

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - x

THE STANDARD FIRE INSURANCE :

COMPANY, :

Petitioner : No. 11-1450

v. :

GREG KNOWLES :

- - - - - x

Washington, D.C.

Monday, January 7, 2013

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

APPEARANCES:

THEODORE J. BOUTROUS, JR., ESQ., Los Angeles, California; on behalf of Petitioner.

DAVID C. FREDERICK, ESQ., Washington, D.C.; on behalf of Respondent.

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	THEODORE J. BOUTROUS, JR., ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	DAVID C. FREDERICK, ESQ.	
7	On behalf of the Respondent	25
8	REBUTTAL ARGUMENT OF	
9	THEODORE J. BOUTROUS, JR., ESQ.	
10	On behalf of the Petitioner	50
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

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument next in Case 11-1450, the Standard Fire Insurance Company v. Knowles.

Mr. Boutrous.

ORAL ARGUMENT OF THEODORE J. BOUTROUS, JR.,  
ON BEHALF OF THE PETITIONER

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

Congress enacted the Class Action Fairness Act of 2005, CAFA, to expand Federal diversity jurisdiction and to protect defendants and absent class members against the kind of State court class action abuses that are occurring in Miller County, Arkansas.

Congress directed that in calculating the amount in controversy, "courts shall aggregate the claims of the individual class members." That's 28 U.S.C. Section 1332(d)(6), quoted in full at page 2 of our blue brief.

Congress's express focus on the claims of the individual class members in the text of the statute, rather than on the amount being sought by the would-be class representative, is dispositive of the question presented and requires reversal in this case.

CHIEF JUSTICE ROBERTS: Would your position

1 be the same if the issue were not the amount sought but  
2 rather the substantive claims? Say there are two  
3 different claims the class member -- the class could  
4 raise. One would yield damages of \$4,900,000. The  
5 other would yield damages of \$10 million. Do you have  
6 the same objection in a case in which the prospective  
7 representative only pleads the first claim?

8 MR. BOUTROUS: Not necessarily, Your Honor.  
9 We are not arguing that here. There are cases that this  
10 Court has decided going back to Barry v. Edmunds in 1886  
11 where there are allegations in a complaint that might,  
12 for example, yield a punitive damage claim but it's not  
13 explicitly pled, and the courts then look and say:  
14 Punitive damages could be recovered here and say the  
15 amount in controversy clearly exceeds the -- the  
16 necessary amount.

17 But we're not saying that in every case the  
18 courts need to look through and see every claim that  
19 could be in play.

20 CHIEF JUSTICE ROBERTS: Well, but you do  
21 seem to have a difficulty with your position about how  
22 far it goes. You make the point in your briefs about  
23 the statute of limitations question. In other words,  
24 it's not just how much they claim, but where they decide  
25 to cut off the statute of limitations and so forth.

1                   It seems to me that it's a bit of a slippery  
2 slope if you start saying we're going to look at what  
3 the class could recover in deciding whether or not, not  
4 simply whether or not this representative is adequate,  
5 but whether or not it's below or above, above or below  
6 \$5 million.

7                   MR. BOUTROUS: That's really how it's been  
8 done, Your Honor, from day one. Under the traditional  
9 diversity statute, the courts look and see what's the  
10 maximum amount the plaintiff on his or her best day  
11 could recover based on the factual elements in the  
12 complaint and the causes of action that could arise from  
13 the factual allegations --

14                   JUSTICE SCALIA: Yes, but under the  
15 traditional -- you surely don't want us to apply the  
16 rules of the traditional diversity statute to this case,  
17 because it's clear that under the traditional diversity  
18 statute, you -- you can waive excessive damages, right?

19                   MR. BOUTROUS: That's correct, Your Honor.  
20 The individual --

21                   JUSTICE SCALIA: So you don't want us to  
22 apply that rule here.

23                   MR. BOUTROUS: I don't want you to apply  
24 that rule, Your Honor, because that rule applies to the  
25 individual who brings his own case in court and can say:

1 I want to come into court and collect less than the  
2 amount that would give Federal jurisdiction. It's much  
3 different when Mr. Knowles has come to court and said:  
4 I want to represent these other individuals in Arkansas.

5 JUSTICE SOTOMAYOR: Well, why doesn't -- why  
6 doesn't the normal class certification process protect  
7 adequately the absent class members? First of all,  
8 counsel has to prove he or she is adequate. So doesn't  
9 that mean that if they enter a stipulation that is  
10 grossly unfair to the class that the judge is not going  
11 to certify that case?

12 MR. BOUTROUS: It wouldn't protect it --  
13 protect from the problems and abuses that Congress was  
14 concerned about, Your Honor, and that are occurring  
15 here.

16 JUSTICE SOTOMAYOR: You haven't answered.  
17 If -- if the court finds the stipulation inadequate for  
18 the class, is that class going to be certified?

19 MR. BOUTROUS: It could be, Your Honor. And  
20 another class representative could come in and could  
21 seek more than \$5 million. That's why --

22 JUSTICE SOTOMAYOR: And then they would get  
23 removed to the Federal court, which is what the statute  
24 was intended to do.

25 MR. BOUTROUS: But what Congress was

1 concerned about in the text of the statute, and the  
2 Senate report makes this very clear, that with all the  
3 abuses that occur in the interim, discovery that has  
4 nothing to do with the case -- the discovery here goes  
5 back 10 years. The -- this case --

6 JUSTICE SOTOMAYOR: Well, discovery vis a  
7 vis the certification of the class is going to happen  
8 anyway. My point is that much of your argument in your  
9 brief is centered around binding the absent class  
10 members. What I'm getting to is that if the stipulation  
11 is grossly unfair, there may not be a class at all, or  
12 the Plaintiffs who have claims greater than those in the  
13 aggregate might opt -- will get notice and opt out. And  
14 there is due process challenges if a settlement is  
15 entered that is so grossly unfair that it violates due  
16 process. So I don't know why the process itself doesn't  
17 protect the interests of Congress.

18 MR. BOUTROUS: Your Honor -- excuse me. The  
19 Congress was very concerned that cases were being kept  
20 in the State courts through abuses and manipulations of  
21 the amount in controversy. It's very clear in the  
22 Senate report, Congress talks about this because, for  
23 example, in this case the defendants can never get a  
24 class certification hearing in Miller County. They  
25 could never get a ruling on the merits. And in the

1 meantime, the kind of abuses that Congress was concerned  
2 about, the lack of the Rule 23 protection, the  
3 application of those standards to protect the class  
4 members --

5 JUSTICE KAGAN: You say what Congress is  
6 concerned about and point to the Senate report. You  
7 know, usually we look to the text and the text makes  
8 very clear that Congress was concerned about many things  
9 and it did many things. It got -- it really -- it  
10 raised the matter in controversy threshold. It  
11 eliminated the Zahn anti-aggregation rule. It  
12 eliminated the complete diversity requirement. It  
13 eliminated the one-year limit on removal.

14 Here's one thing it didn't eliminate. It  
15 didn't eliminate the St. Paul master of your complaint  
16 rule.

17 So I guess where in the text do you see  
18 this? You point to claim, the word "claim." Is that  
19 the only thing that you are resting on in the text?

20 MR. BOUTROUS: Your Honor, I think the text  
21 does take away the St. Paul rule that an individual can  
22 control what he seeks and go where he desires and do  
23 what he wants, or she, because it points to the claims  
24 of the individual class members and the text Congress  
25 could expect --

1 JUSTICE KAGAN: Well, if I said to you,  
2 Mr. Boutrous "Is your claim for over \$100,000?," what  
3 would you think I mean? Would you think I mean some  
4 sort of abstract version of the best claim you could  
5 bring, or would you think I mean what I demanded, what I  
6 asked for?

7 MR. BOUTROUS: Well, Your Honor, I would  
8 think that I would answer you that it's worth as much as  
9 I can possibly obtain in court if I was seeking to  
10 adequately represent the class. But in terms of valuing  
11 the claims here --

12 JUSTICE KAGAN: Do you think that the word  
13 "claim" is not -- when you say Joe made a claim for  
14 \$100,000, a claim is not what he asked for, but is  
15 instead some kind of law professor's view of what the  
16 best thing that he could have asked for?

17 MR. BOUTROUS: Your Honor, we've cited the  
18 Tohono O'odham Nation case, where the Court interpreted  
19 the word "claim" and said when a statute uses the word  
20 "claim" regarding claims that have not been brought,  
21 it's the operative facts and the right to recovery, not  
22 the demand. That's exactly what we have here.

23 JUSTICE GINSBURG: Mr. Boutrous, I thought  
24 at least as an alternative argument, you're saying: The  
25 statute itself is silent. It doesn't deal with this

1 question of amount in controversy. However, the  
2 individual, the named plaintiff, who has said, I'm not  
3 going to seek more than the \$5 million, cannot speak for  
4 the members of the class who are absent. He can't  
5 stipulate that they will take under 5,000. I thought  
6 that was the central part of your argument, not based on  
7 the statute itself, but on the notion that a named  
8 plaintiff, unless and until he is -- he is certified to  
9 represent the class -- doesn't represent them.

10 He can represent himself, but he can't bind  
11 the people who -- who have not been certified as part of  
12 a class. I thought that was part of your argument.

13 MR. BOUTROUS: Yes, Justice Ginsburg, that's  
14 absolutely right. And because the statute focuses on  
15 the claims of the individual class members, Mr. Knowles  
16 has no power to affect those claims. He's not the  
17 master --

18 JUSTICE KAGAN: But he doesn't have power to  
19 affect those claims before the certification has  
20 happened.

21 MR. BOUTROUS: Exactly.

22 JUSTICE KAGAN: Before the certification has  
23 happened, they can do whatever they want. They can  
24 bring their own claim for \$6 million. And that's why  
25 Smith v. Bayer, which you so happily rely on, does not

1 have much to do with this case. Smith v. Bayer is the  
2 question -- can a person be precluded by a judgment when  
3 that person was not part of a class. There's no  
4 question that this person is going to be precluded.  
5 This person can go do whatever he or she wants before  
6 class certification and judgment.

7 MR. BOUTROUS: Your Honor, that's --  
8 Smith v. Bayer says the plaintiff can't bind the class.  
9 Plaintiffs have now conceded that. So what we have  
10 here, the district court found on an uncontradicted  
11 record that the claims of the individual class members  
12 exceed \$5 million. That means there's Federal  
13 jurisdiction.

14 Back to Justice Ginsburg's point, that is  
15 exactly our point, Your Honor. A named plaintiff cannot  
16 affect or jeopardize or undermine the claims of absent  
17 individuals.

18 JUSTICE BREYER: This is what I -- could you  
19 go back --

20 MR. BOUTROUS: Yes.

21 JUSTICE BREYER: -- to Justice Kagan's first  
22 question? I was looking at the words of the statute.  
23 And if I look at 1332, which has been on the books a  
24 long time, it says: "The district court shall have  
25 original jurisdiction of all civil actions where the

1 matter in controversy exceeds the sum or value of  
2 \$75,000, exclusive of interest, of costs, and" -- et  
3 cetera, okay? Then I look here and it says: "The  
4 district court shall have jurisdiction of any civil  
5 action in which the manner in controversy exceeds the  
6 sum or value of \$5 million, exclusive of interest and  
7 costs," et cetera, okay? So the words seem identical.

8 Now, in respect to the first, we know that a  
9 lawyer can file a binding stipulation that says, I don't  
10 care what this is about, I am not asking for more than  
11 \$75,000, and the Federal court does not have  
12 jurisdiction. Given that's true in the first statute,  
13 and given that the second statute is almost identically  
14 worded, at least in that part, why can't you do the same  
15 thing with the \$5 million?

16 And it can't be the words I quoted that  
17 stops him from doing it, so what is the words that stops  
18 him from doing it?

19 MR. BOUTROUS: Your Honor, it's the other  
20 part that is extremely important, section 1332(d)(6).  
21 You were quoting from section 1332(d)(2). Unlike  
22 section 1332(a), Congress in CAFA explicitly added  
23 subsection (6), which says "In any class action, the  
24 claims of the individual class member shall be  
25 aggregated to determine" --

1                   JUSTICE BREYER: As to what that looks like,  
2 "shall be aggregated," again from the language, is it's  
3 simply to make certain that Zahn does not require the  
4 individual thing to approach -- - to count. In other  
5 words, you aggregate rather than just looking at the  
6 individual members, which is Zahn, which has nothing to  
7 do with the issue before us.

8                   MR. BOUTROUS: Well, Justice Breyer,  
9 Congress could have said we're just getting rid of Zahn,  
10 or it could have said the aggregate amount being sought  
11 by the named plaintiff is going to take control. But if  
12 you took that away --

13                   JUSTICE BREYER: No, they rarely pass a  
14 statute that says: Let's just get rid of case X.  
15 Normally they look to the holding of case X, and then  
16 they pass the statute that says the opposite. So the  
17 holding of Zahn was that you could not aggregate the  
18 individual members' claims in a class. So to get rid of  
19 Zahn, what we do is we pass a statute that says you can  
20 aggregate.

21                   And indeed, nobody objects here to the  
22 aggregation. It's the total amount of the claims being  
23 limited by a stipulation that is the issue here, and  
24 that's why I had trouble finding your argument in the  
25 word "aggregation."

1 MR. BOUTROUS: It's really not the word  
2 "aggregation," Your Honor. It's the word "individual"  
3 and it's with the word "claims." If Congress had done  
4 what you are suggesting, Justice Breyer, it could have  
5 said the aggregate amount being sought by the named  
6 plaintiff, or the total amount, or the demand of the  
7 plaintiff. In the Venue Clarification Act, which was  
8 passed in 2011, which applies to 1332(a), Congress said  
9 the sum demanded will control.

10 But here, to protect the legitimate claims,  
11 Congress defining, urged the Court --

12 JUSTICE KAGAN: Mr. Boutrous, that form of  
13 argument -- Congress could have said -- does seem to me  
14 to be much worse for your position. If Congress had  
15 wanted to get rid of the St. Paul master of your  
16 complaint rule, it could have said: We are getting rid  
17 of the St. Paul master of your complaint rule. But  
18 you're trying to find it in a position which is really  
19 an anti-Zahn position, not an anti-St. Paul provision.

20 MR. BOUTROUS: Your Honor, it really goes to  
21 a fundamental issue of what a class action is. If Mr.  
22 Knowles had come into court himself on behalf of  
23 himself, and Zahn -- in St. Paul, the money quote, if  
24 you will, in St. Paul says "if he desires to go to State  
25 court, he can limit his recovery."

1 Mr. Knowles --

2 JUSTICE KAGAN: Let's get back to the Chief  
3 Justice's question, because there are a thousand ways in  
4 which we let the named plaintiff prior to certification  
5 construct a case, and then we ask, as Justice Sotomayor  
6 said, later we ask, is the way he's constructed a case  
7 adequate or not, and we allow him to go forward or not  
8 based on that.

9 But he gets to decide whether to seek  
10 damages. He gets -- at all, or whether he only can seek  
11 injunctive relief. He gets to decide which claims to  
12 bring, trespass or negligence. He gets to decide how  
13 many years' worth to ask for. He gets to decide which  
14 defendants to sue.

15 All of these things are going to have an  
16 effect on -- on the amount that's -- that's being asked  
17 for. And yet in all of these ways, we allow for --  
18 maybe you're telling me no -- do we stop the named  
19 plaintiff from doing all -- all of those things, too?

