  
3 would stand by. I don't think there's a whole  
4 lot of daylight between those different  
5 formulations.

6                   JUSTICE KAVANAUGH: Thank you.

7                   CHIEF JUSTICE ROBERTS: Justice  
8 Barrett?

9                   Justice Jackson?

10                  JUSTICE JACKSON: Just one final  
11 thing. Why is it relevant in this context that  
12 the Board has approved the petition when it  
13 wouldn't be in a normal -- in an ordinary  
14 scenario of the -- the court just making the  
15 kind of determination that Justice Kagan put  
16 forward?

17                  MR. RAYNOR: Justice Jackson, in a  
18 normal scenario, the Board -- excuse me, the  
19 court itself is determining whether to issue a  
20 preliminary injunction. So it doesn't have  
21 reference to another actor that may or may not  
22 have approved preliminary relief.

23                  In this case, we know the Board is the  
24 ultimate adjudicator, and we know that it has  
25 signaled its preliminary view of the merits by



1 approving the petition. That type of structural  
2 relationship isn't present when the district  
3 court is issuing the preliminary injunction  
4 without regard to an agency request.

5 I don't want to overstate this point.  
6 As I mentioned, the Board can change its mind  
7 once it hears the evidence. It hasn't  
8 prejudged, but we do think this is relevant to  
9 the predictive inquiry about how this case is  
10 going to come out, what the likelihood of  
11 success is.

12 JUSTICE JACKSON: Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 MR. RAYNOR: Thank you.

16 CHIEF JUSTICE ROBERTS: Rebuttal, Ms.  
17 Blatt?

18 REBUTTAL ARGUMENT OF LISA S. BLATT

19 ON BEHALF OF THE PETITIONER

20 MS. BLATT: Thank you. May it please  
21 the Court:

22 Just a couple things. On page 91 of  
23 the district court, the district court said, in  
24 terms of likelihood of success, my next inquiry  
25 focuses on whether there are any facts

1 supporting each allegation without resolving  
2 conflicting evidence. So there's no question  
3 there was none of that.

4 And in terms of the standard that as  
5 long reasonable facts support the Board's theory  
6 that should be enough, if that sounds familiar,  
7 it's because it's the standard for summary  
8 judgment, and that obviously is not the standard  
9 for an injunction.

10 And it's a little bit ironic that  
11 that's the standard from summary judgment  
12 because, if you can survive summary judgment, at  
13 least we get a trial. So this is even worse  
14 than a party would have at summary judgment. So  
15 they should have to prove their case like any  
16 other party.

17 In terms of -- so the likelihood of  
18 success, just another thing to keep in mind, the  
19 only evidence that the district court is going  
20 to have is the evidence before the district  
21 court.

22 In terms of the legal theory, the --  
23 the Board has been very, very aggressive on some  
24 of its legal theories, including in a case where  
25 Starbucks sought discovery, the Board turned

1 around and called that an unfair labor practice  
2 and then told the district court they had to  
3 defer to it.

4 The Board also says that you have to  
5 bargain with unions that have been decertified.  
6 So these are very serious legal questions that  
7 do come up.

8 And the other thing, if they want  
9 deference to their -- their investigative  
10 decision, then why aren't they producing their  
11 litigation memo? I mean, really. If they --  
12 that's what you're supposed to do when you get  
13 deference is show your work.

14 And this is obviously a privileged  
15 document and their manual is a cookie-cutter  
16 thing saying here's how you get your litigation  
17 memo, here's how you get Board approval. So at  
18 least disclose it.

19 In terms of getting out in front,  
20 obviously, the district court's findings aren't  
21 binding on the ALJ or the Board.

22 And in terms of lower courts, the only  
23 thing I'll add is that almost all the cases that  
24 kind of water down the standard are pre-Winter.  
25 There was one post-Winter case that didn't cite

1 Winter, and then the Ninth Circuit, the  
2 government relied on and cited the court said  
3 this is in tension with Winter.

4 We'd ask that the judgment be  
5 reversed.

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

8 (Whereupon, at 12:31 p.m., the case  
9 was submitted.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## Official - Subject to Final Review

