

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 SPRINT COMMUNICATIONS, INC., :

4 Petitioner : No. 12-815

5 v. :

6 ELIZABETH S. JACOBS, ET AL. :

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8 Washington, D.C.

9 Tuesday, November 5, 2013

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11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 11:06 a.m.

14 APPEARANCES:

15 TIMOTHY J. SIMEONE, ESQ., Washington, D.C.; on behalf of
16 Petitioner.

17 DAVID J. LYNCH, ESQ., Des Moines, Iowa; on behalf of
18 Respondents.

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1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	TIMOTHY J. SIMEONE, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	DAVID J. LYNCH, ESQ.	
7	On behalf of the Respondents	21
8	REBUTTAL ARGUMENT OF	
9	TIMOTHY J. SIMEONE, ESQ.	
10	On behalf of the Petitioner	42
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We will next hear
4 argument in Case 12-815, Sprint Communications v.
5 Jacobs.

6 Mr. Simeone.

7 ORAL ARGUMENT OF TIMOTHY J. SIMEONE

8 ON BEHALF OF THE PETITIONER

9 MR. SIMEONE: Mr. Chief Justice, and may it
10 please the Court:

11 The IUB's arguments here would transform
12 Younger abstention from the exception into the rule for
13 State agency adjudications. Virtually, all State agency
14 decisions, even on issues of Federal law, would be
15 subject to challenge only in State court.

16 There's no basis for that broad rule in this
17 Court's decisions. Younger abstention began with the
18 traditional principle going back to the time of the
19 framing that Federal courts sitting in equity shouldn't
20 intrude on State criminal cases.

21 This Court's decisions have, of course,
22 expanded Younger slightly beyond criminal cases. In
23 Huffman, in Moore, in Trainor, the Court extended
24 Younger to civil enforcement actions in aid of State
25 criminal laws.

1 In Middlesex County, in Dayton, the Court
2 extended Younger to administrative disciplinary actions.
3 But all of these cases are still coercive civil
4 enforcement actions, where the State's enforcement
5 interests are similar to those in criminal cases.

6 JUSTICE SOTOMAYOR: Counsel, one of the
7 problems I have is I don't know how to define
8 "coercive." The line seems very hard to draw. There
9 are plenty of examples in the brief where some courts
10 have said this kind of proceeding is coercive and that
11 kind is not. So --

12 MR. SIMEONE: Yes, Your Honor.

13 JUSTICE SOTOMAYOR: -- is it -- is it
14 worthwhile using that distinction at all? Or should we
15 be thinking about going back to basic principles and
16 doing something like the Second Circuit does, which is
17 to say it's a sovereign interest, rather than a personal
18 interest?

19 MR. SIMEONE: Your Honor, we've argued that
20 there is no magic to the -- to the word "coercive."
21 Coercive is a sort of shorthand that the lower courts
22 have used to mean coercive in the ways that this Court's
23 Younger decisions are coercive.

24 So I think the question of how far this
25 Court has extended Younger is really the heart of this

1 case, as opposed to sort of what is the meaning of the
2 word "coercive." And I think, as I was saying, the
3 Court started with criminal cases, and it extended that
4 principle somewhat in Huffman and Moore and Trainor.

5 JUSTICE SOTOMAYOR: Those were when most of
6 them involved State proceedings.

7 MR. SIMEONE: Yes. There's -- they're --
8 but they're a specific kind of State enforcement action.
9 In each of those cases, this Court held that the State
10 enforcement action was in aid of criminal law. So it's
11 a small extension of the traditional principle that
12 courts sitting in equity don't intrude on State criminal
13 cases.

14 JUSTICE SOTOMAYOR: But then we went further
15 in Pennzoil and in New Orleans -- well, perhaps not.

16 MR. SIMEONE: Yes, the Court went further in
17 a couple of different directions, and I want to try to
18 address them separately, if I may.

19 The first direction is, really, the Dayton
20 Middlesex County cases. Those were administrative
21 disciplinary actions. And I think the Dayton case is
22 actually especially helpful here in drawing the kind of
23 line that you're looking for, Your Honor. The Dayton
24 case helps to give some substance to exactly what is a
25 civil enforcement proceeding.

1 So in -- in Dayton, the Ohio Civil Rights
2 Commission conducted an investigation and found that the
3 school there had engaged in discrimination on the basis
4 of sex. The commission proposed a consent order, and it
5 told the school, if you don't agree to this consent
6 order under which you need to hire back the professor --
7 I mean, the teacher and pay her back pay, then we're
8 going to proceed to disciplinary action; we're going to
9 file an administrative complaint.

10 The school ignored the consent order,
11 refused to show up for a hearing that the commission had
12 scheduled. And so, in Dayton, the State filed an
13 administrative complaint, charging violations of the
14 Ohio Civil Rights Act. And those violations that were
15 charged were third-degree misdemeanors, subject to
16 fines, subject to jail time, up to 60 days in jail.

17 So we think that Dayton gives some substance
18 to what is a civil enforcement action. It's the sort of
19 proceeding where you have an investigation. You have
20 factual findings. You have an administrative complaint.
21 You have the possibility of -- of civil penalties, and
22 potentially, in that case, there was jail time as well.

23 JUSTICE GINSBURG: Mr. Simeone, this -- the
24 background of this case, I don't quite grasp. You
25 originally said that you wanted to make sure you --

1 there was no disconnection, pending the FCC's resolution
2 of the issue.

3 MR. SIMEONE: That's exactly right, Your
4 Honor.

5 JUSTICE GINSBURG: Has the FCC had a
6 proceeding to resolve it?

7 MR. SIMEONE: Yes, although the FCC is
8 surprisingly adept at not resolving the issue in the
9 proceedings that it holds to resolve the issue. So, in
10 fact, the FCC had a proceeding pending before it at the
11 time that this case was before the IUB, in which Sprint
12 expected that the -- that the FCC would resolve this
13 issue.

14 What the FCC did was resolve the issue of
15 what inter-carrier compensation regime applies going
16 forward, but it didn't address these calls that have
17 already occurred. So this is a sort of strange corner
18 of telecommunications law now.

19 Going forward, the FCC has applied specific
20 inter-carrier compensation regime under Federal law to
21 this kind of call. But going backwards, the appropriate
22 inter-carrier compensation regime to apply under the
23 1996 Act, under the federal law is -- is still at issue.

24 JUSTICE GINSBURG: Well, why wouldn't --
25 let's say you -- you -- there were no abstention. You

1 have your case in Federal court. And the Federal judge
2 says, the FCC hasn't spoken, so I don't want to step out
3 in front of the FCC on this -- on this question.

4 MR. SIMEONE: We -- we strongly urged the
5 IUB not to address these issues of Federal law. The
6 IUB, I think, was frustrated with the FCC, which had not
7 implemented the relevant provisions of Federal law, and
8 the IUB reached out to make decisions on Federal law.

9 And all we're saying in this case is that
10 we -- we think that we ought to be able to challenge
11 those decisions that the IUB made as to what's an
12 information service, what's a telecommunications
13 service.

14 JUSTICE GINSBURG: Well, you could. You
15 could challenge it in the State court or this Court
16 and -- eventually, but there's a proceeding going on in
17 the State court, and there's a review -- State review
18 attached to that.

19 And you're -- you're saying we can cut off
20 this administrative process that ends in State review.
21 We could cut it off and go to the Federal court.

22 MR. SIMEONE: To be clear, Your Honor, we
23 actually aren't seeking to enjoin any proceeding in the
24 State. We filed the action in State court because we
25 were required to by Eighth Circuit law. The Eighth

1 Circuit has a line of cases --

2 JUSTICE GINSBURG: Then you explain that.

3 But -- but in the review -- in your review petition from
4 the State court -- to -- to the State court, you brought
5 up more than just this -- the question of these -- these
6 charges.

7 MR. SIMEONE: Yes, Your Honor. This
8 could -- this is a situation quite comparable to the
9 England case. In the England case, the -- the Federal
10 court plaintiffs thought that they were required to go
11 to State court with their Federal law issues.

12 And this Court said that they didn't have to
13 go to Federal court -- to State court with their Federal
14 law issues. And since they did, they were still
15 entitled to reserve their Federal law issues for Federal
16 court.

17 In our case, we actually were required by
18 Eighth Circuit precedent to go to State court. The
19 Eighth Circuit rule is that, if you don't go to State
20 court with your Federal law issues, then abstention --
21 Younger abstention applies anyway, even though there is
22 no State proceeding whatsoever.

23 So in this case, we went to State court, but
24 only because we had to under Eighth Circuit -- under the
25 Eighth Circuit's unusual law of Younger abstention.

1 When we got to State court, we tried to
2 essentially do an England reservation. We said to the
3 State court: We'd like to stay the Federal issues while
4 they go forward in Federal court because, of course, the
5 Federal court has jurisdiction and a virtually
6 unflagging obligation to exercise that jurisdiction.

7 The -- the State court actually held those
8 issues in abeyance for 2 years while the abstention
9 issues were heard in Federal court. When -- when the
10 Federal abstention issues were decided by the Eighth
11 Circuit, incorrectly, we think, the State court decided
12 to go forward.

13 But our -- our argument here is that in a
14 system of concurrent jurisdiction, where we have the
15 right to be in Federal court, to get review of our
16 Federal law issues, the fact that we were forced by
17 Eighth Circuit law to go to State court, too, shouldn't
18 preclude the Federal court proceeding from going
19 forward.

20 JUSTICE KENNEDY: Well, what would have been
21 the ruling, do you think -- what would have been the
22 correct ruling if you had filed your Federal action
23 while the case was still -- the issue was still pending
24 before the Iowa board?

25 In other words, before the State judicial

1 review process kicked in? Would the -- would your
2 analysis of the case be the same or would we apply a
3 different --

4 MR. SIMEONE: It would not be the same, Your
5 Honor, but we do think that we should --

6 JUSTICE KENNEDY: Because it would be an --
7 because it would be Burford at that point or what?

8 MR. SIMEONE: I don't think it would be -- I
9 don't think it would be Burford because the State
10 doesn't argue that there's a complex regulatory regime
11 here of the sort that's covered by Burford.

12 What we think is that, if this were still
13 before the IUB, that would really take us back to our
14 main argument here in this case. Our argument is that
15 neither the State court proceeding, nor the IUB
16 proceeding, was the kind of civil enforcement action to
17 which this Court has extended Younger.

18 So even if we'd filed in Federal court at
19 the time that proceeding was still pending before the
20 IUB, we think that Younger still shouldn't apply. But
21 here, there's an additional reason why it shouldn't
22 apply.

