

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	ROBERT D. KLAUSNER, ESQ.	
4	On behalf of the Petitioners	3
5	MALCOLM L. STEWART, ESQ.	
6	On behalf of the Respondent	23
7	REBUTTAL ARGUMENT OF	
8	ROBERT D. KLAUSNER, ESQ.	
9	On behalf of the Petitioners	49
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:09 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 next in Case 06-1037, Kentucky Retirement Systems v.
5 EEOC.

6 Mr. Klausner.

7 ORAL ARGUMENT OF ROBERT D. KLAUSNER

8 ON BEHALF OF THE PETITIONERS

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

11 Retirement eligibility in Kentucky is based
12 on 20 years of service or age 55. Age is not the only
13 determinant. And "age" is not a bad word. As Justice
14 White said in McMann v. United Airlines, all retirement
15 plans necessarily make distinctions based on age.

16 Here it is age or service. And the EEOC's
17 focus on age alone fails to appreciate that Kentucky is
18 an integrated, consolidated retirement plan with the
19 goal of providing benefits to all qualified workers. To
20 say, as the EEOC does, that all younger workers will
21 always fare better than all older workers is factually
22 wrong, and it fails to appreciate the myriad factors
23 that go into determining pension amounts.

24 It's not age alone that determines the
25 result. Age is a factor. It's not the factor. The

1 plan is not facially discriminatory, it's not arbitrary,
2 and it doesn't violate --

3 JUSTICE BREYER: I guess the part that they
4 are saying is arbitrary as I understand it, and I
5 appreciate your correcting me if I don't understand it
6 correctly, is that you get double your pension at 55 if
7 you've worked 20 years as opposed to 10. Is that right?

8 MR. KLAUSNER: No, Mr. Chief Justice --

9 JUSTICE BREYER: A worker who has been
10 there, he's qualified, he has only worked for 10 years
11 and now he's 55 years old. There is a chart in the SG's
12 brief, and as I read that chart, he got amount "X". He
13 started at 45, he ended up at 55, he gets "X". If he
14 started at 35 and worked for 20 years, he would get much
15 more than "X".

16 MR. KLAUSNER: If the EEOC's chart were --
17 correct, that would be true, Your Honor, limited only to
18 the amount of imputed service. The person who began
19 younger in the example which Your Honor used would get
20 more imputed service.

21 JUSTICE BREYER: You would get "Y", because
22 he worked for 20 years rather than 10; is that right?
23 I'm not talking about a disabled person. I'm talking
24 about anybody.

25 MR. KLAUSNER: No, Your Honor. That's only

1 in the case of disability. In a normal requirement
2 setting, one works a number of years and you get two
3 and-a-half percent of your salary for each year that you
4 worked.

5 JUSTICE BREYER: So if a person works for 20
6 years, he gets more than if he worked for 10 years; is
7 that right?

8 MR. KLAUSNER: That's right.

9 JUSTICE BREYER: Now he is disabled. And
10 when he's disabled, if he's disabled after working only
11 10 and he is 45 years old, they pretend he had worked
12 the full 20?

13 MR. KLAUSNER: They impute -- yes, Your
14 Honor. They impute the additional service to you.

15 JUSTICE BREYER: Now I understand it.

16 Now, this individual says, I was working
17 there after the age of 55, I only worked for 14 years,
18 now I become disabled. If I become disabled before I
19 was 55, let's say I had six years to go, they would give
20 me six years extra. But because I was disabled after
21 I'm 55, I get nothing extra. Nothing is imputed. Is
22 that right?

23 MR. KLAUSNER: It's only partially right,
24 Mr. Justice. Justice Breyer, the reason that you get
25 additional before age 55 is the same as the reason why

1 you get extra before you reach 20 years.

2 JUSTICE BREYER: I didn't ask you for the
3 reasons. I want to know if I'm factually right.

4 MR. KLAUSNER: Your only partially --

5 JUSTICE BREYER: Where am I factually wrong?

6 MR. KLAUSNER: The difference is that the
7 imputed service comes before 55, because you're not
8 eligible for after 55 or after 20 years you are eligible
9 for benefits --

10 JUSTICE BREYER: You're giving me reasons.
11 I'll ask you in a second for the reasons. I want to
12 know if what I said is factually true?

13 MR. KLAUSNER: If you were disabled before
14 normal retirement, you receive imputed service.

15 JUSTICE BREYER: And not after?

16 MR. KLAUSNER: Correct.

17 JUSTICE BREYER: Okay. Now I'll say that I
18 think is the discrimination of which he is complaining.
19 And now what he would like to know is what possible
20 reason is there for that difference? Now I'd like to
21 hear what the reason is that justifies that difference.

22 You give him six extra years when he retired
23 after 14 years and though he was only 49 years old, and
24 you don't give him even one extra year when everything
25 else was the same but he retired after he was 55.

1 Now, explain to me what the reason is for
2 that.

3 MR. KLAUSNER: The reason for that, Justice
4 Breyer, is as follows: The person who's 49 and gets
5 disabled, assuming he does not have -- he or she doesn't
6 have 20 years of service, can't retire. The person who
7 is 55 in your example can leave tomorrow.

8 Additionally, the person who begins work
9 older starts out closer to retirement. We are not
10 talking about two different groups of people. The plan
11 favors the older worker by saying on the day you begin
12 work, you're always closer to retiring than a younger
13 person.

14 The purpose of the imputed service is to try
15 to replicate as closely as possible within some
16 financial limits set by the -- by the General Assembly
17 of Kentucky what you would have received had you made --

18 JUSTICE BREYER: No. He says now, what he
19 says to that, I take it, is fine. He is 49 years old.
20 He has six years to go to qualify for retirement, so let
21 him retire. If you let him retire, and you gave him 14
22 years of credit, you would be treating him just like
23 you're treating me.

24 But in addition to letting him retire, you
25 give him six extra years of credit, which at two

1 and-a-half percent per year. Good, I'm glad you do
2 that. Give me the six extra years at two and-a-half
3 percent as well. Treat us alike.

4 What's your response?

5 MR. KLAUSNER: My response, Justice, is
6 this. They start out un-alike. As I mentioned before,
7 the person who was in 55 in your example, A, is already
8 eligible for benefit. He doesn't have to wait to be
9 disabled. He may leave tomorrow.

10 The person who starts younger, particularly
11 in a public safety retirement plan, spends more time in
12 the line of fire than the person who starts older. The
13 person who starts older takes advantage of the fact that
14 in this retirement plan you can retire with as little as
15 five years of service. Actually a person who is 55 is
16 eligible for a benefit after only a month. In fact,
17 Kentucky may be the only plan in the country that does
18 that.

19 But where they don't start out alike and
20 where the EEOC's chart is based on fallacy is that the
21 person who began older in work in your example was
22 always closer to retirement, they needed less years.

23 The purpose of the plan for disability
24 purposes, which is not a separate plan, it's simply a
25 means of getting one to normal retirement who is not

1 otherwise eligible.

2 JUSTICE KENNEDY: This has been very
3 helpful, but it does seem to me to raise a question
4 about the fairness of your opening statement. You began
5 by saying something to the effect that this does not
6 discriminate on the basis of age. It does. Age is the
7 explicit factor that the statute uses in order to answer
8 Justice Breyer's question. And the Act does not
9 prohibit the use of age in all circumstances to which it
10 applies, but it does -- the Act goes on to prohibit the
11 use of age in some of the circumstances. And one of
12 those circumstances is the hypothetical of the
13 55-plus-year-old person used in Justice Breyer's
14 statement and example.

15 So, it is not correct, it seems to me, for
16 you to say that this does not discriminate on the basis
17 of age. Now, maybe there is some good reasons for doing
18 that, you can get into that, but it seems to me it does
19 make an explicit determination based on age as to some
20 people.

21 MR. KLAUSNER: Respectfully, Justice
22 Kennedy, I think that's not entirely correct, for this
23 reason. The plan makes the determination of eligible to
24 retire on 20 years or age 55 with five years. In other
25 words, it makes the determination not based on age but

1 on pension status, that is, eligibility to receive an
2 unreduced normal retirement.

3 JUSTICE SCALIA: You're saying you're one
4 step removed. You're making your determination on the
5 basis of eligibility for retirement, which in turn is
6 based on age. And you're saying that that --

7 JUSTICE STEVENS: It's sometimes based on
8 age.

9 JUSTICE SCALIA: Huh?

10 JUSTICE STEVENS: It's sometimes based on
11 age, sometimes years of service.

12 JUSTICE SCALIA: Right.

13 CHIEF JUSTICE ROBERTS: And always based on
14 age plus service.

15 MR. KLAUSNER: Right. Yes, Mr. Chief
16 Justice.

17 JUSTICE SOUTER: But your answer, as I
18 understand it, to Justice Breyer's question was, could
19 be boiled down to this: The person whose disability
20 benefit or total benefit following disability is
21 calculated on the basis of age 55, is less likely to
22 have worked or is likely to have worked less long than
23 the person whose benefit is imputed and calculated on
24 the basis of 20 years. And because the odds are that
25 we'll say the person in the 55-year-old category has

1 worked less and endured less risk, it is, therefore,
2 fair to impute less time on average to such a person,
3 and therefore, give a lower benefit.

4 You're saying there is a tradeoff. And the
5 tradeoff is because the 55-year-old retiree may get a
6 benefit after very little work and very little risk, it
7 is therefore fair and not a discrimination that on the
8 average the windfall is less for that person by the
9 imputation than the windfall to the person who retires
10 on the basis of age 20.

11 Is that a fair statement of your argument?

12 MR. KLAUSNER: Yes.

13 JUSTICE SOUTER: Okay.

14 MR. KLAUSNER: As I noted before, it's
15 about retirement eligibility, not about age.

16 In Hazen Paper you dealt with the question
17 of an individual who was fired because they were about
18 to meet the 10-year vesting requirement in a private
19 sector plan. The person was also over the age of 40.
20 The Court found that it wasn't an age discrimination
21 case because it said that age was merely correlated with
22 what the Court called pension status. I think pension
23 status and retirement eligibility, which can occur at 20
24 years or it can occur at age 55 with some service, is
25 exactly the same. In --

1 JUSTICE ALITO: That would be a good
2 argument if the sole basis for retirement under your
3 system was years of service, but it's not just years of
4 service, isn't that right?

5 MR. KLAUSNER: That's correct, Justice. One
6 needs some service, but one may retire at 55 or one may
7 retire at 20 years.

8 JUSTICE ALITO: You can't take your -- you
9 couldn't take your statute and erase all the references
10 to age and have the statute work, could you?

11 MR. KLAUSNER: No. And I don't -- I don't
12 think that pension statutes are required to eliminate
13 any use of age at all.

14 JUSTICE ALITO: Because the ADA expressly
15 allows them to do that; isn't that right?

16 MR. KLAUSNER: The ADA is designed to
17 eliminate arbitrary age discrimination. That is where
18 the design of the plan is motivated by a policy of the
19 employer to discriminate, to provide less solely because
20 of the individual's age.

21 JUSTICE SOUTER: That's -- you're sticking
22 in a word, "arbitrary," that appears nowhere in the body
23 of the statute. You picked it up from the preamble, and
24 that's -- and you're interpreting the statute with that.
25 And it isn't customary for this Court to take words that

1 don't appear in the text of the statute and read them
2 in, based on some statement of purpose or preamble.

3 MR. KLAUSNER: Justice Ginsburg, I'm aware
4 that the preamble alone doesn't direct, and I understand
5 that the operative language is in 623(a). But I think
6 that the --

7 JUSTICE SCALIA: You'd be in better shape if
8 it was in legislative history and not in the preamble.
9 We probably would take it into account.

10 MR. KLAUSNER: I think, Justice, the
11 legislative history is important for this reason. When
12 Title VII was first written age was included and then it
13 was taken out, and there was a reason why it was taken
14 out: Because there is never a reason to discriminate on
15 the basis of race, there is never a reason to
16 discriminate on the basis of national origin or
17 religion; but in government retirement plans, which are
18 paid for life and in which the calculation is determined
19 in part on age, on how long someone will live and how
20 long they've worked and that interrelationship, I think
21 Congress recognized age is qualitatively different.

22 JUSTICE GINSBURG: I think the Congress
23 recognized that what they were protecting was not age as
24 such, but old age, where in the other case they say it's
25 the racial criterion and whether it's -- or the sex

1 criterion, whether it's a man that's adversely affected
2 or a woman it doesn't make any difference; Title VII
3 applies to them both. But the Age Discrimination Act
4 doesn't apply to younger workers. It doesn't say that
5 you can't discriminate on the basis of age, so you can't
6 prefer the older person over the younger person.

