



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

- - - - -

NEAL BISSONNETTE, ET AL., )

Petitioners, )

v. ) No. 23-51

LePAGE BAKERIES PARK ST., LLC, )

ET AL., )

Respondents. )

- - - - -

Washington, D.C.

Tuesday, February 20, 2024

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

APPEARANCES:

JENNIFER D. BENNETT, ESQUIRE, San Francisco, California; on behalf of the Petitioners.

TRACI L. LOVITT, ESQUIRE, New York, New York; on behalf of the Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	JENNIFER D. BENNETT, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	TRACI L. LOVITT, ESQ.	
7	On behalf of the Respondents	31
8	REBUTTAL ARGUMENT OF:	
9	JENNIFER D. BENNETT, ESQ.	
10	On behalf of the Petitioners	64
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:13 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 23-51, Bissonnette versus LePage Bakeries.

Ms. Bennett.

ORAL ARGUMENT OF JENNIFER D. BENNETT

ON BEHALF OF THE PETITIONERS

MS. BENNETT: Thank you. Mr. Chief Justice, and may it please the Court:

Less than two years ago, in Southwest versus Saxon, this Court carefully examined the text and history of the Federal Arbitration Act's worker exemption, and it held that the exemption applies to "any class of workers directly involved in transporting goods across state or international borders."

Flowers now asks this Court to add an additional unwritten requirement that the worker's employer must sell transportation. According to Flowers, if the thousands of truck drivers who work full-time hauling its goods were only implied -- employed by a trucking company that Flowers had hired to do so, then they'd be exempt transportation workers. But,

1 because Flowers essentially created its own  
2 in-house trucking company, it says that those  
3 same truck drivers are no longer transportation  
4 workers.

5 That distinction has no basis in the  
6 text of the statute. Flowers' only attempt at a  
7 textual argument is its invocation of ejusdem  
8 generis, but that argument fails from the start  
9 because Flowers can't identify a single example  
10 of the word "seamen" ever being defined based on  
11 whether a worker's employer sold transportation.

12 In fact, if Flowers' drivers were on  
13 boats rather than trucks, under Flowers' own  
14 definition of "seamen," they would be seamen.  
15 In the words of Saxon, that sinks the company's  
16 ejusdem generis argument.

17 Unable to rely on the text, Flowers  
18 pivots to administrability. But, even if this  
19 Court could rewrite statutes to make them easier  
20 to apply, Flowers' rule is anything but  
21 workable. Flowers can't even explain how it  
22 would apply in this very case.

23 This Court should reject Flowers'  
24 attempt to add to the FAA an employer-based  
25 industry requirement that is both atextual and

1 unworkable.

2 I welcome this Court's questions.

3 JUSTICE THOMAS: If this case is  
4 decided in your favor, would it affect the  
5 separate question of whether or not this --  
6 these drivers are engaged in intrastate  
7 deliveries?

8 MS. BENNETT: No, I don't think it  
9 would. The only question -- you know, as this  
10 case comes to the Court, built into the question  
11 presented is the assumption that the workers are  
12 members of a class of workers engaged in  
13 interstate commerce. It wouldn't affect that at  
14 all.

15 The only question here is, assuming  
16 that to be true, is there an additional  
17 requirement that the individual plaintiffs be  
18 employed by a company that's in the  
19 transportation industry?

20 JUSTICE THOMAS: So why would the  
21 inquiry into transportation industry be any more  
22 complicated than the inquiry into transportation  
23 workers?

24 MS. BENNETT: So, by -- by  
25 "transportation workers," I take it you mean

1 whether someone is directly involved?

2 JUSTICE THOMAS: Yeah.

3 MS. BENNETT: So -- so I think there  
4 are -- I think there are certainly going to be  
5 edge cases about whether some -- a class of  
6 workers is directly involved in transporting  
7 goods across state or international borders. I  
8 would concede that. But what Flowers is asking  
9 is that we adopt an additional requirement on  
10 top of that that wouldn't obviate that inquiry.

11 So take, for example, Amazon. So it  
12 has trucks traveling across the highway. It has  
13 planes in the air. Maybe there's a difficult  
14 question about whether those, you know, say,  
15 truckers are directly involved in transporting  
16 goods across borders. But what Flowers says is,  
17 in addition to figuring out that question, we  
18 also have to figure out whether Amazon sells  
19 transportation.

20 So, you know, how do we know? Do we  
21 need discovery into whether it sells  
22 transportation? Does it matter who it sells it  
23 to? Does it just have to sell it to its  
24 customers? Does it have to sell it to other  
25 companies? Does it matter how much

1 transportation it sells? Does it matter what  
2 percentage of its price is in revenues? All of  
3 these are going to be difficult questions that  
4 are then layered on top of the question you  
5 raised, which is already in the text of the  
6 statute.

7 And so, in an Amazon's case, for  
8 example, it doesn't get us out of the question  
9 you raised. It just adds an additional one on  
10 top.

11 JUSTICE KAVANAUGH: In your opening,  
12 you emphasized the text quite a bit.

13 MS. BENNETT: Yes, Your Honor.

14 JUSTICE KAVANAUGH: But, in ejusdem  
15 generis cases, by definition, we're not  
16 following the literal text of the residual  
17 clause. Instead, we're looking at the listed  
18 items and trying to discern what connects those  
19 listed items, what feature of those listed items  
20 is common. And as -- as the Scalia-Garner  
21 treatise says, that can be somewhat  
22 indeterminate. A difficult position for judges,  
23 but we have to try to figure it out.

24 So seamen and railroad employees in  
25 1925, one thing that it seems was going on and I



1 want to get your reaction to is Congress took  
2 them out of this arbitration regime. All  
3 workers, all contracts of employment are subject  
4 to arbitration. It takes them out, but it takes  
5 them out seemingly -- you have to look at the  
6 legal context, I would think -- because they had  
7 a separate arbitration regime that already  
8 existed.

9 In other words, at least as I read the  
10 record, and it is murky in parts, I'll grant  
11 you, as of 1925, Congress didn't want anyone to  
12 be outside of arbitration. They wanted  
13 Section 2 for most workers and then not for  
14 seamen and railroad employees because there was  
15 a separate arbitration regime.

16 Why, when we look at the common legal  
17 context that connects those terms, isn't that  
18 the correct way to look at it? Why is that  
19 wrong?

20 MS. BENNETT: There's two answers to  
21 that. One is we know that Congress wasn't  
22 exempting just workers who had alternative  
23 dispute resolution regimes because it added the  
24 residual clause, and that residual clause would  
25 have covered no workers at all at the time.

1                   JUSTICE KAVANAUGH: At the time, but  
2 what Congress was doing, arguably -- this is the  
3 argument -- was contemplating that there would  
4 be future industries that would fit in. And in  
5 1936, the airline industry comes in, and those  
6 employees are funneled into the same kind of  
7 separate arbitration -- or the railway  
8 arbitration regime. So Congress was  
9 accommodating the future.

10                   MS. BENNETT: Sure. So the -- the  
11 second historical answer to that is, even if  
12 this Court were going to try to discern some  
13 purpose of the exemption and instead of focusing  
14 specifically on the text, which is difficult a  
15 hundred years later, you know, if you look at  
16 seamen, I think one of the assumptions under  
17 that -- underlying that question is seamen  
18 had -- were going to arbitration, that there was  
19 a mandatory arbitration scheme that covered  
20 seamen, and that's actually just -- just not  
21 correct.

22                   So the Shipping Commissioners Act,  
23 which is the statute that provided for shipping  
24 commissioner arbitration for seamen, two things  
25 about that. It wasn't limited to employers who

1 sold transportation, so it was -- it had  
2 geographic limitations. It was about seamen who  
3 were traveling abroad, coast to coast, and some  
4 coastalized seamen, like the people on lumber  
5 boats who would have been employed in lumber  
6 companies.

7           So, even if you think that's the  
8 purpose of the exemption, is to accommodate  
9 these alternative dispute resolution schemes,  
10 adding an employer-based industry requirement  
11 would actually conflict with that purpose.

12           I also want to take a step back and  
13 talk about what the dispute resolution scheme  
14 was governing seamen at the time, and this Court  
15 has discussed that in its U.S. Bulk Carriers  
16 case, and what the Court said is, you know, from  
17 the beginning of time essentially, seamen have  
18 been wards of the court. They've been subject  
19 to the court's protection with a right to bring  
20 cases in court. And since 1790, Congress had  
21 enshrined that right in statutes.

22           And what the Shipping Commissioners  
23 Act did is it said, if certain seamen, after a  
24 dispute arises, if they agree with the master of  
25 their boat in writing to go to the -- to the

1 shipping commissioner, then they can do so.

2 And what this Court held is that  
3 imposing a pre-dispute mandatory arbitration  
4 scheme would conflict with this age-old right to  
5 go to court --

6 JUSTICE KAVANAUGH: So you think  
7 Congress in 1925 wanted seamen to be able to go  
8 straight to court?

9 MS. BENNETT: I think that's exactly  
10 right. And I think that's what the --

11 JUSTICE KAVANAUGH: Where -- is there  
12 anything to support that?

13 MS. BENNETT: Sure. So -- so there  
14 are a few things. One is what this Court said  
15 in U.S. Bulk Carriers. If you look at the title  
16 of the U.S. Code, which is Title 46, enacted in  
17 1925, the same year that the Federal Arbitration  
18 Act was enacted, what you'll see is references  
19 all of the -- a lot of the rights. The  
20 references say you can go to court.

21 And if you look at the Shipping  
22 Commissioners Act itself, it only applies if,  
23 after the dispute has arisen, the parties to the  
24 dispute agree in writing to go to arbitration.

25 In other words, it only applies

1 post-disputes, quite different than what the  
2 Federal Arbitration Act would require. And --  
3 and this Court explained all of this in -- in  
4 the U.S. Bulk Carriers case, and in that case,  
5 it was looking at grievance arbitration, but the  
6 principles apply, and -- and the principles are  
7 this mandatory pre- dispute arbitration statute  
8 would have -- would have interrupted all of  
9 this.

10 JUSTICE BARRETT: Counsel, can I --  
11 I'm sorry, are you finished?

12 JUSTICE KAVANAUGH: Go ahead.

13 JUSTICE BARRETT: Is there any  
14 continuing reason -- and this is just my  
15 ignorance, so I'm just curious -- we were  
16 talking about why in 1925 what the regulatory  
17 regime was and whether Congress wanted to funnel  
18 some of these transportation workers into  
19 alternative dispute mechanisms -- resolution  
20 mechanisms.

21 Is this now just an anachronism, or is  
22 there any continuing reason for transportation  
23 workers to be exempt?

24 MS. BENNETT: So I'll -- I'll -- I'll  
25 be quite honest with you, which is it's not

1 clear entirely what the purpose was in 1925.

2 It's not clear now.

3           You know, I think, if you -- if you  
4 look at the history, what was happening is that  
5 there were, you know, strike after strike in the  
6 transportation -- among transportation workers,  
7 and -- and -- and among maritime workers  
8 specifically, the strikes were -- were -- the  
9 core of those strikers were lumber boats, people  
10 who were not employed by employers in the  
11 transportation industry.

12           And -- and to the extent that what  
13 Congress was doing is saying these people are  
14 really important to our economy and every time  
15 they strike they are interrupting commerce, you  
16 know, the seamen strike amongst the lumber boats  
17 in 1923 interrupted the whole building boom on  
18 the West Coast, and so --

19           JUSTICE BARRETT: But -- but that's  
20 all from the past, right?

21           MS. BENNETT: Sure. So it may have --

22           JUSTICE BARRETT: So my question is  
23 just like, yeah, now.

24           MS. BENNETT: Right. So putting that  
25 in that context, you know, one thing that --

1 that courts do and that group-based arbitration  
2 does is it makes transparent issues that are  
3 coming up amongst transportation workers and  
4 amongst these companies, and it gives Congress  
5 and the executive branch, which was often  
6 involved in these disputes in the past, insight  
7 into -- into how these disputes are arising and  
8 maybe the potential for heading them off.

9 And so I do think there's a modern  
10 reason, you know, to the extent we think that  
11 was the reason in 1925, it's no different now in  
12 what it -- in that people going to court and  
13 people going to sort of labor-based grievance,  
14 group-based arbitration like in the railroad  
15 statutes would -- would flag these kinds of  
16 disputes perhaps before they end up, you know,  
17 in nationwide strikes that are going to  
18 interrupt commerce.

19 JUSTICE SOTOMAYOR: The Second Circuit  
20 did not rely on the district court's reasoning.

21 MS. BENNETT: They did not.

22 JUSTICE SOTOMAYOR: And so it's not  
23 before us. And -- and -- but this is more a  
24 curiosity on my part.

25 The district court I understood said

1 they're not transportation workers because they  
2 do more that's office-based. They're --  
3 they're -- they're not a traditional  
4 transportation worker.

5 How do you deal with that? If -- if  
6 someone's job is, you know, at the end of the  
7 day, they're making all this product, but they  
8 deliver it from here to somewhere else, that's  
9 enough for you?

10 MS. BENNETT: So I'd say there's a  
11 factual answer to that question and a legal  
12 answer, and I'll take the legal question first,  
13 which is --

14 JUSTICE SOTOMAYOR: Okay. Go ahead.

15 MS. BENNETT: -- which is I think what  
16 you're raising is the question of some workers  
17 have different tasks that they do and how do --  
18 how do we deal with that question. And the  
19 first stab I would take at that is to look at  
20 this Court's decision in Saxon actually.

21 You know, Ms. Saxon in Saxon spent  
22 three days a week roughly loading and unloading  
23 cargo and two days a week supervising other  
24 people. And what this Court said is three days  
25 a week is enough. We don't need to look at



1 whether the supervision counts.

2           And -- and, you know, so -- and so  
3 there may be, I think, tough questions in very  
4 few cases actually where people are -- are  
5 having multiple jobs. I'll note that these  
6 aren't -- we haven't seen them in the lower  
7 courts. It doesn't come up often.

8           And there are -- and the way I would  
9 deal with answering them, you know, if it's say  
10 less than Saxon but more than never is -- is to  
11 look -- you know, I would do two things. One is  
12 I would look in 1925 and see, for example, how  
13 much, you know, of the time did someone have to  
14 spend doing the kinds of work that somebody is  
15 doing to be a seamen and a railroad employee.

16           I'd also note that this comes up in  
17 other statutory regimes and I might look at  
18 those cases. So, for example, there's a whole  
19 body of law around the Jones Act, which is the  
20 case that involves -- the statute governing when  
21 seamen are injured and when they can bring  
22 claims about what percentage of the time the  
23 person has to be connected to the vessel in  
24 order for them to be a seamen. And so I might  
25 look at that body of law.

1                   There's a body of law under the Motor  
2 Carriers Act about how much a -- a company needs  
3 to be engaged in commerce to be subject to that  
4 act.

5                   So it's not an unusual question, and  
6 courts have tools to answer that question. It's  
7 also not a question that comes up much.

8                   JUSTICE KAVANAUGH: Can I ask you  
9 about Saxon itself and also comments in your  
10 brief that it would make no sense to adopt the  
11 opposing side's view?

12                   Because, in Saxon, at oral argument,  
13 it was repeatedly stated to us, if we're talking  
14 about a company that is shipping its own goods,  
15 those people likely wouldn't have been railroad  
16 -- railroad employees or seamen at the time.

17                   Not just Amazon department stores,  
18 those people are likely not exempt, and here's  
19 why. There was a distinction that was made  
20 between railroads that shipped things for the  
21 public and I think that's how we normally  
22 understood -- understand seamen and railroad  
23 employees and say a coal company's internal  
24 railroads.

25                   And there's another -- there's more.

1 We have seamen and railroad employees, the two  
2 classes of workers that had preexisting dispute  
3 resolution statutes at the time and were  
4 commonly understood categories.

5 As a class, the seamen are the people  
6 who do the work of the shipping industry. As a  
7 class, railroad employees are people who do the  
8 work of the railroad industry.

9 Now I bring that up not to bind  
10 anyone. I bring that up just because that was  
11 the common-sense understanding of counsel -- of  
12 Saxon, and so it seems odd that you would read  
13 the Saxon opinion to have blown through those  
14 limits that were being stressed by counsel for  
15 Saxon about the implications of the position,  
16 number one.

17 And it seems odd also to say the other  
18 side's position just makes no sense when --  
19 given what was said at the oral argument in  
20 Saxon. So I just want to give you an  
21 opportunity to respond to that.

22 MS. BENNETT: Sure. A -- a few  
23 responses to that. One is, you know, we don't  
24 read Saxon to decide the question presented  
25 here. I don't think --

1 JUSTICE KAVANAUGH: I certainly didn't  
2 think that based on what happened at oral  
3 argument.

4 MS. BENNETT: Sure. And I -- I  
5 think -- I think it leaves the question  
6 presented open, although I will say I think  
7 Flowers' argument is inconsistent with the  
8 reasoning of Saxon, which is we look at what  
9 these words meant in 1925 and we also are  
10 looking for a commonality between seamen and  
11 railroad employees, and if there isn't that  
12 commonality, we're not going to add an  
13 additional requirement.

14 Now I think you asked about some  
15 answers to the hypotheticals in -- in Saxon.

16 JUSTICE KAVANAUGH: Mm-hmm.

17 MS. BENNETT: You know, and I'll note  
18 that this question wasn't presented either way  
19 in Saxon, and -- and there were some  
20 hypotheticals I do think that touched on this  
21 question, but the -- you know, and I apologize  
22 if -- if the answer wasn't as clear as it should  
23 have been. The gravamen of that --

24 JUSTICE KAVANAUGH: Well, I thought  
25 the answer was very clear actually.

1 MS. BENNETT: Well, so -- so --

2 JUSTICE KAVANAUGH: It was reassuring,  
3 I think the word "narrow" was used, reassuring  
4 that the holding in favor of Saxon would be  
5 narrow and would not extend to industries other  
6 than the transportation industry, which that may  
7 be incorrect, but to call it like that makes no  
8 sense is a little much for me at least.

9 MS. BENNETT: Sure. And I think the  
10 -- the gravamen -- you know, the -- there were  
11 specific predictions maybe, but the gravamen of  
12 that answer is to know whether the Federal  
13 Arbitration Act exempts a particular class of  
14 workers, what we'd have to do is go back and  
15 look in 1925 and see what these words meant.  
16 And we've now -- you know, because it wasn't the  
17 question presented in Saxon, that -- that  
18 research hadn't been done. We've now done that  
19 that.

20 And I think it's very clear that in  
21 1925, the word "seamen" did not mean somebody  
22 who was employed by a company that sold  
23 transportation, and I -- I'd like to turn to  
24 that briefly if -- if I may.

25 You know, every source we have, when

1 you go back and take a look, dictionaries, case  
2 law, books, other statutes, literally any piece  
3 of evidence we have confirms that the word  
4 "seamen" included anyone who worked aboard a  
5 vessel in furtherance of its purpose. It had  
6 nothing to with whether an employer sold  
7 transportation or in the Second Circuit's word  
8 had a particular price or revenue structure.

9           And I'll note that this Court has  
10 already canvassed this history at least twice  
11 and first in Wilander and then again in Saxon,  
12 and both times it came to the same conclusion,  
13 which is that "seaman" -- "seamen" rather is a  
14 longstanding, well-defined term that in 1925  
15 plainly meant everybody who worked aboard a  
16 vessel.

17           Now, to its credit, I actually don't  
18 take Flowers to dispute this ordinary meaning of  
19 "seamen." Maybe they'll get up and tell me I'm  
20 wrong about how I read their brief, but -- but  
21 what I take them to say is, you know, whatever  
22 the ordinary meaning is, for purposes of the  
23 Federal Arbitration Act, the Court should give  
24 the word a different definition, and that  
25 different definition should be something like

1 workers aboard a ship in a carrying trade  
2 carrying goods for trade and commerce.

