

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 TYNDALE HOUSE PUBLISHERS, INC.,
Plaintiff, .

4 vs. . Docket No. CV 12-1635

5 KATHLEEN SEBELIUS, et al . Washington, D.C.
6 AMERICAN CIVIL LIBERTIES . Friday, November 9, 2012

UNION, et al. .
Defendant. .

7

8
9 TRANSCRIPT OF MOTION HEARING

10 BEFORE THE HONORABLE JUDGE REGGIE B. WALTON

11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiffs: Matthew Bowman, Esquire
14 ALLIANCE DEFENDING FREEDOM
801 G Street, N.W., Suite 509
15 Washington, D.C. 20001

16 For the Defendants: Benjamin L. Berwick, Esquire
17 Ethan Davis, Esquire
U.S. DEPARTMENT OF JUSTICE
18 Civil Division
20 Massachusetts Avenue
Washington, D.C. 30530

19
20 Court Reporter: Cathryn J. Jones, RPR
21 Official Court Reporter
Room 6521, U.S. District Court
22 333 Constitution Avenue, N.W.
Washington, D.C. 20001

23
24 Proceedings recorded by machine shorthand, transcript
25 produced by computer-aided transcription.

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

1 plaintiff may proceed.

2 MR. BOWMAN: Good morning, Your Honor. May it
3 please the Court. I'd like to reserve five minutes of my
4 time for rebuttal, if that's acceptable?

5 THE COURT: You may.

6 MR. BOWMAN: Thank you. We are here on a request
7 for a preliminary injunction. Two Federal District Courts
8 have already granted preliminary injunctions against this
9 mandate under the RFRA claim; one in the United States
10 District Court for the District of Colorado, and one
11 recently in the Eastern District of Michigan.

12 Now, the government in --

13 THE COURT: And one has rejected the position in
14 Missouri?

15 MR. BOWMAN: Yes. The posture was a motion to
16 dismiss, but the merits were essentially a rejection of the
17 substantial burden element.

18 Now, the government in this situation, and as Your
19 Honor is familiar with the papers, has voluntarily provided
20 thousands of groups with what it calls a nonenforcement safe
21 harbor, which it contends is equivalent to the injunctive
22 relief we're seeking here. In other words, all of these
23 thousands of religious groups, the government is voluntarily
24 allowing to be free from the application of this mandate by
25 the government.

1 THE COURT: But they say that many of those will
2 only be temporary.

3 MR. BOWMAN: With regard to the safe harbor, yes,
4 it's a temporary relief, potentially through July 2014. But
5 the motion we're requesting today is also only temporary.
6 It's a preliminary injunction. I don't think this case
7 needs to go to 2014. I don't think it needs to go through
8 deep into 2013. I think we can get what's needed to the
9 Court in a timely fashion. And the preliminary injunction
10 in this case need only last for a period of months.

11 The government is granting a nonenforcement safe
12 harbor on its own accord for up to a year, more than a year
13 and a half from now in some cases, leaving thousands of
14 employees of these religious groups without what it claims
15 are the benefits of the mandate. And yet, it refuses to
16 consent to nonenforcement against a devoutly religious Bible
17 publisher, Tyndale House Publishers, that's the plaintiff in
18 this case.

19 And the government, we contend, has no
20 justification to object to our injunction request when it's
21 voluntarily offering what it considers to be the equivalent
22 to thousands of other groups. This massive allowance of
23 nonenforcement by the government undermines all the elements
24 of the RFRA claim Your Honor has asked us to address.

25 THE COURT: I assume that their position is that

1 the exemptions that they have granted have only been granted
2 to nonprofit entities, and that they have not granted the
3 exemption to for-profit entities, which is what your client
4 is.

5 MR. BOWMAN: That is true. The safe harbor only
6 applies to nonprofit entities. But that mere fact doesn't
7 mean, doesn't help the government to advance any of its
8 interests, because a devoutly religious Bible publisher that
9 directs its proceeds to a charitable nonprofit religious
10 organization is exercising religion. The government, by
11 granting a safe harbor, is recognizing that its mandate is a
12 burden that needs to be addressed. And the government is
13 undermining its claim that it has a compelling interest
14 against a preliminary injunction when it's allowing
15 thousands of other groups to be free of the implications of
16 the mandate, at least for a year and a half from now.

17 THE COURT: Is there any case authority that you
18 can cite in support of the proposition that a for-profit
19 corporation can exercise religion?

20 MR. BOWMAN: Yes. And we cite multiple cases on
21 that front; the Stormans and Townley case from the Ninth
22 Circuit, the McClure case from the Minnesota Supreme Court,
23 the Morr-Fitz case from Illinois. And if you look in our
24 brief, we cite up to nine cases on this point.

25 All of those cases allowed for-profit incorporated

1 companies owned by religious believers, religious owners, to
2 bring free exercise claims. And said the burden of the
3 government on the company is a burden on the religious
4 exercise of the owners and, therefore, the Court in each of
5 those cases is going to apply the applicable level of
6 scrutiny. And what the government --

7 THE COURT: They permitted the corporations to
8 bring those claims on behalf of the owners.

9 MR. BOWMAN: In some instances it was on behalf of
10 the owners, which is what we've alleged here. Tyndale House
11 Publishers has explicitly pled that it's bringing its claims
12 on its own behalf and on behalf of its owners. In some
13 instance they said it really doesn't matter. This is what
14 the Ninth Circuit said. It says whether you cognize this as
15 the corporation's exercise of religion or the owner's
16 exercise of religion, it doesn't matter. They can bring the
17 free exercise claim. There's obviously exercise of religion
18 here by a corporation that has a religious owners, it has a
19 religious purpose. And the government tells it in this
20 case, it tells Tyndale House Publishers to violate the Bible
21 that it publishes. We've got a burden on religion. It's
22 cognizable under the Free Exercise Claim. We're going to
23 apply the scrutiny level.