23 We waited for the IUB proceeding to
24 conclude. And, by the way, we then paid the invoices
25 that Windstream wanted us to pay. There's -- there's

1 nothing further that we could be obliged to do here.
2 We've already paid.

3 But the -- but the additional reason why we
4 think we would -- we should prevail here really goes to
5 the issue that this Court reserved in NOPSI. So in
6 NOPSI, the Court assumed, without deciding, that the
7 agency proceeding and the State court review of the
8 agency proceeding were a unitary proceeding. We think
9 that those proceedings should only be treated as unitary
10 in situations where the State interests at the two
11 levels are similar.

12 So in Burford, to go back to your question,
13 Your Honor, in Burford, the State appellate court was
14 participating in the regulatory process with the State
15 agency. And, of course, this Court treated that as a
16 unitary proceeding.

17 In this case, the State court proceeding, as
18 the IUB discusses on pages 33 and 34 of its brief, has
19 nothing to do with the partnership with the -- with the
20 agency. The relevant partnership here -- the relevant
21 place to review the Federal law issues is Federal court.

22 The State's only interest in the State court
23 proceeding here is a State interest in State court
24 review, as opposed to Federal court review, of Federal
25 law issues. That's not the same kind of interest that

1 it had at the regulatory proceeding level.

2 So our view here is that issue in NOPSI
3 of -- you know, is the State interest, for purposes of
4 Younger, the interest at the agency level, or is there a
5 separate interest when it comes to State judicial review
6 of State agency action and Federal judicial review of
7 State agency action, we think that that should be
8 resolved in our favor.

9 So that's a --

10 JUSTICE KAGAN: Mr. Simeone?

11 MR. SIMEONE: Yes.

12 JUSTICE KAGAN: Could I take you back to --
13 to the agency proceeding? So I guess I understood, from
14 your respective briefs, that you say the agency
15 proceeding was not an enforcement proceeding, and the
16 agency says it was an enforcement proceeding because you
17 might have brought it initially, but you tried to get
18 out, and then the agency compelled you to keep on going
19 in its process.

20 So could you explain that to me.

21 MR. SIMEONE: I can do my best. It's
22 somewhat complicated. We went to the agency with an
23 issue of State law. We went to the agency to ask the
24 agency to hold that Windstream was not entitled to stop
25 connecting our calls to its customers without IUB

1 approval under Iowa's consumer protection rules. So
2 that's the issue that we took to the State agency.

3 When we got to the State agency, Windstream
4 said, oh, no, no, no, we are not going to really stop
5 connecting your calls to our customers because that's a
6 big no-no in the telecommunications world. You are not
7 supposed to stop connecting calls. So they -- so that
8 dispute went away.

9 What the IUB did was it reached out to
10 decide a different set of issues, the underlying
11 question of what inter-carrier compensation regime
12 should apply to -- to these calls.

13 So at that point, the IUB's theory, now, is
14 when they reached out to decide these Federal issues
15 under the 1996 Act -- you know, what's -- what's an
16 information service, what's a telecommunication service,
17 what inter-carrier compensation regime applies here --
18 when they reached out to decide those Federal issues
19 they say this case became a civil enforcement
20 proceeding.

21 But this takes me back to my description of
22 Dayton. Dayton was a civil enforcement proceeding.
23 There was an investigation there. There was a finding
24 of violations of the Ohio civil rights statute. There
25 was an administrative complaint charging third degree

1 misdemeanors and threatening penalties and jail time.

2 That is the kind of civil enforcement
3 proceeding to which this Court has applied Younger.
4 That's the kind of proceeding that's like a criminal
5 case, that takes us back to that traditional principle
6 that courts -- Federal courts sitting in equity don't
7 intrude on -- into State criminal proceedings.

8 JUSTICE ALITO: On Dayton, if the only
9 relief available had been reinstatement and back pay,
10 would that matter?

11 MR. SIMEONE: No, I don't think it would
12 matter, Your Honor. I think that, again, the posture of
13 the case was very different. There, you know, there
14 was -- again, there was an investigation, there was a
15 due process right to a hearing. There was an agency
16 that was enforcing existing State law.

17 Here, the agency was essentially
18 implementing Federal law. The FCC hadn't implemented
19 these provisions. Everyone in the industry was
20 frustrated. We were frustrated. We had taken these
21 issues to the FCC -- you know, please decide what
22 inter-carrier compensation regime applies here. The FCC
23 hadn't done it.

24 And so the IUB, quite understandably,
25 reached out to decide those issues. But in announcing

1 the kind of inter-carrier compensation regime that ought
2 to apply to these calls, the IUB wasn't conducting an
3 enforcement proceeding against Sprint.

4 An interesting point here, I think, is that
5 the IUB's position makes for something very strange
6 under Ex Parte Young -- you know, agencies generally
7 have the choice to proceed either by rulemaking, which
8 they often do, or by adjudication. And they can make
9 the exact same rules in either way.

10 Under the -- under the IUB's theory, if the
11 agency proceeds by rulemaking under Ex Parte Young, you
12 can go to Federal court and get an injunction. If the
13 agency proceeds by adjudication, making the exact same
14 rules, you can't because you -- there is a unitary
15 proceeding up through the State court appeals, and you
16 are stuck with that, and certiori review by this Court,
17 of course.

18 That, to me, makes no sense under Ex Parte
19 Young. The agency's decision to proceed by rulemaking
20 versus proceeding by adjudication -- which, by the way,
21 the IUB had in this case. The IUB, when -- when the
22 dispute disappeared between Sprint and Windstream, the
23 IUB could have said, we'll close that docket, and we're
24 going to start a rulemaking to implement these
25 provisions of Federal law that the FCC can't seem to get

1 around to implementing.

2 In that case, we would, of course, have been
3 entitled under Ex Parte Young -- and this is an Ex Parte
4 Young case -- we could have gone to Federal court and
5 gotten an injunction -- a declaratory ruling and
6 injunction. And, of course, it didn't -- it really
7 doesn't make sense to distinguish whether that relief is
8 available on the basis of what -- how the agency decides
9 to proceed.

10 I want to go back to a question that came up
11 earlier about Pennzoil and Juidice and how they fit into
12 this Court's extension of that traditional principle
13 that -- that courts of equity shouldn't intrude into
14 State criminal proceedings. Juidice and Pennzoil are a
15 kind of unusual corner of Younger abstention law because
16 they both involve challenges to the processes that the
17 States use to enforce their judgments.

18 So in Juidice, the Federal Plaintiff was
19 asking -- what challenging under -- under the due
20 process clause New York's contempt procedures, sort of
21 how they went about holding folks in contempt.

22 In Pennzoil, Texaco was challenging the bond
23 requirements to appeal in Texas, but they were both
24 Federal court cases bringing challenges to aspects of
25 the way -- the way that the States enforce their

1 judgments.

2 In this case, Sprint has no quarrel at all
3 with any aspect of Iowa law. We followed Iowa law to a
4 T and -- and filed the State court appeal that the
5 Eighth Circuit required us to file.

6 JUSTICE ALITO: Well, those cases are
7 different. But why is there a -- why is there a greater
8 federalism concern in those cases than in this case
9 where the IUB has a legitimate interest in how much
10 citizens of Iowa pay for a telephone service?

11 MR. SIMEONE: Well, I think this really goes
12 back, Your Honor, to the traditional principle that I
13 started with. The -- the basic idea of Younger is that
14 Federal courts sitting in equity don't intrude into
15 State criminal proceedings.

16 That's a very important traditional rule
17 because that's where the State police power is really at
18 its zenith -- you know, enforcing State criminal law.
19 We think that the Pennzoil and Juidice cases are very
20 similar.

21 The -- the idea that a State can't enforce a
22 judgment once its courts have gone through the process
23 of coming to judgment is -- would be very unsettling.
24 That's -- that's the kind of police -- you know, State
25 police power at its absolute zenith.

1 Now, all the things that State regulatory
2 agencies do are important -- you know, but -- but -- you
3 know, not every rule of a State agency is at that same
4 level of importance as a State criminal court.

5 JUSTICE ALITO: But then, if the question is
6 whether something is tied to something that can be
7 regarded as criminal or quasi-criminal, what about
8 Middlesex County? That's not criminal -- or is not
9 criminal.

10 MR. SIMEONE: Well, Middlesex County is not
11 criminal, certainly. It's a -- I call it an
12 administrative disciplinary proceeding. And I think
13 that the State's interests in that kind of disciplinary
14 proceeding is, in fact, very similar to its interest in
15 a criminal case.

16 In -- in Middlesex County itself, of course,
17 a lawyer had referred to a trial as a kangaroo court and
18 a legalized lynching. And -- and the New Jersey Ethics
19 Committee -- you know, said that that was the sort of
20 conduct that -- that couldn't be permitted under the
21 State bar rules.

22 So that is not literally a criminal case.
23 It is one of this Court's extensions of -- of the
24 principle to the civil enforcement proceeding context;
25 but it does seem to me to be motivated by very much the

1 same sorts of interests.

2 JUSTICE GINSBURG: What do you say about the
3 argument that -- that once the IUB decided to go on with
4 this proceeding, you didn't want them to, but they did,
5 that that then became a proceeding for them to enforce
6 the access charge?

7 MR. SIMEONE: Well, I think, again, Your
8 Honor, that that goes back to the differences between
9 this sort of case and the Dayton case. In this case,
10 what the IUB really was doing was announcing its
11 understanding of -- of these provisions of the Federal
12 act.

13 In -- in a case like Dayton, where this
14 Court has applied Younger, the -- the commission there
15 was -- you know, seeking to penalize wrongdoing by
16 the -- by the school. And it seems to me that
17 there's a -- there's an important difference with
18 respect to that traditional principle that Younger
19 reflects of not interfering with State criminal actions.

20 There's a big difference between when the
21 State announces rules that will be broadly applicable
22 throughout the industry, like here, and when the State
23 is actually seeking to punish wrongdoing, as in Dayton
24 or as in Middlesex County.

25 If there are no further questions, I will

1 reserve the balance of my time.

2 CHIEF JUSTICE ROBERTS: Thank you, counsel.
3 Mr. Lynch?

4 ORAL ARGUMENT OF DAVID J. LYNCH
5 ON BEHALF OF THE RESPONDENTS

6 MR. LYNCH: Mr. Chief Justice, and may it
7 please the Court:

8 Under Sprint's proposed test, after Sprint
9 chose to invoke the jurisdiction of the Iowa Utilities
10 Board, Windstream could have gone to Federal court at
11 any time to enjoin the board proceedings because, under
12 Sprint's test, the board proceedings were remedial and
13 the -- Younger abstention was not applicable to those
14 proceedings.