<p><b>1</b></p> <p><b>1-4</b> [1] 17:8  <b>10(e)</b> [1] 59:16  <b>10(j)</b> [18] 4:11,13,18 5:2 12:23 17:8 36:4,10,12,12 38:10 39:22 40:8,9 50:19 53:8 54:15,16  <b>11:39</b> [2] 1:19 4:2  <b>12</b> [1] 10:13  <b>12:31</b> [1] 67:8  <b>13</b> [1] 35:6  <b>14</b> [7] 17:8,8,18 18:16,24 25:18 35:17  <b>15</b> [1] 1:7  <b>1932</b> [2] 40:2 55:6  <b>1935</b> [1] 40:4  <b>1947</b> [2] 32:8 40:6</p>	<p>17 35:12,20 52:25 62:14  <b>accruing</b> [1] 38:13  <b>acknowledge</b> [4] 21:14 46:8 50:12 51:12  <b>acknowledged</b> [1] 58:13  <b>act</b> [2] 22:18 55:7  <b>acting</b> [1] 50:18  <b>action</b> [2] 18:22 28:4  <b>actor</b> [1] 63:21  <b>actually</b> [8] 20:17 21:2 46:3,20 56:5,9,25 57:15  <b>add</b> [1] 66:23  <b>addressed</b> [1] 16:16  <b>adjudicate</b> [1] 18:13  <b>adjudicating</b> [2] 18:11 45:10  <b>adjudication</b> [7] 5:22 7:10 18:2,7 40:5 54:6,21  <b>adjudicative</b> [8] 28:4 29:17 36:9 39:23 50:20 55:2 56:15 57:2  <b>adjudicator</b> [6] 36:17 45:3,5 48:10 54:4 63:24  <b>adjudicatory</b> [2] 9:17 50:9  <b>administrative</b> [2] 31:7 46:23  <b>adopt</b> [1] 46:19  <b>adversary</b> [1] 26:10  <b>affairs</b> [1] 56:22  <b>afraid</b> [1] 12:18  <b>Agencies</b> [8] 5:19 9:17 19:8 29:12 31:12 45:18 58:7,13  <b>agency</b> [9] 7:10 9:23 31:7 36:6 37:17 39:21 40:13 58:15 64:4  <b>agency's</b> [1] 5:24  <b>aggressive</b> [2] 32:7 65:23  <b>agree</b> [10] 7:21 24:16 34:2 40:19 41:11,20 42:3,10,12 57:21  <b>Ahearn</b> [1] 33:23  <b>ahistorical</b> [1] 6:3  <b>Alito</b> [6] 32:19 38:16 39:7,12,17 58:25  <b>ALJ</b> [6] 13:10 15:5 28:12 50:14 59:2 66:21  <b>ALJ's</b> [1] 13:21  <b>allegation</b> [2] 23:24 65:1  <b>alleged</b> [1] 20:14  <b>allow</b> [3] 40:3,9 46:22  <b>allowed</b> [2] 40:8,11  <b>allows</b> [1] 54:18  <b>almost</b> [3] 29:12 32:6 66:23  <b>alphabet</b> [2] 9:16 45:18  <b>already</b> [3] 9:3 36:17 50:1  <b>although</b> [2] 13:7 23:17  <b>analysis</b> [3] 39:14 42:14 45:16  <b>ancillary</b> [2] 40:12 58:23  <b>animus</b> [1] 14:22  <b>another</b> [3] 31:14 63:21 65:18</p>	<p><b>anti-union</b> [1] 14:22  <b>antitrust</b> [1] 31:15  <b>anytime</b> [3] 12:16 15:15 23:23  <b>appeals</b> [6] 4:17 9:22 12:7,16 13:24 15:9  <b>APPEARANCES</b> [1] 2:1  <b>application</b> [1] 37:4  <b>applied</b> [3] 19:14 20:10 44:8  <b>applies</b> [2] 49:21 62:11  <b>apply</b> [20] 4:14,18 5:16 19:11 24:14 27:11 31:2,22,22 42:15,16,20 44:24,25 45:19 49:4 56:3 57:17 58:19 62:1  <b>applying</b> [4] 29:25 44:16 48:4 49:17  <b>appreciate</b> [2] 18:25 40:18  <b>approach</b> [3] 6:4 58:5,8  <b>approval</b> [1] 66:17  <b>approve</b> [1] 36:11  <b>approved</b> [6] 36:4,14 50:1 62:9 63:12,22  <b>approves</b> [1] 50:16  <b>approving</b> [2] 50:19 64:1  <b>April</b> [1] 1:15  <b>aren't</b> [2] 66:10,20  <b>argues</b> [2] 4:22 6:21  <b>arguing</b> [2] 12:15 61:16  <b>argument</b> [11] 1:18 3:2,5,8 4:4,7 33:3,18 38:17,22 64:18  <b>arm</b> [5] 16:7 28:3,10,15 36:7  <b>around</b> [2] 28:11 66:1  <b>aside</b> [1] 53:16  <b>assessing</b> [2] 28:17 43:10  <b>assigned</b> [3] 7:2 9:5 18:2  <b>Assistant</b> [1] 2:4  <b>assume</b> [3] 37:11 48:19 50:8  <b>assuming</b> [1] 61:1  <b>attention</b> [1] 25:24  <b>AUSTIN</b> [3] 2:4 3:6 33:3  <b>authority</b> [23] 16:18 26:23 27:14 36:9 38:11 39:23 45:13 47:4 48:3 50:20,22,23 51:10 54:18 55:1,2,17 56:15 57:2,10 58:14 59:16 61:3  <b>authorized</b> [2] 35:17 53:8  <b>authorizes</b> [2] 4:11 31:9  <b>authorizing</b> [1] 27:23  <b>automatically</b> [2] 24:20 34:24  <b>awful</b> [1] 46:9</p>	<p><b>ban</b> [1] 32:6  <b>banned</b> [1] 32:14  <b>bar</b> [3] 39:8,14 44:6  <b>bargain</b> [1] 66:5  <b>bargaining</b> [2] 23:18 24:2  <b>barred</b> [3] 8:23,24 15:9  <b>BARRETT</b> [16] 15:18,21 16:4,13 22:22,25 23:3 24:17 32:22,23 50:3,11 51:1,5 62:17 63:8  <b>barricaded</b> [1] 21:2  <b>based</b> [2] 22:18 26:20  <b>basic</b> [3] 6:5 34:11 35:6  <b>basically</b> [7] 12:24 27:20 32:5 34:17 37:14 40:12 62:23  <b>basis</b> [5] 7:16 14:6 19:5 52:18 59:10  <b>bear</b> [2] 51:14 56:20  <b>BEHALF</b> [10] 1:9 2:2,5 3:4,7,10 4:8 33:4 57:12 64:19  <b>behind</b> [1] 38:6  <b>below</b> [4] 4:19 11:6,23 22:11  <b>benefit</b> [3] 46:15 58:7,16  <b>best</b> [6] 38:5 52:4 53:4,13 61:24 62:2  <b>better</b> [3] 28:7 30:18,22  <b>between</b> [5] 21:18,19 47:15 52:9 63:4  <b>biased</b> [1] 28:8  <b>big</b> [1] 51:3  <b>binding</b> [1] 66:21  <b>bit</b> [2] 40:7 65:10  <b>blank</b> [1] 12:25  <b>BLATT</b> [74] 2:2 3:3,9 4:6,7,9 6:2,9,11,25 8:4,17 9:14 10:12,17,22 11:1 12:5 13:5,9,16,20 14:3,10,16,20 15:6,20 16:3,6,12,20 17:3,10,20 19:4,16,22 20:4,16 21:21 22:24 23:2,6 24:5,10,12,16 25:2,25 26:3,7,22 27:4,13,19,25 28:7,19,24 29:13,15,18 30:3,6,14,19,25 31:5 32:4 60:18 64:17,18,20  <b>Blatt's</b> [1] 60:14  <b>blind</b> [1] 51:18  <b>BOARD</b> [127] 1:8,10 5:7,8,14,16,18,22 7:23,25 8:20 9:5,21 10:1,2 11:4 12:9,14 13:23 17:7,14,16 18:3,5,8,21,22,22 19:9 25:9,14,22,23 26:4,8,10,13,14,19,24 27:7,21,21 28:3,4,5,9,12,15,17 29:7,20 31:20 33:13 34:4,8 35:14,21,23,24 36:4,7,8,11,13,16,19 37:14,15,22 38:12,13 40:5,16 43:2,10 44:13,18,21 45:2,5,10,12 47:10 48:2,5,10,19 49:5,24,25 50:4,6,9,12,24 51:18 52:7,23 53:7 54:3,16,18 55:15,18 56:17 57:13 58:6</p>	<p>59:6,10,14,17,19,25 61:19 62:6,9,12 63:12,18,23 64:6 65:23,25 66:4,17,21  <b>Board's</b> [24] 6:23 7:9,22 12:1 15:11 16:17,17,24 20:13,23 21:6 24:20 33:16 38:11 45:13 52:12 54:6,21 55:1 57:2,10 59:23 61:3 65:5  <b>boards</b> [2] 52:21,22  <b>bodies</b> [1] 29:17  <b>body</b> [1] 25:17  <b>boost</b> [1] 50:4  <b>both</b> [4] 11:23 12:6 15:8 18:9  <b>breach</b> [1] 21:23  <b>brief</b> [9] 9:15 10:13 20:9 21:14 29:24 31:12 33:11 60:14,19  <b>bringing</b> [1] 37:22  <b>broader</b> [1] 21:23  <b>brought</b> [7] 28:3 32:2 37:14 47:17,21 48:21 56:20  <b>bunch</b> [1] 9:16  <b>burden-shifting</b> [2] 14:21 29:4</p>