3           And -- and there are two problems,  
4 though, with this request. The first is not  
5 only is this not the ordinary meaning of  
6 "seamen" in 1925, it's not any meaning ever of  
7 "seamen" in 1925 or since then. What that  
8 definition comes from is a definition that a  
9 single district court gave to the term "merchant  
10 vessel," and the term "merchant vessel" is  
11 nowhere in the Federal Arbitration Act.

12           So Flowers has to demonstrate a  
13 commonality between seamen and railroad  
14 employees, not between railroad employees and  
15 merchant vessels. So that's the first problem.  
16 It's just not in the statute.

17           The second problem, though, is that  
18 even if this Court were willing to accept this  
19 definition of words that aren't even in the  
20 statute as the definition of "seamen" for  
21 purposes of the Federal Arbitration Act and  
22 define it in accordance with what Flowers says  
23 we should define it, Flowers' drivers meet its  
24 own definition. There's no question that  
25 Flowers' truck drivers are engaged in

1 transporting goods for commerce, just like the  
2 people on lumber boats in 1925, just like the  
3 people on the barges carrying railroad tie  
4 manufacturers' goods in this Court's decision in  
5 Ayer.

6 And so, even if we were to accept  
7 every single one of Flowers' arguments on  
8 seamen, they still haven't shown that this  
9 employer-based industry requirement has anything  
10 to do with the words of the statute.

11 JUSTICE KAGAN: And -- and just to  
12 understand, what are the categories of seamen  
13 who do not work in the shipping industry?

14 MS. BENNETT: There's a vast number of  
15 them, and they're not -- you know, one thing  
16 that's difficult is they're not -- well, so I  
17 actually -- I want to take a step back and --  
18 and -- and talk about the word "industry" very  
19 briefly, which is to say, when you say "in the  
20 shipping industry," we can mean two different  
21 things. One is we can mean the workers who are  
22 in the industry, as in these are people who do  
23 shipping work. They do the work of the boat.  
24 Or you can mean sort of an employer-based  
25 requirement, which is they work for a company



1 that sells transportation on Flowers' version.

2 And I think the intuition that seamen  
3 and railroad employees are definitely in the  
4 transportation industry is an intuition on the  
5 first question about industry people --

6 JUSTICE KAGAN: So assuming what I  
7 meant was the second.

8 MS. BENNETT: Sure. Sure. A slightly  
9 --

10 JUSTICE KAGAN: So who are the seamen  
11 who are not working for shippers?

12 MS. BENNETT: There's a bunch of them.  
13 So there are a bunch of manufacturers, for  
14 example, who employed seamen. There is -- a  
15 railroad tie manufacturer, for example, in Ayer  
16 employed seamen. There were lumber boats all up  
17 and down the West Coast that employed seamen.  
18 They worked for lumber companies. They didn't  
19 work for transportation companies. There were  
20 coal companies that employed seamen. The Ford  
21 Motor Company employed seamen. There's a host  
22 of -- of employers that employed seamen.

23 And the reason is very similar to why  
24 you have a host of companies employing truckers  
25 today, which is that, unlike railroads, which

1 require, you know, like a track and a railroad,  
2 which is expensive and infrastructure-heavy and  
3 can only be laid in certain places, all you  
4 needed to ship your own goods is a boat --

5 JUSTICE KAVANAUGH: And before --

6 MS. BENNETT: -- just like --

7 JUSTICE KAVANAUGH: Keep going.

8 Sorry.

9 MS. BENNETT: No, please go ahead.

10 JUSTICE KAVANAUGH: Before 1925 -- and  
11 you might have addressed this earlier, but I  
12 want to make sure I have it nailed down. Before  
13 1925, could those employees who worked, as  
14 Justice Kagan said, not in the shipping industry  
15 but, say, lumber barges and that kind of  
16 thing -- if they had a dispute, did it go to the  
17 shipping arbitration regime, or did it go to  
18 court?

19 MS. BENNETT: They could choose. So  
20 the -- the shipping arbitration regime, the --  
21 the -- it applied to anybody who was not paid on  
22 profit share, who was on an international  
23 voyage, a coast-to-coast voyage, or a coasting  
24 voyage if they had signed ship -- shipping  
25 articles before the shipping commissioner.

1 JUSTICE KAVANAUGH: Right, but that --  
2 I think that blends into my concern earlier that  
3 the linkage was, even if you have a slightly  
4 broader category of seamen than they say, they  
5 were covered by this separate arbitration  
6 regime, I think is what you're saying.

7 MS. BENNETT: Some were and some were  
8 not. It would depend on the length of their  
9 voyage essentially.

10 JUSTICE JACKSON: Didn't you also say  
11 it depended on whether they chose afterwards?

12 MS. BENNETT: Yes. That's exactly  
13 right.

14 JUSTICE JACKSON: Yeah.

15 MS. BENNETT: So -- so -- and they --  
16 it was only if -- you know, even the seamen who  
17 were covered by this statute would only go to  
18 arbitration if they chose to do so along with  
19 the master of their boat.

20 JUSTICE GORSUCH: I do want to  
21 understand, though, Justice Kavanaugh's point,  
22 who would not have been included in the regime?  
23 You said there are some seamen who wouldn't be.  
24 Who are they?

25 MS. BENNETT: So anybody who was on a

1 coasting voyage who did not sign their shipping  
2 articles in front of a shipping commissioner.  
3 So the lumber -- to take the lumber boat as an  
4 example, the lumber boat workers who had signed  
5 shipping articles before the shipping  
6 commissioner could have gone to shipping  
7 commissioner arbitration. Those who didn't  
8 could not.

9           Anybody who wasn't on an ocean voyage.  
10 So anybody who was on a river or on a lake,  
11 those were certainly seamen. They could not  
12 have --

13           JUSTICE GORSUCH: Categorically  
14 outside the arbitration provision?

15           MS. BENNETT: Categorically outside  
16 because those voyages were only international,  
17 coast-to-coast, or coastwise. So anybody doing  
18 seamen's work in the internal parts of the  
19 United States. Anybody doing seamen's work that  
20 was local, that didn't go very far, so, for  
21 example, this Court's decision in *Ellis* talks  
22 about dredgers as being seamen.

23           JUSTICE GORSUCH: Got it.

24           MS. BENNETT: Yeah.

25           JUSTICE GORSUCH: Thank you.

1 JUSTICE JACKSON: So, even if we  
2 reject the transportation industry test, we  
3 would still have to distinguish transportation  
4 workers from other workers, and you talked a  
5 little bit with Justice Sotomayor about that.

6 Are you suggesting that we -- if we  
7 side with you in this case, that we take this  
8 opportunity to say more about that distinction,  
9 or do you think Saxon covers it?

10 MS. BENNETT: I think Saxon covers it,  
11 and Saxon lays out a pretty clear test, which is  
12 workers that are directly involved in  
13 transporting goods across foreign or state  
14 borders. And -- and I'll note, since Saxon, the  
15 lower courts are pretty much agreed about what  
16 that means, and so I think, you know, if there  
17 is some further dispute that comes up, perhaps  
18 this Court may need to weigh in in that case,  
19 but I don't think this Court needs to do so  
20 here.

21 CHIEF JUSTICE ROBERTS: Thank you,  
22 counsel.

23 Justice Thomas?

24 Justice Alito?

25 Justice Sotomayor?

1 Justice Kagan?

2 Justice Gorsuch?

3 JUSTICE GORSUCH: Your friends on the  
4 other side make a large feature about some  
5 language in -- in Saxon, and I'm not sure you  
6 quite had a chance to address it yet, but seamen  
7 constituted a subset of workers engaged in the  
8 maritime shipping industry. Put aside history.  
9 How do you deal with that as a matter of  
10 precedent?

11 MS. BENNETT: I think there are -- are  
12 two answers to that. One is -- and they're  
13 related. One is the argument that the Court was  
14 discussing there was just the argument that  
15 anybody who did the work of shipping would be  
16 exempt and would be a seamen. What the Court  
17 was saying is not everybody who did the work of  
18 shipping was a seamen. What they were saying --  
19 what -- you know, what -- people who are seamen  
20 are people who do the work of shipping on a  
21 boat.

22 JUSTICE GORSUCH: Got it.

23 MS. BENNETT: So I don't think the  
24 Court was answering --

25 JUSTICE GORSUCH: That's one. You

1 said you had two.

2 MS. BENNETT: The second is related,  
3 which is -- so the -- it's similar to the answer  
4 I was giving Justice Kagan earlier, which is  
5 what it means to be in an industry. So, for  
6 example, you know, Jones Day, certainly in the  
7 legal services industry. I don't think the head  
8 chef at the cafeteria of Jones Day would say  
9 that she is in the legal services industry. I  
10 think she'd say she's in the food services  
11 industry.

12 JUSTICE GORSUCH: How does that differ  
13 from the first point?

14 MS. BENNETT: I think they're related.  
15 It's the same thing. Essentially, what the  
16 Court --

17 JUSTICE GORSUCH: Okay. All right.  
18 Thank you.

19 MS. BENNETT: -- understood.

20 CHIEF JUSTICE ROBERTS: Justice  
21 Kavanaugh?

22 Justice Barrett?

23 Justice Jackson?

24 Thank you, counsel.

25 MS. BENNETT: Thank you.

1 CHIEF JUSTICE ROBERTS: Ms. Lovitt.

2 ORAL ARGUMENT OF TRACI L. LOVITT

3 ON BEHALF OF THE RESPONDENTS

4 MS. LOVITT: Thank you, Mr. Chief

5 Justice, and may it please the Court:

6 As counsel has made clear, Petitioners  
7 view the Section 1 exemption as encompassing any  
8 worker directly involved in a good's interstate  
9 journey, from the plant worker who loads goods  
10 for shipment to the store clerk who unloads them  
11 and shelves them.

12 But, in *Circuit City*, this Court said  
13 that the Section 1 exemption should be read  
14 narrowly and should be interpreted with  
15 reference to the *ejusdem* canon, context, and  
16 history, all three of which demonstrate that the  
17 exemption is limited to transportation industry  
18 workers.

19 After all, in 1925 -- Justice  
20 Kavanaugh is correct -- seamen and railroad  
21 employees were defined by the industry in which  
22 they work. And that commonality should carry  
23 through to the residual clause. Context and  
24 history tell you why this line makes sense.

25 By 1925, Congress knew that labor



1 disputes involving transport -- transportation  
2 industry workers were different. They were  
3 unique. They could cause famines in Chicago.  
4 And in response, Congress passed two and only  
5 two federal arbitration statutes, one governing  
6 railroad employees in the rail industry and one  
7 governing seamen, who, under the Shipping  
8 Commissioners Act, were limited to those in the  
9 shipping industry.

10           Petitioners can't provide a why for  
11 the enumeration. They can't explain why you  
12 would pair railroad employees and seamen  
13 together. And they advocate a definition of  
14 "seamen" that is so broad, it's flatly  
15 inconsistent with the notion of a transportation  
16 worker and this Court's holding in Circuit City.

17           The result, a poor fit. And  
18 Petitioners show by example. Petitioners buy  
19 Flowers' bread. They pay Flowers for product.  
20 Then they take title to the bread, and it is  
21 only after they take title to the bread that  
22 they then move it intrastate in order to sell it  
23 to retailers for a profit. They are under no  
24 personal obligation to move anything. They look  
25 nothing like railroad employees or seamen.

1 I welcome the Court's questions.

2 JUSTICE THOMAS: We -- we have looked  
3 at the performance of the workers in Saxon, and  
4 wouldn't it complicate matters now to look at  
5 the entire industry as the -- certainly, the  
6 district court did and -- and the Second Circuit  
7 did?

8 MS. LOVITT: I don't think so, Justice  
9 Thomas.

10 JUSTICE THOMAS: And don't you think  
11 -- I mean, I thought we foreclosed that. We  
12 said that we won't look. The argument -- part  
13 of the argument in Saxon was, well, she, Saxon,  
14 is in the -- in the transportation industry  
15 therefore.

16 And as I hear you, you're saying,  
17 well, Petitioner here is not in the  
18 transportation industry therefore. And we  
19 foreclosed that, I thought, in -- in Saxon.

20 MS. LOVITT: So two points, Justice  
21 Thomas. The first was that you have to read  
22 those holdings in Saxon in light of the  
23 background fact that Ms. Saxon was an airline  
24 transportation industry worker. The Court  
25 presupposed that fact. And as Justice Kavanaugh

1 read from the oral argument, that was accepted  
2 fact and part of the background on which the  
3 holding was made.

4 The second point is the industry-wide  
5 holding, and in that part of the Court's  
6 opinion, the Court was rejecting Ms. Saxon's  
7 argument that it was sufficient for her to fall  
8 within the Section 1 exemption just because she  
9 was a transportation industry worker.

10 And our argument is not that it's  
11 sufficient. We think that -- that you have to  
12 do the Saxon analysis, but the first question  
13 is, is being in the transportation industry  
14 necessary?

15 And -- and -- and the answer to that  
16 should be yes, because, you know, ever since  
17 1972 in the Second Circuit, the background rule  
18 has been that you have to be in a transportation  
19 industry. That's the Erving decision that  
20 predates Circuit City and was on the winning  
21 side of the Circuit City split.

22 JUSTICE JACKSON: So we have cases  
23 from the 1920s in which you didn't have to be in  
24 the transportation industry in order to be  
25 counted as a seaman. So how do you square your

1 position with that?

2 MS. LOVITT: So I -- first, I think  
3 Saxon informs what it means to be a seamen,  
4 but -- but, Justice Jackson, those cases aren't  
5 dealing with the limit here, which is you  
6 already have Circuit City, and Circuit City has  
7 already held that ejusdem -- because of the  
8 ejusdem canon, there are implied limits.

9 And one of those implied limits is  
10 it's not a limitless seamen. It's the seamen  
11 who are transportation workers. And I think  
12 that's where Petitioners' definition gets in  
13 trouble because Petitioners freely admit that  
14 their seamen are pirates, they're enemy ship  
15 folks, they're on recreational boats.

16 JUSTICE JACKSON: I understand that.

17 JUSTICE BARRETT: But can I --

18 JUSTICE JACKSON: But how do you  
19 square that with cases where we have actors  
20 aboard a ship being counted as seamen, for  
21 example?

22 MS. LOVITT: Most of those are Jones  
23 Act cases, and --

24 JUSTICE JACKSON: Well, why does that  
25 matter, when Congress was using the word

1 "seamen" as I'm sure it was understood at the  
2 time that statute was passed?

3 MS. LOVITT: Two reasons. The first  
4 is the Jones Act has a broad remedial purpose,  
5 and this Court has repeatedly recognized in the  
6 Jones Act context that it's reaching to the  
7 outer limit of seamen.

8 The second is that there's no other  
9 federal statute that uses railroad employees and  
10 seamen together, and Circuit City says that that  
11 list has meaning and that list means that  
12 Section 1 seamen are different from other  
13 seamen. They share a commonality with railroad  
14 employees. And this Court held in Circuit City  
15 that that commonality is transportation worker.

16 CHIEF JUSTICE ROBERTS: Well, but  
17 commonality can get very complicated, as your  
18 friend on the other side said. I mean, where  
19 did the price structure and revenue approach  
20 come from?

21 MS. LOVITT: That -- that was part of  
22 the Second Circuit's decision and --

23 CHIEF JUSTICE ROBERTS: Yeah, but  
24 where did it -- where did they get it?

25 MS. LOVITT: I think the Court was

1 looking to characteristics of folks in the  
2 transportation industry and giving a more  
3 granular approach to what are common  
4 characteristics on the facts of this case.

5 And, again, these facts aren't  
6 disputed. So there's for purposes --

7 CHIEF JUSTICE ROBERTS: No, no, but I  
8 mean they're not -- they're trying to figure out  
9 what the transportation industry is.

10 MS. LOVITT: Mm-hmm. Right.

11 CHIEF JUSTICE ROBERTS: And, again,  
12 I -- I think they just kind of made up, not -- I  
13 don't use that in a pejorative sense, maybe  
14 created this price structure and revenue  
15 approach, but it really imposes a -- a difficult  
16 burden and it would seem to me a lot of  
17 different results. I mean, you'd have conflict  
18 among the lower courts considering how that  
19 applies.

20 I mean -- and the examples they give I  
21 think are pretty compelling. I mean, is -- is  
22 Amazon in the transportation business just  
23 because it has a fleet of planes that it uses or  
24 part of Amazon is?

25 MS. LOVITT: So, to take your kind of

1 three questions there, so I'll --

2 CHIEF JUSTICE ROBERTS: Sorry.

3 MS. LOVITT: -- I'll try to keep track  
4 of them, but the first -- the first question,  
5 which is about the Second Circuit's analysis, I  
6 think the Second Circuit was giving factors that  
7 were relevant to this case.

8 I think the test is broader than that  
9 and it has been broader than that because,  
10 again, the background rule for -- since at least  
11 1972 in the Second Circuit has been you have to  
12 be in the transportation industry. And it's  
13 been a line between, are you hauling only your  
14 own stuff, or is part of your business hauling  
15 third-party goods as well?

16 And that's a very clean line. Let's  
17 use your Amazon example. I think, in Amazon --  
18 and, again, I don't -- I'm not Amazon's counsel,  
19 so I'm speaking as purely a consumer. As I  
20 understand Amazon, they're shipping not only  
21 some Amazon retail products, but their regular  
22 course of business involves shipping all sorts  
23 of products that they don't manufacture.

24 CHIEF JUSTICE ROBERTS: Well, but --

25 MS. LOVITT: I think they're clearly

1 in the transportation industry.

2 CHIEF JUSTICE ROBERTS: Well, but  
3 sometimes they use their own planes and  
4 sometimes they use FedEx's planes.

5 MS. LOVITT: And it --

6 CHIEF JUSTICE ROBERTS: So -- and  
7 sometimes the workers who do exactly the same  
8 thing count as in the transportation industry,  
9 but in the other -- other times they don't.

10 MS. LOVITT: Well, again, I think that  
11 in the Amazon case, you're -- you're -- you're  
12 in the transportation industry. And they get  
13 out for -- for last-mile reasons. But, to your  
14 question, which is sometimes they use FedEx,  
15 that's correct, but if FedEx -- if we had used  
16 FedEx, the defendant in this suit wouldn't be  
17 Flowers Foods. It would be FedEx because the  
18 contract of employment would be between FedEx  
19 and the worker.

20 Why would Congress do that? That was  
21 your last question. I think that's the key  
22 question. And there's a lot of reasons why  
23 Congress would do this. There's -- this is --  
24 to us, Section 1, the exemption, is a wholesale  
25 policy judgment by Congress that transportation



1 industry workers are different.

2 And we know Congress is making  
3 wholesale judgments because it had put only two  
4 classes of workers in arbitration or had federal  
5 arbitration statutes, railroad employees and  
6 seamen in the shipping industry.

7 And why would Congress do that?  
8 Because, up to 1925, there had been many  
9 strikes, as Petitioners point out, but only  
10 strikes involving the transpiration industry  
11 brought the country to a halt and caused famines  
12 in Chicago. And so Congress could reasonably  
13 say this is different.

14 Today, we -- because the economy is  
15 different, we can think of all sorts of reasons  
16 why that policy judgment doesn't fit on the  
17 modern economy, but that doesn't make Congress's  
18 judgment in 1925 wrong.

19 JUSTICE BARRETT: But, Ms. Lovitt, the  
20 Shipping Commissioners Act, Ms. Bennett says  
21 that, in fact, it did encompass seamen who were  
22 outside of the shipping industry.

23 If I agree with her about that, do you  
24 lose?

25 MS. LOVITT: Well, I -- I would

1 disagree with that, and if I can answer that  
2 question first, then yours, Justice Barrett.

3 JUSTICE BARRETT: Sure.

4 MS. LOVITT: So the Shipping  
5 Commissioners Act has two large restrictions.  
6 The first was in -- and I'm citing the 1925  
7 version -- 46 U.S.C. Section 464 and  
8 Section 465.