7 MR. KLAUSNER: Justice Ginsburg, I
8 understand this Court's holding in Cline was that the
9 statute is intended to protect the relatively older as
10 it relates to the relatively younger. But you also said
11 in Cline that age is qualitatively different, because
12 what gives age reason in terms of discrimination is when
13 it's arbitrary. That is, when it is invidious, and
14 that's the distinction between the Title VII cases that
15 the Government relies on, and why I think Hazen Paper is
16 important, because, as the Court said, unless you can
17 show in a disparate treatment case that the policy is
18 motivated by age, then I think that the -- the intent
19 goes. And the -- one cannot draw from the face of the
20 Kentucky statute -- and that's what this is; this was a
21 challenge that said the statute discriminates on its
22 face -- that the only inference that one can have is
23 that the design of the plan is motivated to pay older
24 people less.

25 JUSTICE GINSBURG: There is one little piece

1 of it that seems, that clearly does favor the younger
2 retiree. And that's the -- what is it -- you're
3 guaranteed, what was it, at least 25 percent of your
4 final monthly salary. That's not under -- for a regular
5 retiree; and also this 10 percent that you get added on
6 for each child -- that's not part -- that's somebody who
7 is disabled gets that, but not somebody who is already a
8 retiree. Isn't that so?

9 MR. KLAUSNER: That is correct, but Justice
10 Ginsburg, that type of disability is not the disability
11 which was at issue in this particular case. That is for
12 a person who is disabled from any ability to work,
13 period, in other words, the Social Security standard of
14 disability. The disability at issue in this case was
15 the inability to work as a public safety officer, in
16 this case a police officer.

17 JUSTICE GINSBURG: I'm not sure that I
18 follow that answer.

19 JUSTICE STEVENS: Am I correct in
20 understanding that your plan does not provide a
21 disability benefit just as a disability benefit? The
22 only time disability is relevant is when it determines
23 whether or not a person will become eligible for the
24 regular retirement benefit?

25 MR. KLAUSNER: That's correct. This isn't,

1 for example, a stand-alone disability insurance policy.

2 JUSTICE STEVENS: So that for the old person
3 who has already reached retirement age the fact that he
4 doesn't get a disability benefit is common to everybody
5 subject to the plan.

6 MR. KLAUSNER: It is common subject to
7 everyone in the plan without --

8 JUSTICE STEVENS: Isn't that the answer to
9 Justice Breyer's question?

10 MR. KLAUSNER: And I -- you certainly said
11 it better than I did, Justice Stevens.

12 CHIEF JUSTICE ROBERTS: But is there any
13 reason -- I think what you're saying is we should view
14 this as a retirement plan and there are a number of ways
15 you can be eligible for retirement: Age plus years of
16 service, but another way you can be eligible is
17 disability.

18 MR. KLAUSNER: Disability fills in -- it
19 covers a gap. Disability is designed to cover you in
20 most instances from the time you get five years of
21 service -- and by the way, you're uncovered in this plan
22 for disability for the first five years of employment
23 except for a very limited, specific number of instances
24 in which only total disability from all work applies.

25 So in the case of the individual who the

1 EEOC talks about as having been discriminated against,
2 if you were a younger worker for the first five years of
3 employment you would have been not covered. A 55 -- for
4 any benefit at all. A person who starts at 21 and gets
5 disabled from work as a police officer or firefighter
6 for the first five years of employment has no protection
7 at all.

8 JUSTICE GINSBURG: But let's take the one
9 who gets over the five-year initial period. The
10 disability pay when you no longer can be in the
11 hazardous occupation, it will begin immediately, right?
12 You don't wait until you get -- you're 55 to get it.

13 MR. KLAUSNER: No, ma'am. That's the
14 purpose of the imputed services. And it's
15 essentially -- we say if during this gap of time before
16 normal retirement, this risk that's covered, that if
17 this disabling event occurs, we advance you to normal
18 retirement immediately and try to replicate as closely
19 as possible the benefit that one would have achieved had
20 you worked to the closest --

21 JUSTICE BREYER: But that's the point,
22 right?

23 MR. KLAUSNER: -- point of eligibility.

24 JUSTICE BREYER: There -- that's what the
25 complaint is, I think, that you say it's the second part

1 that you just said. What you do when the person is
2 disabled and he is not yet 55 -- he hasn't qualified
3 yet -- is you both qualify him, and when you qualify him
4 you give him credit for years he hasn't worked. Now,
5 the older person who is still working and is also
6 disabled says: Fine, you let me retire, but you don't
7 give me any extra years.

8 Now that's the complaint, I think. So that
9 if you had a person who had started at 45, eligible to
10 retire at 55, works for 4 years and becomes disabled, he
11 is credited with 14 years; while the person who started
12 at 35 and at 45 becomes disabled, he is given 20 years.
13 He is given the 10 extra years. So the first person,
14 older person, says: You gave him some extra years; you
15 didn't have to give him those extra years in order to
16 qualify him to retire. You could have just said you can
17 retire, but you gave him 10 extra years and you give me
18 no extra years. Why not?

19 MR. KLAUSNER: The answer to your question,
20 Justice Breyer, is the person who has either 20 years or
21 is 55 on the day they become disabled is already
22 eligible to retire. The plan is a single plan that
23 provides a benefit. If you start older, you have to
24 work less to get there. By the same token, by starting
25 closer to retirement you need less added to your balance

1 to bring you to normal retirement. In the example --

2 JUSTICE BREYER: You don't need anything to
3 bring you to normal retirement. You could rewrite the
4 plan and say when a person becomes disabled you get
5 retirement, right at that moment. You could say that.
6 And what the plaintiff is saying is, why don't you say
7 that? Though it's a bit mean. But I think what he
8 would probably like is you would extend the extra years
9 to him.

10 MR. KLAUSNER: There's reasons why that
11 isn't done. Number one, to follow your example, Justice
12 Breyer, for current employees, people hired before 2004,
13 of which there were several hundred thousand, you'd have
14 to lower the benefit to follow your example. The
15 Kentucky Constitution forbids lowering the benefits.
16 Actually, the Commonwealth, in response to the liability
17 in this case, did change the disability benefit. For
18 people hired after 2004, they slashed its economic value
19 substantially, and now everybody just gets a certain
20 amount of disability. It doesn't, however, accomplish
21 the Commonwealth's goal of attracting and retaining
22 employees to do hazardous duty jobs.

23 CHIEF JUSTICE ROBERTS: So the effect of
24 this litigation is that policemen or firefighters who
25 are injured and become disabled now get lower benefits

1 for disability?

2 MR. KLAUSNER: Much lower. It's a
3 substantial reduction. They just get a small piece of
4 change.

5 It's interesting, you know, in the Federal
6 Civil Service Retirement System, the police officers,
7 for example, who work in this Court, if they become
8 disabled, they have imputed service to an age. It's a
9 very similar system. In fact, all employees in both
10 FERS, the Federal Employees' Retirement System, and the
11 Civil Service Employees' Retirement System, both
12 participate in a program where age is imputed to normal
13 retirement. It's a common practice, as the Court can
14 see from the amicus briefs. It's a common practice
15 throughout the United States. I think --

16 JUSTICE BREYER: See, that's why I think the
17 result in this case is just terrible. I think it takes
18 disabled people and cuts their benefits with no benefit.
19 I cannot believe for two minutes that Congress would
20 have intended that result. But the reason I asked you
21 the question was I want you to tell me how to get to
22 that result under this statute.

23 MR. KLAUSNER: You may get to this result in
24 this way: If you determine that age is not the driver,
25 that is, that because you have a plan that has normal

1 retirement based on service alone, a 38-year-old
2 employee who gets disabled with 18 years of service gets
3 two years of imputed service. The 45-year-old, in your
4 example, who started at 35 would get 10 years.

5 JUSTICE KENNEDY: Suppose I can't make that
6 assumption or adopt that premise. Is there another
7 basis on which to reach the result? I think this does
8 explicitly discriminate based on age as to some people,
9 and you're telling me you don't want me to do that. But
10 Suppose I don't agree with you. Is there some other way
11 to reach the result?

12 MR. KLAUSNER: I think Your Honor you can
13 reach the result in this way. The statute was
14 challenged as being facially discriminatory, and I think
15 under this Court's precedents for facial discrimination,
16 one would have to say that the only reasonable inference
17 in the statute, by its mere use of age, is that you say
18 that it starts out presumptively discriminatory. What
19 the Government has really argued here is an as-applied
20 circumstance. They said the effect of the statute in
21 certain cases, and in those circumstances the statute
22 would stand on its face and if there is a circumstance
23 in which someone effectively is discriminated, then you
24 look to see are there reasonable factors other than age
25 that effect -- that take effect in this instance?

1 Secondly, I think the Court can determine --
2 and I think this is the question that is the next step
3 after Hazen, where you said that age correlated with
4 pension status, in that case being vested for 10 years.
5 The question is, if a plan has eligibility to retire as
6 its motivation, that is, it is service regardless of age
7 or age plus service, is it really motivated by age? And
8 I think the answer to that question, Justice Kennedy,
9 clearly is no.

10 The one thing I would add is if you look at
11 the statute in Betts, the Ohio case, which is the last
12 time an age case on a public plan got to this Court, in
13 the Ohio plan you couldn't get a disability because you
14 were 60, but you could also retire in that plan just
15 like Kentucky on years of service alone, but a
16 years-of-service retiree in Ohio could get a disability.

17 That's not true in Kentucky. Somebody who
18 starts as a firefighter at 18 no longer has disability
19 protection at 38 years old. A person who starts as a
20 police officer at 45 retains disability coverage until
21 they're 55. I think -- I think the language of the
22 statute alone enables you to get there.

23 And I think to get back to Justice
24 Ginsburg's question -- and I don't believe I fully
25 answered on this issue of the role of the word

1 "arbitrary" in the statute -- I think that that gives
2 that word meaning, not just because it's in the
3 preamble, but because it's in the legislative history,
4 and the evil that Congress was trying to get to is what
5 is it that we're trying to prevent? We're trying to
6 create job opportunities for older workers, and what
7 Congress said after Betts is you want to make sure
8 benefit plans are covered. And I think Kentucky has
9 accomplished both. It doesn't use a retirement age, as
10 many employers do. Again, the Federal Government forces
11 police officers and firefighters out of their jobs.
12 Firefighters at 55, police officers at 57. Kentucky
13 doesn't. The program doesn't discriminate on the basis
14 of age.

15 If there's no question, I'd like to reserve
16 the rest of my time for rebuttal.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.
18 Mr. Stewart.

19 ORAL ARGUMENT OF MALCOLM L. STEWART
20 ON BEHALF OF THE RESPONDENT

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

23 In calculating the retirement benefits owed
24 to disabled workers, Kentucky uses age as an explicit
25 decisionmaking factor in a way that disadvantages older

1 employees. Although Kentucky may be able to establish
2 on --

3 JUSTICE BREYER: Let me ask you this sort of
4 basic question: Does it use age any differently than it
5 uses years of service?

6 MR. STEWART: It does in the sense that,
7 with respect to disabled employees, two employees who
8 have the same total years of actual service but who are
9 of different ages may receive dramatically different
10 benefits.

11 JUSTICE STEVENS: That's because of the
12 period necessary to qualify for retirement?

13 MR. STEWART: It's -- let me direct your
14 attention to the relevant provision of the Kentucky
15 statute, and it's at page 7a and 8a of the blue brief.
16 This is with respect to -- it's true that, for a normal
17 retirement, an individual either has to be age 55 with 5
18 years of service or have 20 years of service at whatever
19 age. But if you look at the requirements for disability
20 retirement in particular, the very bottom of the page,
21 it says: "Any person may qualify to retire on
22 disability subject to the following. The person shall
23 have 60 months of service, 12 of which shall be current
24 service credited under provisions of Kentucky law."

25 JUSTICE STEVENS: Let me just interrupt you.

1 Is there -- is it your position there is a disability
2 benefit that is different from the retirement benefit?

3 MR. STEWART: They -- they are different in
4 the sense that they are calculated differently. That
5 is, if all Kentucky had done was say --

6 JUSTICE STEVENS: I thought that all that
7 disability did was determine -- help get a man who is
8 disabled eligible for the retirement benefit.

