SUPREME COURT
OF THE UNITED STATES

          IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - - -

CYAN, INC., ET AL.,   )

          Petitioners,   )

               v.   ) No. 15-1439

BEAVER COUNTY EMPLOYEES RETIREMENT)

FUND, ET AL.,   )

          Respondents.   )

- - - - - - - - - - - - - - - - - - - -

Pages: 1 through 83

Place: Washington, D.C.

Date: November 28, 2017

1   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - - - - - - - - - - - - - - - -

3   CYAN, INC., ET AL.,   )

4   Petitioners,   )

5   v.   ) No. 15-1439

6   BEAVER COUNTY EMPLOYEES RETIREMENT)

7   FUND, ET AL.,   )

8   Respondents.   )

9   - - - - - - - - - - - - - - - - - - -

10   Washington, D.C.

11   Tuesday, November 28, 2017

12

13   The above-entitled matter came on for oral

14   argument before the Supreme Court of the United

15   States at 10:04 a.m.

16

17   APPEARANCES:

18   NEAL K. KATYAL, Washington, D.C.; on

19   behalf of the Petitioners

20   ALLON KEDEM, Assistant to the Solicitor General,

21   Department of Justice, Washington D.C.; on behalf

22   of the United States, as amicus curiae, in support

23   of affirmance

24   THOMAS C. GOLDSTEIN, Bethesda, Maryland; on

25   behalf of the Respondents

1   C O N T E N T S

16

17

18

19

20

21

22

23

24

25

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

 2                                    (10:04 a.m.)

 3              CHIEF JUSTICE ROBERTS:  We'll hear

 4    argument first this morning in Case 15-1439,

 5    Cyan versus Beaver County Employees Retirement

 6    Fund.

 7              Mr. Katyal.

 8              ORAL ARGUMENT OF NEAL K. KATYAL

 9               ON BEHALF OF THE PETITIONERS

10              MR. KATYAL:  Thank you, Mr. Chief

11    Justice, and may it please the Court:

12              Congress in 1998 reacted to a new

13    problem.  After its 1995 Reform Act, which

14    dealt with the crisis of abuse of federal

15    claims in federal court, plaintiffs had

16    responded by shifting their litigation to state

17    court.  The upshot was that the pre-'95 abuses

18    were happening; they were just happening in

19    state court.

20              Congress, in the Securities Litigation

21    Uniform Standards Act, SLUSA, took three steps.

22    First, it precluded certain causes of action.

23    Second, it modified its anti-removal bar.  And,

24    third, it eliminated concurrent jurisdiction

25    for many '33 Act federal claims in state court.
```

Official

1   Respondents disagree with this third

 2   one, but the text, structure, and purpose are

 3   all against them. And the best way of

 4   understanding our argument is this: If Beaver

 5   County brought the exact same complaint that

 6   they did here, alleging a federal '33 Act

 7   claim, but did one thing differently, they also

 8   brought a state law claim, they'd be knocked

 9   out of state court. That's their own reading.

10   But, they say, because they didn't

11   bring their state law count, they are now --

12   the state law claim, they are now entitled to

13   bring their federal claim in state court.

14   JUSTICE GINSBURG: Mr. Katyal --

15   MR. KATYAL: That makes zero sense.

16   JUSTICE GINSBURG: Well, one could

17   say, with respect to your argument, that

18   Congress chose a rather obtuse way of saying

19   that federal courts shall have exclusive

20   jurisdiction. It could have simply said, in

21   covered class actions related to claims under

22   the '33 Act, federal courts shall have

23   exclusive jurisdiction, period, and that would

24   be clear and everybody would understand and you

25   would prevail.

Heritage Reporting Corporation

    1   But the Congress certainly took an odd

    2   route to getting there.

    3   MR. KATYAL: Justice Ginsburg, we

    4   agree with you that this is an obtuse way of

    5   getting there. And, you know, this body could

    6   have written a much better statute than our

    7   friends across the street or so on, but I do

    8   think it's the best way of understanding the

    9   text. I'll explain why in a moment.

   10   And as I was saying a moment before,

   11   the anomaly on the other side is far worse.

   12   This would then -- in no other statute that

   13   they point to, that I've ever heard of, does

   14   bringing a state count force you out of state

   15   court, but that's their reading. And if

   16   Congress is going to do something that strange,

   17   you would expect them to have said so --

   18   JUSTICE SOTOMAYOR: I'm sorry, I

   19   thought the whole purpose, the main purpose, of

   20   SLUSA was just that, to ensure that claims of

   21   this particular type were not covered under

   22   state law but covered under federal law. If I

   23   accept that that was the main purpose of

   24   Congress's position, what difference does it

   25   make who adjudicates the claim if both courts

```
 1    are going to be bound by federal law?

 2              MR. KATYAL:  Justice Sotomayor, we

 3    disagree with the premise and what it

 4    eventually leads you to in your -- in your

 5    question to me in terms of your conclusion.  So

 6    we disagree that the main purpose was

 7    preclusion of state claims.  They pointed to

 8    nothing saying so.  And I'll walk you through

 9    the actual statutory findings in the text of

10    the statute which I think rebel at that.

11              And then even if it were a main

12    purpose to deal with the precluded claims,

13    there's certainly nothing to exclude, and I

14    think there's legislative history and the

15    statute itself is pretty clear that Congress

16    also had in mind the abuse that was going on

17    because these federal claims were being brought

18    to -- were being brought in state court.  And,

19    you know, the text of the statute itself,

20    Justice Sotomayor, says that.

21              JUSTICE SOTOMAYOR:  Doesn't your --

22    doesn't your reading contain an inherent

23    contradiction?  If the first clause is supposed

24    to preclude or give exclusive jurisdiction to

25    the district courts over all covered class
```

          1   actions, which under your reading includes even

          2   those that are not federal --

          3   MR. KATYAL: Yes.

          4   JUSTICE SOTOMAYOR: -- why then have

          5   the second "except"? Isn't there a tension

          6   between the two?

          7   MR. KATYAL: No, I don't think there's

          8   a tension. As our reply brief, you know, I

          9   think, outlines, it's exactly actually the

         10   compromise that was struck in the '34 Exchange

         11   Act because the Exchange Act --

         12   JUSTICE SOTOMAYOR: Well, you're --

         13   there's an inherent tension in the two "except"

         14   clauses otherwise. You're giving -- you're

         15   saying the second "except" helps you, but --

         16   MR. KATYAL: I don't --

         17   JUSTICE SOTOMAYOR: -- they're

         18   contradictory on that.

         19   MR. KATYAL: I don't think they're

         20   contradictory. I think that what our reading

         21   does is leave the '33 and '34 Acts in exactly

         22   the same position; that is to say that both of

         23   them say if you're bringing a federal claim,

         24   either '33 or '34, you can't bring it in state

         25   court. You're ousted of jurisdiction.

```
 1              JUSTICE SOTOMAYOR:  I -- I'm sorry.

 2    Your -- your -- your reading of that first

 3    "except" clause --

 4              MR. KATYAL:  Uh-huh.

 5              JUSTICE SOTOMAYOR:  -- is that it

 6    covers all covered class actions as defined in

 7    p(f)(2).  P(f)(2) defines covered class actions

 8    only as those that have 50 or --

 9              MR. KATYAL:  Correct.

10              JUSTICE SOTOMAYOR:  -- 50 or more

11    people, a certain amount of damages.

12              MR. KATYAL:  Correct.

13              JUSTICE SOTOMAYOR:  That could include

14    federal or state law claims.  Under your

15    reading, this reference to "except" is

16    definitional, p(f)(2).

17              MR. KATYAL:  Justice Sotomayor, you're

18    right to say that under our reading the except

19    -- the jurisdiction that is ousted of the state

20    court is greater than what is precluded by

21    Congress.  That was intentional.  What I'm

22    trying to say is that's exactly what happened

23    in the '34 Act.  And it's done so for good

24    reason, because as this Court said in

25    Chadbourne, when Congress is precluding
```

 1   something, that's very strong medicine. That's

 2   them saying to states you can't have this law

 3   at all, the substantive law, but when we're

 4   talking about jurisdiction over federal claims,

 5   Congress is the master of that and can -- they

 6   can decide, you know, where to bring a case and

 7   so on.

 8   Now, you had asked about the

 9   legislative history and I want to get back to

10   that because -- and the purpose because I do

11   think it is very strong. The purpose is found

12   in our blue brief -- the statutory findings are

13   in our blue brief at page 20. I want to

14   isolate three of them. This is the text of the

15   statute.

16   JUSTICE KAGAN: Could we -- I'm sorry,

17   could we -- could we just talk about the text

18   before we speak about the purpose --

19   MR. KATYAL: Sure.

20   JUSTICE KAGAN: -- which -- because,

21   you know, "except as provided" in 77p, the

22   natural way to read that is we look at 77p, the

23   whole thing, and we see what's the "except"

24   that's provided in. We don't look to an

25   ancillary definitional provision that all it

 1   does is define a term. We look for a rule that

 2   might be in conflict, that could be taken to be

 3   in conflict, with the jurisdictional provision.

 4   MR. KATYAL: Right. So --

 5   JUSTICE KAGAN: So, you know, it just

 6   seems as though your interpretation does a very

 7   odd thing, textually, when you read "except as

 8   provided" in Section 77p to say let's look to a

 9   definition in that section.

10   MR. KATYAL: So, Justice Kagan, you're

11   reading from Section 22(a), the "except"

12   clause, which is also v -- which is also

13   77v(a). It's found in our blue brief at page

14   8a. And you're absolutely right that the

15   clause says "except as provided" in Section 16.

16   And you'd say -- if that alone, which is the

17   part you read to me, were enough, you would

18   say, well, do you look to the definition? It's

19   unclear. But it's more than that because then

20   it says "with respect to covered class

21   actions." So there are two halves to this

22   "except" clause.

23   The first half is, you're right -- is

24   to say -- point you in the direction of where

25   to look, but it's the second part with respect

```
 1    to covered class actions that I think our

 2    reading gives effect to these words and theirs

 3    does not.  That is, it points you --

 4            JUSTICE ALITO:  Mr. Katyal, I had -- I

 5    had a similar concern as Justice Kagan.  Our

 6    late colleague wrote a book called Reading Law,

 7    which provides guidance about how you read

 8    statutes.  And I looked through that to see

 9    what we are supposed to do when Congress writes

10    gibberish.

11            And that's what we have here.  You

12    said it's obtuse.  That's flattering.

13            (Laughter.)

14            JUSTICE ALITO:  And we have very smart

15    lawyers here who have come up with creative

16    interpretations, but this is gibberish.  It's

17    -- it is just gibberish.

18            It says -- the provision that was read

19    says that the state courts have jurisdiction

20    over federal claims, except as provided in

21    Section 77p, which says nothing whatsoever

22    about jurisdiction for state -- for federal

23    claims.

24            MR. KATYAL:  So, Justice --

25            JUSTICE ALITO:  So what are -- what
```

```
 1     are we supposed to do with this?

 2              MR. KATYAL:  Justice Alito, I -- I

 3     think I'd say three things about that.  First

 4     is -- as I was saying to Justice Ginsburg, I

 5     don't think the statute's by any stretch a

 6     model of clarity, but I don't go so far as to

 7     say it is gibberish.  Your late colleague in

 8     that book did talk about how if you really

 9     can't figure it out, then you look to, for

10     example, the statutory findings, that even as a

11     textualist as he was, said, you know, look to

12     that to try and figure out what Congress was

13     getting at.  And this returns me to Justice

14     Sotomayor's claim -- question and the blue

15     brief at page 20, because the statutory

16     findings really do tell you, I think, what

17     Congress is doing.

18              They're as follows:  "Since enactment

19     of that [Reform Act] legislation, considerable

20     evidence has been presented to Congress that a

21     number of securities class action lawsuits have

22     shifted from Federal to State courts."

23              And then "this shift has prevented

24     that Act from fully achieving its objectives,"

