

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 EXPRESSIONS HAIR DESIGN, :

4 ET AL., :

5 Petitioners : No. 15-1391

6 v. :

7 ERIC T. SCHNEIDERMAN, ATTORNEY :

8 GENERAL OF NEW YORK, ET AL. :

9 Respondents. :

10 - - - - - x

11 Washington, D.C.

12 Tuesday, January 10, 2017

13

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

17 APPEARANCES:

18 DEEPAK GUPTA, ESQ., Washington, D.C.; on behalf
19 of the Petitioners.

20 ERIC J. FEIGIN, ESQ., Assistant to the Solicitor
21 General, Department of Justice, Washington, D.C.;;
22 for United States, as amicus curiae, supporting
23 neither party.

24 STEVEN C. WU, ESQ., Deputy Solicitor General,
25 New York, N.Y.; on behalf of the Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	DEEPAK GUPTA, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF	
6	ERIC J. FEIGIN, ESQ.	
7	For United States, as amicus curiae,	
8	supporting neither party	28
9	ORAL ARGUMENT OF	
10	STEVEN C. WU, ESQ.	
11	On behalf of the Respondents	39
12	REBUTTAL ARGUMENT OF	
13	DEEPAK GUPTA, ESQ.	
14	On behalf of the Petitioners	63
15		
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 will hear
4 argument first this morning in Case 15-1391, Expressions
5 Hair Design v. Schneiderman.

6 Mr. Gupta.

7 ORAL ARGUMENT OF DEEPAK GUPTA

8 ON BEHALF OF THE PETITIONERS

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

11 This case is about whether the State may
12 criminalize truthful speech that merchants believe is
13 their most effective way of communicating the hidden
14 cost of credit cards to their customers.

15 By design, New York's law suppresses the
16 message that you pay more --

17 JUSTICE SOTOMAYOR: I'm sorry. I -- I --
18 you're two groups of -- of Petitioners. One wants to
19 just give a cash price without any information about the
20 surcharge, and the other, I thought, wanted to give two
21 separate prices. So not everybody doesn't want to give
22 truthful information about the surcharge.

23 MR. GUPTA: No -- well, they do, Your Honor.
24 They all want to do the same thing. They -- they -- I
25 think what you're referring to is that some of them are

1 doing different things now.

2 One of the Petitioners, Expressions Hair
3 Design, is engaging in dual pricing, they're charging
4 two different prices, one for cash, one for credit, but
5 they are trying as hard as they can to describe that as
6 a -- as a discount so that they comply with the law.

7 The other Petitioners right now are
8 refraining from dual pricing altogether, because they
9 don't want to run the risk of -- of failing to comply
10 with this regime. But if we win this case, all of the
11 Petitioners would like to charge two different prices
12 for cash or for credit, and they would like to be able
13 to characterize the price difference as a surcharge for
14 using a credit card.

15 JUSTICE SOTOMAYOR: That's not what I
16 understood, but your adversary can tell me.

17 JUSTICE KAGAN: Mr. Gupta, what -- what
18 speech precisely do you think is being restricted?

19 MR. GUPTA: The -- the message that when you
20 use a credit card, you're paying more, and to be more
21 precise, I think if you look at Joint Appendix 103
22 through 104, you'll find there the supplemental
23 declaration of Expressions Hair Design where they say
24 exactly what they'd like to do. And if you look at the
25 yellow brief, it's page 1 of the yellow brief, we have a

1 chart. And what we'd like to do, ideally, is describe
2 the pastrami sandwich as \$10, and then tell you that
3 it's going to cost a certain percentage more, 2 percent
4 more, to pay with a credit card.

5 JUSTICE KAGAN: Well, I guess that's why I
6 said like what speech precisely, and you said the
7 message that you're going to pay more if you use a
8 credit card.

9 MR. GUPTA: Right.

10 JUSTICE KAGAN: But, you know, as -- this --
11 this statute is not written in terms of speech, it's --
12 it's written in terms of imposing a surcharge. And --
13 and let's say that somebody -- let's say that there is a
14 merchant and the merchant charges the list price for
15 something as a dollar and the person comes up to the
16 cash register and offers a dollar bill.

17 MR. GUPTA: Uh-huh.

18 JUSTICE KAGAN: And -- and the cashier says,
19 oh, no. For you it's 95 cents because I impose a
20 surcharge for people who use credit cards; right?

21 MR. GUPTA: Uh-huh.

22 JUSTICE KAGAN: Now, would that violate this
23 law?

24 MR. GUPTA: I -- you know, I don't know, and
25 what -- part of the difficulty is -- and the reason, we

1 have a vagueness challenge --

2 JUSTICE KAGAN: You don't know? How would
3 it violate the law?

4 MR. GUPTA: I don't think -- I don't think
5 it would. I don't think it would. And certainly the
6 State hasn't taken that position --

7 JUSTICE KAGAN: You don't think it would.

8 MR. GUPTA: I don't think it would.

9 JUSTICE KAGAN: Even though you're
10 describing something as a surcharge. Because -- the
11 reason it wouldn't violate the law is because the
12 conduct is, you know -- it -- it fits the law, right,
13 that essentially you're not imposing a surcharge on
14 credit card users. Whatever you call it, however you
15 describe it, you're not imposing a surcharge on credit
16 card users.

17 MR. GUPTA: Well, I think the way this law
18 works is that you can engage in precisely the same
19 conduct. You can charge the two different prices, one
20 for cash, one for credit, and what -- what runs afoul of
21 the law is describing the price difference one way as a
22 surcharge versus a credit, and you know that --

23 JUSTICE KAGAN: See, that's what you keep --
24 you -- you said that again --

25 MR. GUPTA: Right.

1 JUSTICE KAGAN: -- and I think my
2 hypothetical was designed to show that that's just not
3 right.

4 I mean, I can imagine ways in which you
5 might say that this is restricting speech, but that's
6 not it. Because as long as the price listed is the
7 higher price, is the price that a credit card company
8 has to pay, as long as that's true, you can describe it
9 any which way you please. And you can describe it in
10 terms of impose -- of -- of imposing a surcharge or
11 charging credit card customers more, and it still is not
12 going to violate this law.

13 MR. GUPTA: I -- I don't think so,
14 Justice Kagan, and I think in your hypothetical --
15 the -- it -- in your hypothetical, the merchant hasn't
16 telegraphed to the consumer at the same time the two
17 prices, right? That's not what our clients want to
18 engage in.

19 If -- if New York wants to continue to
20 enforce this statute against deceptive practices or
21 false advertising, we have no problem with that. This
22 is an as-applied challenge, and the merchants in this
23 case want to engage in truthful speech. They want to
24 disclose more. They want to --

25 JUSTICE BREYER: They want to do more. They

1 want to impose a surcharge.

2 MR. GUPTA: No. No --

3 JUSTICE BREYER: Then what's the problem
4 with saying -- you -- you don't -- you're too young to
5 know what the OPA was.

6 MR. GUPTA: I think -- I think so, Justice
7 Breyer.

8 (Laughter.)

9 JUSTICE BREYER: It's called the Office of
10 Price Administration.

11 MR. GUPTA: Right.

12 JUSTICE BREYER: Ken Galbraith ran it for
13 awhile. And they would -- what they would do, he said
14 is they'd go around and they'd smell what the right
15 price was.

16 MR. GUPTA: Mm-hmm.

17 JUSTICE BREYER: And after they said that in
18 World War II, you couldn't charge a higher price.

19 Would you have come in and said, Ken
20 Galbraith says you can only charge \$13 for this item.
21 It violates our free speech.

22 MR. GUPTA: Absolutely --

23 JUSTICE BREYER: Because we want to charge
24 \$15.

25 MR. GUPTA: Absolutely not, Justice Breyer.

1 JUSTICE BREYER: And very well what this
2 statute says is, you can't impose a surcharge. Very
3 well, you can't.

4 MR. GUPTA: Right.

5 JUSTICE BREYER: And you want to.

6 MR. GUPTA: I --

7 JUSTICE BREYER: What's that got to do with
8 speech? I grant you, all business activity takes place
9 through speech.

10 MR. GUPTA: Right.

11 JUSTICE BREYER: So explain to me what it's
12 got to do with speech.

13 MR. GUPTA: And I agree, if you look at this
14 statute, it doesn't scream First Amendment probably --

15 JUSTICE BREYER: Not only doesn't it scream
16 it, I want to know --

17 MR. GUPTA: Right.

18 JUSTICE BREYER: Unless you want to say
19 whenever a businessman is regulated in what he can do,
20 or she --

21 MR. GUPTA: Mm-hmm. Right.

22 JUSTICE BREYER: -- that violates the First
23 Amendment or at least potentially because they do it
24 through speech.

25 MR. GUPTA: Right. But this is a regime

1 that says you are allowed to call it a surcharge, you
2 just can't call it a discount. And the enforcement --

3 JUSTICE BREYER: I don't see that in the
4 statute. My statute that I'm reading says you can't
5 charge a surcharge.

6 MR. GUPTA: Well --

7 JUSTICE BREYER: But you can charge a
8 discount.

9 Now, I know, Paul MacAvoy, I hate to bring
10 up these long-gone names, but he was an economist with
11 whom I wrote a book. And he would have said what you
12 said, that, well, a discount and a surcharge are the
13 same thing economically.

14 MR. GUPTA: Right.

15 JUSTICE BREYER: But we live in a world that
16 not everybody is an economist, and many people think
17 it's quite a different thing, and there are a lot of
18 studies in this thing that the -- you know, that said it
19 was a different thing. That's what they can't do.

20 MR. GUPTA: Certainly -- right. Certainly
21 consumers react to the way price information is
22 communicated --

23 JUSTICE BREYER: Not in the way -- you have
24 the regular price. If you go above the regular price,
25 it's a surcharge. If you go below the regular price,

1 it's a discount.

2 MR. GUPTA: But in this case, both sides
3 agree the way the regular price is -- is defined is in
4 relation to how you communicate that. Look at page 28
5 of the red brief. They define regular price based on
6 how it's communicated.

7 I think both sides come to this case with
8 two propositions that they agree on. We all agree that
9 the regulation of prices, the kind of price regulation
10 you're talking about, Justice Breyer, is economic
11 conduct that doesn't implicate First Amendment concerns.
12 We also agree -- we also all agree and know from
13 Virginia Board that communicating price information to
14 consumers is protected by the First Amendment and is at
15 the heart of the commercial speech doctrine.

16 JUSTICE ALITO: Can I go back to --

17 MR. GUPTA: Plus --

18 JUSTICE ALITO: -- Justice Kagan's
19 hypothetical. It doesn't address the situation where
20 dual prices are posted, but it addresses a situation
21 where there is a dual-price regime. Some consumers are
22 going to pay more; some consumers are going to pay less.

23 MR. GUPTA: Right.

24 JUSTICE ALITO: And in her hypothetical, she
25 says the sticker price is the higher price. And then

1 when the cash purchaser comes to the cash register, the
2 purchaser gets a pleasant surprise. No, you are going
3 to be charged less.

4 But I thought your argument was that this --
5 if that is the correct interpretation of the statute,
6 and -- and I don't really know what the statute means
7 and we don't have a definitive interpretation. But if
8 that is the correct interpretation of the statute, what
9 New York State has done is to force the merchant to
10 say -- to post a particular sticker price -- namely, the
11 higher sticker price -- as opposed to the lower sticker
12 price.

13 So that is mandated speech. Isn't that your
14 argument?

15 MR. GUPTA: I think if New York -- it's not
16 mandated speech in the sense they haven't told us
17 precisely what to say.

18 JUSTICE ALITO: Well, under that
19 interpretation, if it's okay to post the higher price
20 and nothing more, and if the higher price is the credit
21 card price, they are -- they are forcing the merchant to
22 speak in a particular way.

23 MR. GUPTA: I think what they are doing
24 is -- they are -- they are forcing the merchant to speak
25 in a particular way in the sense that you have to

1 characterize the price difference a certain way in order
2 to comply with the statute.

3 JUSTICE KAGAN: Mr. Gupta, this exchange --
4 I mean, I think that these are two very different
5 theories of what makes this a speech restriction. And I
6 guess the reason I asked my question was because Justice
7 Alito's theory does not appear to be your theory, and I
8 want to know which theory we're really talking about
9 here.

10 Justice Alito's theory is that when the
11 legislation says you have to post the higher price, that
12 that in itself is a restriction on speech. And that's
13 an interesting argument, and maybe he's right about
14 that. I don't know.

15 Now, your brief took a different position.
16 Your brief essentially said the problem is that this --
17 this -- this legislation affects the way a cashier or
18 somebody in a store -- just affects -- it affects the
19 way they describe transactions generally, you know, and
20 the cashier is going to be worried that she can't say to
21 the customer, you charge more if you use a credit card.
22 And I guess I wanted to know, which theory is your
23 theory?

24 MR. GUPTA: I think our theory is what you
25 just described.

1 JUSTICE KAGAN: The latter one.

2 MR. GUPTA: But I think Justice Alito is not
3 wrong that if -- it would certainly implicate First
4 Amendment concerns if the -- if the State were to say,
5 here is how you have to display your prices. But that
6 would be -- it could be, theoretically, a disclosure
7 regime; right? And that's what the solicitor general
8 has posited, a disclosure regime --

9 JUSTICE SOTOMAYOR: Counselor, can I --
10 I'm -- part of -- I'm a little bit like Justice Alito
11 and less than Justice Kagan. I'm not sure what you or
12 anybody is saying about this statute or what it means,
13 but not because it's necessarily vague. I just don't
14 see anything about speech in the statute.

15 MR. GUPTA: Well --

16 JUSTICE SOTOMAYOR: The statute simply says,
17 "No seller in any sales transaction may impose a
18 surcharge on a holder who elects to use a credit card in
19 lieu of payment by cash, check, or similar means." To
20 me, it's very simple: One price for everything.

21 MR. GUPTA: Well, Justice Kagan --

22 JUSTICE SOTOMAYOR: You walk in and --
23 forget about -- I don't know where they get the discount
24 from or that the statute permits that, because what it
25 says on its -- to me, on its plain terms is one price.

1 And you told Justice Breyer that that was okay.
2 Certainly would be -- I'm hard-pressed to see if that's
3 the interpretation given to what I view as the plain
4 meaning of the statute, that that would be
5 unconstitutional.

6 MR. GUPTA: But this is not a statute that
7 functions in a vacuum; right? And in the other States
8 that enacted statutes at the same time, some of them put
9 in their text a surcharge is okay; a surcharge is not
10 okay --

11 JUSTICE SOTOMAYOR: New York didn't.

12 MR. GUPTA: -- a discount is not okay.

13 New York didn't, but it -- but everyone has
14 agreed that it has been interpreted in parallel with
15 those statutes. And --

16 JUSTICE SOTOMAYOR: Well, this is a really
17 nice agreement, except the State below had two different
18 interpretations.

19 MR. GUPTA: But the -- but the State has
20 never wavered from its interpretation that framing the
21 price difference as a -- as a discount is perfectly
22 permissible under this regime.

23 And you don't have to take my word for it
24 and look only at the text of the statute. You can look
25 at the way it's been enforced. So the statute was

1 enacted in the 1980s. A few years thereafter, there was
2 the first reported criminal prosecution under that
3 statute.

4 And in that case, a gas station owner had
5 the posted prices, cash and credit. But the -- what --
6 what caused the criminal prosecution is that the cashier
7 made the mistake of describing the price difference as a
8 nickel more for using a credit card rather than a nickel
9 less for cash. It was that speech and that speech only
10 that triggered the criminal prosecution. And the
11 prosecutor in that case and the judge all agreed that's
12 what the statute meant.

