

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY,)
) Petitioner,)
) v.) No. 23-1229
CALUMET SHREVEPORT REFINING,)
L.L.C., ET AL.,)
) Respondents.)

Pages: 1 through 111
Place: Washington, D.C.
Date: March 25, 2025

HERITAGE REPORTING CORPORATION
Official Reporters
1150 Connecticut Avenue, N.W., Suite 305
Washington, D.C. 20036
(202) 628-4888
www.hrccourtreporters.com

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
- - - - -
ENVIRONMENTAL PROTECTION AGENCY,)
Petitioner,)
v.) No. 23-1229
CALUMET SHREVEPORT REFINING,)
L.L.C., ET AL.,)
Respondents.)
- - - - -

Washington, D.C.
Tuesday, March 25, 2025

The above-entitled matter came on for
oral argument before the Supreme Court of the
United States at 10:04 a.m.

1 APPEARANCES:
2 MALCOLM L. STEWART, Deputy Solicitor General,
3 Department of Justice, Washington, D.C.; on behalf
4 of the Petitioner.
5 SETH P. WAXMAN, Washington, D.C.; on behalf of
6 Respondents Growth Energy and Renewable Fuels
7 Association in support of the Petitioner.
8 MICHAEL R. HUSTON, Phoenix, Arizona; on behalf of
9 Respondents Calumet Shreveport Refining, L.L.C.,
10 et al.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	MALCOLM L. STEWART, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	SETH P. WAXMAN, ESQ.	
7	On behalf of Respondents Growth Energy	
8	and Renewable Fuels Association	
9	in support of the Petitioner	48
10	ORAL ARGUMENT OF:	
11	MICHAEL R. HUSTON, ESQ.	
12	On behalf of Respondents Calumet	
13	Shreveport Refining, L.L.C., et al.	70
14	REBUTTAL ARGUMENT OF:	
15	MALCOLM L. STEWART, ESQ.	
16	On behalf of the Petitioner	108
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

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 23-1229, Environmental Protection Agency versus Calumet Shreveport Refining.

Mr. Stewart.

ORAL ARGUMENT OF MALCOLM L. STEWART
ON BEHALF OF THE PETITIONER

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

This case provides a paradigmatic example of the result that the Clean Air Act -- Act's venue provision was intended to avoid. The April and June 2022 denial actions at issue here resolved a total of 105 exemption petitions filed by refineries in eight different -- 18 different states within eight judicial circuits.

The agency based those denials on a new statutory interpretation and economic analysis it had not previously applied. Under the approach to venue adopted by the court of appeals, however, several different regional circuits would have been required to consider substantially similar challenges to the agency's

1 approach, wasting judicial resources and
2 creating a heightened risk of inconsistent
3 outcomes. Congress amended the venue provision
4 in 1977 to prevent those results.

5 The judgment of the court of appeals
6 should be reversed.

7 I welcome the Court's questions.

8 JUSTICE THOMAS: Mr. Stewart, are
9 there any limits to aggregating different claims
10 and thereby determining venue in D.C.?

11 MR. STEWART: I don't know that there
12 are limits to the agency's authority to publish
13 different decisions in the same Federal Register
14 notice. We do think that there is some room for
15 judicial scrutiny of whether -- what the agency
16 describes as a single action should be regarded
17 in that way.

18 And so, for example, if the agency in
19 one Federal Register notice disapproved a SIP
20 proposed by the State of Ohio and simultaneously
21 denied an exemption request for a smaller
22 refinery in Louisiana, you couldn't cogently
23 regard that as a single action even if it was
24 published in the same Federal Register notice.

25 JUSTICE THOMAS: Well, in -- let's

1 just take this case with the refineries. What
2 would be a limiting principle if you could just
3 simply aggregate decisions about refineries?

4 MR. STEWART: I think you could. I
5 think in this case that the agency had good
6 reasons for publishing them together because it
7 had issued proposed denials based on a proposal
8 to change its methodology, and it didn't want to
9 issue the denials until it was ready to finalize
10 the methodology. And -- and that's why we wound
11 up with something of a -- of a backlog.

12 JUSTICE THOMAS: Does it have to be a
13 change? What about an application of an
14 existing rule or determination?

15 MR. STEWART: I think the agency's
16 typical practice has been to do those one at a
17 time or in small groups when the -- when the
18 agency is simply applying a principle of federal
19 law or s rule of federal law that has previously
20 been established and isn't likely to be
21 contested on judicial review.

22 JUSTICE THOMAS: But that's
23 discretionary, isn't it? That's not a real
24 limit?

25 MR. STEWART: I -- I think you're

1 right that it is up to the -- the agency's
2 discretion whether to aggregate in those
3 circumstances.

4 JUSTICE GORSUCH: Mr. Stewart,
5 historically, they -- they've taken these one by
6 one, and -- and SIPs and hardship determinations
7 have been dealt with at the -- at the regional
8 circuit level. This is kind of a new
9 development.

10 MR. STEWART: Well, I think with
11 respect to ozone transport rules in particular,
12 that is, review of SIP provisions that purport
13 to carry out states' good neighbor obligations
14 to prevent downwind pollution, I think the norm
15 in that area has been aggregation --

16 JUSTICE GORSUCH: Well, I -- I dealt
17 with a bunch of SIP approvals on the -- on the
18 circuit court, and -- and now you've bundled
19 them and done it differently, but up until now,
20 these things with refineries and -- and with --
21 and with SIPs have been done -- done
22 historically --

23 MR. STEWART: Oh, I think you're
24 right.

25 JUSTICE GORSUCH: -- at a state level.

1 MR. STEWART: I think you're right
2 with respect to the refineries, that they have
3 they have been done seriatim in the past, but
4 the court --

5 JUSTICE GORSUCH: Yeah. So this is
6 kind of new. I guess I'm asking what's changed
7 other than EPA's decision to bundle them
8 together?

9 MR. STEWART: I think what changed was
10 that the agency was changing its methodology.
11 And the court of appeals, the Fifth Circuit,
12 noted that EPA in these denial actions had
13 abandoned or rejected an adjudicative
14 methodology that it had been applying for more
15 than a decade.

16 JUSTICE GORSUCH: So it came up with
17 this pass-through theory. That's the new
18 development?

19 MR. STEWART: It's partly the
20 pass-through theory and it's partly the
21 statutory interpretation.

22 JUSTICE GORSUCH: It's interpretation.
23 Okay. So, yeah. On those, I guess I struggle
24 because statutory interpretation, by gosh, I
25 should hope EPA applies a consistent statutory

1 interpretation across the country. And when it
2 comes to economic theories, same goes.
3 Otherwise, it would be arbitrary and capricious.

4 So how can it be that that's -- that's
5 what we should look at?

6 MR. STEWART: Well, I think with --
7 turning for a second to the third prong of the
8 statute, the "based on a determination of
9 nationwide scope or effect," in -- in our view,
10 the word "determination" has the implication of
11 resolving a question that was previously
12 unsettled.

13 JUSTICE GORSUCH: Sure. And every
14 statutory interpretation and economic theory is
15 going to -- going to do that, right?

16 MR. STEWART: At some time, but I
17 think, you know, for instance, if this Court in
18 2025 struck down an Act of Congress as
19 unconstitutional, you wouldn't say that the
20 Court determined in that decision that it had
21 the -- the authority to review acts of Congress
22 for constitutionality. That --

23 JUSTICE GORSUCH: Well, I guess I'm
24 just struggling with, you know, you're trying to
25 -- a complete sea change in how these things

1 have been reviewed in the past, and when I look
2 at a determination, it's an action and a
3 determination. And I look at, what is it, 7545,
4 right? And the action is, of course, here,
5 you're rejecting a hardship application. And
6 the determination is -- I mean it's right there
7 in the statute, the Secretary has to determine
8 whether there's a disproportionate economic harm
9 to this particular refinery.

10 And so when I'm looking for a
11 determination, why wouldn't I look to the
12 statute where it uses the very word?

13 MR. STEWART: I mean, that's certainly
14 one determination, but the agency, in this
15 context and others, may be making different
16 subsidiary determinations.

17 JUSTICE GORSUCH: I -- I accept that
18 there are -- that that determination of undue
19 hardship is going to rest upon a statutory
20 interpretation and an economic theory. But how
21 far back does somebody have to go in the
22 chain of reasoning behind the determination that
23 there's no undue hardship to determine where to
24 bring their suit? This Court has traditionally
25 said that venues should be easy and it -- to

1 figure out at the outset of a case and shouldn't
2 in -- involve undue litigation.

3 Now -- now you're asking parties to
4 not just look at the action, the -- the
5 rejection of this -- of the application, not
6 just the determination that there is no undue
7 hardship, but the analysis behind that, right?
8 And I -- I think you used the word "core," core
9 analysis behind it and figure out what's the
10 core behind a determination and an action.

11 MR. STEWART: I guess I'd say two
12 things. The first is that EPA, in a case like
13 this one and typically at the time it takes the
14 action, will express its own view about where
15 any challenges should be brought. And so --

16 JUSTICE GORSUCH: Oh, sure. EPA has
17 its view, but we've got a statute here, friend.

18 MR. STEWART: It's certainly true --

19 JUSTICE GORSUCH: They've got their
20 view too. I mean --

21 MR. STEWART: My point is simply that
22 the -- with respect to that point, is simply
23 that the -- the litigant is not kind of starting
24 from square one. The litigant knows what EPA's
25 view about proper venue is. It knows whether --

1 JUSTICE GORSUCH: Yeah, it knows --
2 the government -- the government would like to
3 always win, sure, okay. But when it's supposed
4 to be determining where to bring its suit, it
5 has to now look not just at the action and the
6 determination that went into the action but the
7 reasoning behind it and figure out what part of
8 its core. How -- how is that consistent with
9 this -- this Court's repeated admonitions that
10 venue is supposed to be easy to determine at the
11 outset of the case?

12 MR. STEWART: Well, clearly, Congress
13 wanted there to be a meaningful role for the
14 D.C. Circuit, not just in reviewing the actions
15 that are enumerated as nationally applicable.

16 JUSTICE GORSUCH: Sure. And it also
17 wanted, you know, regional circuits -- I mean,
18 it's a cooperative federalism system, the Clean
19 Air Act. It wanted room for both. And we're
20 now trying to figure out where the line is. And
21 you're asking us to change historical practice
22 pretty radically, and I'm just curious how that
23 fits with our -- our -- our presumption that
24 venues should be easy to determine at the outset
25 of a case.

1 MR. STEWART: Well, I think -- that
2 was part of the debate that went on in the 1970s
3 after the NRDC cases that we've discussed in our
4 brief. That is, in 1972 and 1973, there were
5 numerous challenges to an EPA action that had
6 simultaneously granted extensions to a number of
7 different states for filing -- for -- for
8 meeting a particular type of attainment deadline
9 and had simultaneously approved SIPs submitted
10 by the states.

11 And there was controversy over where
12 those cases should be heard, because although
13 they pertained to a number of different states,
14 the legal challenges were all the same. And
15 both the First Circuit and the D.C. Circuit
16 concluded that venue in that circumstance was
17 proper in the D.C. Circuit.

18 But the real significance of those
19 cases is -- is not about whether they were
20 correct or incorrect in interpreting the statute
21 as it then existed. The real significance was,
22 after that happened, there was a debate in the
23 mid-1970s. And ACUS, the Administrative
24 Conference of the United States, recommended
25 that the statute be amended to provide that a

1 challenge to any EPA action with respect to a
2 state SIP would be heard in the regional circuit
3 for -- that contained the state whose plan was
4 involved.

5 And part of the justification for that
6 approach was, as you say, ease of admission,
7 that you -- you would know right off what the
8 right forum was.

9 But the general counsel of EPA said,
10 in most cases, challenges to SIP decisions will
11 rest on state-specific circumstances, but
12 sometimes EPA's SIP decisions will rest on what
13 he referred to as generic determinations of
14 nationwide scope or effect. And --

15 JUSTICE JACKSON: And so, Mr. Stewart,
16 I think the answer to Justice Gorsuch's question
17 is that the statute is focusing people's
18 attention on what the EPA's reasons are, at
19 least in that third prong.

20 MR. STEWART: Yes.

21 JUSTICE JACKSON: Then --

22 JUSTICE GORSUCH: Where -- where is
23 that? I -- I see -- they have to focus on the
24 action of the determination. I don't see that
25 they have to focus on the reasons behind the

1 determination.

2 MR. STEWART: Well, the -- the
3 determine -- when we talk about an action based
4 on determinations, we are talking about the
5 determinations are the reasons, the action --

6 JUSTICE GORSUCH: The -- the action is
7 denying the application, correct?

8 MR. STEWART: Yes.

9 JUSTICE GORSUCH: And to determine
10 whether to deny or grant the application, you
11 have to decide whether there is undue hardship.
12 That's the statute language, right?

13 MR. STEWART: That's the statute's
14 language.

15 JUSTICE GORSUCH: So that's the
16 determination. You've determined that there is
17 no undue hardship here, right?

18 MR. STEWART: But there can also be
19 determinations about what does the term "undue
20 hardship" mean, when the question is --

21 JUSTICE GORSUCH: Oh, sure, you've
22 lots of reasons for reaching your determination.

23 MR. STEWART: But I think what
24 Congress was trying to drive at, and what the --
25 the EPA's general counsel had in mind was,

1 you -- you are correct that in every case the
2 EPA is going to be applying some kind of general
3 federal rule or policy or framework to local
4 facts. Or at least for any locally or
5 regionally applicable action, you'll have some
6 of both.

7 And the -- the venue provision will
8 work best if cases are routed to the D.C.
9 Circuit when the general methodology is likely
10 to be the subject of the judicial challenge,
11 because those are the cases where you have the
12 greatest risk of duplicative judicial resources
13 and inconsistent outcomes.

14 JUSTICE JACKSON: Can -- can I say it
15 in another way? That -- that the venue
16 provision appears to be designed to direct
17 challenges that will turn on local facts and
18 issues to the local circuits, and challenges
19 that turn on national facts and issues to the
20 D.C. Circuit.

21 Now, I know that's very generalized,
22 but to the extent that the challenge in this
23 case and other cases are, for example -- or is,
24 for example, to the EPA's economic analysis,
25 which it drew in this case from national market

1 evaluation and it applied to all of the -- all
2 of the different refineries, this national
3 economic analysis, one might think that that's
4 the kind of determination of national scope or
5 effect that the third prong, at least, wanted
6 directed to the D.C. Circuit.

7 MR. STEWART: I -- I think that's
8 right, but the -- the additional point I would
9 make is it -- it matters a lot whether EPA's
10 statutory interpretation and economic analysis
11 are new or whether this is the way that the
12 agency has been doing it for 10 years.

13 JUSTICE JACKSON: Why is that?

14 MR. STEWART: It's -- it's that way
15 because if the agency has been doing it that way
16 for 10 years, then it's very likely that any
17 potential challenges to the methodology will
18 have brought -- been resolved. They will be --
19 they will have been sorted out.

20 And at that point, if EPA has -- is
21 applying a ten-year-old regulation that was
22 challenged in the D.C. Circuit but upheld, it's
23 very unlikely that the new action is going to be
24 attacked based on the asserted invalidity of the
25 rule.

1 JUSTICE GORSUCH: How -- how is -- how
2 is a litigant supposed to figure that out?

3 MR. STEWART: Well, part of --

4 JUSTICE GORSUCH: So you're saying,
5 okay, when they're new theories of statutory
6 interpretation or new economic theories of
7 nationwide impact, it goes to the D.C. Circuit.
8 But if they're old, ah, then -- then I can bring
9 it in my own circuit where I actually live and
10 operate and work.

11 What -- is it a ten-year cutoff, is
12 that -- is that the -- is that -- is that what
13 -- I mean, venue is supposed to be simple. And
14 I guess I'm trying to figure out what's our
15 simple -- what simple rule would you have us
16 apply here?

17 MR. STEWART: Well, one of the things
18 you can look at is, is there some metric by
19 which you conclude the validity of the rule has
20 been established? Was it challenged before and
21 upheld? Has the time for challenging it passed?

22 Another is you can look at the
23 comments that EPA received on the proposed
24 action, because not everything, but a lot of
25 what EPA does, it issues a proposed action and

1 then it takes comments and it responds to the
2 comments. And here, it was clear from the
3 comments that EPA received that any judicial
4 challenges were likely to be attacks on the
5 methodology predominantly.

6 JUSTICE KAGAN: I -- I think what
7 would help me, Mr. Stewart, is if you talked in
8 -- in a bit more concrete terms about this case.
9 And again, focusing on the third sentence, "the
10 action based on a determination of nationwide
11 scope or effect."

12 What was the determination of
13 nationwide scope or effect that you are saying
14 drove all of these decisions?

15 MR. STEWART: The -- the two
16 determinations of nationwide scope or effect --
17 effect that we've emphasized are, first, the
18 statutory interpretation, the requirement that
19 the economic hardship come from the blending
20 requirement itself and not from other economic
21 circumstances.

22 And the second was the passthrough
23 theory, the presumption that generally small
24 refineries can pass their costs of compliance
25 along to their customers.

1 And -- and those --

2 JUSTICE KAGAN: And how responsible
3 were those two findings, taken together, for the
4 actual determinations made?

5 MR. STEWART: They were -- I mean, all
6 of the petitions were denied. Now, it's true
7 that EPA, with respect to the passthrough theory
8 in particular, gave each refinery an opportunity
9 to rebut the presumption and show that its own
10 circumstances were different, that it couldn't
11 pass through the cost.

12 But certainly the -- the challenges in
13 the -- the various litigated proceedings have
14 focused predominantly on the validity of the
15 nationwide determinations. They haven't
16 primarily been a --

17 JUSTICE KAGAN: What would a -- what
18 would -- what would you have to do to rebut the
19 presumption? I mean, is that a very high bar?
20 Is that why it's -- wasn't met in any case?

21 MR. STEWART: I would think it's a
22 pretty high bar.

23 JUSTICE KAGAN: So your essential
24 argument here is, like, Look, there's the
25 statutory interpretation, plus there's this --

1 what did you call the other one? The --

2 MR. STEWART: The economic analysis.

3 JUSTICE KAGAN: The economic analysis.

4 That together, was basically determining what
5 decision was going to be made in all these
6 cases. There was, you know, a way for you to
7 come back and say it shouldn't happen here, but
8 not really.

9 And, you know, given that, like,
10 everybody would want this to be done in one
11 court, because one thing was driving all of
12 these decisions across the country.

13 MR. STEWART: Yes, exactly.

14 JUSTICE BARRETT: But, Mr. Stewart --
15 Oh, sorry. Finish.

16 JUSTICE KAGAN: Go ahead.

17 JUSTICE BARRETT: I -- I -- picking up
18 on that, what if one of the refineries wanted to
19 challenge both the EPA's denial of the
20 presumption in their favor, like, you know, the
21 non-zero chance, as the Fifth Circuit calls it,
22 to say, you know what, you should have given me
23 an exception, because I can show that I uniquely
24 experienced hardship, as well as the economic
25 theory and the statutory interpretation.

1 So does it depend on how the refinery
2 styles the challenge?

3 MR. STEWART: It doesn't depend on how
4 the refinery challenges -- styles the court
5 challenge, because the determination -- I mean,
6 EPA's decision that the third prong applies has
7 to be made at the type it -- time it takes the
8 action. And it has to publish that finding in
9 taking the action.

10 And so it -- it may depend, in part,
11 on what sort of comments EPA received during the
12 rule-making, because that -- that may alert it
13 that it is resolving something that is
14 contested. But the right forum thereafter
15 doesn't depend on what particular mix of
16 challenges a particular refinery wants to make.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Justice Thomas?

20 Justice Alito?

21 JUSTICE ALITO: Well, there are a
22 couple of points about your argument that I
23 would appreciate some clarification. Some of
24 them have been touched on, but just to make
25 them -- present them in simple terms.

1 When do you think an issue is
2 sufficiently settled so that decisions based on
3 that no longer involve a determination?

4 MR. STEWART: Well, we -- we've
5 referred to the fact that the -- the denials
6 here were issued roughly contemporaneously with
7 the -- with the determine -- the announcement of
8 the determination itself.

9 And we have also referred to the fact
10 that the comments indicated that the nationwide
11 determinations were likely to be the subject of
12 challenge.

13 I don't think, frankly, that there is
14 a time limit, and -- but I think what the Court
15 should be trying to get at is, kind of, what is
16 the likelihood? Are these determinations
17 sufficiently new? Are they sufficiently
18 unestablished that they can be expected to be
19 the focus of judicial challenge?

20 Because --

21 JUSTICE ALITO: Well, that doesn't
22 seem to be a very clear rule. Maybe the
23 application of it here would be clear, but going
24 forward in other cases, that certainly doesn't
25 seem to be clear, whether it was sufficiently

1 established to -- so that anything that happens
2 later is not a new determination?

3 MR. STEWART: I mean, I think one
4 thing we would offer is with respect to the
5 standard of review here, we certainly think the
6 question of what is the test, what is the basic
7 standard for applying the third prong, that's a
8 question of statutory determination that the
9 court decides de novo. So we disagree with
10 Respondents' interpretation, but the question
11 whether they're right or wrong -- their --
12 interpretation, but we -- but the question
13 whether they're right or wrong is for the Court
14 to decide.

15 If the Court accepts our basic
16 framework that the test should be were these
17 determinations sufficiently new that they are
18 likely to be the subject of judicial challenge,
19 then I think it would be appropriate to give
20 some deference to EPA's determination in that
21 regard, because EPA would know the record, it
22 would understand to what extent was it departing
23 from its past methodology, what had the comments
24 been, and --

25 JUSTICE ALITO: Okay. Thank you.

1 What -- why should it matter in making
2 this determination whether EPA decides -- makes
3 one -- takes one action by itself or bundles a
4 bunch together?

5 MR. STEWART: I don't think it
6 particularly matters for purposes of the third
7 prong; that is, for purposes of the first prong,
8 the -- the question is whether the action is
9 nationally applicable. And that depends on
10 whether the action that EPA announces as the not
11 denial of a lot of petitions or the denial of
12 one.

13 I think for purposes of the third
14 prong, the analysis would be the same regardless
15 of whether there's bundling.

16 JUSTICE ALITO: So you can't just --
17 EPA can't just say, look, this is -- we're --
18 we're deciding cases from five different
19 circuits and, you know, or a number of different
20 states and they fall into five different
21 circuits, ^ ? that shouldn't matter at all?

22 MR. STEWART: It -- it doesn't matter
23 for purposes of the third prong, that the
24 question is, even if you think of the action as
25 being the denial of a particular refinery's

1 petition, if it is based on -- if that action is
2 based on a determination of federal law that's
3 likely to be challenged in court, that's an
4 appropriate case for the D.C. Circuit to
5 exercise review.

6 JUSTICE ALITO: What do you think
7 "based on" means? And it wasn't exactly clear
8 from your brief. At some points, you seem to
9 say it's but-for causation, and then at another
10 point, you say it's -- it must lie at the core
11 of the agency action. Which one is it?

12 MR. STEWART: We would say but-for
13 causation. That's typically the meaning that
14 the Court ascribes to the term "based on." But
15 if the Court wanted to have a slightly more
16 stringent -- stringent test, it's -- it's really
17 the principle that we care most about, rather
18 than kind of the exact formulation of the
19 standard.

20 JUSTICE ALITO: I know the pass- --
21 the validity of the pass-through theory is not
22 before us, but just out of curiosity, has that
23 -- is that being challenged? And what is -- if
24 so, where -- what is the status of the
25 challenge?

1 MR. STEWART: Well, it -- it was
2 challenged in both the D.C. Circuit and the
3 Fifth Circuit because a lot --

4 JUSTICE ALITO: Right.

5 MR. STEWART: -- of these cases wound
6 up in --

7 JUSTICE ALITO: Yeah.

8 MR. STEWART: -- the Fifth Circuit.
9 The -- both of those courts ruled against EPA on
10 that issue. And in our motion to hold the
11 briefing schedule in abeyance in this case, we
12 noted that EPA is reconsidering the methodology
13 it's using. I -- I don't have any updates on
14 that, but that -- that's what we've represented
15 to the court previously.

16 JUSTICE ALITO: Thank you.

17 CHIEF JUSTICE ROBERTS: Justice
18 Sotomayor?

19 JUSTICE SOTOMAYOR: I am having almost
20 an impossible time understanding how you
21 answered Justice Thomas's question to say that
22 there is a limit that's subject to some form of
23 judicial review on your decision to bundle
24 that's not tied directly to the third prong;
25 meaning, I don't see how you can bundle unless

1 you meet the third prong, because the first
2 prong requires an action, and the action,
3 whether it's a national action or a individual
4 action, and if it has to be an individual
5 action, I don't see how you can make it national
6 without the third prong.