<p><b>2</b></p> <p><b>2</b> [2] 16:7 33:15  <b>20,000</b> [3] 35:15,18 37:5  <b>2024</b> [1] 1:15  <b>23</b> [2] 1:15 9:19  <b>23-367</b> [1] 4:4</p>	<p><b>3</b></p> <p><b>3</b> [2] 16:6,9  <b>30</b> [1] 43:18  <b>33</b> [1] 3:7  <b>39</b> [1] 29:24</p>	<p><b>4</b></p> <p><b>4</b> [1] 3:4  <b>42</b> [2] 9:14,19  <b>44</b> [1] 9:14</p>	<p><b>5</b></p> <p><b>50</b> [2] 43:18,23</p>	<p><b>C</b></p> <p><b>call</b> [1] 8:6  <b>called</b> [1] 66:1  <b>came</b> [2] 1:17 24:14  <b>Cannabis</b> [2] 22:2 34:15  <b>cannot</b> [1] 34:13  <b>capacity</b> [3] 27:22 28:16 32:2  <b>care</b> [1] 8:1  <b>careful</b> [2] 17:16,24  <b>cares</b> [1] 29:1  <b>caricature</b> [1] 41:13  <b>Case</b> [37] 4:4 5:10 6:6 12:24 14:21 15:7 21:19 22:1 28:18 29:3 30:11 33:7,23 34:15,25 35:1 37:21 40:22,24 41:3,6,15 46:2,19 48:21 49:18,22 58:24 59:21 60:13 63:23 64:9 65:15,24 66:25 67:7,8  <b>cases</b> [15] 6:13 7:17 9:17 12:15 16:24 18:16,20 25:18 30:8 34:20 37:15 38:12 39:3 41:1 66:23  <b>categorical</b> [1] 32:6  <b>caused</b> [1] 29:5  <b>caveat</b> [1] 62:8  <b>centralized</b> [2] 40:4 56:14  <b>century</b> [1] 6:6  <b>cert</b> [2] 39:2,5  <b>certain</b> [1] 28:12  <b>certainly</b> [2] 39:13 55:19  <b>certainty</b> [1] 33:20  <b>certiorari</b> [2] 38:21,25  <b>cetera</b> [1] 11:8  <b>change</b> [3] 28:11 50:12 64:6  <b>characteristic</b> [1] 53:21</p>
<p><b>3</b></p> <p><b>3</b> [2] 16:6,9  <b>30</b> [1] 43:18  <b>33</b> [1] 3:7  <b>39</b> [1] 29:24</p>	<p><b>4</b></p> <p><b>4</b> [1] 3:4  <b>42</b> [2] 9:14,19  <b>44</b> [1] 9:14</p>	<p><b>5</b></p> <p><b>50</b> [2] 43:18,23</p>	<p><b>6</b></p> <p><b>61</b> [1] 30:2  <b>64</b> [1] 3:10</p>	<p><b>7</b></p> <p><b>700</b> [1] 18:22  <b>750</b> [1] 35:16</p>
<p><b>9</b></p> <p><b>90</b> [1] 29:18  <b>91</b> [1] 64:22</p>	<p><b>A</b></p> <p><b>a.m</b> [2] 1:19 4:2  <b>ability</b> [5] 20:13 25:14,15 55:8 58:21  <b>able</b> [3] 33:13 34:9 55:11  <b>above</b> [1] 43:17  <b>above-entitled</b> [1] 1:17  <b>absent</b> [1] 5:12  <b>absolute</b> [1] 32:6  <b>Absolutely</b> [1] 14:20  <b>abuse</b> [1] 37:22  <b>abusive</b> [1] 17:14  <b>accident</b> [1] 10:9  <b>according</b> [1] 26:11  <b>account</b> [7] 10:7 14:18 21:</p>	<p><b>B</b></p> <p><b>back</b> [6] 5:15 6:15 14:1 18:5 29:7 40:7  <b>backed</b> [1] 5:7  <b>balance</b> [6] 7:6 11:14,22 16:5,12 21:9</p>	<p><b>7</b></p> <p><b>700</b> [1] 18:22  <b>750</b> [1] 35:16</p>	<p><b>8</b></p> <p><b>8</b> [1] 30:2  <b>84</b> [1] 3:10</p>
<p><b>9</b></p> <p><b>90</b> [1] 29:18  <b>91</b> [1] 64:22</p>	<p><b>A</b></p> <p><b>a.m</b> [2] 1:19 4:2  <b>ability</b> [5] 20:13 25:14,15 55:8 58:21  <b>able</b> [3] 33:13 34:9 55:11  <b>above</b> [1] 43:17  <b>above-entitled</b> [1] 1:17  <b>absent</b> [1] 5:12  <b>absolute</b> [1] 32:6  <b>Absolutely</b> [1] 14:20  <b>abuse</b> [1] 37:22  <b>abusive</b> [1] 17:14  <b>accident</b> [1] 10:9  <b>according</b> [1] 26:11  <b>account</b> [7] 10:7 14:18 21:</p>	<p><b>B</b></p> <p><b>back</b> [6] 5:15 6:15 14:1 18:5 29:7 40:7  <b>backed</b> [1] 5:7  <b>balance</b> [6] 7:6 11:14,22 16:5,12 21:9</p>	<p><b>8</b></p> <p><b>8</b> [1] 30:2  <b>84</b> [1] 3:10</p>	<p><b>8</b></p> <p><b>8</b> [1] 8:6  <b>called</b> [1] 66:1  <b>came</b> [2] 1:17 24:14  <b>Cannabis</b> [2] 22:2 34:15  <b>cannot</b> [1] 34:13  <b>capacity</b> [3] 27:22 28:16 32:2  <b>care</b> [1] 8:1  <b>careful</b> [2] 17:16,24  <b>cares</b> [1] 29:1  <b>caricature</b> [1] 41:13  <b>Case</b> [37] 4:4 5:10 6:6 12:24 14:21 15:7 21:19 22:1 28:18 29:3 30:11 33:7,23 34:15,25 35:1 37:21 40:22,24 41:3,6,15 46:2,19 48:21 49:18,22 58:24 59:21 60:13 63:23 64:9 65:15,24 66:25 67:7,8  <b>cases</b> [15] 6:13 7:17 9:17 12:15 16:24 18:16,20 25:18 30:8 34:20 37:15 38:12 39:3 41:1 66:23  <b>categorical</b> [1] 32:6  <b>caused</b> [1] 29:5  <b>caveat</b> [1] 62:8  <b>centralized</b> [2] 40:4 56:14  <b>century</b> [1] 6:6  <b>cert</b> [2] 39:2,5  <b>certain</b> [1] 28:12  <b>certainly</b> [2] 39:13 55:19  <b>certainty</b> [1] 33:20  <b>certiorari</b> [2] 38:21,25  <b>cetera</b> [1] 11:8  <b>change</b> [3] 28:11 50:12 64:6  <b>characteristic</b> [1] 53:21</p>
<p><b>A</b></p> <p><b>a.m</b> [2] 1:19 4:2  <b>ability</b> [5] 20:13 25:14,15 55:8 58:21  <b>able</b> [3] 33:13 34:9 55:11  <b>above</b> [1] 43:17  <b>above-entitled</b> [1] 1:17  <b>absent</b> [1] 5:12  <b>absolute</b> [1] 32:6  <b>Absolutely</b> [1] 14:20  <b>abuse</b> [1] 37:22  <b>abusive</b> [1] 17:14  <b>accident</b> [1] 10:9  <b>according</b> [1] 26:11  <b>account</b> [7] 10:7 14:18 21:</p>	<p><b>B</b></p> <p><b>back</b> [6] 5:15 6:15 14:1 18:5 29:7 40:7  <b>backed</b> [1] 5:7  <b>balance</b> [6] 7:6 11:14,22 16:5,12 21:9</p>	<p><b>C</b></p> <p><b>call</b> [1] 8:6  <b>called</b> [1] 66:1  <b>came</b> [2] 1:17 24:14  <b>Cannabis</b> [2] 22:2 34:15  <b>cannot</b> [1] 34:13  <b>capacity</b> [3] 27:22 28:16 32:2  <b>care</b> [1] 8:1  <b>careful</b> [2] 17:16,24  <b>cares</b> [1] 29:1  <b>caricature</b> [1] 41:13  <b>Case</b> [37] 4:4 5:10 6:6 12:24 14:21 15:7 21:19 22:1 28:18 29:3 30:11 33:7,23 34:15,25 35:1 37:21 40:22,24 41:3,6,15 46:2,19 48:21 49:18,22 58:24 59:21 60:13 63:23 64:9 65:15,24 66:25 67:7,8  <b>cases</b> [15] 6:13 7:17 9:17 12:15 16:24 18:16,20 25:18 30:8 34:20 37:15 38:12 39:3 41:1 66:23  <b>categorical</b> [1] 32:6  <b>caused</b> [1] 29:5  <b>caveat</b> [1] 62:8  <b>centralized</b> [2] 40:4 56:14  <b>century</b> [1] 6:6  <b>cert</b> [2] 39:2,5  <b>certain</b> [1] 28:12  <b>certainly</b> [2] 39:13 55:19  <b>certainty</b> [1] 33:20  <b>certiorari</b> [2] 38:21,25  <b>cetera</b> [1] 11:8  <b>change</b> [3] 28:11 50:12 64:6  <b>characteristic</b> [1] 53:21</p>	<p><b>9</b></p> <p><b>90</b> [1] 29:18  <b>91</b> [1] 64:22</p>	<p><b>9</b></p> <p><b>90</b> [1] 29:18  <b>91</b> [1] 64:22</p>