13 JUSTICE SOTOMAYOR: And you tell me that
14 that's what the State is going to tell me, that if they
15 post credit card price 2.10, cash price \$2, that if the
16 cash -- if the person comes to the cashier and gives
17 them a credit card, the cashier is going to say, you
18 know you're paying a surcharge of 10 cents; you're
19 going -- you're going to be prosecuted for that?

20 MR. GUPTA: Well, the State can try to run
21 away from the enforcement history, but I think it would
22 be very difficult to run away from the most recent
23 enforcement history. The State went after 50 or so
24 merchants in 2008 and 2009. There were sweeps. You
25 have, in the Joint Appendix, declarations from merchants

1 who were caught up in that sweep, lawyers, the trade
2 association head.

3 And what happened in all of those cases was
4 that somebody called up on the phone from the attorney
5 general's office pretending to be a customer, and they
6 said, what are your prices? And those merchants said,
7 well, it costs, you know, say, \$10 to buy the heating
8 oil and then, you know, this many cents more to pay with
9 a credit card.

10 And that was the only speech that they
11 engaged in. They -- they disclosed their prices.
12 There's nothing deceptive about that. And they were --
13 they were -- they were targeted by the attorney
14 general's office. And then they asked the attorney
15 general, how do we comply with this statute? And you'll
16 find that at Joint Appendix 107.

17 The attorney general's office didn't say,
18 disclose the total credit card price. They said, you
19 have to frame it as a discount. You can charge more all
20 you want.

21 And I think that shows that this speech is
22 regulating nothing --

23 CHIEF JUSTICE ROBERTS: Now, does your --

24 MR. GUPTA: -- this statute is regulating
25 nothing but speech.

1 CHIEF JUSTICE ROBERTS: Does your argument
2 depend upon the fact that there is no difference from
3 the consumer's perspective if he sees this product is
4 \$100, come in and buy it, and then he gets to the cash
5 register and there's a surcharge, no, it's \$103, and
6 it's \$100, he goes to the cash register, pays cash, and
7 they say, well, happy you, it's \$97?

8 And is your argument that a consumer sees no
9 difference in those two situations?

10 MR. GUPTA: No. Our -- our --

11 CHIEF JUSTICE ROBERTS: Can you agree with
12 the -- the State that that is -- could be to some extent
13 misleading as far as the consumer --

14 MR. GUPTA: I think --

15 CHIEF JUSTICE ROBERTS: -- is concerned?

16 MR. GUPTA: I think it's really important to
17 understand that this is an as-applied challenge. And
18 the only thing we are challenging is the application of
19 the statute to merchants who want to simultaneously
20 prominently disclose both the cash price and the credit
21 card price, but want to frame the credit card price as a
22 surcharge. Anything else is not within the scope of our
23 as-applied --

24 CHIEF JUSTICE ROBERTS: Well, under your --

25 MR. GUPTA: -- challenge.

1 CHIEF JUSTICE ROBERTS: Under your -- under
2 your argument -- I just want to understand. I
3 understand you say, well, that's -- it's not this case.
4 But under your argument, how would you analyze the --
5 the hypothetical that I posed?

6 MR. GUPTA: I think if the State wants to
7 have a regime where they think it's a deceptive practice
8 because you aren't telling people the -- the higher
9 price or the -- the price difference at the same time,
10 and that people are hoodwinked or there's bait and
11 switch, they are perfectly free to do that. It's odd
12 that there's a criminal regime in this case, and false
13 advertising law certainly makes it possible to do that
14 anyway. But if the State wants to enforce this statute
15 that way, we have no problem with that. They can
16 continue to do that.

17 If you look at Joint Appendix 144, you'll
18 see an example of a bait-and-switch scenario like that.
19 The odd thing there is that the State didn't invoke
20 its Section 518, the no-surcharge statute. They enacted
21 the false advertising statutes, which suggests that this
22 statute has something else in mind. And --

23 JUSTICE ALITO: I'm going to say when I
24 first read this statute without knowing anything about
25 the background with the Federal statute or reading the

1 briefs or the Second Circuit opinion, I interpreted it
2 the way Justice Sotomayor did, that it mandates a single
3 price. Now, that may be a -- an uninformed
4 interpretation, but I feel somewhat uncomfortable about
5 ruling on the constitutionality of this statute without
6 knowing how the court of appeals, New York court of
7 appeals would interpret the statute.

8 So why shouldn't we certify that question of
9 interpretation to that court before we plunge into this
10 First Amendment issue?

11 MR. GUPTA: Well, the State of New York
12 didn't ask for certification below. Believe it or not,
13 you know more about the New York statute than you know
14 about any of these statutes. And the other courts that
15 have confronted the Florida statute, the California
16 statute, they had no problems striking them down without
17 an enforcement history. They all have been understood
18 to mean the same thing. And -- and I think, you know,
19 what you said -- what this Court said in Sorrell is that
20 plaintiffs in a First Amendment challenge have a right
21 to prompt adjudication despite ambiguities in State law.

22 And so this Court used to abstain in First
23 Amendment challenges where there is some ambiguity in
24 State law. I think the -- the modern trend in this
25 Court's cases has been to take a crack at it. And, you

1 know, you have the enforcement history. You know what
2 the statute means on the ground. If you had a content
3 neutral statute and the State were enforcing it
4 consistently in a content discriminatory way, you
5 wouldn't say, well, we don't know what the statute
6 means, you can't challenge that.

7 In effect, when you bring an as-applied
8 challenge, you're bringing a challenge not just some
9 words in a statute book, but also to the way that the
10 statute is being enforced. And the injunction in an
11 as-applied challenge would look the same whether you
12 conceptualize that as a challenge to the statute as
13 written or to the State's enforcement policy. Either
14 way, we want an injunction that says --

15 JUSTICE BREYER: Well, now, this is exactly
16 what's worrying me. The State, you say, told some
17 merchants that they cannot say that they have a
18 surcharge. Is that what it is? Is that the problem?

19 MR. GUPTA: You can --

20 JUSTICE BREYER: But they did say, you can
21 do exactly the same thing?

22 MR. GUPTA: Exactly. They said you can
23 charge --

24 JUSTICE BREYER: Did they say, do exactly
25 the same thing --

1 MR. GUPTA: Yes.

2 JUSTICE BREYER: -- or did they say you can
3 have a discount?

4 MR. GUPTA: They said you can charge more
5 all you want.

6 JUSTICE BREYER: You can charge more all you
7 want.

8 MR. GUPTA: You just have to call it a
9 discount.

10 JUSTICE BREYER: Did they say call it a
11 discount?

12 MR. GUPTA: Yes.

13 JUSTICE BREYER: So what we are doing here
14 is we are taking all the principles which are important
15 of a First Amendment case and we are going to apply them
16 speedy determination not as applied, you know, across
17 the board. There are lots of protective things. And we
18 are diving headlong into an area called price
19 regulation.

20 It is a form of price regulation, and price
21 regulation goes on all over the place in regulatory
22 agencies. And so the word that I fear begins with an L
23 and ends with an R; it's called Lockner. And there we
24 go.

25 Using the First Amendment as a tool to get

1 at price regulation that enforcers will sometimes say
2 the wrong thing. Okay? So that's a very general
3 question. But if you want to know what's worrying me,
4 that's it.

5 MR. GUPTA: Justice Breyer, I understand the
6 concern. I think it's a serious concern, but it's not a
7 concern at issue in this case. And that's because this
8 is not price regulation. This is the regulation of how
9 prices are communicated. And I think that the Joint --
10 the declaration in the Joint Appendix shows you that.
11 When the State says to someone, you can charge more all
12 you want, you just have to call it something different,
13 that's not price regulation. That's the regulation of
14 how prices are communicated.

15 And I think here's the test, Justice Breyer.
16 If you want to figure out -- because we all agree that
17 Virginia Board is the law, right? Communication of
18 price information is protected by the First Amendment.
19 But we also all agree that price regulation is economic
20 conduct. So you ask, can you come into compliance with
21 the law simply by changing what you say without changing
22 what you charge? And that is the scenario here. That's
23 exactly what the State told those merchants. They said,
24 you don't have to change what you charge, charge the
25 same thing. Change what you say.

1 JUSTICE KAGAN: Mr. Gupta, you're putting
2 really a lot of emphasis on a few cases in which
3 prosecutors describe the law in a certain way. But the
4 law as written doesn't really do any of the things that
5 you're saying. I mean, Justice Alito is right. The law
6 as written actually can be read -- and Justice Sotomayor
7 said this before -- as just requiring a single price.
8 Now, that's something that none of the parties here say,
9 but if you just look at the law, that's what the law
10 says.

11 MR. GUPTA: Right.

12 JUSTICE KAGAN: Let's take that out of the
13 picture. Even then the law can say, the only thing that
14 we are requiring is that you list the higher price.
15 That's the only thing that we are requiring. And then
16 you can describe what you're doing any way you like.
17 You can use the word "surcharge." You can use the word
18 "more." You can use the word "less." You can use the
19 word "discount." It doesn't matter. So long as you
20 list the higher price, you're in the clear. And that,
21 too, is very different from what you're saying, maybe
22 from what the prosecutor said. But just the way you
23 read this law, it just doesn't give -- I mean, what
24 these prosecutors say don't match what the law says.

25 MR. GUPTA: Well, the law --

1 JUSTICE KAGAN: The law says, you know, this
2 is all about listing, you know, conduct; what you can
3 charge.

4 MR. GUPTA: But the law also means what it
5 means on the ground. And we have -- the State agrees we
6 have a credible fear of prosecution if we -- if we say
7 what we want to say. So there's no dispute about that.
8 The Document 51 in the district court, they conceded
9 that if we say what we want to say, we could be
10 prosecuted tomorrow, that shows there's a case in
11 controversy about whether we can be prosecuted for --
12 for truthful speech.

13 JUSTICE KAGAN: Well, New York is saying in
14 its brief that that's not the case; that you can say
15 what you want to say; that you can call this a
16 surcharge; that you can communicate in the way you want
17 to communicate as long as your listed price is the -- is
18 the credit card price.

19 MR. GUPTA: But that makes it impossible. I
20 mean, that makes it impossible to frame the price as a
21 surcharge, because that -- that normalizes the credit
22 card price. It makes that the baseline price, and that
23 effectively defines away a surcharge. And that's been
24 the purpose of this --

25 JUSTICE SOTOMAYOR: So you think the Federal

1 law was unconstitutional as well.

2 MR. GUPTA: I think the Federal law was
3 unconstitutional, too. We don't have to win that fight
4 to win this case.

5 JUSTICE GINSBURG: Were there any
6 prosecutions under the Federal?

7 MR. GUPTA: There were not. And the reason
8 is that the Federal Trade Commission, the Federal
9 Reserve Board and the consumer groups all opposed that
10 regime because they thought it hid the cost of credit
11 from consumers. There was never any enforcement, but
12 you can look in the blue brief at pages 11 through 15.
13 We've tried to lay out how that regime worked, and I
14 don't think it is the way the Solicitor General has
15 characterized it. You cannot find any regulations from
16 the time that the Federal regime was in effect that
17 said, all you have to do is list the highest, you know,
18 credit card price. That would look like a disclosure
19 regime.

20 JUSTICE GINSBURG: As far as discounts are
21 concerned, is there some protection that the merchant
22 can offer a discount?

23 MR. GUPTA: That the merchant can offer a
24 discount; in other words, can they do that under this
25 statute? Is that --

1 JUSTICE GINSBURG: No. I thought that there
2 was some legislation that permitted --

3 MR. GUPTA: There's Federal legislation that
4 says that it is a violation of the statute to have
5 private ordering that forbids a discount and that's why
6 what you had, Justice Ginsburg, were contract rules that
7 made it illegal for merchants to frame the price
8 difference as a surcharge. Those contract rules were
9 rescinded in 2013 in the face of antitrust scrutiny, and
10 that's what led to this litigation.

11 If there are no further questions --

12 JUSTICE KAGAN: I'm sorry. You said
13 something very interesting.

14 MR. GUPTA: Yes.

15 JUSTICE KAGAN: You said if you take the
16 statute, if you understand the statute to just mean that
17 the listed price has to be the credit card price, that
18 looks like a disclosure regime. Could you explain that?

19 MR. GUPTA: Sure. I think a disclosure
20 regime would look very different. It wouldn't be a
21 hidden accidental disclosure regime. It would tell you
22 exactly what it was requiring; right? And you wouldn't
23 have any confusion and then you would have to probably
24 analyze that under Zauderer, and you'd ask a few
25 questions: Is it specifically priced -- precise that

1 merchants have some warning or guidance? Is there some
2 evidence that it's furthering some anti-deception
3 interest?

4 We do math all the time. We -- we know that
5 we can add the sale -- sales charge as a percentage of
6 the service charge on a restaurant menu. Nobody thinks
7 that that's a problem for consumers to do math. So why
8 in this one place are they requiring the total price?
9 Could it be because they want to suppress the message
10 that merchants want to get across? Is it unjustified or
11 burdensome? Is it impossible for merchants, if they
12 have to frame only one price, to do it this way or is it
13 going to dissuade them from getting their message
14 across --

15 CHIEF JUSTICE ROBERTS: Thank you, counsel.
16 We'll afford you a minute for rebuttal.

17 MR. GUPTA: Okay.

18 CHIEF JUSTICE ROBERTS: Mr. Feigin?

19 ORAL ARGUMENT OF ERIC J. FEIGIN

20 FOR UNITED STATES, AS AMICUS CURIAE,

21 SUPPORTING NEITHER PARTY

22 MR. FEIGIN: Thank you, Mr. Chief Justice,
23 and may it please the Court:

24 I want to focus on what I take to be the
25 core of the First Amendment dispute between the parties,

1 which I think centers around a merchant who, for
2 example, wants to label a soda as costing \$1.95 with a 5
3 percent credit card surcharge, and the question is
4 whether the State can require the merchant to
5 specifically identify a price of \$2.05 before charging a
6 customer who wants to use a credit card that amount.

7 A law like that is very similar to a law
8 that simply regulates pricing or requires a merchant to
9 honor their offers to make or enter into a contract of
10 the sort that we normally wouldn't think is subject to
11 any First Amendment scrutiny. We nevertheless think
12 that the requirement that everyone seems to agree is
13 imposed here is best viewed under this Court's
14 precedence as a speech regulation because, in effect,
15 it's prescribing how the merchant communicates an
16 otherwise lawful pricing scheme.

17 But to the extent that New York's law, like
18 the Federal law, simply requires a disclosure in
19 dollars-and-cents form of any higher credit card price
20 in circumstances where the merchant has decided to
21 display the lower cash price in dollars-and-cents form,
22 it's a perfectly valid consumer disclosure law under
23 this Court's decision in Zauderer. We --

24 JUSTICE SOTOMAYOR: Mr. Feigin, could you
25 get more concrete for me? Take the list of four ways

1 that they would like to advertise in the reply brief.

2 Which ways do you think -- or would the New
3 York law potentially or actually make any of this
4 conduct illegal?

5 MR. FEIGIN: Your Honor, I don't think I can
6 answer that question as to the New York law. I --

7 JUSTICE SOTOMAYOR: Why?

8 MR. FEIGIN: Because I think we lack a
9 definitive interpretation from the New York court of
10 appeals. I think much of dispute between the parties,
11 as the first 25 minutes of questioning revealed,
12 involves what the New York law actually does under
13 particular circumstances.