9 MR. STEWART: The program --

10 JUSTICE STEVENS: That's the only function
11 it provides.

12 MR. STEWART: I think that's incorrect.
13 There are two distinct functions of -- there are two
14 distinct differences between disability retirement and
15 normal retirement: The first is that the eligibility
16 criteria are different. In order to qualify for normal
17 retirement, you have to be either 55 years old with 5
18 years of service or have 20 years of service. For
19 disability retirement, you become eligible if you are of
20 any age and are forced to retire due to disability and
21 have at least five years of service.

22 JUSTICE SCALIA: Well, why does that matter?
23 I mean, the exception in the statute is for -- for
24 retirement, taking age into account for retirement, is
25 narrowly crafted. It says that they can make any

1 decision about -- they can require the attainment of a
2 minimum age as a condition of eligibility for normal or
3 early retirement.

4 Now, we have not read that to exclude adding
5 an additional element to age, namely age plus years of
6 service. We don't say that that disables you from the
7 -- from that exemption. Why can't you add a third
8 factor? Age, years of service, and disability.

9 MR. STEWART: You can't. The first thing I
10 would say about that exception is it refers specifically
11 to a minimum age, and what that was intended to make
12 clear was that to the extent that Kentucky allows
13 55-year-olds to retire with only 5 years of service, but
14 requires a 45-year-old to have 20 years of service, that
15 minimum age would not violate the statute. Now, as a
16 result of this Court's decision in Cline, that provision
17 in a sense is superfluous because the younger worker
18 wouldn't have an ADEA claim anyway. But the reference
19 to a minimum age is intended to address that situation.

20 JUSTICE SCALIA: And --

21 JUSTICE ALITO: It seems to me that what
22 Kentucky is trying to do is to, at least in part,
23 provide make-whole benefits for a police officer who
24 becomes disabled below the age of 55. So what they want
25 to do is to say we want to give you the benefit that you

1 would have received if you had not been hurt on the job
2 and therefore unable to work and had been able to work
3 to the normal retirement age.

4 Now, if that's correct, is that an
5 illegitimate objective? And if it's not an illegitimate
6 objective, is there any way that they can do that
7 consistent with your understanding of the ADEA? Because
8 when someone is over the retirement age, it's rather
9 hard to see how many years you would add on projecting
10 how long that person would continue to work beyond the
11 age of retirement eligibility.

12 MR. STEWART: It is certainly not
13 illegitimate for Kentucky to say: We want to be more
14 generous to people who are forced to retire due to
15 disability than to people who choose to retire
16 voluntarily when they are physically capable of
17 continuing to work.

18 And so if Kentucky wants to say, in the case
19 of an individual who is forced to retire due to
20 disability, we will add additional years in computing
21 benefits to estimate the number of years this person
22 would have worked had he or she not become disabled,
23 that's fine as well.

24 What they can't do, at least what they can't
25 do without establishing one of the affirmative defenses,

1 is use age as a proxy, as the basis for deciding how
2 many years would this person have worked if he or she
3 had not become disabled because --

4 JUSTICE ALITO: So if they want to do that
5 and they have a case of a police officer who works
6 beyond 55 -- the officer is 55-plus with 10 years of
7 service and then becomes disabled -- you say they have
8 to give that person 10 years of credit.

9 MR. STEWART: If they are going to give the
10 45-year-old with 10 years of service 10 years of credit,
11 they have to give the 55-year-old 10 years of service --
12 with 10 years of service 10 years of credit, again,
13 unless they can establish the cost-justification
14 defense.

15 And part of the argument they are making is
16 it would be unduly expensive to guarantee the
17 55-year-old an additional 10 years of service, because
18 it's much more likely that the 55-year-old will become
19 disabled than it is with the 45-year-old.

20 JUSTICE SOUTER: But he is saying one thing
21 more. He is saying it's also highly unlikely that the
22 55-year-old has worked as long subject to risk at the
23 point at which the calculation is made than is the case
24 with the person who retires on the basis of 20 years.
25 And so that there is a tradeoff. And, therefore, you

1 constantly analyze this as the kind of garden variety of
2 discrimination based on age which Congress was aiming
3 for.

4 MR. STEWART: Well, to go back to the
5 question you were asking Mr. Klausner, I think if we
6 were looking at the class of voluntary retirees, it
7 would be an accurate generalization to say that those
8 above 55 were likely to have fewer years of service than
9 the younger people. Because the only way that a younger
10 person could qualify for normal retirement would be to
11 amass 20 years of service; whereas, the older person
12 could do it with fewer years.

13 But if you are looking at people who want to
14 continue working but who are prevented from doing so by
15 reason of disability, there is no reason to assume that
16 the older people are going to have spent less time in
17 the line of fire than the younger people. And, in any
18 event, the comparison that we are making --

19 JUSTICE SCALIA: Just say that again. Just
20 say the last thing again. I didn't follow you.

21 JUSTICE SOUTER: Yes. I didn't get it
22 either.

23 MR. STEWART: If we're looking at the class
24 of people who -- including over 55-year-old and under
25 55-year-old -- who want to continue working but who have

1 been prevented from doing so by reason of disability,
2 there is no reason to think that the older people within
3 that class, as a group, will have fewer years in the
4 line of fire than the younger people. And, in any event
5 --

6 JUSTICE SCALIA: Why? I -- I think -- you
7 mean in the future?

8 MR. STEWART: No. No. Under their belt.
9 Under their belt.

10 JUSTICE SCALIA: Under their belt. I see.

11 JUSTICE SOUTER: They are exactly the same
12 people. The only thing that distinguishes the one
13 class, those who voluntarily do and those who are
14 disabled, is happenstance; and the happenstance is
15 disability in the line of service.

16 MR. STEWART: It's not just happenstance,
17 because if you're guessing the likely tenure of service
18 of people who take voluntary normal retirement before
19 age 55, in a sense you are skewing the class, because
20 the only people who can do that under Kentucky law are
21 people with at least 20 years of service.

22 So the voluntary retirees, the younger
23 people, as a group, are likely to be -- have longer
24 tenure. But that generalization doesn't hold true with
25 respect to people who are forced to retire due to

1 disability.

2 JUSTICE STEVENS: It seems to me your
3 argument boils down to the claim that people who have
4 already reached -- become eligible for retirement by
5 either age or period of service, the State has a duty to
6 give them a chance to recover a disability benefit if
7 they give a disability benefit to younger workers.

8 MR. STEWART: No. Our point is that they
9 should use the same computation methodology for both
10 categories of employees.

11 JUSTICE STEVENS: The computation is for a
12 different purpose in that -- in -- for the younger
13 workers the purpose is to make them eligible for
14 retirement. For the older workers, they are already
15 eligible for retirement.

16 MR. STEWART: I think that's incorrect, and
17 that was really the point I was making by quoting from
18 the Kentucky law on page 7a and 8a. The Kentucky
19 provision that I quoted was the provision that
20 establishes eligibility for disability retirement. And
21 it says, as the criterion for eligibility, beyond, of
22 course, the fact of disability, the person shall have 60
23 months of service.

24 So an individual under Kentucky law who is
25 forced to retire due to disability and has at least five

1 years of service is eligible for disability retirement.
2 The imputation of additional years of service is not
3 necessary --

4 JUSTICE STEVENS: The term "eligibility for
5 retirement," as used in that part of the statute, is
6 referring to actually the same thing as retirement
7 achieved by getting their -- getting credit for
8 post-disability years.

9 MR. STEWART: Exactly. Well, the purpose of
10 defining the category of eligible persons is to make
11 sure that they do get a retirement benefit even though
12 they wouldn't satisfy the normal age and service
13 requirements for ordinary retirement. And we have no
14 problem with that.

15 Kentucky can say we want to define a
16 separate category of individuals who don't satisfy
17 normal age and service rules but who should,
18 nevertheless, be given a retirement benefit because they
19 have been forced to retire due to disability. That's
20 fine.

21 And if they use the same computation
22 methodology, namely, some factor of actual years of
23 service times final compensation times a multiplier, as
24 they do for normal retirement, that would be fine. Our
25 --

1 CHIEF JUSTICE ROBERTS: So it's fine for
2 them to use that, but you're saying it's not fine for
3 them to use any element of age in making that
4 computation?

5 MR. STEWART: That's correct.

6 CHIEF JUSTICE ROBERTS: Even though, under
7 the Federal law, they can use age as the exclusive
8 requirement in determining retirement?

9 MR. STEWART: Well, again, there is a an
10 explicit exemption in the ADEA for a minimum retirement
11 age. And so it wouldn't have violated -- even apart
12 from this Court's decision in Cline, it wouldn't have
13 violated the ADEA to say an individual who is 55 with
14 five years of service can get retirement, even though a
15 younger --

16 JUSTICE BREYER: What is wrong with using
17 that as a benchmark? If you can fire a person when he
18 is 55, why can't you use it as a benchmark as to how
19 much you're going to give a disability person on
20 pension?

21 MR. STEWART: Well, again, I think the --

22 JUSTICE BREYER: The lesser or greater --
23 this would be an instance where greater includes lesser
24 for the reason that this lesser business has no
25 stereotypes. All they're trying to do is to help people

1 who are disabled at a time when they are younger and
2 probably have fairly good expenses, and everybody gets
3 this kind of insurance.

4 And this man who is the Plaintiff here had
5 it, too, while he was there. So it's true you are
6 really using in a minimal sense age, but you are doing
7 it in a statute that permits you to do it because it's a
8 lesser version of that.

9 MR. STEWART: There are a couple of things
10 I'd say. The first is that the Act is quite specific in
11 saying that a State may establish a minimum -- may
12 establish a retirement age with respect to its State
13 police and firefighters, but it doesn't say the ADEA is
14 inapplicable to police and firefighters who are over age
15 55.

16 JUSTICE BREYER: It doesn't say it's
17 inapplicable. I wasn't saying it's inapplicable. What
18 I am worried about -- and this is a perfect example of
19 people using absolutely mechanical rules, and
20 particularly when you talk about pension systems, which,
21 of course, age is relevant to a pension system, and what
22 they do is find comparisons; and, before you know it,
23 you are in the kind of a -- of a hamburger situation
24 where it's so chopped up that perfectly worthwhile
25 things are forbidden. And this would seem to be a

1 number 1 exhibit.

2 MR. STEWART: There are several different
3 answers I would give. The first is if the greater
4 included the lesser, it would be permissible for
5 Kentucky to say: We will keep the over 55-year-old
6 people on the work force, but we'll pay them less
7 because of their age.

8 JUSTICE BREYER: No, because what you are
9 looking at is to see whether the purpose of Congress is
10 somehow implicated, a purpose designed to prevent
11 stereotypical thinking from being used to put older
12 people at a disadvantage. And there is no indication
13 that this is so in this case.

14 MR. STEWART: I think --

15 JUSTICE BREYER: Now, what's the response?

16 MR. STEWART: I think that's incorrect, that
17 is, the two justifications that have been given for the
18 disparate treatment of older workers are, first, younger
19 workers as a group are likely to need more of a boost;
20 and, second, the younger disabled person probably would
21 have worked longer if he had not become disabled. And
22 so this replicates the situation that would have
23 prevailed.

24 I think, whether or not you want to think of
25 those as stigmatizing stereotypes, it's quite clear that

1 neither of those generalizations could typically be used
2 as a basis for age-based disparities.

3 For instance, nobody would claim that an
4 employer could pay the older workers less because they
5 are likely to be less in need of financial assistance.
6 And with respect to the initial --

7 JUSTICE SOUTER: The reason for that is that
8 we accept the criterion at the outset that your pay
9 bears some relationship to what you do.

10 We are now in a situation in which the
11 benefit does not bear a relationship to what you are
12 doing or going to do.

13 MR. STEWART: Well, on the whole, the
14 benefit bears a close -- the retirement benefit bears a
15 close relationship to what you have done. That is, the
16 benefit is calculated on the basis of actual years of
17 service, and the purpose clearly is, in part, to reward
18 the employee for service to the employer.

19 But with respect to -- and that's the way
20 it's done with respect to the older disabled worker.
21 His benefits are computed based on what years of service
22 he has actually contributed to the employer. With
23 respect to the younger people, it's not based on that
24 alone. Rather, the State imputes additional years --

25 JUSTICE GINSBURG: And with respect to that,

1 Mr. Stewart, the problem that Justice Breyer brought up,
2 you -- if you would look to your brief, page 30,
3 footnote 13, the question is, so we have this -- if we
4 take your interpretation of the statute, how can we deal
5 with a person in her 30s who becomes disabled when she
6 is making a low salary and has only, say, 10 years of
7 service? She is going to get a very low disability.
8 And you say that's one thing that's all right.