24 Now, what the government wants to do in this case
25 is to prevent this Court from applying the scrutiny level

1 because it knows that this mandate can't withstand the
2 scrutiny level. RFRA applies strict scrutiny and this
3 mandate is arbitrary, it fails those standards of strict
4 scrutiny, it fails the requirement in the Lukumi case that
5 the government, at minimum, can't leave appreciable damage
6 to the same interest that it claims in this case. And what
7 the government has done here that the Court recognized in
8 Denver, is it's allowed a hundred and ninety one million
9 Americans to not have to comply with the mandate in this
10 case.

11 And yet, it says that it turns around and says
12 that the 260 employees in Tyndale House Publishers somehow
13 represent a paramount, grave interest of the highest order
14 and can somehow pass the most demanding test of
15 constitutional law for the government to claim a compelling
16 interest. And yet, two-thirds of the country don't have to
17 comply with that same interest. It's just not important
18 enough to the government to impose its mandate.

19 And so, because the government knows that it can't
20 succeed under the strict scrutiny test, that's why it's
21 attempting to come to court and say well, we shouldn't even
22 apply the test because this company can't exercise religion
23 in the first place.

24 The McClure case in the Minnesota Supreme Court,
25 not only rejected that view, rejected it decisively. It

1 said it was conclusory and unsupported to claim that when
2 religious owners act in business through a corporation, that
3 they're not exercising religion. They are. The Religious
4 Freedom Restoration Act says that it applies to any free
5 exercise of religion. It doesn't say that it doesn't apply
6 in business. There's no business exception to the free
7 exercise claim in the First Amendment or in RFRA.

8 In fact, most of the Supreme Court cases are in
9 the business context. Looking at free exercise claims,
10 United States versus Lee was an Amish employer. And the
11 Court in the United States versus Lee said that just the
12 fact that he had to pay a tax that he disagreed with was a
13 burden, was a burden on his free exercise of religion, and
14 so the Court was going to apply the scrutiny level that it
15 decided to apply there.

16 The Court in Thomas versus Review Board and
17 Sherbert versus Verner, those were cases where people were
18 employees and they weren't even being told by the government
19 to do something against their beliefs. They were -- they
20 actually wanted the government to pay them for unemployment
21 benefits. And the Supreme Court said yes, you're acting in
22 employment, you're deciding you don't want to do something,
23 you're exercising religion.

24 There's a fundamental error I think that runs as a
25 theme through the government's brief that I'd like to point

1 out. And the error is to conflate the different elements of
2 RFRA. The RFRA has four elements: It's free exercise of
3 religion by the plaintiff and a substantial burden thereon,
4 and then the government has to show compelling interest in
5 least restrictive means. And what the government has done
6 in this case is it cited cases that decided that some
7 application of the scrutiny level did not go in plaintiff's
8 favor.

9 So, in United States versus Lee, the Court said,
10 this tax, it upheld the tax against the employer. And the
11 government is taking these cases and coming to this Court
12 and saying, you see, this person isn't exercising religion
13 in the first place.

14 Well, that's a conflation of the elements of RFRA.
15 United States versus Lee didn't say that the employer wasn't
16 exercising religion and burdened by it. It said yes, they
17 were, actually had a whole paragraph saying yes, they are
18 exercising religion, they have asserted sufficient burden,
19 but it applied a level of scrutiny more akin to Smith that's
20 not -- it's never said it was applying the compelling
21 interest test. And so, it passed the scrutiny level.

22 So, cases -- just the mere fact that a religious
23 plaintiff has lost doesn't mean that the religious plaintiff
24 wasn't exercising religion. So, the government is citing
25 all these cases saying oh, well, here the religious

1 plaintiff ultimately didn't succeed because those laws were
2 different than the mandate in this case. It's trying to use
3 those --

4 THE COURT: Does the ownership structure create a
5 problem for you in this case in that the ownership is held
6 through several trusts? Whereas as I understand in all of
7 the other cases you've been talking about, there was direct
8 ownership by individuals. Whereas here, you've got another
9 entity which is the owner of the plaintiff. Does that once
10 removed circumstance complicate your argument about the
11 exercise of religion by the individual owners?

12 MR. BOWMAN: It doesn't, and here's why: The 97
13 percent owner of Tyndale House Publishers is a nonprofit
14 religious organization. So, essentially what you have in
15 this case is you have a religious company, thoroughly
16 religious. It donates its proceeds to charity. In fact, if
17 you look at the numbers, it actually donates more than a
18 hundred percent of its profits to charity because it ties
19 pretax money to charity and then it takes the profits and
20 97 percent of that go to a nonprofit organization.

21 So you have this thoroughly religious company
22 owned by a nonprofit organization. The government admits
23 that religious nonprofits can exercise religion. So the
24 question is, can the owner of Tyndale House Publishers
25 exercise religion? Well, the government admits that it can.

1 The owner of Tyndale House Publishers is a nonprofit
2 religious organization. And the government admits that
3 nonprofits religious organizations can exercise religion.