15 That's true despite the fact that, at that
16 time, when the petition was filed, the board was faced
17 with a compelling State interest; that is, an immediate
18 and direct threat to public health and welfare.

19 If Windstream had been able to go to the
20 Federal court and interrupt the State proceedings at
21 that moment, that very act would unavoidably cast
22 dispersions on the State's ability to resolve the
23 Federal issues here in the context of that important
24 State interest, and that is precisely one of the evils
25 that Younger abstention is directed to.

1 CHIEF JUSTICE ROBERTS: So -- but, I mean,
2 is there a different category, some of the normal
3 regulatory interests are important and other regulatory
4 interests are not? I mean, it seems to me the line that
5 Younger drew -- or that I thought it was drawing,
6 between criminal and civil has been eroded to a
7 considerable extent.

8 But your friend analogized that the other
9 cases, for want of a better word, to -- they're sort of
10 quasi-criminal or at least touching upon the process as
11 opposed to a particular proceeding. I mean, do you
12 think that the abstention applies in the case of every
13 regulatory proceeding?

14 MR. LYNCH: No, Your Honor, we do not.

15 CHIEF JUSTICE ROBERTS: Well, how do you --
16 how do you tell which --

17 MR. LYNCH: The -- let me give you two parts
18 to that answer. First of all, that -- we believe that
19 it applies when the agency proceedings are engaged in
20 enforcement of a State statute, State law, that that's
21 kind of the touchstone for when you're more likely to
22 see an important State interest.

23 JUSTICE SCALIA: When -- when aren't they?

24 MR. LYNCH: I've got to take this case and
25 make two changes to it, and I have an example for you.

1 Instead of having Sprint in the position of saying that
2 the access -- intrastate access charge tariff does not
3 apply at all, imagine that the dispute between Sprint
4 and Windstream was over merely the calculation of the
5 amounts, over un -- over ambiguous language within that
6 tariff. And because Sprint admitted that the tariff
7 applied, whatever it meant, there would be no threat of
8 disconnection.

9 Under those circumstances, you truly do have
10 the garden variety commercial dispute between two
11 parties that Sprint tries to characterize this case as,
12 but this case involved more.

13 This case involved the Filed Tariff
14 Doctrine, a statutory provision the Court's familiar
15 with, that the board is charged with enforcing. This
16 board, at least initially -- or excuse me -- this case
17 also involved, initially, that threat of disconnection,
18 which added an element of exigency to the board's action
19 that is not present in most of these cases.

20 JUSTICE SOTOMAYOR: Counsel, what's left of
21 Colorado River, under your view of this case? I mean,
22 in Colorado River, we made it very clear that abstention
23 should be the exception. I always thought that was a
24 driving principle, which Federal law should be announced
25 by Federal courts.

1 If we take the Eighth Circuit rule, where
2 everything is unitary and required and your rule that
3 any time it involves a State agency, essentially, it's
4 subject to abstention, what's left of Federal courts
5 having any jurisdiction?

6 MR. LYNCH: Well, first of all, let me say
7 that the question of whether it's a unitary proceeding
8 or whether there's a -- a fork in the road after the
9 agency has completed its proceedings, that question is
10 not part of the question presented here in this case
11 today.

12 The Court does not need to reach that
13 question. It can do as it did in New Orleans Public
14 Service and simply assume that it is a case of the
15 unitary requirement without deciding it.

16 JUSTICE SOTOMAYOR: Well, the Eighth Circuit
17 has decided that question. You're right. We didn't --

18 MR. LYNCH: There's --

19 JUSTICE SOTOMAYOR: They say it is.

20 MR. LYNCH: There is, in fact, under our
21 research, about a 4-3 split among the circuits on that
22 question. The parties haven't really briefed it.

23 JUSTICE SOTOMAYOR: No, I --

24 MR. LYNCH: And if you're going to get to
25 that question, in fact --

1 JUSTICE SOTOMAYOR: But why don't you get to
2 the essence of my question?

3 MR. LYNCH: Thank you. Then what's left of
4 the Colorado River case is what it has always been
5 there, which is when the -- there is not an important
6 State interest, Younger abstention does not apply. And
7 that is always the touchstone of this analysis.

8 You know, the three Middlesex County
9 factors, the first one's easy, is there a pending State
10 proceeding or not? That's always -- either its there or
11 it isn't. That's not a problem.

12 In much that way, when Sprint chose to come
13 to the Iowa Utilities Board, it could have gone to
14 Federal court instead, I assume. It chose to come to the
15 board for relief, even though it says that the issues
16 involved are Federal law.

17 The third factor in Middlesex County, the
18 ability of the courts -- the State courts, through a
19 state process, to address the Federal questions, also
20 typically not an issue in this type of proceeding.
21 There is the right of appeal to the State courts, and
22 that is going to provide an adequate remedy.

23 Sprint has not challenged that in this case.

24 JUSTICE SCALIA: Counsel, especially in
25 cases that involve jurisdictional issues. It seems an

1 awfully -- awful waste of counsel's time and client's
2 money to be litigating about which court you ought to be
3 in, and it seems to me, to avoid that, the lines ought
4 to be clear.

5 And it doesn't seem to me that the
6 line -- you know, whether there is a significant State
7 interest involved or not, is a clear line. You can
8 argue about that in almost any case. So I'm disinclined
9 to use that kind of a -- of a test along with any
10 others.

11 Why can't we just limit -- limit Younger
12 abstention to the three categories discussed in NOPSI,
13 and say, that's it, no more?

14 MR. LYNCH: The -- because it would, if you
15 were to take that approach, it would result in a denial
16 of abstention in cases like this one that present
17 exactly the evils, the concerns that were presented in
18 Younger, in terms of disrespect for the State's ability
19 to resolve Federal questions, the concerns of
20 federalism, the concerns of avoiding duplicative --
21 duplicative cases in the courts.

22 JUSTICE SCALIA: Any purely civil case that
23 raises that kind of an issue can arguably be subject to
24 Younger abstention; is that right?

25 MR. LYNCH: It would be up to the judges to

1 decide whether there was an important State interest
2 there or not.

3 JUSTICE GINSBURG: Are you saying, then,
4 that in every State agency adjudication attended by
5 State court review -- Younger would apply?

6 MR. LYNCH: No, Your Honor, I'm not.

7 JUSTICE GINSBURG: So can you -- so can you
8 then -- we have only the two cases. We have Middlesex
9 and Dayton, and you say this case belongs in that
10 Younger category. What State court adjudication --
11 State agency adjudications attended by State court
12 review would fall outside Younger on your rationale of
13 what Younger covers?

14 MR. LYNCH: A State agency adjudication that
15 did not involve the State agency attempting to enforce a
16 State statute or State law. And that's, as I tried to
17 describe in my earlier example, if that would be the
18 case here, if the dispute between Sprint and Windstream
19 had been something other than does the --

20 JUSTICE SOTOMAYOR: What was the State law
21 here? They were interpreting Federal law.

22 MR. LYNCH: The State law here was Iowa Code
23 Section 476.5, the filed tariff doctrine, which requires
24 that, in this case, that Windstream charge Sprint for
25 providing intrastate access services --

1 JUSTICE SOTOMAYOR: That mimicked the Federal
2 law.

3 MR. LYNCH: On the State side. That's --
4 it's our version of that Federal law, yes.

5 JUSTICE SOTOMAYOR: But you don't derive any
6 power independent of that Federal law?

7 MR. LYNCH: Oh, no, I'm sorry. I
8 misunderstood. This is an independent State statute.
9 It is not -- it is analogous to the Federal interstate
10 filed tariff doctrine, but it is not dependent upon it
11 at all. It's existed for I don't know how many years.

12 JUSTICE SOTOMAYOR: By the way, there are
13 other abstention doctrines that can take care of State
14 interests, aren't there? There's Burford, and there are
15 many others.

16 MR. LYNCH: In appropriate cases, yes.

17 JUSTICE SOTOMAYOR: So I don't know why
18 Younger as you're -- in following up on Justice Scalia's
19 question, why Younger has to be the only vehicle, why we
20 need to create more categories than NOPSI did to protect
21 State interests when we have an awful lot of other
22 doctrines that do that already.

23 MR. LYNCH: I don't know that we're asking
24 you to create a new category or a new extension. We
25 felt that this case fit, very clearly, within the

1 Middlesex test under Younger abstention. And it was a
2 straightforward application of that three-part test, and
3 obviously, a district court judge agreed.

4 It was not -- it does not require any
5 extension of Younger to apply that principle to this
6 case.

7 JUSTICE SOTOMAYOR: By the way, have we ever
8 used the Younger abstention in a case where the Federal
9 plaintiff also filed the Federal -- the State action as
10 well?

11 MR. LYNCH: Do you mean the State action
12 before the board or before --

13 JUSTICE SOTOMAYOR: Before anybody, court or
14 a board.

15 MR. LYNCH: Not that I'm aware of, no.

16 But that brings me to my second point, which
17 is that, if the court were to decide to apply the
18 coercive-remedial distinction as a test in this case,
19 the results before the Eighth Circuit should still be
20 affirmed because the board proceedings were, in fact,
21 coercive.

22 As has already been alluded to here today,
23 after Sprint filed its petition with the board,
24 Windstream came back and said, in essence, we will not
25 disconnect Sprint as long as they pay the access

1 charges, going forward. They can hold the money going
2 back. We won't disconnect them as long as they pay,
3 going forward.

4 Sprint came back and said, we're not going
5 to pay you, going forward, but we've got -- you're not
6 going to disconnect us. We've got what we want. We
7 want to withdraw our petition.

8 And at that point, the board said, that's
9 fine; you can take your petition, but don't go anywhere.
10 Stay here. We're going to get to the bottom of this
11 because, if we let you go, it's going to reoccur.
12 This case --

13 CHIEF JUSTICE ROBERTS: I'm sorry, it's
14 going to what?

15 MR. LYNCH: Reoccur.

16 CHIEF JUSTICE ROBERTS: Oh.

17 MR. LYNCH: The case would inevitably be
18 before the board again, perhaps next time with Sprint --
19 with Windstream filing, instead of Sprint, or Sprint
20 saying they're threatening us with disconnection again.
21 There was no point in letting it start over. We got to
22 the bottom of it, to see what was going on.

23 The lower courts have identified various --
24 this goes to your -- to your earlier question, Justice
25 Sotomayor, about how to define coercive proceedings.