9 On a prospective basis, what could Kentucky
10 do? One is give the younger workers only their actual
11 years of service, which Mr. Klausner said is what is
12 happening, and therefore, these people are getting a lot
13 less than they used to get. And then you say, oh, but
14 there's another way, and that is to impute additional
15 years of service on an age-neutral basis. And you're
16 not specific about what would the age-neutral basis be.

17 MR. STEWART: I guess there could be a range
18 of alternatives. One alternative, for instance, would
19 be for every disabled worker of whatever age impute an
20 additional five years of service as something of a rough
21 estimate of the number that person might have worked if
22 he or she had not become disabled.

23 Another possibility would be to impute years
24 of service up to 10 or 20. Again, there would be
25 probably an infinite number of ways it could be done as

1 long as age were not used as, as the basis.

2 The other thing I wanted to say about --

3 JUSTICE ALITO: But if do you that, aren't
4 you going to be -- you're going to be undercompensating
5 the younger person who gets disabled and
6 overcompensating the people over 55 who gets disabled
7 who may not -- it may not be realistic to think that
8 someone's going to continue to work as a police officer
9 until 65. I don't know.

10 MR. STEWART: Well, the other thing I would
11 say about that justification, which rests on I think the
12 valid statistical correlation between how old you are at
13 the time that you're disabled and how much longer you
14 would have worked. Again, whether or not -- I think you
15 wouldn't think of that as an invidious stereotype. But
16 again, it's not a generalization that could typically be
17 used as a basis for age-specific decisions.

18 For example, the Wirtz report makes clear
19 that the paradigmatic pre-ADA practice that Congress
20 wanted to get rid of was a limit of age 50 or age 45 and
21 an employer saying: We're not going to hire anybody who
22 is over that age. And certainly the employer could say
23 justifiably as a group people above that age are likely
24 to have fewer work years ahead of them than people below
25 that age. And if that generalization could provide a

1 basis for an explicit age-based distinction, the Act
2 would really be eviscerated.

3 The other thing I wanted to respond to is
4 the suggestion that, while we might be able to tease
5 this out of the literal language of the statute, this is
6 certainly an unintended consequence. It is not
7 something that Congress would have wanted. I think, to
8 the contrary, this is not identical but very similar to
9 the type of disparity that was present in Betts. That
10 is, in Betts the individual was over the age of normal
11 retirement but had elected to keep working. She became
12 disabled and was prevented from continuing to work. She
13 was eligible for normal retirement benefits. She wanted
14 to collect disability retirement benefits, because
15 again, the reason for her retirement was disability.
16 She was told that she couldn't do it. And the State's
17 computation methodology for calculating disability
18 retirement benefits was significantly more generous than
19 the one that it offered for --

20 JUSTICE BREYER: What about this idea, which
21 is -- would this wreck the statute? You say we're
22 talking about age, which is not an immutable
23 characteristic. Everybody goes through it. Everybody
24 is younger, everybody is older. And therefore we take
25 the word "discriminate" and the word "discriminate" in

1 this context, when considered in terms of pension
2 requirements, which inevitably are age mixed to a
3 considerable degree, means that if there are plausible
4 justifications and no significant reason for thinking
5 that it reflects stereotypical thinking, that it does
6 not fall within the scope of the word "discriminate."

7 MR. STEWART: I think, first, that would be
8 contrary to the way that the word "discriminate" has
9 been construed in Title VII.

10 JUSTICE BREYER: I started out by saying,
11 that's why I said that this is not an immutable
12 characteristic, and it is -- that's why I put all the
13 qualifications in there.

14 MR. STEWART: Well, the court in *Thurston*
15 has said the language of the ADEA should be construed
16 similarly to that of Title VII because the basic
17 anti-discrimination prohibition was drawn in *haec verba*
18 from Title VII in the legislative history to the older
19 workers's Benefit Protection Act when Congress amended
20 the statute to cover fringe benefits, which the Court in
21 *Betts* had held were not covered. Congress did that by
22 enacting a new 29 U.S.C. 630(1) to say the term -- that
23 the phrase "terms and conditions of employment" includes
24 fringe benefits.

25 And the legislative history explains that

1 Congress could have achieved the same result by adding a
2 reference to fringe benefits in the basic
3 anti-discrimination provision contained in 29 U.S.C.
4 623(a), but the Congress chose not to do that because it
5 wanted to maintain the similarity in wording between the
6 ADEA's anti-discrimination provision and that of Title
7 VII in order to reinforce the inference that the two
8 were to be construed in pari materia.

9 The other thing I would say with respect to
10 your reference to age distinctions that are not based on
11 stereotypes is again to return to what I was discussing
12 earlier. The two justifications that have been offered
13 are first, younger people are likely to have fewer
14 financial resources, so they need more of a boost; the
15 second is the younger worker probably would have worked
16 longer if he hadn't become disabled and therefore this
17 is replicating the situation that would have prevailed
18 absent the disability.

19 And again, my point is, whether or not you
20 think of those as invidious stereotypes, they are
21 plainly not generalizations that could typically be used
22 to justify --

23 JUSTICE STEVENS: May I ask this question
24 right on that point. Supposing you have two different
25 people retire, one -- that become disabled, rather --

1 one because he's five years short of the age eligibility
2 and the other because he's five years short of years of
3 service, so it would be a younger person, and both would
4 have become eligible for retirement in five years after
5 their disability. Are they treated the same way under
6 the plan? And if they are, where is the discrimination?

7 MR. STEWART: Well, the discrimination is if
8 you imagine --

9 JUSTICE STEVENS: Well, first of all, tell
10 me whether they're treated the same way under the plan.

11 MR. STEWART: Well, it depends on other
12 variables. For instance, if you have a --

13 JUSTICE STEVENS: What other variables?

14 MR. STEWART: As to the person who is five
15 years away from qualifying by reason of --

16 JUSTICE STEVENS: Years of service.

17 MR. STEWART: -- years of service, if that
18 person is younger than 50, then they'll be treated the
19 same, because each of them will have --

20 JUSTICE STEVENS: That's a hypothesis.

21 MR. STEWART: But --

22 JUSTICE STEVENS: So then how is that
23 discrimination on the basis of age?

24 MR. STEWART: But it is a discrimination on
25 the basis --

1 JUSTICE STEVENS: It's not even
2 discrimination as far as I see it.

3 MR. STEWART: Well, it wouldn't -- there
4 wouldn't be any claim of disparate treatment with
5 respect to those two individuals. But if you have an
6 individual who is 55 years old with 15 years of service
7 and 50 years old with 15 years of service, they are both
8 equally close to the 20-year threshold for qualifying
9 for normal retirement on the basis of years of service.
10 Yet the 50-year-old gets 5 imputed years added and gets
11 a significantly larger benefit than the 55-year-old.

12 Their justification is, well, the
13 55-year-old is already eligible for normal retirement
14 and therefore, it's fair to treat him differently. And
15 the point I was making with reference to the Kentucky
16 code is the 50-year-old who is forced to retire due to
17 disability is also eligible for retirement. It's called
18 disability retirement.

19 JUSTICE STEVENS: It seems to me that your
20 claim boils down to an argument that the statute
21 requires someone who is already qualified for retirement
22 to get a disability benefit that the younger person
23 would. It seems to me that's the basic difference.

24 MR. STEWART: No, I don't think that's
25 correct. If all the State did was to say disability

1 retirement benefits will be available to people who have
2 at least five years of service and are forced to retire
3 due to disability and we are excluding people who are
4 above 55, in and of itself that's fine. If the only
5 purpose of excluding the older workers is to make clear
6 that they can't get both benefits simultaneously, there
7 is no problem with that.

8 Our problem is that, having defined the
9 class of persons eligible for disability benefits to
10 include only those who are under 55 --

11 JUSTICE STEVENS: I see you talking about
12 two benefits.

13 MR. STEWART: -- they did use a more
14 generous computation methodology.

15 JUSTICE STEVENS: There not two benefits.
16 It's only one.

17 MR. STEWART: It's only one benefit. And
18 really, that's part of our point. It's only one
19 benefit, so why would they say that people who are older
20 will have their benefits computed using a different
21 formula than people who are younger?

22 CHIEF JUSTICE ROBERTS: You prevent the
23 State from taking into account the fact that younger
24 disabled workers have not had the same opportunity that
25 older disabled workers have. And it results -- if we

1 adopt your system where you can look only at years of
2 service, what it, in effect, is going to do is to
3 prevent Kentucky from giving disability benefits to
4 older workers who become disabled.

5 For example, if you have two workers, one
6 who starts work at 18 and acquires years of service,
7 say, 12 years of service and becomes disabled, you would
8 say, well, you can take those years of service into
9 account. The older worker who begins at age 30 and is
10 disabled in his first year on the job, you say, well,
11 you can only look at years of service. You can't impute
12 to both of them retirement age. So the 30-year-old who
13 becomes disabled has to get less, fewer benefits than
14 the 18-year-old who becomes disabled.

15 MR. STEWART: Well, first, we are not
16 preventing Kentucky from imputing additional years. We
17 are simply saying the method of determining how many
18 years will be imputed, absent an affirmative defense,
19 can't be dependent on the employee's age.

20 JUSTICE BREYER: Would it be the same as --
21 I mean it seems to me now -- I'm thinking the problem is
22 we are going into the package; we are starting opening
23 up the package that the 55-year-old retiree normally
24 gets.

25 Suppose they said this: here's what we'll

1 do to the disabled person. We'll treat him just as if
2 he retired at 55. He is only 35; and, moreover, at 55
3 when you retire in our police force, we give you a big
4 party and a gold watch. Well, we don't do that if you
5 retire later on. Same kind of claim.

6 Why not? Over 65 years old, he retired.
7 Hey, you didn't give him the gold watch. Why did you
8 give the other person the gold watch? You said the
9 reason is we treat them all like we treat them when you
10 retire at 55.

11 MR. STEWART: I'm not quite sure if I
12 understand the question, but I don't think that there is
13 any --

14 JUSTICE BREYER: That's fair, that you don't
15 understand.

16 (Laughter.)

17 MR. STEWART: I don't think there would be
18 anything wrong with Kentucky saying we are going -- in
19 fact, this is what we are asking for. If Kentucky wants
20 to say a younger person who is forced to retire due to
21 disability will be treated as though he were 55 years
22 old, that's fine. If they give him disability benefits
23 and they calculate the benefits using actual years of
24 service as they do for the other -- for the older
25 employees, that there is no ADEA problem with that.

1 Our problem is that they say we are treating
2 him as though he had worked additional years until he
3 was 55 when he hasn't, and when the older employee isn't
4 given that same opportunity.

5 And, again, it is true that Kentucky's
6 system is particularly generous to older employees who
7 want to retire voluntarily. They can retire with as
8 little as five years of service, even though the younger
9 worker would have to have more. But the people on
10 whose behalf the EEOC is suing have not derived any of
11 that benefit. These were people who did not retire
12 voluntarily. They were people who were eligible for
13 retirement benefits, but chose to remain in the work
14 force. And, essentially, they are being told, in
15 estimating how many more years you would have worked, we
16 are going to have an irrebuttable presumption that the
17 answer is zero, even though their very circumstances,
18 the fact that they continued to work after they could
19 have retired, belie that assumption.

20 And just a final point I wanted to make
21 about Betts, is that the system here is not identical,
22 but very similar to the system that was at issue there,
23 in the sense that an older worker who was forced to
24 retire due to disability got a lower benefit than she
25 would have received if she had been younger with the

1 same years of service and the same disability.

2 It couldn't be clearer that Congress wanted
3 to overturn that decision. That was the impetus for the
4 enactment of the OWBPA.

5 So I think there is really -- it's not
6 correct to suggest that, even if we win, this is somehow
7 an unintended consequence of what Congress did. This is
8 the very situation that Congress wanted to cover while
9 providing an affirmative defense to employers who can
10 satisfy it.

11 JUSTICE GINSBURG: Mr. Stewart, before you
12 finish, that little piece that seems to be favoring the
13 younger worker that you guaranteed at least -- what was
14 it, 25 percent of your final monthly salary, and you get
15 10 percent for each child -- now that does seem to be
16 something that's -- that's not available for a regular
17 retiree.

18 MR. STEWART: It's not available for a
19 regular retiree, and it's not available for a person who
20 is eligible for normal retirement but becomes disabled
21 and is forced to retire for that reason.

22 If the only problem were that Kentucky made
23 those benefits available to people who were forced to
24 retire due to disability, that wouldn't be an ADEA
25 violation, so long as they made those benefits available

1 to the older worker who was also forced to retire.