14 I can answer that question on the assumption
15 that the New York law tracks the former Federal law,
16 which, the only thing the Federal law actually did once
17 you trace through the definitional sections was to
18 require, as I said -- as I was saying earlier,
19 disclosure in dollars-and-cents form of a higher credit
20 card price when the merchant has decided to post a cash
21 price.

22 JUSTICE SOTOMAYOR: Fine. So look at
23 this -- if that's what this law means, which of these
24 four ways of advertising would be permissible and which
25 would be unpermissible?

1 MR. FEIGIN: Option A, where it's a \$10 cash
2 price, \$10.20 credit price, would be fine. Option B,
3 where it's \$10 cash price, 20 cents surcharge per item
4 added to credit card purchases, would not be
5 permissible. You'd have to actually disclose in
6 dollars-and-cents form, it would be 10.20.

7 JUSTICE SOTOMAYOR: 10 -- you would have to
8 say \$10.20.

9 MR. FEIGIN: Correct. And I'd like --

10 JUSTICE SOTOMAYOR: So that's regulating
11 speech; it's not regulating price, because it's the same
12 price whether -- I can do that math.

13 MR. FEIGIN: The -- that is why we think
14 that this is better viewed as a speech regulation under
15 this Court's precedence.

16 But let me explain why I think it's a
17 reasonable disclosure.

18 JUSTICE SOTOMAYOR: Finish this -- all
19 right.

20 MR. FEIGIN: Option C, Your Honor, which is
21 \$10, 2 percent surcharge, would be the same as Option B,
22 you'd actually have to say \$10.20. And then Option D,
23 which is \$10.20, 20-cent discount for cash purchases, is
24 fine because you're disclosing to the consumers the
25 highest possible price that they would have to pay in

1 dollars-and-cents form.

2 JUSTICE KAGAN: And -- and your
3 understanding of why it is a speech regulation, it -- is
4 because it affects the way you list prices; is that
5 right?

6 MR. FEIGIN: That's right, Your Honor.

7 So a law, for example, that simply required
8 a merchant who made a particular representation that the
9 price of this item is \$1.95 and required that merchant
10 to honor -- and that was all the merchant said, didn't
11 say anything about surcharges at all, and the law simply
12 required the merchant to honor that price when the
13 consumer gets to the cash register, that's an economic
14 regulation. That's just a regulation that is regulating
15 pricing or contract offers, but the -- the law here, I
16 think everyone agrees, does something a little bit more.

17 In Options B and C that I was just
18 discussing with Justice Sotomayor, you can have a price
19 tag that does reveal a -- the existence of a surcharge
20 expressed as a mathematical formula and the law would
21 say that's not good enough, you have to actually list it
22 as a price.

23 JUSTICE KENNEDY: Well, but --

24 MR. FEIGIN: If I could, I'd like to address
25 what's constitutionally permissible --

1 JUSTICE KENNEDY: -- what is your position
2 as to the constitutionality of prohibiting Options B and
3 C in the pastrami sandwich example on --

4 MR. FEIGIN: Well, Your Honor, first of all,
5 I wouldn't characterize it as prohibiting Options B and
6 C, but simply requiring an additional disclosure. It
7 has to finish off the math problem for the consumers and
8 tell them that the credit card price is \$10.20.

9 The reason that's permissible
10 constitutionally under Zauderer is that -- I think it's
11 important to keep in mind the legislatures are
12 legislating against a backdrop, whether there isn't
13 necessarily any specific requirement at all to even
14 disclose the existence of the surcharge. And I think
15 the two --

16 CHIEF JUSTICE ROBERTS: That's a very --
17 that's a very patronizing approach. I mean, you're
18 saying in B when it says it's \$10 cash, it's 20 cents
19 surcharge, that they've got to do the math and say, by
20 the way, that's \$10.20?

21 MR. FEIGIN: And let me explain why, Your
22 Honor. I think there are two good reasons why that has
23 to be done.

24 First, if you're -- or why it's reasonable
25 for --

1 JUSTICE KENNEDY: I thought it was \$10 and 2
2 cents, but I'll think about that while --

3 (Laughter.)

4 MR. FEIGIN: I think there are two reasons
5 why it's reasonable for a legislature to decide that if
6 it's requiring --

7 JUSTICE KENNEDY: Yeah, right.

8 MR. FEIGIN: -- a disclosure of the facts
9 that the credit card price is going to be higher, it can
10 require that disclosure to be made in dollars-and-cents
11 form rather than a mathematical formula.

12 First, the price --

13 CHIEF JUSTICE ROBERTS: Oh, no, I thought
14 you were telling me that they -- that it's not enough.
15 Even if it's in cash, if they say that's a 20 -- 20-cent
16 surcharge, that violates the statute.

17 MR. FEIGIN: Your Honor, if all they said
18 was \$10 price and 20-cent surcharge --

19 CHIEF JUSTICE ROBERTS: Right.

20 MR. FEIGIN: -- and they don't say \$10.20
21 credit card price, that, as we understand it, would be a
22 violation of the Federal statute.

23 But let me please explain why.

24 JUSTICE KENNEDY: Now, if -- if that --
25 if -- if B or C as stated are a violation of the New

1 York statute, in your view, is that a violation of the
2 First Amendment?

3 MR. FEIGIN: It is not, and I think for two
4 reasons.

5 JUSTICE KENNEDY: Even though this is
6 truthful information.

7 MR. FEIGIN: All that's required -- Your
8 Honor, it's not prohibiting them from saying what's in
9 Options B and C. It's requiring a further disclosure in
10 dollars-and-cents form. I think there are two reasons
11 why Congress or the New York legislature could
12 permissibly require the disclosure to be made in
13 dollars-and-cents form.

14 First, that's the most easily digestible
15 form in which people receive prices. It allows for easy
16 comparison of prices and doesn't require the consumer to
17 complete a math problem.

18 Second, I think this directly --

19 CHIEF JUSTICE ROBERTS: Hold on -- now, hold
20 on. You're saying that the -- the American people are
21 too dumb to understand that if you say \$10 plus a
22 20-cent surcharge, they can't figure out that that's
23 \$10.20.

24 MR. FEIGIN: And the second reason, Your
25 Honor, I think addresses that concern directly.

1 (Laughter.)

2 MR. FEIGIN: Which is that there is -- which
3 is that there is an administrability concern here.

4 CHIEF JUSTICE ROBERTS: There's an --

5 MR. FEIGIN: An administrability concern.

6 Once you start allowing mathematical
7 formulas, you can get into a debate about when the
8 formula becomes too complicated for your average
9 consumer. You can imagine --

10 CHIEF JUSTICE ROBERTS: It's too much to say
11 \$10 plus 20 -- I -- I suppose it's a mathematical
12 formula, but it's for second graders.

13 MR. FEIGIN: Well, Your Honor, let me see if
14 I can -- first of all --

15 JUSTICE KAGAN: Well, isn't the idea,
16 Mr. Feigin, that if you said 32.46 plus 2 percent, then
17 you really are requiring people to do some work and
18 you'd rather just have them know that it's -- see, I
19 can't do it that fast.

20 (Laughter.)

21 MR. FEIGIN: Well, Your Honor, you might
22 also -- you can see that --

23 CHIEF JUSTICE ROBERTS: I agree that
24 percent -- that -- that's Point C, that's not B. I
25 agree that a percentage is more complicated.

1 MR. FEIGIN: Well, you --

2 CHIEF JUSTICE ROBERTS: But 20 cents and
3 \$10, that's not too complicated unless you're taking a
4 very patronizing and condescending view of the
5 capabilities of the American consumer.

6 MR. FEIGIN: I think, Your Honor, under
7 Zauderer, Congress -- or the New York legislature is
8 entitled to draw clear lines. I think it becomes more
9 complicated if you show up at the store and you want to
10 buy 17 things than if you're just buying the one thing,
11 that increases the complexity of the math problem, and
12 it would be much harder to write a law that allows
13 certain formulas, but not certain other formulas.

14 You could imagine a store that says, if you
15 buy an -- here are our prices in cash. If you buy an
16 item in credit, we're going to charge you a surcharge
17 equal to the -- a percentage that is the fifth digit of
18 pi.

19 CHIEF JUSTICE ROBERTS: Yes, yes. I -- I'll
20 give you that --

21 MR. FEIGIN: There's a subset of the
22 population --

23 CHIEF JUSTICE ROBERTS: -- that takes a
24 little longer to figure out. But you're saying that it
25 violates the law if it says \$10 plus 20 cents.

1 MR. FEIGIN: I think, Your Honor, they're
2 entitled to have a bright-line rule. You could have a
3 price that's a little bit -- that creates a harder math
4 problem of the sort that Justice Kagan supposed.

5 And again, you could also be buying many
6 items at once. You could have only a certain amount of
7 money that you want to spend and have trouble figuring
8 out what you're going to be able to fit under that
9 budget --

10 JUSTICE KAGAN: Could I -- I feel it -- I'm
11 sorry.

12 MR. FEIGIN: -- and it makes for comparison
13 pricing much easier.

14 JUSTICE KAGAN: Can I ask you a different
15 question? It -- it does -- this does not look like a
16 disclosure requirement. It just -- I mean, one way to
17 understand this is exactly what you said. It -- it
18 requires disclosure. Whether everybody needs that
19 disclosure, whether only a few people need that
20 disclosure in the \$10.20 case, but it requires
21 disclosure to make sure that everybody is on the same
22 page in terms of knowing prices.

23 But if you look at the language of the
24 statute, it just doesn't look like that. And -- and if
25 we're going to say that something is a disclosure

1 requirement and so subject to a lesser forum of First
2 Amendment review, shouldn't the State be making clear
3 that that's what this is?

4 MR. FEIGIN: You're -- may -- may I
5 answer --

6 CHIEF JUSTICE ROBERTS: Sure.

7 MR. FEIGIN: -- Mr. Chief Justice?

8 Your Honor, I think the best thing for the
9 Court to do here is, the Federal law was clear. I think
10 you can use the Federal law as kind of a baseline for
11 discussing the issue, remand to the Second Circuit and
12 allow for the New York court of appeals to have a
13 definitive interpretation of the law, because there's
14 clearly some dispute about what the New York law does.

15 CHIEF JUSTICE ROBERTS: Thank you, Counsel.
16 Mr. Wu?

17 ORAL ARGUMENT OF STEVEN C. WU

18 ON BEHALF OF THE RESPONDENTS

19 MR. WU: Mr. Chief Justice, and may it
20 please the Court:

21 The plain text of New York's statute refers
22 only to a pricing practice and not to any speech. The
23 statute prohibits a seller from imposing a surcharge on
24 a customer who elects to use a credit card.

25 For sellers that list a single price as

1 nearly all sellers do, the application of the statute is
2 straightforward. The seller may not add to its listed
3 prices and instead must adhere to those prices if a
4 customer decides to pay by using a credit card.

5 JUSTICE ALITO: Could I just ask you a
6 preliminary question about the division of litigation
7 authority in New York State? Does the attorney general
8 or the solicitor general have the authority under New
9 York law to bind all of the district attorneys in the
10 State to an interpretation of this statute? And has the
11 attorney general issued a -- an official interpretation
12 so that all of the district attorneys will be required
13 to -- to enforce this in the same way?

14 MR. WU: So the attorney general and the
15 district attorneys are separate authorities under New
16 York law. In this case, however, the relevant district
17 attorneys for the counties where these Petitioners are
18 located are parties to this case --

19 JUSTICE ALITO: Yeah. But, see, that's a --

20 MR. WU: -- and have expressed their
21 endorsement.

22 JUSTICE ALITO: That's a problem for me.
23 How many district attorneys are there in New York State?

24 MR. WU: There -- there are -- there are
25 many.

1 JUSTICE ALITO: There are many.

2 So you tell us how you interpret this, but
3 how do we know how all of these other district attorneys
4 are going to interpret the statute? They may interpret
5 it differently.

6 MR. WU: Well, I don't think fundamentally
7 there should be a debate about the -- the statute here.
8 And -- and it's because a plain reading of the text here
9 means reading what it means to impose a surcharge.

10 JUSTICE KAGAN: But, you know, there does
11 seem to have been a debate about what this statute
12 means. Because I look at some of this enforcement
13 history and I think -- I don't really understand why
14 this violates that law. And, in fact, you've walked
15 away from some of that enforcement history in your
16 briefing and said, look, the cashier can call it
17 whatever she wants to call it as long as the listed
18 price is the credit card price. But that is
19 contradicting some of this enforcement history where a
20 different understanding of this law was used.

21 So how do we deal with that?

22 MR. WU: Justice Kagan, I disagree that we
23 are walking away from the enforcement history here.
24 See, I think if you actually look at what the
25 enforcement history looks like, especially from the

1 attorney general's office, that it confirms sort of the
2 plain reading of this statute in a single-price scheme.

3 And the heating oil company example, I
4 think, is the clearest one. In each of those cases,
5 when the investigator from our office called up and
6 asked, what is your price, they were given a single
7 dollars-and-cents answer. And on page 106 of the Joint
8 Appendix they asked Parkside Oil, how much is a gallon
9 of oil? And they said, \$3.45.

10 And it was only when the investigator said,
11 I'd like to pay by a credit card, that at that point the
12 oil company representative said, I'm going to impose a
13 surcharge of an extra 5 cents per gallon set on top of
14 the previous price.

15 And I think that pricing practice reflects
16 the commonsense understanding of the word "surcharge,"
17 which is an additional fee or charge on top of a
18 baseline that the seller itself has -- has established.

19 JUSTICE KENNEDY: But under your view, if
20 the heating oil people had said, it's \$103 if you pay by
21 credit card; if you do not pay by credit card, pay by
22 cash, it's \$100, that is lawful?

23 MR. WU: That's -- that's correct. I mean,
24 if the heating oil representative --

25 JUSTICE KENNEDY: Then it's a matter of how

1 the pricing structure is communicated --

2 MR. WU: Well --

3 JUSTICE KENNEDY: -- in the speech.

4 MR. WU: Well, I mean, let me respond in
5 this way, which is, of course the definition or the
6 determination of whether there's a surcharge will look
7 back to the seller's original pricing practices, because
8 that's the meaning of a surcharge, is a difference from
9 some previously conveyed price.

10 But the First Amendment doesn't prohibit the
11 State from using a previously conveyed price as a
12 baseline for a price regulation. As -- as the United
13 States has acknowledged, a regulation that just said you
14 shall adhere to your previously conveyed prices or even
15 previously advertised prices is a perfectly
16 understandable economic regulation that would be
17 conduct.

18 JUSTICE KENNEDY: But suppose -- suppose
19 in -- in the heating oil example they said, it's \$103,
20 but cash is \$100, and that's because we impose a
21 surcharge. Would that be lawful?

22 MR. WU: That -- that would be fine. I take
23 that to be similar to Justice Kagan's example about the
24 \$1 charge for a cup of coffee with -- with a -- with a
25 description of it as a surcharge. And the statute does

1 not prohibit that scheme because, at the end of the day,
2 the listed price, which is in that case conveyed over
3 the phone, is the same as the price charged to a credit
4 card customer. But --

5 JUSTICE SOTOMAYOR: Is your answer to the
6 reply brief examples the same as the solicitor general's
7 office? And do you have a concern the way it does that
8 the statute could be read more broadly?

9 MR. WU: So we -- our answers are the same
10 as to the four examples there, and we do not think it is
11 read more broadly. I mean, one thing that is crystal
12 clear from the lighter side of history here is that New
13 York intended to carry out the same policies and same
14 purpose as the Federal statute that had just lapsed, and
15 the same history is present in all of the other States
16 that have adopted a similar surcharge issue.