1 And the lower courts have identified a number of factors
2 that they've considered in this, including who initiated
3 the proceeding, was participation in the proceeding
4 mandatory, does the Federal Plaintiff contend that the
5 State proceeding is unlawful, or do they -- does the
6 Federal plaintiff, instead, seek a remedy from some
7 other State-initiated inflicted wrong, is the Federal
8 plaintiff alleged to have committed a bad act, and
9 finally, whether the proceeding involved the State's
10 enforcement of its laws.

11 CHIEF JUSTICE ROBERTS: Well, don't all --
12 it's sort of like the important State interests. I
13 assume the State's not doing anything, unless they think
14 it's important. And any type of administrative
15 proceeding, remedial or otherwise, has to have some
16 bite to it.

17 There has to be something that is going
18 happen to you if you don't do what they tell you to do.
19 So in that sense, I mean, almost every administrative
20 proceeding is coercive.

21 MR. LYNCH: If it can be backed up, as this
22 one could. When the board issued its order and directed
23 Sprint to make payment to Windstream, had Sprint failed
24 to do that, Sprint could have been subject to civil
25 penalties assessed by the board. So I think to the

1 extent that the agency proceedings are backed up with
2 that kind of enforcement --

3 CHIEF JUSTICE ROBERTS: Well, my point is it
4 doesn't seem like much of a limiting test, if you can
5 say any time -- sort of any time anything bad can happen
6 to you as a result of an administrative proceeding,
7 that's coercive. It doesn't seem like a serious
8 constraint on the application of Younger.

9 MR. LYNCH: And what that -- what that may
10 go to, Your Honor, is the fact that the
11 coercive-remedial distinction is not any easier to apply
12 than the important State interest test.

13 JUSTICE ALITO: Well, could you give me an
14 example of State administrative proceedings that would
15 not fall within your understanding of the scope of
16 Younger?

17 MR. LYNCH: With respect to my own agency,
18 for instance, a -- well, there is all the obvious
19 examples, legislative action, the cases where there is
20 no State agency -- or no State proceeding pending.

21 But in terms of a quasi-judicial agency
22 action that would not be entitled to Younger abstention,
23 I've given the earlier example if the parties were in what's
24 called the garden -- truly in a garden-variety
25 commercial dispute between two parties and the agency is

1 simply resolving that dispute between the two parties,
2 the State's interest is substantially diminished in that
3 proceeding.

4 JUSTICE KAGAN: I think --

5 CHIEF JUSTICE ROBERTS: Why is -- I'm sorry.
6 I was just going to say why is that? Presumably, the
7 State is resolving that dispute pursuant to some State
8 law or State regulation, State policy. I don't know why
9 the -- the State interest is unimportant simply because
10 it's the resolution of a private dispute.

11 MR. LYNCH: Let me be clear. I don't say
12 the State interest is unimportant; it is simply
13 diminished. And at some point, it would be diminished
14 to the point where Younger abstention would not be
15 appropriate.

16 JUSTICE BREYER: Does it matter if it's just
17 purely Federal law? I mean, think of a civil case
18 involving a State on one side and private parties on
19 another in a State court, which has jurisdiction over
20 Federal laws. The State claims that the defendant has
21 violated, civilly, a Federal statute. There's an action
22 also in Federal Court.

23 In your view, does the Federal Court have to
24 abstain?

25 MR. LYNCH: If the Federal plaintiff brought

1 the Federal action in order to enjoin the State court
2 proceedings --

3 JUSTICE BREYER: No, no. There's no action
4 for an injunction. What they want is the judge to
5 decide the case. The private party wants the Federal
6 judge to decide his case. That's all. It's a matter of
7 interpreting Federal law.

8 Now, in your opinion, is Younger -- does
9 Younger, not some other doctrine, does Younger require
10 abstention?

11 MR. LYNCH: Yes.

12 JUSTICE BREYER: Yes. Okay. So on your
13 view, we can never have a case proceed in Federal court
14 even on a purely Federal issue if, in fact, there is
15 involving this estate civil case on the same question?

16 MR. LYNCH: Involving the same parties?

17 JUSTICE BREYER: Yes.

18 MR. LYNCH: Yeah.

19 JUSTICE BREYER: Well, I can't think of a --
20 doesn't it often happen that there are such cases? I
21 mean, I -- I would think that wouldn't be too difficult.
22 I mean, either there never is one and you tend to be
23 right, or there are a whole lot of them and you tend to
24 be wrong.

25 I've just never heard it put in that extreme

1 way, and maybe you're right. I don't know. What's
2 your -- do you have authority for it or any light to
3 shed?

4 MR. LYNCH: I think my authority for it is
5 in this case -- in this Court's Younger abstention
6 decisions. The Middlesex County test is a simple
7 three-part test that focuses always on the second
8 factor, what is the State's interest -- what is the
9 important State interest?

10 JUSTICE ALITO: Well, suppose it's a
11 licensing procedure. Somebody's been denied a license
12 to be a barber or a hairdresser and the person wants to
13 challenge that in Federal court. Would Younger apply
14 there?

15 MR. LYNCH: No, I don't think that would
16 be a --

17 JUSTICE ALITO: Why?

18 MR. LYNCH: I don't believe that would be
19 agency action in a judicial manner.

20 JUSTICE ALITO: Why not?

21 MR. LYNCH: I'm assuming that they filed
22 a -- a form, filled it out, gave it to the agency, and
23 it was denied. That seems more to me to be of an
24 executive character.

25 JUSTICE ALITO: Well, suppose there's

1 some -- there's an -- an administrative agency in the
2 State that hears appeals from that.

3 MR. LYNCH: If the person applying for that
4 license had then gone on to ask for a hearing before
5 that department that hears administrative appeals, and
6 it had a quasi-judicial proceeding in order to make that
7 determination, then I believe that Younger would --
8 could apply there, if there's an important State
9 interest attached to the denial of that license.

10 JUSTICE KAGAN: I guess, Mr. Lynch, the
11 concern is, given that we think agencies are doing
12 things that implicate important State interests most of
13 the time, that's why they do them, that -- that your
14 test -- and not just your test, but the Eighth Circuit's
15 tests, would turn agency adjudicators into the primary
16 legal decision-makers in our system on all matters that
17 they were -- you know, wanted to get into, including
18 matters of Federal law.

19 MR. LYNCH: That would -- to the extent that
20 the cases are brought before the State agencies in the
21 first place, and the Federal issues are raised there,
22 before it goes to the Federal court, that would be
23 correct.

24 JUSTICE KAGAN: That does seem like a big
25 proposition -- no? I mean, do you think that

1 Younger says that or that Middlesex says that or that
2 we've ever said that?

3 MR. LYNCH: I think that Middlesex, combined
4 with Huffman, providing for the State a unitary
5 proceeding does, in fact, provide for that result.

6 Leads logic --

7 JUSTICE BREYER: Does Younger say "before"?

8 MR. LYNCH: I'm sorry?

9 JUSTICE BREYER: Does Younger say "before"?

10 MR. LYNCH: No. Middlesex --

11 JUSTICE BREYER: You just said before.

12 MR. LYNCH: Middlesex --

13 JUSTICE BREYER: No. So -- so in your view,
14 it doesn't matter which is brought first, I guess.

15 MR. LYNCH: No. Middlesex County requires
16 that there be a pending State proceeding.

17 There is one other argument I'd like to
18 address --

19 JUSTICE ALITO: Is it correct that, under
20 Eighth Circuit law, the -- the party that wants to bring
21 the Federal lawsuit has to go to State court first?

22 MR. LYNCH: You mean following the agency
23 proceedings, the unitary proceeding -- that is the
24 Eighth Circuit's approach, yes, that once you've gotten
25 on the -- the State train, you have to ride that through

1 to the end of the State process.

2 JUSTICE ALITO: Well, I thought that -- I
3 thought that Sprint was -- said that they had to go to
4 State court whether they wanted to or not or else they
5 wouldn't be able to go to Federal court.

6 MR. LYNCH: I believe Sprint's argument -- I
7 don't care -- don't want to speak for them, but I
8 believe their argument on that point was, following the
9 board's decision, they feel that the Eighth Circuit law
10 required them to file petitions in both Federal court
11 and to invoke the judicial review process in State
12 district court.

13 JUSTICE BREYER: If Younger only applies
14 to -- to State proceedings that are brought first, then
15 I guess we could have a -- a criminal defendant, who's
16 not yet one, bring an action in Federal court to say
17 that the law is unconstitutional or something or
18 violates a Federal law. And then the State prosecutes
19 him criminally, and the Federal court couldn't -- and
20 the Federal court could enjoin the criminal proceeding.

21 MR. LYNCH: That would be the -- very much
22 like the case in this Court's decision in Steffel
23 against --

24 JUSTICE BREYER: So we've said they can't --
25 you can enjoin a criminal decision -- a criminal

1 proceeding in a State court, as long as the criminal
2 proceeding wasn't brought first. Is that what this
3 Court has said?

4 MR. LYNCH: As I read it, what this Court
5 has said is that there's no Younger abstention when
6 there's no pending State criminal proceeding.

7 JUSTICE BREYER: No, no. There is a pending
8 one by the time they get around to it. Then what? I
9 mean, I --

10 MR. LYNCH: So -- I'm sorry. I
11 misunderstood.

12 JUSTICE BREYER: I'll ask you to clarify.
13 You've come up with a couple of rules that strike me as
14 counterintuitive, and so I'm trying to figure that one
15 out.

16 The before or after one doesn't seem to work
17 too well in my mind because it would seem -- you know,
18 you couldn't -- Federal court couldn't. Federal court
19 could enjoin a criminal proceeding that came up later in
20 your view, I guess.

21 MR. LYNCH: Yes. I think the Federal court,
22 at least, could answer the Federal question presented.
23 I guess I have a hard time seeing --

24 JUSTICE BREYER: All right.

25 MR. LYNCH: Okay.

1 The last thing I wanted to address is there
2 is a lot of discussion, particularly in some of the
3 amicus briefs, to the effect that the board was acting
4 under Federally delegated authority here under some --
5 as some kind of deputized Federal agent. That is not
6 the case at all here. The board was acting under its
7 State law authority.

8 Sprint relies, for instance, on the AT&T vs.
9 Iowa Utilities Board case for the proposition that the
10 1996 Telecommunications Act asserted Federal authority
11 to regulate local telecommunications matters.

12 That's true, insofar as it goes, but that
13 case is limited to matters addressed by the '96 Act,
14 which was addressed to create in competition within the
15 local exchange marketplace.

16 What we're talking about in this case is
17 access services by which a long distance carrier, such
18 as Sprint, delivers a long distance call to the local
19 exchange carrier, such as Windstream, for completion to
20 Windstream's customers. That service remains
21 practically a monopoly service.