7 MR. STEWART: Well, I think even if
8 EPA was simply applying to new circumstances a
9 -- a previously established general methodology,
10 EPA would have the authority, if it wished, to
11 bundle in the sense of announcing in a single
12 Federal Register notice the results of its --

13 JUSTICE SOTOMAYOR: I just don't see
14 how that can be, unless that action is based on
15 a determination of nationwide scope or effect.
16 I can't see how you can bundle a New York -- and
17 you said you can't --

18 MR. STEWART: Right.

19 JUSTICE SOTOMAYOR: -- bundle a New
20 York and Pennsylvania denial of a SIP and call
21 it nationwide.

22 MR. STEWART: I -- I think that --

23 JUSTICE SOTOMAYOR: Absent a
24 determination of nationwide scope or effect.

25 MR. STEWART: I -- I think the answer

1 to your question turns on our limiting
2 construction of the word "determination." That
3 is, when -- if EPA granted or denied, let's say,
4 four different refinery proposals in a single
5 action, if it were simply applying its
6 preexisting methodology, a methodology that no
7 one was likely to challenge, but it was applying
8 that to disparate circumstances around the
9 country, nothing would prevent it from
10 announcing those dispositions in a single
11 Federal Register notice.

12 The reason we would say those don't
13 turn on a determination of nationwide scope or
14 effect is that the legal principles would be
15 preexisting and established. They wouldn't be
16 kind of new -- new determinations, resolution of
17 an issue.

18 JUSTICE SOTOMAYOR: I think you're --
19 you're -- you're digging yourself into a hole
20 because I would then say they're individual
21 actions that you have to take to the local
22 courts.

23 MR. STEWART: And -- and, frankly, EPA
24 rarely does that kind of bundling in
25 circumstances where it isn't announcing new

1 rules or new frameworks. We think it has the
2 authority to, but I'd -- I'll say we wouldn't
3 lose much if the Court said --

4 JUSTICE SOTOMAYOR: All right.

5 MR. STEWART: -- we --

6 JUSTICE SOTOMAYOR: Assume my
7 assumption, that I don't take any meaning from
8 your bundling --

9 MR. STEWART: Okay.

10 JUSTICE SOTOMAYOR: -- and that I
11 think it's always a issue of what's a
12 determination of nationwide scope and effect.
13 What's the standard of review? I wasn't sure in
14 the answer you gave to -- you -- you talked
15 first about de novo and then you talked about
16 deference. So --

17 MR. STEWART: I -- I would --

18 JUSTICE SOTOMAYOR: -- assume it's
19 only the third prong.

20 MR. STEWART: Right.

21 JUSTICE SOTOMAYOR: All right? What's
22 the standard of review?

23 MR. STEWART: I would say when you are
24 determining what the basic test should be, the
25 standard of review is de novo -- de novo. For

1 instance, Respondents are arguing -- have argued
2 that "determination" here is used as a term of
3 art and it refers only to circumstances where
4 some other CAA provision instructs EPA to make a
5 determination or to determine something on a
6 nationwide basis.

7 Now, we think that interpretation of
8 the statute is wrong, but the question whether
9 it is right or wrong is a pure issue of
10 statutory construction. That's something the
11 court decides de novo.

12 If the Court concludes that we're
13 right about the basic test, that what we are
14 looking for is did EPA in this action announce a
15 new principle of federal law or policy that is
16 likely to be the subject of judicial challenge,
17 if that basic test is correct, then we think EPA
18 should get deference when it announces that it
19 thinks the test is satisfied with respect to a
20 particular action.

21 JUSTICE SOTOMAYOR: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice Kagan?

23 JUSTICE KAGAN: I don't know,
24 Mr. Stewart. You're making this much more
25 complicated than I came in here thinking it was.

1 You know, the way I thought about it
2 was if you have a set of individual actions but
3 they're all based on a common denominator, such
4 that you know how all the individual actions are
5 going to come out or almost all or generally
6 all, you know, such that individual -- like,
7 state circumstances are just not playing much of
8 a role, then you -- then it should be in one
9 court because that's really all that is going to
10 be up for judicial review.

11 So whether it's old, whether it's new,
12 I mean, you just look and you say did -- did one
13 nationwide decision, or two nationwide decisions
14 in this case, drive all of these individual
15 decisions or almost all or most of them? And if
16 it did, like, you don't want 11 circuits dealing
17 with the same question. And if it didn't,
18 because there are lots of individual
19 circumstances coming into play and relating
20 to -- you know, it's -- it's -- it's like both
21 all mixed together so that the individual
22 circumstances really are going to count and
23 different decisions are going to go different
24 ways, then you do want them done by different
25 courts.

1 So, I mean, that might be just an
2 intuitive way of dealing with it, but it seems
3 like a lot simpler to me than what you're
4 pitching.

5 MR. STEWART: Well, I think part of
6 the reason that we focused on determination as
7 we have is the strongest -- to us the strongest
8 argument on the other side is that whenever EPA
9 makes a site-specific determination, it is
10 always applying some nationally applicable rule
11 or framework or policy. If it didn't do that,
12 the other side appropriately points out, we
13 wouldn't have any assurance that --

14 JUSTICE KAGAN: Yeah, sure, there is
15 always some nationwide determination in the mix,
16 but if it's the kind of thing where that
17 nationwide determination as applied is going to
18 come out differently on different decisions,
19 depending on local conditions, then you don't
20 want it in the D.C. Circuit.

21 MR. STEWART: Well, you --

22 JUSTICE KAGAN: I mean, I have a
23 pretty strong intuition -- I won't tell you what
24 it is -- about both of these cases. And one
25 goes one way and one goes the other way.

1 Because, one, everything is being decided by the
2 nationwide determination; and the other, pretty
3 much nothing is being decided by the nationwide
4 determination.

5 MR. STEWART: Well, I think the
6 nationwide determination, the new principle of
7 law, can be very important and can arouse great
8 controversy even if it doesn't, by itself,
9 preordain what the outcome of any particular
10 proceeding is going to be.

11 I mean, I'd look at this -- this
12 Court's practice, for instance. In cases where
13 the -- this Court determines that the court of
14 appeals has erred in its analysis, it's not
15 uncommon for the Court to announce the right
16 analytic framework and then send it back to the
17 lower courts to figure out how that framework
18 applies to particular circumstances.

19 It leaves the last -- it -- it
20 recognizes that its announcement of the
21 framework doesn't necessarily foreordain the
22 outcome. It leaves the last stage for the lower
23 courts.

24 But what this Court is still doing is
25 still terribly important, and it's the kind

1 of -- the task this Court is performing is the
2 type of task for which it's important that there
3 be centralized review, that you not have a lot
4 of courts making the same determination of -- of
5 federal law without some means of bringing
6 harmony to them, even if that determination
7 doesn't dictate the outcome in a particular
8 case.

9 JUSTICE KAGAN: Thank you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Gorsuch?

12 JUSTICE GORSUCH: Well, harmony can
13 also be achieved through appeal, right? I
14 mean --

15 MR. STEWART: Yes.

16 JUSTICE GORSUCH: I mean, the -- the
17 government's not afraid of litigating in -- in
18 -- in appropriate forums across the country,
19 right?

20 MR. STEWART: That -- that's correct,
21 but --

22 JUSTICE GORSUCH: And if there are
23 circuit splits over the meaning of the law,
24 you -- you know how to bring them here, right?

25 MR. STEWART: Yes.

1 JUSTICE GORSUCH: All right. And so
2 I -- I just want to explore the two tests you
3 have offered us: the but-for test and the core
4 test. Those are the two. And you're happy with
5 either one?

6 MR. STEWART: Yes.

7 JUSTICE GORSUCH: Yeah. So the
8 but-for test, I would think, would capture
9 pretty much any time you have a standard
10 statutory interpretation or economic theory.
11 Because but for, you wouldn't have reached the
12 result, right?

13 MR. STEWART: Well, no, I mean, you --
14 with respect to a particular outcome, you could
15 have -- you could have EPA issuing rulings in
16 the alternative, saying: Under our preferred
17 approach, the small refinery's petition would
18 be -- should be denied, but even under our old
19 approach, this particular refinery wouldn't be
20 entitled to an exemption.

21 JUSTICE GORSUCH: But either of those
22 statutory interpretations would be a but-for
23 cause of the -- the -- the -- the ultimate --
24 one or the other would have to be at least a
25 but-for cause?

1 MR. STEWART: Well, no. I think -- I
2 think if you said under each approach --

3 JUSTICE GORSUCH: Let -- let's make it
4 easier. I have one standard statutory
5 interpretation I'm going to apply to all of
6 these cases. That's a but-for cause?

7 MR. STEWART: It would only be a
8 but-for cause if -- if there would be a
9 different outcome under some alternative
10 interpretation.

11 JUSTICE GORSUCH: Right, okay. Yeah.
12 Exactly.

13 But it was a but-for cause of the
14 denial in every case.

15 MR. STEWART: Again, only if there
16 would be a grant of the exemption under some
17 alternative --

18 JUSTICE GORSUCH: Sure. Some court is
19 going to have to decide whether that is a
20 correct interpretation and whether there's an
21 alternative that's preferable, but the
22 interpretation on which EPA is relying to deny
23 the application will be the but-for cause in
24 every case. So it -- it captures everything.
25 So that's one.

1 And then the core -- what does "core"
2 mean, and where does it come from?

3 MR. STEWART: I mean, I think we were
4 trying to get at circumstances where -- we're
5 trying to weed out circumstances where EPA, in
6 the course of an action, may announce some
7 principle of federal law, but it is so
8 peripheral to the decision it's actually making
9 that it doesn't appear likely to affect the
10 outcome, and, consequently, it doesn't appear
11 likely to be the focus of judicial challenge.

12 JUSTICE GORSUCH: No, I get -- I
13 get -- I get the impulse. I'm just not sure
14 where it is in the statute.

15 MR. STEWART: I think the word --
16 again, I --

17 JUSTICE GORSUCH: "Core" does -- it
18 doesn't appear anywhere?

19 MR. STEWART: I think if -- if EPA
20 announced: We -- we think this is the right
21 statutory interpretation and economic analysis,
22 this particular small refinery disagrees, and it
23 thinks we should use an alternative
24 interpretation and analysis, we note that under
25 either approach we think this small refinery

1 would not be entitled to an exemption.

2 I think if you -- if EPA said that,
3 then you couldn't conclude that EPA's preferred
4 interpretation and analysis were a but-for
5 cause.

6 JUSTICE GORSUCH: Are we going to have
7 a jurisprudence on "core"? How core is core?

8 MR. STEWART: Again --

9 JUSTICE GORSUCH: Is that what you're
10 inviting us to do?

11 MR. STEWART: No. I think if the
12 Court adopted our basic test, then it would be
13 appropriate to give some deference to EPA's
14 judgment about how integral to its overall
15 analysis was a particular principle of law.

16 And, you know --

17 JUSTICE GORSUCH: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Kavanaugh?

20 JUSTICE KAVANAUGH: On the reason for
21 all of this in the first place, Congress's
22 reasons for all of this in the first place,
23 obviously it wasn't just harmony. I thought it
24 was also -- but correct me if I'm wrong --
25 speed.

1 MR. STEWART: Yeah.

2 JUSTICE KAVANAUGH: And therefore,
3 American businesses, which have to make
4 millions -- multi-million-dollar decisions on
5 all of this, have some certainty more quickly
6 about what the rules are. Because they will
7 say: You know, we don't care whether the rule's
8 A or B -- I mean, they do care -- but tell us
9 what the rule is so we can make our investment
10 decisions and our business decisions.

11 MR. STEWART: Yes. And -- and that's
12 reflected not just in the provision for
13 centralization in the D.C. Circuit but in the
14 short -- the 60-day time limit for seeking
15 review. It's reflected to an extent in -- in
16 the fact that you go straight to the court of
17 appeals in the first place.

18 Part of the reason for kind of
19 skipping a potential layer of judicial review
20 was to get things -- these things resolved
21 quickly. And so if EPA is -- is told that it's
22 wrong, it can go back to the drawing board. If
23 EPA's methodology is upheld, then it can decide
24 what's the next incremental step from that.

25 JUSTICE KAVANAUGH: The fact that

1 we're having this argument, though, suggests
2 that Congress might have missed the mark on
3 that. But, anyway, that was the idea, right?

4 Then on ease of application, which
5 Justice Gorsuch rightly raises, I just want to
6 zero in on the deference point.

7 Your point there is when -- I think --
8 you know, when EPA makes and publishes and says
9 it's making something based on -- on a
10 determination of nationwide scope or effect,
11 that itself will receive deference?

12 MR. STEWART: Again, if -- if you
13 think that EPA is applying basically the right
14 standard --

15 JUSTICE KAVANAUGH: Assume that.

16 MR. STEWART: Yes.

17 JUSTICE KAVANAUGH: Then it gets
18 deference in how it applies it in a particular
19 case, which helps with respect to ease of
20 application.

21 MR. STEWART: Yes.

22 JUSTICE KAVANAUGH: Okay. And then if
23 it does go to the D.C. Circuit, and the D.C.
24 Circuit rules for EPA -- I just want to make
25 sure you agree with this -- obviously there

1 won't be a circuit split on anything. So when
2 it comes to this Court on cert, we need to be
3 more attentive to cases like that than we might
4 be in certain other cases?

5 MR. STEWART: I -- I agree. And
6 it's -- you know, it's kind of like the federal
7 circuit and patent cases, that with respect to
8 categories of litigation that can't produce a
9 circuit split, then obviously the Court is going
10 to -- to take cases even when some of the usual
11 metrics for what's a cert-worthy case are
12 absent.

13 JUSTICE KAVANAUGH: Good. Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Barrett?

16 JUSTICE BARRETT: Just to crystallize
17 your position, Mr. Stewart, can you point me to
18 the best textual and contextual evidence that a
19 determination is this issue of unsettled --
20 unsettled issue of statutory interpretation,
21 rather than the decision that the underlying
22 hardship appli -- exception doesn't apply?

23 MR. STEWART: I mean, I think that the
24 basic reason that the two shouldn't be equated
25 is that the statute refers -- and this is at

1 the -- kind of the carryover sentence from 31A
2 and 32A of the appendix to the government's
3 brief.

4 It says, "Notwithstanding the
5 preceding sentence, a petition for review of any
6 action referred to in such sentence, namely, an
7 action of -- that is locally or regionally
8 applicable, may be filed only in the United
9 States Court of Appeals for the District of
10 Columbia if such action is based on a
11 determination of nationwide scope" --

12 JUSTICE BARRETT: So the
13 distinction --

14 MR. STEWART: If the state --

15 JUSTICE BARRETT: The use of the words
16 "action" and "determination," you would say, is
17 your best evidence?

18 MR. STEWART: Yes. The -- and the --

19 JUSTICE BARRETT: Okay.

20 MR. STEWART: -- the linkage "based
21 on" indicates that the two are not the same
22 thing.

23 JUSTICE BARRETT: Okay. And then,
24 relatedly, when you've been talking about length
25 of time and how we decide whether something is

1 settled or not, I mean, these were denied in two
2 batches, one April and one June, on the same --
3 basis of the same, say, determination of the
4 economic theory and the statutory
5 interpretation.

6 Why were the ones in June, then, in
7 the government's view, not based on something
8 that was already settled? Or were they?

9 MR. STEWART: I -- I -- I think they
10 weren't. I mean, for -- for one thing, the
11 other metric that -- or criterion that we've
12 identified for determine -- for identifying
13 things that are determinations, things are --
14 that are the resolution of a controversy, is did
15 EPA receive comments on the proposed action that
16 indicated disagreement with the determination?

17 And that was as true for the
18 refineries whose petitions were denied in June
19 as it was for those that were denied in April.
20 In both instances, EPA was told by the
21 petitioning refineries that we're not just
22 disagreeing with the application of your
23 methodology to our circumstances, we're
24 disagreeing with the methodology itself.

25 JUSTICE BARRETT: Okay.

1 CHIEF JUSTICE ROBERTS: Justice
2 Jackson?

3 JUSTICE JACKSON: So I guess I'm just
4 trying to understand your statutory
5 interpretation. Are you saying that the action
6 that was taken here was a nationally applicable
7 one at prong 1, such that that's why it goes to
8 the D.C. Circuit?

9 MR. STEWART: Yes. I mean, we're
10 making two arguments. Our -- our first argument
11 is because this was the denial of 21 small
12 refinery exemptions, rather than only one, it
13 was nationally -- and the refineries were spread
14 out all over the country, it was a nationally
15 applicable action and it goes to the D.C.
16 Circuit under prong 1.

17 But then we're also arguing in the
18 alternative, if instead you view the action as a
19 matter of law as separate denials of 21
20 different petitions, we would say each of those
21 denials falls under prong 3 because each denial
22 was based on a determination of nationwide scope
23 or effect.

24 JUSTICE JACKSON: All right. So going
25 back to the prong 1 issue, help -- help me to

1 understand your argument. I mean, if the EPA
2 had issued each of these denials on a separate
3 piece of paper, would you still say that they
4 belonged on the D.C. Circuit?

5 MR. STEWART: No. I mean, I think our
6 argument does depend on the proposition that you
7 attach a lot of weight to the -- the way EPA
8 frames its action. And so if on the same day we
9 had issued 21 separate Federal Register notices
10 saying we're applying the same methodology but
11 we're engaging in 21 separate denial actions, we
12 would say those are --

13 JUSTICE JACKSON: But what about the
14 statute or Congress's reasons for enacting it or
15 the way that it works makes you think that
16 Congress intended for this to turn on the formal
17 -- the formality of the EPA's determination in
18 that way?

19 MR. STEWART: Well, it refers to the
20 action that EPA takes. And I think to a degree,
21 the -- the application of prong 1 will
22 necessarily depend at least in part on
23 formalities. That is, if EPA had first
24 promulgated a regulation that said here is our
25 new statutory interpretation, here's our new

1 economic analysis, in subsequent decisions we
2 will apply this interpretation and analysis to
3 different refineries, the regulation itself
4 would clearly have been nationally applicable.
5 It would have been a nationwide rule. And it
6 would have been challengeable only in the D.C.
7 Circuit.

8 JUSTICE JACKSON: But I thought you
9 said if they said that and then they had
10 separate papers saying that, there would be
11 local?

12 MR. STEWART: No, I -- I was --
13 perhaps I misunderstood the hypothetical. I was
14 saying --

15 JUSTICE JACKSON: So here's the
16 hypothetical. The EPA issues an order that
17 consists of a single page for each refinery.

18 MR. STEWART: And the -- assuming that
19 the order says we are applying this methodology
20 and concluding on that basis that your refinery
21 doesn't meet the criteria. If it's announcing
22 the methodology in the same document where it
23 announces the denial, then that would be a
24 single -- a single state-specific action.

25 I -- I had in mind a circumstance

1 where EPA proceeds in two steps, first
2 promulgating the rule and then issuing separate
3 actions that apply it to different refineries.
4 And our -- and our point is the fact that in the
5 denial actions here EPA chose to announce the
6 new methodology in the same document as its
7 application shouldn't affect the nationwide
8 applicability.

9 JUSTICE JACKSON: Thank you.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 MR. STEWART: Thank you.

13 CHIEF JUSTICE ROBERTS: Mr. Waxman.

14 ORAL ARGUMENT OF SETH P. WAXMAN
15 ON BEHALF OF RESPONDENTS GROWTH ENERGY
16 AND RENEWABLE FUELS ASSOCIATION
17 IN SUPPORT OF THE PETITIONER

18 MR. WAXMAN: Mr. Chief Justice, and
19 may it please the Court:

20 The core objective of Section 307(b)
21 is to avoid inconsistent rules arising from
22 duplicative litigation in the administration of
23 the Clean Air Act. Yet, under the ruling below,
24 eight different courts of appeals will be
25 passing on the merits of EPA's standards for

1 eligibility under the small refinery exemption,
2 producing, as is already evident from the two
3 circuits that have opined, different substantive
4 standards, completely the opposite of what
5 Congress manifestly intended under the national
6 RFS program.

7 Now, there has been a lot of
8 discussion about prongs 1 and 3 and maybe some
9 discussion without identifying it as prong 2,
10 which is the locally or regionally applicable.
11 As to prong 3, we fully agree with EPA that if
12 the actions are deemed locally applicable, the
13 disposition of each -- each refinery's petition
14 was, indeed, based on a determination of
15 nationwide scope and effect.

16 I have some different answers to some
17 of the questions posed, in particular by Justice
18 Gorsuch and Justice Alito, which I hope I'll get
19 to, but I want to emphasize at the beginning,
20 picking up, I think, on what Justice Jackson's
21 questions were alluding to, that we think that
22 EPA's actions, whether they are considered
23 individually or together as bundled by EPA, were
24 nationally applicable under the first prong for
25 two reasons.

1 The first reason is because they
2 announced and applied a standard for all
3 refineries, regardless of location. This was an
4 avowed statement by EPA in these adjudications.

5 And, second, the second reason relates
6 to the ubiquity of the RFS program, where every
7 individual exemption determines as a matter of
8 law the renewable fuel requirement binding all
9 non-exempt obligated parties and the total
10 volume of renewable fuel that must be purchased,
11 such that the legal effect of even an individual
12 SRE adjudication is nationally applicable
13 insofar as it necessarily affects the blending
14 requirement -- blending obligations of -- of
15 non-exempt obligated parties and will
16 necessarily affect the total amount of renewable
17 fuel that is used in the United States.

18 Now, I guess I should say my time is
19 -- I welcome the Court's questions. I -- I --

20 JUSTICE THOMAS: Mr. Waxman, one
21 question.

22 You say that this is a nationally
23 applicable rule. How many refineries would have
24 to be involved for it to be nationally
25 applicable? Is it just more than one?

1 MR. WAXMAN: So I think, Justice
2 Thomas, in -- in this case, since the -- the
3 standard announced and applied avowedly will
4 apply to every refinery wherever it is located
5 in the United States, regardless of location,
6 that is nationally applicable.

7 I don't think -- nothing in our
8 submission -- I hope this gets to your question
9 -- depends on whether you agree with us and the
10 House report that any legal issue that can be
11 adjudicated in two different -- in one -- in two
12 different circuits is nationally applicable
13 under the first prong or you agree with my
14 friend on the other side that it has to be all
15 50 states.

16 The point here is that when EPA
17 announces and adopts a standard, either in a
18 regulation or other final action, that it says
19 will apply to refinery -- to petitioning
20 refineries regardless of location, that is
21 national.

22 Now, I don't think, just anticipating
23 my friend's argument, that the -- that the rule
24 that in order to -- that it cannot be that it
25 has to apply to all 50 states in order to be

1 national. That's completely inconsistent with
2 the manifest purpose of the 1977 amendments.
3 And it's also manifestly not true because there
4 are many provisions of the Clean Air Act that
5 don't apply to all 50 states --

6 JUSTICE THOMAS: But --

7 MR. WAXMAN: -- including the
8 Renewable Fuel Standard.

9 JUSTICE THOMAS: But I'm -- I'm --
10 let's just -- if we would just limit it to the
11 refineries for now and small refineries, how
12 would you know whether it's nationally
13 applicable?

14 MR. WAXMAN: Well, I think if EPA --
15 if EPA adjudicates a refinery -- an individual
16 refiner's exemption application by announcing
17 and adopting a new metric that will apply to all
18 refiners, it is nationally applicable.

19 JUSTICE THOMAS: Wouldn't it be --
20 wouldn't it be just accepted that if EPA
21 announced the rule with respect to one refinery
22 and -- that it would apply the same rule to
23 future refineries? And would that make it a
24 national rule?

25 MR. WAXMAN: Yes, I think so. That's

1 our --

2 JUSTICE THOMAS: The mere fact that --

3 MR. WAXMAN: That's our position.

4 Now, I -- I recognize that neither of my friends
5 in this case agree with this, but I think, you
6 know, following on what I -- I took to be the
7 point of Justice Jackson's questions, I don't
8 see why it's not true.

9 If EPA -- everybody agrees that if EPA
10 announced a regulation -- in a regulation that
11 said from now on all SRE applications are going
12 to be adjudged under the following metric:
13 Number one, the small refinery has to prove
14 causation; that is, it has to prove that the
15 disproportionate hardship that it is
16 experiencing is due to the RFS obligation and
17 not for some other reason.

18 And in evaluating that case, based on
19 our economic analyses and economic common sense,
20 we presume that RFS -- that -- that ring costs
21 can be passed on to consumers. That is a
22 rebuttable presumption.

23 JUSTICE JACKSON: Mr. --

24 MR. WAXMAN: If that were done in the
25 context of a regulation, even my friend on the

1 other side agrees it would be nationally
2 applicable.

3 JUSTICE JACKSON: Mr. -- Mr. Waxman,
4 here's where I need help. If -- if you're right
5 about that, I guess I don't understand how we
6 ever get to prong 2.

7 How -- it seems to me that -- I don't
8 understand the distinction between 1 and 3,
9 meaning it seems like every case would be one in
10 which you would say that there is a national --
11 nationally applicable standard. Because, as
12 Justice Gorsuch pointed out, we would hope that
13 the agency would have consistent metrics for
14 making these determinations.

15 So it's sort of a given that the
16 agency is going to be applying some standard
17 and, in our country, a standard that is
18 consistently applied across every applicant. So
19 then how do we ever have a local determination
20 in -- in -- in that scheme?

21 MR. WAXMAN: So I think my -- my
22 answer to the question is the same -- it's the
23 same answer to the question I would give to
24 Justice Gorsuch's question about prong 3, how is
25 it -- how can you determine that it is of

1 national -- what is a determination of
2 nationwide scope and effect, and Justice Alito's
3 question about so what's the bright line, what's
4 the metric under which you can decide that?