## Official - Subject to Final Review

<p><b>charges</b> <sup>[1]</sup> 35:15  <b>check</b> <sup>[4]</sup> 51:2,7,22,23  <b>CHIEF</b> <sup>[24]</sup> 4:3,9 32:17,24  33:5 36:25 37:6,10,19,24  38:2,10 57:19 58:2,25 60:  10 62:16 63:7 64:13,16 67:  6  <b>chill</b> <sup>[12]</sup> 12:18 13:1 20:19,  19 22:23,24 23:8,9,10,15  24:18,20  <b>chilled</b> <sup>[2]</sup> 20:20 23:12  <b>circuit</b> <sup>[10]</sup> 15:7 23:5,7 33:  22 41:14,18 44:15,17 63:2  67:1  <b>Circuit's</b> <sup>[1]</sup> 41:9  <b>circuits</b> <sup>[1]</sup> 51:14  <b>circumstances</b> <sup>[1]</sup> 62:10  <b>cite</b> <sup>[8]</sup> 8:7 9:15,18 31:11  58:20 66:25  <b>cited</b> <sup>[3]</sup> 12:9,10 67:2  <b>cites</b> <sup>[1]</sup> 29:24  <b>claim</b> <sup>[1]</sup> 36:15  <b>claims</b> <sup>[2]</sup> 30:18 37:23  <b>clarify</b> <sup>[1]</sup> 36:5  <b>clarifying</b> <sup>[1]</sup> 19:21  <b>classic</b> <sup>[1]</sup> 14:21  <b>clear</b> <sup>[8]</sup> 5:3,12 6:15 10:18,  23 12:1 24:25 52:10  <b>clearly</b> <sup>[1]</sup> 50:6  <b>Code</b> <sup>[1]</sup> 8:8  <b>coercive</b> <sup>[2]</sup> 5:7 8:21  <b>cognizance</b> <sup>[1]</sup> 29:11  <b>cognizant</b> <sup>[3]</sup> 45:9 46:13,  17  <b>come</b> <sup>[9]</sup> 35:21,23 36:16  40:12 46:16 48:12 52:4 64:  10 66:7  <b>comes</b> <sup>[1]</sup> 25:21  <b>coming</b> <sup>[1]</sup> 59:9  <b>commit</b> <sup>[1]</sup> 14:4  <b>common</b> <sup>[1]</sup> 8:20  <b>company</b> <sup>[1]</sup> 14:25  <b>compelling</b> <sup>[2]</sup> 34:22 61:  12  <b>compels</b> <sup>[1]</sup> 4:24  <b>complaint</b> <sup>[4]</sup> 36:1 47:17  59:6,11  <b>complaints</b> <sup>[2]</sup> 18:20 35:  16  <b>completely</b> <sup>[4]</sup> 28:25 31:  19 32:1 60:12  <b>compliment</b> <sup>[1]</sup> 19:25  <b>concede</b> <sup>[2]</sup> 24:18 33:17  <b>conceded</b> <sup>[1]</sup> 14:25  <b>concedes</b> <sup>[2]</sup> 33:15 35:5  <b>conceive</b> <sup>[1]</sup> 45:21  <b>conception</b> <sup>[1]</sup> 56:25  <b>concerned</b> <sup>[2]</sup> 24:19 56:11  <b>concerns</b> <sup>[2]</sup> 31:16 47:6  <b>conditions</b> <sup>[1]</sup> 21:5  <b>conduct</b> <sup>[2]</sup> 4:24 61:14  <b>confines</b> <sup>[1]</sup> 22:6  <b>conflicting</b> <sup>[1]</sup> 65:2  <b>Congress</b> <sup>[26]</sup> 5:15 7:25 8:</p>	<p>14 9:5 18:2 25:13 31:9,10,  17,20,25 34:12,16,25 39:  16,21 40:2 45:2 50:21,24  54:23 55:4,14,20 56:10 61:  6  <b>Congress's</b> <sup>[3]</sup> 34:19 35:8  61:13  <b>consent</b> <sup>[1]</sup> 9:23  <b>consider</b> <sup>[4]</sup> 5:23 9:23 11:  22 39:5  <b>considerably</b> <sup>[1]</sup> 33:8  <b>consideration</b> <sup>[3]</sup> 7:22 17:  25 36:21  <b>considerations</b> <sup>[3]</sup> 16:1  42:13 56:20  <b>considered</b> <sup>[2]</sup> 12:10 53:  19  <b>considering</b> <sup>[2]</sup> 15:10 39:  8  <b>Consistent</b> <sup>[5]</sup> 31:3 33:24  43:14,24 57:6  <b>contains</b> <sup>[1]</sup> 5:3  <b>contempt</b> <sup>[1]</sup> 5:8  <b>contending</b> <sup>[1]</sup> 53:20  <b>context</b> <sup>[28]</sup> 4:24 8:12,13 9:  4,13 10:6,8,10 25:11,12,17  26:16 27:7,10 31:4,13,14,  16 35:13,13 39:6,15 40:15  41:21 42:22 46:12 57:5 63:  11  <b>contexts</b> <sup>[4]</sup> 7:10 9:10,10  53:19  <b>contract</b> <sup>[1]</sup> 21:23  <b>control</b> <sup>[1]</sup> 7:18  <b>convenient</b> <sup>[1]</sup> 23:18  <b>convince</b> <sup>[1]</sup> 38:20  <b>cookie-cutter</b> <sup>[1]</sup> 66:15  <b>CORPORATION</b> <sup>[2]</sup> 1:3 4:  5  <b>correct</b> <sup>[15]</sup> 8:3 21:22 24:9  32:5 41:2,7,19 48:10 49:  11,14 51:4 54:10 55:23 61:  21 62:8  <b>corrected</b> <sup>[1]</sup> 11:10  <b>counsel</b> <sup>[8]</sup> 26:9,23 33:1  36:7,25 57:20 64:14 67:7  <b>count</b> <sup>[2]</sup> 15:10 34:2  <b>couple</b> <sup>[2]</sup> 54:2 64:22  <b>course</b> <sup>[2]</sup> 14:18 47:22  <b>COURT</b> <sup>[90]</sup> 1:1,18 4:10,16,  16 5:23 6:12 7:2 8:23 9:11,  20,22 10:17 11:11,23 12:7,  7,16 13:11,24 14:14 15:4,8,  9 20:11 21:16 22:4,12 23:  14 25:7 27:12,18 28:21 29:  11 31:19 32:12 33:6 34:5,  13,15 35:12,19 36:2,13,22  37:3,8,13,16 38:7 39:8 42:  20 45:7,11 48:17 49:3,9,16,  18 50:25 51:2,7,17 54:5,19,  24 55:1,8,12 57:18 59:25  61:17,19,20,20 62:1,2,5,12,  13 63:14,19 64:3,21,23,23  65:19,21 66:2 67:2</p>	<p><b>court's</b> <sup>[6]</sup> 11:6 25:21 33:  25 48:24 52:1 66:20  <b>courts</b> <sup>[36]</sup> 4:12,14,24 5:14,  16,20 7:16 8:3 12:13 15:9  22:6 27:1 29:21 31:21 32:  1,7 35:7 37:23 40:3,9,12  44:8,24 45:19 46:2,11 47:  13 49:16 50:22 51:9 55:11,  17 56:1,12,19 66:22  <b>courts'</b> <sup>[1]</sup> 6:23  <b>CPFC</b> <sup>[1]</sup> 9:15  <b>crafty</b> <sup>[1]</sup> 20:3  <b>cream-of-the-crop</b> <sup>[1]</sup> 37:  15  <b>credibility</b> <sup>[2]</sup> 8:24 11:8  <b>credulous</b> <sup>[2]</sup> 25:7 38:17  <b>cut</b> <sup>[1]</sup> 40:2</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>D.C</b> <sup>[3]</sup> 1:14 2:2,5  <b>daily</b> <sup>[1]</sup> 7:16  <b>damaging</b> <sup>[1]</sup> 22:20  <b>day</b> <sup>[3]</sup> 12:13,14 44:8  <b>daylight</b> <sup>[1]</sup> 63:4  <b>deal</b> <sup>[1]</sup> 51:3  <b>Debs</b> <sup>[1]</sup> 55:21  <b>decertified</b> <sup>[1]</sup> 66:5  <b>decide</b> <sup>[4]</sup> 5:14 11:11 20:  11 48:5  <b>decided</b> <sup>[1]</sup> 40:6  <b>decision</b> <sup>[7]</sup> 9:7 13:23 38:  14 44:17 61:24 62:3 66:10  <b>decisionmaker</b> <sup>[1]</sup> 27:8  <b>decisions</b> <sup>[1]</sup> 11:6  <b>decontextualized</b> <sup>[1]</sup> 6:4  <b>deem</b> <sup>[1]</sup> 4:13  <b>defending</b> <sup>[1]</sup> 47:18  <b>defer</b> <sup>[3]</sup> 5:19 27:25 66:3  <b>deference</b> <sup>[16]</sup> 5:13 10:2,3  11:3 12:3 13:12,22,25 17:  15 18:4,6 19:5,23 29:8 66:  9,13  <b>deferential</b> <sup>[1]</sup> 4:25  <b>deferred</b> <sup>[1]</sup> 5:24  <b>define</b> <sup>[1]</sup> 61:9  <b>definitely</b> <sup>[2]</sup> 20:5 24:18  <b>definition</b> <sup>[3]</sup> 17:3 21:22  24:20  <b>delay</b> <sup>[1]</sup> 20:11  <b>deliberately</b> <sup>[1]</sup> 22:3  <b>delta</b> <sup>[1]</sup> 52:9  <b>democracy</b> <sup>[2]</sup> 12:21 20:  25  <b>Department</b> <sup>[2]</sup> 2:5 46:25  <b>description</b> <sup>[1]</sup> 10:13  <b>deserve</b> <sup>[2]</sup> 10:2 13:22  <b>deserving</b> <sup>[1]</sup> 37:18  <b>designed</b> <sup>[1]</sup> 54:21  <b>determination</b> <sup>[8]</sup> 7:24 15:  5 25:18,21 26:15 27:15 47:  13 63:15  <b>determinations</b> <sup>[1]</sup> 26:2  <b>determine</b> <sup>[1]</sup> 25:14  <b>determined</b> <sup>[2]</sup> 26:19 28:5</p>	<p><b>determining</b> <sup>[5]</sup> 17:17 18:  23 28:22 36:22 63:19  <b>difference</b> <sup>[2]</sup> 6:24 62:4  <b>different</b> <sup>[17]</sup> 9:4,13 10:15,  20 13:8 21:17 27:10 39:15,  19 45:23 48:20 53:6,12 54:  17 59:16 61:25 63:4  <b>differently</b> <sup>[1]</sup> 56:10  <b>diluting</b> <sup>[1]</sup> 5:4  <b>directed</b> <sup>[1]</sup> 5:15  <b>DIRECTOR</b> <sup>[1]</sup> 1:7  <b>discharges</b> <sup>[2]</sup> 34:1,2  <b>disclose</b> <sup>[1]</sup> 66:18  <b>discovery</b> <sup>[2]</sup> 41:16 65:25  <b>discrepancy</b> <sup>[1]</sup> 52:18  <b>discretion</b> <sup>[2]</sup> 5:21 32:14  <b>discussion</b> <sup>[1]</sup> 35:11  <b>dispose</b> <sup>[1]</sup> 57:22  <b>dispositive</b> <sup>[1]</sup> 53:21  <b>dispute</b> <sup>[5]</sup> 14:14 45:11 50:  17 60:21,24  <b>disputes</b> <sup>[4]</sup> 40:2,5,11 54:  25  <b>disputing</b> <sup>[1]</sup> 51:21  <b>district</b> <sup>[56]</sup> 4:11,14,24 7:2,  16 8:3,23 9:11,20 12:13  14:14 15:4,8,9 22:5,12 25:  7,21 27:1,18 28:21 29:11  31:18,21,25 32:12 36:2,22  40:3,9 42:19 45:19 50:22,  25 51:1,7,9,25 52:14 53:3  54:4,24 55:1,8,17 56:12,19  62:12,13 64:2,23,23 65:19,  20 66:2,20  <b>divisions</b> <sup>[1]</sup> 39:1  <b>document</b> <sup>[1]</sup> 66:15  <b>doing</b> <sup>[1]</sup> 9:11 10:25 11:  18 17:14 18:23 24:4,7 41:  14 49:16 51:8 56:11  <b>done</b> <sup>[1]</sup> 17:22  <b>down</b> <sup>[4]</sup> 21:10 34:8 60:22  66:24  <b>drastic</b> <sup>[1]</sup> 5:6  <b>drive</b> <sup>[2]</sup> 34:6,9  <b>duty</b> <sup>[1]</sup> 9:6</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>each</b> <sup>[1]</sup> 65:1  <b>eager</b> <sup>[1]</sup> 55:20  <b>earlier</b> <sup>[3]</sup> 37:21 49:25 58:  13  <b>easier</b> <sup>[1]</sup> 49:23  <b>EEOC</b> <sup>[2]</sup> 9:16 46:24  <b>effectively</b> <sup>[1]</sup> 44:14  <b>effort</b> <sup>[2]</sup> 5:2 24:22  <b>eight</b> <sup>[3]</sup> 13:4,5 14:4  <b>either</b> <sup>[3]</sup> 12:2 18:9 22:7  <b>election</b> <sup>[1]</sup> 21:1  <b>embarrassed</b> <sup>[1]</sup> 26:24  <b>emergency</b> <sup>[1]</sup> 38:19  <b>employees</b> <sup>[7]</sup> 13:18 14:4,  24 15:24 21:3 23:17,19  <b>employer</b> <sup>[3]</sup> 11:24 21:10  22:16</p>	<p><b>employers</b> <sup>[3]</sup> 30:9 32:11  46:14  <b>empty</b> <sup>[1]</sup> 16:21  <b>encumbrance</b> <sup>[1]</sup> 23:25  <b>end</b> <sup>[7]</sup> 5:15,17 18:5 29:8  33:14 38:7 53:2  <b>enforce</b> <sup>[4]</sup> 34:19 47:4 54:  19 58:22  <b>enforced</b> <sup>[1]</sup> 15:1  <b>engage</b> <sup>[3]</sup> 14:11 40:10 41:  9  <b>engaged</b> <sup>[2]</sup> 37:22 50:5  <b>engaging</b> <sup>[1]</sup> 57:3  <b>enjoins</b> <sup>[1]</sup> 51:6  <b>enough</b> <sup>[2]</sup> 22:23 65:6  <b>entering</b> <sup>[1]</sup> 32:15  <b>entitled</b> <sup>[3]</sup> 7:6 16:25 35:7  <b>environment</b> <sup>[1]</sup> 21:24  <b>equitable</b> <sup>[2]</sup> 5:21 39:14  <b>equities</b> <sup>[11]</sup> 7:7 11:15,23  16:12 21:9,12 34:11,14,18  60:15 61:11  <b>equity</b> <sup>[5]</sup> 6:6,18 10:3 56:7,  20  <b>era</b> <sup>[1]</sup> 55:25  <b>ESQ</b> <sup>[3]</sup> 3:3,6,9  <b>ESQUIRE</b> <sup>[1]</sup> 2:2  <b>essentially</b> <sup>[1]</sup> 55:10  <b>et</b> <sup>[1]</sup> 11:8  <b>even</b> <sup>[14]</sup> 5:18,22 6:11 7:8  12:8 17:17 18:6 19:9 22:  11,19 24:1 26:10 30:4 65:  13  <b>event</b> <sup>[2]</sup> 20:21 21:1  <b>eventually</b> <sup>[1]</sup> 13:12  <b>evidence</b> <sup>[20]</sup> 12:9,10,17  13:1,25 15:10 17:7 22:20  23:9,10 36:20 44:18 50:13,  14,15 51:17 64:7 65:2,19,  20  <b>evidentiary</b> <sup>[1]</sup> 41:15  <b>exact</b> <sup>[1]</sup> 38:3  <b>exacting</b> <sup>[1]</sup> 4:25  <b>Exactly</b> <sup>[6]</sup> 15:6 16:13 37:2  49:21 54:14 57:11  <b>example</b> <sup>[8]</sup> 43:25 47:3 49:  2 50:15,21 51:16 58:21 62:  14  <b>examples</b> <sup>[1]</sup> 31:11  <b>except</b> <sup>[3]</sup> 22:12 30:20 52:  19  <b>Exceptions</b> <sup>[1]</sup> 59:3  <b>excuse</b> <sup>[2]</sup> 21:19 63:18  <b>exercise</b> <sup>[2]</sup> 5:21 32:13  <b>exercised</b> <sup>[1]</sup> 45:9  <b>expect</b> <sup>[1]</sup> 59:9  <b>expected</b> <sup>[1]</sup> 31:21  <b>expeditiously</b> <sup>[1]</sup> 55:11  <b>expert</b> <sup>[1]</sup> 37:16  <b>expertise</b> <sup>[2]</sup> 5:20 10:3  <b>expire</b> <sup>[2]</sup> 60:2,3  <b>expires</b> <sup>[1]</sup> 54:16  <b>explain</b> <sup>[1]</sup> 24:17  <b>explained</b> <sup>[1]</sup> 14:24</p>
--	---	---	--	--