25     and then "it is appropriate to enact national
```

1   standards [...] while preserving the

2   appropriate enforcement powers of State

3   securities regulators and not changing the

4   current treatment of individual lawsuits."

5   JUSTICE SOTOMAYOR: I'm sorry, that

6   says nothing about ousting the state courts.

7   It says providing national standards that will

8   control state enforcement agencies.

9   So whether it's state court or federal

10   court, it's still the same national standards.

11   MR. KATYAL: Well, it's not the same

12   national --

13   JUSTICE SOTOMAYOR: But -- but -- but

14   going --

15   MR. KATYAL: -- standards because

16   Congress cared very much about the procedures.

17   The whole Reform Act did things like say you

18   can't have professional plaintiffs, there are

19   limits on attorneys' fees, all sorts of stuff

20   --

21   JUSTICE SOTOMAYOR: What was very

22   clear in the Act is that there are certain

23   sections that were clearly intended to be

24   national, certain things that were and were not

25   covered, and then there were, you're right,

 1   some procedural aspects, but nowhere in those

 2   procedural aspects did Congress say they have

 3   to be followed both in state and federal court.

 4   MR. KATYAL: In the Reform Act, you're

 5   absolutely right, but I do think that is the

 6   way of understanding what SLUSA was doing.

 7   It's precisely because they weren't followed,

 8   Justice Sotomayor, in state court --

 9   JUSTICE SOTOMAYOR: Can we -- can we

10   go back to your definition? A covered class

11   action under, I call it 77p, it's just easier

12   for me, has a bunch of different subsections.

13   MR. KATYAL: Yes.

14   JUSTICE SOTOMAYOR: You're relying on

15   the definitional one. But each of the

16   pertinent ones also talks about class action

17   limitations, removal of covered class actions

18   by referencing "p" in its entirety.

19   What is either illogical, contextually

20   wrong, or improper about looking at all of the

21   provisions of "p" that talk with respect to

22   covered class actions?

23   MR. KATYAL: I --

24   JUSTICE SOTOMAYOR: Because b and c

25   are certainly talking with respect to covered

 1   class actions.

 2   MR. KATYAL: So I certainly agree with

 3   you, Justice Sotomayor, that when Congress used

 4   the -- and pointed to the entire clause, it

 5   could point to any part of the clause, you

 6   know, and I think the definition does give you

 7   the best indicia of it.

 8   But there's nothing that says that you

 9   should only look, as my friend on the other

10   side does -- says, only look at the preclusion

11   provisions.

12   After all, these are about

13   preclusions.

14   JUSTICE SOTOMAYOR: No, he's not doing

15   that. He's saying you look at every provision

16   that mentions or talks about the covered class

17   action.

18   MR. KATYAL: And if you did, then

19   you'd look to the definition as well. And that

20   would say, as I was saying to Justice Kagan,

21   except as provided in Section 16, so you look

22   to Section 16, with respect to covered class

23   actions, and you look to what that is.

24   JUSTICE KAGAN: Well, if your reading

25   were right, Mr. Katyal, it would be written

1   something like: Except with respect to class

2   actions as defined in -- not as provided by --

3   as defined in 77p(f)(2), not just 77p.

4   So there are two ways in which your

5   reading really does seem at odds with the

6   statutory text. First by not saying the -- the

7   text says provided in, you're saying defined

8   by, and, second, the -- the statute makes clear

9   you look to 77p as a whole, not to some

10   sub-subsection within it.

11   MR. KATYAL: So I don't think either

12   of those means that our reading is at odds,

13   Justice Kagan. I think all that suggests is

14   that, you know, as I was saying to Justice

15   Ginsburg, Congress had other ways of writing

16   the statute that are clear, that could have

17   been clearer, but this Court confronts this --

18   and this returns to Justice Alito's question --

19   all the time, in big cases like Burwell, in

20   small cases like Perry versus Merit Systems

21   Protection Board last term, you're dealing with

22   the statute that, maybe if you look at it one

23   way it's gibberish, maybe some of you could

24   have written it better, but it still has to be

25   given some meaning.

 1   And our reading of --

 2   JUSTICE GINSBURG: Under your reading

 3   -- under your reading, Mr. Katyal, are there

 4   any 1933 Act claims that could be brought,

 5   federal claims, under the 1933 Act that could

 6   be brought in state court?

 7   MR. KATYAL: Absolutely, Justice

 8   Ginsburg. And that's why, to return to your

 9   first question, why Congress didn't say

10   exclusive jurisdiction as they did in the '34

11   Act.

12   Congress in SLUSA made -- took care,

13   and this is Finding 5 that I had read to

14   Justice Sotomayor earlier, to say, look, we

15   want to preserve the vast majority of

16   concurrent jurisdiction in state courts.

17   That's individual lawsuits and class actions

18   that aren't covered. So that's derivative

19   actions or actions not seeking money damages or

20   actions for fewer than 50.

21   But if you accept their reading, what

22   you're essentially doing is saying, look,

23   Congress in this statute, they built this super

24   safe house, you know, in SLUSA with a front

25   door that was locked that had alarm systems to

1   bar against federal court abuse of federal

2   claims -- that's the Reform Act -- and then the

3   side doors they locked because they were

4   worried about state court abuse and federal

5   court abuse of state law claims -- that's

6   Justice Sotomayor's point -- but they didn't

7   even build the back of the house.

8   They didn't build even a door to deal

9   with the problem of all of this being repleaded

10   now in state courts. These are federal claims.

11   JUSTICE BREYER: -- kind of claims?

12   JUSTICE KAGAN: Well, but you're --

13   you're forgetting that most securities actions

14   are Exchange Act actions. They're not

15   Securities Act actions.

16   And for that, Congress did everything

17   it wanted because Exchange Act actions are all

18   in the federal courts. There is exclusive

19   jurisdiction there.

20   So essentially what was happening was

21   that in Exchange Act actions, it -- that

22   exclusive jurisdiction was being compromised by

23   the ability of people to bring state law

24   actions.

25   And Congress completely shut that

 1   down. So Congress did everything it wanted

 2   with respect to Exchange Act actions, which are

 3   the lion's share of securities lawsuits.

 4   MR. KATYAL: Justice Kagan, I don't

 5   know about lion's share or not, but it is very

 6   clear, manifestly clear, that SLUSA dealt with

 7   both problems, '33 and '34. There are two

 8   separate titles that deal with this.

 9   And there is a good -- you know, as

10   the amici here say, this is a huge problem on

11   the ground. You know, the Alibaba brief says

12   that 50 percent now of these '33 Act claims

13   involving IPOs, which, you know, if it's an

14   IPO, it's usually a '33 Act claim, 50 percent

15   of them have parallel --

16   JUSTICE BREYER: All right --

17   MR. KATYAL: -- federal and state

18   court litigation.

19   JUSTICE BREYER: Let me ask one

20   textual question and one purposeful question.

21   All right. The textual question,

22   think of v, okay, and v, it -- it talks about

23   "except as provided in 77p," et cetera, and

24   covered, "suits in equity and actions at law,"

25   does that phrase specifically refer to the '33

 1   Act?

 2   MR. KATYAL: Yes.

 3   JUSTICE BREYER: It says the '33 Act?

 4   MR. KATYAL: Yes, so it says -- it's

 5   all actions at law, and the next words -- and,

 6   again, I'm reading at Blue Brief page 8a.

 7   We're reading 22a or 77v(a): "Actions at law

 8   brought to enforce any liability or duty

 9   created by this subchapter." Created by this

10   subchapter.

11   JUSTICE BREYER: Well, does this

12   subchapter mean '34, '33 --

13   MR. KATYAL: Yes.

14   JUSTICE BREYER: -- or is it ambiguous

15   between the two?

16   MR. KATYAL: It's not ambiguous,

17   Justice Breyer. It is modifying the '33 Act.

18   JUSTICE BREYER: Yes.

19   MR. KATYAL: And that is crucial to

20   our argument. The title --

21   JUSTICE BREYER: Yeah, it is crucial,

22   okay.

23   MR. KATYAL: Yes. The title of --

24   JUSTICE BREYER: Yeah, yeah, yeah.

25   Your argument is stronger with that.

         1   MR. KATYAL: Absolutely.

         2   JUSTICE BREYER: I -- I -- I agree.

         3   MR. KATYAL: The title of this act is

         4   called -- this provision is called --

         5   JUSTICE BREYER: Yeah.

         6   MR. KATYAL: -- Jurisdiction of

         7   Offenses in Suits. It is about federal claims.

         8   JUSTICE BREYER: Okay, okay. I'll ask

         9   my question to the other side. The -- the --

        10   the -- the -- on the -- on the purpose, I -- I

        11   assumed that you put the strongest legislative

        12   history argument you could find on page 20 of

        13   your brief -- and that's when President

        14   Clinton, when he signed it and so forth and all

        15   that stuff you have there -- and -- and it

        16   seemed to me in reading through the legislative

        17   history, I couldn't find anything that really

        18   makes clear that it's referring to the '33 Act.

        19   It could be just referring to the '34

        20   Act, I think. Is there something you want to

        21   point me to that -- that would absolutely make

        22   clear that this is referring to the '33 Act?

        23   MR. KATYAL: I think the conference

        24   report does --

        25   JUSTICE BREYER: Where?

```
 1            MR. KATYAL:  -- in its very first
 2   lines.
 3            JUSTICE BREYER:  Says what?
 4            MR. KATYAL:  And I think it is talking
 5   about both the --
 6            JUSTICE BREYER:  In respect to --
 7            MR. KATYAL:  -- '33 and '34 Act.  And
 8   there's no --
 9            JUSTICE BREYER:  It's -- it's
10   absolutely clear on -- it's pretty clear on
11   that fact?
12            MR. KATYAL:  I do think it's clear.  I
13   think that, you know, that -- I mean, and
14   Congress, again, this returns to my point to
15   Justice Kagan --
16            JUSTICE BREYER:  All right.  Okay.
17   Okay.
18            MR. KATYAL:  -- Congress affirmatively
19   --
20            JUSTICE BREYER:  I'll go read that.
21   I'll read it.  I'll read it.
22            MR. KATYAL:  -- modified the '33 Act.
23            JUSTICE BREYER:  Got it.  I'll read
24   it.
25            JUSTICE SOTOMAYOR:  Assuming --
```

```
 1              JUSTICE BREYER:  My textual argument

 2    question is this.  My textual question is that

 3    what I think your argument, but perhaps not the

 4    government's argument, requires us to read c in

 5    a pretty unnatural way, that's -- that's p(c),

 6    see, because it says "as set forth in

 7    subsection (b)."

 8              So what you want us to do is to look

 9    at subsection (b) and you -- take that as

10    referring to -- which is possible, but it's

11    tough -- not having the words "based upon

12    statutory or common law of any state."

13              You see, because -- because if it --

14    if it picks that up, well, then -- then all

15    we're talking about is those actions that have

16    the state action within it are removable, which

17    explains the anomaly that you started out with

18    and it would just be an anomaly and you'd say,

19    well, it isn't a practical anomaly because no

20    sensible lawyer is going to include the state

21    one anymore.  He'll just include the '33 one.

22              MR. KATYAL:  Right.  So, Justice

23    Breyer, I get --

24              JUSTICE BREYER:  So how do I -- how do

25    I deal with that textual problem?
```

           1   MR. KATYAL: Certainly, I think the

           2   Solicitor General's way of dealing with that is

           3   available to you, but I think that our argument

           4   does not depend on, you know, on read --

           5   reading the removal provision the way it does.

           6   All our argument depends on -- it's a

           7   straight-forward reading, and it -- you know, I

           8   understand Justice Kagan --

           9   JUSTICE BREYER: It says "a covered

          10   security as set forth in subsection (b)." Now,

          11   there are commas around the (b), around that

          12   phrase I just read, I agree, but the most

          13   natural thing is it's referring to those

          14   covered actions that are referred to in (b).

          15   And what it refers to in (b) are covered

          16   actions all right, but -- but they're involving

          17   state law.

          18   MR. KATYAL: Right. So my only point

          19   to you is the first -- our argument is really

          20   about the first half, the jurisdiction clause.

          21   JUSTICE BREYER: Yeah.

          22   MR. KATYAL: And the jurisdiction

          23   clause is all you need to look at. It says

          24   that there's concurrent jurisdiction, that's

          25   what the '33 Act said, except as provided in

 1   Section 16 with respect to covered class

 2   actions. And so, in order to decide does a

 3   state court have jurisdiction, you look to

 4   Section 16 and you look to the definition of a

 5   covered class action.

 6   Our argument is that is, you know,

 7   it's not the -- you know, the usual way

 8   "provided" is -- is written -- Justice Kagan's

 9   right to say that -- but it's not such an

10   unusual way. There are other statutes that do

11   exactly this. You know, the National Guard

12   statute and the scholarship statute, vessels,

13   and the like, our example about -- you know,

14   about parking that's in our reply brief at page

15   5. These are ways of doing this.

16   And, again, I think that, you know, if

17   Congress was going to do what my friend on the

18   other side says --

19   JUSTICE BREYER: Uh-huh.

20   MR. KATYAL: -- which is to say that

21   by bringing a state law count in your federal

22   complaint, you now are ousted out of state

23   court, one would expect that --

24   JUSTICE SOTOMAYOR: All right.

25   JUSTICE BREYER: You --

```
 1              JUSTICE SOTOMAYOR:  So why not -- why

 2    not make the second "except" clause read

 3    identically?  But the Congress didn't.  Under

 4    your theory, assume somebody brings a 1933 Act

 5    claim, in state court, tied to a non-1933 state

 6    law action.

 7              Under your theory, what happens to

 8    that case?

 9              MR. KATYAL:  Yep.

10              JUSTICE SOTOMAYOR:  It can't get

11    removed because under (c) you can only remove

12    those claims that are -- state law claims that

13    are based on 1933.  And this says you can't

14    remove them.  So now what happens?

15              MR. KATYAL:  Right.  So, Justice

16    Sotomayor, you're exactly right that, under our

17    reading, the preclusion is narrower than the

18    ousted jurisdiction in SLUSA so that there is a

19    category of cases, non-covered securities or

20    claims that aren't about fraud, in which there

21    is no preclusion, but we believe there is no

22    state court jurisdiction over these federal

23    claims.

24              JUSTICE SOTOMAYOR:  So your theory is

25    that on those claims they just get ousted out
```

```
 1     of court, even though they have a non-covered,

 2     completely viable non-'33 state law action?

 3              MR. KATYAL:  Exactly.  And that's

 4     exactly the balance --

 5              JUSTICE SOTOMAYOR:  That's -- that's a

 6     fairly extreme result on a reading that bucks

 7     the presumption, and one that exists when

 8     there's an ambiguity, that says we presume in

 9     favor of concurrent jurisdiction.

10              So you're taking a very strong

11     presumption, turning it on its head, and saying

12     we're ousting state courts over jurisdiction of

13     securities actions that have nothing to do with

14     federal law.

15              MR. KATYAL:  So -- so two things.

16              JUSTICE SOTOMAYOR:  That's -- that's

17     what you're saying.

18              MR. KATYAL:  Well, I don't think

19     that's exactly right.  So two things.  First is

20     --

21              JUSTICE SOTOMAYOR:  Why is it not

22     exactly right?

23              MR. KATYAL:  Because, first, I don't

24     think this is some anomalous reading.  This is

25     reading the '33 Act exactly the way the '34
```

```
1    does.  Now, you say --

2              JUSTICE SOTOMAYOR:  No, this Act does

3    not preempt those state law non-1933,

4    non-federal actions.

5              MR. KATYAL:  Justice Sotomayor, with

6    -- with respect, it actually does.  SLUSA has a

7    removal provision and a preclusion provision

8    for the 1934 Act.

9              JUSTICE SOTOMAYOR:  For those state

10   law claims that relate to federal claims --

11   that relate to federal claims.  But it

12   explicitly exempts out those that don't.

13             MR. KATYAL:  With respect to state

14   claims, it's precluding --

15             JUSTICE SOTOMAYOR:  Exactly.  State

16   claims.

17             MR. KATYAL:  -- in the '34 Act, it's

18   precluding the same basket of state claims as

19   the '33 Act, and the jurisdiction, the way we

20   read it, is exactly the same.  That is, that

21   same category of cases, non-covered securities,

22   non-fraud cases, there's no jurisdiction in

23   state courts for them, but they are -- but they

24   don't happen to be precluded under both the '33

25   and '34 Act.
```

 1   JUSTICE SOTOMAYOR: Exactly.

 2   MR. KATYAL: Now, you -- and now, you

 3   had asked about the presumption about

 4   concurrent jurisdiction. And I don't think

 5   that presumption even applies here. Those

 6   cases that my friend cites are cases --

 7   JUSTICE SOTOMAYOR: So how about --

 8   MR. KATYAL: -- in which the statute's

 9   silent --

10   JUSTICE SOTOMAYOR: --

11   anti-commandeering cases? In what other

12   situation where we do not have a federal law

13   that preempts a state law have we ever

14   permitted the federal government to tell the

15   states that they can't adjudicate a case under

16   their own law?

17   MR. KATYAL: Well, my friend on the

18   other side hasn't even made that argument, but

19   I do think preclusion --

20   JUSTICE SOTOMAYOR: I -- I --

21   MR. KATYAL: -- and preemption --

22   JUSTICE SOTOMAYOR: -- I think it's a

23   very natural argument. Under what --

24   MR. KATYAL: Preclusion and preemption

25   are pretty natural concepts in the law. And --

```
 1              JUSTICE SOTOMAYOR:  But it's not --

 2    you just said to me the '33 and the '34 Act do

 3    not preclude certain state law securities

 4    actions.  If they're not precluded, how can we

 5    give a reading to this provision that would

 6    stop the state courts from adjudicating

 7    those cases?

 8              MR. KATYAL:  Justice Sotomayor, I'd

 9    caution the Court into adopting a ruling that

10    would call into question the constitutionality

11    of not just the '33 Act --

12              JUSTICE SOTOMAYOR:  No --

13              MR. KATYAL:  -- but the '34 Act.

14              JUSTICE SOTOMAYOR:  -- you can -- you

15    can pass a federal law that says this federal

16    law precludes these actions.  But if you don't

17    have one that says that --

18              MR. KATYAL:  But I think --

19              JUSTICE SOTOMAYOR:  -- how can you

20    order the state court not to adjudicate a claim

21    that is not precluded --

22              MR. KATYAL:  So the --

23              JUSTICE SOTOMAYOR:  -- that is

24    expressly not precluded.

25              MR. KATYAL:  The answer to this is
```

 1   found in the Senate report brief -- Senate

 2   report at page 4 in which they said we are very

 3   concerned for federalism reasons about

 4   preclusion because it's such strong medicine.

 5   But when we're dealing with jurisdiction, we

 6   have the ability to paint with a broader brush

 7   without interfering with federalism principles.

 8   Here, we're only talking about federal

 9   court count -- federal court causes of action,

10   and all Congress is saying is that they are the

11   master of that and you can't bring those in

12   state court when it's subject to very different

13   standards than you can in federal court.

14   JUSTICE GINSBURG: Mr. -- Mr. Katyal,

15   you make this as a -- as taking -- allowing a

16   state court to hear a federal claim that

17   shouldn't be there. But on your reading of

18   this statute, the cure is in your own hands,

19   because you agree with the government that you

20   could remove this case to federal court and

21   then you'd have your federal forum. But you

22   didn't do that. You didn't --

23   MR. KATYAL: So -- so you're about to

24   hear from the government about their -- their

25   theory. We do think it does solve a lot of the

1   policy concerns that Congress was getting at.

2   We think our textual reading is better

3   because we actually give effect to the 12 words

4   in the -- in the modification of federal court

5   jurisdiction. And so we think that's why you

6   should adopt our reading over the Solicitor

7   General's.

8   If I may reserve.

9   CHIEF JUSTICE ROBERTS: Thank you,

10   counsel.

11   Mr. Kedem.

12   ORAL ARGUMENT OF ALLON KEDEM

13   ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

14   IN SUPPORT OF AFFIRMANCE

15   MR. KEDEM: Mr. Chief Justice, and may

16   it please the Court:

17   Petitioners are correct that Congress

18   enacted SLUSA to reestablish federal courts as

19   the preferred venue for large class actions

20   involving nationally traded securities.

21   But it did so not by eliminating state

22   court jurisdiction over suits involving federal

23   claims but by permitting removal of such suits

24   from state to federal court.

25   Perhaps a good place to start, Justice

            1   Breyer, would be with your question about the

            2   removal provision and how, under the text of

            3   that provision, removal of actions that only

            4   involve federal claims is permitted. And I

            5   think it's easiest to understand if you're

            6   looking directly at it, 77p, subsection (c), on

            7   page 1a of the red brief.

            8   I think the question for the Court is

            9   whether the limiting clause, as set forth in

           10   subsection (b), modifies the phrase immediately

           11   before it, "involving a covered security," or

           12   instead modifies the phrase that comes at the

           13   beginning of the sentence, "any covered class

           14   action."

           15   If it modifies "any covered class

           16   action," Justice Breyer, I think you would be

           17   correct that what Congress would mean by that

           18   is the type of class action that's specified at

           19   subsection (b), which would have all of the

           20   criteria, including that it would be pleaded

           21   under state law.

           22   But if we're correct that instead it

           23   modifies "involving a covered security," then I

           24   think you would look to subsection (b) to

           25   answer the question what type of connection to

```
 1    a covered security did Congress have in mind

 2    when it used that phrase?