17 JUSTICE ALITO: Then why didn't New York --
18 I mean, New York adopted this against the backdrop of a
19 lot of consideration at the Federal level. Why did it
20 not adopt the Federal definitions?

21 MR. WU: I can't answer that question
22 because nothing in the legislative history explains why
23 they did not.

24 JUSTICE GINSBURG: What did the other --

25 MR. WU: But --

1 JUSTICE GINSBURG: -- the other States that
2 picked up after the Feds didn't renew the statute, what
3 did the other States do?

4 MR. WU: At --

5 JUSTICE GINSBURG: Did they do what New York
6 did or did they copy the Federal statute?

7 MR. WU: Well, the vast majority of them did
8 not adopt the Federal definition. As far as I'm aware,
9 only Massachusetts adopted the Federal definitions. And
10 there are some exceptions where some of the statutes
11 actually have a separate definition of a surcharge,
12 which is just the plain meaning definition that we have
13 adopted here, which is in addition to a previously
14 disclosed or regular price. And so all of these
15 statutes are really -- should be, we think, read
16 similarly here.

17 JUSTICE ALITO: Well, if I had the authority
18 to interpret the New York statute, which I really don't,
19 and I saw that they copied part of a prior statute, but
20 they deliberately omitted other parts of the prior
21 statute, I would be tempted to infer that they had a
22 reason for omitting the definitions. And that was that
23 they didn't want to be bound by that, so they wanted
24 something different.

25 MR. GUPTA: I don't think there's anything

1 in the history that would support that interpretation,
 2 Justice Alito. And I would just say part of the reason
 3 that they may not have felt it necessary was because
 4 just as the Federal statute originally did not have
 5 these definitions for a period of many years, the
 6 legislature may have believed that the ordinary meaning
 7 of a surcharge is obvious enough that they didn't need
 8 the clarifying definitions of the -- of the Federal
 9 statute.

10 JUSTICE BREYER: Go ahead. Are you
 11 finished?

12 MR. WU: Yes, sir.

13 JUSTICE BREYER: All right. Help me. I may
 14 be the only one that needs this help, but I do have this
 15 Lockner problem.

16 One, if this -- if I were a legislature --
 17 legislator, I would have voted against this statute. I
 18 think it does hide the cost. That has nothing to do
 19 with this.

20 Two, I think that the reason we're having so
 21 much trouble is because it's so difficult, but not
 22 impossible, to distinguish between surcharge and
 23 discount. And if you want to distinguish -- and they
 24 are different -- words are very helpful. They're
 25 evidentiary. But what we're after is not the words.

1 They're evidentiary of something. But that's all almost
2 we have.

3 Three, the fact that you have the questions
4 you've had and both sides of the bench have had such
5 trouble with this, to me, is strong evidence that the
6 Court should stay out of this under normal First
7 Amendment standards. Because if we don't, we are going
8 to discover all kinds of price regulation all over the
9 place that suffers to greater or lesser degrees from
10 this kind of problem, and you'll have judges all over
11 the country substituting for regulators and others in
12 trying to regulate. That's where I'm coming from.

13 Now, you tell me how to do it.

14 MR. WU: Well --

15 JUSTICE BREYER: That is, you tell me, given
16 precedent, et cetera, what should we overrule? Or what
17 should we narrow? If, as I believe is true, these
18 regulatory areas are areas that not normal First
19 Amendment, "tough, you can't do it" principles apply --
20 weakened forms might because it applies everywhere in a
21 sense. But it used to be rational basis. It used to be
22 rational basis. But water has flowed over that dam or
23 under that bridge or whatever, and so I want to know
24 your best thinking on what you would do in terms of
25 trying to write a rule of law that would favor you.

1 MR. WU: I'm going to give two responses to
2 that. I mean, the first goes back to the text of the
3 statute and recognizes that this statute is not phrased
4 in any way that touches on what we would ordinarily
5 think of as a speech. In contrast to, for example, the
6 statute in the Milavetz case, which talked about
7 regulating the advice that a -- that relief agency would
8 give to a potential client.

9 JUSTICE SOTOMAYOR: We're talking --

10 MR. WU: This talks about the imposition of
11 a surcharge.

12 JUSTICE SOTOMAYOR: I can't look at this
13 statute and rely on its words or make a judgment on its
14 words because nothing of what you're saying it applies
15 to is said on the face of this statute.

16 MR. WU: Well --

17 JUSTICE SOTOMAYOR: You're asking me to take
18 a lot of steps, which is start with the language of the
19 statute, ignore it, and go to a Federal statute and
20 apply its definitions. How many of them, you haven't
21 quite told me. How you differ, you haven't quite told
22 me. And -- but I'm going to assume the Federal
23 definitions apply, even though none of them are used
24 here.

25 So I'm -- I'm very confused why you're

1 starting your answer to Justice Breyer by saying, look
2 at the statute and see what the words of the statute are
3 doing.

4 MR. WU: Well, if I could get to that in
5 just one second and finish the answer to Justice
6 Breyer's, because I think given the way the statute is
7 phrased, the easiest way to dispose of this case is to
8 recognize this as a direct price regulation that this
9 Court in 44 Liquormart and other cases have held is not
10 subject to First Amendment scrutiny.

11 JUSTICE GINSBURG: But it doesn't set a
12 standing price. It doesn't set any price at all. It
13 lets the merchant set the price. And the question is
14 how that price is described. So I think it's quite
15 different from OPA ceiling prices, which says you cannot
16 charge more than the ceiling price. Here, the sky is
17 the limit as to what the -- the merchants can charge.
18 New York is not regulating what the price of the goods
19 are.

20 MR. WU: But the way to understand the
21 statute -- and I think this answers Justice Sotomayor's
22 question as well -- is that once the seller has chosen
23 that price, which I agree they have a free choice about,
24 then its ability to change that price for someone who
25 uses a credit card is constrained. And I think this is

1 easiest to understand in the scope of a single
2 transaction. You walk into a store, they give you a
3 menu with a list of prices for their food. Those prices
4 are in large part unadorned by any conditions about when
5 those prices apply. And you know, in the course of that
6 transaction, between when you sit down and when you pay
7 the bill that those prices will be the prices charged to
8 you even if at the end of the transaction you take a
9 credit card and pay for it.

10 JUSTICE SOTOMAYOR: No, I don't, because I
11 know I have to pay sales tax.

12 MR. WU: Well, you might have to pay sales
13 tax.

14 JUSTICE SOTOMAYOR: And every -- and every
15 State I have to figure out what that sales tax is and
16 I've got to do the math in my own head.

17 MR. WU: That's -- that's correct. And --
18 and there are a lot of price adjustments that sellers
19 could impose. You could have coupons, member discounts,
20 et cetera. But I think those actually support our point
21 here, because what do those price adjustments apply to?
22 And at the end of the day, New York's position under the
23 ordinary definition of a surcharge, is all of those
24 adjustments apply to the regular or starting price --
25 price of a good or product.

1 JUSTICE KAGAN: I mean, here's the narrow
2 way in which this seems to affect communication, speech.
3 I'm a seller. I set my prices. I say I want to charge
4 cash customers a dollar and I want to charge credit card
5 customers \$1.05. All right? Now, if I put my list
6 price as \$1.05 and then the cash customers get a happy
7 surprise, that seems fine. But if I put my list price
8 as a dollar and then the credit card companies get a
9 not-so-happy surprise, that can't be done. So it does
10 affect the way a seller communicates which price he's
11 going to say is the regular price, is the list price.

12 So why isn't that a speech regulation? Now,
13 you might say, as the solicitor general does, it is a
14 speech regulation, but it's only a disclosure regulation
15 and subject to a lower standard. But you're saying it's
16 not a speech regulation at all. And I want to know why,
17 given that it is affecting which price you choose to say
18 is your list price.

19 MR. WU: So even if it does affect what a
20 seller does in that case, it's only because the list
21 price is being used as evidence to support whether an
22 imposition -- whether a surcharge has been imposed
23 later. And it's perfectly permissible under the First
24 Amendment for conduct to be defined in relation to
25 previous acts of speech. You know, conduct can be

1 initiated evidence or carried out through speech and the
2 First Amendment doesn't bar a State from regulating it
3 in that way.

4 And I'll just use a couple of examples that
5 I think make this clear. Under a statute that says the
6 seller shall adhere to a previously advertised price,
7 that regulation, which the United States says is an
8 economic regulation, would be susceptible to the same
9 analysis. If somebody wants to charge \$100, they know
10 that what they have to do is list \$100 in their
11 advertisements or in their stores. They can't list \$98
12 or \$95 or \$90.

13 And a similar example comes from this
14 Court's decision in *Rumsfeld v. Fare*, which recognized
15 that part of determining whether law schools had
16 improperly excluded military recruiters from campus
17 might be looking at the contents of emails or notices or
18 other evidence of the underlying conduct of exclusion.
19 And that's the only way that a seller's prices are being
20 used here. It's being used as the benchmark to
21 determine whether the seller has engaged in the unlawful
22 conduct of increasing a previously disclosed price.

23 Now, why this is clear under the statute,
24 getting back to Justice Sotomayor's question, is in part
25 because of the posture of this case. We have a set of

1 Petitioners here who are bringing, as their counsel has
2 acknowledged, an as-applied challenge. And if you look
3 at the conduct that they want to engage in here, there
4 is no ambiguity about what they think is the baseline or
5 regular price. All of them want to --

6 JUSTICE KENNEDY: But suppose that a
7 business makes a point of its reputation is -- is
8 meeting all prices. We meet prices. And there is a
9 business that's very close to another State and the
10 other State allows cash, has -- has an option where all
11 surcharges are permitted and surcharges are -- are
12 disclosed. Then the State -- the seller in this State
13 says, you know, we will charge the lowest price, we will
14 meet the price, but we add 3 cents for credit cards.
15 And because that's difficult to enforce, all of our
16 prices are increased by 3 percent for everybody because
17 of the difficulty of applying surcharges in some cases.
18 Is that valid?

19 MR. WU: I think it probably would be deemed
20 to be a credit card surcharge in that case. Obviously,
21 no court has addressed that specific question. It's not
22 presented by any of the Petitioners here. And I don't
23 mean to be evasive about it. I think that's an
24 important point because in an as-applied challenge, the
25 relevant question is whether the statute can be applied

1 to what the Petitioners want to do. And none of them
2 want to engage in these complicated pricing schemes.
3 All of them say --

4 JUSTICE KENNEDY: The question of Justice
5 Breyer says that -- that this is so complicated, doesn't
6 that indicate the statute is vague?

7 MR. WU: It -- it does not, because under
8 the vagueness doctrine under the Due Process Clause, as
9 long as there are a core set of cases that people can
10 understand, that's enough to sustain it. And especially
11 when it is clear how it would apply in the -- in the
12 context of the plaintiffs' own allegations.

13 And here again -- and this is clearest from
14 page 101 and 102 of the Joint Appendix. What the
15 Petitioners here want to do and what they will do the
16 moment the statute is invalidated is to list a single
17 set of prices, a single set of prices for each of their
18 goods and services and then collect an additional man on
19 top for -- for a surcharge.

20 Now, it might be the case that other
21 Petitioners or other plaintiffs would engage in more
22 complicated pricing schemes. But the proper way to
23 resolve those questions is in future as-applied cases if
24 and when they arise. And -- and one of the things that
25 we can say from the enforcement history is it's deeply

1 unclear whether those cases will arrive. Sellers first
2 have to engage in those pricing schemes --

3 JUSTICE SOTOMAYOR: So they hold this in an
4 as-applied a challenge -- I hope your adversary will
5 confirm this -- that they want to do these four things
6 that's in the reply brief, one or the other. If we say
7 these are okay, whatever else the law means we're not
8 reaching because this is an as-applied challenge. If --
9 if we say they're okay or the New York State court of
10 appeals say it's okay, it's okay; right?

11 MR. WU: Yes. I think that's --

12 JUSTICE SOTOMAYOR: But you're saying more
13 than this. You're saying this is how they advertise it,
14 but that there's a further disclosure law that when a
15 customer calls up the gas station, the gas station can't
16 do any one of these four things and potentially other
17 things, too; right?

18 MR. WU: I don't think that's our argument.
19 And I should clarify I do think some of these schemes
20 are not okay in the sense that you couldn't impose a
21 credit card surcharge under some of these boxes. But if
22 I'm understanding your question correctly, we are not
23 saying --

24 JUSTICE SOTOMAYOR: I'm saying if we say
25 it's okay. I know you're not claiming it is.

1 MR. WU: But -- but one point I want to
2 respond to is the idea that what somebody says over the
3 phone here can affect the underlying price structure. I
4 mean, we treat the phone calls, including the phone
5 calls in the enforcement history here, as just evidence
6 of what the underlying prices are in the same way that a
7 printed placard itself, although an active
8 communication, would itself be evidence of the
9 underlying prices. And there's no dispute here that
10 when the heating oil representatives were describing
11 their company's prices, they were describing a price
12 scheme that they had settled upon --

13 JUSTICE ALITO: Does this apply --

14 JUSTICE SOTOMAYOR: I'm sorry.

15 JUSTICE ALITO: Does this apply to all
16 merchants? Anybody who sells anything?

17 MR. WU: It -- it does. There are limited
18 exception for government entities who are not deemed to
19 be sellers.

20 JUSTICE ALITO: I mean, suppose some kids
21 have a lemonade stand or they're washing cars and they
22 say a glass of lemonade, \$1 and then somebody comes up
23 to them and says I'd like to buy that with a credit
24 card. It might happen today. I have -- I have never
25 seen anybody younger than me buy anything with cash.

1 But that would be a violation if they put the \$1 there
2 on the assumption that everybody is going to pay cash
3 for their lemonade. These are tech savvy kids so they
4 can -- could process a credit card purchase if they
5 wanted to?

6 MR. WU: The statue has no exemption for
7 kids selling lemonade.

8 (Laughter.)

9 MR. WU: I think -- I think prosecutorial
10 discretion would almost certainly be exercised in
11 that -- in that situation.

12 JUSTICE BREYER: You can think of examples
13 which I can't. In areas like energy, people who make
14 their own energy who use time-of-day metering, there
15 could be lots of regulatory rules that affect how an
16 energy company presents the pricing of this element or
17 that element included. Now, if I think that in all
18 these areas the correct First Amendment standard is
19 rational basis, nothing stronger, how then do I
20 distinguish the cases which you've talked about how
21 you -- what you say in respect to price because after
22 all, even if it's just evidentiary, this statute does
23 affect what people say as to price. So if in fact I
24 need a legal distinction here to get at what I think the
25 First Amendment is driving at, what's your best effort?

1 MR. WU: Well, they affect only what you say
2 about price as an incident to preventing you from
3 engaging a certain pricing practice in the first
4 instance, and I think this is the distinction this Court
5 has drawn in cases like Virginia State Board of
6 Pharmacy. I mean, that's a case about price
7 advertisements, but the understanding there is that the
8 advertisements are describing an underlying price that
9 would be applied. For instance, if a consumer walked
10 into a pharmacy and wanted to buy a prescription drug.
11 And -- and this case is about that consumer transaction.

12 The descriptions of the prices are
13 incidental to the regulation of the underlying consumer
14 transaction and the price that the seller may impose
15 here.