4 In these other cases, you have a company owned by
5 individuals who can exercise religion. So, the question
6 isn't a formality question of what's the structure. The
7 question is, and the Court discussed this in the Bellotti
8 case, the First National Bank versus Bellotti, where it said
9 when the Court considers a free exercise claim, it doesn't
10 look at legalisms and formalities of well, what's the exact
11 structure here and who's doing what?

12 What it says is, what's the activity here? What's
13 the exercise? Is this the kind of exercise that the First
14 Amendment is designed to protect?

15 Now, we submit to the Court that publishing Bibles
16 for an evangelical purpose and then directing your proceeds
17 to charity is at the heart of what the First Amendment is
18 intended to protect. In fact, it's very hard to imagine the
19 notion of religious freedom in the last 600 years without
20 the activity of publishing Bibles for religious purpose.
21 This is an activity in this case that is so squarely within
22 what the First Amendment and the Religion Freedom
23 Restoration Act are designed to protect. We think that it's
24 non questionable.

25 THE COURT: Let's assume that you make a showing

1 of substantial burden. Why doesn't the government have a
2 compelling reason to have this law in place in light of the
3 desire to provide health care? And we know that the lack of
4 health care is a major problem in American society. And
5 it's having a significant impact on the health of
6 individuals and also the economic health of the country.
7 So, why doesn't the government have a compelling reason to
8 have this law in place?

9 MR. BOWMAN: Essentially three reasons. The first
10 is that under the, the Supreme Court has decided a case
11 under RFRA, the O'Centro Espirita case. And the Court
12 there, as it has done throughout its compelling interest
13 jurisprudence, has said that the government can't state its
14 interest generically. We want to promote health care. The
15 government has to state a specific interest against the
16 claimant in this case.

17 So, Tyndale isn't claiming a right not to provide
18 health care. Tyndale is just saying we provide a generous
19 health plan, we even provide all preventive services. Heck,
20 we even provide contraception. We just don't want to
21 provide the kinds of things the FDA calls contraception that
22 we contend can cause early abortions. Just those things.

23 The government has to show a compelling interest
24 to force Tyndale to provide these abortifacient drugs and to
25 force Tyndale to provide these abortifacient drugs, a

1 religious Bible publisher.

2 Now, the second problem for the government is that
3 Congress itself has decided that this interest is not an
4 interest of the highest order. Congress has decided that
5 two-thirds of the country, a hundred and ninety-one million
6 Americans, through the grandfathering exemption, don't have
7 to be subject to the mandate.

8 Now, the grandfathering exemption is the idea that
9 if you like your health plan you can keep. And so if you
10 haven't made -- you can make changes to your health plan,
11 but if you haven't made significant ones since 2010, you
12 don't have to comply with much of the Affordable Care Act.
13 However --

14 THE COURT: So we're talking about how many people
15 who will be exempt based upon that?

16 MR. BOWMAN: A hundred and ninety-one million.
17 The government's own data, which Judge Cane cited in the
18 Newman decision in Colorado, the governments own data
19 projected out as far as the government projects it, shows
20 that, as of 2013, there will still be a hundred and
21 ninety-one million people not subject to the mandate by
22 Congress' own choice.

23 THE COURT: But they project that that number will
24 decrease. And I don't know what their predicate is for that
25 and how they can calculate what the decrease would be, but

1 they do suggest that there will be a decrease over time.

2 MR. BOWMAN: And that's the problem because the
3 compelling interest is the government's burden. The Supreme
4 Court in O'Centro Espirita made it very clear that once the
5 plaintiff shows free exercise and substantial burden, it's
6 the government's burden, even at the preliminary injunction
7 stage, to show a compelling interest.

8 And then the Supreme Court in the Brown decision
9 in 2011, said that the government has to show compelling
10 evidence to support its burden, its showing. And the
11 evidence has to be causal. And any uncertainty about that
12 evidence cuts against the government.

13 So the government is saying well, in its brief the
14 government says oh, we think the grandfathering exemption
15 will trickle away. They don't cite any data showing it will
16 trickle away. The only data they cite is the data that
17 Judge Cane cited, which says that as of 2013, there will
18 still be a hundred and ninety-one million people, two-thirds
19 of the country, not under the mandate.

20 Congress has decided -- and the government's rule
21 say that the grandfathering it's not -- they don't say it's
22 a phrase in, they don't say it goes away, there's no sunset
23 on grandfathering. In fact, the government publicly makes
24 it very clear, which we cite in our brief, that
25 grandfathering is a right that people can keep it as long as

1 they want perpetually.

2 So, let's just suppose that there were data, and
3 there isn't, showing that this hundred and ninety-one
4 million people will decrease by ten million people a year
5 for the next 20 years. Even if that were true, which the
6 government hasn't shown, the government would still not have
7 a compelling interest enforcing 260 people at a Bible
8 publishing company to perceive abortifacients, when they're
9 letting ten million people in the year 19 out of the same
10 mandate.

11 What Congress has decided is that actually
12 grandfathering plaintiffs do have to do some things under
13 the Affordable Care Act. Grandfathering plaintiffs can't
14 impose lifetime limits on certain coverage. Grandfathering
15 plaintiffs have to cover dependents up to age 26.
16 Grandfathering plaintiffs can't exclude certain preexisting
17 conditions, in particular for children.