5 I think the same applies to prong --
6 to the -- our -- our first theory for why this
7 is nationally applicable under prong 1, which is
8 it is not a -- an action of -- a nationally
9 applicable action. And it is also, under prong
10 3, not a determination of nationwide ^
11 significance -- scope and effect if it is simply
12 applying settled law.

13 Now, I fully -- I -- I appreciate the
14 questions about at what point does law become
15 settled, and why does that matter for
16 determination. In our view, law becomes settled
17 when either there is a court ruling -- and
18 presumably it would be under prong 3 or prong
19 1 -- a ruling of the D.C. Circuit saying EPA is
20 right or EPA is wrong.

21 The application of that national
22 standard thereafter -- the application of that
23 standard thereafter would not qualify under
24 prong 1 or prong 3, in our view.

25 In -- even in the absence of a -- of a

1 D.C. Circuit adjudication, this statute, this
2 very unique statute, has a 60-day limit on pose
3 challenges to any regulation or final action.
4 It's a pretty strict time limit that's included
5 in the same subsection that we're deciding.

6 And I think an argument can be made
7 that if there is no -- 60 days goes by and
8 there's no challenge, or if there is a
9 challenge -- if there is a challenge, let's let
10 the D.C. Circuit decide. If there's no
11 challenge, it's settled.

12 And thereafter, when the EPA uses that
13 standard to either grant or deny an exemption
14 request, that goes to the regional circuit.

15 The other part of my answer that I --
16 I don't think -- I'm not sure was fully answered
17 in response to the questions before is, like,
18 what -- what is it that -- how are you defining
19 "determination"? I think this was maybe Justice
20 Barrett's question.

21 And I think, you know, we define
22 "determination" by reference to the accepted
23 dictionary definition, which we elucidate in our
24 brief, which is: A determination is either the
25 resolution of a particular unsettled issue or

1 the measure of something. That's the dictionary
2 definition of it.

3 And we're -- we think that that
4 dictionary definition comfortably cabins the
5 scope and extent of -- of the third prong.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 I am very sympathetic to the concern
9 that venue provisions should be simple. I mean,
10 it's the first step. It's where you go. It's
11 not about the merits at all. You don't want to
12 spend a lot of time litigating that.

13 And you have suggested that your
14 standard, just recently, is -- is a simple one.
15 Now, in what respects do you think Mr. Stewart's
16 proposal is not simple?

17 MR. WAXMAN: Well, I think -- I think
18 Mr. Proposal's -- Mr. Proposal's --
19 Mr. Stewart's proposal is simple. And I think
20 it can be -- prong 3, with which we agree, can
21 simply be decided by a proper understanding of
22 the definitional terms of what is and isn't a
23 determination.

24 As to prong 1, while I agree with him
25 that the relevant actions in this case are the

1 two consolidated actions in April and June, we
2 have -- we have proposed in our briefing two
3 other tests under prong 1 that, if anything, are
4 even more straightforward and don't depend on
5 bundling.

6 One is the point that I've been
7 discussing earlier about if it is an action that
8 announces and adopts a new standard that will be
9 applied across the country, it is nationally
10 applicable.

11 The other, which in some ways is the
12 simplest, but is a real consequence of the
13 ubiquity of -- of the RFS standard, which was
14 adopted long after these 1977 amendments, is
15 that every adjudication of a small refinery
16 exemption is nationally applicable as a matter
17 of law, because it will determine as a matter of
18 legal consequence the refining obligations, the
19 blending obligations of non-petitioning
20 refiners.

21 CHIEF JUSTICE ROBERTS: Thank -- thank
22 you, counsel.

23 MR. WAXMAN: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Thomas, anything further?

1 JUSTICE THOMAS: Just briefly.

2 Mr. Waxman, you -- you mention -- you
3 discussed determinations a minute ago, but what
4 -- what would be your view of "based on"? I
5 think that's important as to what -- what
6 content you give that.

7 MR. WAXMAN: So we think that "based
8 on" means essentially two things. There are two
9 requirements for an action. The action in these
10 cases is -- was the denial of the exemption.

11 "Based on" means that it is a but-for
12 cause or an essential premise of the action and
13 that it resolves an unsettled issue or that it
14 establishes a standard. When you have those two
15 things, the act -- you can say confidently that
16 the action is based on that determination.

17 I hope that answers your question.
18 It's the best I got.

19 CHIEF JUSTICE ROBERTS: Justice Alito?
20 Justice Sotomayor?

21 JUSTICE SOTOMAYOR: There's a number
22 of lower courts that have said, with respect to
23 the question of whether a denial is nationally
24 applicable, that what you have to look at is not
25 the downstream consequences of the EPA's -- of

1 the EPA's determination, but what is the effect
2 of -- on the parties? Is it a national effect
3 or not?

4 Your -- one of your two suggestions
5 that the -- I see as downstream effects. Yes,
6 there are going to be people from each petition
7 who might have to do something more later, and
8 something less if -- if they are denied, but why
9 isn't that just a pure downstream effect? And
10 aren't we straying too far when we're
11 incorporating that into our analysis?

12 MR. WAXMAN: So I think -- I do
13 recognize those opinions. And I endorse them,
14 in the sense that I think, for example, you
15 know, Justice Kavanaugh -- or then Judge
16 Kavanaugh had it correctly in -- when he ruled
17 in the D.C. Circuit that national applicability
18 has to be determined on the face of the action.

19 JUSTICE SOTOMAYOR: That's the case
20 I'm talking about.

21 MR. WAXMAN: Yes. And -- and that
22 practical effect, downstream effects of what is
23 likely to -- what is more than likely not to
24 happen is not the crux.

25 All parties in this case -- and I

1 think all courts -- have agreed that the legal
2 effects of the regulation or the action is, in
3 fact, the -- something that is viewable and
4 consistent with the you have to look on its
5 face.

6 And with respect to the Renewable Fuel
7 Standard, the legal effect -- not just some
8 predictable downstream effect, the legal effect
9 of every SRE determination extends to the
10 national blending standard and the national
11 volume requirements by -- as a matter of law.

12 And that's how I would address that --

13 JUSTICE SOTOMAYOR: You know what
14 bothers me about that position is you're now
15 saying that every exemption has to go to the
16 D.C. Circuit --

17 MR. WAXMAN: Our -- our --

18 JUSTICE SOTOMAYOR: -- whether the
19 methodology -- methodology is new or not.
20 That's the force of that argument.

21 MR. WAXMAN: So that's one of the two
22 arguments that we're making for why this is
23 nationally applicable. And, yes, it basically
24 acknowledges that because of the ubiquity, the
25 way that the RFS program, as opposed to many --

1 most other Clean Air Act programs, is --
2 operates, it is a necessary legal effect of the
3 -- any denial that it will be nationally
4 applicable in the sense that it has an
5 inexorable legal effect on other actors and the
6 -- the -- the -- the nation's ability to meet
7 its national renewable fuel requirement. But,
8 yes, I do --

9 JUSTICE SOTOMAYOR: That prong.

10 MR. WAXMAN: That's -- that, that
11 argument is -- is asking for a -- an
12 acknowledgment -- a rule across the board with
13 respect to all exemptions.

14 CHIEF JUSTICE ROBERTS: Justice Kagan?
15 Justice Gorsuch?

16 JUSTICE GORSUCH: Mr. Waxman, do you
17 agree that the action here is the denial of a --
18 a petition --

19 MR. WAXMAN: Yes.

20 JUSTICE GORSUCH: -- to be exempt from
21 renewable energy mandates?

22 MR. WAXMAN: Well, I -- I think -- I'm
23 going to be ecumenical about --

24 JUSTICE GORSUCH: Let's not -- no, I'm
25 not -- I don't want you to be ecumenical today.

1 MR. WAXMAN: Okay.

2 JUSTICE GORSUCH: No, I just want to
3 know the right answer. That's the action.
4 That's the agency action.

5 MR. WAXMAN: Our view as expressed --

6 JUSTICE GORSUCH: Right, but it's in
7 the Federal Register?

8 MR. WAXMAN: Our view as expressed in
9 our brief is that the EPA is correct that the
10 actions that are under review today are the
11 consolidated April and June decisions, but that
12 under our understanding of nationally
13 applicable, it doesn't matter.

14 JUSTICE GORSUCH: I understand that.
15 I understand the second part. Put that aside.
16 Put prong 1 aside for now. But the actions --
17 all right, you want to use the plural -- are the
18 denial of the -- of -- of the exemptions from
19 the renewable energy program, right?

20 MR. WAXMAN: Yes.

21 JUSTICE GORSUCH: Okay. And to -- to
22 make that action, EPA had to make a
23 determination about whether there's a particular
24 hardship for a particular refinery, correct?

25 MR. WAXMAN: Correct.

1 JUSTICE GORSUCH: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Kavanaugh?

4 JUSTICE KAVANAUGH: The third
5 sentence, the third prong, the third sentence is
6 just difficult to apply in a coherent way
7 because it's always going to be -- when you have
8 some rule that's being applied to a particular
9 entity in a particular state, it's going -- it's
10 going to be very difficult.

11 What -- what -- so how should we
12 handle that?

13 MR. WAXMAN: So, you know, this is our
14 lot. This is our --

15 JUSTICE KAVANAUGH: Because --

16 MR. WAXMAN: This is --

17 JUSTICE KAVANAUGH: Because to the
18 Chief Justice's point and Justice Gorsuch's, I
19 would like to come out of this case with
20 something that everyone out there knows, okay,
21 this is what we need to do.

22 MR. WAXMAN: So I -- we think that the
23 simplest way to decide this is under the first
24 sentence, rather than the third, but as to your
25 question --

1 JUSTICE KAVANAUGH: But if we get to
2 the third -- yeah.

3 MR. WAXMAN: If we get to the third, I
4 would say what the Court should -- what -- the
5 Court should base its interpretation on the
6 meaning of the term "determination" and that
7 under the -- consistent with dictionary
8 definitions, the determination is either the
9 resolution of a particular issue and/or the
10 measurement of something and that what we have
11 in EPA's two-part test is both.

12 The first part of the test, the
13 causation requirement, is certainly the former.
14 And the -- the presumption based on EPA's
15 experience with the data is the latter and maybe
16 also the former. And that so long as that --
17 the validity of that two-part test is unsettled,
18 meaning that 60 days have passed under the sub-
19 -- under the very next sentence in the
20 subsection, and no challenge has been raised, or
21 a challenge has been raised but the D.C. Circuit
22 has not yet decided it, it is still a
23 determination as to which review should be in
24 the D.C. Circuit.

25 And as to -- to Justice Barrett's

1 question about, well, June was the second one,
2 it wasn't the first one, so how do you -- how do
3 you -- how do you -- how do you deal with that,
4 I think the answer is that I believe -- I -- I'm
5 not -- I don't have a specific recollection, but
6 fewer than 60 days passed between the late April
7 determination and the June 3rd determination.

8 I believe there already had been filed
9 at least one petition for review, but even if
10 there hadn't, it was still open for review. And
11 the consequence of holding that it's only the
12 first one, whether it's the first single
13 application as I'm intuiting Justice Gorsuch is
14 inclined to rule, or the -- the omnibus --

15 JUSTICE GORSUCH: I wouldn't be so
16 sure.

17 (Laughter.)

18 MR. WAXMAN: Pardon my indiscretion
19 and my presumption. Whether it's one or the
20 36th that were decided in April, the notion
21 that, well, June was not April, and, therefore,
22 all 67 refineries that were disappointed by the
23 outcome in June can go to their eight regional
24 circuits and the D.C. Circuit to get resolution
25 of the same legal question --

1 CHIEF JUSTICE ROBERTS: Anything

2 further --

3 MR. WAXMAN: -- is just the opposite

4 --

5 CHIEF JUSTICE ROBERTS: Anything

6 further, Justice Kavanaugh?

7 JUSTICE KAVANAUGH: No.

8 CHIEF JUSTICE ROBERTS: No?

9 Justice Barrett?

10 JUSTICE BARRETT: Just one question.

11 Do you think under your definition of

12 "determination," which you say is the dictionary

13 definition of "determination," that it would be

14 a determination that the hardship exception

15 didn't apply, kind of to Justice Gorsuch's

16 point? You've got the action, the denial, and

17 then you have the determination that the undue

18 hardship exception is inapplicable to that

19 particular refinery.

20 I understand that the reasoning is --

21 is what you want to -- is what you're hanging

22 your hat on, but do you agree that just by the

23 terms of the definition, it could apply as

24 Justice Gorsuch suggested -- suggested to the

25 determination that there was not an undue

1 hardship?

2 MR. WAXMAN: I -- I think in the
3 vernacular sense outside of context, you could
4 say that that is a determination because it will
5 always be the case that if a settled legal test
6 says you get a benefit if you prove this
7 predicate, a determination that you haven't
8 proved the predicate means you don't get the
9 benefit.

10 But it wouldn't be a determination of
11 national scope or effect.

12 JUSTICE BARRETT: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Jackson?

15 JUSTICE JACKSON: So I understand the
16 general concern about simplicity, but it appears
17 that Congress did not share that concern with
18 respect to this statute because it's very
19 complicated.

20 And I'm trying to understand your
21 interpretation of the difference between
22 nationally applicable and a determination of
23 nationwide scope and effect. Are those the same
24 or different in your view? Do they rise and
25 fall together? Could we ever have one without

1 the other?

2 MR. WAXMAN: They are the same in this
3 case and will perhaps often be the same, but
4 they -- they don't inexorably -- one doesn't
5 inexorably require the other. And I'll give you
6 an example each way.

7 A regulation or guidance that is
8 issued by EPA is not a prong 3 issue. It is
9 nationally applicable. It is not locally or
10 regionally applicable.

11 Likewise, SIP denials, that is state
12 implementation plan denials, are not only
13 specifically listed under the second prong but
14 courts have recognized -- and Justice Gorsuch
15 underscored with his questions today -- they are
16 the paradigmatic local or regionally applicable
17 determination because it just asks the question:
18 Did this state plan satisfy its, the state's,
19 requirements under the national air quality --
20 national ambient air quality standards?

21 But the courts have recognized
22 repeatedly that if in the course of denying or
23 granting a SIP application, EPA adopts a new
24 rule, EPA says, well, there's a new NAAQ
25 requirement for ozone and you haven't met it,

1 that -- those cases all go to the D.C. Circuit.
2 And that's the example that General Counsel
3 Frick was addressing in his comments in 1977.

4 JUSTICE JACKSON: Thank you.

5 MR. WAXMAN: Thank you, Your Honor.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Mr. Huston.

9 ORAL ARGUMENT OF MICHAEL R. HUSTON
10 ON BEHALF OF RESPONDENTS CALUMET SHREVEPORT
11 REFINING, L.L.C., ET AL.

12 MR. HUSTON: Mr. Chief Justice, and
13 may it please the Court:

14 The Clean Air Act's venue provision
15 requires a court to look to the text of the
16 chapter to determine whether an EPA action is
17 nationally applicable or is instead locally or
18 regionally applicable and what that action was
19 based on.

20 When EPA, for example, uses a
21 rule-making to set requirements for all
22 regulated parties wherever they're located
23 throughout the nation, that's a nationally
24 applicable action. But the relevant text of the
25 chapter here, Section 7545(o)(9), makes it clear

1 that EPA's actions on hardship petitions must be
2 locally applicable. You can find that text on
3 page 23a of your our red brief.

4 Unlike the pre-2011 regime where all
5 small refineries throughout the nation were
6 entitled to an exemption, the text now requires
7 each individual refinery to make its own case
8 for hardship relief. Quote, "the refinery must
9 demonstrate that it would be subject to a
10 disproportionate economic hardship."

11 And the text then reinforces the
12 requirement of individualized action by keying
13 EPA's deadline to act to the submission of each
14 individual petition. These actions were locally
15 applicable because each EPA action on a hardship
16 petition affected only one refinery located in
17 one place.

18 And the actions were required by the
19 text to be based on each refinery's economic
20 circumstances, not any determination affecting
21 the entire nation. EPA moved past theory and
22 produced final agency action only by analyzing
23 these six small refineries' individualized
24 evidence of their disproportionate economic
25 hardship.

1 Now, to be sure, we think EPA's
2 analysis of those economic factors was wrong on
3 the merits. But the important point for venue
4 purposes is this: Analyzing the evidence of
5 local economic conditions facing small
6 refineries in San Antonio, Texas and Shreveport,
7 Louisiana is a task that Congress assigned to
8 the Fifth Circuit, not the D.C. Circuit.

9 I welcome the Court's questions.

10 JUSTICE THOMAS: But the argument
11 would be: If EPA develops a new rule and
12 applies it to the refineries, that -- that that
13 is a nationwide rule. That -- at least that's
14 how I understand their argument.

15 MR. HUSTON: Justice Thomas, I think
16 EPA is very clear in this case. You can see
17 this at Pet. App. 330 in the denial decisions.
18 They say: This is not a rule-making.

19 If EPA wanted to promulgate a new
20 analytical framework and centralize review of
21 that framework in the D.C. Circuit --

22 JUSTICE THOMAS: Well, let's say a new
23 framework for determining whether or not the
24 exemption applies to the small refineries.

25 MR. HUSTON: Yes, understood. And I

1 think what I'm saying is if EPA wanted to set
2 that new framework for adjudicating small
3 refinery hardship additions, it could use a
4 rule-making to do so.

5 EPA consciously chose not to use its
6 rule-making authority here. It expressly
7 invoked only its adjudication authority. It did
8 so for a very particular reason.

9 This is April and June of 2022. EPA
10 is adjudicating hardship petitions from 2018,
11 '19, and '20. They're retroactively denying
12 petitions submitted three years earlier. It
13 would have been illegal under Black Letter
14 administrative law for EPA to put out a new rule
15 that retroactively denied old hardship
16 petitions.

17 But if they want to do that --

18 JUSTICE THOMAS: Well, they could --
19 EPA, however, could make a determination that's
20 national in scope and effect. Why -- how is
21 that different?

22 MR. HUSTON: So EPA -- I -- I think
23 they could theoretic -- they could make a rule
24 that would say: This is how we interpret the
25 statute. This is how we're going -- what we

1 want future small refineries to demonstrate when
2 they are petitioning for hardship relief.

3 And if they use their rule-making
4 authority, I think that's going to be a
5 nationally applicable action. But that was not
6 the final actions here. EPA said these are
7 adjudications of these hardship petitions.

8 And the -- the right text -- I think
9 the simple way to answer the third prong, the
10 third sentence -- there's been a lot of, you
11 know, talk today about how can we simplify this.
12 Here is the easy answer to how you determine
13 what an action was based on: You look at what
14 the text of the chapter required it to be based
15 on.

16 And here, the text tells you when EPA
17 produces this kind of final action, the denial
18 of a hardship petition, that denial has to be
19 based on a conclusion about whether the refinery
20 is experiencing disproportionate economic
21 hardship.

22 JUSTICE SOTOMAYOR: Counsel, give me
23 meaning to 3. 3 basically says that something
24 that would otherwise be looked at as locally or
25 regularly -- or regionally applicable, it says,

1 notwithstanding that, that there are -- that
2 there are some -- "if the action is based on,"
3 seems to me that you have to give that a
4 difference.

5 Tell me, outside of an announcement of
6 a regulation or a new rule, some action that EPA
7 could take that's local on its face, regional on
8 its face, one application, but could still fit
9 the third exception.

10 MR. HUSTON: So if I might just -- I
11 want to answer your question directly,
12 Justice -- Justice Sotomayor, but before doing
13 so I just want to observe that neither the
14 government -- neither the government nor we have
15 been able to locate any Clean Air Act case
16 that -- where venue has been decided solely on
17 the third prong.

18 So I think this has always been
19 intended to be --

20 JUSTICE SOTOMAYOR: Well, the -- yes,
21 but that doesn't answer the question.

22 MR. HUSTON: Understood.

23 JUSTICE SOTOMAYOR: Congress had in
24 mind something. When I try to figure out what
25 Congress has in mind, I look at the -- my --

1 some of my colleagues don't, but I look at the
2 legislative history to tell me what the examples
3 were that they were dealing with.

4 MR. HUSTON: Sure.

5 JUSTICE SOTOMAYOR: And they were
6 dealing with something very similar to this.
7 And then they created the third sentence. So
8 you give me another reason for the third
9 exception.

10 MR. HUSTON: Justice Sotomayor, so
11 I'm happy -- let's talk directly about what
12 Congress had in mind. As the government --

13 JUSTICE SOTOMAYOR: No. Tell me how
14 you would read it to give it meaning.

15 MR. HUSTON: Sure. I think in a
16 circumstance for a statutory provision like the
17 one that then EPA General Counsel Frick brought
18 to Congress and said this is why we need the
19 third sentence, that was an instance in which
20 the statute authorized EPA to grant individual
21 extensions to individual states, but that was
22 based on a "determination" about the technology
23 that was available throughout the nation.

24 So --

25 JUSTICE JACKSON: Why isn't that

1 indistinguishable from this?

2 MR. HUSTON: Because, Justice
3 Jackson --

4 JUSTICE JACKSON: I mean, the
5 determination here was based on a national
6 survey economic understanding of how these
7 markets work.

8 MR. HUSTON: Justice Jackson, the EPA
9 produced an economic hypothesis. That's what
10 RIN cost passthrough was. According to --

11 JUSTICE JACKSON: I understand. But
12 it was nationwide in scope. It seems to me to
13 be exactly the same thing that you just read, in
14 terms of the examples that were before Congress
15 as to the reason why the third sentence was
16 needed.

17 So I appreciate your argument about
18 the first sentence, the first statement. It
19 seems quintessentially local. They're making
20 individualized hardship determinations. But in
21 making them in this context, when they are doing
22 the localized analysis, they are applying an
23 evaluation or an assessment that is a nationwide
24 economic analysis.

25 MR. HUSTON: But that was not the

1 basis for their determination at the end of the
2 day. Their determination was that this
3 refinery, each of them individually, you and you
4 and you and you --

5 JUSTICE JACKSON: Right. But then I'm
6 back to Justice Sotomayor's question. If you're
7 defining "determination" as just the answer, do
8 you get it, then you're never going to have a
9 situation in which you have a localized
10 assessment that has a nationwide scope or
11 effect, because you've now eliminated the idea
12 that the reasons being nation -- nationwide
13 count.

14 You say it can't be nationwide if the
15 answer -- the determination is yes, you get it;
16 no, you don't. And that's going to happen in
17 every one of these cases.

18 MR. HUSTON: No, Justice -- Justice
19 Jackson, I think it's important to separate what
20 is the action and what determination is it based
21 on.

22 Here, I -- I think the -- I've taken
23 my friends to agree, the relevant action is the
24 denial of the hardship petition that was
25 submitted by the Calumet Shreveport refinery for

1 itself. What was that action based on?

2 Here, the statutory text tells you.

3 It was based on EPA's conclusion that the
4 Calumet Shreveport refinery is not experiencing
5 disproportionate economic hardship.

6 JUSTICE KAVANAUGH: Wouldn't that
7 always be the case -- and this is not meant as a
8 hostile question, but won't that always be the
9 case when a local or regional action is taken
10 affecting the local or regional entities, even
11 though there's a nationwide rule it's applying?

12 In other words, it's always going to
13 be applying a nationwide rule or regulation, as
14 Justice Gorsuch said, to something local. And
15 you're saying when it's being applied, it's no
16 longer based on the -- the nationwide
17 determination. I think that's what you're
18 saying.

19 So it will really have no effect. And
20 maybe that's the answer. And I -- I'm not sure
21 you should shy away. And you've said it's never
22 been applied. Maybe the answer is it's -- it's,
23 you know, inconsistent on its face and it just
24 really has no impact. Is that where we end up?

25 MR. HUSTON: I think it was --

1 JUSTICE KAVANAUGH: And I'm not saying
2 that's where we shouldn't end up, just to be
3 clear.

4 MR. HUSTON: Justice Kavanaugh, I
5 think it was always intended to be a narrow
6 exception to the rule for locally applicable
7 actions, which is they're meant to go to the
8 regional circuits and get review there.

9 There have not been hardly any -- we
10 can't find a single example where a court has
11 adjudicated a Clean Air Act venue dispute and
12 said: This case is locally applicable, but it
13 goes to the D.C. Circuit because of the third
14 sentence.

15 I'm not trying to tell you it's
16 impossible that there could be. And I think
17 that the sentence --

18 JUSTICE KAVANAUGH: But you can't
19 articulate a good example.

20 MR. HUSTON: So --

21 JUSTICE KAVANAUGH: Which maybe it is
22 impossible.

23 MR. HUSTON: So I will give you --

24 JUSTICE KAVANAUGH: Which is fine.

25 MR. HUSTON: I will give you one more

1 that we have thought of that I think comes
2 closer to this and that a court has -- has
3 suggested would get there, which is there was
4 something called the alternative compliance
5 demonstration approach. It's discussed in these
6 papers.

7 It was issued along the -- at the same
8 time as the April and June 2022 denials. And
9 what EPA said is although we're denying these
10 2018 hardship petitions, that was so long ago
11 that to attempt to ask those refineries to
12 retire RINs now would really have a
13 destabilizing effect on the RIN market and the
14 RIN bank.