## Official - Subject to Final Review

<p><b>exploration</b> <sup>[1]</sup> 57:3  <b>expressed</b> <sup>[1]</sup> 22:4  <b>extent</b> <sup>[4]</sup> 46:18 48:3 51:23 57:15  <b>extinguishes</b> <sup>[1]</sup> 34:6  <b>extraordinary</b> <sup>[1]</sup> 5:6  <b>extremely</b> <sup>[1]</sup> 34:21</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>face</b> <sup>[1]</sup> 6:16  <b>facilitate</b> <sup>[1]</sup> 54:5  <b>fact</b> <sup>[16]</sup> 9:11 14:15 17:22 18:1 27:7,22 29:6,9,12,23 31:18 37:13 41:9 45:9 49:5 52:21  <b>fact-finder</b> <sup>[2]</sup> 43:2 44:12  <b>fact-finding</b> <sup>[2]</sup> 41:12,18  <b>factor</b> <sup>[6]</sup> 10:22 16:3,6,7,9,10  <b>factors</b> <sup>[23]</sup> 4:15,17 5:12,17,23 6:14,19 10:5 19:2,2,8,11,22 20:6,24 22:14 24:8 27:11 33:9 37:4 42:10,11 48:4  <b>facts</b> <sup>[11]</sup> 4:19 8:23 12:8 25:16 27:16 28:1 43:1 53:6,6 64:25 65:5  <b>factual</b> <sup>[6]</sup> 5:2,18 13:11 44:11 51:20 53:12  <b>fair</b> <sup>[3]</sup> 17:10,22 44:1  <b>fairly</b> <sup>[1]</sup> 46:20  <b>faith</b> <sup>[2]</sup> 12:21 20:24  <b>familiar</b> <sup>[1]</sup> 65:6  <b>far</b> <sup>[2]</sup> 6:17 22:7  <b>faster</b> <sup>[1]</sup> 18:18  <b>favor</b> <sup>[1]</sup> 50:10  <b>fear</b> <sup>[1]</sup> 23:24  <b>federal</b> <sup>[4]</sup> 31:8 47:3,5 58:22  <b>feel</b> <sup>[1]</sup> 38:4  <b>fellow</b> <sup>[1]</sup> 23:19  <b>field</b> <sup>[1]</sup> 19:7  <b>fight</b> <sup>[1]</sup> 30:10  <b>fighting</b> <sup>[1]</sup> 30:23  <b>fight</b> <sup>[1]</sup> 30:17  <b>figure</b> <sup>[1]</sup> 29:7  <b>file</b> <sup>[2]</sup> 28:10 39:1  <b>filed</b> <sup>[5]</sup> 18:21 35:17 36:2,13 59:3  <b>files</b> <sup>[2]</sup> 38:18 40:17  <b>fill</b> <sup>[1]</sup> 12:25  <b>final</b> <sup>[5]</sup> 9:23 13:23 48:15 59:6 63:10  <b>finally</b> <sup>[1]</sup> 11:25  <b>find</b> <sup>[5]</sup> 12:8 25:16 43:2 44:12 47:11  <b>finder</b> <sup>[2]</sup> 27:8,22  <b>finding</b> <sup>[4]</sup> 8:23 9:11 18:1 41:10  <b>findings</b> <sup>[4]</sup> 5:19 13:11,22 66:20  <b>finds</b> <sup>[1]</sup> 49:18  <b>fired</b> <sup>[4]</sup> 13:14,19 14:9,12  <b>firing</b> <sup>[1]</sup> 13:3</p>	<p><b>first</b> <sup>[4]</sup> 7:24 9:7 25:15 33:10  <b>fiscal</b> <sup>[1]</sup> 59:8  <b>focus</b> <sup>[3]</sup> 33:12,15 41:2  <b>focused</b> <sup>[1]</sup> 41:5  <b>focuses</b> <sup>[2]</sup> 61:2 64:25  <b>focusing</b> <sup>[1]</sup> 42:23  <b>follows</b> <sup>[1]</sup> 45:15  <b>forget</b> <sup>[1]</sup> 37:2  <b>formulations</b> <sup>[1]</sup> 63:5  <b>fortitude</b> <sup>[1]</sup> 30:9  <b>forward</b> <sup>[1]</sup> 63:16  <b>fought</b> <sup>[1]</sup> 33:11  <b>found</b> <sup>[4]</sup> 12:16 13:12 28:1 29:9  <b>four</b> <sup>[16]</sup> 4:14,17 5:12,23 6:14,19 10:5 19:2,11,22 20:5 27:11 42:9,11,12 48:4  <b>four-factor</b> <sup>[4]</sup> 10:14,16 19:14 20:10  <b>four-part</b> <sup>[3]</sup> 4:23 30:22,24  <b>fragile</b> <sup>[1]</sup> 15:13  <b>frame</b> <sup>[2]</sup> 56:5,9  <b>framed</b> <sup>[1]</sup> 63:2  <b>framing</b> <sup>[1]</sup> 37:2  <b>free-ranging</b> <sup>[1]</sup> 57:3  <b>friend</b> <sup>[3]</sup> 33:17 45:24 57:21  <b>friend's</b> <sup>[1]</sup> 52:12  <b>front</b> <sup>[5]</sup> 5:17 45:12 52:21,23 66:19  <b>front-line</b> <sup>[1]</sup> 53:16  <b>frustrate</b> <sup>[2]</sup> 20:12,13  <b>frustrated</b> <sup>[1]</sup> 21:7  <b>FTC</b> <sup>[2]</sup> 9:15 46:24  <b>full</b> <sup>[2]</sup> 18:7 56:20  <b>fully</b> <sup>[1]</sup> 33:24  <b>function</b> <sup>[3]</sup> 38:9 50:5 54:15  <b>functions</b> <sup>[1]</sup> 36:6  <b>further</b> <sup>[2]</sup> 33:17 57:18</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>gander</b> <sup>[1]</sup> 46:17  <b>gave</b> <sup>[1]</sup> 45:6  <b>General</b> <sup>[6]</sup> 2:4 26:9,22 36:6 42:17 57:8  <b>general's</b> <sup>[1]</sup> 38:24  <b>generalizability</b> <sup>[1]</sup> 46:20  <b>generalizable</b> <sup>[1]</sup> 57:15  <b>generalize</b> <sup>[1]</sup> 47:5  <b>generally</b> <sup>[3]</sup> 44:2,22 62:8  <b>gets</b> <sup>[2]</sup> 8:20 53:1  <b>getting</b> <sup>[2]</sup> 6:12 66:19  <b>give</b> <sup>[5]</sup> 11:3 13:12 31:12 54:25 55:17  <b>given</b> <sup>[5]</sup> 25:13 27:6 50:21,24 51:9  <b>giving</b> <sup>[2]</sup> 17:15 50:4  <b>glorious</b> <sup>[1]</sup> 55:25  <b>goose</b> <sup>[1]</sup> 46:16  <b>GORSUCH</b> <sup>[47]</sup> 14:13,17 15:3 16:1 27:24 28:2 29:10,14,16 30:12,16,21 32:</p>	<p>21 38:15 40:18,24,25 41:4,8,11,17,22 42:1,4,8 43:6,15,20,21 45:14,25 46:6,9 47:1 51:24 52:16,19 53:11,15,23 55:19,24 56:4,6,13,16,18  <b>gosh</b> <sup>[1]</sup> 52:10  <b>got</b> <sup>[3]</sup> 7:12 38:5 48:23  <b>gotten</b> <sup>[1]</sup> 12:5  <b>governing</b> <sup>[2]</sup> 49:9,13  <b>government</b> <sup>[12]</sup> 4:22 5:13 6:3,21 8:25 29:24 30:17 31:8 32:10 47:4 58:21 67:2  <b>government's</b> <sup>[2]</sup> 30:20,25  <b>governs</b> <sup>[2]</sup> 4:23 43:13  <b>grant</b> <sup>[3]</sup> 4:12 38:21 51:19  <b>gross</b> <sup>[1]</sup> 14:4  <b>ground</b> <sup>[1]</sup> 48:7  <b>guess</b> <sup>[4]</sup> 9:2 18:15 52:17,24</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>handful</b> <sup>[1]</sup> 46:21  <b>handles</b> <sup>[1]</sup> 25:22  <b>happen</b> <sup>[2]</sup> 9:9 20:21  <b>happening</b> <sup>[2]</sup> 17:6,9  <b>happens</b> <sup>[3]</sup> 17:11 45:17,17  <b>happy</b> <sup>[4]</sup> 15:18,21 16:4,6  <b>hard</b> <sup>[2]</sup> 13:6 18:14  <b>harks</b> <sup>[1]</sup> 6:18  <b>harm</b> <sup>[38]</sup> 4:21,21 7:5 11:14,23,24,24 12:8,11,12 15:11,17,22,23 16:10,15,22 17:1 20:9 21:8 22:23 24:22 25:2 31:15 33:10,12,14,19,20,22 34:3 38:13 55:16,18 60:15 61:2,5 62:19  <b>harmed</b> <sup>[1]</sup> 16:18  <b>harms</b> <sup>[3]</sup> 23:21,22,22  <b>hat</b> <sup>[2]</sup> 50:8,9  <b>hear</b> <sup>[1]</sup> 4:3  <b>heard</b> <sup>[1]</sup> 22:20  <b>hearing</b> <sup>[3]</sup> 41:15 50:15 53:9  <b>hears</b> <sup>[1]</sup> 64:7  <b>held</b> <sup>[1]</sup> 4:17  <b>help</b> <sup>[2]</sup> 20:19 32:11  <b>hesitant</b> <sup>[1]</sup> 43:19  <b>highly</b> <sup>[2]</sup> 5:11 38:1  <b>historical</b> <sup>[1]</sup> 54:22  <b>history</b> <sup>[3]</sup> 31:24 39:25 55:13  <b>hold</b> <sup>[2]</sup> 19:10 53:8  <b>hope</b> <sup>[2]</sup> 19:16 26:25  <b>hours</b> <sup>[3]</sup> 13:15,18 15:25  <b>however</b> <sup>[1]</sup> 61:9  <b>huge</b> <sup>[2]</sup> 19:3,6  <b>hundred</b> <sup>[1]</sup> 18:21  <b>hypothetical</b> <sup>[1]</sup> 52:17</p> <hr/> <p style="text-align: center;"><b>I</b></p>	<p><b>idea</b> <sup>[1]</sup> 33:11  <b>identify</b> <sup>[2]</sup> 46:1,22  <b>ignore</b> <sup>[1]</sup> 27:18  <b>illegal</b> <sup>[1]</sup> 61:14  <b>impairs</b> <sup>[1]</sup> 34:7  <b>important</b> <sup>[1]</sup> 10:10  <b>importantly</b> <sup>[1]</sup> 28:9  <b>imposed</b> <sup>[1]</sup> 55:7  <b>inappropriate</b> <sup>[2]</sup> 5:11 41:18  <b>inclined</b> <sup>[1]</sup> 49:20  <b>including</b> <sup>[1]</sup> 65:24  <b>inconsistent</b> <sup>[1]</sup> 6:4  <b>Indeed</b> <sup>[2]</sup> 5:21 42:11  <b>independent</b> <sup>[2]</sup> 51:2,7  <b>inference</b> <sup>[2]</sup> 37:25 38:3  <b>inflicted</b> <sup>[1]</sup> 55:16  <b>inform</b> <sup>[1]</sup> 8:13  <b>inherent</b> <sup>[1]</sup> 23:8  <b>initial</b> <sup>[1]</sup> 26:15  <b>initially</b> <sup>[1]</sup> 39:25  <b>injunction</b> <sup>[36]</sup> 5:7 7:1,6,11,15,18 8:5,16,21 9:24 10:7 13:21 14:3 16:19,25 18:19,24 19:10 21:4 22:17 25:19 26:17,21 28:10 32:16 34:23 51:6 55:21 57:6 58:5 59:12,20 60:3 63:20 64:3 65:9  <b>injunction's</b> <sup>[1]</sup> 14:19  <b>injunctions</b> <sup>[10]</sup> 4:12 5:5 17:8,18 18:12 31:9 32:7 45:6 46:14 55:9  <b>injunctive</b> <sup>[8]</sup> 5:9 19:7 35:4 46:22 48:2 56:2 58:15,24  <b>inquiry</b> <sup>[7]</sup> 4:25 33:12 40:20 51:15 60:22 64:9,24  <b>insofar</b> <sup>[1]</sup> 9:4  <b>instance</b> <sup>[3]</sup> 7:25 9:8 25:15  <b>integrity</b> <sup>[1]</sup> 40:13  <b>intend</b> <sup>[1]</sup> 45:4  <b>intended</b> <sup>[2]</sup> 8:14 45:2  <b>intensive</b> <sup>[1]</sup> 5:1  <b>interest</b> <sup>[22]</sup> 11:15,17,18,19,25 21:13,23 22:3,5,9,11,13,15,21 34:10,13 57:9 60:16 61:5,7,10,12  <b>interesting</b> <sup>[1]</sup> 30:17  <b>interests</b> <sup>[7]</sup> 21:16,20 22:1 34:22,23 35:3 58:6  <b>interference</b> <sup>[1]</sup> 56:22  <b>intervene</b> <sup>[1]</sup> 40:4  <b>intrusion</b> <sup>[1]</sup> 40:1  <b>intrusive</b> <sup>[1]</sup> 40:10  <b>investigate</b> <sup>[1]</sup> 9:6  <b>investigating</b> <sup>[2]</sup> 18:10,23  <b>investigation</b> <sup>[4]</sup> 17:23,24 25:16 26:20  <b>investigative</b> <sup>[1]</sup> 66:9  <b>involved</b> <sup>[2]</sup> 21:15,16  <b>involvement</b> <sup>[2]</sup> 40:11 54:24</p>	<p><b>involves</b> <sup>[1]</sup> 9:19  <b>involving</b> <sup>[1]</sup> 47:3  <b>ironic</b> <sup>[2]</sup> 32:9 65:10  <b>irrelevant</b> <sup>[6]</sup> 26:3,5,7,19 28:21,25  <b>irreparable</b> <sup>[29]</sup> 4:21 11:14 12:8,10,12 15:16 16:7,10,15,22 17:1 20:8,17,20 21:7 22:23 23:23 24:22 25:2,3 31:15 33:10,12 34:3 38:13 60:15 61:2,4 62:19  <b>Isn't</b> <sup>[7]</sup> 31:24 37:21 38:3 51:12 59:19 62:4 64:2  <b>issue</b> <sup>[10]</sup> 15:1 28:25 38:14 47:20 50:23 53:14 55:8 60:20,24 63:19  <b>issued</b> <sup>[1]</sup> 59:20  <b>issues</b> <sup>[5]</sup> 5:2 8:1 35:16 54:16 59:15  <b>issuing</b> <sup>[1]</sup> 64:3  <b>itself</b> <sup>[5]</sup> 25:8 36:10,13 50:10 63:19</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>JACKSON</b> <sup>[35]</sup> 7:14 8:11 9:2 16:8,14 17:2,4,12 18:15 25:1,4 26:1,5,11 27:2,5,14 28:13,20 31:3,24 32:25 35:14 37:20 39:24 47:8 53:24 54:1,7,11 57:5 63:9,10,17 64:12  <b>Jackson's</b> <sup>[1]</sup> 49:1  <b>joke</b> <sup>[1]</sup> 9:1  <b>judge</b> <sup>[2]</sup> 52:14 53:3  <b>judgment</b> <sup>[22]</sup> 25:10 34:12,14,16,19 35:1,8,21,22 36:15 47:10,19,24 48:1 52:5 53:14 61:13 65:8,11,12,14 67:4  <b>judgments</b> <sup>[1]</sup> 47:12  <b>judicial</b> <sup>[3]</sup> 40:1 56:22 57:1  <b>jurisdiction</b> <sup>[4]</sup> 6:23,24 7:9,17  <b>Justice</b> <sup>[196]</sup> 2:5 4:3,9 6:2,15,20 7:14 8:11 9:2 10:11,12,20,24 11:2 13:3,6,10,17 14:1,7,13,17,17 15:3,18,21 16:4,8,13,14 17:2,4,12 18:15 19:12,18,20,24 20:2,7 21:12 22:22,25 23:3 24:3,7,11,13,17 25:1,4 26:1,5,11 27:2,5,14,24 28:2,13,20 29:10,14,16,23 30:4,12,16,21 31:3,24 32:17,17,19,20,21,22,23,24,24 33:5 35:14 36:25 37:6,10,19,20,24 38:2,10,15,16 39:7,12,17,24 40:18,24,25 41:4,8,11,17,22 42:1,4,8,15,19 43:4,6,15,20,21,22,25 44:5,20 45:4,14,25 46:6,9 47:1,7,8 48:13,14,16,23 49:1,7,12,15,19 50:3,11 51:1,5,24 52:16,19 53:11,15,23,24 54:1,7,</p>
---	---	---	--	--