9 Section 464 says it's only voyage --  
10 vessels that have voyages from the East Coast in  
11 the United States to the West Coast and from a  
12 port in the United States to a port overseas,  
13 not Canada. And there's a second limit that you  
14 can't be earning a profit from the things that  
15 you're shipping. So you're not -- you're not  
16 making your money because you're shipping fish  
17 and you're selling the fish. You're making the  
18 money off the transportation.

19 Those two limits boil down to the  
20 shipping industry, and here's where I think a  
21 little bit of history of shipping helps a lot.

22 The Panama Canal didn't open until  
23 1914, so to get from San Francisco to Boston in  
24 1914 was almost a nine-month journey. You don't  
25 take that journey and return with an empty ship.

1 Those factors that are in the Shipping  
2 Commissioners Act are isolating the industry.

3 And it makes sense because the people  
4 who need the arbitration remedy, the seamen who  
5 need the arbitration remedy are those who are  
6 going from port to port to port to port to port,  
7 going on a new vessel every time. They aren't  
8 the employees of -- of a company that's making  
9 the same journey back and forth and they're  
10 regularly employed.

11 JUSTICE BARRETT: Except you just  
12 pointed out reasons in the statute that limited.  
13 So you're saying this wasn't just any seamen, it  
14 was seamen who met these particular  
15 restrictions.

16 Well, Section 1 doesn't have that  
17 additional language. It just says seamen. So  
18 why wouldn't Section 1 be a broader subset of  
19 the narrower subset that you're talking about?

20 MS. LOVITT: Because, in both New  
21 Prime and in Circuit City, this Court recognized  
22 that the rich fabric upon which the Section 1  
23 exemption was passed was the fabric of the  
24 Shipping Commissioners Act and the Rail -- the  
25 Railway Act. And both of those were limited in

1 effect to the shipping industry workers, and so  
2 it would have been unusual at the time to bring  
3 in all of these seamen who, again, Petitioners  
4 concede recreational boats are in.

5           So, if you work on a yacht, you are --  
6 and you never transport a good and you're just  
7 sightseeing with, you know, whoever owns the  
8 yacht, you're a seamen within the Section 1  
9 construct. That's not a transportation worker,  
10 and that's not what Congress was getting at.  
11 They were getting at that narrow subset of  
12 workers who actually impact the national  
13 commerce and national security.

14           JUSTICE JACKSON: But why do those  
15 workers have to be in the industry? I mean, I  
16 can agree with you that the statute is about  
17 transportation workers and, in fact, we've held  
18 that.

19           So we're not talking about -- I mean,  
20 maybe -- maybe I would disagree with the  
21 representation that you just made about people  
22 who are working on a yacht. Maybe. But I think  
23 the line there is drawn between transportation  
24 worker and other workers. Both -- you can have  
25 transportation workers in a different kind of

1 industry.

2 That's why I don't understand where  
3 the industry limitation is coming from. That's  
4 not in the statute.

5 MS. LOVITT: I -- I think it's coming  
6 from -- I think it is in the statute. I think  
7 it's falling out of the enumeration. And as  
8 Justice --

9 JUSTICE JACKSON: But we've said the  
10 enumeration goes to transportation worker.  
11 Seamen, railroad workers. The other, we say, is  
12 limited by that to mean transportation workers.  
13 Got it.

14 Where is the industry coming from?

15 MS. LOVITT: So two points. First, in  
16 -- in Saxon, I think this Court correctly  
17 recognized that it's never given an exhaustive  
18 definition of transportation worker.

19 So the industry is coming out of the  
20 fact that in 1925, seamen were the seamen on  
21 these merchant ships that run the shipping  
22 industry, yes.

23 JUSTICE JACKSON: But what about  
24 companies in 19 -- in the 1920s that had their  
25 own fleets or own boats or railroad companies or

1     lumber companies that had railroad workers that  
2     were their own, in-house?

3                   MS. LOVITT:  They were almost outside  
4     of the Shipping Commissioners Act because they  
5     were making these little local journeys that  
6     aren't falling within the arbitration  
7     provisions.

8                   And -- and a lot's been said -- if  
9     you'd indulge me for 30 seconds, a lot's been  
10    said about the lumber schooners.  Petitioners  
11    actually don't have the history right on lumber  
12    schooners.  Lumber schooners are a kind of boat  
13    and they were owned by syndicates.  The  
14    syndicates included all people within the -- you  
15    can imagine, the people who produced the lumber,  
16    the people who were trading in lumber, the  
17    people who converted the lumber to two-by-fours,  
18    and people who made paper.  And they had one --  
19    and the master of the vessel.  And they had one  
20    interest, which was to keep the vessel full.  So  
21    to the extent that --

22                   JUSTICE SOTOMAYOR:  Counsel, isn't all  
23    of this an argument for us looking at the  
24    last-leg drivers and deciding whether this was  
25    foreign or interstate commerce as understood at

1 the time?

2 MS. LOVITT: I --

3 JUSTICE SOTOMAYOR: I mean, that's  
4 where I see this argument. I just don't see it  
5 -- I mean, by the way, as an aside, Amazon,  
6 who's an amicus on your side, doesn't agree with  
7 you, on -- on pages 5 to 7 in their brief they  
8 say the focus is not on what the employee is  
9 doing as part of its duties -- employer is  
10 doing, but what -- what the industry is. And it  
11 says it's what the employee is doing. Their  
12 argument is, on what I'm saying your argument  
13 is, we have to look more carefully and more  
14 narrowly at what foreign or interstate commerce  
15 means.

16 MS. LOVITT: Well, two -- two points,  
17 Justice Sotomayor. The first is I doubt they  
18 liked my answer they were in the transportation  
19 industry, which might explain what they were  
20 doing on pages 5 through 7, but I do think if  
21 you disagree with us, that --

22 JUSTICE SOTOMAYOR: Well, they're  
23 saying they're not, but they don't say that's  
24 dispositive. What they're saying is what's  
25 dispositive is that their workers are not

1 engaged in foreign or interstate commerce.

2 MS. LOVITT: And I -- I would agree  
3 that if -- if you decide -- I think the last  
4 mile cases are important. And I think you --  
5 you do have to decide the last mile issue --

6 JUSTICE SOTOMAYOR: Not here.

7 MS. LOVITT: -- as well as our issue.  
8 Not here, but it would be an issue for remand  
9 because we've -- you know, we've preserved the  
10 issue.

11 JUSTICE SOTOMAYOR: I -- we --

12 MS. LOVITT: But --

13 JUSTICE SOTOMAYOR: -- don't even have  
14 to get into that. Whether you preserved it or  
15 not, I didn't check.

16 MS. LOVITT: So, I do think --

17 JUSTICE SOTOMAYOR: The question is a  
18 different question.

19 MS. LOVITT: But I want -- I want to  
20 get to the heart of that question, which is, is  
21 the problem solved by last mile? And no, it's  
22 not, because, again, the background rule here  
23 until about 2020 was that the transportation  
24 industry workers were out. And that's why  
25 you're not seeing these cases arise until just



1 the past year or so.

2 And so the problem is you have a lot  
3 of companies who are like -- I'm just going to  
4 say Acme to keep it, you know, the record clean.  
5 You have Acme Company, who actually has their  
6 own drivers who cross state lines. That company  
7 doesn't see themselves -- they are not in the  
8 shipping industries in any -- in any way. And  
9 they're not preserved by the last mile.

10 And so you start to introduce a whole  
11 class of cases. I mean, every -- in the modern  
12 economy, every retailer, every manufacturer has  
13 a shipping department. And those shipping  
14 departments are inevitably shipping goods in  
15 interstate commerce.

16 And so you'd be -- in light of the  
17 fact that the background rule excluded  
18 transportation industries, you're opening a  
19 whole other area that has been -- honestly, if  
20 you look at Circuit City, it -- this -- cases  
21 that the Court affirmed in Circuit City, the  
22 court of appeals cases, were all assuming a  
23 transportation industry component.

24 JUSTICE BARRETT: Ms. Lovitt, do we  
25 care -- let's -- let's say we do care. I want

1 to follow up on Justice Sotomayor's question.

2 If you win, if we say there is an  
3 industry requirement, on the last mile -- if  
4 we've shifted our focus to the industry, does  
5 that go a long way towards settling the last  
6 mile driver question against you because then  
7 would we say as long as you're a worker in the  
8 industry and the industry is engaged in  
9 interstate commerce, you get swept in? Or -- I  
10 understand it wouldn't resolve it, but would it  
11 make your argument harder?

12 MS. LOVITT: No, I don't think so  
13 because we're viewing the industry issue as a  
14 threshold issue. It's a necessary condition,  
15 not a sufficient one. So you would still have  
16 the Saxon analysis. And at the time reason why  
17 that is important is because you're excluding a  
18 whole line of cases that heretofore have been  
19 excluded involving manufacturers.

20 You'd still need to decide the last  
21 mile question. And I think for the good of the  
22 lower courts, it would be good to take one of  
23 those cases, because that's an additional  
24 limitation, not an alternative limitation, in  
25 our view, and one that would -- again, I think

1 it's important to deal with both preventing the  
2 wave of cases. And, again, Petitioner is not  
3 denying the fact that this is opening a whole  
4 new line of cases that, since even before the  
5 time of Circuit City, were viewed as off limits  
6 under Section 1. It's -- it's preventing that  
7 waterfall and cascade of cases.

8 JUSTICE KAVANAUGH: Do you think,  
9 before 1925, as your friend on the other side  
10 said, there were some workers who were not  
11 covered by any arbitration regime?

12 MS. LOVITT: Industry workers? I  
13 mean, prior to -- so you --

14 JUSTICE KAVANAUGH: Well, that might  
15 have loaded the --

16 MS. LOVITT: Yeah.

17 JUSTICE KAVANAUGH: You might have  
18 just loaded the question. I think the question  
19 was seamen who don't work for what we would call  
20 a maritime shipping company --

21 MS. LOVITT: Mm-hmm.

22 JUSTICE KAVANAUGH: -- fell into this  
23 gray area where they were covered by neither  
24 arbitration regime, I think was the theory, and  
25 -- I think that was the theory or at least the

1 answer. Do you agree with that?

2 MS. LOVITT: So just -- if I could  
3 restate the question to --

4 JUSTICE KAVANAUGH: Yeah. Please do.

5 MS. LOVITT: -- make sure I understand  
6 it correctly. You said there -- there were  
7 seamen who were outside the Shipping  
8 Commissioners Act or, you know, that -- that  
9 don't work in the shipping industry. That would  
10 be the leisure example, right? And the  
11 recreational boats, the folks who are -- who are  
12 on lumber schooners that just doing coast-wise  
13 voyages, so they're doing -- and those are the  
14 traditional manufacturers. They would be  
15 outside of the Shipping Commissioners Act.

16 We are operating a bit -- just to be  
17 candid, there aren't any cases interpreting the  
18 Shipping Commissioners Act. So you have to  
19 interpret by analogy of, you know, what was  
20 happening in the rail industries. In the rail  
21 --

22 JUSTICE KAVANAUGH: And on the -- on  
23 the rail industry, it's crystal -- well,  
24 "crystal clear" is a little strong, but it's  
25 clearer, right, you had to be an employee of the

1 railroad?

2 MS. LOVITT: Yeah. We would use the  
3 word "crystal clear," but in -- in the -- in the  
4 federal arbitrations provisions governing  
5 railroad employees, you had to be an employer of  
6 the common carrier.

7 And -- and then just to take it full  
8 circle to Saxon, I mean, the cases that this  
9 Court was citing in Saxon for the idea that a  
10 cargo loader was part of the -- part of  
11 interstate commerce, those are all rail common  
12 carriers cases.

13 And the holding is if you're a baggage  
14 handler on a railroad that's in the industry,  
15 providing transportation services, you're  
16 clearly in.

17 JUSTICE KAVANAUGH: And so the -- one  
18 thing I couldn't figure out is, but I think the  
19 number of workers who are going to be exempt and  
20 number of companies who are going to have to  
21 deal with this is massive if you lose. But, I  
22 mean, spell that out for me. That's -- I'm not  
23 sure how to quantify it, really.

24 MS. LOVITT: So it's massive. Let's  
25 -- let's -- again, these are all new cases in

1 the past, say, five years. In the past five  
2 years, you've had cases against Domino's  
3 franchisees, so you're bringing in every  
4 franchise restaurant, which is why the  
5 restaurant industry group filed on our behalf.

6 You're bringing in the medical  
7 industry. Medical industry ships like this  
8 because they need to get their products very  
9 quickly from one place to another.

10 You're bringing in basically the  
11 entire food industry, because, again, these  
12 point-to -- these point-to-sale shipments like  
13 breads, things that go bad, beer, that you'd  
14 have to -- that whole industry is now in.

15 And the way that the modern economy  
16 works, this is how retail works. You're now  
17 bringing in every retail industry that is  
18 shipping their own -- they have got, you know,  
19 warehouses going to brick and mortars.

20 JUSTICE JACKSON: But I --

21 MS. LOVITT: Those would need to go  
22 in.

23 JUSTICE JACKSON: But couldn't that be  
24 taken care of through other doctrines?

25 MS. LOVITT: Not through last mile,

1 which I think was the -- the question.

2 JUSTICE JACKSON: Yes.

3 MS. LOVITT: Because these are --  
4 these are cases -- these are all companies that  
5 are shipping over the borders. And the reason  
6 why this hasn't been a problem to date is,  
7 again, because the background rule has been that  
8 it's the transportation industry.

9 And even in Saxon, when you're talking  
10 about the seamen who are under Section 1, you're  
11 using a subset of the maritime shipping  
12 industry. Even this Court in its -- I -- I'm  
13 not saying it's holding or decided anything, but  
14 I think it's saying these -- this is the  
15 language that's informing the lower courts.

16 JUSTICE ALITO: Well that's a -- an  
17 important point, and I hope that Ms. Bennett  
18 will take the opportunity on rebuttal to address  
19 it.

20 But let me just ask, on the other  
21 side, it may have been straightforward for the  
22 Second Circuit to apply its test to the facts of  
23 this case, but will it be straightforward in  
24 other cases? Will it not involve some very  
25 difficult line-drawing problems?

1                   MS. LOVITT: I -- I don't -- Justice  
2 Alito, in our view, it's not.  
3 Ninety-five percent of these cases, it's clear.  
4 The FedExes, the UPS, the Yellow Freights. It's  
5 very clear who's in the shipping industry  
6 because they're in the business of shipping  
7 other people's goods.

8                   And even there are companies like  
9 Amazon, who ship their own and other people's,  
10 but the usual course of their business is to  
11 include other people's goods. There -- you  
12 know, most companies -- I don't want to use the  
13 word "most" because -- but a lot of --

14                   JUSTICE ALITO: But there are not --  
15 there are not a lot of companies that do -- in  
16 which, let's say, 60 percent of their work  
17 doesn't involve transportation, but -- or  
18 70 percent doesn't involve transportation, but  
19 30 percent does.

20                   There aren't companies that might fall  
21 into that category?

22                   MS. LOVITT: I -- I think you could  
23 use the Saxon analysis. The Saxon said how do  
24 you determine a worker's worth which is also a  
25 fact-based question. You use it whether it's



1 frequent. And I think that's the same kind of  
2 straightforward analysis that you could apply  
3 here. Are you frequently in the business of  
4 shipping other people's goods?

5 And it's no more difficult than the  
6 test in Saxon but it offers a different test and  
7 one that's going to exclude this mass body of  
8 cases that have heretofore not -- not been in  
9 federal courts.

10 JUSTICE KAVANAUGH: But the term --

11 JUSTICE BARRETT: But -- sorry.

12 JUSTICE KAVANAUGH: Go ahead.

13 JUSTICE BARRETT: Is part of what  
14 you're saying that the industry has, or industry  
15 generally, and the way that business is done now  
16 has massively shifted and maybe those words mean  
17 the same thing, maybe they mean what Ms. Bennett  
18 says they do, but because of the way that the  
19 industry and shipping has changed, just kind of  
20 as an anachronism. It doesn't really make  
21 against. And then wouldn't it be for Congress  
22 to fix it?

23 MS. LOVITT: I -- I think Congress  
24 already fixed it. And because in -- when it  
25 enacted Section 1, there is a residual clause.

1 Congress was anticipating that there were going  
2 to be other industries and that would have the  
3 same kind of shipping element to them. And the  
4 airline industry, for example, was the very next  
5 stop.

6 And they also have an arbitration  
7 provision which, by the way, to get to your  
8 question that you asked Petitioners' counsel,  
9 yes, this is still relevant because we still  
10 have massive arbitration regimes governing the  
11 rail industry and the air industry.

12 And if you had the FAA coming in and  
13 there'd be a question over, you know, which one  
14 is preeminent.

15 And I can see Petitioner -- a whole  
16 new line of cases where people -- where  
17 employers are saying no, we're outside of that  
18 federal regime. We have a private contract,  
19 reinforce it under the FAA. So there is  
20 interference that could be done under the  
21 modern -- modern statutes.

22 But I think to get to your point, it's  
23 not an anachronism. I think what has changed is  
24 that in 1925, industries -- there weren't big  
25 long haul, there really wasn't an airline

1 industry and there really wasn't an  
2 over-the-road trucking industry. That didn't  
3 really come until the 1950s. And the way people  
4 shipped goods is by rail.

5 And -- and if you were shipping or  
6 you're shipping long distances in the shipping  
7 industry in vessels. And so the Section 1 was  
8 really encompassing the entirety of the  
9 transportation industry while anticipating that  
10 the industry was also evolving, and that  
11 Congress might want to get involved there too.

12 If I can just make one last point, I  
13 think part of the issue here too is there's not  
14 been any industry component and now Saxon, if  
15 you combine -- if you hold that there's no  
16 industry requirement and you combine it with the  
17 holding in Saxon, it's not only that you bring  
18 in all of these, you know, manufacturers who've  
19 never been within the scope of 1, but you also  
20 bring in people who load goods.

21 And the next question is going to be,  
22 well, what about the people who package them?  
23 What about the people who sort them?

24 JUSTICE JACKSON: But I guess --

25 MS. LOVITT: What about the people in

1 the shipping department?

2 JUSTICE JACKSON: But -- but -- but I  
3 guess what I don't understand is how your theory  
4 is consistent with what you say Congress's goals  
5 are with respect to Section 1. I mean,  
6 throughout your brief, you say that Section 1  
7 was intended to capture workers "critical to  
8 commerce and national security."

9 So fine. We now have all these  
10 companies that have components of transportation  
11 within them, but their workers are doing things,  
12 as you say, involving goods that are crossing  
13 state lines and that are presumably critical to  
14 commerce and national security.

15 So why would the line be between big  
16 companies with in-house transportation arms  
17 versus those that use FedEx?

18 MS. LOVITT: I'm glad you asked that  
19 question. And it's the word "presumably"  
20 because, if something -- in most labor disputes,  
21 if you have a labor dispute between the employer  
22 and their employees, the employer is best  
23 situated to deal with that dispute.

24 The time when that's not true is when  
25 you have transportation industry workers because

1 there are third-party effects that cascade for  
2 the customers who have their -- their goods  
3 on -- on the rails to --

4 JUSTICE JACKSON: But you're --  
5 you're -- you're saying that that's what  
6 Congress -- I -- I thought they were just trying  
7 not to have the disruption.

8 MS. LOVITT: Congress was saying there  
9 are areas of the economy that are so important  
10 that we're doing our own federal arbitration  
11 scheme. We're not leaving it to the private  
12 parties to decide how they're going to resolve  
13 these remedies because they -- they involve  
14 third-party concerns.