22 Sprint has no way to get those calls to
23 Windstream's customers, other than by connecting it to
24 Windstream and letting Windstream -- compensating
25 Windstream for carrying those calls to the end.

1 Because of that, the Federal
2 Telecommunications Act of '96, in Section 251(g),
3 expressly reserved the tariffed access charge regime and
4 did not affect the State's jurisdiction over intrastate
5 access charges. Sprint acknowledges that in its reply
6 brief at pages 22 and 23, but claims that the situation
7 is unclear as to what applied between 1996 and 2011.

8 But the fact remains that Sprint paid those
9 intrastate access charges without protest from 1996 to
10 2009, when it made the unilateral decision to change the
11 process and start withholding those payments.

12 JUSTICE GINSBURG: Well, then why wouldn't
13 you say that Sprint was not the initiator of this State
14 process? Because Sprint withdrew its complaint, right?

15 MR. LYNCH: I'm sorry. I missed a few words
16 there.

17 JUSTICE GINSBURG: Sprint -- Sprint withdrew
18 its complaint.

19 MR. LYNCH: Sprint was allowed to withdraw
20 its complaint.

21 JUSTICE GINSBURG: Yes. So, at that point,
22 it becomes the board's proceeding. It becomes a
23 proceeding initiated by the board and not by Sprint.

24 MR. LYNCH: That is correct.

25 Thus, even under the first-to-file test, we

1 believe that this case was coercive at the time it was
2 before the board, to the extent that the
3 coercive-remedial distinction matters.

4 Those are the points I had to cover. If
5 there are no further questions, thank you.

6 CHIEF JUSTICE ROBERTS: Thank you counsel.

7 Mr. Simeone, you have 6 minutes remaining.

8 REBUTTAL ARGUMENT OF TIMOTHY J. SIMEONE

9 ON BEHALF OF THE PETITIONER

10 MR. SIMEONE: I hope to be very brief. But
11 there was a lot of discussion about the problem with the
12 IUB's approach lacking sort of meaningful limits. And I
13 just want to say a couple words about the Middlesex
14 County test because I don't think that that lack of
15 meaningful limits necessarily follows from -- from the
16 Middlesex County test, although I do think some
17 clarification of the test would be -- would be helpful.

18 Under Middlesex County, of course, Younger
19 requires an ongoing State judicial proceeding, and it
20 requires an important State interest. So with respect
21 to ongoing State judicial proceeding, the IUB
22 understands "judicial" to be any adjudicative
23 proceeding. But as we argue in our briefs, that's not
24 necessarily consistent with the rest of this Court's
25 cases under -- applying Younger.

1 "Judicial," we think, means an exercise of
2 the State's judicial enforcement authority. So limiting
3 that prong of Middlesex County to an exercise of the
4 State's judicial enforcement authority would help to
5 draw this line.

6 A second similar point is with respect to
7 the State interest prong of Middlesex County, we argue,
8 of course, that the relevant State interest is the
9 State's interest in the ongoing State proceeding. Here
10 the ongoing State proceeding was this -- was judicial
11 review of the agency proceeding.

12 So by -- by limiting the proceeding that
13 you're looking at to the ongoing State judicial
14 proceeding required by the first prong of Middlesex
15 County, then you're really just looking at the State's
16 interest in State judicial review of Federal law
17 questions, as opposed to Federal court judicial review
18 of -- of Federal law questions.

19 And, again, that seems to me to help to --
20 to draw a line.

21 Unless there are further questions, that was
22 all I had.

23 CHIEF JUSTICE ROBERTS: Thank you, counsel.
24 Counsel.

25 The case is submitted.

1 (Whereupon, at 11:57 a.m., the case in the
2 above-entitled matter was submitted.)

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C				
<p>c 1:8,15 2:1 3:1</p> <p>calculation 23:4</p> <p>call 7:21 19:11 40:18</p> <p>called 32:24</p> <p>calls 7:16 13:25 14:5,7,12 16:2 40:22,25</p> <p>cant 16:14,25 18:21 26:11 34:19 38:24</p> <p>care 28:13 38:7</p> <p>carrier 40:17,19</p> <p>carrying 40:25</p>				

<p>case 3:4 5:1,21,24 6:22,24 7:11 8:1,9 9:9,9,17,23 10:23 11:2,14 12:17 14:19 15:5,13 16:21 17:2,4 18:2 18:8 19:15,22 20:9,9,9,13 22:12 22:24 23:11,12,13 23:16,21 24:10,14 25:4,23 26:8,22 27:9,18,24 28:25 29:6,8,18 30:12 30:17 33:17 34:5 34:6,13,15 35:5 38:22 40:6,9,13 40:16 42:1 43:25 44:1</p> <p>cases 3:20,22 4:3,5 5:3,9,13,20 9:1 17:24 18:6,8,19 22:9 23:19 25:25 26:16,21 27:8 28:16 32:19 34:20 36:20 42:25</p> <p>cast 21:21</p> <p>categories 26:12 28:20</p> <p>category 22:2 27:10 28:24</p> <p>certainly 19:11</p> <p>certiori 16:16</p> <p>challenge 3:15 8:10 8:15 35:13</p> <p>challenged 25:23</p> <p>challenges 17:16,24</p> <p>challenging 17:19 17:22</p> <p>change 41:10</p> <p>changes 22:25</p> <p>character 35:24</p> <p>characterize 23:11</p> <p>charge 20:6 23:2 27:24 41:3</p> <p>charged 6:15 23:15</p> <p>charges 9:6 30:1</p>	<p>41:5,9</p> <p>charging 6:13 14:25</p> <p>chief 3:3,9 21:2,6 22:1,15 30:13,16 31:11 32:3 33:5 42:6 43:23</p> <p>choice 16:7</p> <p>chose 21:9 25:12,14</p> <p>circuit 4:16 8:25 9:1,18,19,24 10:11,17 18:5 24:1,16 29:19 37:20 38:9</p> <p>circuits 9:25 24:21 36:14 37:24</p> <p>circumstances 23:9</p> <p>citizens 18:10</p> <p>civil 3:24 4:3 5:25 6:1,14,18,21 11:16 14:19,22,24 15:2 19:24 22:6 26:22 31:24 33:17 34:15</p> <p>civily 33:21</p> <p>claims 33:20 41:6</p> <p>clarification 42:17</p> <p>clarify 39:12</p> <p>clause 17:20</p> <p>clear 8:22 23:22 26:4,7 33:11</p> <p>clearly 28:25</p> <p>clients 26:1</p> <p>close 16:23</p> <p>code 27:22</p> <p>coercive 4:3,8,10 4:20,21,22,23 5:2 29:21 30:25 31:20 32:7 42:1</p> <p>coerciveremedial 29:18 32:11 42:3</p> <p>colorado 23:21,22 25:4</p> <p>combined 37:3</p> <p>come 25:12,14 39:13</p>	<p>comes 13:5</p> <p>coming 18:23</p> <p>commercial 23:10 32:25</p> <p>commission 6:2,4 6:11 20:14</p> <p>committed 31:8</p> <p>committee 19:19</p> <p>communications 1:3 3:4</p> <p>comparable 9:8</p> <p>compelled 13:18</p> <p>compelling 21:17</p> <p>compensating 40:24</p> <p>compensation 7:15 7:20,22 14:11,17 15:22 16:1</p> <p>competition 40:14</p> <p>complaint 6:9,13 6:20 14:25 41:14 41:18,20</p> <p>completed 24:9</p> <p>completion 40:19</p> <p>complex 11:10</p> <p>complicated 13:22</p> <p>concern 18:8 36:11</p> <p>concerns 26:17,19 26:20</p> <p>conclude 11:24</p> <p>concurrent 10:14</p> <p>conduct 19:20</p> <p>conducted 6:2</p> <p>conducting 16:2</p> <p>connecting 13:25 14:5,7 40:23</p> <p>consent 6:4,5,10</p> <p>considerable 22:7</p> <p>considered 31:2</p> <p>consistent 42:24</p> <p>constraint 32:8</p> <p>consumer 14:1</p> <p>contempt 17:20,21</p> <p>contend 31:4</p> <p>context 19:24 21:23</p> <p>corner 7:17 17:15</p>	<p>correct 10:22 36:23 37:19 41:24</p> <p>couldnt 19:20 38:19 39:18,18</p> <p>counsel 4:6 21:2 23:20 25:24 42:6 43:23,24</p> <p>counsels 26:1</p> <p>counterintuitive 39:14</p> <p>county 4:1 5:20 19:8,10,16 20:24 25:8,17 35:6 37:15 42:14,16,18 43:3,7,15</p> <p>couple 5:17 39:13 42:13</p> <p>course 3:21 10:4 12:15 16:17 17:2 17:6 19:16 42:18 43:8</p> <p>court 1:1,12 3:10 3:15,23 4:1,25 5:3 5:9,16 8:1,15,15 8:17,21,24 9:4,4 9:10,11,12,13,13 9:16,18,20,23 10:1,3,4,5,7,9,11 10:15,17,18 11:15 11:17,18 12:5,6,7 12:13,15,17,21,22 12:23,24 15:3 16:12,15,16 17:4 17:24 18:4 19:4 19:17 20:14 21:7 21:10,20 24:12 25:14 26:2 27:5 27:10,11 29:3,13 29:17 33:19,22,23 34:1,13 35:13 36:22 37:21 38:4 38:5,10,12,16,19 38:20 39:1,3,4,18 39:18,21 43:17</p> <p>courts 3:17,19,21 4:9,21,22 5:12</p>	<p>15:6,6 17:12,13 18:14,22 19:23 23:14,25 24:4 25:18,18,21 26:21 30:23 31:1 35:5 38:22 42:24</p> <p>cover 42:4</p> <p>covered 11:11</p> <p>covers 27:13</p> <p>create 28:20,24 40:14</p> <p>criminal 3:20,22,25 4:5 5:3,10,12 15:4 15:7 17:14 18:15 18:18 19:4,7,8,9 19:11,15,22 20:19 22:6 38:15,20,25 38:25 39:1,6,19</p> <p>criminally 38:19</p> <p>customers 13:25 14:5 40:20,23</p> <p>cut 8:19,21</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 1:8,15 3:1</p> <p>david 1:17 2:6 21:4</p> <p>days 6:16</p> <p>dayton 4:1 5:19,21 5:23 6:1,12,17 14:22,22 15:8 20:9,13,23 27:9</p> <p>decide 14:10,14,18 15:21,25 27:1 29:17 34:5,6</p> <p>decided 10:10,11 20:3 24:17</p> <p>decides 17:8</p> <p>deciding 12:6 24:15</p> <p>decision 16:19 38:9 38:22,25 41:10</p> <p>decisionmakers 36:16</p> <p>decisions 3:14,17 3:21 4:23 8:8,11 35:6</p> <p>declaratory 17:5</p>
---	--	--	--	---