18 So, Congress has said, you know what, if you have
19 a grandfathering plaintiff, you're in this two-thirds of the
20 country, you still have to do things under the Affordable
21 Care Act. But this mandate is not important enough to be
22 one of the things you have to do. By definition, that is
23 not an interest of the highest order, a paramount interest,
24 a grave interest, that can satisfy what the Supreme Court
25 says is the compelling interest test.

1 THE COURT: There was one aspect of the case that
2 I didn't glean from the papers that were filed. And I don't
3 know if it's really relevant, but the employees who work for
4 your client, they're not, I assume, required to take a
5 pledge, a religious pledge consistent with the dictates of
6 the owners or the company, are they?

7 MR. BOWMAN: Well, some are. Obviously, they're
8 not hiring atheists to edit the Bible, right? But the
9 janitor is not necessarily required to take a statement of
10 faith. But the company itself is thoroughly religious and
11 we -- it's always been that.

12 This is the 50th year of Tyndale House Publishers.
13 They were founded for an evangelical purpose to promote the
14 Bible and other Christian literature. They have weekly
15 prayer. They send their employees out on mission trips.
16 So, no one is working at this company unclear about that
17 this is a thoroughly religious company. It's owned by a
18 religious entity. It has a religious mission. Its proceeds
19 go to religious charity. No one is uncertain about that
20 within the employee base.

21 And the fact is that, those thousands of groups
22 that the government is giving a safe harbor to, they are not
23 required to only hire coreligionists. Those thousands of
24 safe harbor recipients have -- there's no requirement. All
25 they have to do is have an objection and then -- and certify

1 that they have this objection, they haven't been covering
2 these things.

3 THE COURT: You've got about five minutes left.
4 Can you address the narrowly-tailored component of the test?

5 MR. BOWMAN: I can. The least restrictive means
6 test under the Kaemmerling decision and under the Supreme
7 Court's decision, particularly in Riley, says that if the
8 government has another way to achieve its goal, it can't
9 violate religion to achieve its goal. And in the Riley
10 case, the Supreme Court was looking at a state that said we
11 need to protect people who receive solicitation phone calls
12 from the fact that they don't always know that the solicitor
13 is being paid.

14 And the Supreme Court said look, free speech is a
15 fundamental right. This is subject to strict scrutiny, and
16 you could do this another way. You could publish on your
17 web site the fact that there are certain, the government
18 could, that there are certain people who are paid
19 solicitors. You could just prosecute fraud. If people are
20 lying and saying oh, well all the money is going to go to
21 charity, but it's not true, you just prosecute fraud. And
22 all of those alternative ways of doing things are things
23 that the government has to choose first.

24 What the government has done here is the very
25 first thing it decided to choose was religious exercise.

1 Now, the government is already giving out abortifacients.
2 It's already funding abortifacients. This is not -- so when
3 we say oh, the government has another way to do this, we're
4 not proposing something that's strange or unusual or even
5 something -- the government is already doing this on a
6 massive scale in Title X, Title XIX of the Public Health
7 Service Act.

8 THE COURT: So, you're suggesting that the
9 government should pay for this?

10 MR. BOWMAN: I'm not suggesting the government
11 should do it. I'm saying if the government wants to do it,
12 it could, and it's already doing it. And that fact alone --

13 THE COURT: If they made a determination that this
14 type of service to be provided to women is important from a
15 women's health perspective, and realistically the
16 government's trough isn't very big right now, and if they
17 think it's important that as many people be captured by this
18 statute in order to hopefully provide a wider scope of
19 health care treatment for the American public, then why
20 isn't this the least restrictive means to accomplish that
21 objective?

22 MR. BOWMAN: Because strict scrutiny imposes a
23 higher burden than that. Strict scrutiny doesn't say that
24 the government can choose the means it thinks is best, or
25 that it thinks is most convenient or cheapest. Strict

1 scrutiny says you have to chose the least restrictive means.
2 So, the means that is least restrictive --

3 THE COURT: But if it's because of economic
4 constraints it would be impossible to achieve the result,
5 how is that a viable alternative?

6 MR. BOWMAN: Well, the government hasn't met its
7 burden to show it would be impossible to achieve that
8 result. And it hasn't met that burden for a very simple
9 reason: It's already doing this. It's already providing
10 free contraception. Contraception is already accessible in
11 a wide scale and the government is already subsidizing --

12 THE COURT: But it's not providing it to your
13 client's employees?

14 MR. BOWMAN: No, but -- it's not provided by
15 Tyndale House Publishers. But the government is providing
16 it in Illinois through subsidies. It could provide it
17 through those same mechanisms to employees of entities that
18 have religious objections.

19 THE COURT: But you're not suggesting that if they
20 decided they were going to fund for-profit entities, that
21 that would not increase the amount of expenditures they
22 would have to make?

23 MR. BOWMAN: It may well cost the government more.
24 And what we're saying is that the case law makes it clear
25 that just the fact that an alternative might cost the

1 government more doesn't mean that it's not a least
2 restrictive means. The Kaemmerling case says that no
3 alternative forms of regulation have to be available in
4 order to achieve the goal. The fact is that, no matter who
5 women get a device or a drug from, that drug is going to
6 have the same effect. So whether it comes from Tyndale
7 House Publishers, whether it comes from the government, it's
8 going to have the same effect. Whatever that effect is, the
9 government can't show and it hasn't met its burden to show
10 that it -- that this, that it would not be least
11 restriction, a lesser restricted means.