20 MR. BOUTROUS: We don't stop them from doing  
21 all of those things, Your Honor. And there are certain  
22 things -- we -- we agree that the complaint controls a  
23 great deal -- the factual allegations.

24 JUSTICE GINSBURG: What about specifically  
25 the question that the Chief asked about time? You did

1 argue in the district court that these plaintiffs could  
2 have specified a 5-year time period, in which case it  
3 would be clear that the amount in controversy was  
4 satisfied. But instead, they took a 2-year period.

5 Can we take that also into account in  
6 determining the amount in controversy, that the  
7 complaint could have been enlarged to include 5 years  
8 instead of 2 years?

9 MR. BOUTROUS: Your Honor, I believe you  
10 could. And I believe that the Court's decision in Hertz  
11 said if there is a sign of manipulation that is meant to  
12 thwart jurisdiction or affect jurisdiction, the Court  
13 can look through that to look to competent proof of what  
14 the actual facts are. And I think that what has  
15 happened here is the plaintiff's lawyers, in addition to  
16 these stipulations, they're slicing and dicing the  
17 classes up into pieces to thwart jurisdiction and  
18 manipulate jurisdiction.

19 CHIEF JUSTICE ROBERTS: Your approach leads  
20 to particularly perverse results. You're at the  
21 position of arguing that, you know, they are seeking  
22 less than \$5 million, but we're responsible for a lot  
23 more damage than that. And of course, you don't concede  
24 it, but you do say: If in fact we're liable, the  
25 damages are going to be a lot greater. I assume that

1 admission could be used against you under principles of  
2 judicial estoppel.

3 MR. BOUTROUS: It's an unusual position to  
4 be in, Your Honor, it's not quite what we're arguing.  
5 We're arguing that under the rules for judging the  
6 amount in controversy that this Court has enforced, the  
7 lower courts have enforced these for hundreds of years,  
8 and it's that you look at the complaint and say what's  
9 the maximum amount the plaintiff can get on their best  
10 day under the claims they've pled based on the facts and  
11 the proof and the evidence.

12 Here, the uncontradicted evidence, put aside  
13 the statute of limitations question or any other claim  
14 they could have brought, it exceeds \$5 million. The  
15 plaintiff never --

16 JUSTICE ALITO: Is there a difference  
17 between what you're --

18 JUSTICE SOTOMAYOR: But you -- you chimed  
19 into this discussion --

20 CHIEF JUSTICE ROBERTS: I'm sorry.

21 JUSTICE SOTOMAYOR: I'm sorry.

22 CHIEF JUSTICE ROBERTS: Let's go by  
23 seniority. Justice Alito.

24 JUSTICE ALITO: Is there a difference  
25 between what you are advocating and the approach that's

1 now taken in the General Removal Statute as it's been  
2 amended recently under 1446(c)(2)? So there as I read  
3 it, the amount demanded in the complaint is not  
4 necessarily controlling. A case can be removed even if  
5 the amount demanded in the complaint is below the  
6 jurisdictional threshold and then the defendant can  
7 prove that the real amount involved exceeds the  
8 jurisdictional threshold.

9 MR. BOUTROUS: That's -- that's exactly  
10 right, Your Honor. There's greater leeway under CAFA  
11 because under 1332(a) and 1446, there are certain  
12 standards that need to be met to allow the defendant to  
13 put on proof. But that's how it's always been. The  
14 defendant can then put on evidence and say this is the  
15 actual amount in controversy. And here, the only way  
16 the plaintiff got around it in the lower courts was to  
17 argue that the stipulation was binding, Justice Kagan,  
18 that was their argument below and that's what the  
19 district court found. It found that the stipulation was  
20 binding on the class.

21 JUSTICE KAGAN: It's binding if the class is  
22 certified and a case proceeds to judgment. It's not  
23 binding on the absent class members prior to  
24 certification and prior to judgment.

25 MR. BOUTROUS: And that means that

1 jurisdiction in the Federal courts exists, because we  
2 judge jurisdiction at the time of removal. And at the  
3 time of removal, there was no binding limitation on the  
4 recovery that could be obtained, undisputed facts showed  
5 that that exceeds \$5 million when the claims of the  
6 individual class members are aggregated.

7 JUSTICE KAGAN: I think I don't understand  
8 that, Mr. Boutrous, because what you have, given that  
9 this is a State which says that these stipulations are  
10 binding if it proceeds, if there's certification and if  
11 it proceeds to judgment, you have a cap of \$5 million.  
12 You cannot be charged more than \$5 million under this  
13 State's law, if this case ever gets to judgment.

14 MR. BOUTROUS: The problem, Your Honor,  
15 again and this isn't just me. This is what Congress  
16 said in its findings. In -- in the text as you noted,  
17 it eliminated the the five pillars of restrictions and  
18 diversity jurisdiction because in State courts, the  
19 courts aren't applying Rule 23- like standards. They're  
20 not doing it in Miller County. They're not even  
21 allowing class certification to occur or to be heard,  
22 and instead this discovery is being taken. Here, the  
23 limitations period is limited to two -- or the class  
24 period is limited to two years. The discovery that was  
25 served with the complaint goes back to 13 years. So --

1 JUSTICE ALITO: Even if this case were  
2 handled on remand to the Arkansas Supreme Court exactly  
3 like a Federal class action, I don't understand how  
4 absent class members would ever be able to -- to  
5 determine whether by failing to opt out, they had  
6 compromised part of their claim. I don't see how, even  
7 if they're notified that there's a \$5 million cap -- and  
8 I don't know that Rule 23 requires that, but suppose  
9 they're notified of that.

10 They can't tell whether by remaining a  
11 member of the class their claim is going to be  
12 compromised at all. It would depend on lots of  
13 different things, including how many members are in the  
14 class after it's certified. And that's something they  
15 can't know.

16 MR. BOUTROUS: That's -- that's exactly  
17 right, Your Honor, and that's something page 3a of the  
18 addendum to our opening brief, the finding --

19 JUSTICE GINSBURG: Your concern is that  
20 the -- that the certification -- if the certification  
21 would occur in the Federal court, that's one thing. But  
22 you're saying that the named plaintiff can't stand for  
23 the entire class when we know that -- that the  
24 certification question, if the stipulation is binding to  
25 prevent removal, it's going to be the State court that's

1 going to look into the adequacy of representation and  
2 whether the stipulation binds all members of the class.  
3 That's your whole concern. If the Federal court made  
4 that determination, I think you wouldn't be here.

5 MR. BOUTROUS: Well, that's what Congress  
6 was concerned about, too, Your Honor. It was concerned  
7 that the State courts weren't applying standards of  
8 uniformity in these class actions that are affecting  
9 interstate commerce and that Rule 23's protections and  
10 standards should apply.

11 JUSTICE KAGAN: Well, Congress was concerned  
12 about suits of over \$5 million. And -- and the question  
13 here is, is this a suit of over \$5 million. Now, if it  
14 is a suit over \$5 million, a State court is bound by the  
15 due process clause and a State court is going to find,  
16 look, you're just giving these plaintiffs' claims away.  
17 We're not going to allow you to do that. You're not an  
18 adequate representative.

19 On the other hand, in a case like this where  
20 it's \$5,024,000 and it only gets there because you've  
21 added on one and a half million dollars of legal fees,  
22 the Court might very well say you are an adequate  
23 representative, go for it. Now, usually we don't  
24 question State court judgments of that kind. Why should  
25 we do so here?

1           MR. BOUTROUS: We don't have a State court  
2 judgment yet, Your Honor, that -- and we judge the  
3 removal issues and the amount in controversy at the time  
4 of removal. And \$5 million is \$5 million, Congress drew  
5 the line there. And as Justice Alito was pointing out,  
6 the notices to the absent class members, Congress -- I  
7 was about to say 3a of the addendum to our blue brief,  
8 those are the findings that Congress put into the public  
9 law, number -- letter C: Confusing notices are  
10 published that prevent individuals from exercising their  
11 legitimate rights in -- and enforcing their legitimate  
12 claims.

13           And it would be ironic in the extreme if a  
14 -- where a statute was enacted to protect -- and this is  
15 in the findings -- "legitimate claims of absent class  
16 members" and to allow them -- the cases to be in Federal  
17 court, if this Court were to hold that a named plaintiff  
18 who doesn't represent those people can come into court  
19 and -- and say we're not going to seek the full amount  
20 of those claims in order to keep the case out of Federal  
21 court. That would be totally contrary to Congress's  
22 intent.

23           CHIEF JUSTICE ROBERTS: Well, you're  
24 assuming that it's a bad thing for the class members to  
25 have their claims limited. But it may well be a good

1 thing for them to have their claims limited if that gets  
2 them into what would reasonably be regarded as a more  
3 sympathetic forum.

4 MR. BOUTROUS: I'm not making a judgment on  
5 that point, Your Honor. It may or may not be, and the  
6 Plaintiff makes this point. Maybe it's better to be in  
7 State court. But for removal purposes only, going back  
8 to just the pure analysis, the question is does the  
9 amount in controversy when the claims of the individual  
10 class members are aggregated exceed \$5 million? It's  
11 undisputed that that's true. The only basis for saying  
12 it doesn't exceed that amount is the stipulation, which  
13 everyone now agrees has no binding affect whatsoever.

14 The plaintiffs also argue, concede in their  
15 brief that --

16 JUSTICE KAGAN: Mr. Boutrous, as you  
17 think -- you have to be careful about two different uses  
18 of the word "binding." It has no binding effect right  
19 now on an absent class member; they can go out and bring  
20 their own suit. If the -- the named plaintiff is found  
21 to be adequate and the suit goes forward and goes to  
22 judgment, then the stipulation does indeed have binding  
23 effect and -- and you have not been exposed to more than  
24 \$5 million.

25 MR. BOUTROUS: But the question, Your Honor,

1 is, is it binding in this case on anybody or anything  
2 other than Mr. Knowles?

3 JUSTICE KAGAN: It's binding -- it is  
4 binding on everybody if there's a finding of adequate  
5 representation and if this goes forward as a class  
6 action; then it's binding and you haven't been exposed.

7 MR. BOUTROUS: But, Your Honor, again, under  
8 the jurisdictional approach -- and Your Honor cited  
9 St. Paul. St. Paul says that if -- once the amount in  
10 controversy has been established to exceed the amount,  
11 here \$5 million, it's on the burden of the parties  
12 seeking to oust jurisdiction to show to a legal  
13 certainty that the amount will not go over \$5 million.

14 Your questions and the plaintiff's brief  
15 concede it could well go over \$5 million if this class  
16 representative is found inadequate, if another person is  
17 appointed to be the class representative, and therefore,  
18 there is Federal jurisdiction. That's the rule that  
19 plaintiffs say should apply. They don't even -- he does  
20 not even try to suggest that it's legally impossible  
21 that the amount might go over \$5 million, and that's the  
22 problem. It's going -- it's an amount that is over  
23 \$5 million and these cases, the -- the stipulation is  
24 meant to just keep the case in State court, contrary to  
25 Congress's intent and I will --

1 JUSTICE GINSBURG: What do you do -- in the  
2 language in 1332(d)(1)(D), the term "class members"  
3 means the persons, named or unnamed, who fall within the  
4 definition of the proposed class, the proposed class,  
5 and that's what we have here.

6 MR. BOUTROUS: That's -- that's what we're  
7 using, Your Honor, for our calculations, the proposed  
8 class, including the narrower time frame that we think  
9 is a manipulation, but nevertheless we've used that and  
10 the amount exceeds \$5 million.

11 And if I could reserve the rest of my time,  
12 Your Honor? Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
14 Mr. Frederick?

15 ORAL ARGUMENT OF DAVID C. FREDERICK

16 ON BEHALF OF THE RESPONDENT

17 MR. FREDERICK: Thank you,  
18 Mr. Chief Justice, and may it please the Court:

19 Our position is that the stipulation is  
20 binding throughout the "civil action filed by the  
21 putative class representative." I want to focus on the  
22 words "civil action" because there has been no civil  
23 action filed by any absent class members. The only  
24 civil action that the district court is being considered  
25 for jurisdiction is the civil action that has been filed

1 by the putative class representative. So if the class  
2 is later not certified, the stipulation would only bind  
3 the putative class representative. If the class is  
4 certified --

5 JUSTICE KENNEDY: Are you saying that (6)  
6 doesn't apply at this point?

7 MR. FREDERICK: No.

8 JUSTICE KENNEDY: Because (6) talks about  
9 class action, and it says the duty of the district  
10 court --

11 MR. FREDERICK: What --

12 JUSTICE KENNEDY: -- is to aggregate the  
13 claims of the individual class members.

14 MR. FREDERICK: And what 1332(d)(1)(B) does,  
15 Justice Kennedy, is define class action in terms of the  
16 civil action that was filed so long as it was filed  
17 pursuant to Federal Rule 23 or an equivalent state  
18 statute.

19 What the complaint here does in the prayer  
20 for relief and in paragraph 11 of the complaint is to  
21 say that this civil action is not going to be worth more  
22 than \$5 million.

23 CHIEF JUSTICE ROBERTS: And you -- I assume  
24 you agree that if at the adequacy hearing, if there ever  
25 is one, and it's demonstrated that well, in fact, the

1 amount in controversy is \$10 million, then you would be  
2 obviously not an adequate representative.

3 MR. FREDERICK: Well, that would be one  
4 outcome that a state court could come to. A second  
5 outcome could be that at that point, if an alternate  
6 class member comes in and files an intervened complaint  
7 and says: This case really is worth \$10 million, at  
8 that point section 1453(b) applies and they can remove  
9 to federal court.

10 JUSTICE KAGAN: And they can remove no  
11 matter when that happen; is that right, as a result of  
12 CAFA, because CAFA took off the one year limit?

13 MR. FREDERICK: That's correct.

14 JUSTICE SCALIA: Or the state court could  
15 find the claim is worth a lot more than 5 million but  
16 it's worth that amount to be in this generous court for  
17 these generous juries. And you're really not harming  
18 these absent plaintiffs because they ought to want to be  
19 here. We've got juries and very favorable judges.  
20 Couldn't they find that?

21 MR. FREDERICK: Well, what's very clear,  
22 Justice Scalia, is that Congress was not attempting to  
23 address the adequacy of class representation issue where  
24 it decided this statute and enacted it.

25 JUSTICE SCALIA: I understand it, but -- but

1 I'm just addressing your point which you blithely say,  
2 if the representation is inadequate, if indeed it's  
3 worth a lot more, that will be handled. Not  
4 necessarily. The state court could find, and I suspect  
5 this state court would find, that it's worth the money  
6 to be in state court.

7 MR. FREDERICK: A putative class  
8 representative makes all kinds of strategic judgments  
9 about how best to maximize value for his clients and for  
10 the class. And that entails judgments about whether to  
11 assert various legal theories here. And,  
12 Mr. Chief Justice, this goes to your very first  
13 question, this complaint renounced a claim for punitive  
14 damages.

15 But there are some cases out of the Tenth  
16 Circuit, the Frederick case, not associated with me, and  
17 in the Seventh Circuit, the Back Doctors case, they say  
18 essentially if there is a claim for punitive damages you  
19 have to make an estimate for amount in controversy  
20 purposes. As I understand their theory and as they  
21 express it on page 11 of the reply brief, it's very  
22 uncertain as to a case like ours where we have renounced  
23 a claim to punitive damages whether or not a federal  
24 district court is, nonetheless, supposed to take that  
25 into account.