16 And -- and I think the point about the other
17 regulations that may apply is also an important one in
18 a -- in a couple of respects. I think the most
19 important point of these other regulations is that they
20 demonstrate that there are multiple ways in which the
21 legislature or Congress can address what happens to a
22 default or regular price, and they all operate in
23 tandem. The legislature could, for instance, say, you
24 can't do a credit card surcharge as here. They could
25 also say, you can increase your prices at a car rental

1 agency if you add an additional driver, or if you have a
2 car seat. And all of these would operate on the same
3 underlying price structure. The starting point for all
4 of these, as we've argued in our brief, would be the
5 seller's regular or baseline price.

6 If we --

7 JUSTICE GINSBURG: If we -- if we agree with
8 the government that this is because it affects how the
9 merchant characterizes his price, would you also take
10 the position that the government takes that it's
11 justified as a disclosure law?

12 MR. WU: We -- we think that it can be,
13 and -- and -- and in part that's because we agree with
14 the government, with the Federal Government, about the
15 compliance options under this statute.

16 It is true under both the New York law and
17 the Federal law that the way a seller complies with the
18 statute is to display a dollars-and-cents price that it
19 later charges the credit card customers.

20 JUSTICE GINSBURG: Can you explain to me how
21 it's a disclosure requirement to suppress the actual
22 cost of the credit card purchase?

23 MR. WU: Well, it's not suppressing the
24 actual cost of the credit card purchase. It's only
25 preventing -- well, I'll -- I'll say two things.

1 At most it is preventing one way of
2 conveying a credit card price, but the better way to
3 look at it, as the government explains, is that it's
4 just requiring a different price -- the higher
5 dollars-and-cents price for credit card customers to be
6 displayed.

7 JUSTICE KAGAN: Mr. Wu, you think, is this
8 not true, that the dual pricing scheme is legal; is that
9 right?

10 MR. WU: That's correct.

11 JUSTICE KAGAN: That was something that the
12 Second Circuit did not decide, said it was abstaining
13 on. It seems to me that that's quite relevant to this
14 question of whether this is a disclosure requirement.
15 Because if the dual pricing scheme is not legal, it is
16 really hard to characterize this as a disclosure
17 requirement.

18 Would you agree with that?

19 MR. WU: I think that it would be. But --
20 but I think it's important to recognize also why the
21 Second Circuit abstained on this question. It didn't so
22 because it rejected our interpretation of the law which
23 would allow dual pricing. It did so because it found
24 that the statute was readily susceptible to an
25 interpretation that would allow dual pricing because of

1 the clear indications that New York intended to follow
2 the Federal statute, and so it wouldn't adopt an
3 interpretation that would raise constitutional problems.
4 And although -- although we think this Court could adopt
5 our interpretation of the -- of the State law, it would
6 also be fair to recognize that there is no reason to
7 deviate from the Federal statute on this front.

8 But -- but I also want to respond to one
9 other point that Justice Ginsburg had raised, which is
10 whether this suppresses information about credit card
11 costs, and -- and it does not in this important sense:
12 Nothing about the statute prevents a seller from
13 educating consumers about credit card costs, informing
14 them about it, talking about it. Many of the
15 Petitioners here do do so. Brooklyn Pharmacy, for
16 instance, has told its customers not to use credit cards
17 because of the additional costs that they impose, and
18 they remain free to do so under this statute.

19 And in an important sense, that speech is
20 actually a better and more direct way of advocating
21 about credit card costs than the mere imposition of a
22 surcharge.

23 Your Honor, Expressions Hair Design, for
24 instance, wants to impose a flat 3 percent surcharge
25 without apparently any further speech here. And the

1 difficulty with that as a message about credit card
2 costs is, one, it doesn't explain why the surcharge is
3 being imposed; two, it doesn't say that it's being
4 imposed because of a specific thing, there's a merchant
5 interchange fee that credit card issuers charge; and,
6 three, it says nothing about the amount of the
7 interchange fee. A flat 3 percent fee actually that
8 bears no relationship whatsoever to the actual costs,
9 which range from 1.1 to 2.7 percent, that sellers
10 actually infer when they pay.

11 JUSTICE SOTOMAYOR: There is nothing about
12 the scheme that addresses that. The scheme has no
13 disclosure requirement of what was your actual credit
14 card charge versus what you're charging. The scheme
15 does nothing to help that situation.

16 MR. WU: If I could answer just this
17 question.

18 CHIEF JUSTICE ROBERTS: Sure.

19 MR. WU: That's correct, but I think this
20 supports our point. The scheme does not affect anything
21 that sellers may say about their credit card costs. The
22 very narrow thing that it does is to put an imposition
23 of a surcharge in the consumer transaction, and that's
24 what's the classic economic conduct regulation.

25 CHIEF JUSTICE ROBERTS: Thank you, Counsel.

1 Mr. Gupta, a minute.

2 REBUTTAL ARGUMENT OF DEEPAK GUPTA

3 ON BEHALF OF THE PETITIONERS

4 MR. GUPTA: Thank you, Mr. Chief Justice.

5 The solicitor general agrees with us that
6 this is a restriction of speech, but posits that the
7 only thing that's left on the table is a disclosure
8 rationale that New York abandoned in the courts below
9 and is barely pressing here, and the problem with that
10 is that this is a criminal speech restriction. And so
11 if your merchant is faced with compliance, they've got
12 to know, if -- if you think this is a disclosure regime,
13 what are we supposed to say? And typically a disclosure
14 regime doesn't leave you in the dark about what you have
15 to say. The government tells you precisely what to say.

16 And Zauderer recognized this problem. It
17 said that there are serious constitutional problems if
18 you have a disclosure regime that does not tell the
19 merchant precisely what to say.

20 Zauderer isn't a free pass. The government
21 has hypothesized a regime that could exist, but if it
22 did exist, it would still be subject to some First
23 Amendment scrutiny. And you would have to ask of that
24 regime the question that Chief Justice Roberts asked,
25 which is, do we think people are too dumb to do math and

1 why in this one context do we think that? Could it be
2 that it had something to do with suppressing the cost of
3 credit cards.

4 Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you, counsel.

6 The case is submitted.

7 (Whereupon, at 11:07 a.m., the case in the
8 above-entitled matter was submitted.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A				
a.m 1:16 3:2	adopted 44:16 44:18 45:9,13	54:12 allow 39:12	30:10 39:12 55:10	attorney 1:7 17:4,13,14,17
64:7	adversary 4:16 55:4	60:23,25 allowed 10:1	appear 13:7 APPEARAN...	40:7,11,14 42:1
abandoned 63:8	advertise 30:1 55:13	allowing 36:6 allows 35:15	1:17 Appendix 4:21	attorneys 40:9 40:12,15,17,23
ability 49:24	advertised 43:15 52:6	37:12 53:10 altogether 4:8	16:25 17:16 19:17 23:10	41:3 authorities
able 4:12 38:8	advertisements 52:11 58:7,8	ambiguities 20:21	42:8 54:14 application	40:15 authority 40:7,8
above-entitled 1:14 64:8	advertising 7:21 19:13,21 30:24	ambiguity 20:23 53:4	18:18 40:1 applied 22:16	45:17 average 36:8
Absolutely 8:22 8:25	advice 48:7 advocating	Amendment 9:14,23 11:11	53:25 58:9 applies 47:20	aware 45:8 awhile 8:13
abstain 20:22	affect 51:2,10,19 56:3 57:15,23	11:14 14:4 20:10,20,23	48:14 apply 22:15	B B 31:2,21 32:17
abstained 60:21	afford 28:16 58:1 62:20	22:15,25 23:18 28:25 29:11	47:19 48:20,23 50:5,21,24	33:2,5,18 34:25 35:9
abstaining 60:12	afford 28:16 afoul 6:20	35:2 39:2 43:10 47:7,19	54:11 56:13,15 58:17	36:24 back 11:16 43:7
accidental 27:21	agencies 22:22 agency 48:7	49:10 51:24 52:2 57:18,25	applying 53:17 approach 33:17	48:2 52:24 backdrop 33:12
acknowledged 43:13 53:2	add 28:5 40:2 53:14 59:1	63:23 American 35:20	area 22:18 areas 47:18,18	44:18 background
active 56:7	agree 9:13 11:3 11:8,8,12,12	37:5 amicus 1:22 2:7	57:13,18 argued 59:4	19:25 bait 19:10
activity 9:8	agreed 15:14 16:11	28:20 amount 29:6	2:2,5,9,12 3:4 3:7 12:4,14	bait-and-switch 19:18
acts 51:25	agrees 25:5 32:16 63:5	38:6 62:6 analysis 52:9	13:13 18:1,8 19:2,4 28:19	bar 52:2 barely 63:9
actual 59:21,24 62:8,13	agreement 15:17	analyze 19:4 27:24	39:17 55:18 63:2	based 11:5 baseline 25:22
add 28:5 40:2 53:14 59:1	agrees 25:5 32:16 63:5	answer 30:6,14 39:5 42:7 44:5	arrive 55:1 as-applied 7:22	39:10 42:18 43:12 53:4
added 31:4	ahead 46:10 AL 1:4,8	44:21 49:1,5 62:16	18:17,23 21:7 21:11 53:2,24	59:5 basis 47:21,22
addition 45:13	Alito 11:16,18 11:24 12:18	answers 44:9 49:21	54:23 55:4,8 asked 13:6	57:19 bears 62:8
additional 33:6 42:17 54:18	adjustments 50:18,21,24	anti-deception 28:2	63:24 asking 48:17	begins 22:22 behalf 1:18,25
address 11:19 32:24 58:21	administrability 36:3,5	anybody 14:12 56:16,25	Assistant 1:20 association 17:2	2:4,11,14 3:8 39:18 63:3
addressed 53:21	Administration 8:10	anyway 19:14 apparently	assume 48:22 assumption	20:12 47:17 believe 3:12
addresses 11:20 35:25 62:12	adopt 44:20 45:8 61:2,4	61:25 appeals 20:6,7	30:14 57:2	47:17 believed 46:6 bench 47:4
adhere 40:3 43:14 52:6	allegations			
adjudication 20:21				
adjustments 50:18,21,24				
administrability 36:3,5				
Administration 8:10				
adopt 44:20 45:8 61:2,4				

benchmark 52:20	business 9:8 53:7,9	61:13,21 62:1 62:5,14,21	53:14	charging 4:3 7:11 29:5 62:14
best 29:13 39:8 47:24 57:25	businessman 9:19	cards 3:14 5:20 53:14 61:16 64:3	certain 5:3 13:1 24:3 37:13,13 38:6 58:3	chart 5:1
better 31:14 60:2 61:20	buy 17:7 18:4 37:10,15,15 56:23,25 58:10	carried 52:1	certainly 6:5 10:20,20 14:3 15:2 19:13 57:10	check 14:19
bill 5:16 50:7	buying 37:10 38:5	carry 44:13	certification 20:12	Chief 3:3,9 17:23 18:1,11 18:15,24 19:1 28:15,18,22 33:16 34:13,19 35:19 36:4,10 36:23 37:2,19 37:23 39:6,7 39:15,19 62:18 62:25 63:4,24 64:5
bind 40:9		cars 56:21	certify 20:8	choice 49:23
bit 14:10 32:16 38:3	C	case 3:4,11 4:10 7:23 11:2,7 16:4,11 19:3 19:12 22:15 23:7 25:10,14 26:4 38:20 40:16,18 44:2 48:6 49:7 51:20 52:25 53:20 54:20 58:6,11 64:6,7	cetera 47:16 50:20	choose 51:17
blue 26:12	C 1:24 2:1,10 3:1 31:20 32:17 33:3,6 34:25 35:9 36:24 39:17	cases 17:3 20:25 24:2 42:4 49:9 53:17 54:9,23 55:1 57:20 58:5	challenge 6:1 7:22 18:17,25 20:20 21:6,8,8 21:11,12 53:2 53:24 55:4,8	chosen 49:22
board 11:13 22:17 23:17 26:9 58:5	California 20:15	cash 3:19 4:4,12 5:16 6:20 12:1 12:1 14:19 16:5,9,15,16 18:4,6,6,20 29:21 30:20 31:1,3,23 32:13 33:18 34:15 37:15 42:22 43:20 51:4,6 53:10 56:25 57:2	challenges 20:23	Circuit 20:1 39:11 60:12,21
book 10:11 21:9	call 6:14 10:1,2 22:8,10 23:12 25:15 41:16,17	cases 17:3 20:25 24:2 42:4 49:9 53:17 54:9,23 55:1 57:20 58:5	challenging 18:18	circumstances 29:20 30:13
bound 45:23	called 8:9 17:4 22:18,23 42:5	cash 3:19 4:4,12 5:16 6:20 12:1 12:1 14:19 16:5,9,15,16 18:4,6,6,20 29:21 30:20 31:1,3,23 32:13 33:18 34:15 37:15 42:22 43:20 51:4,6 53:10 56:25 57:2	change 23:24,25 49:24	claiming 55:25
boxes 55:21	calls 55:15 56:4 56:5	cash 3:19 4:4,12 5:16 6:20 12:1 12:1 14:19 16:5,9,15,16 18:4,6,6,20 29:21 30:20 31:1,3,23 32:13 33:18 34:15 37:15 42:22 43:20 51:4,6 53:10 56:25 57:2	changing 23:21 23:21	clarify 55:19
Breyer 7:25 8:3 8:7,9,12,17,23 8:25 9:1,5,7,11 9:15,18,22 10:3,7,15,23 11:10 15:1 21:15,20,24 22:2,6,10,13 23:5,15 46:10 46:13 47:15 49:1 54:5 57:12	campus 52:16	cashier 5:18 13:17,20 16:6 16:16,17 41:16	characterize 4:13 13:1 33:5 60:16	clarifying 46:8
Breyer's 49:6	capabilities 37:5	caught 17:1	characterized 26:15	classic 62:24
bridge 47:23	car 58:25 59:2	caused 16:6	characterizes 59:9	Clause 54:8
brief 4:25,25 11:5 13:15,16 25:14 26:12 30:1 44:6 55:6 59:4	card 4:14,20 5:4 5:8 6:14,16 7:7 7:11 12:21 13:21 14:18 16:8,15,17 17:9,18 18:21 18:21 25:18,22 26:18 27:17 29:3,6,19 30:20 31:4 33:8 34:9,21 39:24 40:4 41:18 42:11,21 42:21 44:4 49:25 50:9 51:4,8 53:20 55:21 56:24 57:4 58:24 59:19,22,24 60:2,5 61:10	caused 16:6	charge 4:11 6:19 8:18,20,23 10:5,7 13:21 17:19 21:23 22:4,6 23:11 23:22,24,24 25:3 28:5,6 37:16 42:17 43:24 49:16,17 51:3,4 52:9 53:13 62:5,14	clear 24:20 37:8 39:2,9 44:12 52:5,23 54:11 61:1
briefing 41:16		causing 49:15,16	charged 12:3 44:3 50:7	clearest 42:4 54:13
briefs 20:1		centers 29:1	charges 5:14 59:19	clearly 39:14
bright-line 38:2		cents 5:19 16:18 17:8 31:3 33:18 34:2 37:2,25 42:13		client 48:8
bring 10:9 21:7				clients 7:17
bringing 21:8 53:1				close 53:9
broadly 44:8,11				coffee 43:24
Brooklyn 61:15				collect 54:18
budget 38:9				come 8:19 11:7 18:4 23:20
burdensome 28:11				comes 5:15 12:1 16:16 52:13 56:22
				coming 47:12
				commercial