 3              JUSTICE BREYER:  Well, why, if all

 4    they wanted -- the parenthetical "as set forth

 5    in subsection (b)" -- that's the words we're

 6    talking about, right?

 7              MR. KEDEM:  That's correct.

 8              JUSTICE BREYER:  And it's in commas.

 9              MR. KEDEM:  That's correct.

10              JUSTICE BREYER:  Why wouldn't they say

11    "as set forth" and then they'd refer to (2)(a),

12    the definition of covered class action?

13              MR. KEDEM:  I think what we're talking

14    about is not just the definition of covered

15    class action.  It's what Congress meant by the

16    phrase "involving a covered security," which is

17    a phrase that doesn't have its own definition.

18              JUSTICE BREYER:  Ah.

19              MR. KEDEM:  And to figure out what

20    that means, you look at (b)(1) and (b)(2),

21    which talk about certain types of misconduct in

22    connection with the purchase or sale of a

23    covered security.  We think that's --

24              JUSTICE BREYER:  True, but then --

25    then -- suppose, all right, involving a covered
```

 1   class action. Now --

 2   MR. KEDEM: But it's not involving a

 3   covered class action.

 4   JUSTICE BREYER: What --

 5   MR. KEDEM: It's involving a covered

 6   security.

 7   JUSTICE BREYER: Involving a covered

 8   security.

 9   MR. KEDEM: And we think -- we think

10   for a few reasons it makes the most sense to

11   read the limiting clause as applying to that

12   phrase.

13   First of all, based on the rule of the

14   last --

15   JUSTICE KAGAN: So, Mr. Kedem, so now

16   I understand your argument, but -- but still it

17   doesn't really fit with (b)(1) and (2). I

18   mean, if it were just involving a covered

19   security, as set forth in subsection (b), you

20   would look to something which told you what a

21   covered security is.

22   But (b)(1) and (2) don't do that.

23   They talk about, you know, the kind of conduct

24   that's illegal.

25   MR. KEDEM: That's right.

 1   JUSTICE BREYER: Yeah.

 2   MR. KEDEM: Because it's not just

 3   modifying "covered security." It's modifying

 4   the phrase "involving a covered security." And

 5   you have to figure out what does it mean to

 6   involve the security in the relevant sense.

 7   Perhaps it would be useful to consider

 8   an example of a hypothetical statute in which

 9   Congress imposed liability for "impeding

10   interstate commerce as set forth in Section

11   100."

12   In that case, I think you would want

13   to look to Section 100 --

14   JUSTICE BREYER: Ah, I see. Okay.

15   MR. KEDEM: -- and the type of

16   impeding acts that are described there to tell

17   you what it means to impede in the relevant

18   sense.

19   JUSTICE BREYER: Okay. So your point

20   -- your point is involving a covered security?

21   MR. KEDEM: That's right.

22   JUSTICE BREYER: So you have to both

23   know what a covered security is, and you also

24   have to know is what kind of involvement.

25   MR. KEDEM: That's right. The first

```
 1    part is very --
 2              JUSTICE BREYER:  And so for covered
 3    security you could have just referred to (3)
 4    where they define it, but you have to know a
 5    second thing, which is how is it involved?
 6              MR. KEDEM:  That's correct.
 7              JUSTICE BREYER:  And (1) and (2) in
 8    (b) tell you how it is involved?
 9              MR. KEDEM:  That's right.  We think
10    that's the better reading, first --
11              JUSTICE BREYER:  Okay, I see.
12              MR. KEDEM:  -- based on the rule of
13    the last antecedent --
14              JUSTICE BREYER:  I see, I see, I see.
15              MR. KEDEM:  -- under which the
16    limiting clause is most naturally applied to
17    the thing that comes immediately before it,
18    rather than to something that comes earlier in
19    the sentence.
20              JUSTICE BREYER:  I see.
21              JUSTICE GINSBURG:  Should we pass on
22    -- pass on that in a case where there was no
23    effort to remove?  Removal isn't part of this
24    case.
25              MR. KEDEM:  That's right.  It's not
```

```
 1    squarely presented, but we do think that it's
 2    covered by the question presented in the
 3    following sense:  both Petitioners and
 4    Respondents make structural arguments about the
 5    relationship between the except clause and the
 6    anti-removal provision in the penultimate
 7    sentence of 77v, subsection (a).  And this is
 8    an explanation that responds to both of those
 9    arguments.
10              Moreover, Petitioners make a very
11    powerful policy-based argument that Congress
12    could not have intended for federal claims to
13    be stuck in state court where they wouldn't
14    benefit from the protections of the Reform Act.
15    That was the whole point of SLUSA.  This is
16    also a powerful response to that.
17              In addition, we do think that it would
18    be very useful --
19              JUSTICE GORSUCH:  So you --
20              MR. KEDEM:  -- that the lower court --
21              JUSTICE GORSUCH:  -- you understand
22    the -- the legislative history that Justice
23    Breyer was asking about is relevant to the '33
24    Act, not just the '34 Act?
25              MR. KEDEM:  That's -- that's right.
```

1   Congress was concerned about both acts.

2   In addition to the rule of the last

3   antecedent, I would point to the fact that in

4   between our two candidates for the limiting

5   clause, "any covered class action" at the

6   beginning of the sentence and "involving a

7   covered security" later on, there's an

8   intervening phrase, "brought in any state

9   court."

10   And that phrase doesn't have any

11   obvious analog in subsection (b), which, as the

12   Court is well aware, applies regardless of

13   whether you're in federal or state court. And

14   we think that strengthens the inference that

15   the limiting clause should be applied to the

16   thing adjacent to it.

17   JUSTICE KAGAN: Could -- I just want

18   to get the -- the best version of your

19   argument.

20   MR. KEDEM: Sure.

21   JUSTICE KAGAN: (1) and (2) involve a

22   covered security because what?

23   MR. KEDEM: Because they involve

24   certain types of misconduct in connection with

25   the purchase and sale of a covered security.

```
 1      In other words, what does it mean to involve a
 2      covered security in a sense that's relevant for
 3      the removal provision?  It has to have an
 4      omission with regard to that covered security,
 5      a false statement with regard to that covered
 6      security, and the like, the types of misconduct
 7      specified in those two provisions.
 8              JUSTICE SOTOMAYOR:  Counsel, what do
 9      you do with our statement in Kircher?  And I
10      know you try to distinguish it.
11              MR. KEDEM:  Sure.
12              JUSTICE SOTOMAYOR:  But it very
13      explicitly says removal and jurisdiction to
14      deal with removed cases is limited to those
15      precluded in the terms of subsection (b).
16              MR. KEDEM:  That's right.
17              JUSTICE SOTOMAYOR:  And that was the
18      very argument that was raised there.
19              MR. KEDEM:  Well, the Court said it
20      both ways in Kircher.  It said it that way,
21      that the two provisions, the scope of them is
22      identical, but it also said that they were
23      identical in that they both require certain
24      types of misconduct.
25              JUSTICE SOTOMAYOR:  Counsel, that's a
```

```
 1    bit of a stretch.  When I read the --

 2            MR. KEDEM:  Well --

 3            JUSTICE SOTOMAYOR:  -- opinion, every

 4    time it related to, itself to (1) or (2), it

 5    would say something like, like (1) and (2), or

 6    (1) and others.  It would not limit itself to

 7    just (1) and (2).  It would just --

 8            MR. KEDEM:  I think it was talking

 9    about the types of misconduct at issue in 1 and

10    2.  And the reason I think that is because the

11    specific argument that the Court was

12    considering in Kircher was the argument that

13    the plaintiffs made that the case did not

14    belong in federal court because it didn't

15    involve the purchase or sale of a covered

16    security.

17            The defendants responded:  Even if

18    true, that's an argument about preclusion under

19    subsection (b), not an argument about removal

20    under subsection (c).

21            JUSTICE ALITO:  Do you really think

22    that whoever wrote this removal provision

23    thought about all this stuff that you're

24    telling us now?

25            MR. KEDEM:  I'm not sure that they
```

```
 1    thought about the rule of the last antecedent

 2    and the like.  But I do think that --

 3              JUSTICE ALITO:  I mean, they set out

 4    to do what you say this does, and they decided

 5    this is the way we're going to do it.

 6              MR. KEDEM:  I think it's --

 7              JUSTICE ALITO:  It is SO far from

 8    reality that it really strains credulity.

 9              MR. KEDEM:  I think even if you think

10    that our reading is a little bit of a stretch,

11    I think the contrary reading is also a little

12    bit of a stretch.  I think --

13              JUSTICE ALITO:  I mean, all the

14    readings that everybody has given to all of

15    these proceedings -- provisions are a stretch.

16              (Laughter.)

17              MR. KEDEM:  I think -- I think --

18              JUSTICE ALITO:  I'm serious.  Is there

19    at a certain point at which we say this means

20    nothing, we can't figure out what it means,

21    and, therefore, it has no effect, it means

22    nothing?

23              MR. KEDEM:  Justice --

24              JUSTICE ALITO:  Can we not -- we have

25    to say it means something?
```

 1   MR. KEDEM: I would caution the Court

 2   against saying it means absolutely nothing. I

 3   do think that if the Court is concerned about

 4   the policy arguments that Petitioners raise,

 5   which we think are very important arguments,

 6   and based on the findings of fact in SLUSA

 7   these -- they are things that Congress was

 8   concerned about, we think that our removal

 9   argument gets to essentially the same place as

10   a policy matter but with a much more plausible

11   textual basis.

12   JUSTICE BREYER: Part of the problem,

13   I mean, I don't think -- I don't find this as

14   confusing as -- I mean, I might be wrong in how

15   I'm looking at it -- but as Justice Alito.

16   I'm thinking the drafter is given a

17   task and his task is to do two things,

18   economically, efficiently, I mean, that is

19   efficiently with words.

20   One thing he has to do is get rid of

21   these state actions. That's one. And the

22   second thing he has to do is to remove the

23   federal act cases into federal court. Okay?

24   And that's whether they're mixed, or not mixed,

25   or so forth.

1   MR. KEDEM: Right.

2   JUSTICE BREYER: If he was given that

3   task, this is the language that does it. But I

4   would expect there would be a report, and in

5   this report there would be an explanation such

6   as you gave me of the word "involving." And my

7   guess is there is no such report.

8   MR. KEDEM: That's correct.

9   JUSTICE BREYER: That moves me and --

10   MR. KEDEM: There is no such

11   explanation, but there's also no contrary

12   explanation that we're aware of.

13   JUSTICE BREYER: Well, that's true.

14   That's true.

15   MR. KEDEM: If I could add two more

16   textual points --

17   JUSTICE BREYER: Yeah.

18   MR. KEDEM: -- that support our

19   reading of the statute.

20   If what is meant is the contrary

21   reading, any covered class action of the sort

22   that's specified in subsection (b), it's not

23   clear what the words "involving a covered

24   security" would be doing in that sentence.

25   At best, it would be superfluous and

1   at worst confusing and distracting.

2   CHIEF JUSTICE ROBERTS: Thank you,

3   counsel.

4   Mr. Goldstein.

5   ORAL ARGUMENT OF THOMAS C. GOLDSTEIN

6   ON BEHALF OF THE RESPONDENTS

7   MR. GOLDSTEIN: Thank you, Mr. Chief

8   Justice, and may it please the Court:

9   When the Petitioners' lawyer stands up

10   and says in the first minute that his reading

11   is obtuse and when the Solicitor General's

12   lawyer spends the entire time on an argument

13   that isn't in any of their briefs in the case,

14   you know that the lawyers are scrambling to try

15   and figure out what the statute means.

16   And the way we think you would resolve

17   that is to recognize that these words actually

18   mean something. They may target a null set.

19   They may not accomplish anything. But this

20   Court has said in cases like Manning that if

21   Congress is going to change this kind of law

22   significantly, you don't find elephants in

23   mouse holes.

24   You don't say that obtuse language

25   disrupts and takes away from the state courts a

 1   long-standing form of jurisdiction, and that's

 2   what the other side wants to happen here.

 3   The Securities Act of 1933, unlike the

 4   '34 Act, always has provided for state court

 5   jurisdiction. That is the way it has always

 6   been. And if Congress wanted to disrupt that

 7   and get rid of that, it would say so quite

 8   expressly.

 9   JUSTICE KENNEDY: I -- I can see the

10   importance of deciding the removal issue here

11   because it's central to the interpretation of

12   the question -- the answer to the question

13   before us.

14   On the other hand, as Justice Ginsburg

15   pointed out, the case wasn't removed. Could

16   the -- a clear opinion be written and reserve

17   the removal question?

18   MR. GOLDSTEIN: Well, Justice Kennedy,

19   I have learned that the answer to the question

20   can the Supreme Court do X is always yes.

21   (Laughter.)

22   MR. GOLDSTEIN: You -- you can write

23   an opinion that says we agree, for example,

24   with the government and the Respondents that

25   this language at the very least isn't clear

```
 1     enough to accomplish this result.  We reserve

 2     for another day the removal question.

 3            To be -- and that honestly as a matter

 4     of jurisprudence is probably the right thing to

 5     do.  You're talking about two things.  They

 6     didn't remove it and it's not in the question

 7     presented.

 8            And if you want to signal to the

 9     lawyers how it is that we're supposed to

10     litigate these cases, that's probably not the

11     -- the best signal to send.

12            On the other hand, it's true, for

13     example, that if the Court were to understand

14     the Kircher decision that we do and the

15     structure between (b) and (c) in 77p as having

16     a parallel in v(a), one could effectively

17     resolve the removal question, but you could

18     only, essentially, resolve it in the favor of

19     non-removal.  I -- it would be very hard, I

20     think, to write an opinion honestly that says

21     what should happen here is these cases should

22     be removed under 77p(c).

23            JUSTICE GORSUCH:  Mr. Goldstein,

24     speaking of gibberish --

25            MR. GOLDSTEIN:  Yes?
```

 1   JUSTICE GORSUCH: -- aren't we stuck

 2   with gibberish your way too? I mean, it seems

 3   like it's gibberish all the way down here --

 4   MR. GOLDSTEIN: It --

 5   JUSTICE GORSUCH: -- because --

 6   because under your version, as I understand it,

 7   v(a), that first "except" clause, is

 8   superfluous. It doesn't -- doesn't do

 9   anything. And also we render "involving a

10   covered security," that language, potentially

11   superfluous in (c).

12   MR. GOLDSTEIN: Okay. So --

13   JUSTICE GORSUCH: So help me out with

14   that.

15   MR. GOLDSTEIN: I -- I --

16   JUSTICE GORSUCH: And -- and I know --

17   I know we generally -- you know, we -- nobody

18   likes gibberish, but it is our job to try and

19   give effect whenever possible to Congress's

20   language. It's not for us to assume that

21   Congress's language means nothing --

22   MR. GOLDSTEIN: Sure.

23   JUSTICE GORSUCH: -- and was a waste

24   of time. It went through bicameralism and

25   presentment. And, normally, respect for the

```
 1    legislative process dictates that we afford

 2    some meaning to these words.

 3              MR. GOLDSTEIN:  Fair -- fair enough.

 4    I will say, however, just to be clear, that you

 5    do have a background presumption that Congress

 6    would do something like this clearly and these

 7    are conforming amendments.  To be sure, if you

 8    decided that my reading just came up with

 9    nothing and his was perfectly sensible --

10              JUSTICE GORSUCH:  But --

11              MR. GOLDSTEIN:  -- we would have a

12    problem.