<p>defendant 33:20 38:15 define 4:7 30:25 degree 14:25 delegated 40:4 delivers 40:18 denial 26:15 36:9 denied 35:11,23 department 36:5 dependent 28:10 deputized 40:5 derive 28:5 des 1:17 describe 27:17 description 14:21 despite 21:15 determination 36:7 didnt 7:16 9:12 17:6 20:4 24:17 difference 20:17,20 differences 20:8 different 5:17 11:3 14:10 15:13 18:7 22:2 difficult 34:21 diminished 33:2,13 33:13 direct 21:18 directed 21:25 31:22 direction 5:19 directions 5:17 disappeared 16:22 disciplinary 4:2 5:21 6:8 19:12,13 disconnect 29:25 30:2,6 disconnection 7:1 23:8,17 30:20 discrimination 6:3 discussed 26:12 discusses 12:18 discussion 40:2 42:11 disinclined 26:8 dispersions 21:22</p>	<p>dispute 14:8 16:22 23:3,10 27:18 32:25 33:1,7,10 disrespect 26:18 distance 40:17,18 distinction 4:14 29:18 32:11 42:3 distinguish 17:7 district 29:3 38:12 docket 16:23 doctrine 23:14 27:23 28:10 34:9 doctrines 28:13,22 doesnt 11:10 17:7 26:5 32:4,7 34:20 37:14 39:16 doing 4:16 20:10 31:13 36:11 dont 4:7 5:12 6:5 6:24 8:2 9:19 11:8,9 15:6,11 18:14 25:1 28:5 28:11,17,23 30:9 31:11,18 33:8,11 35:1,15,18 38:7,7 42:14 draw 4:8 43:5,20 drawing 5:22 22:5 drew 22:5 driving 23:24 due 15:15 17:19 duplicative 26:20 26:21</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e 2:1 3:1,1 earlier 17:11 27:17 30:24 32:23 easier 32:11 easy 25:9 effect 40:3 eighth 8:25,25 9:18 9:19,24,25 10:10 10:17 18:5 24:1 24:16 29:19 36:14 37:20,24 38:9</p>	<p>either 16:7,9 25:10 34:22 element 23:18 elizabeth 1:6 ends 8:20 enforce 17:17,25 18:21 20:5 27:15 enforcement 3:24 4:4,4 5:8,10,25 6:18 11:16 13:15 13:16 14:19,22 15:2 16:3 19:24 22:20 31:10 32:2 43:2,4 enforcing 15:16 18:18 23:15 engaged 6:3 22:19 england 9:9,9 10:2 enjoin 8:23 21:11 34:1 38:20,25 39:19 entitled 9:15 13:24 17:3 32:22 equity 3:19 5:12 15:6 17:13 18:14 eroded 22:6 especially 5:22 25:24 esq 1:15,17 2:3,6,9 essence 25:2 29:24 essentially 10:2 15:17 24:3 estate 34:15 et 1:6 ethics 19:18 eventually 8:16 evils 21:24 26:17 ex 16:6,11,18 17:3 17:3 exact 16:9,13 exactly 5:24 7:3 26:17 example 22:25 27:17 32:14,23 examples 4:9 32:19 exception 3:12</p>	<p>23:23 exchange 40:15,19 excuse 23:16 executive 35:24 exercise 10:6 43:1,3 exigency 23:18 existed 28:11 existing 15:16 expanded 3:22 expected 7:12 explain 9:2 13:20 expressly 41:3 extended 3:23 4:2 4:25 5:3 11:17 extension 5:11 17:12 28:24 29:5 extensions 19:23 extent 22:7 32:1 36:19 42:2 extreme 34:25</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>faced 21:16 fact 7:10 10:16 19:14 21:15 24:20 24:25 29:20 32:10 34:14 37:5 41:8 factor 25:17 35:8 factors 25:9 31:1 factual 6:20 failed 31:23 fall 27:12 32:15 familiar 23:14 far 4:24 favor 13:8 fcc 7:5,7,10,12,14 7:19 8:2,3,6 15:18 15:21,22 16:25 fccs 7:1 federal 3:14,19 7:20,23 8:1,1,5,7 8:8,21 9:9,11,13 9:13,15,15,20 10:3,4,5,9,10,15 10:16,18,22 11:18 12:21,21,24,24</p>	<p>13:6 14:14,18 15:6,18 16:12,25 17:4,18,24 18:14 20:11 21:10,20,23 23:24,25 24:4 25:14,16,19 26:19 27:21 28:1,4,6,9 29:8,9 31:4,6,7 33:17,20,21,22,23 33:25 34:1,5,7,13 34:14 35:13 36:18 36:21,22 37:21 38:5,10,16,18,19 38:20 39:18,18,21 39:22 40:5,10 41:1 43:16,17,18 federalism 18:8 26:20 federally 40:4 feel 38:9 felt 28:25 figure 39:14 file 6:9 18:5 38:10 filed 6:12 8:24 10:22 11:18 18:4 21:16 23:13 27:23 28:10 29:9,23 35:21 filing 30:19 filled 35:22 finally 31:9 finding 14:23 findings 6:20 fine 30:9 fines 6:16 first 5:19 22:18 24:6 25:9 36:21 37:14,21 38:14 39:2 43:14 firsttofile 41:25 fit 17:11 28:25 focuses 35:7 folks 17:21 followed 18:3 following 28:18 37:22 38:8</p>
--	---	---	--	--

<p>follows 42:15 forced 10:16 fork 24:8 form 35:22 forward 7:16,19 10:4,12,19 30:1,3 30:5 found 6:2 framing 3:19 friend 22:8 front 8:3 frustrated 8:6 15:20,20 further 5:14,16 12:1 20:25 42:5 43:21</p> <hr/> <p style="text-align: center;">G</p> <p>g 3:1 41:2 garden 23:10 32:24 gardenvariety 32:24 generally 16:6 ginsburg 6:23 7:5 7:24 8:14 9:2 20:2 27:3,7 41:12 41:17,21 give 5:24 22:17 32:13 given 32:23 36:11 gives 6:17 go 8:21 9:10,13,18 9:19 10:4,12,17 12:12 16:12 17:10 20:3 21:19 30:9 30:11 32:10 37:21 38:3,5 goes 12:4 18:11 20:8 30:24 36:22 40:12 going 3:18 4:15 6:8 6:8 7:15,19,21 8:16 10:18 13:18 14:4 16:24 24:24 25:22 30:1,1,3,4,5 30:6,10,11,14,22</p>	<p>31:17 33:6 gotten 17:5 37:24 grasp 6:24 greater 18:7 guess 13:13 36:10 37:14 38:15 39:20 39:23</p> <hr/> <p style="text-align: center;">H</p> <p>hadnt 15:18,23 hairdresser 35:12 happen 31:18 32:5 34:20 hard 4:8 39:23 hasnt 8:2 havent 24:22 health 21:18 hear 3:3 heard 10:9 34:25 hearing 6:11 15:15 36:4 hears 36:2,5 heart 4:25 held 5:9 10:7 help 43:4,19 helpful 5:22 42:17 helps 5:24 hire 6:6 hold 13:24 30:1 holding 17:21 holds 7:9 honor 4:12,19 5:23 7:4 8:22 9:7 11:5 12:13 15:12 18:12 20:8 22:14 27:6 32:10 hope 42:10 huffman 3:23 5:4 37:4</p> <hr/> <p style="text-align: center;">I</p> <p>id 37:17 idea 18:13,21 identified 30:23 31:1 ignored 6:10</p>	<p>ill 39:12 im 26:8 27:6 28:7 29:15 30:13 33:5 35:21 37:8 39:10 39:14 41:15 imagine 23:3 immediate 21:17 implement 16:24 implemented 8:7 15:18 implementing 15:18 17:1 implicate 36:12 importance 19:4 important 18:16 19:2 20:17 21:23 22:3,22 25:5 27:1 31:12,14 32:12 35:9 36:8,12 42:20 including 31:2 36:17 incorrectly 10:11 independent 28:6,8 industry 15:19 20:22 inevitably 30:17 inflicted 31:7 information 8:12 14:16 initially 13:17 23:16,17 initiated 31:2 41:23 initiator 41:13 injunction 16:12 17:5,6 34:4 insofar 40:12 instance 32:18 40:8 intercarrier 7:15 7:20,22 14:11,17 15:22 16:1 interest 4:17,18 12:22,23,25 13:3 13:4,5 18:9 19:14 21:17,24 22:22 25:6 26:7 27:1</p>	<p>32:12 33:2,9,12 35:8,9 36:9 42:20 43:7,8,9,16 interesting 16:4 interests 4:5 12:10 19:13 20:1 22:3,4 28:14,21 31:12 36:12 interfering 20:19 interpreting 27:21 34:7 interrupt 21:20 interstate 28:9 intrastate 23:2 27:25 41:4,9 intrude 3:20 5:12 15:7 17:13 18:14 investigation 6:2 6:19 14:23 15:14 invoices 11:24 invoke 21:9 38:11 involve 17:16 25:25 27:15 involved 5:6 23:12 23:13,17 25:16 26:7 31:9 involves 24:3 involving 33:18 34:15,16 iowa 1:17 10:24 18:3,3,10 21:9 25:13 27:22 40:9 iowas 14:1 isnt 25:11 issue 7:2,8,9,13,14 7:23 10:23 12:5 13:2,23 14:2 25:20 26:23 34:14 issued 31:22 issues 3:14 8:5 9:11 9:14,15,20 10:3,8 10:9,10,16 12:21 12:25 14:10,14,18 15:21,25 21:23 25:15,25 36:21 iub 7:11 8:5,6,8,11</p>	<p>11:13,15,20,23 12:18 13:25 14:9 15:24 16:2,21,21 16:23 18:9 20:3 20:10 42:21 iubs 3:11 14:13 16:5,10 42:12 ive 22:24 34:25</p> <hr/> <p style="text-align: center;">J</p> <p>j 1:15,17 2:3,6,9 3:7 21:4 42:8 jacobs 1:6 3:5 jail 6:16,16,22 15:1 jersey 19:18 judge 8:1 29:3 34:4 34:6 judges 26:25 judgment 18:22,23 judgments 17:17 18:1 judicial 10:25 13:5 13:6 35:19 38:11 42:19,21,22 43:1 43:2,4,10,13,16 43:17 judice 17:11,14,18 18:19 jurisdiction 10:5,6 10:14 21:9 24:5 33:19 41:4 jurisdictional 25:25 justice 3:3,9 4:6,13 5:5,14 6:23 7:5,24 8:14 9:2 10:20 11:6 13:10,12 15:8 18:6 19:5 20:2 21:2,6 22:1 22:15,23 23:20 24:16,19,23 25:1 25:24 26:22 27:3 27:7,20 28:1,5,12 28:17,18 29:7,13 30:13,16,24 31:11 32:3,13 33:4,5,16</p>
--	---	---	--	---