15 And on that basis, they created an
16 alternative path to compliance for those
17 refineries. That, to me, looks closer to, like,
18 a locally applicable determination. They're
19 telling each refinery what they want them to do,
20 but it's based on a conclusion about the RIN
21 bank overall.

22 JUSTICE KAVANAUGH: Or --

23 JUSTICE KAGAN: But why isn't this
24 case the example here? I mean, you have these
25 individual denials. It is you and you and you

1 and you, but it turns out that all these you and
2 you and you and you's are going to come out the
3 exact same way.

4 And the reason that they're going to
5 come out the exact same way is that
6 notwithstanding all the differences among the
7 you, you, you, and you's, that there are local
8 circumstances, there are local conditions,
9 notwithstanding all of those, EPA has reached
10 two conclusions that are going to drive the
11 analysis in every case, or pretty much every
12 case.

13 And in that circumstance, that seems
14 like a perfect case for a single court to
15 adjudicate the question.

16 MR. HUSTON: Justice Kagan, EPA did
17 not make a determination that drove the
18 analysis. EPA said it "had an economic theory
19 for how we expect small refineries' operations"
20 --

21 JUSTICE KAGAN: Well, here's a
22 determination. I mean, it's a statutory
23 determination that hardship has to stem from the
24 Renewable Fuel Program. And it's an economic
25 determination that everybody can recover their

1 RIN costs. And that's a totally, like, normal
2 understanding of what the determination -- a
3 determination means.

4 So you have a statutory determination.
5 You have an economic determination. And those
6 determinations, taken together, are going to
7 produce the exact same outcome in every case, no
8 matter what the individual local situations and
9 circumstances are.

10 MR. HUSTON: So, Justice Kagan, I
11 would love an opportunity to talk about both of
12 EPA's purported determinations, but let me go
13 right to the very end of your question. It is
14 not the case, EPA emphatically denied in the
15 lower courts and they deny here, that it was
16 true that those determinations, those -- their
17 statutory interpretation and their economic
18 theory were sufficient to decide the hard --
19 hard -- the hardship petitions.

20 JUSTICE KAGAN: Well, they gave you an
21 opportunity. They gave the -- all the different
22 "you's" an opportunity to rebut what they said.
23 It's very nice that they gave you that. Nobody
24 was able to come up with anything to rebut what
25 they said. Maybe in some crazy circumstance

1 there could have been a rebuttal.

2 But what you basically know about what
3 EPA has done here is that it's going to apply
4 the same way in Ohio and New York and Alabama.
5 And so in that circumstance, you don't want the
6 Sixth Circuit and the Second Circuit and the
7 Eleventh Circuit to be all deciding the same
8 question. You want one court to be deciding the
9 question as to whether the EPA conclusions are
10 correct.

11 MR. HUSTON: Your Honor, I would urge
12 the Court to take a look at the start of page
13 277 in the Joint Appendix, really moving for the
14 next 50 pages. That's 50 pages of analysis that
15 EPA produced just for the six refineries that
16 are before you today, to say nothing of the
17 many, many more refineries that were in this
18 case.

19 The -- the opportunity to rebut the
20 presumption was not just like some pro forma
21 thing that didn't actually mean anything.
22 There's pages and pages and pages -- hundreds of
23 --

24 JUSTICE KAGAN: Was any of that --
25 those pages, were they ever successful --

1 MR. HUSTON: They --

2 JUSTICE KAGAN: -- in rebutting the
3 presumption?

4 MR. HUSTON: No. EPA did -- EPA
5 concluded that it -- after looking at every
6 individual refinery's evidence, that it believed
7 that these refineries were, in fact, passing
8 their RIN costs --

9 JUSTICE KAGAN: I think EPA gave you
10 every reason to think that at the start, that
11 this was going to be a super-high bar to
12 rebutting the presumption, that once EPA made
13 this statutory conclusion and this economic
14 conclusion, the game was pretty well done.

15 And so who is it that we should want
16 to address those conclusions that is doing a --
17 a -- you know, if not all the work, almost all
18 the work?

19 MR. HUSTON: Justice Kagan, again, I
20 just -- I really respectfully disagree with the
21 -- your -- your characterization of the fact
22 that there was not meaningful study by EPA of
23 the individual economic evidence submitted by
24 the refineries.

25 And I would just say take EPA at their

1 word on this point. They say, on the face of
2 the actions, we completed a thorough evaluation
3 of the data and information provided in the SRE
4 petitions. They go on and on and on. And,
5 again, there's hundreds of pages cumulatively of
6 analysis where EPA looks at the
7 refinery-specific factors, the San Antonio
8 refinery and how small it is and the lots that
9 it can buy RINs, the RIN contracts that Placid
10 has and, you know, the situation facing Calumet
11 Shreveport with its competition in the Gulf
12 Coast.

13 EPA walks through each of this and
14 they say here's why that doesn't persuade me and
15 this doesn't persuade me and the like. We -- we
16 certainly disagree with them, and on the merits
17 of that --

18 JUSTICE KAGAN: You know what they
19 said? They said this doesn't persuade me.
20 Because they had already decided. Subject to
21 somebody coming up with something super-unusual
22 that they hadn't thought about, they had already
23 decided. And that decision was a uniform one
24 that stretched from one end of this country to
25 the other.

1 MR. HUSTON: Your Honor, I think what
2 they very clearly had was a economic
3 presumption. They said we've got a presumption;
4 we're giving you an opportunity to rebut it.
5 Why are we doing that? Because we have to. The
6 law compels us to give you this opportunity.
7 And we took advantage of it. We submitted
8 voluminous evidence.

9 JUSTICE KAGAN: Thank you.

10 MR. HUSTON: EPA says that it studied
11 that evidence and --

12 JUSTICE BARRETT: Counsel --

13 MR. HUSTON: -- not that it had to be
14 the basis of this.

15 JUSTICE ALITO: I mean, somebody --

16 JUSTICE BARRETT: -- can I ask you a
17 question? We've had a lot of talk about
18 important about how it's important for venue
19 rules to be clear. And N given what Justice
20 Kagan just said, you know, EPA made very clear
21 this was going to be apply nationwide and it was
22 fundamentally shifting the way that it treated
23 small refineries.

24 Could you have determined or why
25 couldn't you have determined at the outset of

1 the suit, that the D.C. Circuit was the right
2 venue? Why wouldn't there be clarity when you
3 have that kind of national determination?

4 MR. HUSTON: Well, Your Honor, I mean,
5 I suppose the clearest possible rule would just
6 be that whatever EPA says is the right venue is
7 the right venue. But I don't think that that's
8 the venue rule that this statute requires.

9 JUSTICE BARRETT: I agree with you. I
10 agree with you. But given the existence of this
11 determination on the economic theory and the
12 statutory interpretation -- and -- and maybe the
13 answer is, you know, it wouldn't have been clear
14 to us, but, I mean, given the importance of the
15 clarity of venue rules, I just want to
16 understand why it wouldn't have been clear to
17 you.

18 MR. HUSTON: I think --

19 JUSTICE BARRETT: Maybe it would have
20 and you just didn't want to be in the D.C.
21 Circuit.

22 MR. HUSTON: I think it -- it wouldn't
23 have been clear because if you are Ergon
24 Refining, you're a refinery, one of the
25 Respondents before you located in Vicksburg,

1 Mississippi, and your argument is we produce
2 100 percent diesel fuel, and it's because we
3 only produce diesel that we are economically
4 burdened, that we face disproportionate economic
5 hardship from the RFS, that's an argument that
6 you would naturally think when -- when EPA
7 rejected my evidence, when EPA said to Ergon
8 that doesn't persuade it, Ergon, I think quite
9 rationally, said we want the Fifth Circuit, our
10 home circuit, to have an opportunity to address
11 --

12 JUSTICE SOTOMAYOR: Answer the
13 question.

14 MR. HUSTON: -- the circumstances in
15 our market.

16 JUSTICE SOTOMAYOR: They refused
17 because the EPA is saying to you we have a
18 national rule. It doesn't matter whether you're
19 an Ergon. The national rule is we presume you
20 can. We presume that you can pass the cost on,
21 and we presume that you have to show us hardship
22 that doesn't have to do with your diesel fuel --
23 fuel but has only to do with relying on this reg
24 -- or being forced by this regulation to buy the
25 credits you need to.

1 MR. HUSTON: Your Honor, EPA said we
2 have an economic hypothesis that when we look at
3 your evidence related to your diesel disparity,
4 related if you're Calumet Shreveport, the
5 intense competition --

6 JUSTICE SOTOMAYOR: Let's go back to
7 Justice Barrett's question, which is you knew
8 that they were basing it on two national
9 presumptions. Why doesn't that tell you where
10 to go?

11 MR. HUSTON: Because at the -- we
12 looked to the text of the statute, which said
13 whether --

14 JUSTICE SOTOMAYOR: The text tells you
15 the EPA has some form of discretion or ability
16 -- the EPA has the ability to make a
17 determination that this has a national effect.
18 So you've got a determination that says the EPA
19 believes this has a national effect, one prong
20 of the requirement, and the second is we're
21 basing it on national presumptions.

22 MR. HUSTON: Your Honor --

23 JUSTICE SOTOMAYOR: So what's hard
24 about understanding you go to D.C.?

25 MR. HUSTON: What's hard about it is

1 that you're taking refineries that want the
2 opportunity to have their local economic
3 evidence that is their case --

4 JUSTICE SOTOMAYOR: You want --

5 MR. HUSTON: -- for hardship relief.

6 JUSTICE SOTOMAYOR: That -- that's --
7 you're begging the question. I know the EPA
8 wants national. The question is what Congress
9 wanted, not what you wanted or the EPA wanted.
10 The question is what Congress wanted. And I
11 kept asking you at the beginning, given the way
12 they structured this third exemption -- this
13 third category, they are saying that some local
14 actions have to go to the D.C. Circuit.

15 MR. HUSTON: Yes, there is a --

16 JUSTICE SOTOMAYOR: So why isn't the
17 answer that when the EPA makes a determination
18 and says we're basing it on two national
19 presumptions, that clear enough?

20 MR. HUSTON: Two -- two points about
21 that, Your Honor. The first is that it -- it
22 does not suffice, as I think even the government
23 agrees, for EPA to just make and find -- make a
24 finding that an action is based on a
25 determination of nationwide scope or effect.

1 The action has to actually be based on
2 a determination of nationwide scope or effect.
3 That's written directly into the text of Section
4 7607.

5 JUSTICE SOTOMAYOR: Those are the
6 presumptions. Okay.

7 MR. HUSTON: That is --

8 JUSTICE SOTOMAYOR: But what is --

9 MR. HUSTON: That is their
10 presumption --

11 JUSTICE JACKSON: What do you make of
12 that, the fact that Congress specifically says
13 that the administrator has to make that finding?
14 I mean, doesn't that tell us that Congress
15 really cared about what the agency thought in
16 this way?

17 MR. HUSTON: I don't think so, Justice
18 Jackson. What I take that to mean is that EPA
19 has the opportunity to maintain locally
20 applicable actions in the D.C. Circuit.

21 I think the Congress probably foresaw
22 that you get -- once you start talking about
23 what was the basis of the action, was it core or
24 not, is it, according to my friend, new but
25 still insufficiently settled, it gets pretty

1 metaphysical pretty quickly to decide what the
2 basis was of an EPA action.

3 I think what Congress was thinking
4 was: In any EPA action, there's going to be a
5 description by the agency of the interpretation
6 of its statutory authority, the basic framework
7 through which it filters the individual facts.
8 And I think Congress wanted to ensure that the
9 agency has some control to avoid -- to maintain
10 locally applicable actions in their region --

11 JUSTICE KAVANAUGH: That's why I think
12 the --

13 MR. HUSTON: -- where they are
14 supposed to be.

15 JUSTICE KAVANAUGH: That's why I think
16 the deference question is really important. And
17 Mr. Stewart said that the agency -- and Justice
18 Sotomayor is just following up on this -- the
19 agency should get some deference.

20 Should they get any deference, in your
21 view? Or how does that work?

22 MR. HUSTON: So recall that the text
23 has two requirements in order for the third
24 sentence to be activated. First, the action
25 must be based on a determination of nationwide

1 scope or effect, and if in taking such action
2 the administrator finds and publishes that such
3 action --

4 JUSTICE KAVANAUGH: So if it's found
5 and published --

6 MR. HUSTON: That's --

7 JUSTICE KAVANAUGH: -- does the agency
8 get deference, some deference on the question of
9 whether it is a determination of nationwide
10 scope or effect?

11 MR. HUSTON: So I think with respect
12 to the agency's making of that finding, I think
13 that's textually committed to the agency. So I
14 don't think it's generally subject to -- to --
15 to judicial review.

16 You can't say the agency didn't
17 actually make this finding. But on the --

18 JUSTICE KAVANAUGH: Yeah. On -- on
19 the key part --

20 MR. HUSTON: Yeah, the legal question.
21 Right. Right.

22 JUSTICE KAVANAUGH: You're -- you're
23 talking about the part that's not key. Talk
24 about the key part, which is --

25 MR. HUSTON: No. No deference at all.

1 JUSTICE KAVANAUGH: No deference at
2 all?

3 MR. HUSTON: Absolutely not. It's a
4 legal question for the Court. That set it out
5 as a separate legal requirement. It -- that
6 sentence, that first -- I should -- that first
7 clause --

8 JUSTICE KAVANAUGH: But if that
9 standard -- if we have a set definition of what
10 what's a determination, ordinary administrative
11 law would say when you apply that set standard
12 to a given set of facts, that that gets some
13 deference.

14 MR. HUSTON: But not in a situation,
15 Your Honor, I think where Congress has actually
16 required the legal finding -- excuse me -- the
17 legal issue to be resolved, and then said, in
18 addition, the agency has to make a finding with
19 respect to that.

20 That two --

21 JUSTICE KAVANAUGH: So you're saying
22 the ordinary deference that it would get is
23 taken away by the second sentence -- or the
24 second part of the sentence that requires the
25 publication and finding?

1 MR. HUSTON: That's correct. I think
2 the -- the -- the structure of --

3 JUSTICE KAVANAUGH: That's intriguing.

4 MR. HUSTON: -- the sentence only
5 makes sense -- that first clause only makes
6 sense if that's a legal determination for the
7 court. In other words, if both the court and
8 the agency have to agree that the action is
9 based on a determination of nationwide scope or
10 effect.

11 Now, that's going to make the third
12 sentence --

13 JUSTICE ALITO: When a venue --

14 MR. HUSTON: -- smaller --

15 JUSTICE ALITO: -- when a venue issue
16 arises, it arises because both parties to the
17 dispute think they would be better off in a
18 particular forum.

19 And isn't it very odd to say that
20 one -- that the court, in deciding whether
21 there's venue in one place or the other, should
22 defer to the view of one of these -- one of
23 these parties who are contesting the right to
24 get home court advantage?

25 MR. HUSTON: I certainly agree with

1 that, Justice Alito. And I -- I think just to
2 put a sharper point on it, if, in fact, it were
3 the case that Congress wanted there to be any
4 deference to EPA's venue determination, it could
5 have just written the third sentence to say:
6 The action goes to the D.C. Circuit if EPA finds
7 and publishes that it's based on a determination
8 of nationwide scope or effect.

9 JUSTICE ALITO: But suppose the EPA's
10 economic theory is that: We think that there
11 will almost always be -- I mean, we think that
12 the small refineries are always going to -- as
13 far as we're aware, they're always going to be
14 able to pass through these costs, but, you know,
15 we're -- we can't say that it's inconceivable
16 that some small refinery could come up with some
17 reason that we haven't been able to think of why
18 they wouldn't be able to do it.

19 You know, it's like saying we really
20 think that -- that no Martian has ever landed
21 here, but, you know, we're not going to say
22 we're going to close our minds to the
23 possibility that somebody could prove it.

24 If that's the situation, then what
25 would your answer be?

1 MR. HUSTON: I -- I still think I'm
2 going to have to end up with the same answer,
3 which is that even in that situation, EPA
4 compel -- excuse me -- the statutory text of the
5 chapter compels EPA to perform an examination of
6 whether each petitioning small refinery does or
7 does not experience disproportionate economic
8 hardship.

9 But, notably, the situation that you
10 describe, Your Honor, is very different from how
11 EPA acted here.

12 And, again, I just think take EPA at
13 their word. EPA said: We have an economic
14 theory for how we expect small refineries'
15 operations to be affected. We then analyzed the
16 most current data available to determine whether
17 finished fuels markets move in the way that
18 economic theory predicts.

19 JUSTICE GORSUCH: So, for example,
20 counsel, if -- if EPA had put its economic
21 theory in a rule and promulgated that rule, the
22 challenge to that would have to be in the D.C.
23 Circuit.

24 MR. HUSTON: Almost certainly, yes,
25 Justice Gorsuch.

1 JUSTICE GORSUCH: Yeah. And then its
2 application in later licensing applications, you
3 would be kind of foreclosed on that, but you
4 might have a local challenge otherwise?

5 MR. HUSTON: Yes, I think that's
6 basically right. I think that's how generally
7 administrative law works. An agency --

8 JUSTICE GORSUCH: That's how I
9 remembered it.

10 MR. HUSTON: An agency uses its
11 rule-making authority to pronounce how it
12 understands the statutory framework, how its --
13 and what its adjudicative --

14 JUSTICE SOTOMAYOR: The problem is --

15 JUSTICE GORSUCH: That rule would be
16 maybe locally applicable, but it would be
17 nationwide effect. And -- and so the -- the EPA
18 could sign off on that, and off to the D.C.
19 Circuit.

20 MR. HUSTON: Yes, Your Honor, but it
21 would be an innovation of the agency's
22 rule-making authority.

23 JUSTICE SOTOMAYOR: But the problem is
24 that that's what the third exception says. It
25 says that the -- the court is giving the -- the

1 EPA adjudicatory authority to find -- to -- to
2 find and publish that such an action is based on
3 a determination of nationwide scope and effect.

4 So Justice Gorsuch is talking about
5 what the norm is, but they needn't have created
6 the exemption 3 at all. They could have just
7 stayed to 1 and 2.

8 MR. HUSTON: Your Honor, I think that
9 the purpose of the exception, as we discussed
10 earlier, is for a certain kind of unusual Clean
11 Air Act provision where the text of the chapter
12 directs EPA to make a determination about the
13 whole country.

14 But that's not how this provision of
15 the chapter works.

16 JUSTICE SOTOMAYOR: That's what it has
17 done.

18 JUSTICE GORSUCH: Or it could have a
19 rule, perhaps, that wouldn't be nationwide --
20 nationally applicable, but would be regionally
21 applicable. And perhaps that might wind up --
22 that rule might be reviewed in the D.C. Circuit,
23 or it applies to an industry or whatever.

24 MR. HUSTON: It could -- it --
25 certainly if it applies to the whole industry,

1 it says this is how we're going to regulate
2 stationery sources or power plants, all --
3 wherever they are located throughout the
4 nation --

5 JUSTICE GORSUCH: Even if it isn't all
6 across the nation. It doesn't have to be the
7 whole nation.

8 MR. HUSTON: That's -- of course.
9 That's exactly right. If there is no Rhode --
10 there's no refineries in Rhode Island, a rule
11 that regulates all refineries is still clearly
12 nationally applicable.

13 But consider the sort of absurd
14 textual consequence of my friend's position.
15 The Kansas City Metropolitan Air Quality Control
16 Region, when EPA promulgates a regional air
17 quality action for that region, my friends say,
18 well, that's actually a nationally applicable
19 action, it's not a regionally applicable action,
20 because it just happens to touch more than one
21 state and more than one circuit.

22 I think that's just brutally hard to
23 square with the ordinary meanings of the term
24 "nationally" and "regionally."

25 To come back to the third sentence, I

1 think the easiest way to understand that third
2 sentence is, Number 1, to just keep in mind that
3 the instructions that the court gives about it
4 need to maintain it as a narrow exception,
5 because it's supposed to be an exception to the
6 general rule for locally applicable actions.

7 And then I think the easiest way to
8 cut through the metaphysical questions about
9 what was involved in the process of every EPA
10 action that it might take is to simply ask:
11 When you're looking at the text of the
12 chapter -- when you're looking for what was this
13 final action under this chapter based on, go
14 consult the text of the chapter and see what it
15 directed EPA to base that action on.

16 And here, that leads a very -- that
17 leads to a very simple answer. Because Congress
18 directed EPA, when it takes this kind of action,
19 to base that action on its consideration of a
20 refinery's local economic circumstances.

21 And that's what this refinery --
22 that's what EPA did, according to the agency's
23 own description.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Justice Thomas?

2 Justice Alito?

3 Justice Sotomayor?

4 Justice Kavanaugh?

5 JUSTICE KAVANAUGH: On that last
6 point, which I think is a good point for you, it
7 does -- I think most cases are going to end up
8 that way. And so the -- the third sentence ends
9 up being a null set, or close to a null set, in
10 your view.

11 And that's fine if that's the case. I
12 just want -- is that how you see it playing out?
13 It's been essentially a null set historically.

14 MR. HUSTON: It has, Your -- it has,
15 Your Honor. And I would really urge the Court
16 not to, you know -- to breathe enormous life
17 into this third sentence, because I think to do
18 so would very significantly disrupt the balance
19 that has prevailed in the lower courts.

20 Now, obviously we're here because the
21 lower courts can benefit from some guidance
22 about the application of this venue provision,
23 but it is -- it has absolutely been the case
24 that since 1977 that this third sentence has
25 been extraordinarily narrow.

1 The government hasn't been able to
2 come up with any case. We haven't identified
3 one. And -- and, you know, we've looked. It's
4 not for lack of trying. It's hard to come up
5 with something that fits this. I think that's
6 okay.

7 JUSTICE KAVANAUGH: And -- and just
8 for -- last question. Just to -- so I say it
9 again, it's because when a local or regional
10 action is based on a determination of nationwide
11 scope or effect, the application of that to the
12 particular local or regional entity will mean
13 it's -- it's being applied -- it's not based
14 solely on the nationwide scope -- determination
15 of nationwide scope or effect? Is that right?

16 MR. HUSTON: I -- I'm not certain I
17 understand the question, Justice Kavanaugh.

18 JUSTICE KAVANAUGH: Well, any --
19 you're saying it can't happen that it's based
20 solely on the determination of nationwide scope
21 or effect because it's being applied to the
22 particular entity, right?

23 MR. HUSTON: Yes.

24 JUSTICE KAVANAUGH: Okay.

25 MR. HUSTON: Yes, I think that's

1 right. It is -- it has to be -- in order to
2 adjudicate --

3 JUSTICE KAVANAUGH: In other words, to
4 Justice Gorsuch, it's not like a rule-making --

5 MR. HUSTON: Yes.

6 JUSTICE KAVANAUGH: -- being applied;
7 it's an adjudication.

8 MR. HUSTON: Correct. In an
9 adjudicatory posture, it is almost always going
10 to be the case that the action, a locally
11 applicable action, will be based on the local
12 facts and circumstances of the individual
13 petitioner.

14 That actually makes perfect sense
15 because, remember, the enumerated sections of
16 Section 7607 that Congress assigned as locally
17 applicable, they all have that form. They're
18 all adjudications of local factors. They're not
19 rule-makings unlike the enumerated nationally
20 applicable actions.

21 JUSTICE KAVANAUGH: Exactly. Okay.
22 Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Barrett?

25 Justice Jackson?

1 JUSTICE JACKSON: But, of course, the
2 rule -- the -- the statute could have said
3 something about rule-making versus adjudication.
4 I mean, I -- I appreciate the distinction that
5 you're making turning a determination of
6 nationwide soap -- scope or effect into
7 something akin to a rule-making, but that's not
8 what it says.

9 MR. HUSTON: I'm not trying to say,
10 Justice Jackson, that it can only be a
11 rule-making. What I -- what I am saying,
12 though, is when you look at the structure of the
13 overall venue provision, Congress said here are
14 some things that we are designating as national.
15 Here are some things that we are designating as
16 local.

17 The national things, they all pretty
18 much are rule-makings or they look a lot like
19 rule-makings. The locally designated things
20 that Congress assigned all are either -- are
21 individualized adjudications. I think that's a
22 strong clue about how Congress expected this
23 provision to work.

24 JUSTICE JACKSON: Right. And then
25 you're reading the exception to say that if you

1 are then applying some sort of standard to the
2 individual case in the context of an
3 adjudication, then it's being based on the facts
4 of that case and can never really be considered
5 to be based on a determination of nationwide
6 scope or effect?

7 MR. HUSTON: Well, it -- the third
8 sentence cannot be triggered any time EPA is
9 basing its individual action on a -- a
10 nationwide standard.

11 JUSTICE JACKSON: Oh, I understand.
12 But you -- you -- you flip all the way to the
13 other side. You're saying it's never triggered
14 because you are just applying it to the facts of
15 the particular case.