11:15 Commission 26:8 commonsense 42:16 communicate 11:4 25:16,17 communicated 10:22 11:6 23:9,14 43:1 communicates 29:15 51:10 communicating 3:13 11:13 communication 23:17 51:2 56:8 companies 51:8 company 7:7 42:3,12 57:16 company's 56:11 comparison 35:16 38:12 complete 35:17 complexity 37:11 compliance 23:20 59:15 63:11 complicated 36:8,25 37:3,9 54:2,5,22 complies 59:17 comply 4:6,9 13:2 17:15 conceded 25:8 conceptualize 21:12 concern 23:6,6,7 35:25 36:3,5 44:7 concerned 18:15 26:21 concerns 11:11 14:4 concrete 29:25	condescending 37:4 conditions 50:4 conduct 6:12,19 11:11 23:20 25:2 30:4 43:17 51:24,25 52:18,22 53:3 62:24 confirm 55:5 confirms 42:1 confronted 20:15 confused 48:25 confusion 27:23 Congress 35:11 37:7 58:21 consideration 44:19 consistently 21:4 constitutional 61:3 63:17 constitutionali... 20:5 33:2 constitutionally 32:25 33:10 constrained 49:25 consumer 7:16 18:8,13 26:9 29:22 32:13 35:16 36:9 37:5 58:9,11 58:13 62:23 consumer's 18:3 consumers 10:21 11:14,21 11:22 26:11 28:7 31:24 33:7 61:13 content 21:2,4 contents 52:17 context 54:12 64:1 continue 7:19 19:16	contract 27:6,8 29:9 32:15 contradicting 41:19 contrast 48:5 controversy 25:11 conveyed 43:9 43:11,14 44:2 conveying 60:2 copied 45:19 copy 45:6 core 28:25 54:9 correct 12:5,8 31:9 42:23 50:17 57:18 60:10 62:19 correctly 55:22 cost 3:14 5:3 26:10 46:18 59:22,24 64:2 costing 29:2 costs 17:7 61:11 61:13,17,21 62:2,8,21 counsel 28:15 39:15 53:1 62:25 64:5 Counselor 14:9 counties 40:17 country 47:11 couple 52:4 58:18 coupons 50:19 course 43:5 50:5 court 1:1,15 3:10 20:6,6,9 20:19,22 25:8 28:23 30:9 39:9,12,20 47:6 49:9 53:21 55:9 58:4 61:4 Court's 20:25 29:13,23 31:15 52:14 courts 20:14	63:8 crack 20:25 creates 38:3 credible 25:6 credit 3:14 4:4 4:12,14,20 5:4 5:8,20 6:14,15 6:20,22 7:7,11 12:20 13:21 14:18 16:5,8 16:15,17 17:9 17:18 18:20,21 25:18,21 26:10 26:18 27:17 29:3,6,19 30:19 31:2,4 33:8 34:9,21 37:16 39:24 40:4 41:18 42:11,21,21 44:3 49:25 50:9 51:4,8 53:14,20 55:21 56:23 57:4 58:24 59:19,22 59:24 60:2,5 61:10,13,16,21 62:1,5,13,21 64:3 criminal 16:2,6 16:10 19:12 63:10 criminalize 3:12 crystal 44:11 cup 43:24 curiae 1:22 2:7 28:20 customer 13:21 17:5 29:6 39:24 40:4 44:4 55:15 customers 3:14 7:11 51:4,5,6 59:19 60:5 61:16	D 3:1 31:22 D.C 1:11,18,21 dam 47:22 dark 63:14 day 44:1 50:22 deal 41:21 debate 36:7 41:7 41:11 deceptive 7:20 17:12 19:7 decide 34:5 60:12 decided 29:20 30:20 decides 40:4 decision 29:23 52:14 declaration 4:23 23:10 declarations 16:25 deemed 53:19 56:18 DEEPAK 1:18 2:3,13 3:7 63:2 deeply 54:25 default 58:22 define 11:5 defined 11:3 51:24 defines 25:23 definition 43:5 45:8,11,12 50:23 definitional 30:17 definitions 44:20 45:9,22 46:5,8 48:20 48:23 definitive 12:7 30:9 39:13 degrees 47:9 deliberately 45:20 demonstrate 58:20
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

1:21 depend 18:2 Deputy 1:24 describe 4:5 5:1 6:15 7:8,9 13:19 24:3,16 described 13:25 49:14 describing 6:10 6:21 16:7 56:10,11 58:8 description 43:25 descriptions 58:12 design 1:3 3:5 3:15 4:3,23 61:23 designed 7:2 despite 20:21 determination 22:16 43:6 determine 52:21 determining 52:15 deviate 61:7 differ 48:21 difference 4:13 6:21 13:1 15:21 16:7 18:2,9 19:9 27:8 43:8 different 4:1,4 4:11 6:19 10:17,19 13:4 13:15 15:17 23:12 24:21 27:20 38:14 41:20 45:24 46:24 49:15 60:4 differently 41:5 difficult 16:22 46:21 53:15 difficulty 5:25 53:17 62:1 digestible 35:14	digit 37:17 direct 49:8 61:20 directly 35:18 35:25 disagree 41:22 disclose 7:24 17:18 18:20 31:5 33:14 disclosed 17:11 45:14 52:22 53:12 disclosing 31:24 disclosure 14:6 14:8 26:18 27:18,19,21 29:18,22 30:19 31:17 33:6 34:8,10 35:9 35:12 38:16,18 38:19,20,21,25 51:14 55:14 59:11,21 60:14 60:16 62:13 63:7,12,13,18 discount 4:6 10:2,8,12 11:1 14:23 15:12,21 17:19 22:3,9 22:11 24:19 26:22,24 27:5 31:23 46:23 discounts 26:20 50:19 discover 47:8 discretion 57:10 discriminatory 21:4 discussing 32:18 39:11 display 14:5 29:21 59:18 displayed 60:6 dispose 49:7 dispute 25:7 28:25 30:10 39:14 56:9	dissuade 28:13 distinction 57:24 58:4 distinguish 46:22,23 57:20 district 25:8 40:9,12,15,16 40:23 41:3 diving 22:18 division 40:6 doctrine 11:15 54:8 Document 25:8 doing 4:1 12:23 22:13 24:16 49:3 dollar 5:15,16 51:4,8 dollars-and-ce... 29:19,21 30:19 31:6 32:1 34:10 35:10,13 42:7 59:18 60:5 draw 37:8 drawn 58:5 driver 59:1 driving 57:25 drug 58:10 dual 4:3,8 11:20 60:8,15,23,25 dual-price 11:21 Due 54:8 dumb 35:21 63:25 <hr/> E <hr/> E 2:1 3:1,1 earlier 30:18 easier 38:13 easiest 49:7 50:1 easily 35:14 easy 35:15 economic 11:10 23:19 32:13 43:16 52:8 62:24	economically 10:13 economist 10:10 10:16 educating 61:13 effect 21:7 26:16 29:14 effective 3:13 effectively 25:23 effort 57:25 Either 21:13 elects 14:18 39:24 element 57:16 57:17 emails 52:17 emphasis 24:2 enacted 15:8 16:1 19:20 endorsement 40:21 ends 22:23 energy 57:13,14 57:16 enforce 7:20 19:14 40:13 53:15 enforced 15:25 21:10 enforcement 10:2 16:21,23 20:17 21:1,13 26:11 41:12,15 41:19,23,25 54:25 56:5 enforcers 23:1 enforcing 21:3 engage 6:18 7:18,23 53:3 54:2,21 55:2 engaged 17:11 52:21 engaging 4:3 58:3 enter 29:9 entities 56:18 entitled 37:8	38:2 equal 37:17 ERIC 1:7,20 2:6 28:19 especially 41:25 54:10 ESQ 1:18,20,24 2:3,6,10,13 essentially 6:13 13:16 established 42:18 et 1:4,8 47:16 50:20 evasive 53:23 everybody 3:21 10:16 38:18,21 53:16 57:2 evidence 28:2 47:5 51:21 52:1,18 56:5,8 evidentiary 46:25 47:1 57:22 exactly 4:24 21:15,21,22,24 23:23 27:22 38:17 example 19:18 29:2 32:7 33:3 42:3 43:19,23 48:5 52:13 examples 44:6 44:10 52:4 57:12 exception 56:18 exceptions 45:10 exchange 13:3 excluded 52:16 exclusion 52:18 exemption 57:6 exercised 57:10 exist 63:21,22 existence 32:19 33:14 explain 9:11 27:18 31:16
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

33:21 34:23 59:20 62:2 explains 44:22 60:3 expressed 32:20 40:20 Expressions 1:3 3:4 4:2,23 61:23 extent 18:12 29:17 extra 42:13	33:21 34:4,8 34:17,20 35:3 35:7,24 36:2,5 36:13,16,21 37:1,6,21 38:1 38:12 39:4,7 felt 46:3 fifth 37:17 fight 26:3 figure 23:16 35:22 37:24 50:15 figuring 38:7 find 4:22 17:16 26:15 fine 30:22 31:2 31:24 43:22 51:7 finish 31:18 33:7 49:5 finished 46:11 first 3:4 9:14,22 11:11,14 14:3 16:2 19:24 20:10,20,22 22:15,25 23:18 28:25 29:11 30:11 33:4,24 34:12 35:2,14 36:14 39:1 43:10 47:6,18 48:2 49:10 51:23 52:2 55:1 57:18,25 58:3 63:22 fit 38:8 fits 6:12 flat 61:24 62:7 Florida 20:15 flowed 47:22 focus 28:24 follow 61:1 food 50:3 forbids 27:5 force 12:9 forcing 12:21,24 forget 14:23	form 22:20 29:19,21 30:19 31:6 32:1 34:11 35:10,13 35:15 former 30:15 forms 47:20 formula 32:20 34:11 36:8,12 formulas 36:7 37:13,13 forum 39:1 found 60:23 four 29:25 30:24 44:10 55:5,16 frame 17:19 18:21 25:20 27:7 28:12 framing 15:20 free 8:21 19:11 49:23 61:18 63:20 front 61:7 functions 15:7 fundamentally 41:6 further 27:11 35:9 55:14 61:25 furthering 28:2 future 54:23	44:6 generally 13:19 getting 28:13 52:24 Ginsburg 26:5 26:20 27:1,6 44:24 45:1,5 49:11 59:7,20 61:9 give 3:19,20,21 24:23 37:20 48:1,8 50:2 given 15:3 42:6 47:15 49:6 51:17 gives 16:16 glass 56:22 go 8:14 10:24,25 11:16 22:24 46:10 48:19 goes 18:6 22:21 48:2 going 5:3,7 7:12 11:22,22 12:2 13:20 16:14,17 16:19,19 19:23 22:15 28:13 34:9 37:16 38:8,25 41:4 42:12 47:7 48:1,22 51:11 57:2 good 32:21 33:22 50:25 goods 49:18 54:18 government 56:18 59:8,10 59:14,14 60:3 63:15,20 graders 36:12 grant 9:8 greater 47:9 ground 21:2 25:5 groups 3:18 26:9	guess 5:5 13:6 13:22 guidance 28:1 Gupta 1:18 2:3 2:13 3:6,7,9,23 4:17,19 5:9,17 5:21,24 6:4,8 6:17,25 7:13 8:2,6,11,16,22 8:25 9:4,6,10 9:13,17,21,25 10:6,14,20 11:2,17,23 12:15,23 13:3 13:24 14:2,15 14:21 15:6,12 15:19 16:20 17:24 18:10,14 18:16,25 19:6 20:11 21:19,22 22:1,4,8,12 23:5 24:1,11 24:25 25:4,19 26:2,7,23 27:3 27:14,19 28:17 45:25 63:1,2,4
<hr/> F <hr/>				<hr/> H <hr/>
face 27:9 48:15 faced 63:11 fact 18:2 41:14 47:3 57:23 facts 34:8 failing 4:9 fair 61:6 false 7:21 19:12 19:21 far 18:13 26:20 45:8 Fare 52:14 fast 36:19 favor 47:25 fear 22:22 25:6 Federal 19:25 25:25 26:2,6,8 26:8,16 27:3 29:18 30:15,16 34:22 39:9,10 44:14,19,20 45:6,8,9 46:4,8 48:19,22 59:14 59:17 61:2,7 Feds 45:2 fee 42:17 62:5,7 62:7 feel 20:4 38:10 Feigin 1:20 2:6 28:18,19,22 29:24 30:5,8 31:1,9,13,20 32:6,24 33:4		<hr/> G <hr/>		Hair 1:3 3:5 4:2 4:23 61:23 happen 56:24 happened 17:3 happens 58:21 happy 18:7 51:6 hard 4:5 60:16 hard-pressed 15:2 harder 37:12 38:3 hate 10:9 head 17:2 50:16 headlong 22:18 hear 3:3 heart 11:15 heating 17:7 42:3,20,24 43:19 56:10

held 49:9	II 8:18	injunction 21:10	judgment 48:13	52:24 53:6
help 46:13,14	illegal 27:7 30:4	21:14	Justice 1:21 3:3	54:4,4 55:3,12
62:15	imagine 7:4 36:9	instance 58:4,9	3:9,17 4:15,17	55:24 56:13,14
helpful 46:24	37:14	58:23 61:16,24	5:5,10,18,22	56:15,20 57:12
hid 26:10	implicate 11:11	intended 44:13	6:2,7,9,23 7:1	59:7,20 60:7
hidden 3:13	14:3	61:1	7:14,25 8:3,6,9	60:11 61:9
27:21	important 18:16	interchange	8:12,17,23,25	62:11,18,25
hide 46:18	22:14 33:11	62:5,7	9:1,5,7,11,15	63:4,24 64:5
higher 7:7 8:18	53:24 58:17,19	interest 28:3	9:18,22 10:3,7	justified 59:11
11:25 12:11,19	60:20 61:11,19	interesting	10:15,23 11:10	
12:20 13:11	impose 5:19	13:13 27:13	11:16,18,18,24	K
19:8 24:14,20	7:10 8:1 9:2	interpret 20:7	12:18 13:3,6	Kagan 4:17 5:5
29:19 30:19	14:17 41:9	41:2,4,4 45:18	13:10 14:1,2,9	5:10,18,22 6:2
34:9 60:4	42:12 43:20	interpretation	14:10,11,16,21	6:7,9,23 7:1,14
highest 26:17	50:19 55:20	12:5,7,8,19	14:22 15:1,11	13:3 14:1,11
31:25	58:14 61:17,24	15:3,20 20:4,9	15:16 16:13	14:21 24:1,12
history 16:21,23	imposed 29:13	30:9 39:13	17:23 18:1,11	25:1,13 27:12
20:17 21:1	51:22 62:3,4	40:10,11 46:1	18:15,24 19:1	27:15 32:2
41:13,15,19,23	imposing 5:12	60:22,25 61:3	19:23 20:2	36:15 38:4,10
41:25 44:12,15	6:13,15 7:10	61:5	21:15,20,24	38:14 41:10,22
44:22 46:1	39:23	interpretations	22:2,6,10,13	51:1 60:7,11
54:25 56:5	imposition	15:18	23:5,15 24:1,5	Kagan's 11:18
hold 35:19,19	48:10 51:22	interpreted	24:6,12 25:1	43:23
55:3	61:21 62:22	15:14 20:1	25:13,25 26:5	keep 6:23 33:11
holder 14:18	impossible	invalidated	26:20 27:1,6	Ken 8:12,19
honor 3:23 29:9	25:19,20 28:11	54:16	27:12,15 28:15	KENNEDY
30:5 31:20	46:22	investigator	28:18,22 29:24	32:23 33:1
32:6,10,12	improperly	42:5,10	30:7,22 31:7	34:1,7,24 35:5
33:4,22 34:17	52:16	invoke 19:19	31:10,18 32:2	42:19,25 43:3
35:8,25 36:13	incident 58:2	involves 30:12	32:18,23 33:1	43:18 53:6
36:21 37:6	incidental 58:13	issue 20:10 23:7	33:16 34:1,7	54:4
38:1 39:8	included 57:17	39:11 44:16	34:13,19,24	kids 56:20 57:3
61:23	including 56:4	issued 40:11	35:5,19 36:4	57:7
hoodwinked	increase 58:25	issuers 62:5	36:10,15,23	kind 11:9 39:10
19:10	increased 53:16	item 8:20 31:3	37:2,19,23	47:10
hope 55:4	increases 37:11	32:9 37:16	38:4,10,14	kinds 47:8
hypothesized	increasing 52:22	items 38:6	39:6,7,15,19	know 5:10,24,24
63:21	indicate 54:6		40:5,19,22	6:2,12,22 8:5
hypothetical 7:2	indications 61:1	J	41:1,10,22	9:16 10:9,18
7:14,15 11:19	infer 45:21	J 1:20 2:6 28:19	42:19,25 43:3	11:12 12:6
11:24 19:5	62:10	January 1:12	43:18,23 44:5	13:8,14,19,22
	information	Joint 4:21 16:25	44:17,24 45:1	14:23 16:18
I	3:19,22 10:21	17:16 19:17	45:5,17 46:2	17:7,8 20:13
idea 36:15 56:2	11:13 23:18	23:9,10 42:7	46:10,13 47:15	20:13,18 21:1
ideally 5:1	35:6 61:10	54:14	48:9,12,17	21:1,5 22:16
identify 29:5	informing 61:13	judge 16:11	49:1,5,11,21	23:3 25:1,2
ignore 48:19	initiated 52:1	judges 47:10	50:10,14 51:1	26:17 28:4