<p>34:3,12,17,19 35:10,17,20,25 36:10,24 37:7,9 37:11,13,19 38:2 38:13,24 39:7,12 39:24 41:12,17,21 42:6 43:23</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kagan 13:10,12 33:4 36:10,24 kangaroo 19:17 keep 13:18 kennedy 10:20 11:6 kicked 11:1 kind 4:10,11 5:8,22 7:21 11:16 12:25 15:2,4 16:1 17:15 18:24 19:13 22:21 26:9,23 32:2 40:5 know 4:7 13:3 14:15 15:13,21 16:6 18:18,24 19:2,3,19 20:15 25:8 26:6 28:11 28:17,23 33:8 35:1 36:17 39:17</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lack 42:14 lacking 42:12 language 23:5 law 3:14 5:10 7:18 7:20,23 8:5,7,8,25 9:11,14,15,20,25 10:16,17 12:21,25 13:23 15:16,18 16:25 17:15 18:3 18:3,18 22:20 23:24 25:16 27:16 27:20,21,22 28:2 28:4,6 33:8,17 34:7 36:18 37:20 38:9,17,18 40:7 43:16,18 laws 3:25 31:10</p>	<p>33:20 lawsuit 37:21 lawyer 19:17 leads 37:6 left 23:20 24:4 25:3 legal 36:16 legalized 19:18 legislative 32:19 legitimate 18:9 letting 30:21 40:24 level 13:1,4 19:4 levels 12:11 license 35:11 36:4,9 licensing 35:11 light 35:2 limit 26:11,11 limited 40:13 limiting 32:4 43:2 43:12 limits 42:12,15 line 4:8 5:23 9:1 22:4 26:6,7 43:5 43:20 lines 26:3 literally 19:22 litigating 26:2 local 40:11,15,18 logic 37:6 long 29:25 30:2 39:1 40:17,18 looking 5:23 43:13 43:15 lot 28:21 34:23 40:2 42:11 lower 4:21 30:23 31:1 lynch 1:17 2:6 21:3 21:4,6 22:14,17 22:24 24:6,18,20 24:24 25:3 26:14 26:25 27:6,14,22 28:3,7,16,23 29:11,15 30:15,17 31:21 32:9,17 33:11,25 34:11,16 34:18 35:4,15,18</p>	<p>35:21 36:3,10,19 37:3,8,10,12,15 37:22 38:6,21 39:4,10,21,25 41:15,19,24 lynching 19:18</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>m 1:13 3:2 44:1 magic 4:20 main 11:14 making 16:13 mandatory 31:4 manner 35:19 marketplace 40:15 matter 1:11 15:10 15:12 33:16 34:6 37:14 44:2 matters 36:16,18 40:11,13 42:3 mean 4:22 6:7 22:1 22:4,11 23:21 29:11 31:19 33:17 34:21,22 36:25 37:22 39:9 meaning 5:1 meaningful 42:12 42:15 means 43:1 meant 23:7 merely 23:4 middlesex 4:1 5:20 19:8,10,16 20:24 25:8,17 27:8 29:1 35:6 37:1,3,10,12 37:15 42:13,16,18 43:3,7,14 mimicked 28:1 mind 39:17 minutes 42:7 misdeemeanors 6:15 15:1 missed 41:15 misunderstood 28:8 39:11 moines 1:17</p>	<p>moment 21:21 money 26:2 30:1 monopoly 40:21 moore 3:23 5:4 motivated 19:25</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>n 2:1,1 3:1 necessarily 42:15 42:24 need 6:6 24:12 28:20 neither 11:15 never 34:13,22,25 new 5:15 17:20 19:18 24:13 28:24 28:24 nono 14:6 nopsi 12:5,6 13:2 26:12 28:20 normal 22:2 november 1:9 number 31:1</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>o 2:1 3:1 obligation 10:6 obliged 12:1 obvious 32:18 obviously 29:3 occurred 7:17 oh 14:4 28:7 30:16 ohio 6:1,14 14:24 okay 34:12 39:25 once 18:22 20:3 37:24 ones 25:9 ongoing 42:19,21 43:9,10,13 opinion 34:8 opposed 5:1 12:24 22:11 43:17 oral 1:11 2:2,5 3:7 21:4 order 6:4,6,10 31:22 34:1 36:6</p>	<p>originally 6:25 orleans 5:15 24:13 ought 8:10 16:1 26:2,3 outside 27:12</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p 3:1 page 2:2 pages 12:18 41:6 paid 11:24 12:2 41:8 part 24:10 parte 16:6,11,18 17:3,3 participating 12:14 participation 31:3 particular 22:11 particularly 40:2 parties 23:11 24:22 32:23,25 33:1,18 34:16 partnership 12:19 12:20 parts 22:17 party 34:5 37:20 pay 6:7,7 11:25 15:9 18:10 29:25 30:2,5 payment 31:23 payments 41:11 penalize 20:15 penalties 6:21 15:1 31:25 pending 7:1,10 10:23 11:19 25:9 32:20 37:16 39:6 39:7 pennzoil 5:15 17:11 17:14,22 18:19 permitted 19:20 person 35:12 36:3 personal 4:17 petition 9:3 21:16 29:23 30:7,9 petitioner 1:4,16</p>
---	---	---	---	--

<p>2:4,10 3:8 42:9 petitions 38:10 place 12:21 36:21 plaintiff 17:18 29:9 31:4,6,8 33:25 plaintiffs 9:10 please 3:10 15:21 21:7 plenty 4:9 point 11:7 14:13 16:4 29:16 30:8 30:21 32:3 33:13 33:14 38:8 41:21 43:6 points 42:4 police 18:17,24,25 policy 33:8 position 16:5 23:1 possibility 6:21 posture 15:12 potentially 6:22 power 18:17,25 28:6 practically 40:21 precedent 9:18 precisely 21:24 preclude 10:18 present 23:19 26:16 presented 24:10 26:17 39:22 presumably 33:6 prevail 12:4 primary 36:15 principle 3:18 5:4 5:11 15:5 17:12 18:12 19:24 20:18 23:24 29:5 principles 4:15 private 33:10,18 34:5 problem 25:11 42:11 problems 4:7 procedure 35:11 procedures 17:20</p>	<p>proceed 6:8 16:7 16:19 17:9 34:13 proceeding 4:10 5:25 6:19 7:6,10 8:16,23 9:22 10:18 11:15,16,19 11:23 12:7,8,8,16 12:17,23 13:1,13 13:15,15,16 14:20 14:22 15:3,4 16:3 16:15,20 19:12,14 19:24 20:4,5 22:11,13 24:7 25:10,20 31:3,3,5 31:9,15,20 32:6 32:20 33:3 36:6 37:5,16,23 38:20 39:1,2,6,19 41:22 41:23 42:19,21,23 43:9,10,11,12,14 proceedings 5:6 7:9 12:9 15:7 17:14 18:15 21:11,12,14 21:20 22:19 24:9 29:20 30:25 32:1 32:14 34:2 37:23 38:14 proceeds 16:11,13 process 8:20 11:1 12:14 13:19 15:15 17:20 18:22 22:10 25:19 38:1,11 41:11,14 processes 17:16 professor 6:6 prong 43:3,7,14 proposed 6:4 21:8 proposition 36:25 40:9 prosecutes 38:18 protect 28:20 protection 14:1 protest 41:9 provide 25:22 37:5 providing 27:25 37:4</p>	<p>provision 23:14 provisions 8:7 15:19 16:25 20:11 public 21:18 24:13 punish 20:23 purely 26:22 33:17 34:14 purposes 13:3 pursuant 33:7 put 34:25</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quarrel 18:2 quasicriminal 19:7 22:10 quasijudicial 32:21 36:6 question 4:24 8:3 9:5 12:12 14:11 17:10 19:5 24:7,9 24:10,13,17,22,25 25:2 28:19 30:24 34:15 39:22 questions 20:25 25:19 26:19 42:5 43:17,18,21 quite 6:24 9:8 15:24</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>r 3:1 raised 36:21 raises 26:23 rationale 27:12 reach 24:12 reached 8:8 14:9 14:14,18 15:25 read 39:4 really 4:25 5:19 11:13 12:4 14:4 17:6 18:11,17 20:10 24:22 43:15 reason 11:21 12:3 rebuttal 2:8 42:8 referred 19:17 reflects 20:19</p>	<p>refused 6:11 regarded 19:7 regime 7:15,20,22 11:10 14:11,17 15:22 16:1 41:3 regulate 40:11 regulation 33:8 regulatory 11:10 12:14 13:1 19:1 22:3,3,13 reinstatement 15:9 relevant 8:7 12:20 12:20 43:8 relief 15:9 17:7 25:15 relies 40:8 remaining 42:7 remains 40:20 41:8 remedial 21:12 31:15 remedy 25:22 31:6 reoccur 30:11,15 reply 41:5 require 29:4 34:9 required 8:25 9:10 9:17 18:5 24:2 38:10 43:14 requirement 24:15 requirements 17:23 requires 27:23 37:15 42:19,20 research 24:21 reservation 10:2 reserve 9:15 21:1 reserved 12:5 41:3 resolution 7:1 33:10 resolve 7:6,9,12,14 21:22 26:19 resolved 13:8 resolving 7:8 33:1 33:7 respect 20:18 32:17 42:20 43:6 respective 13:14</p>	<p>respondents 1:18 2:7 21:5 rest 42:24 result 26:15 32:6 37:5 results 29:19 review 8:17,17,20 9:3,3 10:15 11:1 12:7,21,24,24 13:5,6 16:16 27:5 27:12 38:11 43:11 43:16,17 ride 37:25 right 7:3 10:15 15:15 24:17 25:21 26:24 34:23 35:1 39:24 41:14 rights 6:1,14 14:24 river 23:21,22 25:4 road 24:8 roberts 3:3 21:2 22:1,15 30:13,16 31:11 32:3 33:5 42:6 43:23 rule 3:12,16 9:19 18:16 19:3 24:1,2 rulemaking 16:7 16:11,19,24 rules 14:1 16:9,14 19:21 20:21 39:13 ruling 10:21,22 17:5</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>s 1:6 2:1 3:1 saying 5:2 8:9,19 23:1 27:3 30:20 says 8:2 13:16 25:15 37:1,1 scalia 22:23 25:24 26:22 scalias 28:18 scheduled 6:12 school 6:3,5,10 20:16 scope 32:15</p>
---	--	--	--	---