12 THE COURT: What if theoretically the government,
13 who knows, we may not be far away from this hypothetical,
14 the government shows that we're bankrupt, we don't have any
15 money, there's no way that we'd be able to pay for it. But
16 providing universal health care is still a goal on American
17 society and the only way we can accomplish it is through
18 what we've done?

19 MR. BOWMAN: I don't think that, I don't think
20 that the theoretical -- what if it can show it was bankrupt?
21 Well, if the government was bankrupt, giving women free
22 contraception --

23 THE COURT: In a sense it is. If it were a
24 business and the business was borrowing as much money as the
25 United States government borrows, it would be bankrupt.

1 MR. BOWMAN: Yeah. And Congress has already
2 decided that this mandate is not at the top of the list of
3 things that the Affordable Care Act has to impose. Because
4 two-thirds of the country doesn't have to receive it under
5 grandfather plans. So, Congress hasn't even said that this
6 is so important that the society will collapse unless
7 Tyndale House Publishers gives its employees abortifacient
8 drugs.

9 So that's not even a position that Congress takes.
10 Could it be theoretically true that the government would be
11 so bankrupt that it would place the mandate of abortifacient
12 drugs on Tyndale House Publishers above National Defense and
13 above Social Security and above Medicaid? Well, I suppose
14 it's possible. It's kind of hard to even think of that
15 question. I'm not sure how relevant that it is exactly
16 here.

17 The fact that the government runs a deficit
18 doesn't stop it from spending money. And providing
19 abortifacient drugs to religious objectors to this law on a
20 very miniscule scale, it's frankly not even a cognizable
21 drop in the bucket of what the government spends its money
22 on presently in --

23 THE COURT: You reserved five minutes, so.

24 MR. BOWMAN: Oh. Thank you.

25 THE COURT: Very well. The government may proceed

1 and you can proceed until five after 10:00.

2 MR. BERWICK: Thank you, Your Honor. Good
3 morning.

4 THE COURT: Good morning.

5 MR. BERWICK: Your Honor, when individuals
6 establish a for-profit corporation, that corporation becomes
7 subject to a host of laws and regulations: Environmental
8 laws, employment discrimination laws, taxation laws, and
9 laws like those that are at issue in this case that protect
10 the health and well-being of the employees of that
11 corporation.

12 THE COURT: But it also doesn't give up all of its
13 rights either, does it?

14 MR. BERWICK: No, Your Honor.

15 THE COURT: Citizens United makes it clear that at
16 least in that context, a corporation is the equivalent of
17 person.

18 MR. BERWICK: Well, Your Honor, I agree that the
19 corporation doesn't give up all of its rights. And, in
20 fact, we wouldn't dispute that the owners of Tyndale can
21 operate their corporation in many ways, in many respects
22 consistent with their religion. I also agree that --

23 THE COURT: And you would agree that religious
24 rights in American society is one of the most important
25 rights that our constitution recognizes?

1 MR. BERWICK: I don't disagree with that, Your
2 Honor. But what I would say is that, in regard to your
3 Citizens United comment, the Supreme Court has said most
4 recently in Hosana-Tabor, decided this year, that the free
5 exercise clause protects only religious organizations.

6 So, the Court, I think --

7 THE COURT: You would agree that if we were
8 talking about the Catholic church, for example, that the
9 Catholic church would have a legitimate reason to assert
10 that it should not have to pay for these items that the
11 government is saying that this plaintiff should have to pay
12 for?

13 MR. BERWICK: Well, Your Honor, if we were talking
14 about the Catholic church, I think we wouldn't necessarily
15 agree that they would have a RFRA claim. I think we would
16 still argue that there was no substantial burden in that
17 case for other reasons. But I don't -- we would not dispute
18 that in that case the Catholic church had certainly
19 exercised religion under the free exercise clause.

20 THE COURT: Well, if this plaintiff was a
21 charitable organization, would that make a difference? If
22 they weren't a for-profit entity, but they did exactly what
23 they do now, would that make a difference?

24 MR. BERWICK: I think it could, Your Honor. I
25 don't think -- I think that when the Court is applying the

1 test to determine whether Tyndale is religious or religious
2 enough, can exercise religion under the free exercise
3 clause, or is secular for the purposes of the free exercise
4 clause, certainly its status as a for-profit corporation is
5 important as we've said in our briefs.

6 THE COURT: So why do you categorically conclude
7 in reference to this particular statute that because it's
8 for profit, regardless of what it does with those profits,
9 that it can't qualify for the exception?

10 MR. BERWICK: Well, Your Honor, first of all, I
11 want to say I don't think we've made a categorical statement
12 to that effect. I don't think we've said a for profit can
13 never qualify.

14 THE COURT: Well, what was it about this company?
15 I mean, this seems to be, from what I am familiar with, the
16 closest corporation that you probably could have where its
17 mission is religious related.

18 MR. BERWICK: I don't disagree, Your Honor, that
19 this is a closer call than some other cases. And we don't
20 question the sincerity of their religious brief. But I
21 think, as we've tried to layout in our briefs, there are
22 several different tests the Court could apply. We have
23 suggested that the tests under Title VII, as Your Honor is
24 aware, Title VII prohibits discrimination in employment,
25 including religious discrimination.

1 However, there's an exemption in Title VII for
2 religious corporations. And courts have had to --

3 THE COURT: But they wouldn't be precluded under
4 Title VII, would they, for claiming the exemption?

5 MR. BERWICK: I think they would, Your Honor. So,
6 now there are -- there's not one Title VII test.

7 The Ninth Circuit has a test where --

8 THE COURT: Because I understand, Title VII
9 would not preclude them from claiming the exemption because
10 they are a for-profit corporation.