16 MR. HUSTON: It's -- I'm saying it's
17 very rarely triggered. That's why it's an
18 exception to the general rule.

19 JUSTICE JACKSON: I understand.

20 MR. HUSTON: And -- and what --

21 JUSTICE JACKSON: Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Rebuttal, Mr. Stewart?

25

1 REBUTTAL ARGUMENT OF MALCOLM L. STEWART
2 ON BEHALF OF THE PETITIONER

3 MR. STEWART: Thank you, Mr. Chief
4 Justice.

5 First, Mr. Huston said that we haven't
6 found a case in which a court of appeals has
7 upheld an EPA prong 3 finding. But I think
8 there are a fair number of cases in the D.C.
9 Circuit in which you have a pattern like this:
10 EPA announces a new framework, it applies the
11 framework to a number of different states or
12 regulated entities, says we regard this as
13 nationally applicable, says we find also that
14 it's based on a determination of nationwide
15 scope or effect, and parties sue in the D.C.
16 Circuit and because there's no dispute about
17 venue, the D.C. Circuit decides the case on the
18 merits without issuing an opinion that addresses
19 the question. I think that's the explanation
20 for why you don't have published decisions that
21 endorse our view of prong 3.

22 I think it's equally true to say that
23 Mr. Huston hasn't identified a case in which EPA
24 has made a prong 3 finding and a court of
25 appeals has rejected it. So I think that

1 adopting his rule would significantly change
2 prevailing D.C. Circuit practice even though it
3 wouldn't overturn any D.C. Circuit published
4 opinions.

5 The next thing I'd say is I think
6 there's an analogy here between prongs 1 and 3
7 and the types of cases this Court decides that
8 is sometimes this Court decides cases that
9 present facial challenges to an Act of Congress
10 or a challenge to the validity of a nationwide
11 executive branch program, and the bottom line
12 disposition of the case will have national
13 impacts. But there are also cases that this
14 Court reviews that present purely local
15 disputes, really nobody but the parties cares
16 who wins and loses on the bottom line, but the
17 case presents a legal issue that has divided the
18 court of -- courts of appeals and is being
19 litigated all over the country, and it's
20 important to have centralization. And that's
21 the type of thing that prong 3 is for, the local
22 disputes that present recurring questions of
23 federal law.

24 There was a colloquy about does it
25 make is sense to give deference to the view of

1 an interested party as to where the case should
2 be heard? We know that the Congress wanted EPA
3 to have some role in determining venue because
4 it allowed the EPA to make a prong 3 finding or
5 not.

6 And under our view, the two things
7 that will be important are did EPA regard what
8 it was doing as the resolution of a controversy,
9 or was it simply stating an undisputed
10 proposition of federal law? And, second, how
11 integral was that proposition to the ultimate
12 decision? Those are two things that are right
13 within EPA's bailiwick. It makes perfect sense
14 to give deference to them.

15 Finally, we agree that prong 3 should
16 be an exception, that most locally or regionally
17 applicable actions should be reviewable in the
18 regional circuits, but if the exception doesn't
19 apply here, where nationwide determinations
20 drove all of the site-specific actions and where
21 the attack on the nationwide determinations has
22 been the focus of judicial challenges, you're
23 basically reading prong 3 out of the statute
24 altogether.

25 Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 The case is submitted.

4 (Whereupon, at 11:48 a.m., the case
5 was submitted.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official - Subject to Final Review

1	abeyance ^[1] 27:11 ability ^[3] 62:6 90: 15,16 able ^[6] 75:15 83: 24 97: 14,17,18 104: 1 above-entitled ^[1] 1:14 absence ^[1] 55:25 Absent ^[2] 28:23 42: 12 Absolutely ^[2] 95:3 103: 23 absurd ^[1] 101:13 accept ^[1] 10:17 accepted ^[2] 52:20 56: 22 accepts ^[1] 24:15 According ^[3] 77:10 92: 24 102: 22 achieved ^[1] 35:13 acknowledges ^[1] 61:24 acknowledgment ^[1] 62:12 across ^[7] 9:1 21: 12 35: 18 54: 18 58: 9 62: 12 101: 6 Act ^[12] 4:13 9: 18 12: 19 48: 23 52: 4 59: 15 62: 1 71: 13 75: 15 80: 11 100: 11 109: 9 Act's ^[2] 4:14 70: 14 acted ^[1] 98:11 action ^[103] 5:16,23 10: 2,4 11: 4,10, 14 12: 5,6 13: 5 14: 1,24 15: 3,5,6 16: 5 17: 23 18: 24,25 19: 10 22: 8,9 25: 3,8,10,24 26: 1,11 28: 2,2,3,4,5, 14 29: 5 31: 14,20 38: 6 43: 6,7,10, 16 44: 15 45: 5,15,18 46: 8,20 47: 24 51: 18 55: 8,9 56: 3 58: 7 59: 9,9, 12,16 60: 18 61: 2 62: 17 63: 3,4,22 67: 16 70: 16,18,24 71: 12,15,22 74: 5, 13,17 75: 2,6 78: 20,23 79: 1,9 91: 24 92: 1,23 93: 2,4,24 94: 1,3 96: 8 97: 6 100: 2 101: 17,19,19 102: 10, 13,15,18,19 104: 10 105: 10,11 107: 9 actions ^[28] 4:15 8: 12 12: 14 29: 21 32: 2,4 46: 11 48: 3,5 49: 12,22 57: 25 58: 1 63: 10,16 71: 1,14,18 74: 6 80: 7 86: 2 91: 14 92: 20 93: 10 102: 6 105: 20 110: 17,20 activated ^[1] 93:24 actors ^[1] 62:5 acts ^[1] 9:21 actual ^[1] 20:4 actually ^[8] 18:9 38: 8 84: 21 92: 1 94: 17 95: 15 101: 18 105: 14 ACUS ^[1] 13:23 addition ^[1] 95:18 additional ^[1] 17:8 additions ^[1] 73:3 address ^[3] 61:12 85: 16 89: 10 addresses ^[1] 108:18 addressing ^[1] 70:3 adjudged ^[1] 53:12 adjudicate ^[2] 82:15 105: 2 adjudicated ^[2] 51:11 80: 11 adjudicates ^[1] 52:15 adjudicating ^[2] 73:2,10 adjudication ^[7] 50:12 56: 1 58: 15 73: 7 105: 7 106: 3 107: 3 adjudications ^[4] 50:4 74: 7 105: 18 106: 21	adjudicative ^[2] 8:13 99: 13 adjudicatory ^[2] 100:1 105: 9 administration ^[1] 48:22 Administrative ^[4] 13:23 73: 14 95: 10 99: 7 administrator ^[2] 92:13 94: 2 admission ^[1] 14:6 admonitions ^[1] 12:9 adopted ^[3] 4:22 39: 12 58: 14 adopting ^[2] 52:17 109: 1 adopts ^[3] 51:17 58: 8 69: 23 advantage ^[2] 87:7 96: 24 affect ^[3] 38:9 48: 7 50: 16 affected ^[2] 71:16 98: 15 affecting ^[2] 71:20 79: 10 affects ^[1] 50:13 afraid ^[1] 35:17 AGENCY ^[28] 1:3 4: 5,19 5: 15,18 6: 5, 18 8: 10 10: 14 17: 12,15 26: 11 54: 13,16 63: 4 71: 22 92: 15 93: 5,9, 17,19 94: 7,13,16 95: 18 96: 8 99: 7, 10 agency's ^[7] 4:25 5: 12 6: 15 7: 1 94: 12 99: 21 102: 22 aggregate ^[2] 6:3 7: 2 aggregating ^[1] 5:9 aggregation ^[1] 7:15 ago ^[2] 59:3 81: 10 agree ^[16] 41:25 42: 5 49: 11 51: 9, 13 53: 5 57: 20,24 62: 17 67: 22 78: 23 88: 9,10 96: 8,25 110: 15 agreed ^[1] 61:1 agrees ^[3] 53:9 54: 1 91: 23 ah ^[1] 18:8 ahead ^[1] 21:16 Air ^[13] 4:13 12: 19 48: 23 52: 4 62: 1 69: 19,20 70: 14 75: 15 80: 11 100: 11 101: 15,16 akin ^[1] 106:7 AL ^[4] 1:7 2: 10 3: 13 70: 11 Alabama ^[1] 84:4 alert ^[1] 22:12 Alito ^[18] 22:20,21 23: 21 24: 25 25: 16 26: 6,20 27: 4,7,16 49: 18 59: 19 87: 15 96: 13,15 97: 1,9 103: 2 Alito's ^[1] 55:2 allowed ^[1] 110:4 alluding ^[1] 49:21 almost ^[7] 27:19 32: 5,15 85: 17 97: 11 98: 24 105: 9 already ^[5] 44:8 49: 2 66: 8 86: 20, 22 alternative ^[8] 36:16 37: 9,17,21 38: 23 45: 18 81: 4,16 although ^[2] 13:12 81: 9 altogether ^[1] 110:24 ambient ^[1] 69:20 amended ^[2] 5:3 13: 25 amendments ^[2] 52:2 58: 14 American ^[1] 40:3 among ^[1] 82:6 amount ^[1] 50:16 analogy ^[1] 109:6 analyses ^[1] 53:19	analysis ^[24] 4:21 11: 7,9 16: 24 17: 3, 10 21: 2,3 25: 14 34: 14 38: 21,24 39: 4,15 47: 1,2 60: 11 72: 2 77: 22, 24 82: 11,18 84: 14 86: 6 analytic ^[1] 34:16 analytical ^[1] 72:20 analyzed ^[1] 98:15 analyzing ^[2] 71:22 72: 4 and/or ^[1] 65:9 announce ^[4] 31:14 34: 15 38: 6 48: 5 announced ^[5] 38:20 50: 2 51: 3 52: 21 53: 10 announcement ^[3] 23:7 34: 20 75: 5 announces ^[6] 25:10 31: 18 47: 23 51: 17 58: 8 108: 10 announcing ^[5] 28:11 29: 10,25 47: 21 52: 16 another ^[4] 16:15 18: 22 26: 9 76: 8 answer ^[22] 14:16 28: 25 30: 14 54: 22, 23 56: 15 63: 3 66: 4 74: 9,12 75: 11, 21 78: 7,15 79: 20,22 88: 13 89: 12 91: 17 97: 25 98: 2 102: 17 answered ^[2] 27:21 56: 16 answers ^[2] 49:16 59: 17 anticipating ^[1] 51:22 Antonio ^[2] 72:6 86: 7 anyway ^[1] 41:3 App ^[1] 72:17 appeal ^[1] 35:13 appeals ^[10] 4:23 5: 8 8: 11 34: 14 40: 17 43: 9 48: 24 108: 6,25 109: 18 appear ^[3] 38:9,10,18 APPEARANCES ^[1] 2:1 appears ^[2] 16:16 68: 16 appendix ^[2] 43:2 84: 13 appli ^[1] 42:22 applicability ^[2] 48:8 60: 17 applicable ^[56] 12:15 16: 5 25: 9 33: 10 43: 8 45: 6,15 47: 4 49: 10,12, 24 50: 12,23,25 51: 6,12 52: 13,18 54: 2,11 55: 7,9 58: 10,16 59: 24 61: 23 62: 4 63: 13 68: 22 69: 9,10,16 70: 17,18,24 71: 2,15 74: 5,25 80: 6, 12 81: 18 92: 20 93: 10 99: 16 100: 20, 21 101: 12,18,19 102: 6 105: 11, 17,20 108: 13 110: 17 applicant ^[1] 54:18 application ^[21] 6:13 10: 5 11: 5 15: 7, 10 23: 23 37: 23 41: 4,20 44: 22 46: 21 48: 7 52: 16 55: 21,22 66: 13 69: 23 75: 8 99: 2 103: 22 104: 11 applications ^[2] 53:11 99: 2 applied ^[13] 4:21 17: 1 33: 17 50: 2 51: 3 54: 18 58: 9 64: 8 79: 15,22 104: 13,21 105: 6 applies ^[10] 8:25 22: 6 34: 18 41: 18 55: 5 72: 12,24 100: 23,25 108: 10 apply ^[18] 18:16 37: 5 42: 22 47: 2 48: 3 51: 4,19,25 52: 5,17,22 64: 6 67: 15,23 84: 3 87: 21 95: 11 110: 19 applying ^[19] 6:18 8: 14 16: 2 17: 21 24: 7 28: 8 29: 5,7 33: 10 41: 13 46:
2	2 ^[3] 49:9 54: 6 100: 7 20 ^[1] 73:11 2018 ^[2] 73:10 81: 10 2022 ^[3] 4:15 73: 9 81: 8 2025 ^[2] 1:12 9: 18 21 ^[4] 45:11,19 46: 9,11 23-1229 ^[1] 4:4 23a ^[1] 71:3 25 ^[1] 1:12 277 ^[1] 84:13		
3	3 ^[21] 45:21 49: 8,11 54: 8,24 55: 10, 18,24 57: 20 69: 8 74: 23,23 100: 6 108: 7,21,24 109: 6,21 110: 4,15,23 307(b) ^[1] 48:20 31A ^[1] 43:1 32A ^[1] 43:2 330 ^[1] 72:17 36th ^[1] 66:20 3rd ^[1] 66:7		
4	4 ^[1] 3:4 48 ^[1] 3:9		
5	50 ^[5] 51:15,25 52: 5 84: 14,14		
6	60 ^[3] 56:7 65: 18 66: 6 60-day ^[2] 40:14 56: 2 67 ^[1] 66:22		
7	70 ^[1] 3:13 7545 ^[1] 10:3 7545(o) ^[1] 70:25 7607 ^[2] 92:4 105: 16		
^	^ ^[1] 55:10		
A	a.m ^[3] 1:16 4: 2 111: 4 abandoned ^[1] 8:13		

Official - Subject to Final Review

<p>10 47:19 54:16 55:12 77:22 79:11, 13 107:1,14</p> <p>appreciate [4] 22:23 55:13 77:17 106:4</p> <p>approach [8] 4:22 5:1 14:6 36:17, 19 37:2 38:25 81:5</p> <p>appropriate [4] 24:19 26:4 35:18 39:13</p> <p>appropriately [1] 33:12</p> <p>approvals [1] 7:17</p> <p>approved [1] 13:9</p> <p>April [10] 4:15 44:2,19 58:1 63:11 66:6,20,21 73:9 81:8</p> <p>arbitrary [1] 9:3</p> <p>area [1] 7:15</p> <p>aren't [1] 60:10</p> <p>argued [1] 31:1</p> <p>arguing [2] 31:1 45:17</p> <p>argument [26] 1:15 3:2,5,10,14 4: 4,8 20:24 22:22 33:8 41:1 45:10 46:1,6 48:14 51:23 56:6 61:20 62: 11 70:9 72:10,14 77:17 89:1,5 108:1</p> <p>arguments [2] 45:10 61:22</p> <p>arises [2] 96:16,16</p> <p>arising [1] 48:21</p> <p>Arizona [1] 2:8</p> <p>around [1] 29:8</p> <p>arouse [1] 34:7</p> <p>art [1] 31:3</p> <p>articulate [1] 80:19</p> <p>ascribes [1] 26:14</p> <p>aside [2] 63:15,16</p> <p>asks [1] 69:17</p> <p>asserted [1] 17:24</p> <p>assessment [2] 77:23 78:10</p> <p>assigned [3] 72:7 105:16 106:20</p> <p>Association [3] 2:7 3:8 48:16</p> <p>Assume [3] 30:6,18 41:15</p> <p>assuming [1] 47:18</p> <p>assumption [1] 30:7</p> <p>assurance [1] 33:13</p> <p>attach [1] 46:7</p> <p>attack [1] 110:21</p> <p>attacked [1] 17:24</p> <p>attacks [1] 19:4</p> <p>attainment [1] 13:8</p> <p>attempt [1] 81:11</p> <p>attention [1] 14:18</p> <p>attentive [1] 42:3</p> <p>authority [1] 5:12 9:21 28:10 30: 2 73:6,7 74:4 93:6 99:11,22 100:1</p> <p>authorized [1] 76:20</p> <p>available [2] 76:23 98:16</p> <p>avoid [3] 4:14 48:21 93:9</p> <p>avowed [1] 50:4</p> <p>avowedly [1] 51:3</p> <p>aware [1] 97:13</p> <p>away [2] 79:21 95:23</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back [8] 10:21 21:7 34:16 40:22 45:25 78:6 90:6 101:25</p> <p>backlog [1] 6:11</p>	<p>bailiwick [1] 110:13</p> <p>balance [1] 103:18</p> <p>bank [2] 81:14,21</p> <p>bar [3] 20:19,22 85:11</p> <p>BARRETT [17] 21:14,17 42:15,16 43:12,15,19,23 44:25 67:9,10 68: 12 87:12,16 88:9,19 105:24</p> <p>Barrett's [3] 56:20 65:25 90:7</p> <p>base [3] 65:5 102:15,19</p> <p>based [52] 4:19 6:7 9:8 15:3 17:24 19:10 23:2 26:1,2,7,14 28:14 32:3 41:9 43:10,20 44:7 45:22 49:14 53:18 59:4,7,11,16 65:14 70:19 71:19 74:13,14,19 75:2 76:22 77: 5 78:20 79:1,3,16 81:20 91:24 92: 1 93:25 96:9 97:7 100:2 102:13 104:10,13,19 105:11 107:3,5 108: 14</p> <p>basic [8] 24:6,15 30:24 31:13,17 39:12 42:24 93:6</p> <p>basically [7] 21:4 41:13 61:23 74: 23 84:2 99:6 110:23</p> <p>basing [4] 90:8,21 91:18 107:9</p> <p>basis [8] 31:6 44:3 47:20 78:1 81: 15 87:14 92:23 93:2</p> <p>batches [1] 44:2</p> <p>become [1] 55:14</p> <p>becomes [1] 55:16</p> <p>begging [1] 91:7</p> <p>beginning [2] 49:19 91:11</p> <p>behalf [1] 2:3,5,8 3:4,7,12,16 4:9 48:15 70:10 108:2</p> <p>behind [6] 10:22 11:7,9,10 12:7 14:25</p> <p>believe [2] 66:4,8</p> <p>believed [1] 85:6</p> <p>believes [1] 90:19</p> <p>belonged [1] 46:4</p> <p>below [1] 48:23</p> <p>benefit [3] 68:6,9 103:21</p> <p>best [4] 16:8 42:18 43:17 59:18</p> <p>better [1] 96:17</p> <p>between [4] 54:8 66:6 68:21 109: 6</p> <p>binding [1] 50:8</p> <p>bit [1] 19:8</p> <p>Black [1] 73:13</p> <p>blending [5] 19:19 50:13,14 58:19 61:10</p> <p>board [2] 40:22 62:12</p> <p>both [13] 12:19 13:15 16:6 21:19 27:2,9 32:20 33:24 44:20 65:11 83:11 96:7,16</p> <p>bothers [1] 61:14</p> <p>bottom [2] 109:11,16</p> <p>branch [1] 109:11</p> <p>breathe [1] 103:16</p> <p>brief [6] 13:4 26:8 43:3 56:24 63:9 71:3</p> <p>briefing [2] 27:11 58:2</p> <p>briefly [1] 59:1</p> <p>bright [1] 55:3</p> <p>bring [4] 10:24 12:4 18:8 35:24</p> <p>bringing [1] 35:5</p>	<p>brought [3] 11:15 17:18 76:17</p> <p>brutally [1] 101:22</p> <p>bunch [2] 7:17 25:4</p> <p>bundle [6] 8:7 27:23,25 28:11,16, 19</p> <p>bundled [2] 7:18 49:23</p> <p>bundles [1] 25:3</p> <p>bundling [4] 25:15 29:24 30:8 58: 5</p> <p>burdened [1] 89:4</p> <p>business [1] 40:10</p> <p>businesses [1] 40:3</p> <p>but-for [12] 26:9,12 36:3,8,22,25 37:6,8,13,23 39:4 59:11</p> <p>buy [2] 86:9 89:24</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>CAA [1] 31:4</p> <p>cabins [1] 57:4</p> <p>call [2] 21:1 28:20</p> <p>called [1] 81:4</p> <p>calls [1] 21:21</p> <p>CALUMET [9] 1:6 2:9 3:12 4:5 70: 10 78:25 79:4 86:10 90:4</p> <p>came [3] 1:14 8:16 31:25</p> <p>cannot [2] 51:24 107:8</p> <p>capricious [1] 9:3</p> <p>capture [1] 36:8</p> <p>captures [1] 37:24</p> <p>care [3] 26:17 40:7,8</p> <p>cared [1] 92:15</p> <p>cares [1] 109:15</p> <p>carry [1] 7:13</p> <p>carryover [1] 43:1</p> <p>Case [6] 4:4,12 6:1,5 11:1,12 12: 11,25 16:1,23,25 19:8 20:20 26:4 27:11 32:14 35:8 37:14,24 41:19 42:11 51:2 53:5,18 54:9 57:25 60: 19,25 64:19 68:5 69:3 71:7 72:16 75:15 79:7,9 80:12 81:24 82:11, 12,14 83:7,14 84:18 91:3 97:3 103:11,23 104:2 105:10 107:2,4, 15 108:6,17,23 109:12,17 110:1 111:3,4</p> <p>cases [26] 13:3,12,19 14:10 16:8, 11,23 21:6 23:24 25:18 27:5 33: 24 34:12 37:6 42:3,4,7,10 59:10 70:1 78:17 103:7 108:8 109:7,8, 13</p> <p>categories [1] 42:8</p> <p>category [1] 91:13</p> <p>causation [4] 26:9,13 53:14 65:13</p> <p>cause [8] 36:23,25 37:6,8,13,23 39:5 59:12</p> <p>centralization [2] 40:13 109:20</p> <p>centralize [1] 72:20</p> <p>centralized [1] 35:3</p> <p>cert [1] 42:2</p> <p>cert-worthy [1] 42:11</p> <p>certain [3] 42:4 100:10 104:16</p> <p>certainly [10] 10:13 11:18 20:12 23:24 24:5 65:13 86:16 96:25 98: 24 100:25</p> <p>certainty [1] 40:5</p>	<p>chain [1] 10:22</p> <p>challenge [22] 14:1 16:10,22 21: 19 22:2,5 23:12,19 24:18 26:25 29:7 31:16 38:11 56:8,9,9,11 65: 20,21 98:22 99:4 109:10</p> <p>challengeable [1] 47:6</p> <p>challenged [5] 17:22 18:20 26:3, 23 27:2</p> <p>challenges [15] 4:25 11:15 13:5, 14 14:10 16:17,18 17:17 19:4 20: 12 22:4,16 56:3 109:9 110:22</p> <p>challenging [1] 18:21</p> <p>chance [1] 21:21</p> <p>change [5] 6:8,13 9:25 12:21 109: 1</p> <p>changed [2] 8:6,9</p> <p>changing [1] 8:10</p> <p>chapter [9] 70:16,25 74:14 98:5 100:11,15 102:12,13,14</p> <p>characterization [1] 85:21</p> <p>CHIEF [30] 4:3,10 22:17 27:17 31: 22 35:10 39:18 42:14 45:1 48:10, 13,18 57:6 58:21,24 59:19 62:14 64:2,18 67:1,5,8 68:13 70:6,12 102:24 105:23 107:22 108:3 111: 1</p> <p>chose [2] 48:5 73:5</p> <p>circuit [64] 7:8,18 8:11 12:14 13: 15,15,17 14:2 16:9,20 17:6,22 18: 7,9 21:21 26:4 27:2,3,8 33:20 35: 23 40:13 41:23,24 42:1,7,9 45:8, 16 46:4 47:7 55:19 56:1,10,14 60: 17 61:16 65:21,24 66:24 70:1 72: 8,8,21 80:13 84:6,6,7 88:1,21 89: 9,10 91:14 92:20 97:6 98:23 99: 19 100:22 101:21 108:9,16,17 109:2,3</p> <p>circuits [11] 4:18,24 12:17 16:18 25:19 32:16 49:3 51:12 66:24 80: 8 110:18</p> <p>circuits, ^ [1] 25:21</p> <p>circumstance [6] 13:16 47:25 76: 16 82:13 83:25 84:5</p> <p>circumstances [21] 7:3 14:11 19: 21 20:10 28:8 29:8,25 31:3 32:7, 19,22 34:18 38:4,5 44:23 71:20 82:8 83:9 89:14 102:20 105:12</p> <p>City [1] 101:15</p> <p>claims [1] 5:9</p> <p>clarification [1] 22:23</p> <p>clarity [2] 88:2,15</p> <p>clause [2] 95:7 96:5</p> <p>Clean [9] 4:13 12:18 48:23 52:4 62: 1 70:14 75:15 80:11 100:10</p> <p>clear [14] 19:2 23:22,23,25 26:7 70: 25 72:16 80:3 87:19,20 88:13,16, 23 91:19</p> <p>clearest [1] 88:5</p> <p>clearly [4] 12:12 47:4 87:2 101:11</p> <p>close [2] 97:22 103:9</p> <p>closer [2] 81:2,17</p> <p>clue [1] 106:22</p> <p>Coast [1] 86:12</p> <p>cogently [1] 5:22</p>
--	--	---	--