15 And that was the history. In 1925,  
16 the railroad labor industry, there were all --  
17 again, all sorts of industry disputes, but it  
18 was only the rail industry dispute that brought  
19 Chicago to the point of famine, and that's when  
20 Congress had to intervene and --

21 JUSTICE JACKSON: Now I just thought  
22 that was because of the nature of the goods and  
23 the fact that they were crossing state lines and  
24 they were sort of intranational. And that's the  
25 same with Amazon and Walmart and U.S. Foods and

1 companies that have internal transportation arms  
2 today.

3 MS. LOVITT: So today -- let's take  
4 Flowers. If -- if Flowers can't ship its bread,  
5 that is -- that problem is best addressed  
6 between Flowers and -- and its employees, but it  
7 doesn't mean that the nation runs out of bread.  
8 It means that people are going to have to buy  
9 other bread for a little bit of time.

10 And that's true whenever you're  
11 talking about a manufacturer. If it's a single  
12 manufacturer that has a problem, there are other  
13 manufacturers who aren't implicated. Where you  
14 start to get the whole of the national economy  
15 involved is when you're talking about the -- the  
16 international and interstate shipping of goods  
17 and that -- and that industry.

18 And, again, we may come up with a lot  
19 of examples today where that doesn't make sense,  
20 but in 1925, that was the lesson that Congress  
21 had learned, and Congress responded by enacting  
22 arbitration provisions for only two members of  
23 the economy, two classes of workers, and they  
24 were both in the transportation industry.

25 JUSTICE SOTOMAYOR: I just want to

1 make sure that the background principles, I've  
2 got them in my head right.

3 MS. LOVITT: Mm-hmm.

4 JUSTICE SOTOMAYOR: These contracts  
5 that these employees have with the employers  
6 could be enforceable in state court. If they  
7 require arbitration in state court, if you file  
8 a suit in state court or they file a suit in  
9 state court, those arbitration agreements have  
10 to be honored, correct?

11 MS. LOVITT: That's the position we  
12 took in the lower court, but there's a circuit  
13 -- circuit court split on that question as well.  
14 And I don't think that's a good answer because,  
15 in a lot of states, you couldn't arbitrate this  
16 at all either, so you don't get --

17 JUSTICE SOTOMAYOR: Because of state  
18 laws not permitting it?

19 MS. LOVITT: Because of the state --  
20 because of the state law.

21 JUSTICE SOTOMAYOR: Got it.

22 MS. LOVITT: If you have no other  
23 questions?

24 CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 Justice Thomas?

2 Justice Sotomayor?

3 JUSTICE KAVANAUGH: One question.

4 CHIEF JUSTICE ROBERTS: Justice  
5 Kavanaugh?

6 JUSTICE KAVANAUGH: Is the -- the  
7 phrase "common carrier" helpful or not helpful  
8 here?

9 MS. LOVITT: I don't think it's  
10 helpful because, in the shipping industry, I  
11 mean, common carriers would mean ferries and  
12 there's a whole component of the -- of the  
13 shipping industry that aren't common carriers  
14 that are really at the heart of it.

15 JUSTICE KAVANAUGH: Thank you.

16 MS. LOVITT: Mm-hmm.

17 CHIEF JUSTICE ROBERTS: Justice  
18 Barrett?

19 Justice Jackson?

20 Thank you, counsel.

21 MS. LOVITT: Thank you.

22 CHIEF JUSTICE ROBERTS: Ms. Bennett,  
23 rebuttal?

24

25



1 REBUTTAL ARGUMENT OF JENNIFER D. BENNETT  
2 ON BEHALF OF THE PETITIONERS

3 MS. BENNETT: Sure. So I just want to  
4 make -- thank you, Your Honor. I just want to  
5 make three quick points.

6 The first is on the text. I didn't  
7 hear a single argument that any word in this  
8 text means somebody works for an employer that  
9 sells transportation.

10 Again, even if we accept Flowers'  
11 understanding of what the word "seamen" meant in  
12 1925 and put aside fishermen and any of the  
13 other people they are worried about, even if we  
14 accept it's just people who are on vessels  
15 transporting goods for commerce, that has  
16 nothing to do with who employed those people.

17 And that's the way every statute  
18 governing seamen worked in 1925. There were a  
19 bunch of statutes that have a bunch of different  
20 limitations, but all of them were very explicit  
21 about what they were, and not a single one was  
22 employer-based.

23 And that's for the second -- to take  
24 the second reason, which is Flowers says don't  
25 worry so much about the text, what we really

1 want to think about is policy and purpose. And  
2 even if this Court were inclined to do so, even  
3 if this Court were inclined to define what  
4 Congress meant a hundred years ago, we have some  
5 evidence about that, and -- and -- and Flowers  
6 says look at the strikes that disrupted the  
7 national economy.

8 In the maritime --in shipping, in  
9 maritime shipping, those strikes were led by  
10 people on lumber boats, and I'll note we cite in  
11 our brief the evidence that those people were on  
12 boats were employed by the lumber companies and  
13 on boats owned by those companies.

14 But, if Congress was really trying to  
15 get at people who could disrupt commerce, you  
16 know, the way strikes worked in 1925 is they  
17 weren't employer-based. Everybody who did the  
18 same job in the same location struck together.  
19 And that's why they were so disruptive.

20 And so, if Congress was trying to get  
21 at that, they would not have included an  
22 employer-based limitation. I think that's why  
23 we don't see one in the statute.

24 To Justice Alito's point about  
25 narrowness, I think you asked that I address

1 that in rebuttal. Two points on that. One is  
2 it's not true that the background rule in the  
3 circuits has been this employer-based industry  
4 requirement.

5 The Seventh Circuit decision in  
6 Kienstra I believe was a concrete company. The  
7 Ninth Circuit has decisions on Amazon. The  
8 First Circuit does. You know, I'm not aware of  
9 this requirement being true in any circuit until  
10 really the Second Circuit made this decision and  
11 the Eleventh Circuit had some decisions.

12 Even in the Second Circuit, when the  
13 Second Circuit articulated, said that workers  
14 needed to be in the transportation industry,  
15 what it said was a basketball player is not in  
16 the transportation industry. It wasn't saying  
17 anything about who the employer was.

18 And -- and as the dissent in this case  
19 said in the Second Circuit, the well-established  
20 rule has been forever that if the residual  
21 clause covers anyone, it's truck drivers. And  
22 given that long-standing principle, I still  
23 haven't seen a single case where you have, you  
24 know, pizza delivery drivers or pest control  
25 workers people or any of the people they're --

1 they're worried about, actually any court saying  
2 that they're exempt, despite the rule being  
3 ordinarily, no court has really looked at  
4 whether -- at this kind of employer-based test.

5           And -- and -- and the other thing is,  
6 you know, they -- Flowers makes a big deal of  
7 railroad employees. There are almost no  
8 railroad employees today. Almost all of those  
9 jobs are truckers now. And so we're not making  
10 the exemption broader. We're just taking the  
11 people who would have been railroad employees,  
12 and now they're truck drivers. And it so  
13 happens that trucking works just like maritime  
14 shipping, which is that some companies use  
15 companies like FedEx, and some companies do what  
16 Flowers did, which is essentially bring a  
17 trucking company in-house themselves. There's  
18 no reason that those workers should be treated  
19 any differently.

20           And the last point I want to make is  
21 just on administrability. Flowers hasn't  
22 explained how its test or how the Second  
23 Circuit's test would apply in this very case.  
24 And that's in two ways. One, there's no dispute  
25 here that Flowers sells transportation. The --

1 the retailers that Flowers sells to are not just  
2 buying bread; they're buying the bread showing  
3 up at their retail stores. It's not clear to me  
4 why, for that reason alone, those -- they --  
5 they don't -- Flowers doesn't satisfy its own  
6 test.

7           And the second point is Flowers  
8 actually has quite a complicated corporate  
9 structure. And the drivers here aren't  
10 contracting with Flowers. They're contracting  
11 with a subsidiary of Flowers that only handles  
12 transportation for other subsidiaries that make  
13 baked goods. So that subsidiary is only  
14 transporting other people's goods. And Flowers  
15 doesn't explain why that too wouldn't satisfy  
16 its test.

17           And what that shows is that its test,  
18 the employer-based industry test, is going to be  
19 really difficult to apply, and it's going to be  
20 difficult to apply even in cases that Flowers  
21 says, like this one, should be straightforward.  
22 They're not.

23           And, again, this would have been a  
24 problem in 1925, just as it is today. You know,  
25 there were lumber companies that owned railroads

1 that may or may not have shipped entirely the  
2 lumber company's goods. And it's not clear --  
3 you know, Congress would have known in 1925 that  
4 that would have been difficult to apply. And  
5 there's no reason it would have included that  
6 requirement in the statute here.

7 So, again, we ask that this Court  
8 reject Flowers' request to add this requirement  
9 that both has no basis in the text and would  
10 just make the statute harder to apply.

11 Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you,  
13 counsel.

14 The case is submitted.

15 (Whereupon, at 12:14 p.m., the case  
16 was submitted.)

17

18

19

20

21

22

23

24

25

## Official - Subject to Final Review

<b>1</b>	<b>Acme</b> [2] 48:4,5 <b>across</b> [5] 3:16 6:7,12,16 28:13 <b>Act</b> [25] 9:22 10:23 11:18, 22 12:2 16:19 17:2,4 20:13 21:23 22:11,21 32:8 35:23 36:4,6 40:20 41:5 42:2, 24,25 45:4 51:8,15,18 <b>Act's</b> [1] 3:14 <b>actors</b> [1] 35:19 <b>actually</b> [12] 9:20 10:11 15:20 16:4 19:25 21:17 23:17 43:12 45:11 48:5 67:1 68:8 <b>add</b> [4] 3:18 4:24 19:12 69:8 <b>added</b> [1] 8:23 <b>adding</b> [1] 10:10 <b>addition</b> [1] 6:17 <b>additional</b> [7] 3:19 5:16 6:9 7:9 19:13 42:17 49:23 <b>address</b> [3] 29:6 54:18 65:25 <b>addressed</b> [2] 25:11 61:5 <b>adds</b> [1] 7:9 <b>administrability</b> [2] 4:18 67:21 <b>admit</b> [1] 35:13 <b>adopt</b> [2] 6:9 17:10 <b>advocate</b> [1] 32:13 <b>affect</b> [2] 5:4,13 <b>affirmed</b> [1] 48:21 <b>afterwards</b> [1] 26:11 <b>age-old</b> [1] 11:4 <b>ago</b> [2] 3:11 65:4 <b>agree</b> [7] 10:24 11:24 40:23 43:16 46:6 47:2 51:1 <b>agreed</b> [1] 28:15 <b>agreements</b> [1] 62:9 <b>ahead</b> [4] 12:12 15:14 25:9 56:12 <b>air</b> [2] 6:13 57:11 <b>airline</b> [4] 9:5 33:23 57:4, 25 <b>AL</b> [2] 1:3,7 <b>Alito</b> [4] 28:24 54:16 55:2, 14 <b>Alito's</b> [1] 65:24 <b>almost</b> [4] 41:24 45:3 67:7, 8 <b>alone</b> [1] 68:4 <b>already</b> [6] 7:5 8:7 21:10 35:6,7 56:24 <b>alternative</b> [4] 8:22 10:9 12:19 49:24 <b>although</b> [1] 19:6 <b>Amazon</b> [14] 6:11,18 17:17 37:22,24 38:17,17,20,21 39:11 46:5 55:9 60:25 66:7 <b>Amazon's</b> [2] 7:7 38:18 <b>amicus</b> [1] 46:6 <b>among</b> [3] 13:6,7 37:18 <b>amongst</b> [3] 13:16 14:3,4	<b>anachronism</b> [3] 12:21 56:20 57:23 <b>analogy</b> [1] 51:19 <b>analysis</b> [5] 34:12 38:5 49:16 55:23 56:2 <b>another</b> [2] 17:25 53:9 <b>answer</b> [13] 9:11 15:11,12 17:6 19:22,25 20:12 30:3 34:15 41:1 46:18 51:1 62:14 <b>answering</b> [2] 16:9 29:24 <b>answers</b> [3] 8:20 19:15 29:12 <b>anticipating</b> [2] 57:1 58:9 <b>anybody</b> [7] 25:21 26:25 27:9,10,17,19 29:15 <b>apologize</b> [1] 19:21 <b>appeals</b> [1] 48:22 <b>APPEARANCES</b> [1] 1:18 <b>applied</b> [1] 25:21 <b>applies</b> [4] 3:15 11:22,25 37:19 <b>apply</b> [10] 4:20,22 12:6 54:22 56:2 67:23 68:19,20 69:4,10 <b>approach</b> [3] 36:19 37:3, 15 <b>arbitrate</b> [1] 62:15 <b>Arbitration</b> [43] 3:13 8:2,4, 7,12,15 9:7,8,18,19,24 11:3,17,24 12:2,5,7 14:1,14 20:13 21:23 22:11,21 25:20 26:5,18 27:7,14 32:5 40:4,5 42:4,5 45:6 50:11, 24 57:6,10 60:10 61:22 62:7,9 <b>arbitrations</b> [1] 52:4 <b>area</b> [2] 48:19 50:23 <b>areas</b> [1] 60:9 <b>aren't</b> [1] 16:6 22:19 35:4 37:5 42:7 45:6 51:17 55:20 61:13 63:13 68:9 <b>arguably</b> [1] 9:2 <b>argument</b> [29] 1:15 2:2,5,8 3:4,7 4:7,8,16 9:3 17:12 18:19 19:3,7 29:13,14 31:2 33:12,13 34:1,7,10 45:23 46:4,12,12 49:11 64:1,7 <b>arguments</b> [1] 23:7 <b>arise</b> [1] 47:25 <b>arisen</b> [1] 11:23 <b>arises</b> [1] 10:24 <b>arising</b> [1] 14:7 <b>arms</b> [2] 59:16 61:1 <b>around</b> [1] 16:19 <b>articles</b> [3] 25:25 27:2,5 <b>articulated</b> [1] 66:13 <b>aside</b> [3] 29:8 46:5 64:12 <b>asks</b> [1] 3:18 <b>assuming</b> [3] 5:15 24:6 48:22 <b>assumption</b> [1] 5:11 <b>assumptions</b> [1] 9:16 <b>atextual</b> [1] 4:25	<b>attempt</b> [2] 4:6,24 <b>aware</b> [1] 66:8 <b>Ayer</b> [2] 23:5 24:15 <hr/> <b>B</b> <b>back</b> [5] 10:12 20:14 21:1 23:17 42:9 <b>background</b> [9] 33:23 34:2,17 38:10 47:22 48:17 54:7 62:1 66:2 <b>bad</b> [1] 53:13 <b>baggage</b> [1] 52:13 <b>baked</b> [1] 68:13 <b>BAKERIES</b> [2] 1:6 3:5 <b>barges</b> [2] 23:3 25:15 <b>BARRETT</b> [14] 12:10,13 13:19,22 30:22 35:17 40:19 41:2,3 42:11 48:24 56:11,13 63:18 <b>based</b> [2] 4:10 19:2 <b>basically</b> [1] 53:10 <b>basis</b> [2] 4:5 69:9 <b>basketball</b> [1] 66:15 <b>beer</b> [1] 53:13 <b>beginning</b> [1] 10:17 <b>behalf</b> [9] 1:20,22 2:4,7,10 3:8 31:3 53:5 64:2 <b>believe</b> [1] 66:6 <b>BENNETT</b> [50] 1:19 2:3,9 3:6,7,9 5:8,24 6:3 7:13 8:20 9:10 11:9,13 12:24 13:21,24 14:21 15:10,15 18:22 19:4,17 20:1,9 23:14 24:8,12 25:6,9,19 26:7,12, 15,25 27:15,24 28:10 29:11,23 30:2,14,19,25 40:20 54:17 56:17 63:22 64:1,3 <b>best</b> [2] 59:22 61:5 <b>between</b> [10] 17:20 19:10 22:13,14 38:13 39:18 43:23 59:15,21 61:6 <b>big</b> [3] 57:24 59:15 67:6 <b>bind</b> [1] 18:9 <b>BISSONNETTE</b> [2] 1:3 3:4 <b>bit</b> [5] 7:12 28:5 41:21 51:16 61:9 <b>blends</b> [1] 26:2 <b>blown</b> [1] 18:13 <b>boat</b> [8] 10:25 23:23 25:4 26:19 27:3,4 29:21 45:12 <b>boats</b> [13] 4:13 10:5 13:9, 16 23:2 24:16 35:15 43:4 44:25 51:11 65:10,12,13 <b>body</b> [4] 16:19,25 17:1 56:7 <b>boil</b> [1] 41:19 <b>books</b> [1] 21:2 <b>boom</b> [1] 13:17 <b>borders</b> [5] 3:17 6:7,16 28:14 54:5 <b>Boston</b> [1] 41:23 <b>both</b> [8] 4:25 21:12 42:20, 25 43:24 50:1 61:24 69:9	<b>branch</b> [1] 14:5 <b>bread</b> [8] 32:19,20,21 61:4, 7,9 68:2,2 <b>bread's</b> [1] 53:13 <b>brick</b> [1] 53:19 <b>brief</b> [5] 17:10 21:20 46:7 59:6 65:11 <b>briefly</b> [2] 20:24 23:19 <b>bring</b> [8] 10:19 16:21 18:9, 10 43:2 58:17,20 67:16 <b>bringing</b> [4] 53:3,6,10,17 <b>broad</b> [2] 32:14 36:4 <b>broader</b> [5] 26:4 38:8,9 42:18 67:10 <b>brought</b> [2] 40:11 60:18 <b>building</b> [1] 13:17 <b>built</b> [1] 5:10 <b>Bulk</b> [3] 10:15 11:15 12:4 <b>bunch</b> [4] 24:12,13 64:19, 19 <b>burden</b> [1] 37:16 <b>business</b> [7] 37:22 38:14, 22 55:6,10 56:3,15 <b>buy</b> [2] 32:18 61:8 <b>buying</b> [2] 68:2,2 <hr/> <b>C</b> <b>cafeteria</b> [1] 30:8 <b>California</b> [1] 1:20 <b>call</b> [2] 20:7 50:19 <b>came</b> [1] 1:14 21:12 <b>Canada</b> [1] 41:13 <b>Canal</b> [1] 41:22 <b>candid</b> [1] 51:17 <b>canon</b> [2] 31:15 35:8 <b>canvassed</b> [1] 21:10 <b>capture</b> [1] 59:7 <b>care</b> [3] 48:25,25 53:24 <b>carefully</b> [2] 3:12 46:13 <b>cargo</b> [2] 15:23 52:10 <b>carrier</b> [2] 52:6 63:7 <b>Carriers</b> [7] 10:15 11:15 12:4 17:2 52:12 63:11,13 <b>carry</b> [1] 31:22 <b>carrying</b> [3] 22:1,2 23:3 <b>cascade</b> [2] 50:7 60:1 <b>Case</b> [21] 3:4 4:22 5:3,10 7:7 10:16 12:4,4 16:20 21:1 28:7,18 37:4 38:7 39:11 54:23 66:18,23 67:23 69:14,15 <b>cases</b> [30] 6:5 7:15 10:20 16:4,18 34:22 35:4,19,23 47:4,25 48:11,20,22 49:18, 23 50:2,4,7 51:17 52:8,12, 25 53:2 54:4,24 55:3 56:8 57:16 68:20 <b>Categorically</b> [2] 27:13,15 <b>categories</b> [2] 18:4 23:12 <b>category</b> [2] 26:4 55:21 <b>cause</b> [1] 32:3 <b>caused</b> [1] 40:11 <b>certain</b> [2] 10:23 25:3 <b>certainly</b> [5] 6:4 19:1 27:
----------	---	--	---	--