1 CHIEF JUSTICE ROBERTS: What if you had a  
2 case where a lawyer brings an action in Miller County  
3 and says: I want to represent the class of people with  
4 these claims and these claims, whose names begin with A  
5 to K. It turns out that's \$4 million. And in the next  
6 county, at the same time, he files a case saying, I'd  
7 like to represent these people whose names begin L to Z.  
8 In each of those cases, it's \$4 million. I take it you  
9 don't have any objection to that?

10 MR. FREDERICK: Well, my objection would be  
11 at the class certification stage, Mr. Chief Justice,  
12 where the requisite of locality, numerosity, the  
13 contrivances that are being done are -- are going to  
14 whether or not those represent -- representatives are  
15 adequate. It does not speak to federal jurisdiction --

16 JUSTICE BREYER: That's the same question.

17 CHIEF JUSTICE ROBERTS: But is a counsel who  
18 proceeds on that basis, is there any reason to question  
19 his adequacy, let's say he's fully representing,  
20 bringing all the claims and all the damages. He's just  
21 decided to break it up from A to K. Somebody from L is  
22 not going to say: Well, he's inadequate when he's  
23 representing him just because he could have represented  
24 everybody in the other action.

25 MR. FREDERICK: I misunderstood, Mr. Chief

1 Justice. I think that for federal jurisdiction  
2 purposes, the Court has always had -- that kind of legal  
3 strategy is perfectly appropriate under the master of  
4 the complaint --

5 JUSTICE BREYER: If so, this is just a  
6 loophole because it swallows up all of Congress's  
7 statute, which is what their problem is, all you have to  
8 do, even if you were less obvious than the Chief  
9 Justice's example, what you do is you -- you file a  
10 complaint, you say it's for \$4,900,000; in fact, it's  
11 worth 10 million. But you inform people, unlike  
12 Justice Alito, you figure a way around his problem, you  
13 keep them informed, and you say: It's getting close,  
14 getting close.

15 And once you are up to \$4,800,000, the  
16 others get the word: Stay out of it. And once they  
17 stay out of it, you go ahead with your action and then  
18 those that stayed out of it becomes the subject of a  
19 second action. And if it's for 50 millions, then you  
20 have ten actions and then you have 20. So, in fact, all  
21 that is required is a few extra pieces of paper that  
22 will soon become standardized, and a lot of postage  
23 stamps.

24 And we have 30 or 40 or \$50 million cases  
25 being tried in whatever counties Congress liked the

1 least. I gather they're some in Arkansas. But that  
2 seems to be all behind Justice Scalia's and the Chief  
3 Justice's questions, and I would like to hear a pretty  
4 complete answer on that.

5 MR. FREDERICK: Sure. Justice Breyer, if  
6 you look at the report that went along with the statute,  
7 what Congress was most concerned about was the situation  
8 where each individual class member would not be able to  
9 exceed \$75,000 but there might be a million of them.  
10 And so you might have a million class members, each of  
11 whom had a claim for \$50,000, and there was no way to  
12 get that to federal court because of the Zahn  
13 non-aggregating rule.

14 Congress was not concerned about having the  
15 master of the complaint altered in this class process;  
16 and, in fact, Congress rejected a proposal that would  
17 lower the amount in controversy for class actions to \$2  
18 million because the congressional budget office said:  
19 If you keep it at that low, virtually every class action  
20 will be in federal court and Congress has not  
21 appropriated additional funds for the federal courts to  
22 deal with all of the class actions that would occupy  
23 this space.

24 CHIEF JUSTICE ROBERTS: Counsel, you  
25 realize, of course, you are on pretty thin ice. You are

1 talking about a Senate Report and now you are talking  
2 about proposals that weren't enacted. Your friend on  
3 the other side focuses on the statutory language which  
4 tells you how to find out how much is at stake.

5 MR. FREDERICK: And I'm telling you that his  
6 focus on the word "claims" is insufficient because there  
7 are no claims by absent members until there is a civil  
8 action that has been filed. And that is why if you look  
9 at the definition of a class action, it is a civil  
10 action that is filed pursuant to one of those rules.

11 JUSTICE ALITO: Under your argument, the  
12 amount that's demanded seems to be totally meaningless.  
13 Here, we are told that the real amount is only slightly  
14 above the \$5 million figure, but I don't think that  
15 makes any difference. So let's say that what was -- you  
16 stipulate you are not going to get more than \$5 million,  
17 but really the value of the claim is \$50 million.

18 And you say that's perfectly okay. It will  
19 be dealt with later when the case -- after the case has  
20 been remanded to the -- to the state courts. Isn't that  
21 right? So the \$5 million is just -- just means nothing.

22 MR. FREDERICK: No, the 5 million --

23 JUSTICE ALITO: In practical terms.

24 MR. FREDERICK: Well, Justice Alito, it  
25 means we have to determine and the district court has to

1 determine whether or not the 5 million has been  
2 satisfied on the basis of the well pleaded complaint and  
3 an aggregation where, as a factual matter and as a  
4 stipulated matter in paragraph 11 of the complaint, the  
5 class representative here said: This case is not worth  
6 more than \$5 million. And we know that that's true  
7 because even under their estimate of all of the class  
8 members in the state of Arkansas, the damages only equal  
9 about \$3 million. And so --

10 JUSTICE ALITO: Okay. But does that matter?  
11 We assume, I think, that the real amount is a little bit  
12 over \$5 million. Suppose the real amount is 6 million  
13 or 7 million, 8 million, does it matter where along that  
14 continuum the real amount falls?

15 MR. FREDERICK: Not so long as there is a  
16 binding stipulation that says so long as this civil  
17 action is in place, it is not going to be worth  
18 \$5 million.

19 JUSTICE BREYER: But what you said then in  
20 response -- we're on the same subject, and I'm drawing  
21 the conclusion from what you say that yes, we've found a  
22 way around this. And what we're going to do is we will  
23 divide our \$25 million class action into six subsidiary  
24 actions and proceed exactly the same merry way. And we  
25 do that by means of stipulation.

1                   Now, your words in the statute do favor  
2 that, in my opinion, at the moment. But the purpose  
3 seems to strongly cut the other way. And I do see a way  
4 to go the other way, in that you could say, given the  
5 purpose of this, the words do mean something different,  
6 and they do mean you should aggregate the real value of  
7 the real amounts that the class is likely to have.

8                   Now, it's capable of that reading, and the  
9 virtue of that reading is that it would stop what looks  
10 like, from what you're saying, a mechanical method of  
11 avoiding the purpose of the statute. I say that  
12 explicitly because I really want to make it as much as  
13 possible that you will focus in on what's a response to  
14 that.

15                   MR. FREDERICK: Yes. Well, Justice Breyer,  
16 Congress could have addressed any number of those kinds  
17 of issues with the specific terms that it used, but the  
18 well-pleaded complaint rule and the master of the  
19 complaint rule is a very subtle part of our diversity  
20 jurisdiction. And that is so because we want these  
21 jurisdictional issues to be simple, not complicated.

22                   Under their approach, they would take all  
23 the conceivable legal theories that might be brought  
24 over a conceivable period of time, and ask the district  
25 court to make very nuanced judgments about -- what --

1 JUSTICE KENNEDY: But what you're saying in  
2 your answer to Justice Breyer -- and I don't think  
3 you've really addressed his point -- that the statute  
4 number 6 says "shall aggregate the individual claim."  
5 What you're saying is that the simplest thing is to  
6 evade the statute. Evasion is simple. And therefore,  
7 we still use that approach, because the simplest is the  
8 best.

9 That just is not responsive to his question.

10 MR. FREDERICK: Well, Justice Kennedy, let  
11 me try it this way, which is that for the large case,  
12 the one that I gave in my hypothetical where there are a  
13 million class members, and each of them has a claim of  
14 \$50,000, we know that prior to CAFA, that case was  
15 staying in State court because of this Court's Zahn  
16 rule.

17 But that might be a nationwide case. It  
18 might be worth hundreds of millions of dollars in  
19 damages. That was the kind of problem that Congress was  
20 trying to get at. But the case where there's a  
21 stipulation that actually might be meaningful, where the  
22 amount in controversy is debatable as to whether it's  
23 really \$5 million, that's the kind of case where  
24 jurisdictional simplicity ought to encourage --

25 JUSTICE GINSBURG: But your theory doesn't

1 depend on it being just a little over \$5 million, the  
2 theory would hold whether it was \$8 million, \$9 million.

3 MR. FREDERICK: That's correct, because --  
4 and Justice Ginsburg, I'm sorry to interrupt you, but  
5 that's precisely because we want the ability to make  
6 legal judgments and strategies to reside in the person  
7 who's bringing the complaint.

8 We don't want --

9 JUSTICE GINSBURG: Even though you admit in  
10 your brief -- you agreed that the stipulation -- I  
11 didn't think that this is what you said on page 53, the  
12 stipulations that have no effect on absentees, until the  
13 Court finds at the certification stage that the  
14 stipulation was made in good faith and doesn't render  
15 the named plaintiff an inadequate representative.

16 But we have to judge removal at the time  
17 removal is made, and at that time, there is no  
18 determination of class. So at the removal stage, the  
19 stipulation is inoperative as to the non-named class  
20 members.

21 MR. FREDERICK: Not where there are  
22 allegations about what the aggregated damages are about.  
23 That's why -- to address this in the language of the  
24 civil action, those absent class members haven't filed  
25 any lawsuit. We don't really know what claims they

1 might conceivably bring if they are were to be  
2 hypothesized.

3           What we do know is that there is a civil  
4 action, it has been filed by a putative class  
5 representative, that putative class representative in  
6 good faith, the district court found had acted in good  
7 faith in stipulating to a lower amount than \$5 million  
8 -- and the question is should that be given legal  
9 effect, where everybody knows it will be binding if the  
10 class is certified, and it will be binding on the class  
11 representative if the class is not certified.

12           JUSTICE ALITO: Suppose this were an  
13 individual action, and the amount is -- an individual  
14 diversity action -- and the amount that is pled is under  
15 \$75,000. The defendant still can remove the case and  
16 prove that the amount is really higher than that,  
17 because the practice of the State in question is to  
18 allow a recovery that is over \$75,000. So why shouldn't  
19 the same approach apply here?

20           MR. FREDERICK: Well, you were referring to  
21 a statute, Justice Alito, that was recently enacted, in  
22 which it does say that the presumption shall be that the  
23 amount pleaded in the complaint is subject to disproval.  
24 But that's reversing 200 -- well, 100-plus years of  
25 settled removal law, after the reforms of the 1870s

1 created the removal jurisdiction the way it is more  
2 currently constructed.

3 And so in that interregnum between the 1870s  
4 and that statute passed just a couple of years ago, the  
5 rule was well-settled that the individual case pleading  
6 amount was fine. And under St. Paul Mercury, if there  
7 was a stipulation that had been filed contemporaneously  
8 with the complaint or prior to removal, that that would  
9 be given legal effect.

10 Here, the stipulation was filed with the  
11 complaint. There is no doubt that this was done in good  
12 faith. The district court found that -- and I don't  
13 think that's really an even arguable proposition here,  
14 where they were asserting a 40 percent attorney's fee on  
15 this -- and so really the question is, where you have an  
16 aggregated estimate, should that be given legal effect.

17 JUSTICE ALITO: Wouldn't it be perverse if  
18 the rule were that in an individual action where a  
19 plaintiff is simply stipulating how much he or she is  
20 demanding -- individually -- which the person can do,  
21 it's possible to look behind that number.

22 But in a class action where the named  
23 Plaintiff is purporting to make a stipulation on behalf  
24 of absent class members as to whom the named plaintiff  
25 at that point has absolutely no authority, you can't

1 look behind the number --

2 MR. FREDERICK: Well, as a policy matter, we  
3 might have a debate about the various virtues of that,  
4 but they were not enacted in the same piece of  
5 legislation. So what we do know is that for CAFA,  
6 Congress had not adopted the rule that you're positing.  
7 Nonetheless, we do not attempt to argue that they have  
8 no basis for making arguments about amount of  
9 controversy when they remove, but it is subject to the  
10 rule that a binding stipulation shall be given binding  
11 effect in the civil action that has been filed. And if  
12 that is later proved to be inadequate --

13 JUSTICE GINSBURG: How is it binding when  
14 you said in your brief it doesn't bind the unnamed class  
15 members?

16 MR. FREDERICK: Justice Ginsburg, this is  
17 important that you and I understand each other on this  
18 point, because it is binding in the civil action filed  
19 for all purposes. So, whoever is covered by that civil  
20 action will forever be bound by the \$5 million  
21 stipulation.

22 What we do not know is who will be members  
23 of that class until the certification hearing is done.  
24 Whoever ends up being covered by that civil action will  
25 forever be bound by that stipulation. That is what the

1 district court knows.

2 JUSTICE KAGAN: Can I ask you this, because  
3 I have been trying to figure out exactly what  
4 Mr. Boutrous is concerned about? And one thing he might  
5 be concerned about is that, notwithstanding that the  
6 class has really plans for \$20 million, the thing is  
7 going to be certified for \$5 million, and all these  
8 absent class members are -- are being deprived of  
9 something meaningful to them.

10 But that's something which -- you know  
11 usually, we assume that State court judges will do their  
12 jobs, will pay attention to the Constitution, will apply  
13 adequacy of representation standards that come from the  
14 due process clause. So that seems like a strange thing  
15 to worry about in interpreting this Federal statute.

16 The other possibility is that you might be  
17 worried that this stipulation won't be really as binding  
18 as you say, that in a case in which there is an adequacy  
19 of representation determination made, the class goes  
20 forward, and then things work out and it really looks  
21 like all these absent class members are going to get --  
22 you know, badly treated. He's going to tear this  
23 stipulation up or do something like that. And it's  
24 going to be way down the line. And why should we allow  
25 that to happen?

1 MR. FREDERICK: Well, for two reasons,  
2 because there are protections that are in the statute  
3 that protect both defendants and absent class members.  
4 And the protection for the absent class members is it  
5 that if that stipulation is insufficient to adequately  
6 represent their interests, the district court, the trial  
7 court and State court will not certify the class.

8 JUSTICE KAGAN: But this is -- he's done the  
9 certification, now it turns out that the certification  
10 was wrong, that in fact, these claims are worth a good  
11 deal more. And he says, I can't in good faith allow all  
12 these people's claims to be adjudicated for this amount  
13 of money when I know they're worth five times as much.

14 MR. FREDERICK: And -- and as a matter of  
15 judicial estoppel, what is absolutely clear in every  
16 State that I am familiar with is that it follows this  
17 Court's basic formula in *New Hampshire v. Maine*, which  
18 looks at whether or not a change in position would  
19 prejudice the interests of the other party if the Court  
20 had relied on the original position of the litigant, and  
21 that will estop that person.

22 Now, it may -- it may well be that there are  
23 due process issues associated with class representative  
24 and the adequacy of a class representative is a  
25 continuing concern throughout a litigation precisely

1 because of due process concerns.

2 CHIEF JUSTICE ROBERTS: Another thing he  
3 might be worried about is that if this actions is  
4 allowed to proceed, although on its face it's worth  
5 \$4 million, they're going to have to make a  
6 determination whether to settle for a particular amount  
7 or not. And if they make a determination that they've  
8 got to settle for whatever it is, 20 -- you know, \$20  
9 per class member, that is going to set the limit for  
10 other classes, including the class members who opt out  
11 of this action, the class members from Missouri.