13              JUSTICE GORSUCH:  -- doesn't yours --

14              MR. GOLDSTEIN:  No.

15              JUSTICE GORSUCH:  -- indeed come up

16    with nothing --

17              MR. GOLDSTEIN:  No.  It doesn't.

18              JUSTICE GORSUCH:  -- with respect to

19    that first "except" clause and also with

20    respect to the "provided" -- "involving covered

21    securities" --

22              MR. GOLDSTEIN:  Sure.  So two things

23    about that --

24              JUSTICE GORSUCH:  -- language?  Help

25    me out with that.
```

1   MR. GOLDSTEIN: Okay. So the phrase

2   "except as provided in section X with respect

3   to subject matter Y" appears throughout the

4   U.S. Code a bunch of times.

5   JUSTICE GORSUCH: I'm talking about

6   this one now.

7   MR. GOLDSTEIN: Okay, I promise that

8   --

9   JUSTICE GORSUCH: Let's get there.

10   MR. GOLDSTEIN: Okay. Mixed cases is

11   one example. Also the cases like those

12   described in your Merrill Lynch versus Manning

13   decision. So there are cases that involve

14   either a state law claim that isn't expressed

15   -- that -- that relies on the Securities Act of

16   -- the '33 Act, for the substantive standard or

17   a case that combines a '33 Act case with also a

18   state law case. And so --

19   JUSTICE GORSUCH: Help -- help me out.

20   How -- how --

21   MR. GOLDSTEIN: Okay. So what would

22   happen is that if Congress had not amended

23   v(a), what you would have had is, in 77p(b), a

24   prohibition on a complaint that combines a

25   state law --

```
 1                JUSTICE GORSUCH:  Right.  It's a --
 2      it's a straight prohibition, this Court has
 3      said, in Kircher.  It's not -- it has nothing
 4      to do with jurisdiction.
 5                MR. GOLDSTEIN:  Well --
 6                JUSTICE GORSUCH:  It's a preclusion
 7      provision.
 8                MR. GOLDSTEIN:  Okay.  Fair enough.
 9                JUSTICE GORSUCH:  So -- so --
10                MR. GOLDSTEIN:  It is -- it is much
11      closer to a jurisdiction --
12                JUSTICE GORSUCH:  You don't need it.
13                MR. GOLDSTEIN:  It is much closer to a
14      jurisdictional provision than the definition in
15      (f)(2).  It says shall not be --
16                JUSTICE GORSUCH:  Well, this Court --
17      this Court has said it's a preclusion
18      provision.
19                MR. GOLDSTEIN:  Okay.
20                JUSTICE GORSUCH:  So we're stuck with
21      that --
22                MR. GOLDSTEIN:  Okay.  But it is --
23                JUSTICE GORSUCH:  -- all right?  Work
24      with -- work with -- just let me -- work with
25      me, all right?
```

```
 1              MR. GOLDSTEIN:  Sure.

 2              JUSTICE GORSUCH:  You can't refer to

 3      (c) because we have another "except" clause

 4      that refers to (c).  So it has to refer to (b),

 5      but there's no point in referring to (b) if

 6      Kircher is right and this is just a preclusion

 7      provision.

 8              MR. GOLDSTEIN:  I would disagree.  And

 9      so, if you were to ask -- to Justice Breyer's

10      point, if -- if you gave a drafter a mission,

11      what would they do?  If I -- if this is the

12      mission and that is (b) -- under 77p(b), what

13      we're going to do is bar complaints, call it

14      preclusion, bar complaints that combine a state

15      law claim that involves a covered security and

16      is a covered class action with a -- some other

17      claim, so a '33 Act claim.

18              And if what you wanted to do is avoid

19      confusion about what you do with the concurrent

20      jurisdiction under v(a), because that same

21      complaint would both be precluded under p(b)

22      and within the concurrent jurisdiction of the

23      states under v(a), it makes perfect sense to

24      have a conforming amendment that says, okay,

25      the -- the concurrent jurisdiction doesn't
```

```
 1    include the cases that we just barred in p(b).

 2              JUSTICE GORSUCH:  But that's stating

 3    the blindingly obvious.

 4              MR. GOLDSTEIN:  Oh, well, you know, to

 5    Mr. Katyal's point about closing doors --

 6              JUSTICE GORSUCH:  That's superfluous.

 7              MR. GOLDSTEIN:  -- and windows and

 8    everything -- it is not superfluous.

 9              JUSTICE GORSUCH:  It's closing a door

10    twice.  It's not closing a window.

11              MR. GOLDSTEIN:  It is not superfluous,

12    sir, because, remember, jurisdiction says the

13    courts don't have jurisdiction no matter if the

14    defendant invokes this matter -- this provision

15    or not.  It is a categorical instruction to the

16    courts; whereas p(b) is something that --

17              JUSTICE GORSUCH:  Okay.  You haven't

18    helped me out much there.  Maybe you can help

19    me with the -- the language in -- in (c),

20    "involving a covered security."

21              MR. GOLDSTEIN:  Sure.

22              JUSTICE GORSUCH:  How is that not

23    superfluous on your reading?

24              MR. GOLDSTEIN:  It is only an

25    indication of where it is that you look in p --
```

1   in 77p, because there are a lot of provisions

2   that are in 77p. So, if you say look at 77p,

3   what happens to covered securities? If I just

4   -- if you just take the language in these terms

5   and you ask what does 77p provide with respect

6   to covered securities --

7   JUSTICE GORSUCH: I think we're

8   speaking past each other again, because I --

9   I'm referring to, I'm sorry, 77p(c), all right?

10   MR. GOLDSTEIN: Oh.

11   JUSTICE GORSUCH: Which says "any

12   class -- covered class action brought in a

13   state court involving a covered security as set

14   forth in subsection (b)." The government's

15   position is that the words "involving a covered

16   security" must be doing some work. And it

17   seems to me --

18   MR. GOLDSTEIN: Oh, I -- I -- I'm not

19   sure what you're reading from, sir. You're

20   talking about in v(a) --

21   JUSTICE SOTOMAYOR: The removal.

22   JUSTICE GORSUCH: The removal

23   provision.

24   MR. GOLDSTEIN: Of v(a)?

25   JUSTICE GORSUCH: No.

                1   MR. GOLDSTEIN: Okay. Of 77p(c)?

                2   JUSTICE GORSUCH: P(c).

                3   MR. GOLDSTEIN: Okay. Great.

                4   JUSTICE GORSUCH: Okay? Still p(c).

                5   MR. GOLDSTEIN: Yes. Right.

                6   JUSTICE GORSUCH: All right? "Any

                7   covered class action brought in a state court

                8   involving a covered security as set forth in

                9   (b)." The government makes the argument that

               10   if, in fact, all you were doing was referring

               11   to (b), including state law classes -- state

               12   law causes of action, you wouldn't need

               13   "involving a covered security."

               14   MR. GOLDSTEIN: There's going to be --

               15   JUSTICE GORSUCH: That language would

               16   be superfluous.

               17   MR. GOLDSTEIN: Well, there would be

               18   superfluity on anybody's reading because

               19   "brought in any state court" would also be

               20   arguably superfluous; "any covered class

               21   action" would be superfluous. If all you're

               22   doing is saying pick up the cases in (b) --

               23   what Kircher says and I do think it does --

               24   Justice Sotomayor is right that it --

               25   JUSTICE GORSUCH: No, no, because

1   we're talking about removal here. So you have

2   to identify cases that are in state court in

3   order to do any of that.

4   MR. GOLDSTEIN: Okay. Well, then any

5   covered class action. Okay?

6   JUSTICE GORSUCH: Any covered class

7   action could be one in federal court. So it

8   makes sense to put it --

9   MR. GOLDSTEIN: No, I'm just saying in

10   terms of it would be superfluous as -- as well.

11   JUSTICE GORSUCH: I don't see why, any

12   covered class action brought in state court may

13   be removed.

14   MR. GOLDSTEIN: Well, everything --

15   JUSTICE GORSUCH: That makes sense.

16   MR. GOLDSTEIN: Well, every -- (b),

17   everything that is in (b) is with respect to a

18   covered class action. To the point that this

19   statute is not drafted with incredible

20   precision, what Kircher says is going on in

21   SLUSA is in (b) we're going to ban a set of

22   cases; in (c) we're concerned that we might

23   have recalcitrant state courts; the cases that

24   are banned in -- in (b) can be removed under

25   (c).

```
 1            And I don't even think this last

 2    antecedent argument would help the other side

 3    very much for two reasons.  The first is the

 4    last antecedent is "covered securities."  It's

 5    not "involving a covered security."

 6            And the second is you have to ask,

 7    Justice Kagan, when -- when they refer to

 8    involving a covered security, it's not just

 9    involving a covered security in the air; it is

10    an action involving a covered security.  And

11    that action has to be one that's based on state

12    law.

13            JUSTICE KAGAN:  I'll -- I'll add to

14    that.  I mean, as I stare at it a little bit

15    more, I wish I had asked Mr. Kedem, "and shall

16    be subject to subsection (b)," because that

17    suggests that it has to be dismissed, and you

18    wouldn't want to dismiss the kind of cases that

19    Mr. Kedem wants to remove.

20            MR. GOLDSTEIN:  His whole point is

21    that you wouldn't dismiss them, but that's Your

22    Honor's point.

23            JUSTICE KAGAN:  Yeah, but that would

24    make "and shall be subject to subsection (b)"

25    superfluous and -- and essentially mean
```

 1   nothing.

 2   MR. GOLDSTEIN: Right. So just to

 3   circle back around to the question, and,

 4   Justice Alito, you -- you have pointed out that

 5   maybe this thing does nothing at all. That may

 6   well be true. We do think it picks up the

 7   mixed cases. The mixed cases did exist

 8   previously, but --

 9   JUSTICE ALITO: What sense does that

10   -- what sense does that make? The fed -- the

11   state courts have concurrent jurisdiction over

12   '33 Act claims, except if a lawyer is foolish

13   enough to include in the state court complaint

14   state claims that fall within the -- the

15   prohibition? What -- what sense does that

16   make?

17   MR. GOLDSTEIN: Well, Justice Alito,

18   it would make sure that there isn't confusion.

19   It would resolve an ambiguity.

20   It's not intended to do very much.

21   It's a conforming amendment. We don't think

22   that the statute -- this provision, which isn't

23   discussed anywhere in the legislative history

24   at all, is intended to accomplish very much.

25   All it's intending to do, we think,

 1   and it obviously didn't do it, is --

 2   JUSTICE GINSBURG: Which -- which

 3   provision are we talking about?

 4   MR. GOLDSTEIN: The v(a) amendment of

 5   the jurisdictional provision.

 6   JUSTICE GINSBURG: So you -- are you

 7   answering the road to nowhere?

 8   MR. GOLDSTEIN: Yes. I'm answering

 9   the road to nowhere. We don't think that it is

10   a road to nowhere because it does make clear

11   that the courts, without regard to whether or

12   not the defendant invokes p(b), do not have

13   jurisdiction. It actually accomplishes that

14   result. But no matter --

15   JUSTICE GINSBURG: Is it just matching

16   the jurisdictional to the preclusion and

17   removal?

18   MR. GOLDSTEIN: All right. If you --

19   if you told someone to write a statute that

20   says modify v(a) to make sure there isn't

21   jurisdiction over the cases we just banned, you

22   would use this exact language.

23   And the one thing I do want to be

24   clear on is that this phrase -- we do start

25   just with the simple text, that phrase, "except

         1   as provided in section X with respect to

         2   subject matter Y," everywhere in the U.S. Code

         3   it's used refers to the -- the person to a

         4   rule. It's the opposite of a "notwithstanding"

         5   clause.

         6   It always has some measure of

         7   superfluity -- superfluity. What it's doing is

         8   just -- you've got two different provisions and

         9   it tells you which one controls. A

        10   "notwithstanding" provision --

        11   JUSTICE GINSBURG: Mr. Goldstein, why

        12   -- why would Congress want to do that, given

        13   that if the federal claim is in federal court,

        14   there are, as Mr. Katyal pointed out, all these

        15   restrictions on counsel and who's the

        16   represented party? You have the same -- the

        17   federal claim in state court, and none of those

        18   restrictions apply.

        19   MR. GOLDSTEIN: That's the usual rule,

        20   Justice Ginsburg. And, remember, we have a

        21   really good indication that's what Congress

        22   intended, because that's the PSLRA. Congress,

        23   when it wrote the PSLRA against the backdrop of

        24   state law -- state court secured -- '33 Act

        25   class actions, wrote it to say that the

 1   procedural protections apply in cases that are

 2   -- are subject to the Federal Rules of Civil

 3   Procedure.

 4   What it decided to do is it matched

 5   the same compromise that's in the '33 Act

 6   itself, which is it allowed these cases to be

 7   decided in state court. And as we explained,

 8   state courts have their own discovery stays.

 9   They have it in their rules.

10   JUSTICE BREYER: There, I -- I see

11   that. But, look, I have one textual question

12   on your side.

13   MR. GOLDSTEIN: Sure.

14   JUSTICE BREYER: My textual question,

15   which we're discussing now, is we go to v.

16   MR. GOLDSTEIN: Yeah.

17   JUSTICE BREYER: And let's look at the

18   second part, which says "except as provided" in

19   p(c) --

20   MR. GOLDSTEIN: Yeah.

21   JUSTICE BREYER: -- you can't remove

22   it.

23   MR. GOLDSTEIN: Yes.

24   JUSTICE BREYER: So that means if it's

25   provided -- "except" as provided in p(c).

    1   MR. GOLDSTEIN: Yep.

    2   JUSTICE BREYER: And it's talking

    3   about the '33 Act.

    4   MR. GOLDSTEIN: Yes.

    5   JUSTICE BREYER: All right. So now

    6   let's go over to -- to c. And since they're

    7   talking about removal of a '33 Act case --

    8   MR. GOLDSTEIN: A case with a '33 Act

    9   claim.

   10   JUSTICE BREYER: With a '33 Act claim.

   11   MR. GOLDSTEIN: Yes.

   12   JUSTICE BREYER: A case with a '33 Act

   13   claim, we look to (c) and say (c), therefore,

   14   must refer in part to cases with '33 Act

   15   claims.

   16   MR. GOLDSTEIN: Yes.

   17   JUSTICE BREYER: And if that's so,

   18   since -- involving a covered security --

   19   MR. GOLDSTEIN: So, it would be a

   20   mistake --

   21   JUSTICE BREYER: -- if it refers to --

   22   if it refers to all of v, including the state

   23   law problem, there is virtually no scope.

   24   MR. GOLDSTEIN: No, that's not true.

   25   It's the mistake.