2 But I take your point that those aspects of
3 the statute introduce a further element of age
4 discrimination without even the justification that
5 Kentucky has proffered for the imputed years.

6 With respect to the children, in particular,
7 that seems to be the only other area in the plan in
8 which Kentucky is directly targeting the people who are
9 in greatest financial need, at least by one measure
10 having dependent children, and yet the older workers are
11 left out of that entirely.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 Mr. Stewart.

14 Now, Mr. Klausner, you have four minutes
15 remaining.

16 REBUTTAL ARGUMENT OF ROBERT D. KLAUSNER,
17 ON BEHALF OF THE PETITIONERS

18 MR. KLAUSNER: I'd like to start back where
19 we just left off with Justice Ginsburg's question about
20 the guaranteed benefit. If a person is 38 years old and
21 has 20 years of service, that benefit is not available.
22 If you're 50 years old with 5 years of service, the
23 benefit is available.

24 The benefit is not available to the
25 38-year-old because that person is eligible to retire on

1 a normal retirement benefit. Age isn't the driver.
2 Eligibility for retirement is the motivation.

3 And while my brother says that Congress
4 wanted to overturn Betts, what they wanted to overturn
5 in Betts was the language in this Court's decision that
6 cast doubt on whether pension plans were generally
7 covered by the language of the Age Discrimination in
8 Employment Act. And the Older Workers Benefits
9 Protection Act, if one looks at the legislative history,
10 was focused far less on what happened in a public
11 employee retirement system. The real issue that
12 Congress focused on, if one looks at the House and
13 Senate reports, is they said there is a problem in
14 private industry in the Rust Belt that normal retirement
15 eligibility is being used to force people not to get
16 some other benefit in some other stand-alone plan.
17 That's not the issue here.

18 And the plan in Betts is no more like
19 Kentucky's plan than the Thurston plan. In Thurston,
20 the pilot case, no pilot over 60, no matter how
21 skillful, had bumping rights to be a flight engineer.
22 In Kentucky, one with 20 years of service, regardless of
23 age, is in the same posture as someone who is 55 with a
24 minimum service.

25 My brother also pointed you to a provision

1 in the Kentucky statute on pages 7a and -- page 7a in
2 the appendix. Look also at 2a, which defines normal
3 retirement to be 55 with 5 years of service, or 20 years
4 of service regardless of age. The methodology for
5 determining disability in this case is exactly the same.
6 It's based on your proximity to normal retirement, not
7 based on your age.

8 One example was given. If a person is 45
9 years old with 4 years of service and became disabled,
10 that person would get nothing because they haven't met
11 the five-year service requirement. But a 55-year-old
12 with 4 years of service has a normal retirement benefit.

13 It's about limited Government resources not
14 being duplicated, and perhaps that's the reason why the
15 EEOC adopted its regulation on December 26th
16 coordinating retiree health care. The rationale they
17 gave was we looked at all the -- all the ways to do
18 this, and we couldn't come up with a reason to do it any
19 other way.

20 In the Sixth Circuit Federal argument, Judge
21 Boggs noted in his dissent -- Chief Judge Boggs noted he
22 asked the EEOC for a reason on how to fix this, and they
23 couldn't give him one.

24 What this case is about is about being fair
25 to workers without regard to age. All the people who

1 run these plans, who fund these plans, who are in these
2 plans, are all lined up on Kentucky's side of the table.

3 That should tell you that it's neither
4 arbitrary nor discriminatory. The plan is fair, and the
5 plan does not violate the law. We ask you to reverse
6 the decision below and reinstate the district court's
7 original final summary judgment.

8 Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you
10 Mr. Klausner. The case is submitted.

11 (Whereupon, at 12:07 p.m., the case in the
12 above-entitled matter was submitted.)

13

14

15

16

17

18

19

20

21

22

23

24

25

A				
ability 15:12	ADEA's 41:6	37:15,16	appreciate 3:17	41:10 51:6,7
able 24:1 27:2	adopt 21:6 45:1	age-specific	3:22 4:5	basic 24:4 40:16
39:4	adopted 51:15	38:17	arbitrary 4:1,4	41:2 43:23
above-entitled	advance 17:17	agree 21:10	12:17,22 14:13	basis 9:6,16 10:5
1:12 52:12	advantage 8:13	ahead 38:24	23:1 52:4	10:21,24 11:10
absent 41:18	adversely 14:1	aiming 29:2	area 49:7	12:2 13:15,16
45:18	affirmative	Airlines 3:14	argued 21:19	14:5 21:7
absolutely 34:19	27:25 45:18	AL 1:4	argument 1:13	23:13 28:1,24
accept 36:8	48:9	alike 8:3,19	2:2,7 3:3,7	36:2,16 37:9
accomplish	age 3:12,12,13	ALITO 12:1,8	11:11 12:2	37:15,16 38:1
19:20	3:15,16,17,24	12:14 26:21	23:19 28:15	38:17 39:1
accomplished	3:25 5:17,25	28:4 38:3	31:3 43:20	42:23,25 43:9
23:9	9:6,6,9,11,17	allows 12:15	49:16 51:20	bear 36:11
account 13:9	9:19,24,25	26:12	asked 20:20	bears 36:9,14,14
25:24 44:23	10:6,8,11,14	alternative	51:22	began 4:18 8:21
45:9	10:21 11:10,15	37:18	asking 29:5	9:4
accurate 29:7	11:19,20,21,24	alternatives	46:19	begins 7:8 45:9
achieved 17:19	12:10,13,17,20	37:18	aspects 49:2	behalf 1:16,20
32:7 41:1	13:12,19,21,23	amass 29:11	Assembly 7:16	2:4,6,9 3:8
acquires 45:6	13:24 14:3,5	amended 40:19	assistance 36:5	23:20 47:10
Act 9:8,10 14:3	14:11,12,18	amicus 20:14	Assistant 1:18	49:17
34:10 39:1	16:3,15 20:8	amount 4:12,18	assume 29:15	belie 47:19
40:19 50:8,9	20:12,24 21:8	19:20	assuming 7:5	believe 20:19
actual 24:8	21:17,24 22:3	amounts 3:23	assumption 21:6	22:24
32:22 36:16	22:6,7,7,12	analyze 29:1	47:19	belt 30:8,9,10
37:10 46:23	23:9,14,24	and-a-half 5:3	as-applied 21:19	50:14
ADA 12:14,16	24:4,17,19	8:1,2	attainment 26:1	benchmark
add 22:10 26:7	25:20,24 26:2	answer 9:7	attention 24:14	33:17,18
27:9,20	26:5,5,8,11,15	10:17 15:18	attracting 19:21	benefit 8:8,16
added 15:5	26:19,24 27:3	16:8 18:19	available 44:1	10:20,20,23
18:25 43:10	27:8,11 28:1	22:8 47:17	48:16,18,19,23	11:3,6 15:21
adding 26:4	29:2 30:19	answered 22:25	48:25 49:21,23	15:21,24 16:4
41:1	31:5 32:12,17	answers 35:3	49:24	17:4,19 18:23
addition 7:24	33:3,7,11 34:6	anti-discrimin...	average 11:2,8	19:14,17 20:18
additional 5:14	34:12,14,21	40:17 41:3,6	aware 13:3	23:8 25:2,2,8
5:25 26:5	35:7 37:19	anybody 4:24	a.m 1:14 3:2	26:25 31:6,7
27:20 28:17	38:1,20,20,22	38:21		32:11,18 36:11
32:2 36:24	38:23,25 39:10	anyway 26:18	B	36:14,14,16
37:14,20 45:16	39:22 40:2	apart 33:11	back 22:23 29:4	40:19 43:11,22
47:2	41:10 42:1,23	appear 13:1	49:18	44:17,19 47:11
Additionally 7:8	45:9,12,19	APPEARAN...	bad 3:13	47:24 49:20,21
address 26:19	49:3 50:1,7,23	1:15	balance 18:25	49:23,24 50:1
ADEA 26:18	51:4,7,25	appears 12:22	based 3:11,15	50:16 51:12
27:7 33:10,13	ages 24:9	appendix 51:2	8:20 9:19,25	benefits 3:19 6:9
34:13 40:15	age-based 36:2	applies 9:10	10:6,7,10,13	19:15,25 20:18
46:25 48:24	39:1	14:3 16:24	13:2 21:1,8	23:23 24:10
	age-neutral	apply 14:4	29:2 36:21,23	26:23 27:21

36:21 39:13,14 39:18 40:20,24 41:2 44:1,6,9 44:12,15,20 45:3,13 46:22 46:23 47:13 48:23,25 50:8 better 3:21 13:7 16:11 Betts 22:11 23:7 39:9,10 40:21 47:21 50:4,5 50:18 beyond 27:10 28:6 31:21 big 46:3 bit 19:7 blue 24:15 body 12:22 Boggs 51:21,21 boiled 10:19 boils 31:3 43:20 boost 35:19 41:14 bottom 24:20 Breyer 4:3,9,21 5:5,9,15,24 6:2 6:5,10,15,17 7:4,18 17:21 17:24 18:20 19:2,12 20:16 24:3 33:16,22 34:16 35:8,15 37:1 39:20 40:10 45:20 46:14 Breyer's 9:8,13 10:18 16:9 brief 4:12 24:15 37:2 briefs 20:14 bring 19:1,3 brother 50:3,25 brought 37:1 bumping 50:21 business 33:24	C C 2:1 3:1 calculate 46:23 calculated 10:21 10:23 25:4 36:16 calculating 23:23 39:17 calculation 13:18 28:23 called 11:22 43:17 capable 27:16 care 51:16 case 3:4 5:1 11:21 13:24 14:17 15:11,14 15:16 16:25 19:17 20:17 22:4,11,12 27:18 28:5,23 35:13 50:20 51:5,24 52:10 52:11 cases 14:14 21:21 cast 50:6 categories 31:10 category 10:25 32:10,16 certain 19:19 21:21 certainly 16:10 27:12 38:22 39:6 challenge 14:21 challenged 21:14 chance 31:6 change 19:17 20:4 characteristic 39:23 40:12 chart 4:11,12,16 8:20 Chief 3:3,9 4:8 10:13,15 16:12	19:23 23:17,21 33:1,6 44:22 49:12 51:21 52:9 child 15:6 48:15 children 49:6,10 choose 27:15 chopped 34:24 chose 41:4 47:13 Circuit 51:20 circumstance 21:20,22 circumstances 9:9,11,12 21:21 47:17 Civil 20:6,11 claim 26:18 31:3 36:3 43:4,20 46:5 class 29:6,23 30:3,13,19 44:9 clear 26:12 35:25 38:18 44:5 clearer 48:2 clearly 15:1 22:9 36:17 Cline 14:8,11 26:16 33:12 close 36:14,15 43:8 closely 7:15 17:18 closer 7:9,12 8:22 18:25 closest 17:20 code 43:16 collect 39:14 come 51:18 comes 6:7 COMMISSION 1:8 common 16:4,6 20:13,14 Commonwealth 19:16	Commonweal... 19:21 comparison 29:18 comparisons 34:22 compensation 32:23 complaining 6:18 complaint 17:25 18:8 computation 31:9,11 32:21 33:4 39:17 44:14 computed 36:21 44:20 computing 27:20 condition 26:2 conditions 40:23 Congress 13:21 13:22 20:19 23:4,7 29:2 35:9 38:19 39:7 40:19,21 41:1,4 48:2,7,8 50:3,12 consequence 39:6 48:7 considerable 40:3 considered 40:1 consistent 27:7 consolidated 3:18 constantly 29:1 Constitution 19:15 construed 40:9 40:15 41:8 contained 41:3 context 40:1 continue 27:10 29:14,25 38:8 continued 47:18	continuing 27:17 39:12 contrary 39:8 40:8 contributed 36:22 coordinating 51:16 correct 4:17 6:16 9:15,22 12:5 15:9,19 15:25 27:4 33:5 43:25 48:6 correcting 4:5 correctly 4:6 correlated 11:21 22:3 correlation 38:12 cost-justificati... 28:13 counsel 23:17 country 8:17 couple 34:9 course 31:22 34:21 court 1:1,13 3:10 11:20,22 12:25 14:16 20:7,13 22:1 22:12 23:22 40:14,20 court's 14:8 21:15 26:16 33:12 50:5 52:6 cover 16:19 40:20 48:8 coverage 22:20 covered 17:3,16 23:8 40:21 50:7 covers 16:19 crafted 25:25 create 23:6 credit 7:22,25
--	--	--	---	--