## Official - Subject to Final Review

<p>11 55:3,19,24 56:4,6,13,16, 18 57:5,19 58:2,3,4,9,10, 12,25,25 59:1,2,12,18 60:5, 10,10,11,25 61:15,22,23 62:7,15,16,16,18,25 63:6,7, 7,9,10,15,17 64:12,13,16 67:6</p> <p><b>Justices</b> [1] 16:1 <b>justified</b> [1] 14:22 <b>justifies</b> [1] 5:13</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [29] 10:11 19:12, 18,20,24 20:2,7 21:12 32: 20 44:5,20 45:4 47:7 48: 13,16,23 49:7,12,15,19 60: 10,11 61:1,15,22,23 62:7, 15 63:15</p> <p><b>KATHLEEN</b> [1] 1:6 <b>KAVANAUGH</b> [10] 42:15, 19 43:4,22,25 48:14 55:3 62:18,25 63:6</p> <p><b>keep</b> [2] 52:20 65:18 <b>kind</b> [13] 8:15 18:6,19,24 30:12,13,16 32:2 57:6 58: 16 61:13 63:15 66:24 <b>knows</b> [2] 31:11,17</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>LABOR</b> [17] 1:8,10 7:24 9: 6 12:17 15:16 20:14 35:15 40:1,11 46:25 48:6 54:25 55:10,21 56:22 66:1</p> <p><b>Labrador</b> [1] 44:1 <b>language</b> [4] 5:3,3 11:5 41: 20 <b>last</b> [4] 17:7 35:16 37:8 59: 2 <b>lasts</b> [3] 59:13,13,14 <b>later</b> [1] 52:22 <b>Laughter</b> [7] 6:8,10 19:19 20:1 39:10 57:24 58:1 <b>law</b> [18] 6:6 29:6 46:2 47:5 48:19,20,24 49:9,13,17 53: 5,13 58:22 61:23,24 62:2,3, 11 <b>lawful</b> [1] 34:18 <b>lawyer</b> [2] 27:21 29:1 <b>leads</b> [2] 10:1 24:20 <b>least</b> [7] 13:13 25:8,15 31: 13 52:23 65:13 66:18 <b>leave</b> [2] 16:9 24:24 <b>leaves</b> [1] 35:9 <b>leg</b> [1] 31:12 <b>legal</b> [9] 4:20 8:22 22:19 28:25 42:25 47:20 65:22, 24 66:6 <b>legislation</b> [1] 22:4 <b>legislative</b> [1] 55:13 <b>less</b> [2] 4:25 5:3 <b>letter</b> [1] 22:16 <b>level</b> [1] 19:7 <b>likelihood</b> [30] 7:4 11:4,11 12:6 25:5 26:17 27:17 28:</p>	<p>22 33:21 35:24 36:23 40: 20,21 42:23 43:7,8,15 44:7 45:20 48:5 49:21 52:1,3 60:21 61:8,16 62:20 64:10, 24 65:17 <b>likely</b> [8] 36:16 43:10 47:11, 20 52:7 58:16 61:4 62:20 <b>limited</b> [3] 46:21 54:25 57: 16 <b>lines</b> [2] 44:2,23 <b>LISA</b> [5] 2:2 3:3,9 4:7 64:18 <b>litigating</b> [5] 17:25 28:3,9, 15 39:1 <b>litigation</b> [6] 5:24 18:4 27: 20,23 66:11,16 <b>little</b> [7] 22:7 25:7 32:9 38: 17 40:7 56:10 65:10 <b>live</b> [1] 22:17 <b>long</b> [4] 18:13 20:16 59:4 65:5 <b>longstanding</b> [1] 6:14 <b>look</b> [11] 19:1 28:8 34:5 38: 23 41:5 44:18 45:16 53:12 55:13,14 61:23 <b>looked</b> [1] 37:14 <b>looking</b> [1] 47:18 <b>looks</b> [2] 34:4 62:2 <b>looser</b> [2] 56:3,21 <b>lose</b> [3] 29:19 30:15 52:22 <b>lot</b> [10] 17:9 31:7,9 35:10 46:4,6,9 55:10,15 63:4 <b>lots</b> [1] 38:25 <b>lower</b> [10] 43:22 44:6,10,21, 25 46:2,11 53:17,25 66:22</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>made</b> [9] 5:18 13:11 25:17 26:25 27:3,15 34:16 35:1 36:19 <b>magistrate</b> [1] 53:14 <b>managers</b> [1] 14:24 <b>manual</b> [4] 12:23,24 29:22 66:15 <b>many</b> [2] 17:5 45:23 <b>matter</b> [6] 1:17 16:23 17:23 29:3 42:17 51:6 <b>mattered</b> [1] 4:19 <b>matters</b> [2] 8:25 25:12 <b>McKINNEY</b> [2] 1:6 4:5 <b>mean</b> [18] 6:12 7:1,1,18 9: 25 13:3 14:20 18:17,25 21: 13 25:11 29:2,19,23 34:20 36:19 53:1 66:11 <b>meaning</b> [1] 29:2 <b>means</b> [3] 25:3 40:21 50:3 <b>meantime</b> [1] 55:16 <b>members</b> [1] 36:8 <b>memo</b> [3] 27:20 66:11,17 <b>mentioned</b> [7] 14:18 35:14 37:1 39:24 44:11 49:25 64: 6 <b>mentioning</b> [1] 37:21 <b>meritorious</b> [1] 50:7 <b>merits</b> [28] 5:1,15 7:4 11:5,</p>	<p>12 25:14 26:15,18 27:17 28:23 35:9 36:18,24 40:20, 21 41:5 42:23 43:7,9 45: 17,17 47:20 50:2 51:15 52: 2,3 57:4 63:25 <b>might</b> [8] 21:18 28:17 29: 11 55:15 56:3,7,7 59:9 <b>million</b> [1] 6:13 <b>mind</b> [8] 26:25 27:3 36:20 44:3 50:12 53:5 64:6 65: 18 <b>minority</b> [1] 39:3 <b>misconduct</b> [2] 14:5,11 <b>misplaced</b> [1] 12:4 <b>mixed</b> [2] 29:5 46:4 <b>modest</b> [1] 56:25 <b>moment</b> [1] 42:24 <b>momentum</b> [1] 34:6 <b>money</b> [1] 21:11 <b>mooted</b> [1] 59:21 <b>mootness</b> [1] 60:2 <b>morning</b> [2] 33:18 35:11 <b>most</b> [3] 10:6 37:17 38:7 <b>motion</b> [1] 38:19 <b>motive</b> [1] 35:3 <b>Ms</b> [70] 4:6,9 6:2,9,11,25 8: 4,17 9:14 10:12,17,22 11:1 12:5 13:5,9,16,20 14:3,10, 16,20 15:6,20 16:3,6,12,20 17:3,10,20 19:4,16,22 20:4, 16 21:21 22:24 23:2,6 24: 5,10,12,16 25:2,25 26:3,7, 22 27:4,13,19,25 28:7,19, 24 29:13,15,18 30:3,6,14, 19,25 31:5 32:4 60:14,18 64:16,20 <b>much</b> [5] 5:3 17:23,24 18:9 60:20 <b>multitude</b> [2] 7:9 8:9 <b>muster</b> [2] 52:5 53:4</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>narrowed</b> [2] 33:8 60:13 <b>NATIONAL</b> [2] 1:8,9 <b>Navy's</b> [1] 11:18 <b>necessarily</b> [2] 34:3 44:4 <b>necessary</b> [5] 8:9 33:23 34:24 55:12 62:24 <b>need</b> [4] 18:11 19:1 20:5 55:16 <b>needs</b> [4] 11:9,18 23:10 44: 4 <b>neither</b> [1] 9:21 <b>neutral</b> [2] 52:5 53:14 <b>never</b> [4] 5:24 12:21 18:6 22:23 <b>next</b> [2] 4:4 64:24 <b>Ninth</b> [1] 67:1 <b>Nken</b> [2] 11:15 12:2 <b>NLRB</b> [11] 11:25 12:20 26: 9 29:1 30:1 46:12 49:2,8 53:1,4 62:14 <b>NLRB's</b> [1] 11:19 <b>non-frivolous</b> [3] 4:20 8:</p>	<p>22 22:18 <b>none</b> [1] 65:3 <b>nor</b> [2] 9:21 52:19 <b>normal</b> [6] 9:24 19:7,13 31: 19 63:13,18 <b>normally</b> [4] 19:14 20:10 45:20 49:17 <b>Norris-LaGuardia</b> [3] 32: 5,15 55:7 <b>note</b> [1] 36:3 <b>nothing</b> [1] 27:25 <b>notion</b> [2] 8:21 50:17 <b>NRDC</b> [1] 4:15 <b>nuclear</b> [1] 10:9 <b>number</b> [2] 18:20 37:1 <b>numbers</b> [1] 37:9</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>Oakland</b> [2] 22:2 34:15 <b>objectively</b> [1] 52:4 <b>obviously</b> [8] 6:18 7:5 13: 21 43:17 60:7 65:8 66:14, 20 <b>occur</b> [1] 60:9 <b>occurred</b> [1] 9:8 <b>office</b> [2] 38:18,24 <b>often</b> [2] 46:14 53:1 <b>Okay</b> [8] 11:1 28:24 32:25 42:1,8 53:23 62:15,25 <b>once</b> [2] 50:13 64:7 <b>one</b> [17] 7:23 12:9 14:10 19: 9 23:15 25:23 26:14 32:2 34:25 35:13 48:18 53:20 56:3,24 62:18 63:10 66:25 <b>ones</b> [3] 38:4,6,7 <b>ongoing</b> [1] 55:18 <b>only</b> [18] 12:9 15:1 17:18 18:16,18 19:9 21:20 30:1 35:2 37:7 44:21 46:21 51: 22 57:14 60:23 61:3 65:19 66:22 <b>opening</b> [1] 33:11 <b>operating</b> [1] 31:4 <b>opinion</b> [4] 24:8,24 44:1 57:23 <b>opposed</b> [4] 6:23 40:23,25 46:12 <b>opposite</b> [1] 38:3 <b>oral</b> [5] 1:17 3:2,5 4:7 33:3 <b>order</b> [6] 16:22 34:7 54:17, 19 59:6,15 <b>ordinarily</b> [1] 27:11 <b>ordinary</b> [6] 7:17 8:2,5,6 47:22 63:13 <b>organize</b> [1] 14:8 <b>organizer</b> [1] 14:10 <b>organizers</b> [2] 13:4,8 <b>organizing</b> [1] 15:22 <b>originally</b> [1] 31:25 <b>originates</b> [1] 22:1 <b>other</b> [21] 6:13 7:12 9:9,10 10:6 11:13 15:2 34:22,23 35:3 40:23,25 44:24 46:7 47:2 57:22 58:7,13 61:12</p>	<p>65:16 66:8 <b>others</b> [6] 13:8 14:8 25:6 45:23 46:13 49:22 <b>otherwise</b> [3] 29:10 32:14 52:13 <b>ought</b> [1] 62:1 <b>ourselves</b> [1] 24:9 <b>ourself</b> [1] 51:18 <b>out</b> [21] 4:15 9:16 12:14 22: 6 27:9 29:7 30:21 32:1 35: 18,22,23 36:16 37:5 41:21 44:4 45:11,24 48:12 51:14 64:10 66:19 <b>outside</b> [1] 31:19 <b>over</b> [2] 6:6 45:6 <b>overcome</b> [1] 61:13 <b>override</b> [1] 34:13 <b>overstate</b> [1] 64:5 <b>overwhelming</b> [2] 30:8 51: 17 <b>own</b> [5] 39:22 42:7 50:23 57:3 60:3 <b>Ozburn-Hessey</b> [2] 44:16 51:16</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>p.m</b> [1] 67:8 <b>PAGE</b> [5] 3:2 29:24 33:14 35:6 64:22 <b>pages</b> [2] 9:14,18 <b>paragraph</b> [1] 7:20 <b>part</b> [2] 20:9 44:11 <b>particular</b> [7] 8:12 15:8 41: 3 45:22 46:24 53:21 57:9 <b>particularly</b> [1] 55:25 <b>parties</b> [7] 19:8 21:19,20 25:23 47:15 57:8,13 <b>party</b> [6] 7:12 26:8,8,13 65: 14,16 <b>passed</b> [1] 55:6 <b>pay</b> [1] 25:24 <b>pending</b> [2] 46:23 58:15 <b>people</b> [1] 12:18 <b>percent</b> [4] 29:18 30:2 43: 18,18 <b>percentage</b> [2] 43:20 44:4 <b>perhaps</b> [1] 15:5 <b>period</b> [1] 55:9 <b>permissible</b> [1] 41:12 <b>perspective</b> [1] 47:15 <b>petition</b> [17] 36:5,12,13 38: 10,25 39:4 50:1,16,19,20 54:15,16,20 60:2 62:10 63: 12 64:1 <b>Petitioner</b> [9] 1:4 2:3 3:4, 10 4:8 19:6 33:11 35:5 64: 19 <b>Petitioner's</b> [1] 6:3 <b>petitions</b> [3] 35:17 39:2 40: 17 <b>Pharma</b> [1] 10:17 <b>PI</b> [4] 8:2 9:9,10 50:23 <b>piece</b> [1] 35:13 <b>pins</b> [1] 23:16</p>
---	---	--	--	---