## Official - Subject to Final Review

<p>11 30:6 33:5  <b>chance</b> [1] 29:6  <b>changed</b> [2] 56:19 57:23  <b>characteristics</b> [2] 37:1,4  <b>check</b> [1] 47:15  <b>chef</b> [1] 30:8  <b>Chicago</b> [3] 32:3 40:12 60:19  <b>CHIEF</b> [19] 3:3,9 28:21 30:20 31:1,4 36:16,23 37:7,11 38:2,24 39:2,6 62:24 63:4,17,22 69:12  <b>choose</b> [1] 25:19  <b>chose</b> [2] 26:11,18  <b>circle</b> [1] 52:8  <b>Circuit</b> [29] 14:19 31:12 32:16 33:6 34:17,20,21 35:6,6 36:10,14 38:6,11 42:21 48:20,21 50:5 54:22 62:12,13 66:5,7,8,9,10,11,12,13,19  <b>Circuit's</b> [4] 21:7 36:22 38:5 67:23  <b>circuits</b> [1] 66:3  <b>cite</b> [1] 65:10  <b>citing</b> [2] 41:6 52:9  <b>City</b> [12] 31:12 32:16 34:20,21 35:6,6 36:10,14 42:21 48:20,21 50:5  <b>claims</b> [1] 16:22  <b>class</b> [7] 3:15 5:12 6:5 18:5,7 20:13 48:11  <b>classes</b> [3] 18:2 40:4 61:23  <b>clause</b> [6] 7:17 8:24,24 31:23 56:25 66:21  <b>clean</b> [2] 38:16 48:4  <b>clear</b> [13] 13:1,2 19:22,25 20:20 28:11 31:6 51:24 52:3 55:3,5 68:3 69:2  <b>clearer</b> [1] 51:25  <b>clearly</b> [2] 38:25 52:16  <b>clerk</b> [1] 31:10  <b>coal</b> [2] 17:23 24:20  <b>coast</b> [6] 10:3,3 13:18 24:17 41:10,11  <b>coast-to-coast</b> [2] 25:23 27:17  <b>coast-wise</b> [1] 51:12  <b>coastalized</b> [1] 10:4  <b>coasting</b> [2] 25:23 27:1  <b>coastwise</b> [1] 27:17  <b>Code</b> [1] 11:16  <b>combine</b> [2] 58:15,16  <b>come</b> [4] 16:7 36:20 58:3 61:18  <b>comes</b> [6] 5:10 9:5 16:16 17:7 22:8 28:17  <b>coming</b> [6] 14:3 44:3,5,14,19 57:12  <b>comments</b> [1] 17:9  <b>commerce</b> [17] 5:13 13:15 14:18 17:3 22:2 23:1 43:13 45:25 46:14 47:1 48:15 49:9 52:11 59:8,14 64:15</p>	<p>65:15  <b>commissioner</b> [6] 9:24 11:1 25:25 27:2,6,7  <b>Commissioners</b> [12] 9:22 10:22 11:22 32:8 40:20 41:5 42:2,24 45:4 51:8,15,18  <b>common</b> [8] 7:20 8:16 37:3 52:6,11 63:7,11,13  <b>common-sense</b> [1] 18:11  <b>commonality</b> [7] 19:10,12 22:13 31:22 36:13,15,17  <b>commonly</b> [1] 18:4  <b>companies</b> [26] 6:25 10:6 14:4 24:18,19,20,24 44:24,25 45:1 48:3 52:20 54:4 55:8,12,15,20 59:10,16 61:1 65:12,13 67:14,15,15 68:25  <b>company</b> [14] 3:24 4:2 5:18 17:2,14 20:22 23:25 24:21 42:8 48:5,6 50:20 66:6 67:17  <b>company's</b> [3] 4:15 17:23 69:2  <b>compelling</b> [1] 37:21  <b>complicate</b> [1] 33:4  <b>complicated</b> [3] 5:22 36:17 68:8  <b>component</b> [3] 48:23 58:14 63:12  <b>components</b> [1] 59:10  <b>concede</b> [2] 6:8 43:4  <b>concern</b> [1] 26:2  <b>concerns</b> [1] 60:14  <b>conclusion</b> [1] 21:12  <b>concrete</b> [1] 66:6  <b>condition</b> [1] 49:14  <b>confirms</b> [1] 21:3  <b>conflict</b> [3] 10:11 11:4 37:17  <b>Congress</b> [33] 8:1,11,21 9:2,8 10:20 11:7 12:17 13:13 14:4 31:25 32:4 35:25 39:20,23,25 40:2,7,12 43:10 56:21,23 57:1 58:11 60:6,8,20 61:20,21 65:4,14,20 69:3  <b>Congress's</b> [2] 40:17 59:4  <b>connected</b> [1] 16:23  <b>connects</b> [2] 7:18 8:17  <b>considering</b> [1] 37:18  <b>consistent</b> [1] 59:4  <b>constituted</b> [1] 29:7  <b>construct</b> [1] 43:9  <b>consumer</b> [1] 38:19  <b>contemplating</b> [1] 9:3  <b>context</b> [6] 8:6,17 13:25 31:15,23 36:6  <b>continuing</b> [2] 12:14,22  <b>contract</b> [2] 39:18 57:18  <b>contracting</b> [2] 68:10,10  <b>contracts</b> [2] 8:3 62:4  <b>control</b> [1] 66:24  <b>converted</b> [1] 45:17</p>	<p><b>core</b> [1] 13:9  <b>corporate</b> [1] 68:8  <b>correct</b> [5] 8:18 9:21 31:20 39:15 62:10  <b>correctly</b> [2] 44:16 51:6  <b>couldn't</b> [3] 52:18 53:23 62:15  <b>Counsel</b> [12] 12:10 18:11,14 28:22 30:24 31:6 38:18 45:22 57:8 62:25 63:20 69:13  <b>count</b> [1] 39:8  <b>counted</b> [2] 34:25 35:20  <b>country</b> [1] 40:11  <b>counts</b> [1] 16:1  <b>course</b> [2] 38:22 55:10  <b>COURT</b> [58] 1:1,15 3:10,12,18 4:19,23 5:10 9:12 10:14,16,18,20 11:2,5,8,14,20 12:3 14:12,25 15:24 21:9,23 22:9,18 25:18 28:18,19 29:13,16,24 30:16 31:5,12 33:6,24 34:6 36:5,14,25 42:21 44:16 48:21,22 52:9 54:12 62:6,7,8,9,12,13 65:2,3 67:1,3 69:7  <b>Court's</b> [9] 5:2 10:19 14:20 15:20 23:4 27:21 32:16 33:1 34:5  <b>courts</b> [8] 14:1 16:7 17:6 28:15 37:18 49:22 54:15 56:9  <b>covered</b> [6] 8:25 9:19 26:5,17 50:11,23  <b>covers</b> [3] 28:9,10 66:21  <b>created</b> [2] 4:1 37:14  <b>credit</b> [1] 21:17  <b>critical</b> [2] 59:7,13  <b>cross</b> [1] 48:6  <b>crossing</b> [2] 59:12 60:23  <b>crystal</b> [3] 51:23,24 52:3  <b>curiosity</b> [1] 14:24  <b>curious</b> [1] 12:15  <b>customers</b> [2] 6:24 60:2</p>	<p><b>definition</b> [12] 4:14 7:15 21:24,25 22:8,8,19,20,24 32:13 35:12 44:18  <b>deliver</b> [1] 15:8  <b>deliveries</b> [1] 5:7  <b>delivery</b> [1] 66:24  <b>demonstrate</b> [2] 22:12 31:16  <b>denying</b> [1] 50:3  <b>department</b> [3] 17:17 48:13 59:1  <b>departments</b> [1] 48:14  <b>depend</b> [1] 26:8  <b>depended</b> [1] 26:11  <b>despite</b> [1] 67:2  <b>determine</b> [1] 55:24  <b>dictionaries</b> [1] 21:1  <b>differ</b> [1] 30:12  <b>different</b> [16] 12:1 14:11 15:17 21:24,25 23:20 32:2 36:12 37:17 40:1,13,15 43:25 47:18 56:6 64:19  <b>differently</b> [1] 67:19  <b>difficult</b> [11] 6:13 7:3,22 9:14 23:16 37:15 54:25 56:5 68:19,20 69:4  <b>directly</b> [6] 3:16 6:1,6,15 28:12 31:8  <b>disagree</b> [3] 41:1 43:20 46:21  <b>discern</b> [2] 7:18 9:12  <b>discovery</b> [1] 6:21  <b>discussed</b> [1] 10:15  <b>discussing</b> [1] 29:14  <b>dispositive</b> [2] 46:24,25  <b>dispute</b> [16] 8:23 10:9,13,24 11:23,24 12:7,19 18:2 21:18 25:16 28:17 59:21,23 60:18 67:24  <b>disputed</b> [1] 37:6  <b>disputes</b> [6] 14:6,7,16 32:1 59:20 60:17  <b>disrupt</b> [1] 65:15  <b>disrupted</b> [1] 65:6  <b>disruption</b> [1] 60:7  <b>disruptive</b> [1] 65:19  <b>dissent</b> [1] 66:18  <b>distances</b> [1] 58:6  <b>distinction</b> [3] 4:5 17:19 28:8  <b>distinguish</b> [1] 28:3  <b>district</b> [4] 14:20,25 22:9 33:6  <b>doctrines</b> [1] 53:24  <b>doing</b> [14] 9:2 13:13 16:14,15 27:17,19 46:9,10,11,20 51:12,13 59:11 60:10  <b>Domino's</b> [1] 53:2  <b>done</b> [4] 20:18,18 56:15 57:20  <b>doubt</b> [1] 46:17  <b>down</b> [3] 24:17 25:12 41:19  <b>drawn</b> [1] 43:23</p>	<p><b>dredgers</b> [1] 27:22  <b>driver</b> [1] 49:6  <b>drivers</b> [12] 3:22 4:3,12 5:6 22:23,25 45:24 48:6 66:21,24 67:12 68:9  <b>duties</b> [1] 46:9</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>earlier</b> [3] 25:11 26:2 30:4  <b>earning</b> [1] 41:14  <b>easier</b> [1] 4:19  <b>East</b> [1] 41:10  <b>economy</b> [9] 13:14 40:14,17 48:12 53:15 60:9 61:14,23 65:7  <b>edge</b> [1] 6:5  <b>effect</b> [1] 43:1  <b>effects</b> [1] 60:1  <b>either</b> [2] 19:18 62:16  <b>ejusdem</b> [6] 4:7,16 7:14 31:15 35:7,8  <b>element</b> [1] 57:3  <b>Eleventh</b> [1] 66:11  <b>Ellis</b> [1] 27:21  <b>emphasized</b> [1] 7:12  <b>employed</b> [14] 3:23 5:18 10:5 13:10 20:22 24:14,16,17,20,21,22 42:10 64:16 65:12  <b>employee</b> [4] 16:15 46:8,11 51:25  <b>employees</b> [27] 7:24 8:14 9:6 17:16,23 18:1,7 19:11 22:14,14 24:3 25:13 31:21 32:6,12,25 36:9,14 40:5 42:8 52:5 59:22 61:6 62:5 67:7,8,11  <b>employer</b> [9] 3:20 4:11 21:6 46:9 52:5 59:21,22 64:8 66:17  <b>employer-based</b> [10] 4:24 10:10 23:9,24 64:22 65:17,22 66:3 67:4 68:18  <b>employers</b> [5] 9:25 13:10 24:22 57:17 62:5  <b>employing</b> [1] 24:24  <b>employment</b> [2] 8:3 39:18  <b>empty</b> [1] 41:25  <b>enacted</b> [3] 11:16,18 56:25  <b>enacting</b> [1] 61:21  <b>encompass</b> [1] 40:21  <b>encompassing</b> [2] 31:7 58:8  <b>end</b> [2] 14:16 15:6  <b>enemy</b> [1] 35:14  <b>enforceable</b> [1] 62:6  <b>engaged</b> [7] 5:6,12 17:3 22:25 29:7 47:1 49:8  <b>enough</b> [2] 15:9,25  <b>enshrined</b> [1] 10:21  <b>entire</b> [2] 33:5 53:11  <b>entirely</b> [2] 13:1 69:1  <b>entirety</b> [1] 58:8  <b>enumeration</b> [3] 32:11 44:</p>
<b>D</b>				
<p><b>D.C</b> [1] 1:11  <b>date</b> [1] 54:6  <b>day</b> [3] 15:7 30:6,8  <b>days</b> [3] 15:22,23,24  <b>deal</b> [8] 15:5,18 16:9 29:9 50:1 52:21 59:23 67:6  <b>dealing</b> [1] 35:5  <b>decide</b> [5] 18:24 47:3,5 49:20 60:12  <b>decided</b> [2] 5:4 54:13  <b>deciding</b> [1] 45:24  <b>decision</b> [7] 15:20 23:4 27:21 34:19 36:22 66:5,10  <b>decisions</b> [2] 66:7,11  <b>defendant</b> [1] 39:16  <b>define</b> [3] 22:22,23 65:3  <b>defined</b> [2] 4:10 31:21  <b>definitely</b> [1] 24:3</p>	<p><b>core</b> [1] 13:9  <b>corporate</b> [1] 68:8  <b>correct</b> [5] 8:18 9:21 31:20 39:15 62:10  <b>correctly</b> [2] 44:16 51:6  <b>couldn't</b> [3] 52:18 53:23 62:15  <b>Counsel</b> [12] 12:10 18:11,14 28:22 30:24 31:6 38:18 45:22 57:8 62:25 63:20 69:13  <b>count</b> [1] 39:8  <b>counted</b> [2] 34:25 35:20  <b>country</b> [1] 40:11  <b>counts</b> [1] 16:1  <b>course</b> [2] 38:22 55:10  <b>COURT</b> [58] 1:1,15 3:10,12,18 4:19,23 5:10 9:12 10:14,16,18,20 11:2,5,8,14,20 12:3 14:12,25 15:24 21:9,23 22:9,18 25:18 28:18,19 29:13,16,24 30:16 31:5,12 33:6,24 34:6 36:5,14,25 42:21 44:16 48:21,22 52:9 54:12 62:6,7,8,9,12,13 65:2,3 67:1,3 69:7  <b>Court's</b> [9] 5:2 10:19 14:20 15:20 23:4 27:21 32:16 33:1 34:5  <b>courts</b> [8] 14:1 16:7 17:6 28:15 37:18 49:22 54:15 56:9  <b>covered</b> [6] 8:25 9:19 26:5,17 50:11,23  <b>covers</b> [3] 28:9,10 66:21  <b>created</b> [2] 4:1 37:14  <b>credit</b> [1] 21:17  <b>critical</b> [2] 59:7,13  <b>cross</b> [1] 48:6  <b>crossing</b> [2] 59:12 60:23  <b>crystal</b> [3] 51:23,24 52:3  <b>curiosity</b> [1] 14:24  <b>curious</b> [1] 12:15  <b>customers</b> [2] 6:24 60:2</p>	<p><b>definition</b> [12] 4:14 7:15 21:24,25 22:8,8,19,20,24 32:13 35:12 44:18  <b>deliver</b> [1] 15:8  <b>deliveries</b> [1] 5:7  <b>delivery</b> [1] 66:24  <b>demonstrate</b> [2] 22:12 31:16  <b>denying</b> [1] 50:3  <b>department</b> [3] 17:17 48:13 59:1  <b>departments</b> [1] 48:14  <b>depend</b> [1] 26:8  <b>depended</b> [1] 26:11  <b>despite</b> [1] 67:2  <b>determine</b> [1] 55:24  <b>dictionaries</b> [1] 21:1  <b>differ</b> [1] 30:12  <b>different</b> [16] 12:1 14:11 15:17 21:24,25 23:20 32:2 36:12 37:17 40:1,13,15 43:25 47:18 56:6 64:19  <b>differently</b> [1] 67:19  <b>difficult</b> [11] 6:13 7:3,22 9:14 23:16 37:15 54:25 56:5 68:19,20 69:4  <b>directly</b> [6] 3:16 6:1,6,15 28:12 31:8  <b>disagree</b> [3] 41:1 43:20 46:21  <b>discern</b> [2] 7:18 9:12  <b>discovery</b> [1] 6:21  <b>discussed</b> [1] 10:15  <b>discussing</b> [1] 29:14  <b>dispositive</b> [2] 46:24,25  <b>dispute</b> [16] 8:23 10:9,13,24 11:23,24 12:7,19 18:2 21:18 25:16 28:17 59:21,23 60:18 67:24  <b>disputed</b> [1] 37:6  <b>disputes</b> [6] 14:6,7,16 32:1 59:20 60:17  <b>disrupt</b> [1] 65:15  <b>disrupted</b> [1] 65:6  <b>disruption</b> [1] 60:7  <b>disruptive</b> [1] 65:19  <b>dissent</b> [1] 66:18  <b>distances</b> [1] 58:6  <b>distinction</b> [3] 4:5 17:19 28:8  <b>distinguish</b> [1] 28:3  <b>district</b> [4] 14:20,25 22:9 33:6  <b>doctrines</b> [1] 53:24  <b>doing</b> [14] 9:2 13:13 16:14,15 27:17,19 46:9,10,11,20 51:12,13 59:11 60:10  <b>Domino's</b> [1] 53:2  <b>done</b> [4] 20:18,18 56:15 57:20  <b>doubt</b> [1] 46:17  <b>down</b> [3] 24:17 25:12 41:19  <b>drawn</b> [1] 43:23</p>	<p><b>dredgers</b> [1] 27:22  <b>driver</b> [1] 49:6  <b>drivers</b> [12] 3:22 4:3,12 5:6 22:23,25 45:24 48:6 66:21,24 67:12 68:9  <b>duties</b> [1] 46:9</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>earlier</b> [3] 25:11 26:2 30:4  <b>earning</b> [1] 41:14  <b>easier</b> [1] 4:19  <b>East</b> [1] 41:10  <b>economy</b> [9] 13:14 40:14,17 48:12 53:15 60:9 61:14,23 65:7  <b>edge</b> [1] 6:5  <b>effect</b> [1] 43:1  <b>effects</b> [1] 60:1  <b>either</b> [2] 19:18 62:16  <b>ejusdem</b> [6] 4:7,16 7:14 31:15 35:7,8  <b>element</b> [1] 57:3  <b>Eleventh</b> [1] 66:11  <b>Ellis</b> [1] 27:21  <b>emphasized</b> [1] 7:12  <b>employed</b> [14] 3:23 5:18 10:5 13:10 20:22 24:14,16,17,20,21,22 42:10 64:16 65:12  <b>employee</b> [4] 16:15 46:8,11 51:25  <b>employees</b> [27] 7:24 8:14 9:6 17:16,23 18:1,7 19:11 22:14,14 24:3 25:13 31:21 32:6,12,25 36:9,14 40:5 42:8 52:5 59:22 61:6 62:5 67:7,8,11  <b>employer</b> [9] 3:20 4:11 21:6 46:9 52:5 59:21,22 64:8 66:17  <b>employer-based</b> [10] 4:24 10:10 23:9,24 64:22 65:17,22 66:3 67:4 68:18  <b>employers</b> [5] 9:25 13:10 24:22 57:17 62:5  <b>employing</b> [1] 24:24  <b>employment</b> [2] 8:3 39:18  <b>empty</b> [1] 41:25  <b>enacted</b> [3] 11:16,18 56:25  <b>enacting</b> [1] 61:21  <b>encompass</b> [1] 40:21  <b>encompassing</b> [2] 31:7 58:8  <b>end</b> [2] 14:16 15:6  <b>enemy</b> [1] 35:14  <b>enforceable</b> [1] 62:6  <b>engaged</b> [7] 5:6,12 17:3 22:25 29:7 47:1 49:8  <b>enough</b> [2] 15:9,25  <b>enshrined</b> [1] 10:21  <b>entire</b> [2] 33:5 53:11  <b>entirely</b> [2] 13:1 69:1  <b>entirety</b> [1] 58:8  <b>enumeration</b> [3] 32:11 44:</p>	