18:4 28:8,10 28:12 32:7 credited 18:11 24:24 criteria 25:16 criterion 13:25 14:1 31:21 36:8 current 19:12 24:23 customary 12:25 cuts 20:18	3:13 determination 9:19,23,25 10:4 determine 20:24 22:1 25:7 determined 13:18 determines 3:24 15:22 determining 3:23 33:8 45:17 51:5 difference 6:6 6:20,21 14:2 43:23 differences 25:14 different 7:10 13:21 14:11 24:9,9 25:2,3 25:16 31:12 35:2 41:24 44:20 differently 24:4 25:4 43:14 direct 13:4 24:13 directly 49:8 disability 5:1 8:23 10:19,20 15:10,10,14,14 15:21,21,22 16:1,4,17,18 16:19,22,24 17:10 19:17,20 20:1 22:13,16 22:18,20 24:19 24:22 25:1,7 25:14,19,20 26:8 27:15,20 29:15 30:1,15 31:1,6,7,20,22 31:25 32:1,19 33:19 37:7 39:14,15,17 41:18 42:5	43:17,18,22,25 44:3,9 45:3 46:21,22 47:24 48:1,24 51:5 disabled 4:23 5:9,10,10,18 5:18,20 6:13 7:5 8:9 15:7,12 17:5 18:2,6,10 18:12,21 19:4 19:25 20:8,18 21:2 23:24 24:7 25:8 26:24 27:22 28:3,7,19 30:14 34:1 35:20,21 36:20 37:5,19,22 38:5,6,13 39:12 41:16,25 44:24,25 45:4 45:7,10,13,14 46:1 48:20 51:9 disables 26:6 disabling 17:17 disadvantage 35:12 disadvantages 23:25 discriminate 9:6 9:16 12:19 13:14,16 14:5 21:8 23:13 39:25,25 40:6 40:8 discriminated 17:1 21:23 discriminates 14:21 discrimination 6:18 11:7,20 12:17 14:3,12 21:15 29:2 42:6,7,23,24 43:2 49:4 50:7 discriminatory	4:1 21:14,18 52:4 discussing 41:11 disparate 14:17 35:18 43:4 disparities 36:2 disparity 39:9 dissent 51:21 distinct 25:13,14 distinction 14:14 39:1 distinctions 3:15 41:10 distinguishes 30:12 district 52:6 doing 9:17 29:14 30:1 34:6 36:12 double 4:6 doubt 50:6 dramatically 24:9 draw 14:19 drawn 40:17 driver 20:24 50:1 due 25:20 27:14 27:19 30:25 31:25 32:19 43:16 44:3 46:20 47:24 48:24 duplicated 51:14 duty 19:22 31:5 D.C 1:10,19	4:16 8:20 effect 9:5 19:23 21:20,25,25 45:2 effectively 21:23 either 18:20 24:17 25:17 29:22 31:5 elected 39:11 element 26:5 33:3 49:3 eligibility 3:11 10:1,5 11:15 11:23 17:23 22:5 25:15 26:2 27:11 31:20,21 32:4 42:1 50:2,15 eligible 6:8,8 8:8 8:16 9:1,23 15:23 16:15,16 18:9,22 25:8 25:19 31:4,13 31:15 32:1,10 39:13 42:4 43:13,17 44:9 47:12 48:20 49:25 eliminate 12:12 12:17 employee 21:2 36:18 47:3 50:11 employees 19:12 19:22 20:9,10 20:11 24:1,7,7 31:10 46:25 47:6 employee's 45:19 employer 12:19 36:4,18,22 38:21,22 employers 23:10 48:9 employment 1:7 16:22 17:3,6
D D 1:16 2:3,8 3:1 3:7 49:16 day 7:11 18:21 deal 37:4 dealt 11:16 December 51:15 deciding 28:1 decision 26:1,16 33:12 48:3 50:5 52:6 decisionmaking 23:25 decisions 38:17 defense 28:14 45:18 48:9 defenses 27:25 define 32:15 defined 44:8 defines 51:2 defining 32:10 degree 40:3 Department 1:19 dependent 45:19 49:10 depends 42:11 derived 47:10 design 12:18 14:23 designed 12:16 16:19 35:10 determinant			E E 2:1 3:1,1 earlier 41:12 early 26:3 economic 19:18 EEOC 3:5,20 17:1 47:10 51:15,22 EEOC's 3:16	

40:23 50:8 enables 22:22 enacting 40:22 enactment 48:4 ended 4:13 endured 11:1 engineer 50:21 entirely 9:22 49:11 EQUAL 1:7 equally 43:8 erase 12:9 ESQ 1:16,18 2:3 2:5,8 essentially 17:15 47:14 establish 24:1 28:13 34:11,12 establishes 31:20 establishing 27:25 estimate 27:21 37:21 estimating 47:15 ET 1:4 event 17:17 29:18 30:4 everybody 16:4 19:19 34:2 39:23,23,24 evil 23:4 eviscerated 39:2 exactly 11:25 30:11 32:9 51:5 example 4:19 7:7 8:7,21 9:14 16:1 19:1,11 19:14 20:7 21:4 34:18 38:18 45:5 51:8 exception 25:23 26:10 exclude 26:4	excluding 44:3,5 exclusive 33:7 exemption 26:7 33:10 exhibit 35:1 expenses 34:2 expensive 28:16 explain 7:1 explains 40:25 explicit 9:7,19 23:24 33:10 39:1 explicitly 21:8 expressly 12:14 extend 19:8 extent 26:12 extra 5:20,21 6:1,22,24 7:25 8:2 18:7,13,14 18:15,17,18 19:8 <hr/> F face 14:19,22 21:22 facial 21:15 facially 4:1 21:14 fact 8:13,16 16:3 20:9 31:22 44:23 46:19 47:18 factor 3:25,25 9:7 23:25 26:8 32:22 factors 3:22 21:24 factually 3:21 6:3,5,12 fails 3:17,22 fair 11:2,7,11 43:14 46:14 51:24 52:4 fairly 34:2 fairness 9:4 fall 40:6 fallacy 8:20	far 43:2 50:10 fare 3:21 favor 15:1 favoring 48:12 favors 7:11 Federal 20:5,10 23:10 33:7 51:20 FERS 20:10 fewer 29:8,12 30:3 38:24 41:13 45:13 fills 16:18 final 15:4 32:23 47:20 48:14 52:7 financial 7:16 36:5 41:14 49:9 find 34:22 fine 7:19 18:6 27:23 32:20,24 33:1,2 44:4 46:22 finish 48:12 fire 8:12 29:17 30:4 33:17 fired 11:17 firefighter 17:5 22:18 firefighters 19:24 23:11,12 34:13,14 first 13:12 16:22 17:2,6 18:13 25:15 26:9 34:10 35:3,18 40:7 41:13 42:9 45:10,15 five 8:15 9:24 16:20,22 17:2 17:6 25:21 31:25 33:14 37:20 42:1,2,4 42:14 44:2 47:8 five-year 17:9	51:11 fix 51:22 Fla 1:16 flight 50:21 focus 3:17 focused 50:10 50:12 follow 15:18 19:11,14 29:20 following 10:20 24:22 follows 7:4 footnote 37:3 forbidden 34:25 forbids 19:15 force 35:6 46:3 47:14 50:15 forced 25:20 27:14,19 30:25 31:25 32:19 43:16 44:2 46:20 47:23 48:21,23 49:1 forces 23:10 formula 44:21 found 11:20 four 49:14 fringe 40:20,24 41:2 full 5:12 fully 22:24 function 25:10 functions 25:13 fund 52:1 further 49:3 future 30:7 <hr/> G G 3:1 gap 16:19 17:15 garden 29:1 General 1:19 7:16 generalization 29:7 30:24 38:16,25 generalizations	36:1 41:21 generally 50:6 generous 27:14 39:18 44:14 47:6 getting 8:25 32:7,7 37:12 Ginsburg 13:3 13:22 14:7,25 15:10,17 17:8 36:25 48:11 Ginsburg's 22:24 49:19 give 5:19 6:22 6:24 7:25 8:2 11:3 18:4,7,15 18:17 26:25 28:8,9,11 31:6 31:7 33:19 35:3 37:10 46:3,7,8,22 51:23 given 18:12,13 32:18 35:17 47:4 51:8 gives 14:12 23:1 giving 6:10 45:3 glad 8:1 go 3:23 5:19 7:20 29:4 goal 3:19 19:21 goes 9:10 14:19 39:23 going 28:9 29:16 33:19 36:12 37:7 38:4,4,8 38:21 45:2,22 46:18 47:16 gold 46:4,7,8 good 8:1 9:17 12:1 34:2 government 13:17 14:15 21:19 23:10 51:13 greater 33:22,23 35:3
--	--	---	--	--

greatest 49:9	hypothetical 9:12	31:24 33:13	judgment 52:7	K
group 30:3,23		39:10 43:6	Justice 1:19 3:3	keep 35:5 39:11
35:19 38:23	I	individuals	3:9,13 4:3,8,9	Kennedy 9:2,22
groups 7:10	idea 39:20	32:16 43:5	4:21 5:5,9,15	21:5 22:8
guarantee 28:16	identical 39:8	individual's	5:24,24 6:2,5	Kentucky 1:3
guaranteed 15:3	47:21	12:20	6:10,15,17 7:3	3:4,11,17 7:17
48:13 49:20	illegitimate 27:5	industry 50:14	7:18 8:5 9:2,8	8:17 14:20
guess 4:3 37:17	27:5,13	inevitably 40:2	9:13,21 10:3,7	19:15 22:15,17
guessing 30:17	imagine 42:8	inference 14:22	10:9,10,12,13	23:8,12,24
H	immediately	21:16 41:7	10:16,17,18	24:1,14,24
haec 40:17	17:11,18	infinite 37:25	11:13 12:1,5,8	25:5 26:12,22
hamburger	immutable	initial 17:9 36:6	12:14,21 13:3	27:13,18 30:20
34:23	39:22 40:11	injured 19:25	13:7,10,22	31:18,18,24
happened 50:10	impetus 48:3	instance 21:25	14:7,25 15:9	32:15 35:5
happening	implicated	33:23 36:3	15:17,19 16:2	37:9 43:15
37:12	35:10	37:18 42:12	16:8,9,11,12	45:3,16 46:18
happenstance	important 13:11	instances 16:20	17:8,21,24	46:19 48:22
30:14,14,16	14:16	16:23	18:20 19:2,11	49:5,8 50:22
hard 27:9	imputation 11:9	insurance 16:1	19:23 20:16	51:1
hazardous 17:11	32:2	34:3	21:5 22:8,23	Kentucky's 47:5
19:22	impute 5:13,14	integrated 3:18	23:17,21 24:3	50:19 52:2
Hazen 11:16	11:2 37:14,19	intended 14:9	24:11,25 25:6	kind 29:1 34:3
14:15 22:3	37:23 45:11	20:20 26:11,19	25:10,22 26:20	34:23 46:5
health 51:16	imputed 4:18,20	intent 14:18	26:21 28:4,20	Klausner 1:16
hear 3:3 6:21	5:21 6:7,14	interesting 20:5	29:19,21 30:6	2:3,8 3:6,7,9
held 40:21	7:14 10:23	interpretation	30:10,11 31:2	4:8,16,25 5:8
help 25:7 33:25	17:14 20:8,12	37:4	31:11 32:4	5:13,23 6:4,6
helpful 9:3	21:3 43:10	interpreting	33:1,6,16,22	6:13,16 7:3 8:5
Hey 46:7	45:18 49:5	12:24	34:16 35:8,15	9:21 10:15
highly 28:21	imputes 36:24	interrelations...	36:7,25 37:1	11:12,14 12:5
hire 38:21	imputing 45:16	13:20	38:3 39:20	12:11,16 13:3
hired 19:12,18	inability 15:15	interrupt 24:25	40:10 41:23	13:10 14:7
history 13:8,11	inapplicability	introduce 49:3	42:9,13,16,20	15:9,25 16:6
23:3 40:18,25	34:14,17,17	invidious 14:13	42:22 43:1,19	16:10,18 17:13
50:9	include 44:10	38:15 41:20	44:11,15,22	17:23 18:19
hold 30:24	included 13:12	irrebuttable	45:20 46:14	19:10 20:2,23
holding 14:8	35:4	47:16	48:11 49:12,19	21:12 29:5
Honor 4:17,19	includes 33:23	issue 15:11,14	52:9	37:11 49:14,16
4:25 5:14	40:23	22:25 47:22	justifiably 38:23	49:18 52:10
21:12	including 29:24	50:11,17	justification	know 6:3,12,19
House 50:12	incorrect 25:12	J	38:11 43:12	20:5 34:22
Huh 10:9	31:16 35:16	January 1:11	49:4	38:9
hundred 19:13	indication 35:12	job 23:6 27:1	justifications	L
hurt 27:1	individual 5:16	45:10	35:17 40:4	L 1:18 2:5 23:19
hypothesis	11:17 16:25	jobs 19:22 23:11	41:12	language 13:5
42:20	24:17 27:19	Judge 51:20,21	justifies 6:21	22:21 39:5
			justify 41:22	