36:18 41:3,10 47:23 50:5,11 51:16,25 52:9 53:13 55:25 63:12 knowing 19:24 20:6 38:22	60:15 legislating 33:12 legislation 13:11 13:17 27:2,3 legislative 44:22 legislator 46:17 legislature 34:5 35:11 37:7 46:6,16 58:21 58:23 legislatures 33:11 lemonade 56:21 56:22 57:3,7 lesser 39:1 47:9 let's 5:13,13 24:12 level 44:19 lieu 14:19 lighter 44:12 limit 49:17 limited 56:17 lines 37:8 Liquormart 49:9 list 5:14 24:14 24:20 26:17 29:25 32:4,21 39:25 50:3 51:5,7,11,18 51:20 52:10,11 54:16 listed 7:6 25:17 27:17 40:2 41:17 44:2 listing 25:2 litigation 27:10 40:6 little 14:10 32:16 37:24 38:3 live 10:15 located 40:18 Lockner 22:23 46:15 long 7:6,8 24:19 25:17 41:17	54:9 long-gone 10:10 longer 37:24 look 4:21,24 9:13 11:4 15:24,24 19:17 21:11 24:9 26:12,18 27:20 30:22 38:15,23 38:24 41:12,16 41:24 43:6 48:12 49:1 53:2 60:3 looking 52:17 looks 27:18 41:25 lot 10:17 24:2 44:19 48:18 50:18 lots 22:17 57:15 lower 12:11 29:21 51:15 lowest 53:13	20:18 24:5,23 25:20 27:16 33:17 38:16 42:23 43:4 44:11,18 48:2 51:1 53:23 56:4,20 58:6 meaning 15:4 43:8 45:12 46:6 means 12:6 14:12,19 21:2 21:6 25:4,5 30:23 41:9,9 41:12 55:7 meant 16:12 meet 53:8,14 meeting 53:8 member 50:19 menu 28:6 50:3 merchant 5:14 5:14 7:15 12:9 12:21,24 26:21 26:23 29:1,4,8 29:15,20 30:20 32:8,9,10,12 49:13 59:9 62:4 63:11,19 merchants 3:12 7:22 16:24,25 17:6 18:19 21:17 23:23 27:7 28:1,10 28:11 49:17 56:16 mere 61:21 message 3:16 4:19 5:7 28:9 28:13 62:1 metering 57:14 Milavetz 48:6 military 52:16 mind 19:22 33:11 minute 28:16 63:1 minutes 30:11	misleading 18:13 mistake 16:7 Mm-hmm 8:16 9:21 modern 20:24 moment 54:16 money 38:7 morning 3:4 multiple 58:20
<hr/> L <hr/> L 22:22 label 29:2 lack 30:8 language 38:23 48:18 lapsed 44:14 large 50:4 Laughter 8:8 34:3 36:1,20 57:8 law 3:15 4:6 5:23 6:3,11,12 6:17,21 7:12 19:13 20:21,24 23:17,21 24:3 24:4,5,9,9,13 24:23,24,25 25:1,4 26:1,2 29:7,7,17,18 29:22 30:3,6 30:12,15,15,16 30:23 32:7,11 32:15,20 37:12 37:25 39:9,10 39:13,14 40:9 40:16 41:14,20 47:25 52:15 55:7,14 59:11 59:16,17 60:22 61:5 lawful 29:16 42:22 43:21 lawyers 17:1 lay 26:13 leave 63:14 led 27:10 left 63:7 legal 57:24 60:8		<hr/> M <hr/> MacAvoy 10:9 majority 45:7 making 39:2 man 54:18 mandated 12:13 12:16 mandates 20:2 Massachusetts 45:9 match 24:24 math 28:4,7 31:12 33:7,19 35:17 37:11 38:3 50:16 63:25 mathematical 32:20 34:11 36:6,11 matter 1:14 24:19 42:25 64:8 mean 7:4 13:4		<hr/> N <hr/> N 2:1,1 3:1 N.Y 1:25 names 10:10 narrow 47:17 51:1 62:22 nearly 40:1 necessarily 14:13 33:13 necessary 46:3 need 38:19 46:7 57:24 needs 38:18 46:14 neither 1:23 2:8 28:21 neutral 21:3 never 15:20 26:11 56:24 nevertheless 29:11 New 1:8,25 3:15 7:19 12:9,15 15:11,13 20:6 20:11,13 25:13 29:17 30:2,6,9 30:12,15 34:25 35:11 37:7 39:12,14,21 40:7,8,15,23 44:12,17,18 45:5,18 49:18 50:22 55:9 59:16 61:1 63:8 nice 15:17

nickel 16:8,8	oral 1:14 2:2,5,9	paying 4:20	picture 24:13	43:7
no-surcharge	3:7 28:19	16:18	placard 56:7	precedence
19:20	39:17	payment 14:19	place 9:8 22:21	29:14 31:15
normal 47:6,18	order 13:1	pays 18:6	28:8 47:9	precedent 47:16
normalizes	ordering 27:5	people 5:20	plain 14:25 15:3	precise 4:21
25:21	ordinarily 48:4	10:16 19:8,10	39:21 41:8	27:25
normally 29:10	ordinary 46:6	35:15,20 36:17	42:2 45:12	precisely 4:18
not-so-happy	50:23	38:19 42:20	plaintiffs 20:20	5:6 6:18 12:17
51:9	original 43:7	54:9 57:13,23	54:21	63:15,19
notices 52:17	originally 46:4	63:25	plaintiffs' 54:12	preliminary
O	overrule 47:16	percent 5:3 29:3	pleasant 12:2	40:6
O 2:1 3:1	owner 16:4	31:21 36:16,24	please 3:10 7:9	prescribing
obvious 46:7	P	53:16 61:24	28:23 34:23	29:15
Obviously 53:20	P 3:1	62:7,9	39:20	prescription
odd 19:11,19	page 2:2 4:25	percentage 5:3	plunge 20:9	58:10
offer 26:22,23	11:4 38:22	28:5 36:25	plus 11:17 35:21	present 44:15
offers 5:16 29:9	42:7 54:14	37:17	36:11,16 37:25	presented 53:22
32:15	pages 26:12	perfectly 15:21	point 36:24	presents 57:16
office 8:9 17:5	parallel 15:14	19:11 29:22	42:11 50:20	pressing 63:9
17:14,17 42:1	Parkside 42:8	43:15 51:23	53:7,24 56:1	pretending 17:5
42:5 44:7	part 5:25 14:10	period 46:5	58:16,19 59:3	preventing 58:2
official 40:11	45:19 46:2	permissible	61:9 62:20	59:25 60:1
oh 5:19 34:13	50:4 52:15,24	15:22 30:24	policies 44:13	prevents 61:12
oil 17:8 42:3,8,9	59:13	31:5 32:25	policy 21:13	previous 42:14
42:12,20,24	particular 12:10	33:9 51:23	population	51:25
43:19 56:10	12:22,25 30:13	permissibly	37:22	previously 43:9
okay 12:19 15:1	32:8	35:12	posed 19:5	43:11,14,15
15:9,10,12	parties 24:8	permits 14:24	posited 14:8	45:13 52:6,22
23:2 28:17	28:25 30:10	permitted 27:2	position 6:6	price 3:19 4:13
55:7,9,10,10	40:18	53:11	13:15 33:1	5:14 6:21 7:6,7
55:20,25	parts 45:20	person 5:15	50:22 59:10	7:7 8:10,15,18
omitted 45:20	party 1:23 2:8	16:16	posits 63:6	10:21,24,24,25
omitting 45:22	28:21	perspective 18:3	possible 19:13	11:3,5,9,13,25
once 30:16 36:6	pass 63:20	Petitioners 1:5	31:25	11:25 12:10,11
38:6 49:22	pastrami 5:2	1:19 2:4,14 3:8	post 12:10,19	12:12,19,20,21
OPA 8:5 49:15	33:3	3:18 4:2,7,11	13:11 16:15	13:1,11 14:20
operate 58:22	patronizing	40:17 53:1,22	30:20	14:25 15:21
59:2	33:17 37:4	54:1,15,21	posted 11:20	16:7,15,15
opinion 20:1	Paul 10:9	61:15 63:3	16:5	17:18 18:20,21
opposed 12:11	pay 3:16 5:4,7	pharmacy 58:6	posture 52:25	18:21 19:9,9
26:9	7:8 11:22,22	58:10 61:15	potential 48:8	20:3 22:18,20
option 31:1,2,20	17:8 31:25	phone 17:4 44:3	potentially 9:23	22:20 23:1,8
31:21,22 53:10	40:4 42:11,20	56:3,4,4	30:3 55:16	23:13,18,19
options 32:17	42:21,21 50:6	phrased 48:3	practice 19:7	24:7,14,20
33:2,5 35:9	50:9,11,12	49:7	39:22 42:15	25:17,18,20,22
59:15	57:2 62:10	pi 37:18	58:3	25:22 26:18
		picked 45:2	practices 7:20	27:7,17,17

28:8,12 29:5 29:19,21 30:20 30:21 31:2,2,3 31:11,12,25 32:9,12,18,22 33:8 34:9,12 34:18,21 38:3 39:25 41:18,18 42:6,14 43:9 43:11,12 44:2 44:3 45:14 47:8 49:8,12 49:12,13,14,16 49:18,23,24 50:18,21,24,25 51:6,7,10,11 51:11,17,18,21 52:6,22 53:5 53:13,14 56:3 56:11 57:21,23 58:2,6,8,14,22 59:3,5,9,18 60:2,4,5 priced 27:25 prices 3:21 4:4 4:11 6:19 7:17 11:9,20 14:5 16:5 17:6,11 23:9,14 32:4 35:15,16 37:15 38:22 40:3,3 43:14,15 49:15 50:3,5,7,7 51:3 52:19 53:8,8 53:16 54:17,17 56:6,9,11 58:12,25 pricing 4:3,8 29:8,16 32:15 38:13 39:22 42:15 43:1,7 54:2,22 55:2 57:16 58:3 60:8,15,23,25 pries 50:3 principles 22:14 47:19	printed 56:7 prior 45:19,20 private 27:5 probably 9:14 27:23 53:19 problem 7:21 8:3 13:16 19:15 21:18 28:7 33:7 35:17 37:11 38:4 40:22 46:15 47:10 63:9,16 problems 20:16 61:3 63:17 process 54:8 57:4 product 18:3 50:25 prohibit 43:10 44:1 prohibiting 33:2 33:5 35:8 prohibits 39:23 prominently 18:20 prompt 20:21 proper 54:22 propositions 11:8 prosecuted 16:19 25:10,11 prosecution 16:2,6,10 25:6 prosecutions 26:6 prosecutor 16:11 24:22 prosecutorial 57:9 prosecutors 24:3,24 protected 11:14 23:18 protection 26:21 protective 22:17 purchase 57:4	59:22,24 purchaser 12:1 12:2 purchases 31:4 31:23 purpose 25:24 44:14 put 15:8 51:5,7 57:1 62:22 putting 24:1 <hr/> Q question 13:6 20:8 23:3 29:3 30:6,14 38:15 40:6 44:21 49:13,22 52:24 53:21,25 54:4 55:22 60:14,21 62:17 63:24 questioning 30:11 questions 27:11 27:25 47:3 54:23 quite 10:17 48:21,21 49:14 60:13 <hr/> R R 3:1 22:23 raise 61:3 raised 61:9 ran 8:12 range 62:9 rational 47:21 47:22 57:19 rationale 63:8 reaching 55:8 react 10:21 read 19:24 24:6 24:23 44:8,11 45:15 readily 60:24 reading 10:4 19:25 41:8,9 42:2	really 12:6 13:8 15:16 18:16 24:2,4 36:17 41:13 45:15,18 60:16 reason 5:25 6:11 13:6 26:7 33:9 35:24 45:22 46:2,20 61:6 reasonable 31:17 33:24 34:5 reasons 33:22 34:4 35:4,10 rebuttal 2:12 28:16 63:2 receive 35:15 recognize 49:8 60:20 61:6 recognized 52:14 63:16 recognizes 48:3 recruiters 52:16 red 11:5 referring 3:25 refers 39:21 reflects 42:15 refraining 4:8 regime 4:10 9:25 11:21 14:7,8 15:22 19:7,12 26:10,13,16,19 27:18,20,21 63:12,14,18,21 63:24 register 5:16 12:1 18:5,6 32:13 regular 10:24,24 10:25 11:3,5 45:14 50:24 51:11 53:5 58:22 59:5 regulate 47:12 regulated 9:19 regulates 29:8 regulating 17:22	17:24 31:10,11 32:14 48:7 49:18 52:2 regulation 11:9 11:9 22:19,20 22:21 23:1,8,8 23:13,13,19 29:14 31:14 32:3,14,14 43:12,13,16 47:8 49:8 51:12,14,14,16 52:7,8 58:13 62:24 regulations 26:15 58:17,19 regulators 47:11 regulatory 22:21 47:18 57:15 rejected 60:22 relation 11:4 51:24 relationship 62:8 relevant 40:16 53:25 60:13 relief 48:7 rely 48:13 remain 61:18 remand 39:11 renew 45:2 rental 58:25 reply 30:1 44:6 55:6 reported 16:2 representation 32:8 representative 42:12,24 representatives 56:10 reputation 53:7 require 29:4 30:18 34:10 35:12,16 required 32:7,9
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