## Official - Subject to Final Review

<p>7,10  <b>Erving</b> [1] 34:19  <b>ESQ</b> [3] 2:3,6,9  <b>ESQUIRE</b> [2] 1:19,21  <b>essentially</b> [5] 4:1 10:17  26:9 30:15 67:16  <b>ET</b> [2] 1:3,7  <b>even</b> [21] 4:18,21 9:11 10:7  22:18,19 23:6 26:3,16 28:  1 47:13 50:4 54:9,12 55:8  64:10,13 65:2,2 66:12 68:  20  <b>everybody</b> [3] 21:15 29:17  65:17  <b>evidence</b> [3] 21:3 65:5,11  <b>evolving</b> [1] 58:10  <b>exactly</b> [3] 11:9 26:12 39:7  <b>examined</b> [1] 3:12  <b>example</b> [15] 4:9 6:11 7:8  16:12,18 24:14,15 27:4,21  30:6 32:18 35:21 38:17 51:  10 57:4  <b>examples</b> [2] 37:20 61:19  <b>Except</b> [1] 42:11  <b>exclude</b> [1] 56:7  <b>excluded</b> [2] 48:17 49:19  <b>excluding</b> [1] 49:17  <b>executive</b> [1] 14:5  <b>exempt</b> [6] 3:25 12:23 17:  18 29:16 52:19 67:2  <b>exempting</b> [1] 8:22  <b>exemption</b> [11] 3:14,15 9:  13 10:8 31:7,13,17 34:8  39:24 42:23 67:10  <b>exempts</b> [1] 20:13  <b>exhaustive</b> [1] 44:17  <b>existed</b> [1] 8:8  <b>expensive</b> [1] 25:2  <b>explain</b> [4] 4:21 32:11 46:  19 68:15  <b>explained</b> [2] 12:3 67:22  <b>explicit</b> [1] 64:20  <b>extend</b> [1] 20:5  <b>extent</b> [3] 13:12 14:10 45:  21</p>	<p><b>February</b> [1] 1:12  <b>Federal</b> [14] 3:13 11:17 12:  2 20:12 21:23 22:11,21 32:  5 36:9 40:4 52:4 56:9 57:  18 60:10  <b>FedEx</b> [7] 39:14,15,16,17,  18 59:17 67:15  <b>FedEx's</b> [1] 39:4  <b>FedExes</b> [1] 55:4  <b>fell</b> [1] 50:22  <b>ferries</b> [1] 63:11  <b>few</b> [3] 11:14 16:4 18:22  <b>figure</b> [4] 6:18 7:23 37:8  52:18  <b>figuring</b> [1] 6:17  <b>file</b> [2] 62:7,8  <b>filed</b> [1] 53:5  <b>fine</b> [1] 59:9  <b>finished</b> [1] 12:11  <b>first</b> [19] 15:12,19 21:11 22:  4,15 24:5 30:13 33:21 34:  12 35:2 36:3 38:4,4 41:2,6  44:15 46:17 64:6 66:8  <b>fish</b> [2] 41:16,17  <b>fishermen</b> [1] 64:12  <b>fit</b> [3] 9:4 32:17 40:16  <b>five</b> [2] 53:1,1  <b>fix</b> [1] 56:22  <b>fixed</b> [1] 56:24  <b>flag</b> [1] 14:15  <b>flatly</b> [1] 32:14  <b>fleet</b> [1] 37:23  <b>fleets</b> [1] 44:25  <b>Flowers</b> [30] 3:18,21,24 4:  1,9,17,21 6:8,16 21:18 22:  12,22 32:19 39:17 61:4,4,6  64:24 65:5 67:6,16,21,25  68:1,5,7,10,11,14,20  <b>Flowers'</b> [13] 4:6,12,13,20,  23 19:7 22:23,25 23:7 24:  1 32:19 64:10 69:8  <b>focus</b> [2] 46:8 49:4  <b>focusing</b> [1] 9:13  <b>folks</b> [3] 35:15 37:1 51:11  <b>follow</b> [1] 49:1  <b>following</b> [1] 7:16  <b>food</b> [2] 30:10 53:11  <b>Foods</b> [2] 39:17 60:25  <b>Ford</b> [1] 24:20  <b>foreclosed</b> [2] 33:11,19  <b>foreign</b> [4] 28:13 45:25 46:  14 47:1  <b>forever</b> [1] 66:20  <b>forth</b> [1] 42:9  <b>franchise</b> [1] 53:4  <b>franchisees</b> [1] 53:3  <b>Francisco</b> [2] 1:19 41:23  <b>freely</b> [1] 35:13  <b>Freights</b> [1] 55:4  <b>frequent</b> [1] 56:1  <b>frequently</b> [1] 56:3  <b>friend</b> [2] 36:18 50:9  <b>friends</b> [1] 29:3  <b>front</b> [1] 27:2</p>	<p><b>full</b> [2] 45:20 52:7  <b>full-time</b> [1] 3:22  <b>funnel</b> [1] 12:17  <b>funneled</b> [1] 9:6  <b>further</b> [1] 28:17  <b>furtherance</b> [1] 21:5  <b>future</b> [2] 9:4,9</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>gave</b> [1] 22:9  <b>generally</b> [1] 56:15  <b>generis</b> [3] 4:8,16 7:15  <b>geographic</b> [1] 10:2  <b>gets</b> [1] 35:12  <b>getting</b> [2] 43:10,11  <b>give</b> [3] 18:20 21:23 37:20  <b>given</b> [3] 18:19 44:17 66:  22  <b>gives</b> [1] 14:4  <b>giving</b> [3] 30:4 37:2 38:6  <b>glad</b> [1] 59:18  <b>goals</b> [1] 59:4  <b>good's</b> [1] 31:8  <b>goods</b> [26] 3:16,22 6:7,16  17:14 22:2 23:1,4 25:4 28:  13 31:9 38:15 48:14 55:7,  11 56:4 58:4,20 59:12 60:  2,22 61:16 64:15 68:13,14  69:2  <b>GORSUCH</b> [10] 26:20 27:  13,23,25 29:2,3,22,25 30:  12,17  <b>Got</b> [6] 27:23 29:22 44:13  53:18 62:2,21  <b>governing</b> [7] 10:14 16:20  32:5,7 52:4 57:10 64:18  <b>grant</b> [1] 8:10  <b>granular</b> [1] 37:3  <b>gravamen</b> [3] 19:23 20:10,  11  <b>gray</b> [1] 50:23  <b>grievance</b> [2] 12:5 14:13  <b>group</b> [1] 53:5  <b>group-based</b> [2] 14:1,14  <b>guess</b> [2] 58:24 59:3</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>halt</b> [1] 40:11  <b>handler</b> [1] 52:14  <b>handles</b> [1] 68:11  <b>happened</b> [1] 19:2  <b>happening</b> [2] 13:4 51:20  <b>happens</b> [1] 67:13  <b>harder</b> [2] 49:11 69:10  <b>haul</b> [1] 57:25  <b>hauling</b> [3] 3:22 38:13,14  <b>head</b> [2] 30:7 62:2  <b>heading</b> [1] 14:8  <b>hear</b> [3] 3:3 33:16 64:7  <b>heart</b> [2] 47:20 63:14  <b>held</b> [5] 3:14 11:2 35:7 36:  14 43:17  <b>helpful</b> [3] 63:7,7,10  <b>helps</b> [1] 41:21</p>	<p><b>heretofore</b> [2] 49:18 56:8  <b>highway</b> [1] 6:12  <b>hired</b> [1] 3:24  <b>historical</b> [1] 9:11  <b>history</b> [9] 3:13 13:4 21:10  29:8 31:16,24 41:21 45:11  60:15  <b>hold</b> [1] 58:15  <b>holding</b> [7] 20:4 32:16 34:  3,5 52:13 54:13 58:17  <b>holdings</b> [1] 33:22  <b>honest</b> [1] 12:25  <b>honestly</b> [1] 48:19  <b>Honor</b> [2] 7:13 64:4  <b>honored</b> [1] 62:10  <b>hope</b> [1] 54:17  <b>host</b> [2] 24:21,24  <b>hundred</b> [2] 9:15 65:4  <b>hypotheticals</b> [2] 19:15,  20</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [1] 52:9  <b>identify</b> [1] 4:9  <b>ignorance</b> [1] 12:15  <b>imagine</b> [1] 45:15  <b>impact</b> [1] 43:12  <b>implicated</b> [1] 61:13  <b>implications</b> [1] 18:15  <b>implied</b> [3] 3:23 35:8,9  <b>important</b> [6] 13:14 47:4  49:17 50:1 54:17 60:9  <b>imposes</b> [1] 37:15  <b>imposing</b> [1] 11:3  <b>in-house</b> [4] 4:2 45:2 59:  16 67:17  <b>inclined</b> [2] 65:2,3  <b>include</b> [1] 55:11  <b>included</b> [5] 21:4 26:22 45:  14 65:21 69:5  <b>inconsistent</b> [2] 19:7 32:  15  <b>incorrect</b> [1] 20:7  <b>indeterminate</b> [1] 7:22  <b>individual</b> [1] 5:17  <b>indulge</b> [1] 45:9  <b>industries</b> [7] 9:4 20:5 48:  8,18 51:20 57:2,24  <b>industry</b> [102] 4:25 5:19,21  9:5 10:10 13:11 18:6,8 20:  6 23:9,13,18,20,22 24:4,5  25:14 28:2 29:8 30:5,7,9,  11 31:17,21 32:2,6,9 33:5,  14,18,24 34:9,13,19,24 37:  2,9 38:12 39:1,8,12 40:1,6,  10,22 41:20 42:2 43:1,15  44:1,3,14,19,22 46:10,19  47:24 48:23 49:3,4,8,8,13  50:12 51:9,23 52:14 53:5,  7,7,11,14,17 54:8,12 55:5  56:14,14,19 57:4,11,11 58:  1,2,7,9,10,14,16 59:25 60:  16,17,18 61:17,24 63:10,  13 66:3,14,16 68:18</p>	<p><b>industry-wide</b> [1] 34:4  <b>inevitably</b> [1] 48:14  <b>informing</b> [1] 54:15  <b>informs</b> [1] 35:3  <b>infrastructure-heavy</b> [1]  25:2  <b>injured</b> [1] 16:21  <b>inquiry</b> [3] 5:21,22 6:10  <b>insight</b> [1] 14:6  <b>Instead</b> [2] 7:17 9:13  <b>intended</b> [1] 59:7  <b>interest</b> [1] 45:20  <b>interference</b> [1] 57:20  <b>internal</b> [3] 17:23 27:18 61:  1  <b>international</b> [5] 3:17 6:7  25:22 27:16 61:16  <b>interpret</b> [1] 51:19  <b>interpreted</b> [1] 31:14  <b>interpreting</b> [1] 51:17  <b>interrupt</b> [1] 14:18  <b>interrupted</b> [2] 12:8 13:17  <b>interrupting</b> [1] 13:15  <b>interstate</b> [9] 5:13 31:8 45:  25 46:14 47:1 48:15 49:9  52:11 61:16  <b>intervene</b> [1] 60:20  <b>intranational</b> [1] 60:24  <b>intrastate</b> [2] 5:6 32:22  <b>introduce</b> [1] 48:10  <b>intuition</b> [2] 24:2,4  <b>invocation</b> [1] 4:7  <b>involve</b> [4] 54:24 55:17,18  60:13  <b>involved</b> [9] 3:16 6:1,6,15  14:6 28:12 31:8 58:11 61:  15  <b>involves</b> [2] 16:20 38:22  <b>involving</b> [4] 32:1 40:10  49:19 59:12  <b>isn't</b> [3] 8:17 19:11 45:22  <b>isolating</b> [1] 42:2  <b>issue</b> [7] 47:5,7,8,10 49:13,  14 58:13  <b>issues</b> [1] 14:2  <b>items</b> [3] 7:18,19,19  <b>itself</b> [2] 11:22 17:9</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>JACKSON</b> [20] 26:10,14  28:1 30:23 34:22 35:4,16,  18,24 43:14 44:9,23 53:20,  23 54:2 58:24 59:2 60:4,  21 63:19  <b>JENNIFER</b> [5] 1:19 2:3,9 3:  7 64:1  <b>job</b> [2] 15:6 65:18  <b>jobs</b> [2] 16:5 67:9  <b>Jones</b> [6] 16:19 30:6,8 35:  22 36:4,6  <b>journey</b> [4] 31:9 41:24,25  42:9  <b>journeys</b> [1] 45:5  <b>judges</b> [1] 7:22</p>
---	--	---	--	--

## Official - Subject to Final Review

<p><b>judgment</b> [3] 39:25 40:16, 18  <b>judgments</b> [1] 40:3  <b>JUSTICE</b> [135] 3:3, 10 5:3, 20 6:2 7:11, 14 9:1 11:6, 11 12:10, 12, 13 13:19, 22 14:19, 22 15:14 17:8 19:1, 16, 24 20:2 23:11 24:6, 10 25:5, 7, 10, 14 26:1, 10, 14, 20, 21 27:13, 23, 25 28:1, 5, 21, 23, 24, 25 29:1, 2, 3, 22, 25 30:4, 12, 17, 20, 20, 22, 23 31:1, 5, 19 33:2, 8, 10, 20, 25 34:22 35:4, 16, 17, 18, 24 36:16, 23 37:7, 11 38:2, 24 39:2, 6 40:19 41:2, 3 42:11 43:14 44:8, 9, 23 45:22 46:3, 17, 22 47:6, 11, 13, 17 48:24 49:1 50:8, 14, 17, 22 51:4, 22 52:17 53:20, 23 54:2, 16 55:1, 14 56:10, 11, 12, 13 58:24 59:2 60:4, 21 61:25 62:4, 17, 21, 24 63:1, 2, 3, 4, 4, 6, 15, 17, 17, 19, 22 65:24 69:12</p>	<p><b>lays</b> [1] 28:11  <b>learned</b> [1] 61:21  <b>least</b> [5] 8:9 20:8 21:10 38:10 50:25  <b>leaves</b> [1] 19:5  <b>leaving</b> [1] 60:11  <b>led</b> [1] 65:9  <b>legal</b> [8] 8:6, 16 15:11, 12 30:7, 9  <b>leisure</b> [1] 51:10  <b>length</b> [1] 26:8  <b>LePAGE</b> [2] 1:6 3:5  <b>Less</b> [2] 3:11 16:10  <b>lesson</b> [1] 61:20  <b>light</b> [2] 33:22 48:16  <b>likely</b> [2] 17:15, 18  <b>limit</b> [3] 35:5 36:7 41:13  <b>limitation</b> [4] 44:3 49:24, 24 65:22  <b>limitations</b> [2] 10:2 64:20  <b>limited</b> [9] 9:25 31:17 32:8 42:12, 25 44:12  <b>limitless</b> [1] 35:10  <b>limits</b> [5] 18:14 35:8, 9 41:19 50:5  <b>line</b> [8] 31:24 38:13, 16 43:23 49:18 50:4 57:16 59:15  <b>line-drawing</b> [1] 54:25  <b>lines</b> [3] 48:6 59:13 60:23  <b>linkage</b> [1] 26:3  <b>list</b> [2] 36:11, 11  <b>listed</b> [3] 7:17, 19, 19  <b>literal</b> [1] 7:16  <b>literally</b> [1] 21:2  <b>little</b> [6] 20:8 28:5 41:21 45:5 51:24 61:9  <b>LLC</b> [1] 1:6  <b>load</b> [1] 58:20  <b>loaded</b> [2] 50:15, 18  <b>loader</b> [1] 52:10  <b>loading</b> [1] 15:22  <b>loads</b> [1] 31:9  <b>local</b> [2] 27:20 45:5  <b>location</b> [1] 65:18  <b>long</b> [4] 49:5, 7 57:25 58:6  <b>long-standing</b> [1] 66:22  <b>longer</b> [1] 4:3  <b>longstanding</b> [1] 21:14  <b>look</b> [22] 8:5, 16, 18 9:15 11:15, 21 13:4 15:19, 25 16:11, 12, 17, 25 19:8 20:15 21:1 32:24 33:4, 12 46:13 48:20 65:6  <b>looked</b> [2] 33:2 67:3  <b>looking</b> [5] 7:17 12:5 19:10 37:1 45:23  <b>lose</b> [2] 40:24 52:21  <b>lot</b> [9] 11:19 37:16 39:22 41:21 48:2 55:13, 15 61:18 62:15  <b>lot's</b> [2] 45:8, 9  <b>LOVITT</b> [58] 1:21 2:6 31:1, 2, 4 33:8, 20 35:2, 22 36:3, 21, 25 37:10, 25 38:3, 25 39:</p>	<p>5, 10 40:19, 25 41:4 42:20 44:5, 15 45:3 46:2, 16 47:2, 7, 12, 16, 19 48:24 49:12 50:12, 16, 21 51:2, 5 52:2, 24 53:21, 25 54:3 55:1, 22 56:23 58:25 59:18 60:8 61:3 62:3, 11, 19, 22 63:9, 16, 21  <b>lower</b> [6] 16:6 28:15 37:18 49:22 54:15 62:12  <b>lumber</b> [23] 10:4, 5 13:9, 16 23:2 24:16, 18 25:15 27:3, 3, 4 45:1, 10, 11, 12, 15, 16, 17 51:12 65:10, 12 68:25 69:2</p>	<p><b>money</b> [2] 41:16, 18  <b>mortars</b> [1] 53:19  <b>most</b> [5] 8:13 35:22 55:12, 13 59:20  <b>Motor</b> [2] 17:1 24:21  <b>move</b> [2] 32:22, 24  <b>Ms</b> [103] 3:6, 9 5:8, 24 6:3 7:24 13:20 9:10 11:9, 13 12:24 13:21, 24 14:21 15:10, 15, 21 18:22 19:4, 17 20:1, 9 23:14 24:8, 12 25:6, 9, 19 26:7, 12, 15, 25 27:15, 24 28:10 29:11, 23 30:2, 14, 19, 25 31:1, 4 33:8, 20, 23 34:6 35:2, 22 36:3, 21, 25 37:10, 25 38:3, 25 39:5, 10 40:19, 20, 25 41:4 42:20 44:5, 15 45:3 46:2, 16 47:2, 7, 12, 16, 19 48:24 49:12 50:12, 16, 21 51:2, 5 52:2, 24 53:21, 25 54:3, 17 55:1, 22 56:17, 23 58:25 59:18 60:8 61:3 62:3, 11, 19, 22 63:9, 16, 21, 22 64:3  <b>much</b> [7] 6:25 16:13 17:2, 7 20:8 28:15 64:25  <b>multiple</b> [1] 16:5  <b>murky</b> [1] 8:10  <b>must</b> [1] 3:20</p>	<p>19, 20  <hr/> <b>O</b>  <b>obligation</b> [1] 32:24  <b>obviate</b> [1] 6:10  <b>ocean</b> [1] 27:9  <b>odd</b> [2] 18:12, 17  <b>offers</b> [1] 56:6  <b>office-based</b> [1] 15:2  <b>often</b> [2] 14:5 16:7  <b>Okay</b> [2] 15:14 30:17  <b>one</b> [34] 7:9, 25 8:21 9:16 11:14 13:25 16:11 18:16, 23 23:7, 15, 21 29:12, 13, 25 32:5, 6 35:9 45:18, 19 49:15, 22, 25 52:17 53:9 56:7 57:13 58:12 63:3 64:21 65:23 66:1 67:24 68:21  <b>only</b> [23] 3:23 4:6 5:9, 15 11:22, 25 22:5 25:3 26:16, 17 27:16 32:4, 21 38:13, 20 40:3, 9 41:9 58:17 60:18 61:22 68:11, 13  <b>open</b> [2] 19:6 41:22  <b>opening</b> [3] 7:11 48:18 50:3  <b>operating</b> [1] 51:16  <b>opinion</b> [2] 18:13 34:6  <b>opportunity</b> [3] 18:21 28:8 54:18  <b>opposing</b> [1] 17:11  <b>oral</b> [9] 1:15 2:2, 5 3:7 17:12 18:19 19:2 31:2 34:1  <b>order</b> [3] 16:24 32:22 34:24  <b>ordinarily</b> [1] 67:3  <b>ordinary</b> [3] 21:18, 22 22:5  <b>other</b> [34] 6:24 8:9 11:25 15:23 16:17 18:17 20:5 21:2 28:4 29:4 36:8, 12, 18 39:9, 9 43:24 44:11 48:19 50:9 53:24 54:20, 24 55:7, 9, 11 56:4 57:2 61:9, 12 62:22 64:13 67:5 68:12, 14  <b>out</b> [18] 6:17, 18 7:8, 23 8:2, 4, 5 28:11 37:8 39:13 40:9 42:12 44:7, 19 47:24 52:18, 22 61:7  <b>outer</b> [1] 36:7  <b>outside</b> [8] 8:12 27:14, 15 40:22 45:3 51:7, 15 57:17  <b>over</b> [2] 54:5 57:13  <b>over-the-road</b> [1] 58:2  <b>overseas</b> [1] 41:12  <b>own</b> [15] 4:1, 13 17:14 22:24 25:4 38:14 39:3 44:25, 25 45:2 48:6 53:18 55:9 60:10 68:5  <b>owned</b> [3] 45:13 65:13 68:25  <b>owns</b> [1] 43:7</p>
<p><b>K</b>  <b>KAGAN</b> [6] 23:11 24:6, 10 25:14 29:1 30:4  <b>KAVANAUGH</b> [31] 7:11, 14 9:1 11:6, 11 12:12 17:8 19:1, 16, 24 20:2 25:5, 7, 10 26:1 30:21 31:20 33:25 50:8, 14, 17, 22 51:4, 22 52:17 56:10, 12 63:3, 5, 6, 15  <b>Kavanaugh's</b> [1] 26:21  <b>Keep</b> [4] 25:7 38:3 45:20 48:4  <b>key</b> [1] 39:21  <b>Kienstra</b> [1] 66:6  <b>kind</b> [10] 9:6 25:15 37:12, 25 43:25 45:12 56:1, 19 57:3 67:4  <b>kinds</b> [2] 14:15 16:14  <b>known</b> [1] 69:3</p>	<p><b>L</b>  <b>labor</b> [4] 31:25 59:20, 21 60:16  <b>labor-based</b> [1] 14:13  <b>laid</b> [1] 25:3  <b>lake</b> [1] 27:10  <b>language</b> [3] 29:5 42:17 54:15  <b>large</b> [2] 29:4 41:5  <b>last</b> [11] 39:21 47:3, 5, 21 48:9 49:3, 5, 20 53:25 58:12 67:20  <b>last-leg</b> [1] 45:24  <b>last-mile</b> [1] 39:13  <b>later</b> [1] 9:15  <b>law</b> [5] 16:19, 25 17:1 21:2 62:20  <b>laws</b> [1] 62:18  <b>layered</b> [1] 7:4</p>	<p><b>M</b>  <b>made</b> [7] 17:19 31:6 34:3 37:12 43:21 45:18 66:10  <b>mandatory</b> [3] 9:19 11:3 12:7  <b>manufacture</b> [1] 38:23  <b>manufacturer</b> [4] 24:15 48:12 61:11, 12  <b>manufacturers</b> [5] 24:13 49:19 51:14 58:18 61:13  <b>manufacturers'</b> [1] 23:4  <b>many</b> [1] 40:8  <b>maritime</b> [7] 13:7 29:8 50:20 54:11 65:8, 9 67:13  <b>mass</b> [1] 56:7  <b>massive</b> [3] 52:21, 24 57:10  <b>massively</b> [1] 56:16  <b>master</b> [3] 10:24 26:19 45:19  <b>matter</b> [6] 1:14 6:22, 25 7:1 29:9 35:25  <b>matters</b> [1] 33:4  <b>mean</b> [26] 5:25 20:21 23:20, 21, 24 33:11 36:18 37:8, 17, 20, 21 43:15, 19 44:12 46:3, 5 48:11 50:13 52:8, 22 56:16, 17 59:5 61:7 63:11, 11  <b>meaning</b> [5] 21:18, 22 22:5, 6 36:11  <b>means</b> [7] 28:16 30:5 35:3 36:11 46:15 61:8 64:8  <b>meant</b> [6] 19:9 20:15 21:15 24:7 64:11 65:4  <b>mechanisms</b> [2] 12:19, 20  <b>medical</b> [2] 53:6, 7  <b>meet</b> [1] 22:23  <b>members</b> [2] 5:12 61:22  <b>merchant</b> [4] 22:9, 10, 15 44:21  <b>met</b> [1] 42:14  <b>might</b> [8] 16:17, 24 25:11 46:19 50:14, 17 55:20 58:11  <b>mile</b> [8] 47:4, 5, 21 48:9 49:3, 6, 21 53:25  <b>Mm-hmm</b> [5] 19:16 37:10 50:21 62:3 63:16  <b>modern</b> [6] 14:9 40:17 48:11 53:15 57:21, 21</p>	<p><b>N</b>  <b>nailed</b> [1] 25:12  <b>narrow</b> [3] 20:3, 5 43:11  <b>narrower</b> [1] 42:19  <b>narrowly</b> [2] 31:14 46:14  <b>narrowness</b> [1] 65:25  <b>nation</b> [1] 61:7  <b>national</b> [6] 43:12, 13 59:8, 14 61:14 65:7  <b>nationwide</b> [1] 14:17  <b>nature</b> [1] 60:22  <b>NEAL</b> [1] 1:3  <b>necessary</b> [2] 34:14 49:14  <b>need</b> [8] 6:21 15:25 28:18 42:4, 5 49:20 53:8, 21  <b>needed</b> [2] 25:4 66:14  <b>needs</b> [2] 17:2 28:19  <b>neither</b> [1] 50:23  <b>never</b> [4] 16:10 43:6 44:17 58:19  <b>New</b> [7] 1:21, 21 42:7, 20 50:4 52:25 57:16  <b>next</b> [3] 3:4 57:4 58:21  <b>nine-month</b> [1] 41:24  <b>Ninety-five</b> [1] 55:3  <b>Ninth</b> [1] 66:7  <b>normally</b> [1] 17:21  <b>note</b> [6] 16:5, 16 19:17 21:9 28:14 65:10  <b>nothing</b> [3] 21:6 32:25 64:16  <b>notion</b> [1] 32:15  <b>nowhere</b> [1] 22:11  <b>number</b> [4] 18:16 23:14 52:</p>	<p><b>P</b>  <b>p.m</b> [1] 69:15  <b>package</b> [1] 58:22</p>