## Official - Subject to Final Review

<p><b>place</b> <sup>[1]</sup> 51:6  <b>playbook</b> <sup>[1]</sup> 12:24  <b>playing</b> <sup>[1]</sup> 19:7  <b>please</b> <sup>[6]</sup> 4:10 19:10,23  24:24 33:6 64:20  <b>point</b> <sup>[13]</sup> 14:2 22:10 28:2  33:17 34:11 35:6 40:19 44:  16 45:2 54:17 59:15 60:8  64:5  <b>pointed</b> <sup>[2]</sup> 23:8 27:9  <b>points</b> <sup>[2]</sup> 30:21 45:24  <b>policy</b> <sup>[3]</sup> 14:25 15:1,24  <b>position</b> <sup>[8]</sup> 5:25 17:25 18:  4 30:20 46:5 53:16,18,22  <b>positions</b> <sup>[1]</sup> 52:9  <b>possibly</b> <sup>[1]</sup> 48:17  <b>post-war</b> <sup>[1]</sup> 55:9  <b>post-Winter</b> <sup>[1]</sup> 66:25  <b>power</b> <sup>[8]</sup> 11:20 21:6 33:16  36:11 45:6,9 56:11,19  <b>powers</b> <sup>[1]</sup> 28:5  <b>practice</b> <sup>[5]</sup> 7:24 12:17 15:  16 48:6 66:1  <b>practices</b> <sup>[2]</sup> 9:7 20:14  <b>pre-Winter</b> <sup>[1]</sup> 66:24  <b>precedent</b> <sup>[6]</sup> 49:2,4,6,8  53:5 62:14  <b>precedents</b> <sup>[1]</sup> 33:25  <b>predict</b> <sup>[2]</sup> 29:20 48:11  <b>prediction</b> <sup>[1]</sup> 28:14  <b>predictive</b> <sup>[10]</sup> 25:9 28:16  35:20,22 36:15 47:10,11,  24 48:1 64:9  <b>prejudged</b> <sup>[1]</sup> 64:8  <b>preliminarily</b> <sup>[2]</sup> 36:17 47:  19  <b>preliminary</b> <sup>[23]</sup> 4:12 5:5 7:  1,11,15 8:5 9:24 16:19 25:  18 26:2,17,20 27:15 34:21  45:15 47:12 50:2 59:17,20  63:20,22,25 64:3  <b>premise</b> <sup>[1]</sup> 48:25  <b>premises</b> <sup>[1]</sup> 6:5  <b>prerogatives</b> <sup>[1]</sup> 7:22  <b>present</b> <sup>[1]</sup> 64:2  <b>presented</b> <sup>[1]</sup> 9:1  <b>preserve</b> <sup>[1]</sup> 38:11  <b>presume</b> <sup>[1]</sup> 31:14  <b>pretend</b> <sup>[3]</sup> 61:18,19 62:6  <b>pretext</b> <sup>[1]</sup> 15:25  <b>pretextual</b> <sup>[1]</sup> 15:3  <b>pretty</b> <sup>[6]</sup> 17:16 28:16 30:9  39:25 60:20 61:11  <b>prevent</b> <sup>[1]</sup> 55:17  <b>primary</b> <sup>[2]</sup> 45:3,5  <b>principal</b> <sup>[1]</sup> 48:10  <b>principally</b> <sup>[3]</sup> 44:10 49:24  54:2  <b>private</b> <sup>[7]</sup> 19:8 21:18,19,  20 35:2 57:13 61:12  <b>privileged</b> <sup>[1]</sup> 66:14  <b>privy</b> <sup>[1]</sup> 59:23  <b>pro-context</b> <sup>[1]</sup> 53:22  <b>pro-employers</b> <sup>[1]</sup> 32:9</p>	<p><b>probability</b> <sup>[3]</sup> 38:20 43:12  44:3  <b>probably</b> <sup>[1]</sup> 30:10  <b>problem</b> <sup>[5]</sup> 15:6 16:23 19:  3,6 20:15  <b>proceedings</b> <sup>[6]</sup> 33:14 40:  13,14 46:23 55:18 58:15  <b>process</b> <sup>[2]</sup> 19:13 31:20  <b>processes</b> <sup>[1]</sup> 9:18  <b>producing</b> <sup>[1]</sup> 66:10  <b>profit</b> <sup>[2]</sup> 35:2,3  <b>prompted</b> <sup>[1]</sup> 14:23  <b>prongs</b> <sup>[1]</sup> 11:14  <b>proper</b> <sup>[8]</sup> 4:13 6:17 8:6,8,  10,10 31:10 32:13  <b>properly</b> <sup>[1]</sup> 35:19  <b>prosecuting</b> <sup>[2]</sup> 26:8,13  <b>prosecutor</b> <sup>[1]</sup> 27:9  <b>prosecutorial</b> <sup>[3]</sup> 36:7 50:  8,18  <b>prospect</b> <sup>[1]</sup> 44:1  <b>protect</b> <sup>[11]</sup> 39:22 40:13 45:  12 48:2 50:20,23 54:5,21  55:1 57:13 58:6  <b>protecting</b> <sup>[5]</sup> 6:22 56:12  57:1,8,9  <b>prove</b> <sup>[1]</sup> 65:15  <b>provided</b> <sup>[1]</sup> 7:19  <b>providing</b> <sup>[1]</sup> 8:15  <b>provision</b> <sup>[1]</sup> 8:14  <b>public</b> <sup>[23]</sup> 11:15,17,25 21:  13,15,22,25 22:3,5,8,11,13,  15,21 34:10,13,22 57:12,  14 60:16 61:5,7,10  <b>pure</b> <sup>[1]</sup> 28:25  <b>purely</b> <sup>[1]</sup> 35:2  <b>put</b> <sup>[7]</sup> 25:8 32:5 38:5 43:  19 44:18 51:25 63:15  <b>putting</b> <sup>[1]</sup> 22:16</p> <p style="text-align: center;"><b>Q</b></p> <p><b>quality</b> <sup>[1]</sup> 58:23  <b>question</b> <sup>[18]</sup> 18:14 19:17,  21 27:5,6 29:4,6 33:7,19,  21 34:3,4 37:3 49:1 51:22  60:1,21 65:2  <b>questions</b> <sup>[3]</sup> 6:1 57:18 66:  6  <b>quick</b> <sup>[1]</sup> 45:16  <b>quite</b> <sup>[2]</sup> 39:3 46:3  <b>quo</b> <sup>[1]</sup> 11:21  <b>quoted</b> <sup>[1]</sup> 60:14  <b>quoting</b> <sup>[1]</sup> 12:20</p> <p style="text-align: center;"><b>R</b></p> <p><b>Railway</b> <sup>[1]</sup> 22:3  <b>raised</b> <sup>[1]</sup> 47:7  <b>ratcheted</b> <sup>[1]</sup> 60:22  <b>rate</b> <sup>[2]</sup> 29:19 30:1  <b>rather</b> <sup>[3]</sup> 56:2,21 57:2  <b>RAYNOR</b> <sup>[77]</sup> 2:4 3:6 33:2,  3,5 37:5,7,12,20 38:1,9,16  39:7,11,13,20 40:23 41:2,7,  11,19,24 42:3,6,12,18,21</p>	<p>43:8,19,24 44:9 45:1,8,25  46:8,18 47:2,8 48:9,17,22,  25 49:11,14,19 50:11 51:4,  11 52:16 53:10,15 54:1,10,  14 55:5,23 56:4,9,14,17,23  57:11,25 58:4,9,12 59:5,14,  22 60:7,25 61:22 62:7,22  63:1,17 64:15  <b>reach</b> <sup>[2]</sup> 22:6 37:3  <b>reaction</b> <sup>[1]</sup> 6:7  <b>read</b> <sup>[2]</sup> 41:24 54:12  <b>real</b> <sup>[2]</sup> 6:21 60:20  <b>really</b> <sup>[5]</sup> 20:3 29:20 38:4  52:14 66:11  <b>reason</b> <sup>[5]</sup> 21:8 39:20 44:  20,24 55:5  <b>reasonable</b> <sup>[7]</sup> 43:1,11,16,  16 44:3,12 65:5  <b>reasonably</b> <sup>[4]</sup> 33:23 61:4  62:19,24  <b>reasons</b> <sup>[1]</sup> 7:3  <b>REBUTTAL</b> <sup>[3]</sup> 3:8 64:16,  18  <b>receives</b> <sup>[1]</sup> 35:15  <b>recognition</b> <sup>[1]</sup> 11:17  <b>recognize</b> <sup>[1]</sup> 56:23  <b>record</b> <sup>[4]</sup> 17:6 39:4 53:12  54:22  <b>recoverable</b> <sup>[1]</sup> 7:5  <b>recreate</b> <sup>[1]</sup> 21:4  <b>reference</b> <sup>[1]</sup> 63:21  <b>referenced</b> <sup>[1]</sup> 22:11  <b>referencing</b> <sup>[1]</sup> 52:20  <b>referred</b> <sup>[1]</sup> 16:2  <b>referring</b> <sup>[1]</sup> 9:3  <b>refused</b> <sup>[1]</sup> 12:7  <b>refusing</b> <sup>[1]</sup> 34:19  <b>regard</b> <sup>[1]</sup> 64:4  <b>regime</b> <sup>[1]</sup> 45:23  <b>REGION</b> <sup>[1]</sup> 1:7  <b>REGIONAL</b> <sup>[1]</sup> 1:6  <b>regular</b> <sup>[1]</sup> 7:16  <b>reigning</b> <sup>[1]</sup> 49:9  <b>reinstatement</b> <sup>[1]</sup> 16:23  <b>related</b> <sup>[1]</sup> 47:10  <b>RELATIONS</b> <sup>[2]</sup> 1:8,10  <b>relationship</b> <sup>[1]</sup> 64:2  <b>relatively</b> <sup>[1]</sup> 57:16  <b>relegate</b> <sup>[1]</sup> 26:13  <b>relevant</b> <sup>[14]</sup> 24:19 25:20  26:6 35:12,25 36:3,14,21  40:16 42:13 53:4 62:9 63:  11 64:8  <b>relied</b> <sup>[1]</sup> 67:2  <b>relief</b> <sup>[16]</sup> 5:9,11 35:4 37:18  38:19 39:22 40:8,9 46:22  47:12 48:2 51:19 58:15,24  59:17 63:22  <b>relying</b> <sup>[2]</sup> 17:21 32:10  <b>remedial</b> <sup>[8]</sup> 11:20 16:17  20:24 21:6 33:16 38:11 48:  3 61:3  <b>remedies</b> <sup>[2]</sup> 5:6 8:7  <b>remedy</b> <sup>[2]</sup> 20:13 33:13</p>	<p><b>remember</b> <sup>[2]</sup> 9:21 13:20  <b>reparable</b> <sup>[1]</sup> 24:1  <b>reply</b> <sup>[6]</sup> 20:9 33:15 35:6  58:19 60:14,19  <b>representations</b> <sup>[1]</sup> 59:24  <b>representatives</b> <sup>[1]</sup> 13:13  <b>request</b> <sup>[1]</sup> 64:4  <b>requesting</b> <sup>[1]</sup> 58:19  <b>requests</b> <sup>[1]</sup> 39:1  <b>require</b> <sup>[1]</sup> 7:21  <b>required</b> <sup>[1]</sup> 23:5  <b>requirement</b> <sup>[2]</sup> 9:6 12:1  <b>requires</b> <sup>[2]</sup> 4:13 23:4  <b>resolve</b> <sup>[1]</sup> 5:2  <b>resolving</b> <sup>[1]</sup> 65:1  <b>respect</b> <sup>[4]</sup> 8:14 11:13 46:1  61:15  <b>Respondent</b> <sup>[4]</sup> 1:11 2:6 3:  7 33:4  <b>restart</b> <sup>[1]</sup> 34:9  <b>restored</b> <sup>[1]</sup> 12:22  <b>restrained</b> <sup>[1]</sup> 44:22  <b>restraint</b> <sup>[1]</sup> 19:4  <b>restricting</b> <sup>[2]</sup> 56:11,18  <b>restriction</b> <sup>[1]</sup> 40:7  <b>restrictions</b> <sup>[1]</sup> 55:8  <b>restrictive</b> <sup>[1]</sup> 56:2  <b>result</b> <sup>[1]</sup> 18:21  <b>results</b> <sup>[1]</sup> 56:21  <b>resuscitate</b> <sup>[1]</sup> 55:21  <b>retaining</b> <sup>[1]</sup> 15:23  <b>retaliated</b> <sup>[1]</sup> 12:19  <b>retaliation</b> <sup>[1]</sup> 23:25  <b>retreated</b> <sup>[1]</sup> 60:18  <b>returned</b> <sup>[1]</sup> 11:21  <b>reversal</b> <sup>[1]</sup> 20:5  <b>reverse</b> <sup>[2]</sup> 4:16 48:7  <b>reversed</b> <sup>[2]</sup> 53:1 67:5  <b>review</b> <sup>[2]</sup> 31:20 52:22  <b>reviewing</b> <sup>[1]</sup> 9:22  <b>revise</b> <sup>[1]</sup> 35:7  <b>rights</b> <sup>[2]</sup> 21:25 57:14  <b>road</b> <sup>[1]</sup> 34:8  <b>ROBERTS</b> <sup>[18]</sup> 4:3 32:17,  24 36:25 37:6,10,19,24 38:  2 57:19 58:2,25 60:10 62:  16 63:7 64:13,16 67:6  <b>role</b> <sup>[3]</sup> 50:18 54:4 57:1  <b>rubber</b> <sup>[2]</sup> 30:2 51:12  <b>rule</b> <sup>[13]</sup> 6:15 41:9 50:10 52:  13 55:15 57:17 58:17,18  59:10,19,25 60:1 62:11  <b>ruled</b> <sup>[1]</sup> 59:2  <b>rules</b> <sup>[1]</sup> 56:6  <b>run</b> <sup>[2]</sup> 9:16 46:14  <b>run-of-the-mine</b> <sup>[1]</sup> 35:1</p> <p style="text-align: center;"><b>S</b></p> <p><b>same</b> <sup>[10]</sup> 5:9 7:2 42:16,20  44:6 49:22 53:18 58:7,23  62:21  <b>sanctions</b> <sup>[1]</sup> 5:8  <b>satisfy</b> <sup>[1]</sup> 49:24  <b>saying</b> <sup>[17]</sup> 8:9 13:1 15:17</p>	<p>16:21 17:13 18:12,16,16  22:5,12,22 23:9 30:6 44:6  50:6 62:5 66:16  <b>says</b> <sup>[10]</sup> 6:3,17 13:2 26:14  34:16 35:7 44:1,18 55:14  66:4  <b>scared</b> <sup>[1]</sup> 23:16  <b>scarlet</b> <sup>[1]</sup> 22:16  <b>scenario</b> <sup>[2]</sup> 63:14,18  <b>scheduled</b> <sup>[1]</sup> 24:2  <b>scheme</b> <sup>[1]</sup> 39:21  <b>screening</b> <sup>[1]</sup> 50:5  <b>SEC</b> <sup>[1]</sup> 9:15  <b>second</b> <sup>[3]</sup> 18:3 33:19 34:  10  <b>Section</b> <sup>[9]</sup> 4:11,18 36:4,10,  12 38:10 40:8,9 54:15  <b>see</b> <sup>[8]</sup> 8:3 13:7 16:14 20:  18 45:15 48:16 51:24 54:  11  <b>seek</b> <sup>[3]</sup> 17:17 39:22 58:14  <b>seeking</b> <sup>[2]</sup> 16:19 48:2  <b>seeks</b> <sup>[2]</sup> 5:7,8  <b>seem</b> <sup>[1]</sup> 26:18  <b>seems</b> <sup>[4]</sup> 17:16 42:10 51:  8 52:9  <b>seen</b> <sup>[1]</sup> 36:20  <b>selective</b> <sup>[3]</sup> 38:1,23 40:16  <b>sense</b> <sup>[3]</sup> 8:20 43:9 54:23  <b>separate</b> <sup>[1]</sup> 26:23  <b>separation</b> <sup>[1]</sup> 36:5  <b>serious</b> <sup>[2]</sup> 34:7 66:6  <b>Seriously</b> <sup>[1]</sup> 39:12  <b>served</b> <sup>[1]</sup> 22:15  <b>set</b> <sup>[4]</sup> 4:15 39:21 54:12 57:  16  <b>setting</b> <sup>[3]</sup> 7:25 53:15 54:  12  <b>settle</b> <sup>[1]</sup> 30:8  <b>Seven</b> <sup>[4]</sup> 18:21 35:17,18  37:7  <b>shift</b> <sup>[1]</sup> 23:20  <b>shifted</b> <sup>[1]</sup> 32:8  <b>shoes</b> <sup>[1]</sup> 25:9  <b>short</b> <sup>[2]</sup> 24:24 57:23  <b>shouldn't</b> <sup>[1]</sup> 53:3  <b>show</b> <sup>[5]</sup> 7:3 12:17 34:3 43:  11 66:13  <b>showing</b> <sup>[7]</sup> 5:12 7:12 10:  18,23 22:14 23:4 61:4  <b>shut</b> <sup>[1]</sup> 21:10  <b>side</b> <sup>[7]</sup> 22:19 34:22,23 35:  3 46:7 57:22 61:12  <b>signaled</b> <sup>[3]</sup> 36:17 50:1 63:  25  <b>signs</b> <sup>[1]</sup> 27:22  <b>similar</b> <sup>[1]</sup> 58:16  <b>simply</b> <sup>[4]</sup> 47:3 53:19 58:  21 61:6  <b>since</b> <sup>[2]</sup> 17:18 51:9  <b>situation</b> <sup>[3]</sup> 25:5 28:22 48:  7  <b>six</b> <sup>[1]</sup> 8:7  <b>Sixth</b> <sup>[9]</sup> 23:4,6 33:22 41:8,</p>
--	--	--	---	--