32:12 35:7 40:12 requirement 29:12 33:13 38:16 39:1 59:21 60:14,17 62:13 requires 29:8,18 38:18,20 requiring 24:7 24:14,15 27:22 28:8 33:6 34:6 35:9 36:17 60:4 rescinded 27:9 Reserve 26:9 resolve 54:23 respect 57:21 respects 58:18 respond 43:4 56:2 61:8 Respondents 1:9 1:25 2:11 39:18 responses 48:1 restaurant 28:6 restricted 4:18 restricting 7:5 restriction 13:5 13:12 63:6,10 reveal 32:19 revealed 30:11 review 39:2 right 4:7 5:9,20 6:12,25 7:3,17 8:11,14 9:4,10 9:17,21,25 10:14,20 11:23 13:13 14:7 15:7 20:20 23:17 24:5,11 27:22 31:19 32:5,6 34:7,19 46:13 51:5 55:10,17 60:9 risk 4:9 Roberts 3:3	17:23 18:1,11 18:15,24 19:1 28:15,18 33:16 34:13,19 35:19 36:4,10,23 37:2,19,23 39:6,15 62:18 62:25 63:24 64:5 rule 38:2 47:25 rules 27:6,8 57:15 ruling 20:5 Rumsfeld 52:14 run 4:9 16:20,22 runs 6:20 <hr/> S S 2:1 3:1 sale 28:5 sales 14:17 28:5 50:11,12,15 sandwich 5:2 33:3 savvy 57:3 saw 45:19 saying 8:4 14:12 24:5,21 25:13 30:18 33:18 35:8,20 37:24 48:14 49:1 51:15 55:12,13 55:23,24 says 5:18 8:20 9:2 10:1,4 11:25 13:11 14:16,25 21:14 23:11 24:10,24 25:1 27:4 33:18 37:14,25 49:15 52:5,7 53:13 54:5 56:2,23 62:6 scenario 19:18 23:22 scheme 29:16 42:2 44:1	56:12 60:8,15 62:12,12,14,20 schemes 54:2,22 55:2,19 Schneiderman 1:7 3:5 schools 52:15 scope 18:22 50:1 scream 9:14,15 scrutiny 27:9 29:11 49:10 63:23 seat 59:2 second 20:1 35:18,24 36:12 39:11 49:5 60:12,21 Section 19:20 sections 30:17 see 6:23 10:3 14:14 15:2 19:18 36:13,18 36:22 40:19 41:24 49:2 seen 56:25 sees 18:3,8 seller 14:17 39:23 40:2 42:18 49:22 51:3,10,20 52:6,21 53:12 58:14 59:17 61:12 seller's 43:7 52:19 59:5 sellers 39:25 40:1 50:18 55:1 56:19 62:9,21 selling 57:7 sells 56:16 sense 12:16,25 47:21 55:20 61:11,19 separate 3:21 40:15 45:11 serious 23:6	63:17 service 28:6 services 54:18 set 42:13 49:11 49:12,13 51:3 52:25 54:9,17 54:17 settled 56:12 show 7:2 37:9 shows 17:21 23:10 25:10 side 44:12 sides 11:2,7 47:4 similar 14:19 29:7 43:23 44:16 52:13 similarly 45:16 simple 14:20 simply 14:16 23:21 29:8,18 32:7,11 33:6 simultaneously 18:19 single 20:2 24:7 39:25 42:6 50:1 54:16,17 single-price 42:2 sir 46:12 sit 50:6 situation 11:19 11:20 57:11 62:15 situations 18:9 sky 49:16 smell 8:14 soda 29:2 solicitor 1:20,24 14:7 26:14 40:8 44:6 51:13 63:5 somebody 5:13 13:18 17:4 52:9 56:2,22 somewhat 20:4 Sorrell 20:19 sorry 3:17 27:12 38:11 56:14	sort 29:10 38:4 42:1 Sotomayor 3:17 4:15 14:9,16 14:22 15:11,16 16:13 20:2 24:6 25:25 29:24 30:7,22 31:7,10,18 32:18 44:5 48:9,12,17 50:10,14 55:3 55:12,24 56:14 62:11 Sotomayor's 49:21 52:24 speak 12:22,24 specific 33:13 53:21 62:4 specifically 27:25 29:5 speech 3:12 4:18 5:6,11 7:5,23 8:21 9:8,9,12 9:24 11:15 12:13,16 13:5 13:12 14:14 16:9,9 17:10 17:21,25 25:12 29:14 31:11,14 32:3 39:22 43:3 48:5 51:2 51:12,14,16,25 52:1 61:19,25 63:6,10 speedy 22:16 spend 38:7 stand 56:21 standard 51:15 57:18 standards 47:7 standing 49:12 start 36:6 48:18 starting 49:1 50:24 59:3 State 3:11 6:6 12:9 14:4
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

15:17,19 16:14 16:20,23 18:12 19:6,14,19 20:11,21,24 21:3,16 23:11 23:23 25:5 29:4 39:2 40:7 40:10,23 43:11 50:15 52:2 53:9,10,12,12 55:9 58:5 61:5 State's 21:13 stated 34:25 States 1:1,15,22 2:7 15:7 28:20 43:13 44:15 45:1,3 52:7 station 16:4 55:15,15 statue 57:6 statute 5:11 7:20 9:2,14 10:4,4 12:5,6,8 13:2 14:12,14,16,24 15:4,6,24,25 16:3,12 17:15 17:24 18:19 19:14,20,22,24 19:25 20:5,7 20:13,15,16 21:2,3,5,9,10 21:12 26:25 27:4,16,16 34:16,22 35:1 38:24 39:21,23 40:1,10 41:4,7 41:11 42:2 43:25 44:8,14 45:2,6,18,19 45:21 46:4,9 46:17 48:3,3,6 48:13,15,19,19 49:2,2,6,21 52:5,23 53:25 54:6,16 57:22 59:15,18 60:24 61:2,7,12,18	statutes 15:8,15 19:21 20:14 45:10,15 stay 47:6 steps 48:18 STEVEN 1:24 2:10 39:17 sticker 11:25 12:10,11,11 store 13:18 37:9 37:14 50:2 stores 52:11 straightforward 40:2 striking 20:16 strong 47:5 stronger 57:19 structure 43:1 56:3 59:3 studies 10:18 subject 29:10 39:1 49:10 51:15 63:22 submitted 64:6 64:8 subset 37:21 substituting 47:11 suffers 47:9 suggests 19:21 supplemental 4:22 support 46:1 50:20 51:21 supporting 1:22 2:8 28:21 supports 62:20 suppose 36:11 43:18,18 53:6 56:20 supposed 38:4 63:13 suppress 28:9 59:21 suppresses 3:15 61:10 suppressing	59:23 64:2 Supreme 1:1,15 surcharge 3:20 3:22 4:13 5:12 5:20 6:10,13 6:15,22 7:10 8:1 9:2 10:1,5 10:12,25 14:18 15:9,9 16:18 18:5,22 21:18 24:17 25:16,21 25:23 27:8 29:3 31:3,21 32:19 33:14,19 34:16,18 35:22 37:16 39:23 41:9 42:13,16 43:6,8,21,25 44:16 45:11 46:7,22 48:11 50:23 51:22 53:20 54:19 55:21 58:24 61:22,24 62:2 62:23 surcharges 32:11 53:11,11 53:17 sure 14:11 27:19 38:21 39:6 62:18 surprise 12:2 51:7,9 susceptible 52:8 60:24 sustain 54:10 sweep 17:1 sweeps 16:24 switch 19:11 <hr/> T T 1:7 2:1,1 table 63:7 tag 32:19 take 15:23 20:25 24:12 27:15 28:24 29:25	43:22 48:17 50:8 59:9 taken 6:6 takes 9:8 37:23 59:10 talked 48:6 57:20 talking 11:10 13:8 48:9 61:14 talks 48:10 tandem 58:23 targeted 17:13 tax 50:11,13,15 tech 57:3 telegraphed 7:16 tell 4:16 5:2 16:13,14 27:21 33:8 41:2 47:13,15 63:18 telling 19:8 34:14 tells 63:15 tempted 45:21 terms 5:11,12 7:10 14:25 38:22 47:24 test 23:15 text 15:9,24 39:21 41:8 48:2 Thank 28:15,22 39:15 62:25 63:4 64:4,5 theoretically 14:6 theories 13:5 theory 13:7,7,8 13:10,22,23,24 they'd 4:24 8:14 8:14 thing 3:24 10:13 10:17,18,19 18:18 19:19 20:18 21:21,25 23:2,25 24:13	24:15 30:16 37:10 39:8 44:11 62:4,22 63:7 things 4:1 22:17 24:4 37:10 54:24 55:5,16 55:17 59:25 think 3:25 4:18 4:21 6:4,4,5,7 6:8,17 7:1,13 7:14 8:6,6 10:16 11:7 12:15,23 13:4 13:24 14:2 16:21 17:21 18:14,16 19:6 19:7 20:18,24 23:6,9,15 25:25 26:2,14 27:19 29:1,10 29:11 30:2,5,8 30:10 31:13,16 32:16 33:10,14 33:22 34:2,4 35:3,10,18,25 37:6,8 38:1 39:8,9 41:6,13 41:24 42:4,15 44:10 45:15,25 46:18,20 48:5 49:6,14,21,25 50:20 52:5 53:4,19,23 55:11,18,19 57:9,9,12,17 57:24 58:4,16 58:18 59:12 60:7,19,20 61:4 62:19 63:12,25 64:1 thinking 47:24 thinks 28:6 thought 3:20 12:4 26:10 27:1 34:1,13 three 47:3 62:6
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

time 7:16 15:8 19:9 26:16 28:4	typically 63:13	V	55:5 56:1 61:8	26:24 46:24,25
time-of-day 57:14	U	v 1:6 3:5 52:14	wanted 3:20	48:13,14 49:2
today 56:24	Uh-huh 5:17,21	vacuum 15:7	13:22 45:23	work 36:17
told 12:16 15:1 21:16 23:23 48:21,21 61:16	unadorned 50:4	vague 14:13 54:6	57:5 58:10	worked 26:13
tomorrow 25:10	unclear 55:1	vagueness 6:1 54:8	wants 3:18 7:19 19:6,14 29:2,6 41:17 52:9 61:24	works 6:18
tool 22:25	uncomfortable 20:4	valid 29:22 53:18	War 8:18	world 8:18 10:15
top 42:13,17 54:19	unconstitutio... 15:5 26:1,3	vast 45:7	warning 28:1	worried 13:20
total 17:18 28:8	underlying 52:18 56:3,6,9 58:8,13 59:3	versus 6:22 62:14	washing 56:21	worrying 21:16 23:3
touches 48:4	understand 18:17 19:2,3 23:5 27:16 34:21 35:21 38:17 41:13 49:20 50:1 54:10	view 15:3 35:1 37:4 42:19	Washington 1:11,18,21	wouldn't 6:11 21:5 27:20,22 29:10 33:5 61:2
tough 47:19	understandable 43:16	viewed 29:13 31:14	water 47:22	write 37:12 47:25
trace 30:17	understanding 32:3 41:20 42:16 55:22 58:7	violate 5:22 6:3 6:11 7:12	wavered 15:20	written 5:11,12 21:13 24:4,6
tracks 30:15	understood 4:16 20:17	violates 8:21 9:22 34:16 37:25 41:14	way 3:13 6:17 6:21 7:9 10:21 10:23 11:3 12:22,25 13:1 13:17,19 15:25 19:15 20:2 21:4,9,14 24:3 24:16,22 25:16 26:14 28:12 32:4 33:20 38:16 40:13 43:5 44:7 48:4 49:6,7,20 51:2 51:10 52:3,19 54:22 56:6 59:17 60:1,2 61:20	wrong 14:3 23:2
trade 17:1 26:8	uninformed 20:3	violation 27:4 34:22,25 35:1 57:1	ways 7:4 29:25 30:2,24 58:20	wrote 10:11
transaction 14:17 50:2,6,8 58:11,14 62:23	United 1:1,15,22 2:7 28:20 43:12 52:7	Virginia 11:13 23:17 58:5	We'll 28:16	Wu 1:24 2:10 39:16,17,19 40:14,20,24 41:6,22 42:23 43:2,4,22 44:9 44:21,25 45:4 45:7 46:12 47:14 48:1,10 48:16 49:4,20 50:12,17 51:19 53:19 54:7 55:11,18 56:1 56:17 57:6,9 58:1 59:12,23 60:7,10,19 62:16,19
transactions 13:19	unjustified 28:10	voted 46:17	we're 13:8 37:16 38:25 46:20,25 48:9 55:7	X
treat 56:4	unlawful 52:21	W	we've 26:13 59:4	x 1:2,10
trend 20:24	unpermissible 30:25	walk 14:22 50:2	weakened 47:20	Y
tried 26:13	use 4:20 5:7,20 13:21 14:18 24:17,17,18,18 29:6 39:10,24 52:4 57:14 61:16	walked 41:14 58:9	went 16:23	Yeah 34:7 40:19
triggered 16:10	users 6:14,16	walking 41:23	whatsoever 62:8	years 16:1 46:5
trouble 38:7 46:21 47:5	uses 49:25	want 3:21,24 4:9 7:17,23,23,24 7:25 8:1,23 9:5 9:16,18 13:8 17:20 18:19,21 19:2 21:14 22:5,7 23:3,12 23:16 25:7,9 25:15,16 28:9 28:10,24 37:9 38:7 45:23 46:23 47:23 51:3,4,16 53:3 53:5 54:1,2,15	win 4:10 26:3,4	yellow 4:25,25
true 7:8 47:17 59:16 60:8			word 15:23 22:22 24:17,17 24:18,19 42:16	York 1:8,25 7:19 12:9,15 15:11,13 20:6
truthful 3:12,22 7:23 25:12 35:6			words 21:9	
try 16:20				
trying 4:5 47:12 47:25				
Tuesday 1:12				
two 3:18,20 4:4 4:11 6:19 7:16 11:8 13:4 15:17 18:9 33:15,22 34:4 35:3,10 46:20 48:1 59:25 62:3				

20:11,13 25:13	107 17:16	<u>7</u>		
30:3,6,9,12,15	11 26:12			
35:1,11 37:7	11:07 64:7	<u>8</u>		
39:12,14 40:7	13 8:20			
40:9,16,23	144 19:17	<u>9</u>		
44:13,17,18	15 8:24 26:12	90 52:12		
45:5,18 49:18	15-1391 1:5 3:4	95 5:19 52:12		
55:9 59:16	17 37:10	97 18:7		
61:1 63:8	1980s 16:1	98 52:11		
York's 3:15				
29:17 39:21	<u>2</u>			
50:22	2 5:3 16:15			
young 8:4	31:21 34:1			
younger 56:25	36:16			
	2.05 29:5			
	2.10 16:15			
<u>Z</u>	2.7 62:9			
Zauderer 27:24	20 31:3 33:18			
29:23 33:10	34:15 36:11			
37:7 63:16,20	37:2,25			
	20-cent 31:23			
<u>0</u>	34:15,18 35:22			
	2008 16:24			
<u>1</u>	2009 16:24			
1 4:25 43:24	2013 27:9			
56:22 57:1	2017 1:12			
1.05 51:5,6	25 30:11			
1.1 62:9	28 2:8 11:4			
1.95 29:2 32:9				
10 1:12 5:2	<u>3</u>			
16:18 17:7	3 2:4 53:14,16			
31:1,3,7,21	61:24 62:7			
33:18 34:1,18	3.45 42:9			
35:21 36:11	32.46 36:16			
37:3,25	39 2:11			
10.20 31:2,6,8				
31:22,23 33:8	<u>4</u>			
33:20 34:20	44 49:9			
35:23 38:20				
10:04 1:16 3:2	<u>5</u>			
100 18:4,6 42:22	5 29:2 42:13			
43:20 52:9,10	50 16:23			
101 54:14	51 25:8			
102 54:14	518 19:20			
103 4:21 18:5				
42:20 43:19	<u>6</u>			
104 4:22	63 2:14			
106 42:7				