## Official - Subject to Final Review

<p><b>PAGE</b> [1] 2:2  <b>pages</b> [2] 46:7,20  <b>paid</b> [1] 25:21  <b>pair</b> [1] 32:12  <b>Panama</b> [1] 41:22  <b>paper</b> [1] 45:18  <b>PARK</b> [1] 1:6  <b>part</b> [12] 14:24 33:12 34:2,5 36:21 37:24 38:14 46:9 52:10,10 56:13 58:13  <b>particular</b> [3] 20:13 21:8 42:14  <b>parties</b> [2] 11:23 60:12  <b>parts</b> [2] 8:10 27:18  <b>passed</b> [3] 32:4 36:2 42:23  <b>past</b> [5] 13:20 14:6 48:1 53:1,1  <b>pay</b> [1] 32:19  <b>pejorative</b> [1] 37:13  <b>people</b> [40] 10:4 13:9,13 14:12,13 15:24 16:4 17:15,18 18:5,7 23:2,3,22 24:5 29:19,20 42:3 43:21 45:14,15,16,17,18 57:16 58:3,20,22,23,25 61:8 64:13,14,16 65:10,11,15 66:25,25 67:11  <b>people's</b> [5] 55:7,9,11 56:4 68:14  <b>percent</b> [4] 55:3,16,18,19  <b>percentage</b> [2] 7:2 16:22  <b>performance</b> [1] 33:3  <b>perhaps</b> [2] 14:16 28:17  <b>permitting</b> [1] 62:18  <b>person</b> [1] 16:23  <b>personal</b> [1] 32:24  <b>pest</b> [1] 66:24  <b>Petitioner</b> [3] 33:17 50:2 57:15  <b>Petitioners</b> [14] 1:4,20 2:4,10 3:8 31:6 32:10,18,18 35:13 40:9 43:3 45:10 64:2  <b>Petitioners'</b> [2] 35:12 57:8  <b>phrase</b> [1] 63:7  <b>piece</b> [1] 21:2  <b>pirates</b> [1] 35:14  <b>pivots</b> [1] 4:18  <b>pizza</b> [1] 66:24  <b>place</b> [1] 53:9  <b>places</b> [1] 25:3  <b>plainly</b> [1] 21:15  <b>plaintiffs</b> [1] 5:17  <b>planes</b> [4] 6:13 37:23 39:3,4  <b>plant</b> [1] 31:9  <b>player</b> [1] 66:15  <b>please</b> [4] 3:10 25:9 31:5 51:4  <b>point</b> [11] 26:21 30:13 34:4 40:9 54:17 57:22 58:12 60:19 65:24 67:20 68:7  <b>point-to</b> [1] 53:12  <b>point-to-sale</b> [1] 53:12</p>	<p><b>pointed</b> [1] 42:12  <b>points</b> [5] 33:20 44:15 46:16 64:5 66:1  <b>policy</b> [3] 39:25 40:16 65:1  <b>poor</b> [1] 32:17  <b>port</b> [7] 41:12,12 42:6,6,6,6  <b>position</b> [5] 7:22 18:15,18 35:1 62:11  <b>post-disputes</b> [1] 12:1  <b>potential</b> [1] 14:8  <b>pre</b> [1] 12:7  <b>pre-dispute</b> [1] 11:3  <b>precedent</b> [1] 29:10  <b>predates</b> [1] 34:20  <b>predictions</b> [1] 20:11  <b>preeminent</b> [1] 57:14  <b>preexisting</b> [1] 18:2  <b>presented</b> [5] 5:11 18:24 19:6,18 20:17  <b>preserved</b> [3] 47:9,14 48:9  <b>presumably</b> [2] 59:13,19  <b>presupposed</b> [1] 33:25  <b>pretty</b> [3] 28:11,15 37:21  <b>preventing</b> [2] 50:1,6  <b>price</b> [4] 7:2 21:8 36:19 37:14  <b>Prime</b> [1] 42:21  <b>principle</b> [1] 66:22  <b>principles</b> [3] 12:6,6 62:1  <b>prior</b> [1] 50:13  <b>private</b> [2] 57:18 60:11  <b>problem</b> [8] 22:15,17 47:21 48:2 54:6 61:5,12 68:24  <b>problems</b> [2] 22:3 54:25  <b>produced</b> [1] 45:15  <b>product</b> [2] 15:7 32:19  <b>products</b> [3] 38:21,23 53:8  <b>profit</b> [3] 25:22 32:23 41:14  <b>protection</b> [1] 10:19  <b>provide</b> [1] 32:10  <b>provided</b> [1] 9:23  <b>providing</b> [1] 52:15  <b>provision</b> [2] 27:14 57:7  <b>provisions</b> [3] 45:7 52:4 61:22  <b>public</b> [1] 17:21  <b>purely</b> [1] 38:19  <b>purpose</b> [7] 9:13 10:8,11 13:1 21:5 36:4 65:1  <b>purposes</b> [3] 21:22 22:21 37:6  <b>Put</b> [3] 29:8 40:3 64:12  <b>putting</b> [1] 13:24</p> <p style="text-align: center;"><b>Q</b></p> <p><b>quantify</b> [1] 52:23  <b>question</b> [47] 5:5,9,10,15 6:14,17 7:4,8 9:17 13:22 15:11,12,16,18 17:5,6,7 18:24 19:5,18,21 20:17 22:24 24:5 34:12 38:4 39:14,21,22 41:2 47:17,18,20 49:1,6,21</p>	<p>50:18,18 51:3 54:1 55:25 57:8,13 58:21 59:19 62:13 63:3  <b>questions</b> [6] 5:2 7:3 16:3 33:1 38:1 62:23  <b>quick</b> [1] 64:5  <b>quickly</b> [1] 53:9  <b>quite</b> [5] 7:12 12:1,25 29:6 68:8</p> <p style="text-align: center;"><b>R</b></p> <p><b>rail</b> [9] 32:6 42:24 51:20,20,23 52:11 57:11 58:4 60:18  <b>railroad</b> [34] 7:24 8:14 14:14 16:15 17:15,16,22 18:1,7,8 19:11 22:13,14 23:3 24:3,15 25:1 31:20 32:6,12,25 36:9,13 40:5 44:11,25 45:1 52:1,5,14 60:16 67:7,8,11  <b>railroads</b> [4] 17:20,24 24:25 68:25  <b>rails</b> [1] 60:3  <b>railway</b> [2] 9:7 42:25  <b>raised</b> [2] 7:5,9  <b>raising</b> [1] 15:16  <b>rather</b> [2] 4:13 21:13  <b>reaching</b> [1] 36:6  <b>reaction</b> [1] 8:1  <b>read</b> [7] 8:9 18:12,24 21:20 31:13 33:21 34:1  <b>really</b> [14] 13:14 37:15 52:23 56:20 57:25 58:1,3,8 63:14 64:25 65:14 66:10 67:3 68:19  <b>reason</b> [11] 12:14,22 14:10,11 24:23 49:16 54:5 64:24 67:18 68:4 69:5  <b>reasonably</b> [1] 40:12  <b>reasoning</b> [2] 14:20 19:8  <b>reasons</b> [5] 36:3 39:13,22 40:15 42:12  <b>reassuring</b> [2] 20:2,3  <b>REBUTTAL</b> [5] 2:8 54:18 63:23 64:1 66:1  <b>recognized</b> [3] 36:5 42:21 44:17  <b>record</b> [2] 8:10 48:4  <b>recreational</b> [3] 35:15 43:4 51:11  <b>reference</b> [1] 31:15  <b>references</b> [2] 11:18,20  <b>regime</b> [12] 8:2,7,15 9:8 12:17 25:17,20 26:6,22 50:11,24 57:18  <b>regimes</b> [3] 8:23 16:17 57:10  <b>regular</b> [1] 38:21  <b>regularly</b> [1] 42:10  <b>regulatory</b> [1] 12:16  <b>reinforce</b> [1] 57:19  <b>reject</b> [3] 4:23 28:2 69:8  <b>rejecting</b> [1] 34:6  <b>related</b> [3] 29:13 30:2,14</p>	<p><b>relevant</b> [2] 38:7 57:9  <b>rely</b> [2] 4:17 14:20  <b>remand</b> [1] 47:8  <b>remedial</b> [1] 36:4  <b>remedies</b> [1] 60:13  <b>remedy</b> [2] 42:4,5  <b>repeatedly</b> [2] 17:13 36:5  <b>representation</b> [1] 43:21  <b>request</b> [2] 22:4 69:8  <b>require</b> [3] 12:2 25:1 62:7  <b>requirement</b> [14] 3:19 4:25 5:17 6:9 10:10 19:13 23:9,25 49:3 58:16 66:4,9 69:6,8  <b>research</b> [1] 20:18  <b>residual</b> [6] 7:16 8:24,24 31:23 56:25 66:20  <b>resolution</b> [5] 8:23 10:9,13 12:19 18:3  <b>resolve</b> [2] 49:10 60:12  <b>respect</b> [1] 59:5  <b>respond</b> [1] 18:21  <b>responded</b> [1] 61:21  <b>Respondents</b> [4] 1:8,22 2:7 31:3  <b>response</b> [1] 32:4  <b>responses</b> [1] 18:23  <b>restate</b> [1] 51:3  <b>restaurant</b> [2] 53:4,5  <b>restrictions</b> [2] 41:5 42:15  <b>result</b> [1] 32:17  <b>results</b> [1] 37:17  <b>retail</b> [4] 38:21 53:16,17 68:3  <b>retailer</b> [1] 48:12  <b>retailers</b> [2] 32:23 68:1  <b>return</b> [1] 41:25  <b>revenue</b> [3] 21:8 36:19 37:14  <b>revenues</b> [1] 7:2  <b>rewrite</b> [1] 4:19  <b>rich</b> [1] 42:22  <b>rights</b> [1] 11:19  <b>river</b> [1] 27:10  <b>ROBERTS</b> [17] 3:3 28:21 30:20 31:1 36:16,23 37:7,11 38:2,24 39:2,6 62:24 63:4,17,22 69:12  <b>roughly</b> [1] 15:22  <b>rule</b> [9] 4:20 34:17 38:10 47:22 48:17 54:7 66:2,20 67:2  <b>run</b> [1] 44:21  <b>runs</b> [1] 61:7</p> <p style="text-align: center;"><b>S</b></p> <p><b>same</b> [13] 4:3 9:6 11:17 21:12 30:15 39:7 42:9 56:1,17 57:3 60:25 65:18,18  <b>San</b> [2] 1:19 41:23  <b>satisfy</b> [2] 68:5,15  <b>Saxon</b> [42] 3:12 4:15 15:20,21,21 16:10 17:9,12 18:12,13,15,20,24 19:8,15,19 20:4,17 21:11 28:9,10,11,14 29:5 33:3,13,13,19,22,23 34:12 35:3 44:16 49:16 52:8,9 54:9 55:23,23 56:6 58:14,17  <b>Saxon's</b> [1] 34:6  <b>saying</b> [17] 13:13 26:6 29:17,18 33:16 42:13 46:12,23,24 54:13,14 56:14 57:17 60:5,8 66:16 67:1  <b>says</b> [13] 4:2 6:16 7:21 22:22 36:10 40:20 41:9 42:17 46:11 56:18 64:24 65:6 68:21  <b>Scalia-Garner</b> [1] 7:20  <b>scheme</b> [4] 9:19 10:13 11:4 60:11  <b>schemes</b> [1] 10:9  <b>schooners</b> [4] 45:10,12,12 51:12  <b>scope</b> [1] 58:19  <b>seaman</b> [1] 21:13  <b>seamen</b> [83] 4:10,14,14 7:24 8:14 9:16,17,20,24 10:2,4,14,17,23 11:7 13:16 16:15,21,24 17:16,22 18:1,5 19:10 20:21 21:4,13,19 22:6,7,13,20 23:8,12 24:2,10,14,16,17,20,21,22 26:4,16,23 27:11,22 29:6,16,18,19 31:20 32:7,12,14,25 34:25 35:3,10,10,14,20 36:1,7,10,12,13 40:6,21 42:4,13,14,17 43:3,8 44:11,20,20 50:19 51:7 54:10 64:11,18  <b>seamen's</b> [2] 27:18,19  <b>second</b> [24] 9:11 14:19 21:7 22:17 24:7 30:2 33:6 34:4,17 36:8,22 38:5,6,11 41:13 54:22 64:23,24 66:10,12,13,19 67:22 68:7  <b>seconds</b> [1] 45:9  <b>Section</b> [19] 8:13 31:7,13 34:8 36:12 39:24 41:7,8,9 42:16,18,22 43:8 50:6 54:10 56:25 58:7 59:5,6  <b>security</b> [3] 43:13 59:8,14  <b>see</b> [8] 11:18 16:12 20:15 46:4,4 48:7 57:15 65:23  <b>seeing</b> [1] 47:25  <b>seem</b> [1] 37:16  <b>seemingly</b> [1] 8:5  <b>seems</b> [3] 7:25 18:12,17  <b>seen</b> [2] 16:6 66:23  <b>sell</b> [4] 3:20 6:23,24 32:22  <b>selling</b> [1] 41:17  <b>sells</b> [8] 6:18,21,22 7:1 24:1 64:9 67:25 68:1  <b>sense</b> [7] 17:10 18:18 20:8 31:24 37:13 42:3 61:19  <b>separate</b> [5] 5:5 8:7,15 9:7 26:5  <b>services</b> [4] 30:7,9,10 52:15</p>
---	--	---	---