12 And the point is that, for a variety of  
13 reasons, that this gives extraordinary leverage to the  
14 individual class representative of a sort that --  
15 precisely the sort that Congress was worried about.

16 MR. FREDERICK: Actually, I think  
17 Mr. Chief Justice, with all due respect, the economic  
18 incentives are completely reversed, because if a class  
19 representative is bound by a stipulation that this case  
20 is not worth than \$5 million, the bidding starts at 5  
21 million, but it goes down, it doesn't go north, because  
22 the defendant knows that no matter whether we go to  
23 trial or not, this case, this civil action is only going  
24 to be worth \$5 million.

25 CHIEF JUSTICE ROBERTS: It's going to be

1 worth a lot more, because if you go to trial, you're  
2 going to have a judgment that they should have been  
3 giving the general contractor whatever --

4 MR. FREDERICK: GCOP.

5 CHIEF JUSTICE ROBERTS: -- pickup it is in  
6 every case. And so that is going to be extremely  
7 valuable. It's going to be worth a lot more -- but the  
8 downside, it's going to be a lot more than \$5 million.

9 MR. FREDERICK: Well, certainly,  
10 Mr. Chief Justice, Congress could have drafted a statute  
11 that allowed for the removal of every State class action  
12 and dealt with that issue if it was deemed appropriate  
13 to have Federal courts decide all class actions, but  
14 that wasn't the statute that Congress enacted. And  
15 Congress also could have expressed concerns and  
16 difficulty with this idea of having the Master of the  
17 Complaint Rule applied in the class action context, but  
18 it didn't address that either.

19 And so when Congress is only addressing a  
20 very narrow problem of dealing with the non-aggregation  
21 principle so that class actions that were worth more  
22 than \$5 million would be allowed to be removed to  
23 Federal court, I don't think it would be appropriate for  
24 the Court to try to infer a larger set of --

25 CHIEF JUSTICE ROBERTS: It's very

1 difficult -- one reason, it's very difficult to  
2 speculate about Congress, what they speculate about what  
3 they would have intended. Presumably, they may not have  
4 thought about the idea that there will be class actions  
5 worth a lot more than \$5 million, but the plaintiff's  
6 lawyer will only ask for less than \$5 million.

7 MR. FREDERICK: Well, these kinds of  
8 stipulations are well known and in fact, as we quote on,  
9 I think it's page 5 of our brief, Congress was aware of  
10 factual stipulations. They concede in their reply brief  
11 that it's perfectly fine for their to be a joint  
12 stipulation between the putative class representative  
13 and the defendants. And yet, I would think that that  
14 would raise even more problems and concerns by you,  
15 because that would lead to the kind of collusion between  
16 a putative class representative and the defendant  
17 without knowing what the other interests of the absent  
18 class members are.

19 And so here, where a good faith effort is  
20 made to quantify the aggregate claims and that good  
21 faith effort leads to the stipulation that the case will  
22 not be worth more than \$5 million, the interests of  
23 jurisdictional simplicity, the interest of fairness to  
24 the class members, the interest of understanding what  
25 the civil action is all about so that the defendant is

1 on notice about what will be claimed in this civil  
2 action are all things that should be given respect.

3 JUSTICE BREYER: What about -- what about,  
4 has anyone thought of this -- I hate to bring up sort of  
5 a new idea, but somebody may have thought of it.  
6 Imagine we're now in the Federal district court. And  
7 the Federal district court reads the statute because the  
8 case has just been removed. And he says, you know,  
9 this -- this case would be worth a lot more than 5  
10 million were it not for that stipulation.

11 And let now me look at that stipulation.  
12 That stipulation is a part of some, let's call it quote  
13 "monkey business," end quote, which you will resist  
14 that, but I mean by that to -- to encompass the kinds of  
15 things we've been talking about, that there are going to  
16 be five similar class actions, that they're going to  
17 take the people A through K, that they're going to --  
18 anything like that.

19 And he says that's not under this statute  
20 the kind of stipulation that Congress meant to bar my  
21 consideration of the \$5 million. So if it's a  
22 manipulative stipulation, whatever that might be, it  
23 doesn't bar me as the district judge from aggregating up  
24 to -- beyond 5 million, but if it's not manipulative,  
25 fine. Has there -- has there been any thought on that

1 kind of --

2 MR. FREDERICK: Well, there are two tools  
3 that -- that we describe in our brief and that I think  
4 are reasonable ways that Federal courts address these  
5 matters. One is to look at whether or not it violates  
6 Rule 11 and there are -- there's a frivolous assertion  
7 of a stipulation, which Federal district judges deal  
8 with Rule 11 motions all the time.

9 The second is the concept of good faith,  
10 which is what St. Paul Mercury addressed when it said  
11 that a stipulation for less than the jurisdictional  
12 amount if made in good faith is something that will be  
13 treated as dispositive for jurisdictional purposes.

14 JUSTICE GINSBURG: Justice Breyer's  
15 hypothetical would not come up on your theory, because  
16 the Federal court would never get the chance to make  
17 that determination. It would be made in the State  
18 court.

19 MR. FREDERICK: No. If I'm understanding  
20 Justice Breyer's hypothetical, it's at the amount of  
21 controversy stage and so there is litigation at that  
22 stage and the defendant presumably would bring to the  
23 judge's attention, I think this is being done in bad  
24 faith and I have these arguments for why this is  
25 deceiving -- deceitful, misleading, et cetera.

1 JUSTICE GINSBURG: So would that include the  
2 I'm suing for two years when I could have sued for five?

3 MR. FREDERICK: No, I don't think so,  
4 because there are lots of tactical reasons why litigants  
5 might want to limit their claims or might have a good  
6 faith basis for saying, I've only investigated this time  
7 period, I cannot have a good faith basis for asserting  
8 claims in a different time period that I have not  
9 investigated that does not serve the court.

10 JUSTICE BREYER: Well, but there might be --  
11 there might be ways of working with this notion, a  
12 little risky from your point of view, but there might be  
13 ways of working with this good faith notion so that  
14 some -- there would be some power in the Federal  
15 district court to set aside certain stipulations which  
16 were used for manipulative purposes and what definition  
17 that manipulative is something that isn't clear to -- to  
18 me at the moment.

19 MR. FREDERICK: Well, the -- the -- the  
20 notion that I have distilled from St. Paul Mercury and  
21 the idea of good faith and looking at cases that have  
22 addressed bad faith, which is obviously the converse of  
23 good faith, is whether or not there is something  
24 misleading or deceitful in the way that this stipulation  
25 would be framed. And I think that that is as good a

1 guidance as I can give you absent briefing.

2 JUSTICE SOTOMAYOR: But it would never  
3 involve a judgment that a claim is really worth  
4 \$50 million and just to defeat this statute, it's being  
5 limited to 5.

6 MR. FREDERICK: There -- there could be a  
7 strategic reason, Justice Sotomayor, why --

8 JUSTICE SOTOMAYOR: Well, the only strategic  
9 reason according to your adversary is they want to stay  
10 in State court.

11 MR. FREDERICK: Well, but there are reasons,  
12 because in Arkansas, for instance, there is a direct  
13 appeal for the State supreme court. We could finish  
14 this case in many fewer years than it would take to wind  
15 its way up through the Eighth Circuit and up to this  
16 Court. That is one salutary reason.

17 The second is we're talking about State law  
18 claims that are breach of contract claims for a  
19 State-regulated industry. The State insurance board  
20 would be looking at how State insurance is done here.  
21 So there are very good reasons why a -- why a lawyer  
22 would want this case to be in State court and not want  
23 it to be removed to Federal court wholly apart from the  
24 ad hominem attacks that they make about Miller County  
25 which were not brought to Congress's attention and in

1 fact are false. As we have put into amicus briefs, it  
2 is false. The arguments that they talk about abuse  
3 involve all cases that predated CAFA.

4 CHIEF JUSTICE ROBERTS: Why did you decide  
5 to file in Miller County?

6 MR. FREDERICK: Because these are Texarkana  
7 lawyers who filed on behalf of all Arkansas residents  
8 and Texarkana, Arkansas is a jurisdiction in Arkansas.

9 JUSTICE SOTOMAYOR: Mr. Frederick, your  
10 answer just doesn't deal with the component that's been  
11 troubling, which is that it doesn't protect the absent  
12 class members. In situations like the one Justice Alito  
13 or the point Justice Alito made, which is they don't  
14 really know how much the entire quantity of the class  
15 might truly be, and who's protecting them --

16 MR. FREDERICK: Well --

17 JUSTICE SOTOMAYOR: -- if it would go your  
18 way?

19 MR. FREDERICK: Sure. In his hypothetical,  
20 that's true under Federal rules, too. If you're  
21 applying Federal Rule 23 and you have a large number of  
22 class members and the case gets settled for X dollars,  
23 the individual class member is held to the duty of  
24 deciding whether to opt out because that individual  
25 class member thinks I may have been able to get more

1 than what is being offered in this class settlement or  
2 to attack the adequacy of the representation because the  
3 aggregate amount is not high enough. It's a problem  
4 that applies in both Federal and in State court. It's  
5 not unique to State court at all.

6 If the Court has no further questions, we'll  
7 submit.

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.

9 Mr. Boutrous, you have four minutes.

10 REBUTTAL ARGUMENT OF THEODORE J. BOUTROUS, JR.,

11 ON BEHALF OF THE PETITIONER

12 MR. BOUTROUS: Thank you, Your Honor. Let  
13 me just start with the concerns that I have and I think  
14 they're best expressed and encapsulated in two of the  
15 friend-of-the-court briefs, the Manufactured Housing  
16 Institute brief and the 21st Century brief. They  
17 explain what has been happening in Miller County. It's  
18 not speedy justice. It takes five or six years to get a  
19 hearing on anything and then there's no hearing, even on  
20 class certification.

21 And that's why, Justice Kagan, it's cold  
22 comfort to maybe somebody day the Court will find this  
23 is an inadequate class member or class representative.  
24 It does not solve the problem that Congress sought to  
25 address.

1                   With respect to Mr. Fredrick's suggestion  
2 that this stipulation is binding in this case forever  
3 and all-time on anybody who's in the case, his own brief  
4 on page 41 says: It might well be that another class  
5 representative might get appointed and the stipulation  
6 might be invalidated because it's an unfair stipulation  
7 and not valid for the class. That new class  
8 representative could come in and say: We are not going  
9 to be bound by this \$5 million number. That's not the  
10 amount in controversy.

11                   JUSTICE SOTOMAYOR: So why can't the case be  
12 removed at that moment?

13                   MR. BOUTROUS: Well, it theoretically could  
14 be, Your Honor, but that won't solve the problem of  
15 discovery. If it goes back ten years in a case that's  
16 supposed to be about two years. It won't solve the  
17 problem of --

18                   JUSTICE KAGAN: Mr. Boutrous, you know, a  
19 lot of your brief talks about this problem of discovery.  
20 And it may very well be that there is a significant one,  
21 I don't know, but when you look at CAFA, I mean, CAFA  
22 did a lot of things. And it did not address this  
23 problem that you have with discovery. There could be --  
24 I can give you, you know, ten different proposals that  
25 would enable you to bypass expensive discovery, but CAFA

1 didn't do any of them. And this is a kind of a  
2 jerry-rigged solution to get at a problem that Congress,  
3 in fact, did not address.

4 MR. BOUTROUS: That's incorrect, Your Honor.  
5 First, Congress knew what was going on in state courts  
6 and wanted swift removal in a simple way for defendants  
7 to protect defendants and absent class members because  
8 it knew what was going on. There wasn't these  
9 protections. The federal rules provide protection  
10 against discovery.

11 This Court said -- one of the reasons is  
12 speedy motion to dismiss, and a strong standard is  
13 necessary as to avoid discovery that is burdensome, that  
14 coerces settlements that don't relate to the merits. So  
15 Congress knew it was bringing cases into the federal  
16 system for precisely that reason.

17 And on this master of complaint point,  
18 Mr. Frederick is simply incorrect on this point.  
19 St. Paul wasn't a master of the complaint case, it said  
20 the plaintiff can limit the amount that he wants to  
21 seek. The master of the complaint doctrine has never,  
22 ever been applied by this Court where an unappointed  
23 named plaintiff, who's not been appointed to represent  
24 people, seeks to try to alter the claims and judgments  
25 of other people and the rights of them to recover. It's

1 usually been applied in the arising under contexts.  
2 Where the Court has said if a plaintiff wants to bring a  
3 state claim, they can. We are not going to force them  
4 to bring a federal claim.

5 JUSTICE KAGAN: Mr. Boutrous, the idea of  
6 master of the complaint is inherent in every class  
7 litigation because there could be no class action, there  
8 could be no definition of anything, of the claims, of  
9 the amount of damages, of the number of defendants, of  
10 the amount of time unless the plaintiff, the named  
11 plaintiff, had some ability to define the claim. And  
12 this is just one aspect of that larger power.

13 MR. BOUTROUS: Your Honor, on the amount in  
14 controversy, this Court has never held in a class action  
15 or otherwise that that's something that's subject to the  
16 well pleaded complaint rule or the master of the  
17 complaint doctrine. The court in the Hertz case and in  
18 the McNutt case, which it cites, said the Court should  
19 look past what the pleadings say.

20 JUSTICE KAGAN: Okay. Then you really are  
21 asking us to blow up the whole world.

22 MR. BOUTROUS: No, Your Honor.

23 JUSTICE KAGAN: Because you're saying: Next  
24 time we will be back and tell you that the named  
25 plaintiff can't define the clans. Next time we are

1 going to be back and tell you that they can't name the  
2 defendants.

3 MR. BOUTROUS: No, Your Honor.

4 May I answer, Your Honor?

5 CHIEF JUSTICE ROBERTS: (Nods.)

6 MR. BOUTROUS: We are asking the Court to  
7 apply the same rules on this score that the Court has  
8 always applied, that when the complaint claims one  
9 amount, the defendant can bring forth proof that it's a  
10 larger amount, that it exceeds the amount in controversy  
11 and the Court looks at the competent proof, that's the  
12 language the Court used in the Hertz case, to determine  
13 the actual amount in controversy, not some jerry-rigged  
14 amount the plaintiffs came up with.

15 Thank you.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
17 The case is submitted.

18 (Whereupon, at 12:06 p.m., the case in the  
19 above-entitled matter was submitted.)