11 MR. BERWICK: Well, I actually don't,
12 respectfully, I don't agree with that, Your Honor. I think
13 it, again, it depends on what circuit you're looking to.
14 And the DC Circuit has not yet adopted a test under that
15 exemption, but the Ninth Circuit has. And under the Ninth
16 Circuit's test status is a for-profit company in
17 dispositive. A for-profit company cannot qualify as a
18 religious corporation under Title VII.

19 The Third Circuit test, which we've also
20 referenced --

21 THE COURT: But as far as standing is concerned,
22 the Ninth Circuit has accepted the premise that the
23 corporation can sue on behalf of its owners.

24 MR. BERWICK: Yes, Your Honor. In Stormans and
25 Townley, the Ninth Circuit did hold that a corporation, the

1 corporation in those cases could sue on behalf of its
2 owners.

3 THE COURT: Isn't this an appropriate factual
4 scenario to justify my doing the same thing?

5 MR. BERWICK: Well, we don't think so, Your Honor.
6 First of all, we don't agree with the standing determination
7 of the Ninth Circuit there. As we've explained in our
8 briefs, the Ninth Circuit did not engage in any third-party
9 standing analysis. There's no hinderance to the owners
10 bringing their own claims here, but they are not parties
11 here. But that, that aside, Your Honor, just because the
12 Ninth Circuit determined that the corporations in those
13 cases --

14 THE COURT: Well, I assume that if the plaintiffs
15 had brought this, the owners had brought this case in their
16 own name, you would say, well, they really aren't the
17 corporation. It's the corporation and, therefore, it's the
18 corporation that has to assert the right. And then we'd be
19 back in the --

20 MR. BERWICK: That's right, Your Honor. No, I
21 don't disagree with that. I think that's correct. So,
22 that's why I think --

23 THE COURT: So from your perspective, it would be
24 irrelevant whether the plaintiffs were parties in this case?
25 I mean, the individual owners were parties in this case?

1 MR. BERWICK: I would say it would be irrelevant
2 to the outcome, yes, Your Honor. And the reason is, Your
3 Honor, because the -- as we've said, there is -- when
4 individuals take the corporate form, there is, it's black
5 letter law that there is a legal separation between the
6 corporation and the owners. And the requirements --

7 THE COURT: Do you dispute what the counsel for
8 the plaintiffs says happens to the profits that the
9 corporation generates? All of those profits they say go
10 into either religious-related charitable activity or other
11 types of charitable activity.

12 MR. BERWICK: We don't dispute it, Your Honor. I
13 mean, I would note that some small percentage of the profits
14 is taken out of the corporation, as it is their right, for
15 the personal use of the founder's family, which is of course
16 their right as a for-profit corporation. But I --

17 THE COURT: A very small percentage.

18 MR. BERWICK: Yeah, we don't dispute that most of
19 it goes to this foundation. But I don't think that's
20 particularly relevant, Your Honor. The point is --

21 THE COURT: I mean, I don't know. I mean, if it's
22 using its profits in the same way that a religious
23 organization uses its profits, how do you make a reason
24 distinction between the two?

25 MR. BERWICK: Well, Your Honor, so I have a couple

1 of answers to that. First of all, I don't think we claim
2 that the for profit/nonprofit distinction is always a
3 perfect one. But as the Ninth Circuit found in Spencer and
4 as the Circuit has found University of Great Falls in a
5 related but different context, the reason that courts have
6 used the nonprofit/for profit distinction to determine
7 whether a company or a corporation is religious is because
8 it allows the court to avoid engaging in more problematic
9 inquires about the religious belief of the corporation and
10 possible entanglement issues.

11 So, I think that the Ninth Circuit explained this
12 quite well in Spencer. For profit -- the for
13 profit/nonprofit distinction is a useful litmus test, if you
14 will, for courts so that they don't have to engage in more
15 in depth inquiries about the company's sort of religious
16 beliefs, religious purposes.

17 THE COURT: So, you're saying it's just a factor
18 to consider or that it sets the norm? It's the red line for
19 when a corporation is entitled to the exemption?

20 MR. BERWICK: Well, I think it really depends on
21 what test Your Honor adopts. I mean, again, under the Ninth
22 Circuit's Title VII test it is dispositive. Under the D.C.
23 Circuit's test in the context of NLRB jurisdiction in
24 University of Great Falls, it's also dispositive. In the
25 Third Circuit's Title VII test it's not -- we wouldn't claim

1 that it's dispositive. But I still think it is, it's a
2 really important factor under any of those tests. And
3 Tyndale would not qualify as a religious organization under
4 any of those tests.

5 I would add, Your Honor, that under the Third
6 Circuit's tests, where fore profit --

7 THE COURT: We discussed that, but what about the
8 test here?

9 MR. BERWICK: The test in this circuit?

10 THE COURT: Yes.

11 MR. BERWICK: Well, again, Your Honor, the D.C.
12 Circuit has not adopted a test for Title VII. And the for
13 the reasons we've explained, we think Title VII is a useful
14 guide for this Court. That being said, so in University of
15 Great Falls, which we cited in our brief, where the court,
16 the D.C. Circuit was deciding whether it would violate the
17 free exercise clause for NLRB to have jurisdiction over the
18 plaintiff in that case, the court was required to determine
19 whether the plaintiff was a religious organization or a
20 nonreligious organization.