## Official - Subject to Final Review

<p>14,17 44:15,17 63:2  <b>small</b> [2] 18:19 37:1  <b>Solicitor</b> [2] 2:4 38:24  <b>somehow</b> [2] 23:25 61:17  <b>Someone</b> [1] 47:18  <b>Someone's</b> [1] 47:17  <b>sometimes</b> [2] 52:22 55:14  <b>somewhat</b> [2] 59:7 60:22  <b>sorry</b> [2] 16:9 44:5  <b>sort</b> [2] 54:9 57:7  <b>sorts</b> [2] 37:22 45:18  <b>SOTOMAYOR</b> [23] 10:12, 20,24 11:2 13:3,6,10,17 14:1,7,17 16:2 24:3,7,11,13 29:23 30:4 59:1,2,12,18 60:5  <b>sought</b> [3] 17:8 19:9 65:25  <b>sound</b> [2] 43:4,6  <b>sounding</b> [1] 19:3  <b>sounds</b> [1] 65:6  <b>soup</b> [1] 45:18  <b>special</b> [1] 31:16  <b>specific</b> [2] 7:19 58:14  <b>specifically</b> [1] 54:20  <b>spell</b> [1] 44:4  <b>spend</b> [1] 18:10  <b>spending</b> [1] 18:9  <b>split</b> [1] 15:7  <b>stage</b> [4] 34:14,18,21 50:19  <b>stakes</b> [1] 48:7  <b>stamp</b> [2] 30:2 51:12  <b>stand</b> [1] 63:3  <b>standard</b> [22] 5:4 7:15 8:8 10:15 14:4 43:12 44:7,10, 21,25 46:15,19 53:17,18, 25 56:21 61:25 65:4,7,8,11 66:24  <b>standards</b> [2] 9:24 19:1  <b>STARBUCKS</b> [4] 1:3 4:4 15:23 65:25  <b>Starbucks'</b> [1] 14:23  <b>start</b> [1] 5:25  <b>started</b> [1] 60:13  <b>stat</b> [1] 32:15  <b>statement</b> [3] 6:15 42:4,6  <b>STATES</b> [2] 1:1,19  <b>statistical</b> [1] 38:17  <b>statistics</b> [5] 35:13 51:13 52:20,25 59:5  <b>status</b> [2] 11:21 26:13  <b>statute</b> [19] 7:20,21 8:6,15, 19 21:15,18 22:7,13 25:13 26:12,12,14,23 29:2 32:10 36:10 54:8,12  <b>statutes</b> [7] 8:7,9 46:1,21 47:2 57:16 58:20  <b>statutory</b> [10] 4:23 6:5 10:6,7,10 27:6 45:22 54:18 58:14 59:16  <b>stay</b> [1] 13:15  <b>staying</b> [2] 13:18 15:25  <b>step</b> [1] 55:11  <b>still</b> [2] 17:25 49:23</p>	<p><b>stop</b> [1] 55:12  <b>stopping</b> [1] 32:8  <b>store</b> [3] 15:24 21:2,10  <b>stores</b> [1] 15:2  <b>Story</b> [2] 6:15 15:12  <b>stringent</b> [3] 10:14,19 55:7  <b>structural</b> [4] 45:1 47:6 54:3 64:1  <b>structure</b> [1] 54:13  <b>struggle</b> [1] 46:10  <b>stuff</b> [1] 11:7  <b>subject</b> [1] 35:10  <b>submission</b> [1] 60:8  <b>submit</b> [1] 49:23  <b>submitted</b> [2] 67:7,9  <b>substantial</b> [3] 13:24 35:25 42:25  <b>succeed</b> [2] 43:10 52:7  <b>success</b> [30] 7:4 11:4 12:6 25:5 26:18 27:17 28:23 29:19 30:1 35:24 36:23 39:4 40:20,21 43:7,9,12,16 44:7 45:20 49:21 51:13 52:1,3 60:22 61:8,16 64:11,24 65:18  <b>sue</b> [2] 47:4 58:22  <b>sufficient</b> [2] 43:1 44:13  <b>suggest</b> [2] 17:5 42:10  <b>suggests</b> [1] 31:20  <b>suing</b> [2] 57:12,13  <b>summary</b> [4] 65:7,11,12,14  <b>sums</b> [1] 27:20  <b>support</b> [4] 12:19 15:13 46:3 65:5  <b>supported</b> [1] 4:19  <b>supporting</b> [1] 65:1  <b>supports</b> [2] 46:4 54:23  <b>suppose</b> [1] 29:10  <b>supposed</b> [18] 17:15 19:20 20:11 21:16 32:11,13 48:18 49:10,15 52:1,2,6,14,15 61:18,20 62:5 66:12  <b>SUPREME</b> [2] 1:1,18  <b>surprised</b> [1] 43:21  <b>survive</b> [1] 65:12</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>table</b> [2] 12:6 25:6  <b>talked</b> [1] 11:16  <b>tells</b> [1] 29:20  <b>tend</b> [1] 52:21  <b>tendency</b> [1] 41:13  <b>tension</b> [1] 67:3  <b>terminated</b> [1] 23:17  <b>termination</b> [2] 14:6 29:5  <b>terminations</b> [1] 14:23  <b>terms</b> [16] 9:25 10:4 12:12 17:11 23:15 28:16 29:3,4 31:10 60:3 64:24 65:4,17, 22 66:19,22  <b>test</b> [24] 4:23 10:15,16,22 19:14 20:10 24:15 29:25 30:5,7,15,18,22,23,24 31:1 33:22 42:16 44:15 45:20</p>	<p>49:21,24 56:2 63:2  <b>text</b> [2] 6:5,16  <b>themselves</b> [1] 36:8  <b>theories</b> [1] 65:24  <b>theory</b> [9] 4:20 8:22 15:11 16:24 22:19 28:11 42:25 65:5,22  <b>there's</b> [49] 7:3,8 9:18 11:5 12:16 13:1,23 14:5 16:25 17:6 20:17,25,25 21:1,7,25 22:12,14 23:7,12,24 24:21 27:16,25 29:2 31:7,16 33:21 34:21 35:2 37:7 38:20 39:8,14 41:13 46:4,6,21,23 47:6,12 49:2,7 54:17 57:11 59:15 61:7 63:3 65:2  <b>therefore</b> [2] 37:11 56:1  <b>they'll</b> [1] 31:14  <b>they've</b> [4] 17:22 18:23 21:1 27:3  <b>thinks</b> [1] 29:1  <b>third</b> [2] 18:8 35:9  <b>THOMAS</b> [7] 6:2,20 32:18 58:3,4,10,12  <b>though</b> [4] 14:14 17:9 25:22 55:20  <b>thousand</b> [1] 18:20  <b>three</b> [5] 9:18 11:13 22:14 23:7 46:24  <b>tied</b> [1] 23:10  <b>timing</b> [1] 59:23  <b>tiny</b> [1] 39:3  <b>today</b> [1] 60:19  <b>took</b> [3] 31:25 48:22,25  <b>totally</b> [3] 17:10 26:3,7  <b>trademark</b> [1] 31:13  <b>traditional</b> [9] 4:14 5:4 6:18 10:21,22 19:13 24:14 31:1 56:6  <b>translation</b> [1] 42:22  <b>trial</b> [4] 5:14,16 12:7 65:13  <b>trick</b> [1] 19:17  <b>true</b> [1] 55:19  <b>try</b> [2] 20:18 38:20  <b>trying</b> [4] 24:17 31:5 35:20 48:11  <b>Tuesday</b> [1] 1:15  <b>turn</b> [1] 28:10  <b>turned</b> [1] 65:25  <b>Twenty</b> [1] 18:20  <b>two</b> [11] 4:23 13:13 14:7 19:2 23:14,16 29:7 34:8 59:7, 7,8  <b>two-day</b> [1] 41:14  <b>two-part</b> [4] 29:25 30:4,7, 23  <b>type</b> [3] 15:15 58:23 64:1  <b>typically</b> [2] 35:4 59:6</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> [1] 8:7  <b>ultimate</b> [1] 63:24  <b>ultimately</b> [3] 5:14 7:23 35:22</p>	<p><b>under</b> [9] 4:18 5:12 20:10 22:14,17 26:23 30:18 32:14 44:8  <b>understand</b> [15] 7:8 8:11, 13 11:2,9 13:7 19:2 28:13 30:19 46:10 60:12,23 61:1, 17 62:3  <b>understood</b> [2] 32:3 33:16  <b>undertaking</b> [1] 5:1  <b>undone</b> [1] 23:11  <b>undue</b> [1] 17:15  <b>unfair</b> [8] 7:24 9:6 12:17 15:16 20:14 35:15 48:6 66:1  <b>uniformly</b> [1] 46:3  <b>union</b> [12] 11:24 12:19 13:4,13 14:8,10 15:12,14,22 23:16 24:5 34:6  <b>union's</b> [1] 15:14  <b>unionization</b> [2] 15:12 24:22  <b>unions</b> [3] 32:8 46:15 66:5  <b>unique</b> [2] 27:6 46:12  <b>unit</b> [1] 23:18  <b>UNITED</b> [2] 1:1,18  <b>unlawful</b> [2] 34:2,17  <b>Unless</b> [2] 21:3 23:23  <b>unrest</b> [1] 55:10  <b>unscrambled</b> [1] 20:22  <b>until</b> [3] 59:13,13,14  <b>untraditional</b> [2] 31:4,6  <b>untraditionally</b> [1] 31:2  <b>up</b> [12] 7:25 26:25 27:3 31:12 36:20 38:7 39:21 46:16 52:4 54:12 59:9 66:7  <b>uses</b> [1] 31:10  <b>using</b> [2] 10:14 20:12  <b>usual</b> [1] 44:7</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p><b>varies</b> [1] 59:7  <b>various</b> [1] 51:13  <b>version</b> [1] 10:14  <b>versus</b> [4] 4:5,15 10:18 19:2  <b>vests</b> [1] 36:11  <b>view</b> [13] 22:21 25:12 31:1 36:18 48:18,20,24 50:2 54:8,8 56:24 61:6 63:25  <b>violated</b> [3] 14:25 15:24 22:18  <b>violation</b> [1] 61:8  <b>Virginia</b> [1] 22:2  <b>vote</b> [4] 21:3 23:11,13 24:6  <b>voted</b> [2] 15:14,15  <b>voting</b> [2] 21:25 23:12  <b>vulnerable</b> [1] 38:8</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>wait</b> [1] 16:8  <b>walk</b> [3] 8:20 33:8 40:6  <b>walked</b> [2] 41:23 42:9  <b>Walsh</b> [1] 10:18  <b>wanted</b> [1] 54:25</p>	<p><b>wants</b> [2] 7:11 19:6  <b>warranted</b> [4] 14:19 25:19 26:21 35:5  <b>Washington</b> [3] 1:14 2:2,5  <b>water</b> [1] 66:24  <b>way</b> [12] 15:5 21:17 34:7 41:25 42:16,20 49:22 50:22 51:25 56:24 61:1 63:1  <b>ways</b> [1] 18:9  <b>wearing</b> [1] 23:15  <b>weigh</b> [1] 24:8  <b>weighed</b> [2] 10:4 49:3  <b>weighing</b> [9] 8:24 11:8 14:18 15:19,22 24:9 34:14 51:20 61:10  <b>welcome</b> [1] 6:1  <b>whatever</b> [2] 46:15 48:8  <b>whatsoever</b> [1] 5:20  <b>whenever</b> [2] 15:11 24:21  <b>Whereupon</b> [1] 67:8  <b>whether</b> [22] 4:19,20,21,22 9:8 14:19 15:1,13 16:17 17:17 19:5 20:11 30:14 33:13,20,21 34:1,5 36:23 60:21 63:19 64:25  <b>who's</b> [3] 13:10 47:14,19  <b>whole</b> [1] 63:3  <b>whom</b> [1] 13:11  <b>wide-ranging</b> [2] 40:10 54:24  <b>widespread</b> [1] 40:1  <b>will</b> [7] 5:22 9:23 13:12 34:24 46:20 52:7 59:23  <b>win</b> [9] 29:12,21,22 30:15 47:14,20 52:12,21,23  <b>winnowing</b> [1] 36:1  <b>Winter</b> [12] 4:15 5:16,23 6:13 10:18 11:15 12:2 31:23 42:13 44:8 67:1,3  <b>Winter's</b> [1] 4:17  <b>within</b> [2] 7:17 36:6  <b>without</b> [4] 5:1 16:21 64:4 65:1  <b>witness</b> [1] 8:24  <b>won</b> [2] 5:10 24:5  <b>word</b> [1] 12:3  <b>words</b> [2] 16:21 20:12  <b>work</b> [1] 66:13  <b>workplace</b> [2] 12:21 20:24  <b>worried</b> [2] 17:13 38:12  <b>worse</b> [1] 65:13  <b>wrote</b> [1] 27:21</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p><b>year</b> [6] 17:7 34:8 35:15,16 37:8 59:8  <b>year-long</b> [1] 18:11  <b>years</b> [3] 29:7 59:7,8</p>
---	--	---	--	---