Official - Subject to Final Review

<p>coherent ^[1] 64:6 colleagues ^[1] 76:1 colloquy ^[1] 109:24 Columbia ^[1] 43:10 come ^[13] 19:19 21:7 32:5 33:18 38:2 64:19 82:2,5 83:24 97:16 101:25 104:2,4 comes ^[3] 9:2 42:2 81:1 comfortably ^[1] 57:4 coming ^[2] 32:19 86:21 comments ^[9] 18:23 19:1,2,3 22:11 23:10 24:23 44:15 70:3 committed ^[1] 94:13 common ^[2] 32:3 53:19 compel ^[1] 98:4 compels ^[2] 87:6 98:5 competition ^[2] 86:11 90:5 complete ^[1] 9:25 completed ^[1] 86:2 completely ^[2] 49:4 52:1 compliance ^[3] 19:24 81:4,16 complicated ^[2] 31:25 68:19 concern ^[3] 57:8 68:16,17 conclude ^[2] 18:19 39:3 concluded ^[2] 13:16 85:5 concludes ^[1] 31:12 concluding ^[1] 47:20 conclusion ^[5] 74:19 79:3 81:20 85:13,14 conclusions ^[3] 82:10 84:9 85:16 concrete ^[1] 19:8 conditions ^[3] 33:19 72:5 82:8 Conference ^[1] 13:24 confidently ^[1] 59:15 Congress ^[31] 5:3 9:18,21 12:12 15:24 41:2 46:16 49:5 68:17 72:7 75:23,25 76:12,18 77:14 91:8,10 92:12,14,21 93:3,8 95:15 97:3 102:17 105:16 106:13,20,22 109:9 110:2 Congress's ^[2] 39:21 46:14 consciously ^[1] 73:5 consequence ^[4] 58:12,18 66:11 101:14 consequences ^[1] 59:25 consequently ^[1] 38:10 consider ^[2] 4:24 101:13 consideration ^[1] 102:19 considered ^[2] 49:22 107:4 consistent ^[5] 8:25 12:8 54:13 61:4 65:7 consistently ^[1] 54:18 consists ^[1] 47:17 consolidated ^[2] 58:1 63:11 constitutionality ^[1] 9:22 construction ^[2] 29:2 31:10 consult ^[1] 102:14 consumers ^[1] 53:21 contained ^[1] 14:3 contemporaneously ^[1] 23:6 content ^[1] 59:6 contested ^[2] 6:21 22:14 contesting ^[1] 96:23 context ^[5] 10:15 53:25 68:3 77:</p>	<p>21 107:2 contextual ^[1] 42:18 contracts ^[1] 86:9 control ^[2] 93:9 101:15 controversy ^[4] 13:11 34:8 44:14 110:8 cooperative ^[1] 12:18 core ^[14] 11:8,8,10 12:8 26:10 36:3 38:1,1,1,17 39:7,7,7 48:20 92:23 correct ^[13] 13:20 15:7 16:1 31:17 35:20 37:20 39:24 63:9,24,25 84:10 96:1 105:8 correctly ^[1] 60:16 cost ^[3] 20:11 77:10 89:20 costs ^[5] 19:24 53:20 83:1 85:8 97:14 couldn't ^[4] 5:22 20:10 39:3 87:25 counsel ^[15] 14:9 15:25 22:18 48:11 57:7 58:22 70:2,7 74:22 76:17 87:12 98:20 102:25 107:23 111:2 count ^[2] 32:22 78:13 country ^[10] 9:1 21:12 29:9 35:18 45:14 54:17 58:9 86:24 100:13 109:19 couple ^[1] 22:22 course ^[5] 10:4 38:6 69:22 101:8 106:1 COURT ^[61] 1:1,15 4:11,22 5:5 7:18 8:4,11 9:17,20 10:24 21:11 22:4 23:14 24:9,13,15 26:3,14,15 27:15 30:3 31:11,12 32:9 34:13,13,15,24 35:1 37:18 39:12 40:16 42:2,9 43:9 48:19 55:17 65:4,5 70:13,15 80:10 81:2 82:14 84:8,12 95:4 96:7,7,20,24 99:25 102:3 103:15 108:6,24 109:7,8,14,18 Court's ^[5] 5:7 12:9 34:12 50:19 72:9 courts ^[15] 27:9 29:22 32:25 34:17,23 35:4 48:24 59:22 61:1 69:14,21 83:15 103:19,21 109:18 crazy ^[1] 83:25 created ^[3] 76:7 81:15 100:5 creating ^[1] 5:2 credits ^[1] 89:25 criteria ^[1] 47:21 criterion ^[1] 44:11 crux ^[1] 60:24 crystallize ^[1] 42:16 cumulatively ^[1] 86:5 curiosity ^[1] 26:22 curious ^[1] 12:22 current ^[1] 98:16 customers ^[1] 19:25 cut ^[1] 102:8 cutoff ^[1] 18:11</p>	<p>20 97:6 98:22 99:18 100:22 108:8,15,17 109:2,3 data ^[3] 65:15 86:3 98:16 day ^[2] 46:8 78:2 days ^[3] 56:7 65:18 66:6 de ^[5] 24:9 30:15,25,25 31:11 deadline ^[2] 13:8 71:13 deal ^[1] 66:3 dealing ^[4] 32:16 33:2 76:3,6 dealt ^[2] 7:7,16 debate ^[2] 13:2,22 decade ^[1] 8:15 decide ^[10] 15:11 24:14 37:19 40:23 43:25 55:4 56:10 64:23 83:18 93:1 decided ^[8] 34:1,3 57:21 65:22 66:20 75:16 86:20,23 decides ^[6] 24:9 25:2 31:11 108:17 109:7,8 deciding ^[5] 25:18 56:5 84:7,8 96:20 decision ^[10] 8:7 9:20 21:5 22:6 27:23 32:13 38:8 42:21 86:23 110:12 decisions ^[18] 5:13 6:3 14:10,12 19:14 21:12 23:2 32:13,15,23 33:18 40:4,10,10 47:1 63:11 72:17 108:20 deemed ^[1] 49:12 defer ^[1] 96:22 deference ^[19] 24:20 30:16 31:18 39:13 41:6,11,18 93:16,19,20 94:8,8,25 95:1,13,22 97:4 109:25 110:14 define ^[1] 56:21 defining ^[2] 56:18 78:7 definition ^[7] 56:23 57:2,4 67:11,13,23 95:9 definitional ^[1] 57:22 definitions ^[1] 65:8 degree ^[1] 46:20 demonstrate ^[2] 71:9 74:1 demonstration ^[1] 81:5 denial ^[23] 4:15 8:12 21:19 25:11,11,25 28:20 37:14 45:11,21 46:11 47:23 48:5 59:10,23 62:3,17 63:18 67:16 72:17 74:17,18 78:24 denials ^[11] 4:19 6:7,9 23:5 45:19,21 46:2 69:11,12 81:8,25 denied ^[10] 5:21 20:6 29:3 36:18 44:1,18,19 60:8 73:15 83:14 denominator ^[1] 32:3 deny ^[4] 15:10 37:22 56:13 83:15 denying ^[4] 15:7 69:22 73:11 81:9 departing ^[1] 24:22 Department ^[1] 2:3 depend ^[7] 22:1,3,10,15 46:6,22 58:4 depending ^[1] 33:19 depends ^[2] 25:9 51:9 Deputy ^[1] 2:2 describe ^[1] 98:10 describes ^[1] 5:16 description ^[2] 93:5 102:23</p>	<p>designated ^[1] 106:19 designating ^[2] 106:14,15 designed ^[1] 16:16 destabilizing ^[1] 81:13 determination ^[121] 6:14 9:8,10 10:2,3,6,11,14,18,22 11:6,10 12:6 14:24 15:1,16,22 17:4 19:10,12 22:5 23:3,8 24:2,8,20 25:2 26:2 28:15,24 29:2,13 30:12 31:2,5 33:6,9,15,17 34:2,4,6 35:4,6 41:10 42:19 43:11,16 44:3,16 45:22 46:17 49:14 54:19 55:1,10,16 56:19,22,24 57:23 59:16 60:1 61:9 63:23 65:6,8,23 66:7,7 67:12,13,14,17,25 68:4,7,10,22 69:17 71:20 73:19 76:22 77:5 78:1,2,7,15,20 79:17 81:18 82:17,22,23,25 83:2,3,4,5 88:3,11 90:17,18 91:17,25 92:2 93:25 94:9 95:10 96:6,9 97:4,7 100:3,12 104:10,14,20 106:5 107:5 108:14 determinations ^[22] 7:6 10:16 14:13 15:4,5,19 19:16 20:4,15 23:11,16 24:17 29:16 44:13 54:14 59:3 77:20 83:6,12,16 110:19,21 determine ^[14] 10:7,23 12:10,24 15:3,9 23:7 31:5 44:12 54:25 58:17 70:16 74:12 98:16 determined ^[5] 9:20 15:16 60:18 87:24,25 determines ^[2] 34:13 50:7 determining ^[6] 5:10 12:4 21:4 30:24 72:23 110:3 development ^[2] 7:9 8:18 develops ^[1] 72:11 dictate ^[1] 35:7 dictionary ^[5] 56:23 57:1,4 65:7 67:12 diesel ^[4] 89:2,3,22 90:3 difference ^[2] 68:21 75:4 differences ^[1] 82:6 different ^[32] 4:17,18,23 5:9,13 10:15 13:7,13 17:2 20:10 25:18,19,20 29:4 32:23,23,24 33:18 37:9 45:20 47:3 48:3,24 49:3,16 51:11,12 68:24 73:21 83:21 98:10 108:11 differently ^[2] 7:19 33:18 difficult ^[2] 64:6,10 digging ^[1] 29:19 direct ^[1] 16:16 directed ^[3] 17:6 102:15,18 directly ^[4] 27:24 75:11 76:11 92:3 directs ^[1] 100:12 disagree ^[3] 24:9 85:20 86:16 disagreeing ^[2] 44:22,24 disagreement ^[1] 44:16 disagrees ^[1] 38:22 disappointed ^[1] 66:22 disapproved ^[1] 5:19 discretion ^[2] 7:2 90:15 discretionary ^[1] 6:23 discussed ^[4] 13:3 59:3 81:5 100:9</p>
D			
<p>D.C ^[48] 1:11 2:3,5 5:10 12:14 13:15,17 16:8,20 17:6,22 18:7 26:4 27:2 33:20 40:13 41:23,23 45:8,15 46:4 47:6 55:19 56:1,10 60:17 61:16 65:21,24 66:24 70:1 72:8,21 80:13 88:1,20 90:24 91:14 92:</p>			

Official - Subject to Final Review

<p>discussing ^[1] 58:7 discussion ^[2] 49:8,9 disparate ^[1] 29:8 disparity ^[1] 90:3 disposition ^[2] 49:13 109:12 dispositions ^[1] 29:10 disproportionate ^[8] 10:8 53:15 dispute ^[3] 80:11 96:17 108:16 disputes ^[2] 109:15,22 disrupt ^[1] 103:18 distinction ^[3] 43:13 54:8 106:4 District ^[1] 43:9 divided ^[1] 109:17 document ^[2] 47:22 48:6 doing ^[8] 17:12,15 34:24 75:12 77:21 85:16 87:5 110:8 done ^[10] 7:19,21,21 8:3 21:10 32:24 53:24 84:3 85:14 100:17 down ^[1] 9:18 downstream ^[5] 59:25 60:5,9,22 61:8 downwind ^[1] 7:14 drawing ^[1] 40:22 drew ^[1] 16:25 drive ^[3] 15:24 32:14 82:10 driving ^[1] 21:11 drove ^[3] 19:14 82:17 110:20 due ^[1] 53:16 duplicative ^[2] 16:12 48:22 during ^[1] 22:11</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each ^[18] 20:8 37:2 45:20,21 46:2 47:17 49:13,13 60:6 69:6 71:7,13, 15,19 78:3 81:19 86:13 98:6 earlier ^[3] 58:7 73:12 100:10 ease ^[3] 14:6 41:4,19 easier ^[1] 37:4 easiest ^[2] 102:1,7 easy ^[4] 10:25 12:10,24 74:12 economic ^[47] 4:20 9:2,14 10:8,20 16:24 17:3,10 18:6 19:19,20 21:2, 3,24 36:10 38:21 44:4 47:1 53:19, 19 71:10,19,24 72:2,5 74:20 77:6, 9,24 79:5 82:18,24 83:5,17 85:13, 23 87:2 88:11 89:4 90:2 91:2 97:10 98:7,13,18,20 102:20 economically ^[1] 89:3 ecumenical ^[2] 62:23,25 effect ^[48] 9:9 14:14 17:5 19:11,13, 16,17 28:15,24 29:14 30:12 41:10 45:23 49:15 50:11 55:2,11 60:1,2, 9,22 61:7,8,8 62:2,5 68:11,23 73:20 78:11 79:19 81:13 90:17,19 91:25 92:2 94:1,10 96:10 97:8 99:17 100:3 104:11,15,21 106:6 107:6 108:15 effects ^[3] 60:5,22 61:2 eight ^[4] 4:17,18 48:24 66:23 either ^[9] 36:5,21 38:25 51:17 55:17 56:13,24 65:8 106:20 Eleventh ^[1] 84:7 eligibility ^[1] 49:1</p>	<p>eliminated ^[1] 78:11 elucidate ^[1] 56:23 emphasize ^[1] 49:19 emphasized ^[1] 19:17 emphatically ^[1] 83:14 enacting ^[1] 46:14 end ^[7] 78:1 79:24 80:2 83:13 86:24 98:2 103:7 endorse ^[2] 60:13 108:21 ends ^[1] 103:8 Energy ^[5] 2:6 3:7 48:15 62:21 63:19 engaging ^[1] 46:11 enormous ^[1] 103:16 enough ^[1] 91:19 ensure ^[1] 93:8 entire ^[1] 71:21 entities ^[2] 79:10 108:12 entitled ^[3] 36:20 39:1 71:6 entity ^[3] 64:9 104:12,22 enumerated ^[3] 12:15 105:15,19 ENVIRONMENTAL ^[2] 1:3 4:5 EPA ^[137] 8:12,25 11:12,16 13:5 14:1,9 16:2 17:20 18:23,25 19:3 20:7 22:11 24:21 25:2,10,17 27:9,12 28:8,10 29:3,23 31:4,14,17 33:8 36:15 37:22 38:5,19 39:2 40:21 41:8,13,24 44:15,20 46:1,7,20,23 47:16 48:1,5 49:11,23 50:4 51:16 52:14,15,20 53:9,9 55:19,20 56:12 63:9,22 69:8,23,24 70:16,20 71:15,21 72:11,16,19 73:1,5,9,14, 19,22 74:6,16 75:6 76:17,20 77:8 81:9 82:9,16,18 83:14 84:3,9,15 85:4,4,9,12,22,25 86:6,13 87:10, 20 88:6 89:6,7,17 90:1,15,16,18 91:7,9,17,23 92:18 93:2,4 97:6 98:3,5,11,12,13,20 99:17 100:1,12 101:16 102:9,15,18,22 107:8 108:7,10,23 110:2,4,7 EPA's ^[28] 8:7 11:24 14:12,18 15:25 16:24 17:9 21:19 22:6 24:20 39:3,13 40:23 46:17 48:25 49:22 59:25 60:1 65:11,14 71:1,13 72:1 79:3 83:12 97:4,9 110:13 equally ^[1] 108:22 equated ^[1] 42:24 Ergon ^[4] 88:23 89:7,8,19 erred ^[1] 34:14 ESQ ^[4] 3:3,6,11,15 essential ^[2] 20:23 59:12 essentially ^[2] 59:8 103:13 established ^[5] 6:20 18:20 24:1 28:9 29:15 establishes ^[1] 59:14 ET ^[4] 1:7 2:10 3:13 70:11 evaluating ^[1] 53:18 evaluation ^[3] 17:1 77:23 86:2 even ^[17] 5:23 25:24 28:7 34:8 35:6 36:18 42:10 50:11 53:25 55:25 58:4 66:9 79:10 91:22 98:3 101:5 109:2 everybody ^[3] 21:10 53:9 82:25 everyone ^[1] 64:20</p>	<p>everything ^[3] 18:24 34:1 37:24 evidence ^[11] 42:18 43:17 71:24 72:4 85:6,23 87:8,11 89:7 90:3 91:3 evident ^[1] 49:2 exact ^[4] 26:18 82:3,5 83:7 exactly ^[6] 21:13 26:7 37:12 77:13 101:9 105:21 examination ^[1] 98:5 example ^[12] 4:13 5:18 16:23,24 60:14 69:6 70:2,20 80:10,19 81:24 98:19 examples ^[2] 76:2 77:14 exception ^[15] 21:23 42:22 67:14, 18 75:9 76:9 80:6 99:24 100:9 102:4,5 106:25 107:18 110:16,18 excuse ^[2] 95:16 98:4 executive ^[1] 109:11 exempt ^[1] 62:20 exemption ^[16] 4:16 5:21 36:20 37:16 39:1 49:1 50:7 52:16 56:13 58:16 59:10 61:15 71:6 72:24 91:12 100:6 exemptions ^[3] 45:12 62:13 63:18 exercise ^[1] 26:5 existed ^[1] 13:21 existence ^[1] 88:10 existing ^[1] 6:14 expect ^[2] 82:19 98:14 expected ^[2] 23:18 106:22 experience ^[2] 65:15 98:7 experienced ^[1] 21:24 experiencing ^[3] 53:16 74:20 79:4 explanation ^[1] 108:19 explore ^[1] 36:2 express ^[1] 11:14 expressed ^[2] 63:5,8 expressly ^[1] 73:6 extends ^[1] 61:9 extensions ^[2] 13:6 76:21 extent ^[4] 16:22 24:22 40:15 57:5 extraordinarily ^[1] 103:25</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face ^[7] 60:18 61:5 75:7,8 79:23 86:1 89:4 facial ^[1] 109:9 facing ^[2] 72:5 86:10 fact ^[11] 23:5,9 40:16,25 48:4 53:2 61:3 85:7,21 92:12 97:2 factors ^[3] 72:2 86:7 105:18 facts ^[8] 16:4,17,19 93:7 95:12 105:12 107:3,14 fair ^[1] 108:8 fall ^[2] 25:20 68:25 falls ^[1] 45:21 far ^[3] 10:21 60:10 97:13 favor ^[1] 21:20 Federal ^[17] 5:13,19,24 6:18,19 16:3 26:2 28:12 29:11 31:15 35:5 38:7 42:6 46:9 63:7 109:23 110:10 federalism ^[1] 12:18</p>	<p>fewer ^[1] 66:6 Fifth ^[6] 8:11 21:21 27:3,8 72:8 89:9 figure ^[8] 11:1,9 12:7,20 18:2,14 34:17 75:24 filed ^[3] 4:17 43:8 66:8 filter ^[1] 13:7 filters ^[1] 93:7 final ^[6] 51:18 56:3 71:22 74:6,17 102:13 finalize ^[1] 6:9 Finally ^[1] 110:15 find ^[6] 71:2 80:10 91:23 100:1,2 108:13 finding ^[11] 22:8 91:24 92:13 94:12,17 95:16,18,25 108:7,24 110:4 findings ^[1] 20:3 finds ^[2] 94:2 97:6 fine ^[2] 80:24 103:11 Finish ^[1] 21:15 finished ^[1] 98:17 first ^[31] 4:4 11:12 13:15 19:17 25:7 28:1 30:15 39:21,22 40:17 45:10 46:23 48:1 49:24 50:1 51:13 55:6 57:10 64:23 65:12 66:2,12, 12 77:18,18 91:21 93:24 95:6,6 96:5 108:5 fit ^[1] 75:8 fits ^[2] 12:23 104:5 five ^[2] 25:18,20 flip ^[1] 107:12 focus ^[5] 14:23,25 23:19 38:11 110:22 focused ^[2] 20:14 33:6 focusing ^[2] 14:17 19:9 following ^[3] 53:6,12 93:18 force ^[1] 61:20 forced ^[1] 89:24 foreclosed ^[1] 99:3 foreordain ^[1] 34:21 foresaw ^[1] 92:21 form ^[3] 27:22 90:15 105:17 forma ^[1] 84:20 formal ^[1] 46:16 formalities ^[1] 46:23 formality ^[1] 46:17 former ^[2] 65:13,16 formulation ^[1] 26:18 forum ^[3] 14:8 22:14 96:18 forums ^[1] 35:18 forward ^[1] 23:24 found ^[2] 94:4 108:6 four ^[1] 29:4 frames ^[1] 46:8 framework ^[14] 16:3 24:16 33:11 34:16,17,21 72:20,21,23 73:2 93:6 99:12 108:10,11 frameworks ^[1] 30:1 frankly ^[2] 23:13 29:23 Frick ^[2] 70:3 76:17 friend ^[4] 11:17 51:14 53:25 92:24 friend's ^[2] 51:23 101:14 friends ^[3] 53:4 78:23 101:17 fuel ^[10] 50:8,10,17 52:8 61:6 62:7</p>
---	---	--	---