20

21

22

23

24

25

<b>A</b>				
<b>ability</b> 36:5 53:11	44:4 45:16	12:25 13:2 19:6	25:10 27:1,16	<b>appropriate</b> 30:3
<b>able</b> 20:4 31:8	<b>actual</b> 16:14	23:10 36:22	28:19 31:17	43:12,23
49:25	18:15 54:13	38:16	32:12,13 33:11	<b>appropriated</b>
<b>above-entitled</b>	<b>ad</b> 48:24	<b>aggregating</b>	33:12,14 35:22	31:21
1:12 54:19	<b>added</b> 12:22	45:23	37:7,13,14,16	<b>arguable</b> 38:13
<b>absent</b> 3:13 6:7	21:21	<b>aggregation</b>	37:23 38:6 39:8	<b>argue</b> 16:1 18:17
7:9 10:4 11:16	<b>addendum</b> 20:18	13:22,25 14:2	41:12 42:6	23:14 39:7
18:23 20:4 22:6	22:7	33:3	46:12,20 50:3	<b>arguing</b> 4:9
22:15 23:19	<b>addition</b> 16:15	<b>ago</b> 38:4	51:10 52:20	16:21 17:4,5
25:23 27:18	<b>additional</b> 31:21	<b>agree</b> 15:22	53:9,10,13 54:9	<b>argument</b> 1:13
32:7 36:24	<b>address</b> 27:23	26:24	54:10,10,13,14	2:2,5,8 3:4,7
38:24 40:8,21	36:23 43:18	<b>agreed</b> 36:10	<b>amounts</b> 34:7	7:8 9:24 10:6
41:3,4 44:17	46:4 50:25	<b>agrees</b> 23:13	<b>analysis</b> 23:8	10:12 13:24
48:1 49:11 52:7	51:22 52:3	<b>ahead</b> 30:17	<b>Angeles</b> 1:16	14:13 18:18
<b>absentees</b> 36:12	<b>addressed</b> 34:16	<b>Alito</b> 17:16,23,24	<b>answer</b> 9:8 31:4	25:15 32:11
<b>absolutely</b> 10:14	35:3 46:10	20:1 22:5 30:12	35:2 49:10 54:4	50:10
38:25 41:15	47:22	32:11,23,24	<b>answered</b> 6:16	<b>arguments</b> 39:8
<b>abstract</b> 9:4	<b>addressing</b> 28:1	33:10 37:12,21	<b>anti-aggregation</b>	46:24 49:2
<b>abuse</b> 49:2	43:19	38:17 49:12,13	8:11	<b>arising</b> 53:1
<b>abuses</b> 3:15 6:13	<b>adequacy</b> 21:1	<b>allegations</b> 4:11	<b>anti-St</b> 14:19	<b>Arkansas</b> 3:15
7:3,20 8:1	26:24 27:23	5:13 15:23	<b>anti-Zahn</b> 14:19	6:4 20:2 31:1
<b>account</b> 16:5	29:19 40:13,18	36:22	<b>anybody</b> 24:1	33:8 48:12 49:7
28:25	41:24 50:2	<b>allow</b> 15:7,17	51:3	49:8,8
<b>Act</b> 3:12 14:7	<b>adequate</b> 5:4 6:8	18:12 21:17	<b>anyway</b> 7:8	<b>aside</b> 17:12
<b>acted</b> 37:6	15:7 21:18,22	22:16 37:18	<b>apart</b> 48:23	47:15
<b>action</b> 3:11,14	23:21 24:4 27:2	40:24 41:11	<b>appeal</b> 48:13	<b>asked</b> 9:6,14,16
5:12 12:5,23	29:15	<b>allowed</b> 42:4	<b>APPEARANC...</b>	15:16,25
14:21 20:3 24:6	<b>adequately</b> 6:7	43:11,22	1:15	<b>asking</b> 12:10
25:20,22,23,24	9:10 41:5	<b>allowing</b> 19:21	<b>application</b> 8:3	53:21 54:6
25:25 26:9,15	<b>adjudicated</b>	<b>all-time</b> 51:3	<b>applied</b> 43:17	<b>aspect</b> 53:12
26:16,21 29:2	41:12	<b>alter</b> 52:24	52:22 53:1 54:8	<b>assert</b> 28:11
29:24 30:17,19	<b>admission</b> 17:1	<b>altered</b> 31:15	<b>applies</b> 5:24 14:8	<b>asserting</b> 38:14
31:19 32:8,9,10	<b>admit</b> 36:9	<b>alternate</b> 27:5	27:8 50:4	47:7
33:17,23 36:24	<b>adopted</b> 39:6	<b>alternative</b> 9:24	<b>apply</b> 5:15,22,23	<b>assertion</b> 46:6
37:4,13,14	<b>adversary</b> 48:9	<b>amended</b> 18:2	21:10 24:19	<b>associated</b> 28:16
38:18,22 39:11	<b>advocating</b> 17:25	<b>amicus</b> 49:1	26:6 37:19	41:23
39:18,20,24	<b>affect</b> 10:16,19	<b>amount</b> 3:16,22	40:12 54:7	<b>assume</b> 16:25
42:11,23 43:11	11:16 16:12	4:1,15,16 5:10	40:12 54:7	26:23 33:11
43:17 44:25	23:13	6:2 7:21 10:1	<b>applying</b> 19:19	40:11
45:2 53:7,14	<b>aggregate</b> 3:17	13:10,22 14:5,6	21:7 49:21	<b>assuming</b> 22:24
<b>actions</b> 11:25	7:13 13:5,10,17	15:16 16:3,6	<b>appointed</b> 24:17	<b>attack</b> 50:2
21:8 30:20	13:20 14:5	17:6,9 18:3,5,7	51:5 52:23	<b>attacks</b> 48:24
31:17,22 33:24	26:12 34:6 35:4	18:15 22:3,19	<b>approach</b> 13:4	<b>attempt</b> 39:7
42:3 43:13,21	44:20 50:3	23:9,12 24:9,10	16:19 17:25	<b>attempting</b> 27:22
	<b>aggregated</b>	24:13,21,22	24:8 34:22 35:7	<b>attention</b> 40:12
			37:19	

<p>46:23 48:25  <b>attorney's</b> 38:14  <b>authority</b> 38:25  <b>avoid</b> 52:13  <b>avoiding</b> 34:11  <b>aware</b> 44:9  <b>a.m</b> 1:14 3:2</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>back</b> 4:10 7:5  11:14,19 15:2  19:25 23:7  28:17 51:15  53:24 54:1  <b>bad</b> 22:24 46:23  47:22  <b>badly</b> 40:22  <b>bar</b> 45:20,23  <b>Barry</b> 4:10  <b>based</b> 5:11 10:6  15:8 17:10  <b>basic</b> 41:17  <b>basis</b> 23:11  29:18 33:2 39:8  47:6,7  <b>Bayer</b> 10:25 11:1  11:8  <b>behalf</b> 1:17,18  2:4,7,10 3:8  14:22 25:16  38:23 49:7  50:11  <b>believe</b> 16:9,10  <b>best</b> 5:10 9:4,16  17:9 28:9 35:8  50:14  <b>better</b> 23:6  <b>beyond</b> 45:24  <b>bidding</b> 42:20  <b>bind</b> 10:10 11:8  26:2 39:14  <b>binding</b> 7:9 12:9  18:17,20,21,23  19:3,10 20:24  23:13,18,18,22</p>	<p>24:1,3,4,6  25:20 33:16  37:9,10 39:10  39:10,13,18  40:17 51:2  <b>binds</b> 21:2  <b>bit</b> 5:1 33:11  <b>blithely</b> 28:1  <b>blow</b> 53:21  <b>blue</b> 3:19 22:7  <b>board</b> 48:19  <b>books</b> 11:23  <b>bound</b> 21:14  39:20,25 42:19  51:9  <b>Boutros</b> 1:16  2:3,9 3:6,7,9  4:8 5:7,19,23  6:12,19,25 7:18  8:20 9:2,7,17  9:23 10:13,21  11:7,20 12:19  13:8 14:1,12,20  15:20 16:9 17:3  18:9,25 19:8,14  20:16 21:5 22:1  23:4,16,25 24:7  25:6 40:4 50:9  50:10,12 51:13  51:18 52:4 53:5  53:13,22 54:3,6  <b>breach</b> 48:18  <b>break</b> 29:21  <b>Breyer</b> 11:18,21  13:1,8,13 14:4  29:16 30:5 31:5  33:19 34:15  35:2 45:3 47:10  <b>Breyer's</b> 46:14  46:20  <b>brief</b> 3:19 7:9  20:18 22:7  23:15 24:14  28:21 36:10  39:14 44:9,10</p>	<p>46:3 50:16,16  51:3,19  <b>briefing</b> 48:1  <b>briefs</b> 4:22 49:1  50:15  <b>bring</b> 9:5 10:24  15:12 23:19  37:1 45:4 46:22  53:2,4 54:9  <b>bringing</b> 29:20  36:7 52:15  <b>brings</b> 5:25 29:2  <b>brought</b> 9:20  17:14 34:23  48:25  <b>budget</b> 31:18  <b>burden</b> 24:11  <b>burdensome</b>  52:13  <b>business</b> 45:13  <b>bypass</b> 51:25</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 1:18 2:1,6 3:1  22:9 25:15  <b>CAFA</b> 3:12  12:22 18:10  27:12,12 35:14  39:5 49:3 51:21  51:21,25  <b>calculating</b> 3:16  <b>calculations</b> 25:7  <b>California</b> 1:17  <b>call</b> 45:12  <b>cap</b> 19:11 20:7  <b>capable</b> 34:8  <b>care</b> 12:10  <b>careful</b> 23:17  <b>case</b> 3:4,24 4:6  4:17 5:16,25  6:11 7:4,5,23  9:18 11:1 13:14  13:15 15:5,6  16:2 18:4,22  19:13 20:1</p>	<p>21:19 22:20  24:1,24 27:7  28:16,17,22  29:2,6 32:19,19  33:5 35:11,14  35:17,20,23  37:15 38:5  40:18 42:19,23  43:6 44:21 45:8  45:9 48:14,22  49:22 51:2,3,11  51:15 52:19  53:17,18 54:12  54:17,18  <b>cases</b> 4:9 7:19  22:16 24:23  28:15 29:8  30:24 47:21  49:3 52:15  <b>causes</b> 5:12  <b>centered</b> 7:9  <b>central</b> 10:6  <b>Century</b> 50:16  <b>certain</b> 13:3  15:21 18:11  47:15  <b>certainly</b> 43:9  <b>certainty</b> 24:13  <b>certification</b> 6:6  7:7,24 10:19,22  11:6 15:4 18:24  19:10,21 20:20  20:20,24 29:11  36:13 39:23  41:9,9 50:20  <b>certified</b> 6:18  10:8,11 18:22  20:14 26:2,4  37:10,11 40:7  <b>certify</b> 6:11 41:7  <b>cetera</b> 12:3,7  46:25  <b>challenges</b> 7:14  <b>chance</b> 46:16  <b>change</b> 41:18</p>	<p><b>charged</b> 19:12  <b>Chief</b> 3:3,9,25  4:20 15:2,25  16:19 17:20,22  22:23 25:13,18  26:23 28:12  29:1,11,17,25  30:8 31:2,24  42:2,17,25 43:5  43:10,25 49:4  50:8 54:5,16  <b>chimed</b> 17:18  <b>Circuit</b> 28:16,17  48:15  <b>cited</b> 9:17 24:8  <b>cites</b> 53:18  <b>civil</b> 11:25 12:4  25:20,22,22,24  25:25 26:16,21  32:7,9 33:16  36:24 37:3  39:11,18,19,24  42:23 44:25  45:1  <b>claim</b> 4:7,12,18  4:24 8:18,18  9:2,4,13,13,14  9:19,20 10:24  17:13 20:6,11  27:15 28:13,18  28:23 31:11  32:17 35:4,13  48:3 53:3,4,11  <b>claimed</b> 45:1  <b>claims</b> 3:17,20  4:2,3 7:12 8:23  9:11,20 10:15  10:16,19 11:11  11:16 12:24  13:18,22 14:3  14:10 15:11  17:10 19:5  21:16 22:12,15  22:20,25 23:1,9  26:13 29:4,4,20</p>
---	---	---	--	--

<p>32:6,7 36:25 41:10,12 44:20 47:5,8 48:18,18 52:24 53:8 54:8 <b>clans</b> 53:25 <b>Clarification</b> 14:7 <b>class</b> 3:11,13,14 3:18,21,23 4:3 4:3 5:3 6:6,7,10 6:18,18,20 7:7 7:9,11,24 8:3 8:24 9:10 10:4 10:9,12,15 11:3 11:6,8,11 12:23 12:24 13:18 14:21 18:20,21 18:23 19:6,21 19:23 20:3,4,11 20:14,23 21:2,8 22:6,15,24 23:10,19 24:5 24:15,17 25:2,4 25:4,8,21,23 26:1,1,3,3,9,13 26:15 27:6,23 28:7,10 29:3,11 31:8,10,15,17 31:19,22 32:9 33:5,7,23 34:7 35:13 36:18,19 36:24 37:4,5,10 37:10,11 38:22 38:24 39:14,23 40:6,8,19,21 41:3,4,7,23,24 42:9,10,11,14 42:18 43:11,13 43:17,21 44:4 44:12,16,18,24 45:16 49:12,14 49:22,23,25 50:1,20,23,23 51:4,7,7 52:7 53:6,7,14</p>	<p><b>classes</b> 16:17 42:10 <b>clause</b> 21:15 40:14 <b>clear</b> 5:17 7:2,21 8:8 16:3 27:21 41:15 47:17 <b>clearly</b> 4:15 <b>clients</b> 28:9 <b>close</b> 30:13,14 <b>coerces</b> 52:14 <b>cold</b> 50:21 <b>collect</b> 6:1 <b>collusion</b> 44:15 <b>come</b> 6:1,3,20 14:22 22:18 27:4 40:13 46:15 51:8 <b>comes</b> 27:6 <b>comfort</b> 50:22 <b>commerce</b> 21:9 <b>Company</b> 1:4 3:5 <b>competent</b> 16:13 54:11 <b>complaint</b> 4:11 5:12 8:15 14:16 14:17 15:22 16:7 17:8 18:3 18:5 19:25 26:19,20 27:6 28:13 30:4,10 31:15 33:2,4 34:18,19 36:7 37:23 38:8,11 43:17 52:17,19 52:21 53:6,16 53:17 54:8 <b>complete</b> 8:12 31:4 <b>completely</b> 42:18 <b>complicated</b> 34:21 <b>component</b> 49:10 <b>compromised</b> 20:6,12</p>	<p><b>concede</b> 16:23 23:14 24:15 44:10 <b>conceded</b> 11:9 <b>conceivable</b> 34:23,24 <b>conceivably</b> 37:1 <b>concept</b> 46:9 <b>concern</b> 20:19 21:3 41:25 <b>concerned</b> 6:14 7:1,19 8:1,6,8 21:6,6,11 31:7 31:14 40:4,5 <b>concerns</b> 42:1 43:15 44:14 50:13 <b>conclusion</b> 33:21 <b>Confusing</b> 22:9 <b>Congress</b> 3:11 3:16 6:13,25 7:17,19,22 8:1 8:5,8,24 12:22 13:9 14:3,8,11 14:13,14 19:15 21:5,11 22:4,6 22:8 27:22 30:25 31:7,14 31:16,20 34:16 35:19 39:6 42:15 43:10,14 43:15,19 44:2,9 45:20 50:24 52:2,5,15 <b>congressional</b> 31:18 <b>Congress's</b> 3:20 22:21 24:25 30:6 48:25 <b>consideration</b> 45:21 <b>considered</b> 25:24 <b>Constitution</b> 40:12 <b>construct</b> 15:5</p>	<p><b>constructed</b> 15:6 38:2 <b>contemporane...</b> 38:7 <b>context</b> 43:17 <b>contexts</b> 53:1 <b>continuing</b> 41:25 <b>continuum</b> 33:14 <b>contract</b> 48:18 <b>contractor</b> 43:3 <b>contrary</b> 22:21 24:24 <b>contrivances</b> 29:13 <b>control</b> 8:22 13:11 14:9 <b>controlling</b> 18:4 <b>controls</b> 15:22 <b>controversy</b> 3:17 4:15 7:21 8:10 10:1 12:1,5 16:3,6 17:6 18:15 22:3 23:9 24:10 27:1 28:19 31:17 35:22 39:9 46:21 51:10 53:14 54:10,13 <b>converse</b> 47:22 <b>correct</b> 5:19 27:13 36:3 <b>costs</b> 12:2,7 <b>counsel</b> 6:8 25:13 29:17 31:24 50:8 54:16 <b>count</b> 13:4 <b>counties</b> 30:25 <b>county</b> 3:15 7:24 19:20 29:2,6 48:24 49:5 50:17 <b>couple</b> 38:4 <b>course</b> 16:23 31:25</p>	<p><b>court</b> 1:1,13 3:10 3:14 4:10 5:25 6:1,3,17,23 9:9 9:18 11:10,24 12:4,11 14:11 14:22,25 16:1 16:12 17:6 18:19 20:2,21 20:25 21:3,14 21:15,22,24 22:1,17,17,18 22:21 23:7 24:24 25:18,24 26:10 27:4,9,14 27:16 28:4,5,6 28:24 30:2 31:12,20 32:25 34:25 35:15 36:13 37:6 38:12 40:1,11 41:6,7,7,19 43:23,24 45:6,7 46:16,18 47:9 47:15 48:10,13 48:16,22,23 50:4,5,6,22 52:11,22 53:2 53:14,17,18 54:6,7,11,12 <b>courts</b> 3:17 4:13 4:18 5:9 7:20 17:7 18:16 19:1 19:18,19 21:7 31:21 32:20 43:13 46:4 52:5 <b>Court's</b> 16:10 35:15 41:17 <b>covered</b> 39:19 39:24 <b>created</b> 38:1 <b>currently</b> 38:2 <b>cut</b> 4:25 34:3</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 3:1</p>
---	---	---	--	--