```
 1              JUSTICE BREYER:  Ah, you're going to
 2    -- I get it.  I get it.  You're going to say --
 3              MR. GOLDSTEIN:  Here's what I think
 4    happened.
 5              JUSTICE BREYER:  All right.  Is this
 6    the answer?
 7              MR. GOLDSTEIN:  Yeah.  So SLUSA is a
 8    door-closing statute.
 9              JUSTICE BREYER:  Yeah.
10              MR. GOLDSTEIN:  It looks back to the
11    PSLRA and says we've had a statute that's been
12    evaded a bunch.  We just don't want it to
13    happen again.  So we're going to ban a set of
14    cases that have shifted from federal to state
15    court.  Those are '34 Act cases by and large.
16    We're going to ban those.  What might a clever
17    plaintiff's lawyer do?
18              Well, what they might do is slap a '33
19    Act claim on here and say it's still within the
20    concurrent jurisdiction of the state courts.
21    So we're just going to make clear that's not
22    true.  That's all --
23              JUSTICE BREYER:  Okay.
24              MR. GOLDSTEIN:  -- that this provision
25    does.
```

```
1            JUSTICE BREYER:  Now, this is my
2    choice then.  All right.  The choice is reading
3    v for '33 Act, back to c, and when they talk
4    about (c), which refers to (b), they either
5    mean all of (b), which is a case with a state
6    law claim in it --
7            MR. GOLDSTEIN:  Yes.
8            JUSTICE BREYER:  -- and also a '33 Act
9    claim.
10           MR. GOLDSTEIN:  Yes.
11           JUSTICE BREYER:  That's your view.
12           MR. GOLDSTEIN:  Yes.
13           JUSTICE BREYER:  Or the government's
14   view is that involving just refers to (1) and
15   (2) in (b) and so it refers to '33 Act claims
16   sitting there by themselves in state court,
17   too.
18           MR. GOLDSTEIN:  Right.
19           JUSTICE BREYER:  That's my choice,
20   right?
21           MR. GOLDSTEIN:  Yes.
22           JUSTICE BREYER:  And I've got to see
23   which of those two makes more sense in terms of
24   the Act, which is why I started out with I want
25   to know what they want to do --
```

          1   MR. GOLDSTEIN: Sure.

          2   JUSTICE BREYER: -- with '33 Acts --

          3   MR. GOLDSTEIN: Sure.

          4   JUSTICE BREYER: -- because a '33 Act

          5   is a big deal here.

          6   MR. GOLDSTEIN: Right.

          7   JUSTICE BREYER: Then the -- the SG's

          8   position looks better.

          9   MR. GOLDSTEIN: Sure.

         10   JUSTICE BREYER: And if it's a not

         11   much of a deal, a throwaway --

         12   MR. GOLDSTEIN: Right.

         13   JUSTICE BREYER: -- then yours looks

         14   better.

         15   MR. GOLDSTEIN: Right. And so --

         16   JUSTICE BREYER: Is that right?

         17   MR. GOLDSTEIN: Yes. So here is why

         18   you know that the '33 Act is the tail and the

         19   '34 Act is the dog. The -- the legislative

         20   history and the findings that my friend talks

         21   about refer to the shift of cases from federal

         22   to state court. These are not cases that

         23   shifted. '34 Act case shifted.

         24   The '34 Act requires you to file in

         25   federal court. What happened is people instead

 1   brought securities fraud cases under state law

 2   in state court to avoid the PSLRA. Fine. But

 3   that's not what happened here.

 4   Our case was under the Securities Act

 5   -- the '33 Act. It was fine in state court

 6   before the PSLRA. Congress didn't change that

 7   in the PSLRA. It's not an evasion of any

 8   existing standard. All the rules that applied

 9   to the '33 Act continue to apply to it.

10   So what Congress was concerned about

11   is a body of cases moving out of federal court

12   to state court. These cases have been within

13   the concurrent jurisdiction, non-removable, of

14   the state courts since the day the statute was

15   enacted. That's the compromise.

16   JUSTICE ALITO: If a plaintiff files a

17   third -- files a claim in state court under a

18   state law cause of action that mirrors the '33

19   Act in the -- in the respects that are set out

20   in the statute, the state court can't entertain

21   that. Am I right?

22   MR. GOLDSTEIN: That is correct.

23   JUSTICE ALITO: Okay. Now given that,

24   why in the world would Congress want the state

25   court to be able to entertain the real thing,

 1   an actual '33 Act?

 2   MR. GOLDSTEIN: Because what Congress

 3   is targeting is it just doesn't want this

 4   resolved under state law. It wants it resolved

 5   under the '33 Act. It does want these

 6   nationally-traded securities cases to be

 7   litigated under federal law.

 8   JUSTICE ALITO: I thought it -- what

 9   it wanted was it to be resolved under federal

10   procedural law?

11   MR. GOLDSTEIN: No, that is not

12   uniformly true. Remember, we're talking about

13   a concern of the evasion of the PSLRA. And

14   Congress quite --

15   JUSTICE ALITO: Yeah, they wanted to

16   -- they wanted to resolve in accordance with

17   the PSLRA.

18   MR. GOLDSTEIN: Right. And the PSLRA

19   --

20   JUSTICE ALITO: Which wouldn't apply

21   in state court.

22   MR. GOLDSTEIN: Exactly right. And so

23   that's our point and, that is, this is not an

24   evasion of the PSLRA. If Congress wanted to

25   delete the phrase in the PSLRA in cases that

          1   are subject to the Federal Rules of Civil

          2   Procedure and extend the PSLRA to the state

          3   court, or if it wanted to make all these cases

          4   removable or if it wanted to refer to a

          5   definition, there are 10 different easier ways

          6   and more clear ways, rather than to pick up a

          7   phrase that is not used in this way in the U.S.

          8   Code anywhere at all.

          9   I did want to just respond to an

         10   anomaly, it's akin to the one that you just

         11   described as possible, that my friend talks

         12   about. He says this: Look, under the

         13   Respondents' view, if what you did was combine

         14   a '33 Act claim with a state law claim, then we

         15   admit that case would be litigated in federal

         16   court. That is not correct.

         17   Under 1441, this is what would happen,

         18   is that the case would be removed to federal

         19   court and under 1441(c) would mandate severing

         20   out the prohibited state law claim and the case

         21   would be remanded to state court and it would

         22   be litigated in state court as a matter of law.

         23   JUSTICE ALITO: The whole mixed case

         24   thing doesn't make the first bit of sense to

         25   me, that you've got the federal -- you have the

 1   '33 Act claim and you have the prohibited state

 2   act claim in state court.

 3   So then the state court knows -- has

 4   no jurisdiction whatsoever. What's going to

 5   happen? The defendant moves to dismiss. The

 6   plaintiff says, okay, fine, I dismiss my -- my

 7   -- my state act claim.

 8   MR. GOLDSTEIN: Right.

 9   JUSTICE ALITO: Or the judge is going

10   to say, oh, it's too late. You combined them

11   to start out. The whole thing is dismissed.

12   And then, if the statute of limitations hasn't

13   run, the plaintiff can just come back and file

14   the federal -- the '33 Act claim in state court

15   by itself. Right?

16   MR. GOLDSTEIN: Yes, but that's only

17   because of SLUSA because what SLUSA is doing is

18   barring the state law claim. That wouldn't be

19   true if SLUSA didn't exist.

20   And I just think that you just have to

21   -- look, this is a narrow provision, not

22   discussed in the legislative history. You

23   can't ask it to do the world, which is to undo

24   the jurisdiction of the '33 Act that has

25   existed a long time and, that is, it's another

 1   anti-evasion principle.

 2   I do want to respond as well to my

 3   friend's statement that what he -- he says the

 4   exact opposite thing. He says his position

 5   produces a direct parallel between the '33 and

 6   '34 Act, and then to Justice Ginsburg says it

 7   treats the '33 and '34 Act wildly differently.

 8   It does treat them quite differently,

 9   and that is he is pointing to statements in the

10   legislative history that suggest that some

11   members of Congress believe that all securities

12   cases would be litigated in federal court. But

13   he leaves behind all of the non-class actions

14   and he picks up cases that SLUSA clearly was

15   not intended to apply to, and that is

16   non-covered securities.

17   SLUSA is quite clear about this, that

18   it is intended to respond only with respect to

19   the nationally-traded securities that are

20   defined as covered securities. But this

21   reading somehow picks up, according to the

22   Petitioners, all of the covered class actions,

23   even if it's not a nationally-traded security

24   at all.

25   And it would be incredibly weird to

      1   write a statute that says, except as provided

      2   in 77p with respect to covered securities, and

      3   to do something radically different from what

      4   77p does with respect to covered securities.

      5   What it does is it causes them to be

      6   dismissed, not removed, and it applies only

      7   with respect to those that involve

      8   nationally-traded securities. And their

      9   reading doesn't.

     10   It is really, really obtuse. It is an

     11   extraordinarily unusual way to accomplish this

     12   result, which is a big result. Mr. Katyal

     13   believes the statute does something quite

     14   important. It changes how the '33 Act

     15   functions with respect to a large body of

     16   cases.

     17   And you just don't -- your

     18   jurisprudence helpfully tells the Congress, if

     19   you want to do something like that, do it the

     20   simple way. Say as defined in or say it's

     21   removable or say it's within the exclusive

     22   jurisdiction.

     23   If you find out that -- if you

     24   believe, Justice Gorsuch and Justice Alito,

     25   that this -- our reading would produce -- would

1   apply to a null set, which we disagree with,

2   nonetheless, it is the case that we do give

3   meaning to the phrase, it wouldn't pick up any

4   cases, but their reading is not -- the words

5   that Congress used aren't nearly clear enough

6   to accomplish that result.

7   If there are no further questions.

8   JUSTICE SOTOMAYOR: I have one. What

9   do you think -- what would be the null set if

10   you read the government's reading of the

11   removal -- the involving -- if you read it --

12   MR. GOLDSTEIN: Its reading -- its

13   reading today in argument?

14   JUSTICE SOTOMAYOR: Its reading today.

15   MR. GOLDSTEIN: Okay.

16   JUSTICE SOTOMAYOR: I assume you

17   understand it.

18   MR. GOLDSTEIN: Yes.

19   JUSTICE SOTOMAYOR: All right. If we

20   read it the government's way --

21   MR. GOLDSTEIN: Yeah.

22   JUSTICE SOTOMAYOR: -- what would we

23   make -- what would be left of the second

24   "except" clause in -- in 77v(a)?

25   MR. GOLDSTEIN: The removal except

 1   clause?

 2   JUSTICE SOTOMAYOR: Yes.

 3   MR. GOLDSTEIN: So --

 4   JUSTICE SOTOMAYOR: Second "except"

 5   clause.

 6   MR. GOLDSTEIN: So the second "except"

 7   clause, just to walk this through, says

 8   basically whatever we're doing in 77p(c)

 9   controls.

10   JUSTICE SOTOMAYOR: Right.

11   MR. GOLDSTEIN: Okay? And I do think

12   it's very useful that, except as provided and

13   should be read the same way in 77v(a), so it

14   does, you know, tell you to look somewhere

15   else.

16   JUSTICE SOTOMAYOR: If you read this

17   the way the government does --

18   MR. GOLDSTEIN: Right. Yeah.

19   JUSTICE SOTOMAYOR: -- it says you

20   can't remove these cases in (a) --

21   MR. GOLDSTEIN: Yeah.

22   JUSTICE SOTOMAYOR: -- right, so you

23   can't remove them, but (c) says you can remove

24   them. So is there anything then that is not

25   removable? Why write the second "except"

 1   clause at all?

 2   MR. GOLDSTEIN: Well, it is the case

 3   that it would be completely unnecessary because

 4   (c) controls. I do think that probably in the

 5   -- a point in the government's favor that

 6   ultimately is in our favor is that there are

 7   parts of v that don't do anything. Okay? And

 8   the -- the removal provision is an example of

 9   that.

10   If you didn't have the amendment to

11   the removal provision, you would still know

12   that you could remove under p(c). They're just

13   closing doors, locking them, crossing T's and

14   dotting I's a couple of times. That's how this

15   provision works.

16   Don't ask it to do more than it was

17   intended. Thank you.

18   JUSTICE KAGAN: Could I ask you, Mr.

19   -- Mr. Goldstein, also on this (c) provision,

20   and -- and this really ought to be a question

21   for Mr. Kedem, but he sat down. But I don't

22   want you to agree with me just for the sake of

23   --

24   MR. GOLDSTEIN: Okay.

25   JUSTICE KAGAN: -- agreeing with me.

 1   But if I understand what he said, it's these

 2   class actions with this last antecedent

 3   principle, you're only referring to (1) and

 4   (2), so now you -- you make those class actions

 5   removable. But the way this provision works --

 6   and you think kind of that makes sense, right?

 7   We would want those -- those actions to be

 8   removable, be consistent with Congress's other

 9   purposes --

10   MR. GOLDSTEIN: No, but --

11   JUSTICE KAGAN: -- but -- I'm sorry?

12   MR. GOLDSTEIN: I -- I don't think

13   that, but you might.

14   JUSTICE KAGAN: Okay. I'm -- I'm

15   saying what --

16   MR. GOLDSTEIN: Hypothetically.

17   JUSTICE KAGAN: -- in his view, right?

18   MR. GOLDSTEIN: Okay.

19   JUSTICE KAGAN: But then it says "and

20   shall be subject to subsection (b)." And all

21   that subsection (b) does, the way this (c)

22   provision works is it makes a category of cases

23   removable only so that a court can dismiss

24   them. That's the point of subsection (c).

25   It's like they were worried that state courts

 1   wouldn't just dismiss these actions, so it made

 2   them removable to be dismissed.

 3   But then you're getting those cases up

 4   there. You say, okay, we'll get them removable

 5   because these cases really ought to be in

 6   federal court, but under (c), now they have to

 7   be dismissed.

 8   MR. GOLDSTEIN: That's right. I will

 9   say -- I -- I'll give you the answer that I

10   think he might, and that is what he would say

11   is, okay, subject it to subsection (b) and some

12   of them get dismissed, and the rest of them

13   aren't subject to it. That's just not the

14   structure of this statute. And that's not what

15   Kircher says. Kircher says that this is a

16   anti-recalcitrant -- recalcitrance -- whatever

17   -- provision.

18   (Laughter.)

19   MR. GOLDSTEIN: That if state courts

20   just aren't obeying the statute. There isn't

21   any indication that it was intended to pick up

22   a set of cases and deposit them in federal

23   court to litigate --

24   JUSTICE BREYER: There has to be.

25   There has to be, because the mixed case ends up

1   in part being in federal court.

2   MR. GOLDSTEIN: It does not because

3   under 1441(c) it gets remanded. The federal

4   part of the case, as a matter of law, gets

5   cleaved off and gets sent back to state court.

6   It does not stay and get litigated in federal

7   court.

8   JUSTICE SOTOMAYOR: I'm sorry --

9   MR. GOLDSTEIN: Mr. Katyal was just

10   wrong about that.

11   JUSTICE SOTOMAYOR: -- what provision

12   are you citing?

13   MR. GOLDSTEIN: 14 -- 28 U.S.C.

14   1441(c), it's the removal provision. So what

15   happens is if you have a mixed case, the

16   combined federal and state cases that are

17   subject to p(b), it gets removed. And federal

18   law, 1441(c), says if you have a otherwise

19   non-removable provision combined -- claim

20   combined with a removable claim, that what you

21   do is you break them in half and you send the

22   non-removable case back -- claim back. And so

23   this --

24   JUSTICE BREYER: No, so that's --

25   that's major.

```
 1            MR. GOLDSTEIN:  Yes.

 2            JUSTICE BREYER:  I mean, either on the

 3    one hand, your view, this is designed just to

 4    get rid of the state actions.

 5            MR. GOLDSTEIN:  Yes.

 6            JUSTICE BREYER:  On their view, it is

 7    designed to do two things.  One is to remove

 8    the fed part to the feds, and also to get rid

 9    of the state.

10            MR. GOLDSTEIN:  Right.  And so if you

11    just --

12            JUSTICE BREYER:  Is there any history?

13            MR. GOLDSTEIN:  Not -- not about the

14    amendment to v, there's no history, and we

15    don't think there's any history that suggests

16    moving the cases to federal court.

17            Thank you.

18            CHIEF JUSTICE ROBERTS:  Thank you,

19    counsel.