<p>second 4:16 29:16 35:7 43:6 section 27:23 41:2 see 22:22 30:22 seeing 39:23 seek 31:6 seeking 8:23 20:15 20:23 sense 16:18 17:7 31:19 separate 13:5 separately 5:18 serious 32:7 service 8:12,13 14:16,16 18:10 24:14 40:20,21 services 27:25 40:17 set 14:10 sex 6:4 shed 35:3 shorthand 4:21 shouldnt 3:19 10:17 11:20,21 17:13 show 6:11 side 28:3 33:18 significant 26:6 simeone 1:15 2:3,9 3:6,7,9 4:12,19 5:7,16 6:23 7:3,7 8:4,22 9:7 11:4,8 13:10,11,21 15:11 18:11 19:10 20:7 42:7,8,10 similar 4:5 12:11 18:20 19:14 43:6 simple 35:6 simply 24:14 33:1,9 33:12 sitting 3:19 5:12 15:6 18:14 situation 9:8 41:6 situations 12:10 slightly 3:22 small 5:11</p>	<p>somebodys 35:11 somewhat 5:4 13:22 sorry 28:7 30:13 33:5 37:8 39:10 41:15 sort 4:21 5:1 6:18 7:17 11:11 17:20 19:19 20:9 22:9 31:12 32:5 42:12 sorts 20:1 sotomayor 4:6,13 5:5,14 23:20 24:16,19,23 25:1 27:20 28:1,5,12 28:17 29:7,13 30:25 sovereign 4:17 speak 38:7 specific 5:8 7:19 split 24:21 spoken 8:2 sprint 1:3 3:4 7:11 16:3,22 18:2 21:8 23:1,3,6,11 25:12 25:23 27:18,24 29:23,25 30:4,18 30:19,19 31:23,23 31:24 38:3 40:8 40:18,22 41:5,8 41:13,14,17,17,19 41:23 sprints 21:8,12 38:6 start 16:24 30:21 41:11 started 5:3 18:13 state 3:13,13,15,20 3:24 5:6,8,9,12 6:12 8:15,17,17 8:20,24,24 9:4,4 9:11,13,18,19,22 9:23 10:1,3,7,11 10:17,25 11:9,15 12:7,10,13,14,17 12:22,23,23 13:3</p>	<p>13:5,6,7,23 14:2,3 15:7,16 16:15 17:14 18:4,15,17 18:18,21,24 19:1 19:3,4,21 20:19 20:21,22 21:17,20 21:24 22:20,20,22 24:3 25:6,9,18,19 25:21 26:6 27:1,4 27:5,10,11,11,14 27:15,16,16,20,22 28:3,8,13,21 29:9 29:11 31:5,12 32:12,14,20,20 33:7,7,8,8,9,12,18 33:19,20 34:1 35:9 36:2,8,12,20 37:4,16,21,25 38:1,4,11,14,18 39:1,6 40:7 41:13 42:19,20,21 43:7 43:8,9,10,13,16 stateinitiated 31:7 states 1:1,12 4:4 12:22 17:17,25 19:13 21:22 26:18 31:9,13 33:2 35:8 41:4 43:2,4,9,15 statute 14:24 22:20 27:16 28:8 33:21 statutory 23:14 stay 10:3 30:10 steffel 38:22 step 8:2 stop 13:24 14:4,7 straightforward 29:2 strange 7:17 16:5 strike 39:13 strongly 8:4 stuck 16:16 subject 3:15 6:15 6:16 24:4 26:23 31:24 submitted 43:25 44:2</p>	<p>substance 5:24 6:17 substantially 33:2 suppose 35:10,25 supposed 14:7 supreme 1:1,12 sure 6:25 surprisingly 7:8 system 10:14 36:16</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t 2:1,1 18:4 40:8 take 11:13 13:12 22:24 24:1 26:15 28:13 30:9 taken 15:20 takes 14:21 15:5 talking 40:16 tariff 23:2,6,6,13 27:23 28:10 tariffed 41:3 teacher 6:7 telecommunication 14:16 telecommunicati... 7:18 8:12 14:6 40:10,11 41:2 telephone 18:10 tell 22:16 31:18 tend 34:22,23 terms 26:18 32:21 test 21:8,12 26:9 29:1,2,18 32:4,12 35:6,7 36:14,14 41:25 42:14,16,17 tests 36:15 texaco 17:22 texas 17:23 thank 21:2 25:3 42:5,6 43:23 thats 7:3 11:11 12:25 13:9 14:2,5 15:4,4 18:16,17 18:24,24 19:8 21:15 22:20 25:10 25:11 26:13 27:16</p>	<p>28:3 30:8 32:7 34:6 36:13 40:12 42:23 theory 14:13 16:10 theres 3:16 5:7 8:16,17 11:10,21 11:25,25 20:17,17 20:20 24:8,18 28:14 33:21 34:3 35:25 36:1,8 39:5 39:6 theyre 5:7,8 22:9 30:20 theyve 31:2 thing 40:1 things 19:1 36:12 think 4:24 5:2,21 6:17 8:6,10 10:11 10:21 11:5,8,9,12 11:20 12:4,8 13:7 15:11,12 16:4 18:11,19 19:12 20:7 22:12 31:13 31:25 33:4,17 34:19,21 35:4,15 36:11,25 37:3 39:21 42:14,16 43:1 thinking 4:15 third 14:25 25:17 thirddegree 6:15 thought 9:10 22:5 23:23 38:2,3 threat 21:18 23:7 23:17 threatening 15:1 30:20 three 25:8 26:12 threepart 29:2 35:7 tied 19:6 time 3:18 6:16,22 7:11 11:19 15:1 21:1,11,16 24:3 26:1 30:18 32:5,5 36:13 39:8,23 42:1</p>
---	---	--	--	--

<p>timothy 1:15 2:3,9 3:7 42:8 today 24:11 29:22 told 6:5 touching 22:10 touchstone 22:21 25:7 traditional 3:18 5:11 15:5 17:12 18:12,16 20:18 train 37:25 trainor 3:23 5:4 transform 3:11 treated 12:9,15 trial 19:17 tried 10:1 13:17 27:16 tries 23:11 true 21:15 40:12 truly 23:9 32:24 try 5:17 trying 39:14 tuesday 1:9 turn 36:15 two 12:10 22:17,25 23:10 27:8 32:25 33:1 type 25:20 31:14 typically 25:20</p> <hr/> <p style="text-align: center;">U</p> <p>un 23:5 unavoidably 21:21 unclear 41:7 unconstitutional 38:17 underlying 14:10 understandably 15:24 understanding 20:11 32:15 understands 42:22 understood 13:13 unflagging 10:6 unilateral 41:10 unimportant 33:9</p>	<p>33:12 unitary 12:8,9,16 16:14 24:2,7,15 37:4,23 united 1:1,12 unlawful 31:5 unsettling 18:23 unusual 9:25 17:15 urged 8:4 use 17:17 26:9 utilities 21:9 25:13 40:9</p> <hr/> <p style="text-align: center;">V</p> <p>v 1:5 3:4 variety 23:10 various 30:23 vehicle 28:19 version 28:4 versus 16:20 view 13:2 23:21 33:23 34:13 37:13 39:20 violated 33:21 violates 38:18 violations 6:13,14 14:24 virtually 3:13 10:5 vs 40:8</p> <hr/> <p style="text-align: center;">W</p> <p>waited 11:23 want 5:17 8:2 17:10 20:4 22:9 30:6,7 34:4 38:7 42:13 wanted 6:25 11:25 36:17 38:4 40:1 wants 34:5 35:12 37:20 washington 1:8,15 wasnt 16:2 39:2 waste 26:1 way 11:24 16:9,20 17:25,25 25:12 28:12 29:7 35:1</p>	<p>40:22 ways 4:22 wed 10:3 11:18 welfare 21:18 went 5:14,16 9:23 13:22,23 14:8 17:21 weve 4:19 12:2 30:5,6 37:2 38:24 whats 8:11,12 14:15,15,16 23:20 24:4 25:3 32:23 35:1 whatsoever 9:22 whos 38:15 windstream 11:25 13:24 14:3 16:22 21:10,19 23:4 27:18,24 29:24 30:19 31:23 40:19 40:24,24,25 windstreams 40:20 40:23 withdraw 30:7 41:19 withdrew 41:14,17 withholding 41:11 wont 30:2 word 4:20 5:2 22:9 words 10:25 41:15 42:13 work 39:16 world 14:6 worthwhile 4:14 wouldnt 7:24 34:21 38:5 41:12 wrong 31:7 34:24 wrongdoing 20:15 20:23</p> <hr/> <p style="text-align: center;">X</p> <p>x 1:2,7</p> <hr/> <p style="text-align: center;">Y</p> <p>yeah 34:18 years 10:8 28:11</p>	<p>yorks 17:20 young 16:6,11,19 17:3,4 younger 3:12,17,22 3:24 4:2,23,25 9:21,25 11:17,20 13:4 15:3 17:15 18:13 20:14,18 21:13,25 22:5 25:6 26:11,18,24 27:5,10,12,13 28:18,19 29:1,5,8 32:8,16,22 33:14 34:8,9,9 35:5,13 36:7 37:1,7,9 38:13 39:5 42:18 42:25 youre 5:23 8:19,19 22:21 24:17,24 28:18 30:5 35:1 43:13,15 youve 37:24 39:13</p> <hr/> <p style="text-align: center;">Z</p> <p>zenith 18:18,25</p> <hr/> <p style="text-align: center;">0</p> <p>06 1:13 3:2</p> <hr/> <p style="text-align: center;">1</p> <p>11 1:13 3:2 44:1 12815 1:4 3:4 1996 7:23 14:15 40:10 41:7,9</p> <hr/> <p style="text-align: center;">2</p> <p>2 10:8 2009 41:10 2011 41:7 2013 1:9 21 2:7 22 41:6 23 41:6 251 41:2</p> <hr/> <p style="text-align: center;">3</p> <p>3 2:4</p>	<p>33 12:18 34 12:18</p> <hr/> <p style="text-align: center;">4</p> <p>42 2:10 43 24:21 476 27:23</p> <hr/> <p style="text-align: center;">5</p> <p>5 1:9 27:23 57 44:1</p> <hr/> <p style="text-align: center;">6</p> <p>6 42:7 60 6:16</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p style="text-align: center;">9</p> <p>96 40:13 41:2</p>
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