<b>damage</b> 4:12 16:23	<b>demand</b> 9:22 14:6	25:24 26:9 28:24 32:25	<b>enable</b> 51:25	23:10,12 24:10 31:9
<b>damages</b> 4:4,5 4:14 5:18 15:10 16:25 28:14,18 28:23 29:20 33:8 35:19 36:22 53:9	<b>demande</b> 9:5 14:9 18:3,5 32:12	34:24 37:6 38:12 40:1 41:6 45:6,7,23 46:7 47:15	<b>enacted</b> 3:11 22:14 27:24 32:2 37:21 39:4 43:14	<b>exceeds</b> 4:15 12:1,5 17:14 18:7 19:5 25:10 54:10
<b>DAVID</b> 1:18 2:6 25:15	<b>demanding</b> 38:20	<b>diversity</b> 3:12 5:9,16,17 8:12 19:18 34:19 37:14	<b>encapsulated</b> 50:14	<b>excessive</b> 5:18
<b>day</b> 5:8,10 17:10 50:22	<b>demonstrated</b> 26:25	<b>divide</b> 33:23	<b>encompass</b> 45:14	<b>exclusive</b> 12:2,6
<b>deal</b> 9:25 15:23 31:22 41:11 46:7 49:10	<b>depend</b> 20:12 36:1	<b>Doctors</b> 28:17	<b>encourage</b> 35:24	<b>excuse</b> 7:18
<b>dealing</b> 43:20	<b>deprived</b> 40:8	<b>doctrine</b> 52:21 53:17	<b>ends</b> 39:24	<b>exercising</b> 22:10
<b>dealt</b> 32:19 43:12	<b>describe</b> 46:3	<b>doing</b> 12:17,18 15:19,20 19:20	<b>enforced</b> 17:6,7	<b>exists</b> 19:1
<b>debatable</b> 35:22	<b>desires</b> 8:22 14:24	<b>dollars</b> 21:21 35:18 49:22	<b>enforcing</b> 22:11	<b>expand</b> 3:12
<b>debate</b> 39:3	<b>determination</b> 21:4 36:18 40:19 42:6,7 46:17	<b>doubt</b> 38:11	<b>enlarged</b> 16:7	<b>expect</b> 8:25
<b>deceitful</b> 46:25 47:24	<b>determine</b> 12:25 20:5 32:25 33:1 54:12	<b>downside</b> 43:8	<b>entails</b> 28:10	<b>expensive</b> 51:25
<b>deceiving</b> 46:25	<b>determining</b> 16:6	<b>drafted</b> 43:10	<b>enter</b> 6:9	<b>explain</b> 50:17
<b>decide</b> 4:24 15:9 15:11,12,13 43:13 49:4	<b>dicing</b> 16:16	<b>drawing</b> 33:20	<b>entered</b> 7:15	<b>explicitly</b> 4:13 12:22 34:12
<b>decided</b> 4:10 27:24 29:21	<b>difference</b> 17:16 17:24 32:15	<b>drew</b> 22:4	<b>entire</b> 20:23 49:14	<b>exposed</b> 23:23 24:6
<b>deciding</b> 5:3 49:24	<b>different</b> 4:3 6:3 20:13 23:17 34:5 47:8 51:24	<b>due</b> 7:14,15 21:15 40:14 41:23 42:1,17	<b>equal</b> 33:8	<b>express</b> 3:20 28:21
<b>decision</b> 16:10	<b>difficult</b> 44:1,1	<b>duty</b> 26:9 49:23	<b>equivalent</b> 26:17	<b>expressed</b> 43:15 50:14
<b>deemed</b> 43:12	<b>difficulty</b> 4:21 43:16	<b>D.C</b> 1:9,18	<b>ESQ</b> 1:16,18 2:3 2:6,9	<b>extra</b> 30:21
<b>defeat</b> 48:4	<b>direct</b> 48:12	<hr/> <b>E</b> <hr/>	<b>essentially</b> 28:18	<b>extraordinary</b> 42:13
<b>defendant</b> 18:6 18:12,14 37:15 42:22 44:16,25 46:22 54:9	<b>directed</b> 3:16	<b>E 2:1</b> 3:1,1	<b>established</b> 24:10	<b>extreme</b> 22:13
<b>defendants</b> 3:13 7:23 15:14 41:3 44:13 52:6,7 53:9 54:2	<b>discovery</b> 7:3,4,6 19:22,24 51:15 51:19,23,25 52:10,13	<b>economic</b> 42:17	<b>estimate</b> 28:19 33:7 38:16	<b>extremely</b> 12:20 43:6
<b>define</b> 26:15 53:11,25	<b>discussion</b> 17:19	<b>Edmunds</b> 4:10	<b>estop</b> 41:21	<hr/> <b>F</b> <hr/>
<b>defining</b> 14:11	<b>dismiss</b> 52:12	<b>effect</b> 15:16 23:18,23 36:12 37:9 38:9,16 39:11	<b>estoppel</b> 17:2 41:15	<b>face</b> 42:4
<b>definition</b> 25:4 32:9 47:16 53:8	<b>dispositive</b> 3:23 46:13	<b>effort</b> 44:19,21	<b>et</b> 12:2,7 46:25	<b>fact</b> 16:24 26:25 30:10,20 31:16 41:10 44:8 49:1 52:3
	<b>disproval</b> 37:23	<b>Eighth</b> 48:15	<b>evade</b> 35:6	<b>facts</b> 9:21 16:14 17:10 19:4
	<b>distilled</b> 47:20	<b>either</b> 43:18	<b>Evasion</b> 35:6	<b>factual</b> 5:11,13 15:23 33:3 44:10
	<b>district</b> 11:10,24 12:4 16:1 18:19	<b>elements</b> 5:11	<b>everybody</b> 24:4 29:24 37:9	<b>failing</b> 20:5
		<b>eliminate</b> 8:14 8:15	<b>evidence</b> 17:11 17:12 18:14	<b>fairness</b> 3:11 44:23
		<b>eliminated</b> 8:11 8:12,13 19:17	<b>exactly</b> 9:22 10:21 11:15 18:9 20:2,16 33:24 40:3	<b>faith</b> 36:14 37:6
			<b>example</b> 4:12 7:23 30:9	
			<b>exceed</b> 11:12	

<p>37:7 38:12 41:11 44:19,21 46:9,12,24 47:6 47:7,13,21,22 47:23 <b>fall</b> 25:3 <b>falls</b> 33:14 <b>false</b> 49:1,2 <b>familiar</b> 41:16 <b>far</b> 4:22 <b>favor</b> 34:1 <b>favorable</b> 27:19 <b>federal</b> 3:12 6:2 6:23 11:12 12:11 19:1 20:3 20:21 21:3 22:16,20 24:18 26:17 27:9 28:23 29:15 30:1 31:12,20 31:21 40:15 43:13,23 45:6,7 46:4,7,16 47:14 48:23 49:20,21 50:4 52:9,15 53:4 <b>fee</b> 38:14 <b>fees</b> 21:21 <b>fewer</b> 48:14 <b>figure</b> 30:12 32:14 40:3 <b>file</b> 12:9 30:9 49:5 <b>filed</b> 25:20,23,25 26:16,16 32:8 32:10 36:24 37:4 38:7,10 39:11,18 49:7 <b>files</b> 27:6 29:6 <b>find</b> 14:18 21:15 27:15,20 28:4,5 32:4 50:22 <b>finding</b> 13:24 20:18 24:4 <b>findings</b> 19:16</p>	<p>22:8,15 <b>finds</b> 6:17 36:13 <b>fine</b> 38:6 44:11 45:25 <b>finish</b> 48:13 <b>Fire</b> 1:3 3:4 <b>first</b> 4:7 6:7 11:21 12:8,12 28:12 52:5 <b>five</b> 19:17 41:13 45:16 47:2 50:18 <b>focus</b> 3:20 25:21 32:6 34:13 <b>focuses</b> 10:14 32:3 <b>follows</b> 41:16 <b>force</b> 53:3 <b>forever</b> 39:20,25 51:2 <b>form</b> 14:12 <b>formula</b> 41:17 <b>forth</b> 4:25 54:9 <b>forum</b> 23:3 <b>forward</b> 15:7 23:21 24:5 40:20 <b>found</b> 11:10 18:19,19 23:20 24:16 33:21 37:6 38:12 <b>four</b> 50:9 <b>frame</b> 25:8 <b>framed</b> 47:25 <b>Frederick</b> 1:18 2:6 25:14,15,17 26:7,11,14 27:3 27:13,21 28:7 28:16 29:10,25 31:5 32:5,22,24 33:15 34:15 35:10 36:3,21 37:20 39:2,16 41:1,14 42:16 43:4,9 44:7</p>	<p>46:2,19 47:3,19 48:6,11 49:6,9 49:16,19 52:18 <b>Fredrick's</b> 51:1 <b>friend</b> 32:2 <b>friend-of-the-c...</b> 50:15 <b>frivolous</b> 46:6 <b>full</b> 3:19 22:19 <b>fully</b> 29:19 <b>fundamental</b> 14:21 <b>funds</b> 31:21 <b>further</b> 50:6</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 3:1 <b>gather</b> 31:1 <b>GCOP</b> 43:4 <b>general</b> 18:1 43:3 <b>generous</b> 27:16 27:17 <b>getting</b> 7:10 13:9 14:16 30:13,14 <b>Ginsburg</b> 9:23 10:13 15:24 20:19 25:1 35:25 36:4,9 39:13,16 46:14 47:1 <b>Ginsburg's</b> 11:14 <b>give</b> 6:2 48:1 51:24 <b>given</b> 12:12,13 19:8 34:4 37:8 38:9,16 39:10 45:2 <b>gives</b> 42:13 <b>giving</b> 21:16 43:3 <b>go</b> 8:22 11:5,19 14:24 15:7 17:22 21:23 23:19 24:13,15 24:21 30:17</p>	<p>34:4 42:21,22 43:1 49:17 <b>goes</b> 4:22 7:4 14:20 19:25 23:21,21 24:5 28:12 40:19 42:21 51:15 <b>going</b> 4:10 5:2 6:10,18 7:7 10:3 11:4 13:11 15:15 16:25 20:11,25 21:1 21:15,17 22:19 23:7 24:22 26:21 29:13,22 32:16 33:17,22 40:7,21,22,24 42:5,9,23,25 43:2,6,7,8 45:15,16,17 51:8 52:5,8 53:3 54:1 <b>good</b> 22:25 36:14 37:6,6 38:11 41:10,11 44:19 44:20 46:9,12 47:5,7,13,21 47:23,25 48:21 <b>great</b> 15:23 <b>greater</b> 7:12 16:25 18:10 <b>GREG</b> 1:7 <b>grossly</b> 6:10 7:11 7:15 <b>guess</b> 8:17 <b>guidance</b> 48:1</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>half</b> 21:21 <b>Hampshire</b> 41:17 <b>hand</b> 21:19 <b>handled</b> 20:2 28:3 <b>happen</b> 7:7 27:11</p>	<p>40:25 <b>happened</b> 10:20 10:23 16:15 <b>happening</b> 50:17 <b>happily</b> 10:25 <b>harming</b> 27:17 <b>hate</b> 45:4 <b>hear</b> 3:3 31:3 <b>heard</b> 19:21 <b>hearing</b> 7:24 26:24 39:23 50:19,19 <b>held</b> 49:23 53:14 <b>Hertz</b> 16:10 53:17 54:12 <b>high</b> 50:3 <b>higher</b> 37:16 <b>hold</b> 22:17 36:2 <b>holding</b> 13:15,17 <b>hominem</b> 48:24 <b>Honor</b> 4:8 5:8,19 5:24 6:14,19 7:18 8:20 9:7 9:17 11:7,15 12:19 14:2,20 15:21 16:9 17:4 18:10 19:14 20:17 21:6 22:2 23:5,25 24:7,8 25:7,12 50:12 51:14 52:4 53:13,22 54:3,4 <b>Housing</b> 50:15 <b>hundreds</b> 17:7 35:18 <b>hypothesized</b> 37:2 <b>hypothetical</b> 35:12 46:15,20 49:19</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>ice</b> 31:25 <b>idea</b> 43:16 44:4 45:5 47:21 53:5</p>
--	---	--	---	--