20            Four minutes, Mr. Katyal.

21             REBUTTAL ARGUMENT OF NEAL K. KATYAL

22                ON BEHALF OF THE PETITIONERS

23            MR. KATYAL:  Thank you.

24            Four -- four points.  First, Congress

25    took the affirmative step of modifying the
```

1   preexisting concurrent jurisdiction provision

2   in Section 22. We're the only ones who give

3   that some meaning.

4   Justice Gorsuch, this is not about

5   surplusage, the canon of surplusage. This is

6   obliteration. They can't give you an

7   explanation for what Congress did when it added

8   those 12 words.

9   And that's why my friend says, oh,

10   there's some canon against doing -- a canon

11   that you have to do things a simple way. There

12   is no such canon in this Court's jurisprudence.

13   The closest, as Justice Sotomayor said, is the

14   presumption about concurrent jurisdiction, but

15   that presumption has never been held to apply

16   when a statute isn't silent. Those are only

17   when the Congress is silent. This is one in

18   which Congress has affirmatively taken the step

19   to remove 12 words -- to -- to remove some

20   subset of what was preexisting jurisdiction in

21   the state courts.

22   And, in addition, as this Court in

23   Kircher said, when you don't have a long

24   history of state court adjudication in the

25   area, presumptions about preemption don't

1   apply -- indeed, presumptions about

2   preemptions, Justice Breyer, your opinion in

3   Geier says they don't apply when you have an

4   express statute that deals with preemption.

5   And I think the same analogy is true

6   here. You have a specific statute that deals

7   with -- you know, which deals with the amount

8   of jurisdiction. So, I don't think this Court

9   could apply the presumption about concurrent

10   jurisdiction.

11   Second, Justice Breyer, you asked

12   about the legislative history. And, Justice

13   Alito, you asked who do you think -- do -- do

14   you think the person who wrote this statute set

15   out to do what you think you're saying it did?

16   And we're the only ones who are

17   telling you a story that is in the legislative

18   history itself. The first line of the

19   conference report: "Title 1 of SLUSA makes

20   federal court the exclusive venue for most

21   securities class action lawsuits." The manager

22   in the Senate, Senator D'Amato, and the chair:

23   "There shall be a uniform standard and there

24   should be a uniform procedure, and that's why

25   you move these nationally-traded securities to

         1   a federal forum." President Clinton's signing

         2   statement: "Since the uniform standards

         3   provided by this legislation state that class

         4   actions generally can only be brought in

         5   federal court, will be governed by federal law,

         6   clarity on the federal law to be applied is

         7   particularly important."

         8   There is nothing in there saying this

         9   is only about the '34 Act. This is my friend

        10   on the other side's invention. Congress

        11   affirmatively took the step to modify the '33

        12   Act jurisdictional provision, not just the '34

        13   Act.

        14   Justice Kennedy, this is my third

        15   point, you asked about removal and whether or

        16   not if you didn't accept our view of 22(a),

        17   would that mean that, you know, we'd

        18   effectively be out of luck. And I think you

        19   shouldn't reserve that question because of the

        20   reasons that my colleague from the Solicitor

        21   General's Office said, and indeed it may take

        22   years for another case to come up precisely

        23   because there's a bar on interlocutory appeals

        24   from removal decisions, as this Court in

        25   Kircher made clear.

1   And, in addition, the Ninth Circuit in

2   a case called Rea versus Michaels Stores in

3   2014 said, when this Court, the Supreme Court,

4   makes removal available for the first time,

5   then we as litigants can go and seek that

6   removal. There's a lot of precedent which

7   barred us from seeking removal before, but,

8   obviously, we would do that if this Court were

9   to accept the alternative reading.

10   And last and finally, ultimately you

11   are left with Justice Alito's question: What

12   sense does their statutory reading make? Why

13   would bringing a state court count oust a

14   plaintiff out of state court when a mixed one

15   would not?

16   And Justice Ginsburg asked why would

17   Congress, when they're so concerned about

18   procedure and things like abusive litigation

19   and serial plaintiffs and massive attorneys'

20   fees, and took all these steps to regulate that

21   in the federal court context, why would they

22   just leave the back door gaping and wide open?

23   That is not the way to read a statute.

24   I understand the statute is a hard one

25   to read, but we're the only ones giving it a

1   reading that, A, makes sense; and that is, B,

2   consistent with the legislative history; and,

3   C, most importantly, is textual. We give

4   effect to those 12 words. They obliterate

5   them.

6   CHIEF JUSTICE ROBERTS: Thank you,

7   counsel.

8   The case is submitted.

9   (Whereupon, at 11:10 a.m., the case

10   was submitted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official

Heritage Reporting Corporation

11,14,17,18,21,24 **21**:2,5,8,25 **22:**
3,6,9,16,20,23 **23**:1,23,24 **24**:9,21
25:19,25 **33**:1,16 **34**:3,8,10,18,24
35:4,7 **36**:1,14,19,22 **37**:2,7,11,14,
20 **38**:23 **43**:12 **44**:2,9,13,17 **61:**
10,14,17,21,24 **62**:2,5,10,12,17,21
63:1,5,9,23 **64**:1,8,11,13,19,22 **65:**
2,4,7,10,13,16 **76**:24 **77**:24 **78**:2,6,
12 **80**:2,11
Breyer's [1] **52**:9
brief [11] **7**:8 **9**:12,13 **10**:13 **12**:15
19:11 **20**:6 **21**:13 **25**:14 **31**:1 **33**:7
briefs [1] **45**:13
bring [6] **4**:11,13 **7**:24 **9**:6 **18**:23
31:11
bringing [4] **5**:14 **7**:23 **25**:21 **82**:13
brings [1] **26**:4
broader [1] **31**:6
brought [14] **4**:5,8 **6**:17,18 **17**:4,6
20:8 **39**:8 **54**:12 **55**:7,19 **56**:12 **66:**
1 **81**:4
brush [1] **31**:6
bucks [1] **27**:6
build [2] **18**:7,8
built [1] **17**:23
bunch [3] **14**:12 **50**:4 **63**:12
Burwell [1] **16**:19

C

call [3] **14**:11 **30**:10 **52**:13
called [4] **11**:6 **21**:4,4 **82**:2
came [2] **1**:13 **49**:8
candidates [1] **39**:4
canon [4] **79**:5,10,10,12
care [1] **17**:12
cared [1] **13**:16
Case [34] **3**:4 **9**:6 **26**:8 **29**:15 **31**:20
36:12 **37**:22,24 **41**:13 **45**:13 **46**:15
50:17,17,18 **62**:7,8,12 **64**:5 **65**:23
66:4 **68**:15,18,20,23 **72**:2 **74**:2 **76:**
25 **77**:4,15,22 **81**:22 **82**:2 **83**:8,9
cases [50] **16**:19,20 **26**:19 **28**:21,
22 **29**:6,6,11 **30**:7 **40**:14 **43**:23 **45:**
20 **47**:10,21 **50**:10,11,13 **53**:1 **55:**
22 **56**:2,22,23 **57**:18 **58**:7,7 **59**:21
61:1,6 **62**:14 **63**:14,15 **65**:21,22
66:1,11,12 **67**:6,25 **68**:3 **70**:12,14
71:16 **72**:4 **73**:20 **75**:22 **76**:3,5,22
77:16 **78**:16
categorical [1] **53**:15
category [3] **26**:19 **28**:21 **75**:22
cause [1] **66**:18
causes [4] **3**:22 **31**:9 **55**:12 **71**:5
caution [2] **30**:9 **43**:1
central [1] **46**:11
certain [9] **3**:22 **8**:11 **13**:22,24 **30:**
3 **34**:21 **39**:24 **40**:23 **42**:19
certainly [5] **5**:1 **6**:13 **14**:25 **15**:2
24:1
cetera [1] **19**:23
Chadbourne [1] **8**:25
chair [1] **80**:22
change [2] **45**:21 **66**:6
changes [1] **71**:14

changing [1] **13**:3
CHIEF [8] **3**:3,10 **32**:9,15 **45**:2,7 **78:**
18 **83**:6
choice [3] **64**:2,2,19
chose [1] **4**:18
circle [1] **58**:3
Circuit [1] **82**:1
cites [1] **29**:6
citing [1] **77**:12
Civil [2] **61**:2 **68**:1
claim [35] **4**:7,8,12,13 **5**:25 **7**:23 **12:**
14 **19**:14 **26**:5 **30**:20 **31**:16 **50**:14
52:15,17,17 **60**:13,17 **62**:9,10,13
63:19 **64**:6,9 **66**:17 **68**:14,14,20
69:1,2,7,14,18 **77**:19,20,22
claims [37] **3**:15,25 **4**:21 **5**:20 **6**:7,
12,17 **8**:14 **9**:4 **11**:20,23 **17**:4,5 **18:**
2,5,10,11 **19**:12 **21**:7 **26**:12,12,20,
23,25 **28**:10,10,11,14,16,18 **32**:23
33:4 **38**:12 **58**:12,14 **62**:15 **64**:15
clarity [2] **12**:6 **81**:6
class [43] **4**:21 **6**:25 **8**:6,7 **10**:20 **11:**
1 **12**:21 **14**:10,16,17,22 **15**:1,16,22
16:1 **17**:17 **25**:1,5 **32**:19 **33**:13,15,
18 **34**:12,15 **35**:1,3 **39**:5 **44**:21 **52:**
16 **54**:12,12 **55**:7,20 **56**:5,6,12,18
60:25 **70**:22 **75**:2,4 **80**:21 **81**:3
classes [1] **55**:11
clause [25] **6**:23 **8**:3 **10**:12,15,22
15:4,5 **24**:20,23 **26**:2 **33**:9 **35**:11
37:16 **38**:5 **39**:5,15 **48**:7 **49**:19 **52:**
3 **60**:5 **72**:24 **73**:1,5,7 **74**:1
clauses [1] **7**:14
clear [23] **4**:24 **6**:15 **13**:22 **16**:8,16
19:6,6 **21**:18,22 **22**:10,10,12 **44:**
23 **46**:16,25 **49**:4 **59**:10,24 **63**:21
68:6 **70**:17 **72**:5 **81**:25
clearer [1] **16**:17
clearly [3] **13**:23 **49**:6 **70**:14
cleaved [1] **77**:5
clever [1] **63**:16
Clinton [1] **21**:14
Clinton's [1] **81**:1
closer [2] **51**:11,13
closest [1] **79**:13
closing [4] **53**:5,9,10 **74**:13
Code [3] **50**:4 **60**:2 **68**:8
colleague [3] **11**:6 **12**:7 **81**:20
combine [2] **52**:14 **68**:13
combined [4] **69**:10 **77**:16,19,20
combines [2] **50**:17,24
come [4] **11**:15 **49**:15 **69**:13 **81**:22
comes [3] **33**:12 **37**:17,18
commas [2] **24**:11 **34**:8
commerce [1] **36**:10
common [1] **23**:12
complaint [5] **4**:5 **25**:22 **50**:24 **52:**
21 **58**:13
complaints [2] **52**:13,14
completely [3] **18**:25 **27**:2 **74**:3
compromise [3] **7**:10 **61**:5 **66**:15
compromised [1] **18**:22
concepts [1] **29**:25
concern [2] **11**:5 **67**:13

concerned [7] **31**:3 **39**:1 **43**:3,8
56:22 **66**:10 **82**:17
concerns [1] **32**:1
conclusion [1] **6**:5
concurrent [14] **3**:24 **17**:16 **24**:24
27:9 **29**:4 **52**:19,22,25 **58**:11 **63:**
20 **66**:13 **79**:1,14 **80**:9
conduct [1] **35**:23
conference [2] **21**:23 **80**:19
conflict [2] **10**:2,3
conforming [3] **49**:7 **52**:24 **58**:21
confronts [1] **16**:17
confusing [2] **43**:14 **45**:1
confusion [2] **52**:19 **58**:18
Congress [59] **3**:12,20 **4**:18 **5**:1,16
6:15 **8**:21,25 **9**:5 **11**:9 **12**:12,17,20
13:16 **14**:2 **15**:3 **16**:15 **17**:9,12,23
18:16,25 **19**:1 **22**:14,18 **25**:17 **26:**
3 **31**:10 **32**:1,17 **33**:17 **34**:1,15 **36:**
9 **38**:11 **39**:1 **43**:7 **45**:21 **46**:6 **49**:5
50:22 **60**:12,21,22 **66**:6,10,24 **67:**
2,14,24 **70**:11 **71**:18 **72**:5 **78**:24
79:7,17,18 **81**:10 **82**:17
Congress's [4] **5**:24 **48**:19,21 **75:**
8
connection [3] **33**:25 **34**:22 **39**:24
consider [1] **36**:7
considerable [1] **12**:19
considering [1] **41**:12
consistent [2] **75**:8 **83**:2
constitutionality [1] **30**:10
contain [1] **6**:22
context [1] **82**:21
contextually [1] **14**:19
continue [1] **66**:9
contradiction [1] **6**:23
contradictory [2] **7**:18,20
contrary [3] **42**:11 **44**:11,20
control [1] **13**:8
controls [3] **60**:9 **73**:9 **74**:4
Correct [11] **8**:9,12 **32**:17 **33**:17,22
34:7,9 **37**:6 **44**:8 **66**:22 **68**:16
couldn't [1] **21**:17
counsel [7] **32**:10 **40**:8,25 **45**:3 **60:**
15 **78**:19 **83**:7
count [5] **4**:11 **5**:14 **25**:21 **31**:9 **82:**
13
COUNTY [3] **1**:6 **3**:5 **4**:5
couple [1] **74**:14
COURT [112] **1**:1,14 **3**:11,15,17,19,
25 **4**:9,13 **5**:15 **6**:18 **7**:25 **8**:20,24
13:9,10 **14**:3,8 **16**:17 **17**:6 **18**:1,4,
5 **19**:18 **25**:3,23 **26**:5,22 **27**:1 **30**:9,
20 **31**:9,9,12,13,16,20 **32**:4,16,22,
24 **33**:8 **38**:13,20 **39**:9,12,13 **40:**
19 **41**:11,14 **43**:1,3,23 **45**:8,20 **46:**
4,20 **47**:13 **51**:2,16,17 **54**:13 **55**:7,
19 **56**:2,7,12 **58**:13 **60**:13,17,24
61:7 **63**:15 **64**:16 **65**:22,25 **66**:2,5,
11,12,17,20,25 **67**:21 **68**:3,16,19,