<p>40:15 50:5,7 larger 43:11 Laughter 46:16 law 24:24 30:20 31:18,24 33:7 52:5 leave 7:7 8:9 left 49:11,19 legislative 13:8 13:11 23:3 40:18,25 50:9 lesser 33:22,23 33:24 34:8 35:4 letting 7:24 let's 5:19 17:8 liability 19:16 life 13:18 limit 38:20 limited 4:17 16:23 51:13 limits 7:16 line 8:12 29:17 30:4,15 lined 52:2 literal 39:5 litigation 19:24 little 8:14 11:6,6 14:25 47:8 48:12 live 13:19 long 10:22 13:19 13:20 27:10 28:22 38:1 48:25 longer 17:10 22:18 30:23 35:21 38:13 41:16 look 21:24 22:10 24:19 37:2 45:1,11 51:2 looked 51:17 looking 29:6,13 29:23 35:9 looks 50:9,12 lot 37:12</p>	<p>low 37:6,7 lower 11:3 19:14 19:25 20:2 47:24 lowering 19:15</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>maintain 41:5 make-whole 26:23 making 10:4 28:15 29:18 31:17 33:3 37:6 43:15 MALCOLM 1:18 2:5 23:19 man 14:1 25:7 34:4 materia 41:8 matter 1:12 25:22 50:20 52:12 ma'am 17:13 McMann 3:14 mean 19:7 25:23 30:7 45:21 meaning 23:2 means 8:25 40:3 measure 49:9 mechanical 34:19 meet 11:18 mentioned 8:6 mere 21:17 merely 11:21 met 51:10 method 45:17 methodology 31:9 32:22 39:17 44:14 51:4 minimal 34:6 minimum 26:2 26:11,15,19 33:10 34:11 50:24 minutes 20:19</p>	<p>49:14 mixed 40:2 moment 19:5 month 8:16 monthly 15:4 48:14 months 24:23 31:23 motivated 12:18 14:18,23 22:7 motivation 22:6 50:2 multiplier 32:23 myriad 3:22</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 narrowly 25:25 national 13:16 necessarily 3:15 necessary 24:12 32:3 need 18:25 19:2 35:19 36:5 41:14 49:9 needed 8:22 needs 12:6 neither 36:1 52:3 never 13:14,15 nevertheless 32:18 new 40:22 normal 5:1 6:14 8:25 10:2 17:16,17 19:1 19:3 20:12,25 24:16 25:15,16 26:2 27:3 29:10 30:18 32:12,17,24 39:10,13 43:9 43:13 48:20 50:1,14 51:2,6 51:12 normally 45:23 noted 11:14</p>	<p>51:21,21 number 5:2 16:14,23 19:11 27:21 35:1 37:21,25</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 objective 27:5,6 occupation 17:11 occur 11:23,24 occurs 17:17 odds 10:24 offered 39:19 41:12 officer 15:15,16 17:5 22:20 26:23 28:5,6 38:8 officers 20:6 23:11,12 oh 37:13 Ohio 22:11,13 22:16 Okay 6:17 11:13 old 4:11 5:11 6:23 7:19 13:24 16:2 22:19 25:17 38:12 43:6,7 46:6,22 49:20 49:22 51:9 older 3:21 7:9 7:11 8:12,13 8:21 14:6,9,23 18:5,14,23 23:6,25 29:11 29:16 30:2 31:14 35:11,18 36:4,20 39:24 40:18 44:5,19 44:25 45:4,9 46:24 47:3,6 47:23 49:1,10 50:8 opening 9:4</p>	<p>45:22 operative 13:5 opportunities 23:6 opportunity 1:8 44:24 47:4 opposed 4:7 oral 1:12 2:2 3:7 23:19 order 9:7 18:15 25:16 41:7 ordinary 32:13 origin 13:16 original 52:7 outset 36:8 overcompensa... 38:6 overturn 48:3 50:4,4 OWBPA 48:4 owed 23:23</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3:1 package 45:22 45:23 page 2:2 24:15 24:20 31:18 37:2 51:1 pages 51:1 paid 13:18 Paper 11:16 14:15 paradigmatic 38:19 pari 41:8 part 4:3 13:19 15:6 17:25 26:22 28:15 32:5 36:17 44:18 partially 5:23 6:4 participate 20:12 particular 15:11 24:20 49:6</p>
--	---	--	--	--

particularly 8:10 34:20 47:6	19:4 22:19 24:21,22 27:10 27:21 28:2,8 28:24 29:10,11 31:22 33:17,19 35:20 37:5,21 38:5 42:3,14 42:18 43:22 46:1,8,20 48:19 49:20,25 51:8,10	point 17:21,23 28:23 31:8,17 41:19,24 43:15 44:18 47:20 49:2	50:14	Q
party 46:4	persons 32:10 44:9	pointed 50:25	probably 13:9 19:8 34:2 35:20 37:25 41:15	qualifications 40:13
pay 14:23 17:10 35:6 36:4,8	Petitioners 1:5 1:17 2:4,9 3:8 49:17	police 15:16 17:5 20:6 22:20 23:11,12 26:23 28:5 34:13,14 38:8 46:3	problem 32:14 37:1 44:7,8 45:21 46:25 47:1 48:22 50:13	qualified 3:19 4:10 18:2 43:21
pension 3:23 4:6 10:1 11:22,22 12:12 22:4 33:20 34:20,21 40:1 50:6	physically 27:16	policemen 19:24	proffered 49:5	qualify 7:20 18:3,3,16 24:12,21 25:16 29:10
people 7:10 9:20 14:24 19:12,18 20:18 21:8 27:14,15 29:9 29:13,16,17,24 30:2,4,12,18 30:20,21,23,25 31:3 33:25 34:19 35:6,12 36:23 37:12 38:6,23,24 41:13,25 44:1 44:3,19,21 47:9,11,12 48:23 49:8 50:15 51:25	picked 12:23	policy 12:18 14:17 16:1	program 20:12 23:13 25:9	qualifying 42:15 43:8
percent 5:3 8:1 8:3 15:3,5 48:14,15	piece 14:25 20:3 48:12	position 25:1	prohibit 9:9,10	qualitatively 13:21 14:11
perfect 34:18	pilot 50:20,20	possibility 37:23	prohibition 40:17	question 9:3,8 10:18 11:16 16:9 18:19 20:21 22:2,5,8 22:24 23:15 24:4 29:5 37:3 41:23 46:12 49:19
perfectly 34:24	plainly 41:21	possible 6:19 7:15 17:19	projecting 27:9	
period 15:13 17:9 24:12 31:5	plaintiff 19:6 34:4	posture 50:23	prospective 37:9	
permissible 35:4	plan 3:18 4:1 7:10 8:11,14 8:17,23,24 9:23 11:19 12:18 14:23 15:20 16:5,7 16:14,21 18:22 18:22 19:4 20:25 22:5,12 22:13,14 42:6 42:10 49:7 50:16,18,19,19 52:4,5	post-disability 32:8	protect 14:9	
permits 34:7	plans 3:15 13:17 23:8 50:6 52:1 52:1,2	practice 20:13 20:14 38:19	protecting 13:23	protect 14:9
person 4:18,23 5:5 7:4,6,8,13 8:7,10,12,13 8:15,21 9:13 10:19,23,25 11:2,8,9,19 14:6,6 15:12 15:23 16:2 17:4 18:1,5,9 18:11,13,14,20	Plantation 1:16	preamble 12:23 13:2,4,8 23:3	protection 17:6 22:19 40:19 50:9	protection 17:6
	plausible 40:3	precedents 21:15	provide 12:19 15:20 26:23 38:25	providing 3:19 48:9
	please 3:10 23:22	prefer 14:6	provides 18:23 25:11	provision 24:14 26:16 31:19,19 41:3,6 50:25
	plus 10:14 16:15 22:7 26:5	premise 21:6	provisions 24:24	proximity 51:6
		present 39:9	proxy 28:1	public 8:11 15:15 22:12 50:10
		presumption 47:16	purpose 7:14 8:23 13:2 17:14 31:12,13 32:9 35:9,10 36:17 44:5	public 8:11
		presumptively 21:18	purposes 8:24	put 35:11 40:12
		pretend 5:11	p.m 52:11	
		prevailed 35:23 41:17		R
		prevent 23:5 35:10 44:22 45:3		R 3:1
		prevented 29:14 30:1 39:12		race 13:15
		preventing 45:16		racial 13:25
		pre-ADA 38:19		raise 9:3
		private 11:18		range 37:17
				rationale 51:16
				reach 6:1 21:7 21:11,13
				reached 16:3 31:4
				read 4:12 13:1 26:4
				real 50:11
				realistic 38:7
				really 21:19 22:7 31:17 34:6 39:2 44:18 48:5
				reason 5:24,25

6:20,21 7:1,3 9:23 13:11,13 13:14,15 14:12 16:13 20:20 29:15,15 30:1 30:2 33:24 36:7 39:15 40:4 42:15 46:9 48:21 51:14,18,22 reasonable 21:16,24 reasons 6:3,10 6:11 9:17 19:10 rebuttal 2:7 23:16 49:16 receive 6:14 10:1 24:9 received 7:17 27:1 47:25 recognized 13:21,23 recover 31:6 reduction 20:3 reference 26:18 41:2,10 43:15 references 12:9 referring 32:6 refers 26:10 reflects 40:5 regard 51:25 regardless 22:6 50:22 51:4 regular 15:4,24 48:16,19 regulation 51:15 reinforce 41:7 reinstate 52:6 relates 14:10 relationship 36:9,11,15 relatively 14:9 14:10 relevant 15:22 24:14 34:21 relies 14:15	religion 13:17 remain 47:13 remaining 49:15 removed 10:4 replicate 7:15 17:18 replicates 35:22 replicating 41:17 report 38:18 reports 50:13 require 26:1 required 12:12 requirement 5:1 11:18 33:8 51:11 requirements 24:19 32:13 40:2 requires 26:14 43:21 reserve 23:15 resources 41:14 51:13 respect 24:7,16 30:25 34:12 36:6,19,20,23 36:25 41:9 43:5 49:6 Respectfully 9:21 respond 39:3 Respondent 1:20 2:6 23:20 response 8:4,5 19:16 35:15 rest 23:16 rests 38:11 result 3:25 20:17,20,22,23 21:7,11,13 26:16 41:1 results 44:25 retaining 19:21 retains 22:20 retire 7:6,21,21 7:24 8:14 9:24	12:6,7 18:6,10 18:16,17,22 22:5,14 24:21 25:20 26:13 27:14,15,19 30:25 31:25 32:19 41:25 43:16 44:2 46:3,5,10,20 47:7,7,11,24 48:21,24 49:1 49:25 retired 6:22,25 46:2,6 47:19 retiree 11:5 15:2 15:5,8 22:16 45:23 48:17,19 51:16 retirees 29:6 30:22 retirement 1:3 3:4,11,14,18 6:14 7:9,20 8:11,14,22,25 10:2,5 11:15 11:23 12:2 13:17 15:24 16:3,14,15 17:16,18 18:25 19:1,3,5 20:6 20:10,11,13 21:1 23:9,23 24:12,17,20 25:2,8,14,15 25:17,19,24,24 26:3 27:3,8,11 29:10 30:18 31:4,14,15,20 32:1,5,6,11,13 32:18,24 33:8 33:10,14 34:12 36:14 39:11,13 39:14,15,18 42:4 43:9,13 43:17,18,21 44:1 45:12 47:13 48:20	50:1,2,11,14 51:3,6,12 retires 11:9 28:24 retiring 7:12 return 41:11 reverse 52:5 reward 36:17 rewrite 19:3 rid 38:20 right 4:7,22 5:7 5:8,22,23 6:3 10:12,15 12:4 12:15 17:11,22 19:5 37:8 41:24 rights 50:21 risk 11:1,6 17:16 28:22 ROBERT 1:16 2:3,8 3:7 49:16 ROBERTS 3:3 10:13 16:12 19:23 23:17 33:1,6 44:22 49:12 52:9 role 22:25 rough 37:20 rules 32:17 34:19 run 52:1 Rust 50:14 <hr/> S <hr/> S 2:1 3:1 safety 8:11 15:15 salary 5:3 15:4 37:6 48:14 satisfy 32:12,16 48:10 saying 4:4 7:11 9:5 10:3,6 11:4 16:13 19:6 28:20,21 33:2 34:11,17 38:21 40:10 45:17	46:18 says 5:16 7:18 7:19 18:6,14 24:21 25:25 31:21 50:3 SCALIA 10:3,9 10:12 13:7 25:22 26:20 29:19 30:6,10 scope 40:6 second 6:11 17:25 35:20 41:15 Secondly 22:1 sector 11:19 Security 15:13 see 20:14,16 21:24 27:9 30:10 35:9 43:2 44:11 Senate 50:13 sense 24:6 25:4 26:17 30:19 34:6 47:23 separate 8:24 32:16 service 3:12,16 4:18,20 5:14 6:7,14 7:6,14 8:15 10:11,14 11:24 12:3,4,6 16:16,21 20:6 20:8,11 21:1,2 21:3 22:6,7,15 24:5,8,18,18 24:23,24 25:18 25:18,21 26:6 26:8,13,14 28:7,10,11,12 28:17 29:8,11 30:15,17,21 31:5,23 32:1,2 32:12,17,23 33:14 36:17,18 36:21 37:7,11 37:15,20,24 42:3,16,17
--	--	---	--	--