Official - Subject to Final Review

<p>82:24 89:2,22,23 Fuels [4] 2:6 3:8 48:16 98:17 fully [3] 49:11 55:13 56:16 fundamentally [1] 87:22 further [3] 58:25 67:2,6 future [2] 52:23 74:1</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>game [1] 85:14 gave [6] 20:8 30:14 83:20,21,23 85:9 General [11] 2:2 14:9 15:25 16:2,9 28:9 68:16 70:2 76:17 102:6 107:18 generalized [1] 16:21 generally [4] 19:23 32:5 94:14 99:6 generic [1] 14:13 gets [4] 41:17 51:8 92:25 95:12 give [14] 24:19 39:13 54:23 59:6 69:5 74:22 75:3 76:8,14 80:23,25 87:6 109:25 110:14 given [8] 21:9,22 54:15 87:19 88:10,14 91:11 95:12 gives [1] 102:3 giving [2] 87:4 99:25 GORSUCH [6] 7:4,16,25 8:5,16,22 9:13,23 10:17 11:16,19 12:1,16 14:22 15:6,9,15,21 18:1,4 35:11,12,16,22 36:1,7,21 37:3,11,18 38:12,17 39:6,9,17 41:5 49:18 54:12 62:15,16,20,24 63:2,6,14,21 64:1 66:13,15 67:24 69:14 79:14 98:19,25 99:1,8,15 100:4,18 101:5 105:4 Gorsuch's [4] 14:16 54:24 64:18 67:15 gosh [1] 8:24 got [6] 11:17,19 59:18 67:16 87:3 90:18 government [7] 12:2,2 75:14,14 76:12 91:22 104:1 government's [3] 35:17 43:2 44:7 grant [4] 15:10 37:16 56:13 76:20 granted [2] 13:6 29:3 granting [1] 69:23 great [1] 34:7 greatest [1] 16:12 groups [1] 6:17 Growth [3] 2:6 3:7 48:15 guess [8] 8:6,23 9:23 11:11 18:14 45:3 50:18 54:5 guidance [2] 69:7 103:21 Gulf [1] 86:11</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>handle [1] 64:12 hanging [1] 67:21 happen [4] 21:7 60:24 78:16 104:19 happened [1] 13:22 happens [2] 24:1 101:20 happy [2] 36:4 76:11 hard [6] 83:18,19 90:23,25 101:22</p>	<p>104:4 hardly [1] 80:9 hardship [38] 7:6 10:5,19,23 11:7 15:11,17,20 19:19 21:24 42:22 53:15 63:24 67:14,18 68:1 71:1,8,10,15,25 73:3,10,15 74:2,7,18,21 77:20 78:24 79:5 81:10 82:23 83:19 89:5,21 91:5 98:8 harm [1] 10:8 harmony [3] 35:6,12 39:23 hat [1] 67:22 hear [1] 4:3 heard [3] 13:12 14:2 110:2 heightened [1] 5:2 help [4] 19:7 45:25,25 54:4 helps [1] 41:19 high [2] 20:19,22 historical [1] 12:21 historically [3] 7:5,22 103:13 history [1] 76:2 hold [1] 27:10 holding [1] 66:11 hole [1] 29:19 home [2] 89:10 96:24 Honor [12] 70:5 84:11 87:1 88:4 90:1,22 91:21 95:15 98:10 99:20 100:8 103:15 hope [5] 8:25 49:18 51:8 54:12 59:17 hostile [1] 79:8 House [1] 51:10 however [2] 4:23 73:19 hundreds [2] 84:22 86:5 HUSTON [77] 2:8 3:11 70:8,9,12 72:15,25 73:22 75:10,22 76:4,10,15 77:2,8,25 78:18 79:25 80:4,20,23,25 82:16 83:10 84:11 85:1,4,19 87:1,10,13 88:4,18,22 89:14 90:1,11,22,25 91:5,15,20 92:7,9,17 93:13,22 94:6,11,20,25 95:3,14 96:1,4,14,25 98:1,24 99:5,10,20 100:8,24 101:8 103:14 104:16,23,25 105:5,8 106:9 107:7,16,20 108:5,23 hypothesis [2] 77:9 90:2 hypothetical [2] 47:13,16</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea [2] 41:3 78:11 identified [3] 44:12 104:2 108:23 identifying [2] 44:12 49:9 illegal [1] 73:13 impact [2] 18:7 79:24 impacts [1] 109:13 implementation [1] 69:12 implication [1] 9:10 importance [1] 88:14 important [11] 34:7,25 35:2 59:5 72:3 78:19 87:18,18 93:16 109:20 110:7 impossible [3] 27:20 80:16,22 impulse [1] 38:13 inapplicable [1] 67:18 inclined [1] 66:14</p>	<p>included [1] 56:4 including [1] 52:7 inconceivable [1] 97:15 inconsistent [5] 5:2 16:13 48:21 52:1 79:23 incorporating [1] 60:11 incorrect [1] 13:20 incremental [1] 40:24 indeed [1] 49:14 indicated [2] 23:10 44:16 indicates [1] 43:21 indiscretion [1] 66:18 indistinguishable [1] 77:1 individual [24] 28:3,4 29:20 32:2,4,6,14,18,21 50:7,11 52:15 71:7,14 76:20,21 81:25 83:8 85:6,23 93:7 105:12 107:2,9 individualized [4] 71:12,23 77:20 106:21 individually [2] 49:23 78:3 industry [2] 100:23,25 inexorable [1] 62:5 inexorably [2] 69:4,5 information [1] 86:3 innovation [1] 99:21 insofar [1] 50:13 instance [4] 9:17 31:1 34:12 76:19 instances [1] 44:20 instead [2] 45:18 70:17 instructions [1] 102:3 instructs [1] 31:4 insufficiently [1] 92:25 integral [2] 39:14 110:11 intended [5] 4:14 46:16 49:5 75:19 80:5 intense [1] 90:5 interested [1] 110:1 interpret [1] 73:24 interpretation [33] 4:20 8:21,22,24 9:1,14 10:20 17:10 18:6 19:18 20:25 21:25 24:10,12 31:7 36:10 37:5,10,20,22 38:21,24 39:4 42:20 44:5 45:5 46:25 47:2 65:5 68:21 83:17 88:12 93:5 interpretations [1] 36:22 interpreting [1] 13:20 intriguing [1] 96:3 intuiting [1] 66:13 intuition [1] 33:23 intuitive [1] 33:2 invalidity [1] 17:24 investment [1] 40:9 inviting [1] 39:10 invoked [1] 73:7 involve [2] 11:2 23:3 involved [3] 14:4 50:24 102:9 Island [1] 101:10 isn't [10] 6:20,23 29:25 57:22 60:9 76:25 81:23 91:16 96:19 101:5 issue [18] 4:15 6:9 23:1 27:10 29:17 30:11 31:9 42:19,20 45:25 51:10 56:25 59:13 65:9 69:8 95:17 96:15 109:17</p>	<p>issued [6] 6:7 23:6 46:2,9 69:8 81:7 issues [4] 16:18,19 18:25 47:16 issuing [3] 36:15 48:2 108:18 itself [8] 19:20 23:8 25:3 34:8 41:11 44:24 47:3 79:1</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>JACKSON [32] 14:15,21 16:14 17:13 45:2,3,24 46:13 47:8,15 48:9 53:23 54:3 68:14,15 70:4 76:25 77:3,4,8,11 78:5,19 92:11,18 105:25 106:1,10,24 107:11,19,21 Jackson's [2] 49:20 53:7 Joint [1] 84:13 Judge [1] 60:15 judgment [2] 5:5 39:14 judicial [16] 4:18 5:1,15 6:21 16:10,12 19:3 23:19 24:18 27:23 31:16 32:10 38:11 40:19 94:15 110:22 June [12] 4:15 44:2,6,18 58:1 63:11 66:1,7,21,23 73:9 81:8 jurisprudence [1] 39:7 Justice [296] 2:3 4:3,10 5:8,25 6:12,22 7:4,16,25 8:5,16,22 9:13,23 10:17 11:16,19 12:1,16 14:15,16,21,22 15:6,9,15,21 16:14 17:13 18:1,4 19:6 20:2,17,23 21:3,14,16,17 22:17,19,20,21 23:21 24:25 25:16 26:6,20 27:4,7,16,17,17,19,21 28:13,19,23 29:18 30:4,6,10,18,21 31:21,22,22,23 33:14,22 35:9,10,10,12,16,22 36:1,7,21 37:3,11,18 38:12,17 39:6,9,17,18,18,20 40:2,25 41:5,15,17,22 42:13,14,14,16 43:12,15,19,23 44:25 45:1,1,3,24 46:13 47:8,15 48:9,10,13,18 49:17,18,20 50:20 51:1 52:6,9,19 53:2,7,23 54:3,12,24 55:2 56:19 57:6 58:21,24,24 59:1,19,19,20,21 60:15,19 61:13,18 62:9,14,14,15,16,20,24 63:2,6,14,21 64:1,2,2,4,15,17,18 65:1,25 66:13,15 67:1,5,6,7,8,9,10,15,24 68:12,13,13,15 69:14 70:4,6,12 72:10,15,22 73:18 74:22 75:12,12,20,23 76:5,10,13,25 77:2,4,8,11 78:5,6,18,18 79:6,14 80:1,4,18,21,24 81:22,23 82:16,21 83:10,20 84:24 85:2,9,19 86:18 87:9,12,15,16,19 88:9,19 89:12,16 90:6,7,14,23 91:4,6,16 92:5,8,11,17 93:11,15,17 94:4,7,18,22 95:1,8,21 96:3,13,15 97:1,9 98:19,25 99:1,8,14,15,23 100:4,16,18 101:5 102:24 103:1,2,3,4,5 104:7,17,18,24 105:3,4,6,21,23,23,25 106:1,10,24 107:11,19,21,22 108:4 111:1 Justice's [1] 64:18 justification [1] 14:5</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>KAGAN [24] 19:6 20:2,17,23 21:3,16 31:22,23 33:14,22 35:9 62:14</p>
---	--	--	--

Official - Subject to Final Review

<p>81:23 82:16,21 83:10,20 84:24 85:2,9,19 86:18 87:9,20 Kansas [1] 101:15 Kavanaugh [43] 39:19,20 40:2,25 41:15,17,22 42:13 60:15,16 64:3,4,15,17 65:1 67:6,7 79:6 80:1,4,18,21,24 81:22 93:11,15 94:4,7,18,22 95:1,8,21 96:3 103:4,5 104:7,17,18,24 105:3,6,21 keep [1] 102:2 kept [1] 91:11 key [3] 94:19,23,24 keying [1] 71:12 kind [20] 7:8 8:6 11:23 16:2 17:4 23:15 26:18 29:16,24 33:16 34:25 40:18 42:6 43:1 67:15 74:17 88:3 99:3 100:10 102:18 knows [4] 11:24,25 12:1 64:20</p>	<p>litigation [3] 11:2 42:8 48:22 live [1] 18:9 local [28] 16:3,17,18 29:21 33:19 47:11 54:19 69:16 72:5 75:7 77:19 79:9,10,14 82:7,8 83:8 91:2,13 99:4 102:20 104:9,12 105:11,18 106:16 109:14,21 localized [2] 77:22 78:9 locally [20] 16:4 43:7 49:10,12 69:9 70:17 71:2,14 74:24 80:6,12 81:18 92:19 93:10 99:16 102:6 105:10,16 106:19 110:16 locate [1] 75:15 located [5] 51:4 70:22 71:16 88:25 101:3 location [3] 50:3 51:5,20 long [3] 58:14 65:16 81:10 longer [2] 23:3 79:16 look [22] 9:5 10:1,3,11 11:4 12:5 18:18,22 20:24 25:17 32:12 34:11 59:24 61:4 70:15 74:13 75:25 76:1 84:12 90:2 106:12,18 looked [3] 74:24 90:12 104:3 looking [5] 10:10 31:14 85:5 102:11,12 looks [2] 81:17 86:6 lose [1] 30:3 loses [1] 109:16 lot [13] 17:9 18:24 25:11 27:3 33:3 35:3 46:7 49:7 57:12 64:14 74:10 87:17 106:18 lots [3] 15:22 32:18 86:8 Louisiana [2] 5:22 72:7 love [1] 83:11 lower [6] 34:17,22 59:22 83:15 103:19,21</p>	<p>meaning [9] 26:13 27:25 30:7 35:23 54:9 65:6,18 74:23 76:14 meaningful [2] 12:13 85:22 meanings [1] 101:23 means [6] 26:7 35:5 59:8,11 68:8 83:3 meant [2] 79:7 80:7 measure [1] 57:1 measurement [1] 65:10 meet [3] 28:1 47:21 62:6 meeting [1] 13:8 mention [1] 59:2 mere [1] 53:2 merits [5] 48:25 57:11 72:3 86:16 108:18 met [2] 20:20 69:25 metaphysical [2] 93:1 102:8 methodology [2] 6:8,10 8:10,14 16:9 17:17 19:5 24:23 27:12 28:9 29:6,6 40:23 44:23,24 46:10 47:19,22 48:6 61:19,19 metric [5] 18:18 44:11 52:17 53:12 55:4 metrics [2] 42:11 54:13 Metropolitan [1] 101:15 MICHAEL [3] 2:8 3:11 70:9 mid-1970s [1] 13:23 might [10] 17:3 33:1 41:2 42:3 60:7 75:10 99:4 100:21,22 102:10 millions [1] 40:4 mind [6] 15:25 47:25 75:24,25 76:12 102:2 minds [1] 97:22 minute [1] 59:3 missed [1] 41:2 Mississippi [1] 89:1 misunderstood [1] 47:13 mix [2] 22:15 33:15 mixed [1] 32:21 morning [1] 4:4 most [7] 14:10 26:17 32:15 62:1 98:16 103:7 110:16 motion [1] 27:10 move [1] 98:17 moved [1] 71:21 moving [1] 84:13 much [7] 30:3 31:24 32:7 34:3 36:9 82:11 106:18 multi-million-dollar [1] 40:4 must [5] 26:10 50:10 71:1,8 93:25</p>	<p>nationally [36] 12:15 25:9 33:10 45:6,13,14 47:4 49:24 50:12,22,24 51:6,12 52:12,18 54:1,11 55:7,8 58:9,16 59:23 61:23 62:3 63:12 68:22 69:9 70:17,23 74:5 100:20 101:12,18,24 105:19 108:13 nationwide [60] 9:9 14:14 18:7 19:10,13,16 20:15 23:10 28:15,21,24 29:13 30:12 31:6 32:13,13 33:15,17 34:2,3,6 41:10 43:11 45:22 47:5 48:7 49:15 55:2,10 68:23 72:13 77:12,23 78:10,12,14 79:11,13,16 87:21 91:25 92:2 93:25 94:9 96:9 97:8 99:17 100:3,19 104:10,14,15,20 106:6 107:5,10 108:14 109:10 110:19,21 naturally [1] 89:6 necessarily [4] 34:21 46:22 50:13,16 necessary [1] 62:2 need [6] 42:2 54:4 64:21 76:18 89:25 102:4 needed [1] 77:16 needn't [1] 100:5 neighbor [1] 7:13 neither [3] 53:4 75:13,14 never [4] 78:8 79:21 107:4,13 new [38] 4:20 7:8 8:6,17 17:11,23 18:5,6 23:17 24:2,17 28:8,16,19 29:16,16,25 30:1 31:15 32:11 34:6 46:25,25 48:6 52:17 58:8 61:19 69:23,24 72:11,19,22 73:2,14 75:6 84:4 92:24 108:10 next [4] 40:24 65:19 84:14 109:5 nice [1] 83:23 Nobody [2] 83:23 109:15 non-exempt [2] 50:9,15 non-petitioning [1] 58:19 non-zero [1] 21:21 nor [1] 75:14 norm [2] 7:14 100:5 normal [1] 83:1 notably [1] 98:9 note [1] 38:24 noted [2] 8:12 27:12 nothing [4] 29:9 34:3 51:7 84:16 notice [5] 5:14,19,24 28:12 29:11 notices [1] 46:9 notion [1] 66:20 Notwithstanding [4] 43:4 75:1 82:6,9 novo [5] 24:9 30:15,25,25 31:11 NRDC [1] 13:3 null [3] 103:9,9,13 number [8] 13:6,13 25:19 53:13 59:21 102:2 108:8,11 numerous [1] 13:5</p>
L			
<p>L.L.C [4] 1:7 2:9 3:13 70:11 lack [1] 104:4 landed [1] 97:20 language [2] 15:12,14 last [4] 34:19,22 103:5 104:8 late [1] 66:6 later [3] 24:2 60:7 99:2 latter [1] 65:15 Laughter [1] 66:17 law [22] 6:19,19 26:2 31:15 34:7 35:5,23 38:7 39:15 45:19 50:8 55:12,14,16 58:17 61:11 73:14 87:6 95:11 99:7 109:23 110:10 layer [1] 40:19 leads [2] 102:16,17 least [7] 14:19 16:4 17:5 36:24 46:22 66:9 72:13 leaves [2] 34:19,22 legal [19] 13:14 29:14 50:11 51:10 58:18 61:1,7,8 62:2,5 66:25 68:5 94:20 95:4,5,16,17 96:6 109:17 legislative [1] 76:2 length [1] 43:24 less [1] 60:8 Letter [1] 73:13 level [2] 7:8,25 licensing [1] 99:2 lie [1] 26:10 life [1] 103:16 likelihood [1] 23:16 likely [13] 6:20 16:9 17:16 19:4 23:11 24:18 26:3 29:7 31:16 38:9,11 60:23,23 Likewise [1] 69:11 limit [7] 6:24 23:14 27:22 40:14 52:10 56:2,4 limiting [2] 6:2 29:1 limits [2] 5:9,12 line [4] 12:20 55:3 109:11,16 linkage [1] 43:20 listed [1] 69:13 litigant [3] 11:23,24 18:2 litigated [2] 20:13 109:19 litigating [2] 35:17 57:12</p>	<p>M</p> <p>made [7] 20:4 21:5 22:7 56:6 85:12 87:20 108:24 maintain [3] 92:19 93:9 102:4 MALCOLM [5] 2:2 3:3,15 4:8 108:1 mandates [1] 62:21 manifest [1] 52:2 manifestly [2] 49:5 52:3 many [5] 50:23 52:4 61:25 84:17,17 March [1] 1:12 mark [1] 41:2 market [3] 16:25 81:13 89:15 markets [2] 77:7 98:17 Martian [1] 97:20 matter [12] 1:14 25:1,22 45:19 50:7 55:15 58:16,17 61:11 63:13 83:8 89:18 matters [2] 17:9 25:6 mean [39] 10:6,13 11:20 12:17 15:20 18:13 20:5,19 22:5 24:3 32:12 33:1,22 34:11 35:14,16 36:13 38:2,3 40:8 42:23 44:1,10 45:9 46:1,5 57:9 77:4 81:24 82:22 84:21 87:15 88:4,14 92:14,18 97:11 104:12 106:4</p>	<p>N</p> <p>NAAQ [1] 69:24 namely [1] 43:6 narrow [3] 80:5 102:4 103:25 nation [8] 70:23 71:5,21 76:23 78:12 101:4,6,7 nation's [1] 62:6 national [35] 16:19,25 17:2,4 28:3,5 49:5 51:21 52:1,24 54:10 55:1,21 60:2,17 61:10,10 62:7 68:11 69:19,20 73:20 77:5 88:3 89:18,19 90:8,17,19,21 91:8,18 106:14,17 109:12</p>	<p>O</p> <p>objective [1] 48:20 obligated [2] 50:9,15 obligation [1] 53:16 obligations [4] 7:13 50:14 58:18,19</p>

Official - Subject to Final Review

<p>observe ^[1] 75:13 obviously ^[4] 39:23 41:25 42:9 103:20 odd ^[1] 96:19 offer ^[1] 24:4 offered ^[1] 36:3 often ^[1] 69:3 Ohio ^[2] 5:20 84:4 Okay ^[17] 8:23 12:3 18:5 24:25 30:9 37:11 41:22 43:19,23 44:25 63:1,21 64:20 92:6 104:6,24 105:21 old ^[4] 18:8 32:11 36:18 73:15 omnibus ^[1] 66:14 once ^[2] 85:12 92:22 one ^[70] 5:19 6:16 7:5,6 10:14 11:13,24 17:3 18:17 21:1,10,11,18 24:3 25:3,3,12 26:11 29:7 32:8,12 33:24,25,25 34:1 36:5,24 37:4,25 44:2,2,10 45:7,12 50:20,25 51:11 52:21 53:13 54:9 57:14 58:6 60:4 61:21 66:1,2,9,12,19 67:10 68:25 69:4 71:16,17 75:8 76:17 78:17 80:25 84:8 86:23,24 88:24 90:19 96:20,21,22,22 101:20,21 104:3 ones ^[1] 44:6 only ^[17] 30:19 31:3 37:7,15 43:8 45:12 47:6 66:11 69:12 71:16,22 73:7 89:3,23 96:4,5 106:10 open ^[1] 66:10 operate ^[1] 18:10 operates ^[1] 62:2 operations ^[2] 82:19 98:15 opined ^[1] 49:3 opinion ^[1] 108:18 opinions ^[2] 60:13 109:4 opportunity ^[10] 20:8 83:11,21,22 84:19 87:4,6 89:10 91:2 92:19 opposed ^[1] 61:25 opposite ^[2] 49:4 67:3 oral ^[7] 1:15 3:2,5,10 4:8 48:14 70:9 order ^[6] 47:16,19 51:24,25 93:23 105:1 ordinary ^[3] 95:10,22 101:23 other ^[30] 8:7 16:23 19:20 21:1 23:24 31:4 33:8,12,25 34:2 36:24 42:4 44:11 51:14,18 53:17 54:1 56:15 58:3,11 62:1,5 69:1,5 79:12 86:25 96:7,21 105:3 107:13 others ^[1] 10:15 Otherwise ^[3] 9:3 74:24 99:4 out ^[26] 7:13 11:1,9 12:7,20 17:19 18:2,14 26:22 32:5 33:12,18 34:17 38:5 45:14 54:12 64:19,20 73:14 75:24 82:1,2,5 95:4 103:12 110:23 outcome ^[8] 34:9,22 35:7 36:14 37:9 38:10 66:23 83:7 outcomes ^[2] 5:3 16:13 outset ^[4] 11:1 12:11,24 87:25 outside ^[2] 68:3 75:5 over ^[4] 13:11 35:23 45:14 109:19 overall ^[3] 39:14 81:21 106:13 overturn ^[1] 109:3</p>	<p>own ^[5] 11:14 18:9 20:9 71:7 102:23 ozone ^[2] 7:11 69:25</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>PAGE ^[4] 3:2 47:17 71:3 84:12 pages ^[7] 84:14,14,22,22,22,25 86:5 paper ^[1] 46:3 papers ^[2] 47:10 81:6 paradigmatic ^[2] 4:12 69:16 Pardon ^[1] 66:18 part ^[15] 12:7 13:2 14:5 18:3 22:10 33:5 40:18 46:22 56:15 63:15 65:12 94:19,23,24 95:24 particular ^[29] 7:11 10:9 13:8 20:8 22:15,16 25:25 31:20 34:9,18 35:7 36:14,19 38:22 39:15 41:18 49:17 56:25 63:23,24 64:8,9 65:9 67:19 73:8 96:18 104:12,22 107:15 particularly ^[1] 25:6 parties ^[10] 11:3 50:9,15 60:2,25 70:22 96:16,23 108:15 109:15 partly ^[2] 8:19,20 party ^[1] 110:1 pass ^[5] 19:24 20:11 26:20 89:20 97:14 pass-through ^[3] 8:17,20 26:21 passed ^[4] 18:21 53:21 65:18 66:6 passing ^[2] 48:25 85:7 passthrough ^[3] 19:22 20:7 77:10 past ^[4] 8:3 10:1 24:23 71:21 patent ^[1] 42:7 path ^[1] 81:16 pattern ^[1] 108:9 Pennsylvania ^[1] 28:20 people ^[1] 60:6 people's ^[1] 14:17 percent ^[1] 89:2 perfect ^[3] 82:14 105:14 110:13 perform ^[1] 98:5 performing ^[1] 35:1 perhaps ^[4] 47:13 69:3 100:19,21 peripheral ^[1] 38:8 persuade ^[4] 86:14,15,19 89:8 pertained ^[1] 13:13 Pet ^[1] 72:17 petition ^[11] 26:1 36:17 43:5 49:13 60:6 62:18 66:9 71:14,16 74:18 78:24 Petitioner ^[10] 1:4 2:4,7 3:4,9,16 4:9 48:17 105:13 108:2 petitioning ^[4] 44:21 51:19 74:2 98:6 petitions ^[13] 4:16 20:6 25:11 44:18 45:20 71:1 73:10,12,16 74:7 81:10 83:19 86:4 Phoenix ^[1] 2:8 picking ^[2] 21:17 49:20 piece ^[1] 46:3 pitching ^[1] 33:4 place ^[5] 39:21,22 40:17 71:17 96:21</p>	<p>Placid ^[1] 86:9 plan ^[3] 14:3 69:12,18 plants ^[1] 101:2 play ^[1] 32:19 playing ^[2] 32:7 103:12 please ^[3] 4:11 48:19 70:13 plural ^[1] 63:17 plus ^[1] 20:25 point ^[20] 11:21,22 17:8,20 26:10 41:6,7 42:17 48:4 51:16 53:7 55:14 58:6 64:18 67:16 72:3 86:1 97:2 103:6,6 pointed ^[1] 54:12 points ^[4] 22:22 26:8 33:12 91:20 policy ^[3] 16:3 31:15 33:11 pollution ^[1] 7:14 pose ^[1] 56:2 posed ^[1] 49:17 position ^[4] 42:17 53:3 61:14 101:14 possibility ^[1] 97:23 possible ^[1] 88:5 posture ^[1] 105:9 potential ^[2] 17:17 40:19 power ^[1] 101:2 practical ^[1] 60:22 practice ^[4] 6:16 12:21 34:12 109:2 pre-2011 ^[1] 71:4 preceding ^[1] 43:5 predicate ^[2] 68:7,8 predictable ^[1] 61:8 predicts ^[1] 98:18 predominantly ^[2] 19:5 20:14 preexisting ^[2] 29:6,15 preferable ^[1] 37:21 preferred ^[2] 36:16 39:3 premise ^[1] 59:12 preordain ^[1] 34:9 present ^[4] 22:25 109:9,14,22 presents ^[1] 109:17 presumably ^[1] 55:18 presume ^[4] 53:20 89:19,20,21 presumption ^[14] 12:23 19:23 20:9,19 21:20 53:22 65:14 66:19 84:20 85:3,12 87:3,3 92:10 presumptions ^[4] 90:9,21 91:19 92:6 pretty ^[11] 12:22 20:22 33:23 34:2 36:9 56:4 82:11 85:14 92:25 93:1 106:17 prevailed ^[1] 103:19 prevailing ^[1] 109:2 prevent ^[3] 5:4 7:14 29:9 previously ^[5] 4:21 6:19 9:11 27:15 28:9 primarily ^[1] 20:16 principle ^[7] 6:2,18 26:17 31:15 34:6 38:7 39:15 principles ^[1] 29:14 pro ^[1] 84:20 probably ^[1] 92:21 problem ^[2] 99:14,23 proceeding ^[1] 34:10</p>	<p>proceedings ^[1] 20:13 proceeds ^[1] 48:1 process ^[1] 102:9 produce ^[4] 42:8 83:7 89:1,3 produced ^[3] 71:22 77:9 84:15 produces ^[1] 74:17 producing ^[1] 49:2 program ^[6] 49:6 50:6 61:25 63:19 82:24 109:11 programs ^[1] 62:1 promulgate ^[1] 72:19 promulgated ^[2] 46:24 98:21 promulgates ^[1] 101:16 promulgating ^[1] 48:2 prong ^[51] 9:7 14:19 17:5 22:6 24:7 25:7,7,14,23 27:24 28:1,2,6 30:19 45:7,16,21,25 46:21 49:9,11,24 51:13 54:6,24 55:5,7,9,18,18,24,24 57:5,20,24 58:3 62:9 63:16 64:5 69:8,13 74:9 75:17 90:19 108:7,21,24 109:21 110:4,15,23 prongs ^[2] 49:8 109:6 pronounce ^[1] 99:11 proper ^[3] 11:25 13:17 57:21 proposal ^[3] 6:7 57:16,19 Proposal's ^[2] 57:18,18 proposals ^[1] 29:4 proposed ^[6] 5:20 6:7 18:23,25 44:15 58:2 proposition ^[3] 46:6 110:10,11 PROTECTION ^[2] 1:3 4:5 prove ^[4] 53:13,14 68:6 97:23 proved ^[1] 68:8 provide ^[1] 13:25 provided ^[1] 86:3 provides ^[1] 4:12 provision ^[13] 4:14 5:3 16:7,16 31:3 40:12 70:14 76:16 100:11,14 103:22 106:13,23 provisions ^[3] 7:12 52:4 57:9 publication ^[1] 95:25 publish ^[3] 5:12 22:8 100:2 published ^[4] 5:24 94:5 108:20 109:3 publishes ^[3] 41:8 94:2 97:7 publishing ^[1] 6:6 purchased ^[1] 50:10 pure ^[2] 31:9 60:9 purely ^[1] 109:14 purport ^[1] 7:12 purported ^[1] 83:12 purpose ^[2] 52:2 100:9 purposes ^[5] 25:6,7,13,23 72:4 Put ^[5] 63:15,16 73:14 97:2 98:20</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualify ^[1] 55:23 quality ^[4] 69:19,20 101:15,17 question ^[48] 9:11 14:16 15:20 24:6,8,10,12 25:8,24 27:21 29:1 31:8 32:17 50:21 51:8 54:22,23,24 55:3 56:20 59:17,23 64:25 66:1,25 67:10 69:17 75:11,21 78:6 79:8 82:15 83:13 84:8,9 87:17 89:13</p>
--	--	---	--