21,22 **69**:2,3,14 **70**:12 **75**:23 **76**:6,
23 **77**:1,5,7 **78**:16 **79**:22,24 **80**:8,
20 **81**:5,24 **82**:3,3,8,13,14,21
Court's [1] **79**:12

courts [26] **4**:19,22 **5**:25 **6**:25 **11:**
19 **12**:22 **13**:6 **17**:16 **18**:10,18 **27:**
12 **28**:23 **30**:6 **32**:18 **45**:25 **53**:13,
16 **56**:23 **58**:11 **59**:11 **61**:8 **63**:20
66:14 **75**:25 **76**:19 **79**:21
covered [81] **4**:21 **5**:21,22 **6**:25 **8**:6,
7 **10**:20 **11**:1 **13**:25 **14**:10,17,22,
25 **15**:16,22 **17**:18 **19**:24 **24**:9,14,
15 **25**:1,5 **33**:11,13,15,23 **34**:1,12,
14,16,23,25 **35**:3,5,7,18,21 **36**:3,4,
20,23 **37**:2 **38**:2 **39**:5,7,22,25 **40**:2,
4,5 **41**:15 **44**:21,23 **48**:10 **49**:20
52:15,16 **53**:20 **54**:3,6,12,13,15
55:7,8,13,20 **56**:5,6,12,18 **57**:4,5,8,
9,10 **62**:18 **70**:20,22 **71**:2,4
covers [1] **8**:6
created [2] **20**:9,9
creative [1] **11**:15
credulity [1] **42**:8
crisis [1] **3**:14
criteria [1] **33**:20
crossing [1] **74**:13
crucial [2] **20**:19,21
cure [1] **31**:18
curiae [3] **1**:22 **2**:8 **32**:13
current [1] **13**:4
CYAN [2] **1**:3 **3**:5

D

D'Amato [1] **80**:22
D.C [3] **1**:10,18,21
damages [2] **8**:11 **17**:19
day [2] **47**:2 **66**:14
deal [7] **6**:12 **18**:8 **19**:8 **23**:25 **40:**
14 **65**:5,11
dealing [3] **16**:21 **24**:2 **31**:5
deals [3] **80**:4,6,7
dealt [2] **3**:14 **19**:6
decide [2] **9**:6 **25**:2
decided [4] **42**:4 **49**:8 **61**:4,7
deciding [1] **46**:10
decision [2] **47**:14 **50**:13
decisions [1] **81**:24
defendant [3] **53**:14 **59**:12 **69**:5
defendants [1] **41**:17
define [2] **10**:1 **37**:4
defined [6] **8**:6 **16**:2,3,7 **70**:20 **71:**
20
defines [1] **8**:7
definition [11] **10**:9,18 **14**:10 **15**:6,
19 **25**:4 **34**:12,14,17 **51**:14 **68**:5
definitional [3] **8**:16 **9**:25 **14**:15
delete [1] **67**:25
Department [1] **1**:21
depend [1] **24**:4
depends [1] **24**:6
deposit [1] **76**:22
derivative [1] **17**:18
described [3] **36**:16 **50**:12 **68**:11
designed [2] **78**:3,7
dictates [1] **49**:1
difference [1] **5**:24
different [5] **14**:12 **31**:12 **60**:8 **68**:5
71:3

honestly [2] 47:3,20
Honor's [1] 57:22
house [2] 17:24 18:7
however [1] 49:4
huge [1] 19:10
hypothetical [1] 36:8
Hypothetically [1] 75:16

I

I's [1] 74:14
identical [2] 40:22,23
identically [1] 26:3
identify [1] 56:2
illegal [1] 35:24
illogical [1] 14:19
immediately [2] 33:10 37:17
impede [1] 36:17
impeding [2] 36:9,16
importance [1] 46:10
important [3] 43:5 71:14 81:7
importantly [1] 83:3
imposed [1] 36:9
improper [1] 14:20
INC [1] 1:3
include [5] 8:13 23:20,21 53:1 58: 13
includes [1] 7:1
including [3] 33:20 55:11 62:22
incredible [1] 56:19
incredibly [1] 70:25
indeed [3] 49:15 80:1 81:21
indication [3] 53:25 60:21 76:21
indicia [1] 15:7
individual [2] 13:4 17:17
inference [1] 39:14
inherent [2] 6:22 7:13
instead [3] 33:12,22 65:25
instruction [1] 53:15
intended [9] 13:23 38:12 58:20,24 60:22 70:15,18 74:17 76:21
intending [1] 58:25
intentional [1] 8:21
interfering [1] 31:7
interlocutory [1] 81:23
interpretation [2] 10:6 46:11
interpretations [1] 11:16
interstate [1] 36:10
intervening [1] 39:8
invention [1] 81:10
invokes [2] 53:14 59:12
involve [8] 33:4 36:6 39:21,23 40: 1 41:15 50:13 71:7
involved [2] 37:5,8
involvement [1] 36:24
involves [1] 52:15
involving [31] 19:13 24:16 32:20, 22 33:11,23 34:16,25 35:2,5,7,18 36:4,20 39:6 44:6,23 48:9 49:20 53:20 54:13,15 55:8,13 57:5,8,9, 10 62:18 64:14 72:11
IPO [1] 19:14
IPOs [1] 19:13
Isn't [11] 7:5 23:19 37:23 45:13 46: 25 50:14 58:18,22 59:20 76:20 79:

16
isolate [1] 9:14
issue [2] 41:9 46:10
itself [7] 6:15,19 41:4,6 61:6 69:15 80:18

J

job [1] 48:18
judge [1] 69:9
jurisdiction [51] 3:24 4:20,23 6:24 7:25 8:19 9:4 11:19,22 17:10,16 18:19,22 21:6 24:20,22,24 25:3 26:18,22 27:9,12 28:19,22 29:4 31:5 32:5,22 40:13 46:1,5 51:4,11 52:20,22,25 53:12,13 58:11 59:13, 21 63:20 66:13 69:4,24 71:22 79: 1,14,20 80:8,10
jurisdictional [5] 10:3 51:14 59:5, 16 81:12
jurisprudence [3] 47:4 71:18 79: 12
Justice [279] 1:21 3:3,11 4:14,16 5: 3,18 6:2,20,21 7:4,12,17 8:1,5,10, 13,17 9:16,20 10:5,10 11:4,5,14, 24,25 12:2,4,13 13:5,13,21 14:8,9, 14,24 15:3,14,20,24 16:13,14,18 17:2,7,14 18:6,11,12 19:4,16,19 20:3,11,14,17,18,21,24 21:2,5,8, 25 22:3,6,9,15,16,20,23,25 23:1, 22,24 24:8,9,21 25:8,19,24,25 26: 1,10,15,24 27:5,16,21 28:2,5,9,15 29:1,7,10,20,22 30:1,8,12,14,19, 23 31:14 32:9,15,25 33:16 34:3,8, 10,18,24 35:4,7,15 36:1,14,19,22 37:2,7,11,14,20,21 38:19,21,22 39: 17,21 40:8,12,17,25 41:3,21 42:3, 7,13,18,23,24 43:12,15 44:2,9,13, 17 45:2,8 46:9,14,18 47:23 48:1,5, 13,16,23 49:10,13,15,18,24 50:5,9, 19 51:1,6,9,12,16,20,23 52:2,9 53: 2,6,9,17,22 54:7,11,21,22,25 55:2, 4,6,15,24,25 56:6,11,15 57:7,13, 23 58:4,9,17 59:2,6,15 60:11,20 61:10,14,17,21,24 62:2,5,10,12,17, 21 63:1,5,9,23 64:1,8,11,13,19,22 65:2,4,7,10,13,16 66:16,23 67:8, 15,20 68:23 69:9 70:6 71:24,24 72:8,14,16,19,22 73:2,4,10,16,19, 22 74:18,25 75:11,14,17,19 76:24 77:8,11,24 78:2,6,12,18 79:4,13 80:2,11,12 81:14 82:11,16 83:6

K

KAGAN [24] 9:16,20 10:5,10 11:5 15:20,24 16:13 18:12 19:4 22:15 24:8 35:15 39:17,21 57:7,13,23 74:18,25 75:11,14,17,19
Kagan's [1] 25:8
KATYAL [85] 1:18 2:3,14 3:7,8,10 4:14,15 5:3 6:2 7:3,7,16,19 8:4,9, 12,17 9:19 10:4,10 11:4,24 12:2 13:11,15 14:4,13,23 15:2,18,25 16:11 17:3,7 19:4,17 20:2,4,13,16, 19,23 21:1,3,6,23 22:1,4,7,12,18,

22 23:22 24:1,18,22 25:20 26:9, 15 27:3,15,18,23 28:5,13,17 29:2, 8,17,21,24 30:8,13,18,22,25 31:14, 23 60:14 71:12 77:9 78:20,21,23
Katyal's [1] 53:5
KEDEM [46] 1:20 2:6 32:11,12,15 34:7,9,13,19 35:2,5,9,15,25 36:2, 15,21,25 37:6,9,12,15,25 38:20,25 39:20,23 40:11,16,19 41:2,8,25 42:6,9,17,23 43:1 44:1,8,10,15,18 57:15,19 74:21
KENNEDY [3] 46:9,18 81:14
kind [6] 18:11 35:23 36:24 45:21 57:18 75:6
Kircher [12] 40:9,20 41:12 47:14 51:3 52:6 55:23 56:20 76:15,15 79:23 81:25
knocked [1] 4:8
knows [1] 69:3

L

language [11] 44:3 45:24 46:25 48:10,20,21 49:24 53:19 54:4 55: 15 59:22
large [3] 32:19 63:15 71:15
last [9] 16:21 35:14 37:13 39:2 42: 1 57:1,4 75:2 82:10
late [3] 11:6 12:7 69:10
later [1] 39:7
Laughter [4] 11:13 42:16 46:21 76:18
law [56] 4:8,11,12 5:22,22 6:1 8:14 9:2,3 11:6 18:5,23 19:24 20:5,7 23:12 24:17 25:21 26:6,12 27:2, 14 28:3,10 29:12,13,16,25 30:3,15, 16 33:21 45:21 50:14,18,25 52:15 55:11,12 57:12 60:24 62:23 64:6 66:1,18 67:4,7,10 68:14,20,22 69: 18 77:4,18 81:5,6
lawsuits [5] 12:21 13:4 17:17 19:3 80:21
lawyer [5] 23:20 45:9,12 58:12 63: 17
lawyers [3] 11:15 45:14 47:9
leads [1] 6:4
learned [1] 46:19
least [1] 46:25
leave [2] 7:21 82:22
leaves [1] 70:13
left [2] 72:23 82:11
legislation [2] 12:19 81:3
legislative [13] 6:14 9:9 21:11,16 38:22 49:1 58:23 65:19 69:22 70: 10 80:12,17 83:2
liability [2] 20:8 36:9
likes [1] 48:18
limit [1] 41:6
limitations [2] 14:17 69:12
limited [1] 40:14
limiting [5] 33:9 35:11 37:16 39:4, 15
limits [1] 13:19
line [1] 80:18
lines [1] 22:2

lion's [2] 19:3,5
litigants [1] 82:5
litigate [2] 47:10 76:23
litigated [5] 67:7 68:15,22 70:12 77:6
litigation [4] 3:16,20 19:18 82:18
little [3] 42:10,11 57:14
locked [2] 17:25 18:3
locking [1] 74:13
long [2] 69:25 79:23
long-standing [1] 46:1
look [34] 9:22,24 10:1,8,18,25 12:9, 11 15:9,10,15,19,21,23 16:9,22 17: 14,22 23:8 24:23 25:3,4 33:24 34: 20 35:20 36:13 53:25 54:2 61:11, 17 62:13 68:12 69:21 73:14
looked [1] 11:8
looking [3] 14:20 33:6 43:15
looks [3] 63:10 65:8,13
lot [3] 31:25 54:1 82:6
lower [1] 38:20
luck [1] 81:18
Lynch [1] 50:12

M

made [5] 17:12 29:18 41:13 76:1 81:25
main [4] 5:19,23 6:6,11
major [1] 77:25
majority [1] 17:15
manager [1] 80:21
mandate [1] 68:19
manifestly [1] 19:6
Manning [2] 45:20 50:12
many [1] 3:25
Maryland [1] 1:24
massive [1] 82:19
master [2] 9:5 31:11
matched [1] 61:4
matching [1] 59:15
matter [10] 1:13 43:10 47:3 50:3 53:13,14 59:14 60:2 68:22 77:4
mean [18] 20:12 22:13 33:17 35:18 36:5 40:1 42:3,13 43:13,14,18 45: 18 48:2 57:14,25 64:5 78:2 81:17
meaning [4] 16:25 49:2 72:3 79:3
means [11] 16:12 34:20 36:17 42: 19,20,21,25 43:2 45:15 48:21 61: 24
meant [2] 34:15 44:20
measure [1] 60:6
medicine [2] 9:1 31:4
members [1] 70:11
mentions [1] 15:16
Merit [1] 16:20
Merrill [1] 50:12
Michaels [1] 82:2
might [7] 10:2 43:14 56:22 63:16, 18 75:13 76:10
mind [2] 6:16 34:1
minute [1] 45:10
minutes [1] 78:20
mirrors [1] 66:18
misconduct [5] 34:21 39:24 40:6,

24 **41**:9
mission [2] **52**:10,12
mistake [2] **62**:20,25
mixed [9] **43**:24,24 **50**:10 **58**:7,7 **68**:23 **76**:25 **77**:15 **82**:14
model [1] **12**:6
modification [1] **32**:4
modified [2] **3**:23 **22**:22
modifies [4] **33**:10,12,15,23
modify [2] **59**:20 **81**:11
modifying [4] **20**:17 **36**:3,3 **78**:25
moment [2] **5**:9,10
money [1] **17**:19
Moreover [1] **38**:10
morning [1] **3**:4
most [6] **18**:13 **24**:12 **35**:10 **37**:16 **80**:20 **83**:3
mouse [1] **45**:23
move [1] **80**:25
moves [2] **44**:9 **69**:5
moving [2] **66**:11 **78**:16
much [10] **5**:6 **13**:16 **43**:10 **51**:10, 13 **53**:18 **57**:3 **58**:20,24 **65**:11
must [2] **54**:16 **62**:14

N

narrow [1] **69**:21
narrower [1] **26**:17
national [6] **12**:25 **13**:7,10,12,24 **25**:11
nationally [1] **32**:20
nationally-traded [5] **67**:6 **70**:19, 23 **71**:8 **80**:25
natural [4] **9**:22 **24**:13 **29**:23,25
naturally [1] **37**:16
NEAL [5] **1**:18 **2**:3,14 **3**:8 **78**:21
nearly [1] **72**:5
need [3] **24**:23 **51**:12 **55**:12
never [1] **79**:15
new [1] **3**:12
next [1] **20**:5
Ninth [1] **82**:1
nobody [1] **48**:17
non-'33 [1] **27**:2
non-1933 [2] **26**:5 **28**:3
non-class [1] **70**:13
non-covered [4] **26**:19 **27**:1 **28**:21 **70**:16
non-federal [1] **28**:4
non-fraud [1] **28**:22
non-removable [3] **66**:13 **77**:19, 22
non-removal [1] **47**:19
none [1] **60**:17
nonetheless [1] **72**:2
normally [1] **48**:25
nothing [16] **6**:8,13 **11**:21 **13**:6 **15**:8 **27**:13 **42**:20,22 **43**:2 **48**:21 **49**:9, 16 **51**:3 **58**:1,5 **81**:8
notwithstanding [2] **60**:4,10
November [1] **1**:11
nowhere [4] **14**:1 **59**:7,9,10
null [3] **45**:18 **72**:1,9
number [1] **12**:21

O

obeying [1] **76**:20
objectives [1] **12**:24
obliterate [1] **83**:4
obliteration [1] **79**:6
obtuse [6] **4**:18 **5**:4 **11**:12 **45**:11, 24 **71**:10
obvious [2] **39**:11 **53**:3
obviously [2] **59**:1 **82**:8
odd [2] **5**:1 **10**:7
odds [2] **16**:5,12
Offenses [1] **21**:7
Office [1] **81**:21
okay [36] **19**:22 **20**:22 **21**:8,8 **22**:16, 17 **36**:14,19 **37**:11 **43**:23 **48**:12 **50**: 1,7,10,21 **51**:8,19,22 **52**:24 **53**:17 **55**:1,3,4 **56**:4,5 **63**:23 **66**:23 **69**:6 **72**:15 **73**:11 **74**:7,24 **75**:14,18 **76**: 4,11
omission [1] **40**:4
one [29] **4**:2,7,16 **14**:15 **16**:22 **19**: 19,20 **23**:21,21 **25**:23 **27**:7 **30**:17 **43**:20,21 **47**:16 **50**:6,11 **56**:7 **57**: 11 **59**:23 **60**:9 **61**:11 **68**:10 **72**:8 **78**:3,7 **79**:17 **82**:14,24
ones [4] **14**:16 **79**:2 **80**:16 **82**:25
only [20] **8**:8 **15**:9,10 **24**:18 **26**:11 **31**:8 **33**:3 **47**:18 **53**:24 **69**:16 **70**: 18 **71**:6 **75**:3,23 **79**:2,16 **80**:16 **81**: 4,9 **82**:25
open [1] **82**:22
opinion [5] **41**:3 **46**:16,23 **47**:20 **80**:2
opposite [2] **60**:4 **70**:4
oral [7] **1**:13 **2**:2,5,10 **3**:8 **32**:12 **45**: 5
order [3] **25**:2 **30**:20 **56**:3
other [18] **5**:11,12 **15**:9 **16**:15 **21**:9 **25**:10,18 **29**:11,18 **40**:1 **46**:2,14 **47**:12 **52**:16 **54**:8 **57**:2 **75**:8 **81**:10
others [1] **41**:6
otherwise [2] **7**:14 **77**:18
ought [2] **74**:20 **76**:5
oust [1] **82**:13
ousted [5] **7**:25 **8**:19 **25**:22 **26**:18, 25
ousting [2] **13**:6 **27**:12
out [29] **4**:9 **5**:14 **12**:9,12 **23**:17 **25**: 22 **26**:25 **28**:12 **34**:19 **36**:5 **42**:3, 20 **45**:15 **46**:15 **48**:13 **49**:25 **50**:19 **53**:18 **58**:4 **60**:14 **64**:24 **66**:11,19 **68**:20 **69**:11 **71**:23 **80**:15 **81**:18 **82**: 14
outlines [1] **7**:9
over [10] **6**:25 **9**:4 **11**:20 **26**:22 **27**: 12 **32**:6,22 **58**:11 **59**:21 **62**:6
own [5] **4**:9 **29**:16 **31**:18 **34**:17 **61**: 8

P

p(b [5] **52**:21 **53**:1,16 **59**:12 **77**:17
p(c [6] **23**:5 **55**:2,4 **61**:19,25 **74**:12