43:6,7,9 44:2 45:2,6,7,8,11 46:24 47:8 48:1 49:21,22 50:22,24 51:3 51:4,9,11,12 services 17:14 set 7:16 setting 5:2 sex 13:25 SG's 4:11 shape 13:7 short 42:1,2 show 14:17 side 52:2 significant 40:4 significantly 39:18 43:11 similar 20:9 39:8 47:22 similarity 41:5 similarly 40:16 simply 8:24 45:17 simultaneously 44:6 single 18:22 situation 26:19 34:23 35:22 36:10 41:17 48:8 six 5:19,20 6:22 7:20,25 8:2 Sixth 51:20 skewing 30:19 skillful 50:21 slashed 19:18 small 20:3 Social 15:13 sole 12:2 solely 12:19 Solicitor 1:18 somebody 15:6 15:7 22:17 someone's 38:8 sort 24:3 SOUTER 10:17	11:13 12:21 28:20 29:21 30:11 36:7 specific 16:23 34:10 37:16 specifically 26:10 spends 8:11 spent 29:16 stand 21:22 standard 15:13 stand-alone 16:1 50:16 start 8:6,19 18:23 49:18 started 4:13,14 18:9,11 21:4 40:10 starting 18:24 45:22 starts 7:9 8:10 8:12,13 17:4 21:18 22:18,19 45:6 State 31:5 34:11 34:12 36:24 43:25 44:23 statement 9:4,14 11:11 13:2 States 1:1,13 20:15 State's 39:16 statistical 38:12 status 10:1 11:22,23 22:4 statute 9:7 12:9 12:10,23,24 13:1 14:9,20 14:21 20:22 21:13,17,20,21 22:11,22 23:1 24:15 25:23 26:15 32:5 34:7 37:4 39:5 39:21 40:20 43:20 49:3 51:1	statutes 12:12 step 10:4 22:2 stereotype 38:15 stereotypes 33:25 35:25 41:11,20 stereotypical 35:11 40:5 Stevens 10:7,10 15:19 16:2,8 16:11 24:11,25 25:6,10 31:2 31:11 32:4 41:23 42:9,13 42:16,20,22 43:1,19 44:11 44:15 Stewart 1:18 2:5 23:18,19,21 24:6,13 25:3,9 25:12 26:9 27:12 28:9 29:4,23 30:8 30:16 31:8,16 32:9 33:5,9,21 34:9 35:2,14 35:16 36:13 37:1,17 38:10 40:7,14 42:7 42:11,14,17,21 42:24 43:3,24 44:13,17 45:15 46:11,17 48:11 48:18 49:13 sticking 12:21 stigmatizing 35:25 subject 16:5,6 24:22 28:22 submitted 52:10 52:12 substantial 20:3 substantially 19:19 suggest 48:6 suggestion 39:4 suing 47:10	summary 52:7 superfluous 26:17 Suppose 21:5,10 45:25 Supposing 41:24 Supreme 1:1,13 sure 15:17 23:7 32:11 46:11 system 12:3 20:6 20:9,10,11 34:21 45:1 47:6,21,22 50:11 systems 1:4 3:4 34:20	thing 22:10 26:9 28:20 29:20 30:12 32:6 37:8 38:2,10 39:3 41:9 things 34:9,25 think 6:18 9:22 11:22 12:12 13:5,10,20,22 14:15,18 16:13 17:25 18:8 19:7 20:15,16 20:17 21:7,12 21:14 22:1,2,8 22:21,21,23 23:1,8 25:12 29:5 30:2,6 31:16 33:21 35:14,16,24,24 38:7,11,14,15 39:7 40:7 41:20 43:24 46:12,17 48:5 thinking 35:11 40:4,5 45:21 third 26:7 thought 25:6 thousand 19:13 threshold 43:8 Thurston 40:14 50:19,19 time 8:11 11:2 15:22 16:20 17:15 22:12 23:16 29:16 34:1 38:13 times 32:23,23 Title 13:12 14:2 14:14 40:9,16 40:18 41:6 token 18:24 told 39:16 47:14 tomorrow 7:7 8:9 total 10:20 16:24 24:8 tradeoff 11:4,5
--	--	--	---	---

28:25 treat 8:3 43:14 46:1,9,9 treated 42:5,10 42:18 46:21 treating 7:22,23 47:1 treatment 14:17 35:18 43:4 true 4:17 6:12 22:17 24:16 30:24 34:5 47:5 try 7:14 17:18 trying 23:4,5,5 26:22 33:25 turn 10:5 two 5:2 7:10,25 8:2 20:19 21:3 24:7 25:13,13 35:17 41:7,12 41:24 43:5 44:12,15 45:5 type 15:10 39:9 typically 36:1 38:16 41:21	21:17 23:9 24:4 28:1 31:9 32:21 33:2,3,7 33:18 44:13 uses 9:7 23:24 24:5 U.S.C 40:22 41:3 <hr/> V <hr/> v 1:6 3:4,14 valid 38:12 value 19:18 variables 42:12 42:13 variety 29:1 verba 40:17 version 34:8 vested 22:4 vesting 11:18 view 16:13 VII 13:12 14:2 14:14 40:9,16 40:18 41:7 violate 4:2 26:15 52:5 violated 33:11 33:13 violation 48:25 voluntarily 27:16 30:13 47:7,12 voluntary 29:6 30:18,22 <hr/> W <hr/> wait 8:8 17:12 want 6:3,11 20:21 21:9 23:7 26:24,25 27:13 28:4 29:13,25 32:15 35:24 47:7 wanted 38:2,20 39:3,7,13 41:5 47:20 48:2,8 50:4,4 wants 27:18	46:19 Washington 1:10,19 wasn't 11:20 34:17 watch 46:4,7,8 way 16:16,21 20:24 21:10,13 23:25 27:6 29:9 36:19 37:14 40:8 42:5,10 51:19 ways 16:14 37:25 51:17 Wednesday 1:11 we'll 3:3 10:25 35:6 45:25 46:1 we're 23:5,5 29:23 38:21 39:21 White 3:14 win 48:6 windfall 11:8,9 Wirtz 38:18 woman 14:2 word 3:13 12:22 22:25 23:2 39:25,25 40:6 40:8 wording 41:5 words 9:25 12:25 15:13 work 7:8,12 8:21 11:6 12:10 15:12,15 16:24 17:5 18:24 20:7 27:2,2,10,17 35:6 38:8,24 39:12 45:6 47:13,18 worked 4:7,10 4:14,22 5:4,6 5:11,17 10:22 10:22 11:1	13:20 17:20 18:4 27:22 28:2,22 35:21 37:21 38:14 41:15 47:2,15 worker 4:9 7:11 17:2 26:17 36:20 37:19 41:15 45:9 47:9,23 48:13 49:1 workers 3:19,20 3:21 14:4 23:6 23:24 31:7,13 31:14 35:18,19 36:4 37:10 44:5,24,25 45:4,5 49:10 50:8 51:25 workers's 40:19 working 5:10,16 18:5 29:14,25 39:11 works 5:2,5 18:10 28:5 worried 34:18 worthwhile 34:24 wouldn't 26:18 32:12 33:11,12 38:15 43:3,4 48:24 wreck 39:21 written 13:12 wrong 3:22 6:5 33:16 46:18 <hr/> X <hr/> x 1:2,9 4:12,13 4:15 <hr/> Y <hr/> Y 4:21 year 5:3 6:24 8:1 45:10 years 3:12 4:7 4:10,11,14,22 5:2,6,6,11,17	5:19,20 6:1,8 6:22,23,23 7:6 7:19,20,22,25 8:2,15,22 9:24 9:24 10:11,24 11:24 12:3,3,7 16:15,20,22 17:2,6 18:4,7 18:10,11,12,13 18:14,15,17,18 18:20 19:8 21:2,3,4 22:4 22:15,19 24:5 24:8,18,18 25:17,18,18,21 26:5,8,13,14 27:9,20,21 28:2,6,8,10,10 28:11,12,12,17 28:24 29:8,11 29:12 30:3,21 32:1,2,8,22 33:14 36:16,21 36:24 37:6,11 37:15,20,23 38:24 42:1,2,2 42:4,15,16,17 43:6,6,7,7,9,10 44:2 45:1,6,7,8 45:11,16,18 46:6,21,23 47:2,8,15 48:1 49:5,20,21,22 49:22 50:22 51:3,3,9,9,12 years-of-service 22:16 younger 3:20 4:19 7:12 8:10 14:4,6,10 15:1 17:2 26:17 29:9,9,17 30:4 30:22 31:7,12 33:15 34:1 35:18,20 36:23 37:10 38:5 39:24 41:13,15
--	---	---	--	---

42:3,18 43:22 44:21,23 46:20 47:8,25 48:13	23 2:6 25 15:3 48:14 26th 51:15 29 40:22 41:3	34:15 38:6 43:6 44:4,10 46:2,2,10,21 47:3 50:23 51:3 55-plus 28:6 55-plus-year-... 9:13 55-year-old 10:25 11:5 28:11,17,18,22 29:24,25 35:5 43:11,13 45:23 51:11 55-year-olds 26:13 57 23:12		
Z zero 47:17	3			
0	3 2:4 30 37:2 45:9 30s 37:5 30-year-old 45:12 35 4:14 18:12 21:4 46:2 38 22:19 49:20 38-year-old 21:1 49:25	55-plus-year-... 9:13 55-year-old 10:25 11:5 28:11,17,18,22 29:24,25 35:5 43:11,13 45:23 51:11 55-year-olds 26:13 57 23:12		
06-1037 1:6 3:4	4	6		
1	4 18:10 51:9,12 40 11:19 45 4:13 5:11 18:9,12 22:20 38:20 51:8 45-year-old 21:3 26:14 28:10,19 49 2:9 6:23 7:4 7:19	60 22:14 24:23 31:22 50:20 623(a) 13:5 41:4 630(l) 40:22 65 38:9 46:6		
1 35:1 10 4:7,10,22 5:6 5:11 15:5 18:13,17 21:4 22:4 28:6,8,10 28:10,11,12,12 28:17 37:6,24 48:15 10-year 11:18 11:09 1:14 3:2 12 24:23 45:7 12:07 52:11 13 37:3 14 5:17 6:23 7:21 18:11 15 43:6,7 18 21:2 22:18 45:6 18-year-old 45:14	5	7		
2	5 24:17 25:17 26:13 43:10 49:22 51:3 50 38:20 42:18 43:7 49:22 50-year-old 43:10,16 55 3:12 4:6,11 4:13 5:17,19 5:21,25 6:7,8 6:25 7:7 8:7,15 9:24 10:21 11:24 12:6 17:3,12 18:2 18:10,21 22:21 23:12 24:17 25:17 26:24 28:6 29:8 30:19 33:13,18	7a 24:15 31:18 51:1,1		
2a 51:2 20 3:12 4:7,14 4:22 5:5,12 6:1 6:8 7:6 9:24 10:24 11:10,23 12:7 18:12,20 24:18 25:18 26:14 28:24 29:11 30:21 37:24 49:21 50:22 51:3 20-year 43:8 2004 19:12,18 2008 1:11 21 17:4	8	8a 24:15 31:18		
	9	9		
		9 1:11		