Official - Subject to Final Review

<p>90:7 91:7,8,10 93:16 94:8,20 95:4 104:8,17 108:19 questions [1] 5:7 49:17,21 50:19 53:7 55:14 56:17 69:15 72:9 102:8 109:22 quickly [3] 40:5,21 93:1 quintessentially [1] 77:19 quite [1] 89:8 Quote [1] 71:8</p>	<p>refinery [36] 5:22 10:9 20:8 22:1,4, 16 29:4 36:19 38:22,25 45:12 47:17,20 49:1 51:4,19 52:15,21 53:13 58:15 63:24 67:19 71:7,8,16 73:3 74:19 78:3,25 79:4 81:19 86:8 88:24 97:16 98:6 102:21 refinery's [6] 25:25 36:17 49:13 71:19 85:6 102:20 refinery-specific [1] 86:7 REFINING [7] 1:6 2:9 3:13 4:6 58:18 70:11 88:24 reflected [2] 40:12,15 refused [1] 89:16 reg [1] 89:23 regard [4] 5:23 24:21 108:12 110:7 regarded [1] 5:16 regardless [4] 25:14 50:3 51:5,20 regime [1] 71:4 region [3] 93:10 101:16,17 regional [14] 4:23 7:7 12:17 14:2 56:14 66:23 75:7 79:9,10 80:8 101:16 104:9,12 110:18 regionally [11] 16:5 43:7 49:10 69:10,16 70:18 74:25 100:20 101:19, 24 110:16 Register [7] 5:13,19,24 28:12 29:11 46:9 63:7 regularly [1] 74:25 regulate [1] 101:1 regulated [2] 70:22 108:12 regulates [1] 101:11 regulation [13] 17:21 46:24 47:3 51:18 53:10,10,25 56:3 61:2 69:7 75:6 79:13 89:24 reinforces [1] 71:11 rejected [3] 8:13 89:7 108:25 rejecting [1] 10:5 rejection [1] 11:5 related [2] 90:3,4 relatedly [1] 43:24 relates [1] 50:5 relating [1] 32:19 relevant [3] 57:25 70:24 78:23 relief [3] 71:8 74:2 91:5 relying [2] 37:22 89:23 remember [1] 105:15 remembered [1] 99:9 Renewable [12] 2:6 3:8 48:16 50:8,10,16 52:8 61:6 62:7,21 63:19 82:24 repeated [1] 12:9 repeatedly [1] 69:22 report [1] 51:10 represented [1] 27:14 request [2] 5:21 56:14 require [1] 69:5 required [4] 4:24 71:18 74:14 95:16 requirement [10] 19:18,20 50:8, 14 62:7 65:13 69:25 71:12 90:20 95:5 requirements [5] 59:9 61:11 69:19 70:21 93:23</p>	<p>requires [5] 28:2 70:15 71:6 88:8 95:24 resolution [6] 29:16 44:14 56:25 65:9 66:24 110:8 resolved [4] 4:16 17:18 40:20 95:17 resolves [1] 59:13 resolving [2] 9:11 22:13 resources [2] 5:1 16:12 respect [17] 7:11 8:2 11:22 14:1 20:7 24:4 31:19 36:14 41:19 42:7 52:21 59:22 61:6 62:13 68:18 94:11 95:19 respectfully [1] 85:20 respects [1] 57:15 Respondents [9] 1:8 2:6,9 3:7,12 31:1 48:15 70:10 88:25 Respondents' [1] 24:10 responds [1] 19:1 response [1] 56:17 responsible [1] 20:2 rest [3] 10:19 14:11,12 result [2] 4:13 36:12 results [2] 5:4 28:12 retire [1] 81:12 retroactively [2] 73:11,15 reversed [1] 5:6 review [21] 6:21 7:12 9:21 24:5 26:5 27:23 30:13,22,25 32:10 35:3 40:15,19 43:5 63:10 65:23 66:9, 10 72:20 80:8 94:15 reviewable [1] 110:17 reviewed [2] 10:1 100:22 reviewing [1] 12:14 reviews [1] 109:14 RFS [7] 49:6 50:6 53:16,20 58:13 61:25 89:5 Rhode [2] 101:9,10 rightly [1] 41:5 RIN [7] 77:10 81:13,14,20 83:1 85:8 86:9 ring [1] 53:20 RINs [2] 81:12 86:9 rise [1] 68:24 risk [2] 5:2 16:12 ROBERTS [25] 4:3 22:17 27:17 31:22 35:10 39:18 42:14 45:1 48:10, 13 57:6 58:21,24 59:19 62:14 64:2 67:1,5,8 68:13 70:6 102:24 105:23 107:22 111:1 role [3] 12:13 32:8 110:3 room [2] 5:14 12:19 roughly [1] 23:6 routed [1] 16:8 rule [42] 6:14,19 16:3 17:25 18:15, 19 23:22 33:10 40:9 47:5 48:2 50:23 51:23 52:21,22,24 62:12 64:8 66:14 69:24 72:11,13 73:14,23 75:6 79:11,13 80:6 88:5,8 89:18,19 98:21,21 99:15 100:19,22 101:10 102:6 106:2 107:18 109:1 rule's [1] 40:7 rule-making [12] 22:12 70:21 72:18 73:4,6 74:3 99:11,22 105:4</p>	<p>106:3,7,11 rule-makings [3] 105:19 106:18, 19 ruled [2] 27:9 60:16 rules [7] 7:11 30:1 40:6 41:24 48:21 87:19 88:15 ruling [3] 48:23 55:17,19 rulings [1] 36:15</p>
R		S	
<p>radically [1] 12:22 raised [2] 65:20,21 raises [1] 41:5 rarely [2] 29:24 107:17 rather [4] 26:17 42:21 45:12 64:24 rationally [1] 89:9 reached [2] 36:11 82:9 reaching [1] 15:22 read [2] 76:14 77:13 reading [2] 106:25 110:23 ready [1] 6:9 real [4] 6:23 13:18,21 58:12 really [15] 21:8 26:16 32:9,22 79:19,24 81:12 84:13 85:20 92:15 93:16 97:19 103:15 107:4 109:15 reason [14] 29:12 33:6 39:20 40:18 42:24 50:1,5 53:17 73:8 76:8 77:15 82:4 85:10 97:17 reasoning [3] 10:22 12:7 67:20 reasons [9] 6:6 14:18,25 15:5,22 39:22 46:14 49:25 78:12 rebut [6] 20:9,18 83:22,24 84:19 87:4 rebuttable [1] 53:22 REBUTTAL [4] 3:14 84:1 107:24 108:1 rebutting [2] 85:2,12 recall [1] 93:22 receive [2] 41:11 44:15 received [3] 18:23 19:3 22:11 recently [1] 57:14 recognize [2] 53:4 60:13 recognized [2] 69:14,21 recognizes [1] 34:20 recollection [1] 66:5 recommended [1] 13:24 reconsidering [1] 27:12 record [1] 24:21 recover [1] 82:25 recurring [1] 109:22 red [1] 71:3 reference [1] 56:22 referred [4] 14:13 23:5,9 43:6 refers [3] 31:3 42:25 46:19 refiner's [1] 52:16 refineries [36] 4:17 6:1,3 7:20 8:2 17:2 19:24 21:18 44:18,21 45:13 47:3 48:3 50:3,23 51:20 52:11,11, 23 66:22 71:5 72:6,12,24 74:1 81:11,17 84:15,17 85:7,24 87:23 91:1 97:12 101:10,11 refineries' [3] 71:23 82:19 98:14 refiners [2] 52:18 58:20</p>	<p>same [31] 5:13,24 9:2 13:14 25:14 32:17 35:4 43:21 44:2,3 46:8,10 47:22 48:6 52:22 54:22,23 55:5 56:5 66:25 68:23 69:2,3 77:13 81:7 82:3,5 83:7 84:4,7 98:2 San [2] 72:6 86:7 satisfied [1] 31:19 satisfy [1] 69:18 saying [21] 18:4 19:13 36:16 45:5 46:10 47:10,14 55:19 61:15 73:1 79:15,18 80:1 89:17 91:13 95:21 97:19 104:19 106:11 107:13,16 says [19] 41:8 43:4 47:19 51:18 68:6 69:24 74:23,25 87:10 88:6 90:18 91:18 92:12 99:24,25 101:1 106:8 108:12,13 schedule [1] 27:11 scheme [1] 54:20 scope [36] 9:9 14:14 17:4 19:11,13, 16 28:15,24 29:13 30:12 41:10 43:11 45:22 49:15 55:2,11 57:5 68:11,23 73:20 77:12 78:10 91:25 92:2 94:1,10 96:9 97:8 100:3 104:11, 14,15,20 106:6 107:6 108:15 scrutiny [1] 5:15 sea [1] 9:25 second [12] 9:7 19:22 50:5,5 63:15 66:1 69:13 84:6 90:20 95:23, 24 110:10 Secretary [1] 10:7 Section [4] 48:20 70:25 92:3 105:16 sections [1] 105:15 see [11] 14:23,24 27:25 28:5,13,16 53:8 60:5 72:16 102:14 103:12 seeking [1] 40:14 seem [3] 23:22,25 26:8 seems [7] 33:2 54:7,9 75:3 77:12, 19 82:13 send [1] 34:16 sense [10] 28:11 53:19 60:14 62:4 68:3 96:5,6 105:14 109:25 110:13 sentence [28] 19:9 43:1,5,6 64:5,5, 24 65:19 74:10 76:7,19 77:15,18 80:14,17 93:24 95:6,23,24 96:4, 12 97:5 101:25 102:2 103:8,17,24 107:8 separate [8] 45:19 46:2,9,11 47:10 48:2 78:19 95:5 seriatim [1] 8:3 set [10] 32:2 70:21 73:1 95:4,9,11, 12 103:9,9,13 SETH [3] 2:5 3:6 48:14 settled [9] 23:2 44:1,8 55:12,15,16</p>		

Official - Subject to Final Review

<p>56:11 68:5 92:25 several [1] 4:23 share [1] 68:17 sharper [1] 97:2 shifting [1] 87:22 short [1] 40:14 shouldn't [5] 11:1 21:7 42:24 48:7 80:2 show [3] 20:9 21:23 89:21 SHREVEPORT [10] 1:6 2:9 3:13 4:6 70:10 72:6 78:25 79:4 86:11 90:4 shy [1] 79:21 side [5] 33:8,12 51:14 54:1 107:13 sign [1] 99:18 significance [3] 13:18,21 55:11 significantly [2] 103:18 109:1 similar [2] 4:25 76:6 simple [10] 18:13,15,15 22:25 57:9, 14,16,19 74:9 102:17 simpler [1] 33:3 simplest [2] 58:12 64:23 simplicity [1] 68:16 simplify [1] 74:11 simply [10] 6:3,18 11:21,22 28:8 29:5 55:11 57:21 102:10 110:9 simultaneously [3] 5:20 13:6,9 since [2] 51:2 103:24 single [11] 5:16,23 28:11 29:4,10 47:17,24,24 66:12 80:10 82:14 SIP [9] 5:19 7:12,17 14:2,10,12 28: 20 69:11,23 SIPs [3] 7:6,21 13:9 site-specific [2] 33:9 110:20 situation [6] 78:9 86:10 95:14 97: 24 98:3,9 situations [1] 83:8 six [2] 71:23 84:15 Sixth [1] 84:6 skipping [1] 40:19 slightly [1] 26:15 small [23] 6:17 19:23 36:17 38:22, 25 45:11 49:1 52:11 53:13 58:15 71:5,23 72:5,24 73:2 74:1 82:19 86:8 87:23 97:12,16 98:6,14 smaller [2] 5:21 96:14 soap [1] 106:6 solely [3] 75:16 104:14,20 Solicitor [1] 2:2 somebody [4] 10:21 86:21 87:15 97:23 sometimes [2] 14:12 109:8 sorry [1] 21:15 sort [4] 22:11 54:15 101:13 107:1 sorted [1] 17:19 Sotomayor [40] 27:18,19 28:13,19, 23 29:18 30:4,6,10,18,21 31:21 59:20,21 60:19 61:13,18 62:9 74: 22 75:12,20,23 76:5,10,13 89:12, 16 90:6,14,23 91:4,6,16 92:5,8 93: 18 99:14,23 100:16 103:3 Sotomayor's [1] 78:6 sources [1] 101:2 specific [1] 66:5</p>	<p>specifically [2] 69:13 92:12 speed [1] 39:25 spend [1] 57:12 split [2] 42:1,9 splits [1] 35:23 spread [1] 45:13 square [2] 11:24 101:23 SRE [4] 50:12 53:11 61:9 86:3 stage [1] 34:22 standard [29] 24:5,7 26:19 30:13, 22,25 36:9 37:4 41:14 50:2 51:3, 17 52:8 54:11,16,17 55:22,23 56: 13 57:14 58:8,13 59:14 61:7,10 95:9,11 107:1,10 standards [3] 48:25 49:4 69:20 start [3] 84:12 85:10 92:22 starting [1] 11:23 State [10] 5:20 7:25 14:2,3 32:7 43: 14 64:9 69:11,18 101:21 state's [1] 69:18 state-specific [2] 14:11 47:24 statement [2] 50:4 77:18 STATES [16] 1:1,16 4:18 13:7,10, 13,24 25:20 43:9 50:17 51:5,15, 25 52:5 76:21 108:11 states' [1] 7:13 stating [1] 110:9 stationery [1] 101:2 status [1] 26:24 statute [21] 9:8 10:7,12 11:17 13: 20,25 14:17 15:12 31:8 38:14 42: 25 46:14 56:1,2 68:18 73:25 76: 20 88:8 90:12 106:2 110:23 statute's [1] 15:13 statutory [31] 4:20 8:21,24,25 9: 14 10:19 17:10 18:5 19:18 20:25 21:25 24:8 31:10 36:10,22 37:4 38:21 42:20 44:4 45:4 46:25 76: 16 79:2 82:22 83:4,17 85:13 88: 12 93:6 98:4 99:12 stayed [1] 100:7 stem [1] 82:23 step [2] 40:24 57:10 steps [1] 48:1 STEWART [101] 2:2 3:3,15 4:7,8, 10 5:8,11 6:4,15,25 7:4,10,23 8:1, 9,19 9:6,16 10:13 11:11,18,21 12: 12 13:1 14:15,20 15:2,8,13,18,23 17:7,14 18:3,17 19:7,15 20:5,21 21:2,13,14 22:3 23:4 24:3 25:5,22 26:12 27:1,5,8 28:7,18,22,25 29: 23 30:5,9,17,20,23 31:24 33:5,21 34:5 35:15,20,25 36:6,13 37:1,7, 15 38:3,15,19 39:8,11 40:1,11 41: 12,16,21 42:5,17,23 43:14,18,20 44:9 45:9 46:5,19 47:12,18 48:12 93:17 107:24 108:1,3 Stewart's [2] 57:15,19 still [9] 34:24,25 46:3 65:22 66:10 75:8 92:25 98:1 101:11 straight [1] 40:16 straightforward [1] 58:4 straying [1] 60:10 stretched [1] 86:24</p>	<p>strict [1] 56:4 stringent [2] 26:16,16 strong [2] 33:23 106:22 strongest [2] 33:7,7 struck [1] 9:18 structure [2] 96:2 106:12 structured [1] 91:12 struggle [1] 8:23 struggling [1] 9:24 studied [1] 87:10 study [1] 85:22 styles [2] 22:2,4 sub [1] 65:18 subject [8] 16:10 23:11 24:18 27: 22 31:16 71:9 86:20 94:14 submission [2] 51:8 71:13 submitted [7] 13:9 73:12 78:25 85:23 87:7 111:3,5 subsection [2] 56:5 65:20 subsequent [1] 47:1 subsidiary [1] 10:16 substantially [1] 4:25 substantive [1] 49:3 successful [1] 84:25 sue [1] 108:15 suffice [1] 91:22 sufficient [1] 83:18 sufficiently [5] 23:2,17,17,25 24: 17 suggested [4] 57:13 67:24,24 81: 3 suggestions [1] 60:4 suggests [1] 41:1 suit [3] 10:24 12:4 88:1 super-high [1] 85:11 super-unusual [1] 86:21 support [3] 2:7 3:9 48:17 suppose [2] 88:5 97:9 supposed [6] 12:3,10 18:2,13 93: 14 102:5 SUPREME [2] 1:1,15 survey [1] 77:6 sympathetic [1] 57:8 system [1] 12:18</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>talked [3] 19:7 30:14,15 task [3] 35:1,2 72:7 technology [1] 76:22 tells [3] 74:16 79:2 90:14 ten-year [1] 18:11 ten-year-old [1] 17:21 term [5] 15:19 26:14 31:2 65:6 101: 23 terms [5] 19:8 22:25 57:22 67:23 77:14 terribly [1] 34:25 test [15] 24:6,16 26:16 30:24 31:13, 17,19 36:3,4,8 39:12 65:11,12,17 68:5 tests [2] 36:2 58:3 Texas [1] 72:6 text [18] 70:15,24 71:2,6,11,19 74: 8,14,16 79:2 90:12,14 92:3 93:22</p>	<p>98:4 100:11 102:11,14 textual [2] 42:18 101:14 textually [1] 94:13 theoretic [1] 73:23 theories [3] 9:2 18:5,6 theory [19] 8:17,20 9:14 10:20 19: 23 20:7 21:25 26:21 36:10 44:4 55:6 71:21 82:18 83:18 88:11 97: 10 98:14,18,21 there's [20] 10:8,23 20:24,25 25: 15 37:20 56:8,10 59:21 63:23 69: 24 74:10 79:11 84:22 86:5 93:4 96:21 101:10 108:16 109:6 thereafter [4] 22:14 55:22,23 56: 12 thereby [1] 5:10 therefore [2] 40:2 66:21 they've [2] 7:5 11:19 thinking [2] 31:25 93:3 thinks [2] 31:19 38:23 third [41] 9:7 14:19 17:5 19:9 22:6 24:7 25:6,13,23 27:24 28:1,6 30: 19 57:5 64:4,5,5,24 65:2,3 74:9, 10 75:9,17 76:7,8,19 77:15 80:13 91:12,13 93:23 96:11 97:5 99:24 101:25 102:1 103:8,17,24 107:7 THOMAS [18] 5:8,25 6:12,22 22: 19 50:20 51:2 52:6,9,19 53:2 58: 25 59:1 72:10,15,22 73:18 103:1 Thomas's [1] 27:21 thorough [1] 86:2 though [4] 41:1 79:11 106:12 109: 2 three [1] 73:12 throughout [4] 70:23 71:5 76:23 101:3 tied [1] 27:24 today [5] 62:25 63:10 69:15 74:11 84:16 together [9] 6:6 8:8 20:3 21:4 25: 4 32:21 49:23 68:25 83:6 took [2] 53:6 87:7 total [3] 4:16 50:9,16 totally [1] 83:1 touch [1] 101:20 touched [1] 22:24 traditionally [1] 10:24 transport [1] 7:11 treated [1] 87:22 triggered [3] 107:8,13,17 true [7] 11:18 20:6 44:17 52:3 53:8 83:16 108:22 try [1] 75:24 trying [12] 9:24 12:20 15:24 18:14 23:15 38:4,5 45:4 68:20 80:15 104:4 106:9 Tuesday [1] 1:12 turn [4] 16:17,19 29:13 46:16 turning [2] 9:7 106:5 turns [2] 29:1 82:1 two [31] 11:11 19:15 20:3 32:13 36: 2,4 42:24 43:21 44:1 45:10 48:1 49:2,25 51:11,11 58:1,2 59:8,8,14 60:4 61:21 82:10 90:8 91:18,20,</p>
---	--	---	---

Official - Subject to Final Review

<p>20 93:23 95:20 110:6,12 two-part [2] 65:11,17 type [4] 13:8 22:7 35:2 109:21 types [1] 109:7 typical [1] 6:16 typically [2] 11:13 26:13</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ubiquity [3] 50:6 58:13 61:24 ultimate [2] 36:23 110:11 uncommon [1] 34:15 unconstitutional [1] 9:19 Under [33] 4:21 36:16,18 37:2,9,16 38:24 45:16,21 48:23 49:1,5,24 51:13 53:12 55:4,7,9,18,23 58:3 63:10,12 64:23 65:7,18,19 67:11 69:13,19 73:13 102:13 110:6 underlying [1] 42:21 underscored [1] 69:15 understand [17] 24:22 45:4 46:1 54:5,8 63:14,15 67:20 68:15,20 72:14 77:11 88:16 102:1 104:17 107:11,19 understanding [6] 27:20 57:21 63:12 77:6 83:2 90:24 understands [1] 99:12 understood [2] 72:25 75:22 undisputed [1] 110:9 undue [9] 10:18,23 11:2,6 15:11, 17,19 67:17,25 unestablished [1] 23:18 uniform [1] 86:23 unique [1] 56:2 uniquely [1] 21:23 UNITED [6] 1:1,16 13:24 43:8 50: 17 51:5 unless [2] 27:25 28:14 Unlike [2] 71:4 105:19 unlikely [1] 17:23 unsettled [6] 9:12 42:19,20 56:25 59:13 65:17 until [2] 6:9 7:19 unusual [1] 100:10 up [20] 6:11 7:1,19 8:16 21:17 27:6 32:10 49:20 79:24 80:2 83:24 86: 21 93:18 97:16 98:2 100:21 103:7, 9 104:2,4 updates [1] 27:13 upheld [4] 17:22 18:21 40:23 108: 7 urge [2] 84:11 103:15 uses [4] 10:12 56:12 70:20 99:10 using [1] 27:13 usual [1] 42:10</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>validity [5] 18:19 20:14 26:21 65: 17 109:10 various [1] 20:13 venue [29] 4:14,22 5:3,10 11:25 12: 10 13:16 16:7,15 18:13 57:9 70: 14 72:3 75:16 80:11 87:18 88:2,6, 7,8,15 96:13,15,21 97:4 103:22 106:13 108:17 110:3</p>	<p>venues [2] 10:25 12:24 vernacular [1] 68:3 versus [2] 4:5 106:3 Vicksburg [1] 88:25 view [19] 9:9 11:14,17,20,25 44:7 45:18 55:16,24 59:4 63:5,8 68:24 93:21 96:22 103:10 108:21 109: 25 110:6 viewable [1] 61:3 volume [2] 50:10 61:11 voluminous [1] 87:8</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>walks [1] 86:13 wanted [15] 12:13,17,19 17:5 21: 18 26:15 72:19 73:1 91:9,9,10 93:8 97:3 110:2 wants [2] 22:16 91:8 Washington [3] 1:11 2:3,5 wasting [1] 5:1 WAXMAN [40] 2:5 3:6 48:13,14,18 50:20 51:1 52:7,14,25 53:3,24 54: 3,21 57:17 58:23 59:2,7 60:12,21 61:17,21 62:10,16,19,22 63:1,5,8, 20,25 64:13,16,22 65:3 66:18 67: 3 68:2 69:2 70:5 way [29] 5:17 16:15 17:11,14,15 21: 6 32:1 33:2,25,25 46:7,15,18 61: 25 64:6,23 69:6 74:9 82:3,5 84:4 87:22 91:11 92:16 98:17 102:1,7 103:8 107:12 ways [2] 32:24 58:11 weed [1] 38:5 weight [1] 46:7 welcome [3] 5:7 50:19 72:9 whatever [2] 88:6 100:23 whenever [1] 33:8 Whereupon [1] 111:4 wherever [3] 51:4 70:22 101:3 whether [42] 5:15 7:2 10:8 11:25 13:19 15:10,11 17:9,11 23:25 24: 11,13 25:2,8,10,15 28:3 31:8 32: 11,11 37:19,20 40:7 43:25 49:22 51:9 52:12 59:23 61:18 63:23 66: 12,19 70:16 72:23 74:19 84:9 89: 18 90:13 94:9 96:20 98:6,16 whole [3] 100:13,25 101:7 will [32] 4:3 11:14 14:10,12 16:7,17 17:17,18,19 37:23 40:6 41:11 46: 21 47:2 48:24 50:15 51:3,19 52: 17 58:8,17 62:3 68:4 69:3 79:19 80:23,25 97:11 104:12 105:11 109:12 110:7 win [1] 12:3 wind [1] 100:21 wins [1] 109:16 wished [1] 28:10 within [2] 4:18 110:13 without [5] 28:6 35:5 49:9 68:25 108:18 word [7] 9:10 10:12 11:8 29:2 38: 15 86:1 98:13 words [4] 43:15 79:12 96:7 105:3 work [7] 16:8 18:10 77:7 85:17,18</p>	<p>93:21 106:23 works [3] 46:15 99:7 100:15 wound [2] 6:10 27:5 written [2] 92:3 97:5</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years [3] 17:12,16 73:12 York [3] 28:16,20 84:4 you's [3] 82:2,7 83:22 yourself [1] 29:19</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero [1] 41:6</p>
---	--	---