<p><b>identical</b> 12:7  <b>identically</b> 12:13  <b>Imagine</b> 45:6  <b>important</b> 12:20              39:17  <b>impossible</b> 24:20  <b>inadequate</b> 6:17              24:16 28:2              29:22 36:15              39:12 50:23  <b>incentives</b> 42:18  <b>include</b> 16:7 47:1  <b>including</b> 20:13              25:8 42:10  <b>incorrect</b> 52:4,18  <b>individual</b> 3:18              3:21 5:20,25              8:21,24 10:2,15              11:11 12:24              13:4,6,18 14:2              19:6 23:9 26:13              31:8 35:4 37:13              37:13 38:5,18              42:14 49:23,24  <b>individually</b>              38:20  <b>individuals</b> 6:4              11:17 22:10  <b>industry</b> 48:19  <b>infer</b> 43:24  <b>inform</b> 30:11  <b>informed</b> 30:13  <b>inherent</b> 53:6  <b>injunctive</b> 15:11  <b>inoperative</b>              36:19  <b>instance</b> 48:12  <b>Institute</b> 50:16  <b>insufficient</b> 32:6              41:5  <b>insurance</b> 1:3 3:5              48:19,20  <b>intended</b> 6:24              44:3  <b>intent</b> 22:22</p>	<p>24:25  <b>interest</b> 12:2,6              44:23,24  <b>interests</b> 7:17              41:6,19 44:17              44:22  <b>interim</b> 7:3  <b>interpreted</b> 9:18  <b>interpreting</b>              40:15  <b>interregnum</b>              38:3  <b>interrupt</b> 36:4  <b>interstate</b> 21:9  <b>intervened</b> 27:6  <b>invalidated</b> 51:6  <b>investigated</b>              47:6,9  <b>involve</b> 48:3 49:3  <b>involved</b> 18:7  <b>ironic</b> 22:13  <b>issue</b> 4:1 13:7,23              14:21 27:23              43:12  <b>issues</b> 22:3 34:17              34:21 41:23</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>J</b> 1:16 2:3,9 3:7              50:10  <b>January</b> 1:10  <b>jeopardize</b> 11:16  <b>jerry-rigged</b> 52:2              54:13  <b>jobs</b> 40:12  <b>Joe</b> 9:13  <b>joint</b> 44:11  <b>JR</b> 1:16 2:3,9 3:7              50:10  <b>judge</b> 6:10 19:2              22:2 36:16              45:23  <b>judges</b> 27:19              40:11 46:7  <b>judge's</b> 46:23</p>	<p><b>judging</b> 17:5  <b>judgment</b> 11:2,6              18:22,24 19:11              19:13 22:2 23:4              23:22 43:2 48:3  <b>judgments</b> 21:24              28:8,10 34:25              36:6 52:24  <b>judicial</b> 17:2              41:15  <b>juries</b> 27:17,19  <b>jurisdiction</b> 3:13              6:2 11:13,25              12:4,12 16:12              16:12,17,18              19:1,2,18 24:12              24:18 25:25              29:15 30:1              34:20 38:1 49:8  <b>jurisdictional</b>              18:6,8 24:8              34:21 35:24              44:23 46:11,13  <b>justice</b> 3:3,9,25              4:20 5:14,21              6:5,16,22 7:6              8:5 9:1,12,23              10:13,18,22              11:14,18,21,21              13:1,8,13 14:4              14:12 15:2,5,24              16:19 17:16,18              17:20,21,22,23              17:24 18:17,21              19:7 20:1,19              21:11 22:5,23              23:16 24:3 25:1              25:13,18 26:5,8              26:12,15,23              27:10,14,22,25              28:12 29:1,11              29:16,17 30:1,5              30:12 31:2,5,24              32:11,23,24              33:10,19 34:15</p>	<p>35:1,2,10,25              36:4,9 37:12,21              38:17 39:13,16              40:2 41:8 42:2              42:17,25 43:5              43:10,25 45:3              46:14,14,20              47:1,10 48:2,7              48:8 49:4,9,12              49:13,17 50:8              50:18,21 51:11              51:18 53:5,20              53:23 54:5,16  <b>Justice's</b> 15:3              30:9 31:3</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>K</b> 29:5,21 45:17  <b>Kagan</b> 8:5 9:1,12              10:18,22 14:12              15:2 18:17,21              19:7 21:11              23:16 24:3              27:10 40:2 41:8              50:21 51:18              53:5,20,23  <b>Kagan's</b> 11:21  <b>keep</b> 22:20 24:24              30:13 31:19  <b>Kennedy</b> 26:5,8              26:12,15 35:1              35:10  <b>kept</b> 7:19  <b>kind</b> 3:14 8:1              9:15 21:24 30:2              35:19,23 44:15              45:20 46:1 52:1  <b>kinds</b> 28:8 34:16              44:7 45:14  <b>knew</b> 52:5,8,15  <b>know</b> 7:16 8:7              12:8 16:21 20:8              20:15,23 33:6              35:14 36:25              37:3 39:5,22</p>	<p>40:10,22 41:13              42:8 45:8 49:14              51:18,21,24  <b>knowing</b> 44:17  <b>Knowles</b> 1:7 3:5              6:3 10:15 14:22              15:1 24:2  <b>known</b> 44:8  <b>knows</b> 37:9 40:1              42:22</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>L</b> 29:7,21  <b>lack</b> 8:2  <b>language</b> 13:2              25:2 32:3 36:23              54:12  <b>large</b> 35:11              49:21  <b>larger</b> 43:24              53:12 54:10  <b>law</b> 9:15 19:13              22:9 37:25              48:17  <b>lawsuit</b> 36:25  <b>lawyer</b> 12:9 29:2              44:6 48:21  <b>lawyers</b> 16:15              49:7  <b>lead</b> 44:15  <b>leads</b> 16:19              44:21  <b>leeway</b> 18:10  <b>legal</b> 21:21 24:12              28:11 30:2              34:23 36:6 37:8              38:9,16  <b>legally</b> 24:20  <b>legislation</b> 39:5  <b>legitimate</b> 14:10              22:11,11,15  <b>letter</b> 22:9  <b>let's</b> 13:14 15:2              17:22 29:19              32:15 45:12</p>
---	---	---	--	---

<p><b>leverage</b> 42:13  <b>liable</b> 16:24  <b>liked</b> 30:25  <b>limit</b> 8:13 14:25              27:12 42:9 47:5              52:20  <b>limitation</b> 19:3  <b>limitations</b> 4:23              4:25 17:13              19:23  <b>limited</b> 13:23              19:23,24 22:25              23:1 48:5  <b>line</b> 22:5 40:24  <b>litigant</b> 41:20  <b>litigants</b> 47:4  <b>litigation</b> 41:25              46:21 53:7  <b>little</b> 33:11 36:1              47:12  <b>locality</b> 29:12  <b>long</b> 11:24 26:16              33:15,16  <b>look</b> 4:13,18 5:2              5:9 8:7 11:23              12:3 13:15              16:13,13 17:8              21:1,16 31:6              32:8 38:21 39:1              45:11 46:5              51:21 53:19  <b>looking</b> 11:22              13:5 47:21              48:20  <b>looks</b> 13:1 34:9              40:20 41:18              54:11  <b>loophole</b> 30:6  <b>Los</b> 1:16  <b>lot</b> 16:22,25              27:15 28:3              30:22 43:1,7,8              44:5 45:9 51:19              51:22  <b>lots</b> 20:12 47:4</p>	<p><b>low</b> 31:19  <b>lower</b> 17:7 18:16              31:17 37:7</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>Maine</b> 41:17  <b>making</b> 23:4 39:8  <b>manipulate</b>              16:18  <b>manipulation</b>              16:11 25:9  <b>manipulations</b>              7:20  <b>manipulative</b>              45:22,24 47:16              47:17  <b>manner</b> 12:5  <b>Manufactured</b>              50:15  <b>master</b> 8:15              10:17 14:15,17              30:3 31:15              34:18 43:16              52:17,19,21              53:6,16  <b>matter</b> 1:12 8:10              12:1 27:11 33:3              33:4,10,13 39:2              41:14 42:22              54:19  <b>matters</b> 46:5  <b>maximize</b> 28:9  <b>maximum</b> 5:10              17:9  <b>McNutt</b> 53:18  <b>mean</b> 6:9 9:3,3,5              34:5,6 45:14              51:21  <b>meaningful</b>              35:21 40:9  <b>meaningless</b>              32:12  <b>means</b> 11:12              18:25 25:3              32:21,25 33:25</p>	<p><b>meant</b> 16:11              24:24 45:20  <b>mechanical</b>              34:10  <b>member</b> 4:3              12:24 20:11              23:19 27:6 31:8              42:9 49:23,25              50:23  <b>members</b> 3:14              3:18,21 6:7              7:10 8:4,24              10:4,15 11:11              13:6,18 18:23              19:6 20:4,13              21:2 22:6,16,24              23:10 25:2,23              26:13 31:10              32:7 33:8 35:13              36:20,24 38:24              39:15,22 40:8              40:21 41:3,4              42:10,11 44:18              44:24 49:12,22              52:7  <b>Mercury</b> 38:6              46:10 47:20  <b>merits</b> 7:25              52:14  <b>merry</b> 33:24  <b>met</b> 18:12  <b>method</b> 34:10  <b>Miller</b> 3:15 7:24              19:20 29:2              48:24 49:5              50:17  <b>million</b> 4:5 5:6              6:21 10:3,24              11:12 12:6,15              16:22 17:14              19:5,11,12 20:7              21:12,13,14,21              22:4,4 23:10,24              24:11,13,15,21              24:23 25:10</p>	<p>26:22 27:1,7,15              29:5,8 30:11,24              31:9,10,18              32:14,16,17,21              32:22 33:1,6,9              33:12,12,13,13              33:18,23 35:13              35:23 36:1,2,2              37:7 39:20 40:6              40:7 42:5,20,21              42:24 43:8,22              44:5,6,22 45:10              45:21,24 48:4              51:9  <b>millions</b> 30:19              35:18  <b>minutes</b> 50:9  <b>misleading</b> 46:25              47:24  <b>Missouri</b> 42:11  <b>misunderstood</b>              29:25  <b>moment</b> 34:2              47:18 51:12  <b>Monday</b> 1:10  <b>money</b> 14:23              28:5 41:13  <b>monkey</b> 45:13  <b>motion</b> 52:12  <b>motions</b> 46:8</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 2:1,1 3:1  <b>name</b> 54:1  <b>named</b> 10:2,7              11:15 13:11              14:5 15:4,18              20:22 22:17              23:20 25:3              36:15 38:22,24              52:23 53:10,24  <b>names</b> 29:4,7  <b>narrow</b> 43:20  <b>narrower</b> 25:8  <b>Nation</b> 9:18</p>	<p><b>nationwide</b> 35:17  <b>necessarily</b> 4:8              18:4 28:4  <b>necessary</b> 4:16              52:13  <b>need</b> 4:18 18:12  <b>negligence</b> 15:12  <b>never</b> 7:23,25              17:15 46:16              48:2 52:21              53:14  <b>nevertheless</b>              25:9  <b>new</b> 41:17 45:5              51:7  <b>Nods</b> 54:5  <b>non-aggregating</b>              31:13  <b>non-aggregation</b>              43:20  <b>non-named</b>              36:19  <b>normal</b> 6:6  <b>Normally</b> 13:15  <b>north</b> 42:21  <b>noted</b> 19:16  <b>notice</b> 7:13 45:1  <b>notices</b> 22:6,9  <b>notified</b> 20:7,9  <b>notion</b> 10:7 47:11              47:13,20  <b>notwithstanding</b>              40:5  <b>nuanced</b> 34:25  <b>number</b> 22:9              34:16 35:4              38:21 39:1              49:21 51:9 53:9  <b>numerosity</b>              29:12</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 2:1 3:1  <b>objection</b> 4:6              29:9,10</p>
---	---	--	--	---



<p><b>question</b> 3:23 4:23 10:1 11:2 11:4,22 15:3,25 17:13 20:24 21:12,24 23:8 23:25 28:13 29:16,18 35:9 37:8,17 38:15 <b>questions</b> 24:14 31:3 50:6 <b>quite</b> 17:4 <b>quote</b> 14:23 44:8 45:12,13 <b>quoted</b> 3:19 12:16 <b>quoting</b> 12:21</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>R</b> 3:1 <b>raise</b> 4:4 44:14 <b>raised</b> 8:10 <b>rarely</b> 13:13 <b>read</b> 18:2 <b>reading</b> 34:8,9 <b>reads</b> 45:7 <b>real</b> 18:7 32:13 33:11,12,14 34:6,7 <b>realize</b> 31:25 <b>really</b> 5:7 8:9 14:1,18,20 27:7 27:17 32:17 34:12 35:3,23 36:25 37:16 38:13,15 40:6 40:17,20 48:3 49:14 53:20 <b>reason</b> 29:18 44:1 48:7,9,16 52:16 <b>reasonable</b> 46:4 <b>reasonably</b> 23:2 <b>reasons</b> 41:1 42:13 47:4 48:11,21 52:11</p>	<p><b>REBUTTAL</b> 2:8 50:10 <b>record</b> 11:11 <b>recover</b> 5:3,11 52:25 <b>recovered</b> 4:14 <b>recovery</b> 9:21 14:25 19:4 37:18 <b>referring</b> 37:20 <b>reforms</b> 37:25 <b>regarded</b> 23:2 <b>regarding</b> 9:20 <b>rejected</b> 31:16 <b>relate</b> 52:14 <b>relied</b> 41:20 <b>relief</b> 15:11 26:20 <b>rely</b> 10:25 <b>remaining</b> 20:10 <b>remand</b> 20:2 <b>remanded</b> 32:20 <b>removal</b> 8:13 18:1 19:2,3 20:25 22:3,4 23:7 36:16,17 36:18 37:25 38:1,8 43:11 52:6 <b>remove</b> 27:8,10 37:15 39:9 <b>removed</b> 6:23 18:4 43:22 45:8 48:23 51:12 <b>render</b> 36:14 <b>renounced</b> 28:13 28:22 <b>reply</b> 28:21 44:10 <b>report</b> 7:2,22 8:6 31:6 32:1 <b>represent</b> 6:4 9:10 10:9,9,10 22:18 29:3,7,14 41:6 52:23</p>	<p><b>representation</b> 21:1 24:5 27:23 28:2 40:13,19 50:2 <b>representative</b> 3:23 4:7 5:4 6:20 21:18,23 24:16,17 25:21 26:1,3 27:2 28:8 33:5 36:15 37:5,5,11 41:23 41:24 42:14,19 44:12,16 50:23 51:5,8 <b>representatives</b> 29:14 <b>represented</b> 29:23 <b>representing</b> 29:19,23 <b>require</b> 13:3 <b>required</b> 30:21 <b>requirement</b> 8:12 <b>requires</b> 3:24 20:8 <b>requisite</b> 29:12 <b>reserve</b> 25:11 <b>reside</b> 36:6 <b>residents</b> 49:7 <b>resist</b> 45:13 <b>respect</b> 12:8 42:17 45:2 51:1 <b>Respondent</b> 1:19 2:7 25:16 <b>response</b> 33:20 34:13 <b>responsible</b> 16:22 <b>responsive</b> 35:9 <b>rest</b> 25:11 <b>resting</b> 8:19 <b>restrictions</b> 19:17 <b>result</b> 27:11</p>	<p><b>results</b> 16:20 <b>reversal</b> 3:24 <b>reversed</b> 42:18 <b>reversing</b> 37:24 <b>rid</b> 13:9,14,18 14:15,16 <b>right</b> 5:18 9:21 10:14 18:10 20:17 23:18 27:11 32:21 <b>rights</b> 22:11 52:25 <b>risky</b> 47:12 <b>ROBERTS</b> 3:3 3:25 4:20 16:19 17:20,22 22:23 25:13 26:23 29:1,17 31:24 42:2,25 43:5,25 49:4 50:8 54:5 54:16 <b>rule</b> 5:22,24,24 8:2,11,16,21 14:16,17 19:19 20:8 21:9 24:18 26:17 31:13 34:18,19 35:16 38:5,18 39:6,10 43:17 46:6,8 49:21 53:16 <b>rules</b> 5:16 17:5 32:10 49:20 52:9 54:7 <b>ruling</b> 7:25</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 2:1 3:1 <b>salutary</b> 48:16 <b>satisfied</b> 16:4 33:2 <b>saying</b> 4:17 5:2 9:24 20:22 23:11 26:5 29:6 34:10 35:1,5 47:6 53:23</p>	<p><b>says</b> 11:8,24 12:3,9,23 13:14 13:16,19 14:24 19:9 24:9 26:9 27:7 29:3 33:16 35:4 41:11 45:8 45:19 51:4 <b>Scalia</b> 5:14,21 27:14,22,25 <b>Scalia's</b> 31:2 <b>score</b> 54:7 <b>second</b> 12:13 27:4 30:19 46:9 48:17 <b>section</b> 3:18 12:20,21,22 27:8 <b>see</b> 4:18 5:9 8:17 20:6 34:3 <b>seek</b> 6:21 10:3 15:9,10 22:19 52:21 <b>seeking</b> 9:9 16:21 24:12 <b>seeks</b> 8:22 52:24 <b>Senate</b> 7:2,22 8:6 32:1 <b>seniority</b> 17:23 <b>serve</b> 47:9 <b>served</b> 19:25 <b>set</b> 42:9 43:24 47:15 <b>settle</b> 42:6,8 <b>settled</b> 37:25 49:22 <b>settlement</b> 7:14 50:1 <b>settlements</b> 52:14 <b>Seventh</b> 28:17 <b>show</b> 24:12 <b>showed</b> 19:4 <b>side</b> 32:3 <b>sign</b> 16:11 <b>significant</b> 51:20</p>
---	---	---	---	---