## Official - Subject to Final Review

<p><b>settling</b> <sup>[1]</sup> 49:5  <b>Seventh</b> <sup>[1]</sup> 66:5  <b>share</b> <sup>[2]</sup> 25:22 36:13  <b>she'd</b> <sup>[1]</sup> 30:10  <b>she's</b> <sup>[1]</sup> 30:10  <b>shelves</b> <sup>[1]</sup> 31:11  <b>shifted</b> <sup>[2]</sup> 49:4 56:16  <b>ship</b> <sup>[8]</sup> 22:1 25:4,24 35:14, 20 41:25 55:9 61:4  <b>shipment</b> <sup>[1]</sup> 31:10  <b>shipments</b> <sup>[1]</sup> 53:12  <b>shipped</b> <sup>[3]</sup> 17:20 58:4 69:1  <b>shippers</b> <sup>[1]</sup> 24:11  <b>Shipping</b> <sup>[68]</sup> 9:22,23 10:22 11:1,21 17:14 18:6 23:13,20,23 25:14,17,20,24, 25 27:1,2,5,5,6 29:8,15,18, 20 32:7,9 38:20,22 40:6,20, 22 41:4,15,16,20,21 42:1, 24 43:1 44:21 45:4 48:8, 13,13,14 50:20 51:7,9,15, 18 53:18 54:5,11 55:5,6 56:4,19 57:3 58:5,6,6 59:1 61:16 63:10,13 65:8,9 67:14  <b>ships</b> <sup>[2]</sup> 44:21 53:7  <b>show</b> <sup>[1]</sup> 32:18  <b>showing</b> <sup>[1]</sup> 68:2  <b>shown</b> <sup>[1]</sup> 23:8  <b>shows</b> <sup>[1]</sup> 68:17  <b>side</b> <sup>[7]</sup> 28:7 29:4 34:21 36:18 46:6 50:9 54:21  <b>side's</b> <sup>[2]</sup> 17:11 18:18  <b>sightseeing</b> <sup>[1]</sup> 43:7  <b>sign</b> <sup>[1]</sup> 27:1  <b>signed</b> <sup>[2]</sup> 25:24 27:4  <b>similar</b> <sup>[2]</sup> 24:23 30:3  <b>since</b> <sup>[6]</sup> 10:20 22:7 28:14 34:16 38:10 50:4  <b>single</b> <sup>[7]</sup> 4:9 22:9 23:7 61:11 64:7,21 66:23  <b>sinks</b> <sup>[1]</sup> 4:15  <b>situated</b> <sup>[1]</sup> 59:23  <b>slightly</b> <sup>[2]</sup> 24:8 26:3  <b>sold</b> <sup>[4]</sup> 4:11 10:1 20:22 21:6  <b>solved</b> <sup>[1]</sup> 47:21  <b>somebody</b> <sup>[3]</sup> 16:14 20:21 64:8  <b>someone</b> <sup>[2]</sup> 6:1 16:13  <b>someone's</b> <sup>[1]</sup> 15:6  <b>sometimes</b> <sup>[4]</sup> 39:3,4,7,14  <b>somewhat</b> <sup>[1]</sup> 7:21  <b>somewhere</b> <sup>[1]</sup> 15:8  <b>sorry</b> <sup>[4]</sup> 12:11 25:8 38:2 56:11  <b>sort</b> <sup>[4]</sup> 14:13 23:24 58:23 60:24  <b>sorts</b> <sup>[3]</sup> 38:22 40:15 60:17  <b>SOTOMAYOR</b> <sup>[18]</sup> 14:19, 22 15:14 28:5,25 45:22 46:3,17,22 47:6,11,13,17 61:25 62:4,17,21 63:2</p>	<p><b>Sotomayor's</b> <sup>[1]</sup> 49:1  <b>source</b> <sup>[1]</sup> 20:25  <b>Southwest</b> <sup>[1]</sup> 3:11  <b>speaking</b> <sup>[1]</sup> 38:19  <b>specific</b> <sup>[1]</sup> 20:11  <b>specifically</b> <sup>[2]</sup> 9:14 13:8  <b>spell</b> <sup>[1]</sup> 52:22  <b>spend</b> <sup>[1]</sup> 16:14  <b>spent</b> <sup>[1]</sup> 15:21  <b>split</b> <sup>[2]</sup> 34:21 62:13  <b>square</b> <sup>[2]</sup> 34:25 35:19  <b>ST</b> <sup>[1]</sup> 1:6  <b>stab</b> <sup>[1]</sup> 15:19  <b>start</b> <sup>[3]</sup> 4:8 48:10 61:14  <b>state</b> <sup>[13]</sup> 3:17 6:7 28:13 48:6 59:13 60:23 62:6,7,8,9, 17,19,20  <b>stated</b> <sup>[1]</sup> 17:13  <b>STATES</b> <sup>[6]</sup> 1:1,16 27:19 41:11,12 62:15  <b>statute</b> <sup>[19]</sup> 4:6 7:6 9:23 12:7 16:20 22:16,20 23:10 26:17 36:2,9 42:12 43:16 44:4,6 64:17 65:23 69:6,10  <b>statutes</b> <sup>[9]</sup> 4:19 10:21 14:15 18:3 21:2 32:5 40:5 57:21 64:19  <b>statutory</b> <sup>[1]</sup> 16:17  <b>step</b> <sup>[2]</sup> 10:12 23:17  <b>still</b> <sup>[7]</sup> 23:8 28:3 49:15,20 57:9,9 66:22  <b>stop</b> <sup>[1]</sup> 57:5  <b>store</b> <sup>[1]</sup> 31:10  <b>stores</b> <sup>[2]</sup> 17:17 68:3  <b>straight</b> <sup>[1]</sup> 11:8  <b>straightforward</b> <sup>[4]</sup> 54:21, 23 56:2 68:21  <b>stressed</b> <sup>[1]</sup> 18:14  <b>strike</b> <sup>[4]</sup> 13:5,5,15,16  <b>strikers</b> <sup>[1]</sup> 13:9  <b>strikes</b> <sup>[7]</sup> 13:8 14:17 40:9, 10 65:6,9,16  <b>strong</b> <sup>[1]</sup> 51:24  <b>struck</b> <sup>[1]</sup> 65:18  <b>structure</b> <sup>[4]</sup> 21:8 36:19 37:14 68:9  <b>stuff</b> <sup>[1]</sup> 38:14  <b>subject</b> <sup>[3]</sup> 8:3 10:18 17:3  <b>submitted</b> <sup>[2]</sup> 69:14,16  <b>subset</b> <sup>[5]</sup> 29:7 42:18,19 43:11 54:11  <b>subsidiaries</b> <sup>[1]</sup> 68:12  <b>subsidiary</b> <sup>[2]</sup> 68:11,13  <b>sufficient</b> <sup>[3]</sup> 34:7,11 49:15  <b>suggesting</b> <sup>[1]</sup> 28:6  <b>suit</b> <sup>[3]</sup> 39:16 62:8,8  <b>supervising</b> <sup>[1]</sup> 15:23  <b>supervision</b> <sup>[1]</sup> 16:1  <b>support</b> <sup>[1]</sup> 11:12  <b>SUPREME</b> <sup>[2]</sup> 1:1,15  <b>swept</b> <sup>[1]</sup> 49:9  <b>syndicates</b> <sup>[2]</sup> 45:13,14</p>	<p style="text-align: center;"><b>T</b></p> <p><b>talked</b> <sup>[1]</sup> 28:4  <b>talks</b> <sup>[1]</sup> 27:21  <b>tasks</b> <sup>[1]</sup> 15:17  <b>term</b> <sup>[4]</sup> 21:14 22:9,10 56:10  <b>terms</b> <sup>[1]</sup> 8:17  <b>test</b> <sup>[13]</sup> 28:2,11 38:8 54:22 56:6,6 67:4,22,23 68:6,16, 17,18  <b>text</b> <sup>[11]</sup> 3:13 4:6,17 7:5,12, 16 9:14 64:6,8,25 69:9  <b>textual</b> <sup>[1]</sup> 4:7  <b>themselves</b> <sup>[2]</sup> 48:7 67:17  <b>theory</b> <sup>[3]</sup> 50:24,25 59:3  <b>there'd</b> <sup>[1]</sup> 57:13  <b>there's</b> <sup>[24]</sup> 6:13 8:20 14:9 15:10 16:18 17:1,25,25 22:24 23:14 24:12,21 36:8 37:6 39:22,23 41:13 58:13,15 62:12 63:12 67:17,24 69:5  <b>therefore</b> <sup>[2]</sup> 33:15,18  <b>they'll</b> <sup>[1]</sup> 21:19  <b>They've</b> <sup>[1]</sup> 10:18  <b>third-party</b> <sup>[3]</sup> 38:15 60:1, 14  <b>THOMAS</b> <sup>[9]</sup> 5:3,20 6:2 28:23 33:2,9,10,21 63:1  <b>though</b> <sup>[3]</sup> 22:4,17 26:21  <b>thousands</b> <sup>[1]</sup> 3:21  <b>three</b> <sup>[5]</sup> 15:22,24 31:16 38:1 64:5  <b>threshold</b> <sup>[1]</sup> 49:14  <b>throughout</b> <sup>[1]</sup> 59:6  <b>tie</b> <sup>[2]</sup> 23:3 24:15  <b>title</b> <sup>[4]</sup> 11:15,16 32:20,21  <b>today</b> <sup>[7]</sup> 24:25 40:14 61:2, 3,19 67:8 68:24  <b>together</b> <sup>[3]</sup> 32:13 36:10 65:18  <b>took</b> <sup>[2]</sup> 8:1 62:12  <b>tools</b> <sup>[1]</sup> 17:6  <b>top</b> <sup>[3]</sup> 6:10 7:4,10  <b>touched</b> <sup>[1]</sup> 19:20  <b>tough</b> <sup>[1]</sup> 16:3  <b>towards</b> <sup>[1]</sup> 49:5  <b>TRACI</b> <sup>[3]</sup> 1:21 2:6 31:2  <b>track</b> <sup>[2]</sup> 25:1 38:3  <b>trade</b> <sup>[2]</sup> 22:1,2  <b>trading</b> <sup>[1]</sup> 45:16  <b>traditional</b> <sup>[2]</sup> 15:3 51:14  <b>transparent</b> <sup>[1]</sup> 14:2  <b>transpiration</b> <sup>[1]</sup> 40:10  <b>transport</b> <sup>[2]</sup> 32:1 43:6  <b>transportation</b> <sup>[75]</sup> 3:20, 25 4:3,11 5:19,21,22,25 6:19,22 7:1 10:1 12:18,22 13:6,6,11 14:3 15:1,4 20:6, 23 21:7 24:1,4,19 28:2,3 31:17 32:1,15 33:14,18,24 34:9,13,18,24 35:11 36:15 37:2,9,22 38:12 39:1,8,12, 25 41:18 43:9,17,23,25 44:</p>	<p>10,12,18 46:18 47:23 48:18,23 52:15 54:8 55:17,18 58:9 59:10,16,25 61:1,24 64:9 66:14,16 67:25 68:12  <b>transporting</b> <sup>[7]</sup> 3:16 6:6, 15 23:1 28:13 64:15 68:14  <b>traveling</b> <sup>[2]</sup> 6:12 10:3  <b>treated</b> <sup>[1]</sup> 67:18  <b>treatise</b> <sup>[1]</sup> 7:21  <b>trouble</b> <sup>[1]</sup> 35:13  <b>truck</b> <sup>[5]</sup> 3:21 4:3 22:25 66:21 67:12  <b>truckers</b> <sup>[3]</sup> 6:15 24:24 67:9  <b>trucking</b> <sup>[5]</sup> 3:23 4:2 58:2 67:13,17  <b>trucks</b> <sup>[2]</sup> 4:13 6:12  <b>true</b> <sup>[5]</sup> 5:16 59:24 61:10 66:2,9  <b>try</b> <sup>[3]</sup> 7:23 9:12 38:3  <b>trying</b> <sup>[5]</sup> 7:18 37:8 60:6 65:14,20  <b>Tuesday</b> <sup>[1]</sup> 1:12  <b>turn</b> <sup>[1]</sup> 20:23  <b>twice</b> <sup>[1]</sup> 21:10  <b>two</b> <sup>[24]</sup> 3:11 8:20 9:24 15:23 16:11 18:1 22:3 23:20 29:12 30:1 32:4,5 33:20 36:3 40:3 41:5,19 44:15 46:16,16 61:22,23 66:1 67:24  <b>two-by-fours</b> <sup>[1]</sup> 45:17</p> <p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> <sup>[5]</sup> 10:15 11:15,16 12:4 60:25  <b>U.S.C</b> <sup>[1]</sup> 41:7  <b>Unable</b> <sup>[1]</sup> 4:17  <b>under</b> <sup>[9]</sup> 4:13 9:16 17:1 32:7,23 50:6 54:10 57:19, 20  <b>underlying</b> <sup>[1]</sup> 9:17  <b>understand</b> <sup>[9]</sup> 17:22 23:12 26:21 35:16 38:20 44:2 49:10 51:5 59:3  <b>understanding</b> <sup>[2]</sup> 18:11 64:11  <b>understood</b> <sup>[6]</sup> 14:25 17:22 18:4 30:19 36:1 45:25  <b>unique</b> <sup>[1]</sup> 32:3  <b>UNITED</b> <sup>[5]</sup> 1:1,16 27:19 41:11,12  <b>unlike</b> <sup>[1]</sup> 24:25  <b>unloading</b> <sup>[1]</sup> 15:22  <b>unloads</b> <sup>[1]</sup> 31:10  <b>until</b> <sup>[5]</sup> 41:22 47:23,25 58:3 66:9  <b>unusual</b> <sup>[2]</sup> 17:5 43:2  <b>unworkable</b> <sup>[1]</sup> 5:1  <b>unwritten</b> <sup>[1]</sup> 3:19  <b>up</b> <sup>[15]</sup> 14:3,16 16:7,16 17:7 18:9,10 21:19 24:16 28:17 37:12 40:8 49:1 61:18 68:3</p>	<p><b>UPS</b> <sup>[1]</sup> 55:4  <b>uses</b> <sup>[2]</sup> 36:9 37:23  <b>using</b> <sup>[2]</sup> 35:25 54:11  <b>usual</b> <sup>[1]</sup> 55:10</p> <p style="text-align: center;"><b>V</b></p> <p><b>vast</b> <sup>[1]</sup> 23:14  <b>version</b> <sup>[2]</sup> 24:1 41:7  <b>versus</b> <sup>[3]</sup> 3:4,12 59:17  <b>vessel</b> <sup>[8]</sup> 16:23 21:5,16 22:10,10 42:7 45:19,20  <b>vessels</b> <sup>[4]</sup> 22:15 41:10 58:7 64:14  <b>view</b> <sup>[4]</sup> 17:11 31:7 49:25 55:2  <b>viewed</b> <sup>[1]</sup> 50:5  <b>viewing</b> <sup>[1]</sup> 49:13  <b>voyage</b> <sup>[7]</sup> 25:23,23,24 26:9 27:1,9 41:9  <b>voyages</b> <sup>[3]</sup> 27:16 41:10 51:13</p> <p style="text-align: center;"><b>W</b></p> <p><b>Walmart</b> <sup>[1]</sup> 60:25  <b>wanted</b> <sup>[3]</sup> 8:12 11:7 12:17  <b>wards</b> <sup>[1]</sup> 10:18  <b>warehouses</b> <sup>[1]</sup> 53:19  <b>Washington</b> <sup>[1]</sup> 1:11  <b>waterfall</b> <sup>[1]</sup> 50:7  <b>wave</b> <sup>[1]</sup> 50:2  <b>way</b> <sup>[13]</sup> 8:18 16:8 19:18 46:5 48:8 49:5 53:15 56:15, 18 57:7 58:3 64:17 65:16  <b>ways</b> <sup>[1]</sup> 67:24  <b>week</b> <sup>[3]</sup> 15:22,23,25  <b>weigh</b> <sup>[1]</sup> 28:18  <b>welcome</b> <sup>[2]</sup> 5:2 33:1  <b>well-defined</b> <sup>[1]</sup> 21:14  <b>well-established</b> <sup>[1]</sup> 66:19  <b>West</b> <sup>[3]</sup> 13:18 24:17 41:11  <b>whatever</b> <sup>[1]</sup> 21:21  <b>whenever</b> <sup>[1]</sup> 61:10  <b>Whereupon</b> <sup>[1]</sup> 69:15  <b>whether</b> <sup>[16]</sup> 4:11 5:5 6:1,5, 14,18,21 12:17 16:1 20:12 21:6 26:11 45:24 47:14 55:25 67:4  <b>who's</b> <sup>[2]</sup> 46:6 55:5  <b>who've</b> <sup>[1]</sup> 58:18  <b>whoever</b> <sup>[1]</sup> 43:7  <b>whole</b> <sup>[10]</sup> 13:17 16:18 48:10,19 49:18 50:3 53:14 57:15 61:14 63:12  <b>wholesale</b> <sup>[2]</sup> 39:24 40:3  <b>Wilander</b> <sup>[1]</sup> 21:11  <b>will</b> <sup>[4]</sup> 19:6 54:18,23,24  <b>willing</b> <sup>[1]</sup> 22:18  <b>win</b> <sup>[1]</sup> 49:2  <b>winning</b> <sup>[1]</sup> 34:20  <b>within</b> <sup>[6]</sup> 34:8 43:8 45:6, 14 58:19 59:11  <b>word</b> <sup>[13]</sup> 4:10 20:3,21 21:3, 7,24 23:18 35:25 52:3 55:</p>
---	--	---	--	---

## Official - Subject to Final Review

13 59:19 64:7,11  
**words** <sup>[8]</sup> 4:15 8:9 11:25  
 19:9 20:15 22:19 23:10 56:  
 16  
**work** <sup>[19]</sup> 3:22 16:14 18:6,8  
 23:13,23,23,25 24:19 27:  
 18,19 29:15,17,20 31:22  
 43:5 50:19 51:9 55:16  
**workable** <sup>[1]</sup> 4:21  
**worked** <sup>[6]</sup> 21:4,15 24:18  
 25:13 64:18 65:16  
**worker** <sup>[14]</sup> 3:14 15:4 31:8,  
 9 32:16 33:24 34:9 36:15  
 39:19 43:9,24 44:10,18 49:  
 7  
**worker's** <sup>[3]</sup> 3:20 4:11 55:  
 24  
**workers** <sup>[56]</sup> 3:15,25 4:4 5:  
 11,12,23,25 6:6 8:3,13,22,  
 25 12:18,23 13:6,7 14:3  
 15:1,16 18:2 20:14 22:1  
 23:21 27:4 28:4,4,12 29:7  
 31:18 32:2 33:3 35:11 39:  
 7 40:1,4 43:1,12,15,17,24,  
 25 44:11,12 45:1 46:25 47:  
 24 50:10,12 52:19 59:7,11,  
 25 61:23 66:13,25 67:18  
**working** <sup>[2]</sup> 24:11 43:22  
**works** <sup>[4]</sup> 53:16,16 64:8 67:  
 13  
**worried** <sup>[2]</sup> 64:13 67:1  
**worry** <sup>[1]</sup> 64:25  
**worth** <sup>[1]</sup> 55:24  
**writing** <sup>[2]</sup> 10:25 11:24

---

**Y**


---

**yacht** <sup>[3]</sup> 43:5,8,22  
**year** <sup>[2]</sup> 11:17 48:1  
**years** <sup>[5]</sup> 3:11 9:15 53:1,2  
 65:4  
**Yellow** <sup>[1]</sup> 55:4  
**York** <sup>[2]</sup> 1:21,21