p(f)(2 [3] **8**:7,7,16

PAGE [9] **2**:2 **9**:13 **10**:13 **12**:15 **20**: 6 **21**:12 **25**:14 **31**:2 **33**:7
paint [1] **31**:6
parallel [3] **19**:15 **47**:16 **70**:5
parenthetical [1] **34**:4
parking [1] **25**:14
part [11] **10**:17,25 **15**:5 **37**:1,23 **43**: 12 **61**:18 **62**:14 **77**:1,4 **78**:8
particular [1] **5**:21
particularly [1] **81**:7
parts [1] **74**:7
party [1] **60**:16
pass [3] **30**:15 **37**:21,22
past [1] **54**:8
penultimate [1] **38**:6
people [3] **8**:11 **18**:23 **65**:25
percent [2] **19**:12,14
perfect [1] **52**:23
perfectly [1] **49**:9
perhaps [3] **23**:3 **32**:25 **36**:7
period [1] **4**:23
permitted [2] **29**:14 **33**:4
permitting [1] **32**:23
Perry [1] **16**:20
person [2] **60**:3 **80**:14
pertinent [1] **14**:16
Petitioners [11] **1**:4,19 **2**:4,15 **3**:9 **32**:17 **38**:3,10 **43**:4 **70**:22 **78**:22
Petitioners' [1] **45**:9
phrase [17] **19**:25 **24**:12 **33**:10,12 **34**:2,16,17 **35**:12 **36**:4 **39**:8,10 **50**: 1 **59**:24,25 **67**:25 **68**:7 **72**:3
pick [4] **55**:22 **68**:6 **72**:3 **76**:21
picks [4] **23**:14 **58**:6 **70**:14,21
place [2] **32**:25 **43**:9
plaintiff [4] **66**:16 **69**:6,13 **82**:14
plaintiff's [1] **63**:17
plaintiffs [4] **3**:15 **13**:18 **41**:13 **82**: 19
plausible [1] **43**:10
pleaded [1] **33**:20
please [3] **3**:11 **32**:16 **45**:8
point [22] **5**:13 **10**:24 **15**:5 **18**:6 **21**: 21 **22**:14 **24**:18 **36**:19,20 **38**:15 **39**: 3 **42**:19 **52**:5,10 **53**:5 **56**:18 **57**:20, 22 **67**:23 **74**:5 **75**:24 **81**:15
pointed [5] **6**:7 **15**:4 **46**:15 **58**:4 **60**: 14
pointing [1] **70**:9
points [3] **11**:3 **44**:16 **78**:24
policy [3] **32**:1 **43**:4,10
policy-based [1] **38**:11
position [5] **5**:24 **7**:22 **54**:15 **65**:8 **70**:4
possible [3] **23**:10 **48**:19 **68**:11
potentially [1] **48**:10
powerful [2] **38**:11,16
powers [1] **13**:2
practical [1] **23**:19
pre-'95 [1] **3**:17
precedent [1] **82**:6
precisely [2] **14**:7 **81**:22
precision [1] **56**:20
preclude [2] **6**:24 **30**:3

precluded [9] **3**:22 **6**:12 **8**:20 **28**: 24 **30**:4,21,24 **40**:15 **52**:21
precludes [1] **30**:16
precluding [3] **8**:25 **28**:14,18
preclusion [14] **6**:7 **15**:10 **26**:17, 21 **28**:7 **29**:19,24 **31**:4 **41**:18 **51**:6, 17 **52**:6,14 **59**:16
preclusions [1] **15**:13
preempt [1] **28**:3
preemption [4] **29**:21,24 **79**:25 **80**: 4
preemptions [1] **80**:2
preempts [1] **29**:13
preexisting [2] **79**:1,20
preferred [1] **32**:19
premise [1] **6**:3
presented [4] **12**:20 **38**:1,2 **47**:7
presentment [1] **48**:25
preserve [1] **17**:15
President [2] **21**:13 **81**:1
presume [1] **27**:8
presumption [8] **27**:7,11 **29**:3,5 **49**:5 **79**:14,15 **80**:9
presumptions [2] **79**:25 **80**:1
pretty [4] **6**:15 **22**:10 **23**:5 **29**:25
prevail [1] **4**:25
prevented [1] **12**:23
previously [1] **58**:8
principle [2] **70**:1 **75**:3
principles [1] **31**:7
probably [3] **47**:4,10 **74**:4
problem [7] **3**:13 **18**:9 **19**:10 **23**:25 **43**:12 **49**:12 **62**:23
problems [1] **19**:7
procedural [4] **14**:1,2 **61**:1 **67**:10
Procedure [4] **61**:3 **68**:2 **80**:24 **82**: 18
procedures [1] **13**:16
proceedings [1] **42**:15
process [1] **49**:1
produce [1] **71**:25
produces [1] **70**:5
professional [1] **13**:18
prohibited [2] **68**:20 **69**:1
prohibition [3] **50**:24 **51**:2 **58**:15
promise [1] **50**:7
Protection [1] **16**:21
protections [2] **38**:14 **61**:1
provide [1] **54**:5
provided [21] **9**:21,24 **10**:8,15 **11**: 20 **15**:21 **16**:2,7 **19**:23 **24**:25 **25**:8 **46**:4 **49**:20 **50**:2 **60**:1 **61**:18,25,25 **71**:1 **73**:12 **81**:3
provides [1] **11**:7
providing [1] **13**:7
provision [38] **9**:25 **10**:3 **11**:18 **15**: 15 **21**:4 **24**:5 **28**:7,7 **30**:5 **33**:2,3 **38**:6 **40**:3 **41**:22 **51**:7,14,18 **52**:7 **53**:14 **54**:23 **58**:22 **59**:3,5 **60**:10 **63**:24 **69**:21 **74**:8,11,15,19 **75**:5, 22 **76**:17 **77**:11,14,19 **79**:1 **81**:12
provisions [7] **14**:21 **15**:11 **40**:7, 21 **42**:15 **54**:1 **60**:8
PSLRA [12] **60**:22,23 **63**:11 **66**:2,6,

stands [1] **45**:9

stare [1] **57**:14

start [3] **32**:25 **59**:24 **69**:11

started [2] **23**:17 **64**:24

state [126] **3**:16,19,25 **4**:8,9,11,12, 13 **5**:14,14,22 **6**:7,18 **7**:24 **8**:14,19 **11**:19,22 **12**:22 **13**:2,6,8,9 **14**:3,8 **17**:6,16 **18**:4,5,10,23 **19**:17 **23**:12, 16,20 **24**:17 **25**:3,21,22 **26**:5,5,12, 22 **27**:2,12 **28**:3,9,13,15,18,23 **29**: 13 **30**:3,6,20 **31**:12,16 **32**:21,24 **33**:21 **38**:13 **39**:8,13 **43**:21 **45**:25 **46**:4 **50**:14,18,25 **52**:14 **54**:13 **55**: 7,11,11,19 **56**:2,12,23 **57**:11 **58**:11, 13,14 **60**:17,24,24 **61**:7,8 **62**:22 **63**:14,20 **64**:5,16 **65**:22 **66**:1,2,5, 12,14,17,18,20,24 **67**:4,21 **68**:2,14, 20,21,22 **69**:1,2,3,7,14,18 **75**:25 **76**:19 **77**:5,16 **78**:4,9 **79**:21,24 **81**: 3 **82**:13,14

statement [4] **40**:5,9 **70**:3 **81**:2

statements [1] **70**:9

STATES [8] **1**:1,15,22 **2**:7 **9**:2 **29**: 15 **32**:13 **52**:23

stating [1] **53**:2

statute [34] **5**:6,12 **6**:10,15,19 **9**:15 **16**:8,16,22 **17**:23 **25**:12,12 **31**:18 **36**:8 **44**:19 **45**:15 **56**:19 **58**:22 **59**: 19 **63**:8,11 **66**:14,20 **69**:12 **71**:1, 13 **76**:14,20 **79**:16 **80**:4,6,14 **82**: 23,24

statute's [2] **12**:5 **29**:8

statutes [2] **11**:8 **25**:10

statutory [7] **6**:9 **9**:12 **12**:10,15 **16**: 6 **23**:12 **82**:12

stay [1] **77**:6

stays [1] **61**:8

step [3] **78**:25 **79**:18 **81**:11

steps [2] **3**:21 **82**:20

still [6] **13**:10 **16**:24 **35**:16 **55**:4 **63**: 19 **74**:11

stop [1] **30**:6

Stores [1] **82**:2

story [1] **80**:17

straight [1] **51**:2

straight-forward [1] **24**:7

strains [1] **42**:8

strange [1] **5**:16

street [1] **5**:7

strengthens [1] **39**:14

stretch [5] **12**:5 **41**:1 **42**:10,12,15

strong [4] **9**:1,11 **27**:10 **31**:4

stronger [1] **20**:25

strongest [1] **21**:11

struck [1] **7**:10

structural [1] **38**:4

structure [3] **4**:2 **47**:15 **76**:14

stuck [3] **38**:13 **48**:1 **51**:20

stuff [3] **13**:19 **21**:15 **41**:23

sub-subsection [1] **16**:10

subchapter [3] **20**:9,10,12

subject [11] **31**:12 **50**:3 **57**:16,24 **60**:2 **61**:2 **68**:1 **75**:20 **76**:11,13 **77**: 17

submitted [2] **83**:8,10

subsection [22] **23**:7,9 **24**:10 **33**:6, 10,19,24 **34**:5 **35**:19 **38**:7 **39**:11 **40**:15 **41**:19,20 **44**:22 **54**:14 **57**:16, 24 **75**:20,21,24 **76**:11

subsections [1] **14**:12

subset [1] **79**:20

substantive [2] **9**:3 **50**:16

suggest [1] **70**:10

suggests [3] **16**:13 **57**:17 **78**:15

suits [4] **19**:24 **21**:7 **32**:22,23

super [1] **17**:23

superfluity [3] **55**:18 **60**:7,7

superfluous [12] **44**:25 **48**:8,11 **53**:6,8,11,23 **55**:16,20,21 **56**:10 **57**:25

support [4] **1**:22 **2**:8 **32**:14 **44**:18

suppose [1] **34**:25

supposed [4] **6**:23 **11**:9 **12**:1 **47**:9

SUPREME [4] **1**:1,14 **46**:20 **82**:3

surplusage [2] **79**:5,5

Systems [2] **16**:20 **17**:25

T

T's [1] **74**:13

tail [1] **65**:18

talks [5] **14**:16 **15**:16 **19**:22 **65**:20 **68**:11

target [1] **45**:18

targeting [1] **67**:3

task [3] **43**:17,17 **44**:3

tells [2] **60**:9 **71**:18

tension [3] **7**:5,8,13

term [2] **10**:1 **16**:21

terms [5] **6**:5 **40**:15 **54**:4 **56**:10 **64**: 23

text [10] **4**:2 **5**:9 **6**:9,19 **9**:14,17 **16**: 6,7 **33**:2 **59**:25

textual [11] **19**:20,21 **23**:1,2,25 **32**: 2 **43**:11 **44**:16 **61**:11,14 **83**:3

textualist [1] **12**:11

textually [1] **10**:7

theirs [1] **11**:2

themselves [1] **64**:16

theory [4] **26**:4,7,24 **31**:25

there's [18] **6**:13,14 **7**:7,13 **15**:8 **22**: 8 **24**:24 **27**:8 **28**:22 **39**:7 **44**:11 **52**: 5 **55**:14 **78**:14,15 **79**:10 **81**:23 **82**: 6

therefore [2] **42**:21 **62**:13

thinking [1] **43**:16

third [4] **3**:24 **4**:1 **66**:17 **81**:14

THOMAS [3] **1**:24 **2**:11 **45**:5

though [2] **10**:6 **27**:1

three [3] **3**:21 **9**:14 **12**:3

throughout [1] **50**:3

throwaway [1] **65**:11

tied [1] **26**:5

title [4] **20**:20,23 **21**:3 **80**:19

titles [1] **19**:8

today [2] **72**:13,14

took [6] **3**:21 **5**:1 **17**:12 **78**:25 **81**: 11 **82**:20

tough [1] **23**:11

traded [1] **32**:20

treat [1] **70**:8

treatment [1] **13**:4

treats [1] **70**:7

True [11] **34**:24 **41**:18 **44**:13,14 **47**: 12 **58**:6 **62**:24 **63**:22 **67**:12 **69**:19 **80**:5

try [4] **12**:12 **40**:10 **45**:14 **48**:18

trying [1] **8**:22

Tuesday [1] **1**:11

turning [1] **27**:11

twice [1] **53**:10

two [19] **7**:6,13 **10**:21 **16**:4 **19**:7 **20**: 15 **27**:15,19 **39**:4 **40**:7,21 **43**:17 **44**:15 **47**:5 **49**:22 **57**:3 **60**:8 **64**:23 **78**:7

type [4] **5**:21 **33**:18,25 **36**:15

types [5] **34**:21 **39**:24 **40**:6,24 **41**:9

U

U.S [3] **50**:4 **60**:2 **68**:7

U.S.C [1] **77**:13

ultimately [2] **74**:6 **82**:10

unclear [1] **10**:19

under [42] **4**:21 **5**:21,22 **7**:1 **8**:14, 18 **14**:11 **17**:2,3,5 **26**:3,7,11,16 **28**: 24 **29**:15,23 **33**:2,21 **37**:15 **41**:18, 20 **47**:22 **48**:6 **52**:12,20,21,23 **56**: 24 **66**:1,4,17 **67**:4,5,7,9 **68**:12,17, 19 **74**:12 **76**:6 **77**:3

understand [10] **4**:24 **24**:8 **33**:5 **35**:16 **38**:21 **47**:13 **48**:6 **72**:17 **75**: 1 **82**:24

understanding [3] **4**:4 **5**:8 **14**:6

undo [1] **69**:23

Uniform [4] **3**:21 **80**:23,24 **81**:2

uniformly [1] **67**:12

UNITED [5] **1**:1,14,22 **2**:7 **32**:13

unlike [1] **46**:3

unnatural [1] **23**:5

unnecessary [1] **74**:3

unusual [2] **25**:10 **71**:11

up [15] **11**:15 **23**:14 **45**:9 **49**:8,15 **55**:22 **58**:6 **68**:6 **70**:14,21 **72**:3 **76**: 3,21,25 **81**:22

upshot [1] **3**:17

useful [3] **36**:7 **38**:18 **73**:12

usual [2] **25**:7 **60**:19

V

v(a [9] **47**:16 **48**:7 **50**:23 **52**:20,23 **54**:20,24 **59**:4,20

vast [1] **17**:15

venue [2] **32**:19 **80**:20

version [2] **39**:18 **48**:6

versus [4] **3**:5 **16**:20 **50**:12 **82**:2

vessels [1] **25**:12

viable [1] **27**:2

view [7] **64**:11,14 **68**:13 **75**:17 **78**:3, 6 **81**:16

virtually [1] **62**:23

W

walk [2] **6**:8 **73**:7

wanted [11] **18**:17 **19**:1 **34**:4 **46**:6

52:18 **67**:9,15,16,24 **68**:3,4

wants [3] **46**:2 **57**:19 **67**:4

Washington [3] **1**:10,18,21

waste [1] **48**:23

way [30] **4**:3,18 **5**:4,8 **9**:22 **14**:6 **16**: 23 **23**:5 **24**:2,5 **25**:7,10 **27**:25 **28**: 19 **40**:20 **42**:5 **45**:16 **46**:5 **48**:2,3 **68**:7 **71**:11,20 **72**:20 **73**:13,17 **75**: 5,21 **79**:11 **82**:23

ways [6] **16**:4,15 **25**:15 **40**:20 **68**:5, 6

weird [1] **70**:25

whatever [2] **73**:8 **76**:16

whatsoever [2] **11**:21 **69**:4

whenever [1] **48**:19

whereas [1] **53**:16

Whereupon [1] **83**:9

whether [6] **13**:9 **33**:9 **39**:13 **43**:24 **59**:11 **81**:15

who's [1] **60**:15

whoever [1] **41**:22

whole [8] **5**:19 **9**:23 **13**:17 **16**:9 **38**: 15 **57**:20 **68**:23 **69**:11

wide [1] **82**:22

wildly [1] **70**:7

will [4] **13**:7 **49**:4 **76**:8 **81**:5

window [1] **53**:10

windows [1] **53**:7

wish [1] **57**:15

within [7] **16**:10 **23**:16 **52**:22 **58**:14 **63**:19 **66**:12 **71**:21

without [2] **31**:7 **59**:11

word [1] **44**:6

words [15] **11**:2 **20**:5 **23**:11 **32**:3 **34**:5 **40**:1 **43**:19 **44**:23 **45**:17 **49**:2 **54**:15 **72**:4 **79**:8,19 **83**:4

Work [4] **51**:23,24,24 **54**:16

works [3] **74**:15 **75**:5,22

world [2] **66**:24 **69**:23

worried [2] **18**:4 **75**:25

worse [1] **5**:11

worst [1] **45**:1

write [5] **46**:22 **47**:20 **59**:19 **71**:1 **73**:25

writes [1] **11**:9

writing [1] **16**:15

written [5] **5**:6 **15**:25 **16**:24 **25**:8 **46**:16

wrote [5] **11**:6 **41**:22 **60**:23,25 **80**: 14

Y

years [1] **81**:22

Yep [2] **26**:9 **62**:1

Z

zero [1] **4**:15