<p><b>silent</b> 9:25  <b>similar</b> 45:16  <b>simple</b> 34:21              35:6 52:6  <b>simplest</b> 35:5,7  <b>simplicity</b> 35:24              44:23  <b>simply</b> 5:4 13:3              38:19 52:18  <b>situation</b> 31:7  <b>situations</b> 49:12  <b>six</b> 33:23 50:18  <b>slicing</b> 16:16  <b>slightly</b> 32:13  <b>slippery</b> 5:1  <b>slope</b> 5:2  <b>Smith</b> 10:25 11:1              11:8  <b>solution</b> 52:2  <b>solve</b> 50:24              51:14,16  <b>somebody</b> 29:21              45:5 50:22  <b>soon</b> 30:22  <b>sorry</b> 17:20,21              36:4  <b>sort</b> 9:4 42:14,15              45:4  <b>Sotomayor</b> 6:5              6:16,22 7:6              15:5 17:18,21              48:2,7,8 49:9              49:17 51:11  <b>sought</b> 3:22 4:1              13:10 14:5              50:24  <b>space</b> 31:23  <b>speak</b> 10:3 29:15  <b>specific</b> 34:17  <b>specifically</b>              15:24  <b>specified</b> 16:2  <b>speculate</b> 44:2,2  <b>speedy</b> 50:18              52:12</p>	<p><b>St</b> 8:15,21 14:15              14:17,23,24              24:9,9 38:6              46:10 47:20              52:19  <b>stage</b> 29:11              36:13,18 46:21              46:22  <b>stake</b> 32:4  <b>stamps</b> 30:23  <b>stand</b> 20:22  <b>standard</b> 1:3 3:4              52:12  <b>standardized</b>              30:22  <b>standards</b> 8:3              18:12 19:19              21:7,10 40:13  <b>start</b> 5:2 50:13  <b>starts</b> 42:20  <b>state</b> 3:14 7:20              14:24 19:9,18              20:25 21:7,14              21:15,24 22:1              23:7 24:24              26:17 27:4,14              28:4,5,6 32:20              33:8 35:15              37:17 40:11              41:7,16 43:11              46:17 48:10,13              48:17,19,20,22              50:4,5 52:5              53:3  <b>States</b> 1:1,13  <b>State's</b> 19:13  <b>State-regulated</b>              48:19  <b>statute</b> 3:21 4:23              4:25 5:9,16,18              6:23 7:1 9:19              9:25 10:7,14              11:22 12:12,13              13:14,16,19              17:13 18:1</p>	<p>22:14 26:18          27:24 30:7 31:6          34:1,11 35:3,6          37:21 38:4          40:15 41:2          43:10,14 45:7          45:19 48:4  <b>statutory</b> 32:3  <b>stay</b> 30:16,17              48:9  <b>stayed</b> 30:18  <b>staying</b> 35:15  <b>stipulate</b> 10:5              32:16  <b>stipulated</b> 33:4  <b>stipulating</b> 37:7              38:19  <b>stipulation</b> 6:9              6:17 7:10 12:9              13:23 18:17,19              20:24 21:2              23:12,22 24:23              25:19 26:2              33:16,25 35:21              36:10,14,19              38:7,10,23              39:10,21,25              40:17,23 41:5              42:19 44:12,21              45:10,11,12,20              45:22 46:7,11              47:24 51:2,5,6  <b>stipulations</b>              16:16 19:9              36:12 44:8,10              47:15  <b>stop</b> 15:18,20              34:9  <b>stops</b> 12:17,17  <b>strange</b> 40:14  <b>strategic</b> 28:8              48:7,8  <b>strategies</b> 36:6  <b>strategy</b> 30:3  <b>strong</b> 52:12</p>	<p><b>strongly</b> 34:3  <b>subject</b> 30:18              33:20 37:23              39:9 53:15  <b>submit</b> 50:7  <b>submitted</b> 54:17              54:19  <b>subsection</b> 12:23  <b>subsidiary</b> 33:23  <b>substantive</b> 4:2  <b>subtle</b> 34:19  <b>sue</b> 15:14  <b>sued</b> 47:2  <b>suggest</b> 24:20  <b>suggesting</b> 14:4  <b>suggestion</b> 51:1  <b>suing</b> 47:2  <b>suit</b> 21:13,14              23:20,21  <b>suits</b> 21:12  <b>sum</b> 12:1,6 14:9  <b>suppose</b> 20:8              33:12 37:12  <b>supposed</b> 28:24              51:16  <b>supreme</b> 1:1,13              20:2 48:13  <b>Sure</b> 31:5 49:19  <b>surely</b> 5:15  <b>suspect</b> 28:4  <b>swallows</b> 30:6  <b>swift</b> 52:6  <b>sympathetic</b> 23:3  <b>system</b> 52:16</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 2:1,1  <b>tactical</b> 47:4  <b>take</b> 8:21 10:5              13:11 16:5              28:24 29:8              34:22 45:17              48:14  <b>taken</b> 18:1 19:22  <b>takes</b> 50:18</p>	<p><b>talk</b> 49:2  <b>talking</b> 32:1,1              45:15 48:17  <b>talks</b> 7:22 26:8              51:19  <b>tear</b> 40:22  <b>tell</b> 20:10 53:24              54:1  <b>telling</b> 15:18 32:5  <b>tells</b> 32:4  <b>ten</b> 30:20 51:15              51:24  <b>Tenth</b> 28:15  <b>term</b> 25:2  <b>terms</b> 9:10 26:15              32:23 34:17  <b>Texarkana</b> 49:6              49:8  <b>text</b> 3:21 7:1 8:7              8:7,17,19,20              8:24 19:16  <b>Thank</b> 25:12,13              25:17 50:8,12              54:15,16  <b>THEODORE</b>              1:16 2:3,9 3:7              50:10  <b>theoretically</b>              51:13  <b>theories</b> 28:11              34:23  <b>theory</b> 28:20              35:25 36:2              46:15  <b>thin</b> 31:25  <b>thing</b> 8:14,19              9:16 12:15 13:4              20:21 22:24              23:1 35:5 40:4              40:6,14 42:2  <b>things</b> 8:8,9              15:15,19,21,22              20:13 40:20              45:2,15 51:22  <b>think</b> 8:20 9:3,3</p>
---	--	--	--	--

<p>9:5,8,12 16:14 19:7 21:4 23:17 25:8 30:1 32:14 33:11 35:2 36:11 38:13 42:16 43:23 44:9,13 46:3,23 47:3,25 50:13</p> <p><b>thinks</b> 49:25 <b>thought</b> 9:23 10:5,12 44:4 45:4,5,25 <b>thousand</b> 15:3 <b>threshold</b> 8:10 18:6,8 <b>thwart</b> 16:12,17 <b>time</b> 11:24 15:25 16:2 19:2,3 22:3 25:8,11 29:6 34:24 36:16,17 46:8 47:6,8 53:10,24 53:25 <b>times</b> 41:13 <b>Tohono</b> 9:18 <b>told</b> 32:13 <b>tools</b> 46:2 <b>total</b> 13:22 14:6 <b>totally</b> 22:21 32:12 <b>traditional</b> 5:8,15 5:16,17 <b>treated</b> 40:22 46:13 <b>trespass</b> 15:12 <b>trial</b> 41:6 42:23 43:1 <b>tried</b> 30:25 <b>trouble</b> 13:24 <b>troubling</b> 49:11 <b>true</b> 12:12 23:11 33:6 49:20 <b>truly</b> 49:15 <b>try</b> 24:20 35:11 43:24 52:24</p>	<p><b>trying</b> 14:18 35:20 40:3 <b>turns</b> 29:5 41:9 <b>two</b> 4:2 19:23,24 23:17 41:1 46:2 47:2 50:14 51:16</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>unappointed</b> 52:22 <b>uncertain</b> 28:22 <b>uncontradicted</b> 11:10 17:12 <b>undermine</b> 11:16 <b>understand</b> 19:7 20:3 27:25 28:20 39:17 <b>understanding</b> 44:24 46:19 <b>undisputed</b> 19:4 23:11 <b>unfair</b> 6:10 7:11 7:15 51:6 <b>uniformity</b> 21:8 <b>unique</b> 50:5 <b>United</b> 1:1,13 <b>unnamed</b> 25:3 39:14 <b>unusual</b> 17:3 <b>urged</b> 14:11 <b>use</b> 35:7 <b>uses</b> 9:19 23:17 <b>usually</b> 8:7 21:23 40:11 53:1 <b>U.S.C</b> 3:18</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>v</b> 1:6 3:5 4:10 10:25 11:1,8 41:17 <b>valid</b> 51:7 <b>valuable</b> 43:7 <b>value</b> 12:1,6 28:9 32:17 34:6</p>	<p><b>valuing</b> 9:10 <b>variety</b> 42:12 <b>various</b> 28:11 39:3 <b>Venue</b> 14:7 <b>version</b> 9:4 <b>view</b> 9:15 47:12 <b>violates</b> 7:15 46:5 <b>virtually</b> 31:19 <b>virtue</b> 34:9 <b>virtues</b> 39:3 <b>vis</b> 7:6,7</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waive</b> 5:18 <b>want</b> 5:15,21,23 6:1,4 10:23 25:21 27:18 29:3 34:12,20 36:5,8 47:5 48:9,22,22 <b>wanted</b> 14:15 52:6 <b>wants</b> 8:23 11:5 52:20 53:2 <b>Washington</b> 1:9 1:18 <b>wasn't</b> 43:14 52:8,19 <b>way</b> 15:6 18:15 30:12 31:11 33:22,24 34:3,3 34:4 35:11 38:1 40:24 47:24 48:15 49:18 52:6 <b>ways</b> 15:3,17 46:4 47:11,13 <b>well-pleaded</b> 34:18 <b>well-settled</b> 38:5 <b>went</b> 31:6 <b>weren't</b> 21:7 32:2 <b>we'll</b> 50:6</p>	<p><b>we're</b> 4:17 5:2 13:9 16:22,24 17:4,5 21:17 22:19 25:6 33:20,22 45:6 48:17 <b>we've</b> 9:17 25:9 27:19 33:21 45:15 <b>whatsoever</b> 23:13 <b>wholly</b> 48:23 <b>wind</b> 48:14 <b>word</b> 8:18 9:12 9:19,19 13:25 14:1,2,3 23:18 30:16 32:6 <b>worded</b> 12:14 <b>words</b> 4:23 11:22 12:7,16,17 13:5 25:22 34:1,5 <b>work</b> 40:20 <b>working</b> 47:11 47:13 <b>world</b> 53:21 <b>worried</b> 40:17 42:3,15 <b>worry</b> 40:15 <b>worse</b> 14:14 <b>worth</b> 9:8 15:13 26:21 27:7,15 27:16 28:3,5 30:11 33:5,17 35:18 41:10,13 42:4,20,24 43:1 43:7,21 44:5,22 45:9 48:3 <b>wouldn't</b> 6:12 21:4 38:17 <b>would-be</b> 3:22 <b>wrong</b> 41:10</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p><b>x</b> 1:2,8 13:14,15 49:22</p>	<hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> 27:12 <b>years</b> 7:5 15:13 16:7,8 17:7 19:24,25 37:24 38:4 47:2 48:14 50:18 51:15,16 <b>yield</b> 4:4,5,12</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>Z</b> 29:7 <b>Zahn</b> 8:11 13:3,6 13:9,17,19 14:23 31:12 35:15</p> <hr/> <p style="text-align: center;"><b>\$</b></p> <hr/> <p><b>\$10</b> 4:5 27:1,7 <b>\$100,000</b> 9:2,14 <b>\$2</b> 31:17 <b>\$20</b> 40:6 42:8 <b>\$25</b> 33:23 <b>\$3</b> 33:9 <b>\$4</b> 29:5,8 42:5 <b>\$4,800,000</b> 30:15 <b>\$4,900,000</b> 4:4 30:10 <b>\$5</b> 5:6 6:21 10:3 11:12 12:6,15 16:22 17:14 19:5,11,12 20:7 21:12,13,14 22:4,4 23:10,24 24:11,13,15,21 24:23 25:10 26:22 32:14,16 32:21 33:6,12 33:18 35:23 36:1 37:7 39:20 40:7 42:20,24 43:8,22 44:5,6 44:22 45:21 51:9 <b>\$5,024,000</b> 21:20 <b>\$50</b> 30:24 32:17</p>
--	---	---	---	--

48:4	<b>23's</b> 21:9			
<b>\$50,000</b> 31:11	<b>25</b> 2:7			
35:14	<b>28</b> 3:18			
<b>\$6</b> 10:24	<hr/>			
<b>\$75,000</b> 12:2,11	<b>3</b>			
31:9 37:15,18	<b>3</b> 2:4			
<b>\$8</b> 36:2	<b>3a</b> 20:17 22:7			
<b>\$9</b> 36:2	<b>30</b> 30:24			
<hr/>	<hr/>			
<b>1</b>	<b>4</b>			
<hr/>	<hr/>			
<b>10</b> 7:5 30:11	<b>40</b> 30:24 38:14			
<b>100-plus</b> 37:24	<b>41</b> 51:4			
<b>11</b> 26:20 28:21	<hr/>			
33:4 46:6,8	<b>5</b>			
<b>11-1450</b> 1:5 3:4	<b>5</b> 16:7 27:15			
<b>11:06</b> 1:14 3:2	32:22 33:1			
<b>12:06</b> 54:18	42:20 44:9 45:9			
<b>13</b> 19:25	45:24 48:5			
<b>1332</b> 11:23	<b>5,000</b> 10:5			
<b>1332(a)</b> 12:22	<b>5-year</b> 16:2			
14:8 18:11	<b>50</b> 2:10 30:19			
<b>1332(d)(1)(B)</b>	<b>53</b> 36:11			
26:14	<hr/>			
<b>1332(d)(1)(D)</b>	<b>6</b>			
25:2	<b>6</b> 12:23 26:5,8			
<b>1332(d)(2)</b> 12:21	33:12 35:4			
<b>1332(d)(6)</b> 3:19	<hr/>			
12:20	<b>7</b>			
<b>1446</b> 18:11	<b>7</b> 1:10 33:13			
<b>1446(c)(2)</b> 18:2	<hr/>			
<b>1453(b)</b> 27:8	<b>8</b>			
<b>1870s</b> 37:25 38:3	<b>8</b> 33:13			
<b>1886</b> 4:10				
<hr/>				
<b>2</b>				
<hr/>				
<b>2</b> 3:19 16:8				
<b>2-year</b> 16:4				
<b>20</b> 30:20 42:8				
<b>200</b> 37:24				
<b>2005</b> 3:12				
<b>2011</b> 14:8				
<b>2013</b> 1:10				
<b>21st</b> 50:16				
<b>23</b> 8:2 19:19 20:8				
26:17 49:21				