21 And the court in that case held that for profit
22 status is dispositive. In other words, a for-profit
23 company -- a for-profit entity cannot be a religious
24 organization in that context.

25 THE COURT: But that's a very different structure.

1 MR. BERWICK: It's a different context, but I
2 believe it's informative, at least, for this Court.

3 THE COURT: Okay.

4 MR. BERWICK: So, Your Honor, I think I started to
5 explain --

6 THE COURT: I'll have to go back and look at the
7 case. I've done a lot of reading and things run together
8 after a while. But did that case, did the Court in that
9 case say definitively that under no circumstances can a
10 for-profit corporation exercise religion?

11 MR. BERWICK: Well, the short answer is, I think
12 yes, Your Honor, although it was really in the NLRB
13 jurisdiction context. What the Court said is, for the
14 purposes of NLRB jurisdiction, we have to distinguish
15 between the religious and secular. And a for-profit company
16 can never be religious under that, in that context.

17 THE COURT: Well, I think it's kind of difficult
18 to characterize this corporation as secular.

19 MR. BERWICK: Well, again, Your Honor, we don't
20 question the sincerity of their beliefs. We certainly
21 understand that this is a closer case than maybe some others
22 like a mining company or something. But we do think, Your
23 Honor, that for purposes of the free exercise clause and
24 RFRA, it is not, Tyndale is not a religious organization.

25 THE COURT: All right. Let's go to the

1 substantial burden component. Do you content that it would
2 not be a substantial burden to require them to pay for these
3 contraceptions?

4 MR. BERWICK: Yes, we do, Your Honor. So, there
5 are sort of two overarching reasons for that. The first is
6 that, as I started to explain at some point, there is a
7 legal separation between Tyndale and its owners. And the
8 requirements of these regulations fall solely on Tyndale,
9 the corporation, and its group health plan. It requires
10 nothing of Tyndale's owners.

11 And the reason that's important, I think, Your
12 Honor, is because if the opposite were true, if a burden on
13 the company or a requirement on the company were always
14 deemed to be a substantial burden on its owners, if they
15 were treated as the same thing, what that would mean is that
16 any company, no matter how secular, that the employees of
17 that company, that the rights and protections of the
18 employees of that company would become subject to the
19 religious beliefs of the corporation's owner, regardless of
20 whether the employees knew of that belief, regardless of
21 whether the employees shared that belief. And as my
22 colleague stated, at least some of Tyndale's employees may
23 not share their religious beliefs.

24 THE COURT: The employees don't, but the directors
25 of the trust that basically run the corporations, they do.

1 MR. BERWICK: Yes, but I think the point I'm
2 making is that the employees, the rights and protections
3 that those employees are entitled to under the law would
4 become limited based on the religious belief of the
5 corporate owners, no matter how secular the company was, if
6 it were deemed that a requirement on the company is a burden
7 on the owners as well.

8 THE COURT: Well, what would be the limitation
9 here as far as the employees are concerned? The plaintiff
10 is prepared to provide certain types of contraceptions, just
11 opposed to these three types of contraception because they
12 believe from their perspective that to have to pay for them
13 in a sense results in the death of a human being. And they
14 say that that's just totally contrary to their religious
15 beliefs and, therefore, they should not be forced to violate
16 their religious dictates by having to pay for that.

17 MR. BERWICK: Yes, Your Honor. But I think the --
18 again, we don't question their religious belief, but I think
19 the implications are much broader than that. Because
20 theoretically, any company could challenge any law or
21 regulation on religious objection grounds and argue that
22 even though the requirement is on the company, no matter how
23 secular the company is, if it violates the owner's religious
24 beliefs, the company doesn't have to comply with that law.

25 And I think, Your Honor, that in addition --

1 THE COURT: I guess I don't agree with that
2 proposition that regardless of how secular they are, that
3 they'd be able to make the assertion. I think we have to
4 look at this corporation as they appear before the Court.
5 And I think they clearly, and you don't deny the fact, that
6 there is a honest, you know, position regarding their belief
7 and religion. And that the corporation follows those
8 dictates.

9 MR. BERWICK: Well, Your Honor, I think, I think
10 there are two distinct ideas here: One is, is the
11 corporation itself religious such that it can exercise
12 religion? And my, our argument is that it is not. Although
13 again, we admit that it is a closer case than for a lot of
14 other companies.

15 And then the second question is, can the owners --
16 is it a substantial burden on the owners when the
17 requirement falls on the company that is a separate legal
18 entity? I think for that question precisely what their
19 beliefs are doesn't really matter. I mean, they allege that
20 they're religious beliefs are being violated. We don't
21 question that. And we don't question that that is the
22 belief.

23 THE COURT: But considering the closeness of the
24 relationship that the individual owners have to the
25 corporation to require them to fund what they believe

1 amounts to the taking of a life, I don't know what could be
2 more contrary to one's religious belief than that.

3 MR. BERWICK: Well, I don't think the fact this is
4 a closely-held corporation is particularly relevant, Your
5 Honor. I mean, Mars, for example --

6 THE COURT: Well, I mean, my wife has a medical
7 practice. She has a corporation, but she's the sole owner
8 and sole stock owner. If she had strongly-held religious
9 belief and she made that known that she operated her medical
10 practice from that perspective, could she be required to pay
11 for these types of items if she felt that that was causing
12 her to violate her religious beliefs?

13 MR. BERWICK: Well, Your Honor, I think what it
14 comes down to is whether there is a legal separation between
15 the company and --

16 THE COURT: It's a legal separation. I mean, she
17 obviously has created the corporation to limit her potential
18 individual liability, but she's the sole owner and everybody
19 associates that medical practice with her as an individual.
20 And if, you know, she was very active in her church and her
21 church had these same type of strong religious-held beliefs,
22 and members of the church and the community became aware of
23 the fact that she is funding something that is totally
24 contrary to what she professes as her belief, why should she
25 have to do that?

1 MR. BERWICK: Well, Your Honor, again, I think it
2 comes down to the fact that the corporation and the owner
3 truly are separate. They are separate legal entities.

4 THE COURT: So, she'd have to give up the
5 limitation that conceivably would befall on her regarding
6 liability in order to exercise her religion? So, she'd have
7 to go as an individual proprietor with no corporation
8 protection in order to assert her religious right? Isn't
9 that as significant burden?

10 MR. BERWICK: Well, I think, Your Honor, that
11 Tyndale, as we've said, can operate their company consistent
12 with their religion beliefs in many, many ways. But I think
13 where --

14 THE COURT: And the other thing here as I
15 understand, this is a self-insurance program. They don't
16 have an insurance carrier, they are self insured.

17 MR. BERWICK: Yes, Your Honor, but I don't think
18 that -- I still think that the self-insured plan is part of
19 the company, the corporation, which is still separate from
20 the owners. I don't think that the fact that it's self
21 insured is particularly relevant here.

22 THE COURT: Okay.

23 MR. BERWICK: Your Honor, I think --

24 THE COURT: Anything else on the burden component?

25 MR. BERWICK: No, Your Honor. I think, I think

1 I've made the points that I'd like to make.

2 THE COURT: What about their position about the
3 number of people who currently are being exempt from the
4 application of this legislation?

5 MR. BERWICK: So, I think that, Your Honor, that
6 is a question of whether the interest is compelling or not.
7 We -- well, first of all, the number 191 million, I'm not
8 sure where that comes from. I mean, the government has
9 estimated that the, as I think Your Honor pointed out, that
10 the grandfathering of health plans from certain requirements
11 is really a phase in over time of these requirements. It's
12 not an exemption.

13 THE COURT: Is there a number that the government
14 has put on it?

15 MR. BERWICK: I believe, Your Honor, the
16 government estimates that half of health plans will no
17 longer be grandfathered by 2013.

18 THE COURT: And what's your basis for that?

19 MR. BERWICK: There was, I think they ran a model
20 of several different scenarios and plugged some assumptions
21 into the model, and came out with some different numbers. I
22 can't say precisely what went into that model, but.

23 THE COURT: And if we focus merely on this
24 plaintiff, has an assessment been made as to how many other
25 plaintiffs would fall into the same category and how large

1 that would increase the pool?

2 MR. BERWICK: Your Honor, I can't give precise
3 numbers. But I do think the appropriate inquiry is not just
4 this plaintiff, but this plaintiff and similarly-situated
5 plaintiffs.

6 THE COURT: How many similarly-situated plaintiffs
7 are there?

8 MR. BERWICK: I apologize, Your Honor. I don't
9 know.

10 THE COURT: Who have this type of closely-held
11 entity where the owners have a very close relationship to
12 the corporation, and the corporation clearly is espousing
13 the religious beliefs of the owners?

14 MR. BERWICK: I don't know the precise number,
15 Your Honor. I can say that we are --

16 THE COURT: Isn't that important?

17 MR. BERWICK: Isn't that important to?

18 THE COURT: Can't I just generically place them
19 with all other nonprofits and use that as the predicate for
20 whether this legislation is narrowly drawn?

21 MR. BERWICK: Well, Your Honor, as I think -- I
22 actually don't think it is that important. I think the
23 compelling -- the interest is compelling even as to Tyndale
24 itself. I mean, the employees of Tyndale -- well, the
25 Institute of Medicine determined that this set of preventive

1 services, including FDA-approved contraception, is important
2 to the healths and well-being of women and to advancing
3 gender equality.

4 THE COURT: As far as the health issue, I mean,
5 that's an interesting proposition. I understand what's
6 being asserted. But how does the providing of these three
7 items, these contraceptive items, how does that improve the
8 health of women?

9 MR. BERWICK: Well, Your Honor, I'm not sure that
10 I agree that that's the appropriate inquiry. I think --

11 THE COURT: What is it then?

12 MR. BERWICK: Well, I think -- so, Tyndale, I
13 think what Tyndale is arguing is that before imposing this
14 type of requirement, the government has to examine the
15 precise, I'll say nature or sense of the employer's
16 employees, precisely which services the employers object to
17 and which they don't. But that would make this
18 administrative scheme completely un-administrable, Your
19 Honor. And I think, even though O'Centro recognized that,
20 RFRA is not intended to make it impossible for government to
21 administrate certain administrative schemes.

22 The Institute of Medicine recommended a set of
23 preventive services for the health and well-being of women.

24 THE COURT: And I guess my question is, how would
25 this preventive measure in and of itself improve the quality

1 of healths for women?

2 MR. BERWICK: Well, Your Honor, I think --

3 THE COURT: Because, I mean, yes, if a pregnancy
4 can cause other health issues, I can see that. But
5 generally, pregnancy in and of itself doesn't cause other
6 health consequences.

7 MR. BERWICK: Yes, Your Honor. But I think the
8 Institute of Medicine report showed that unintended
9 pregnancies carry with it pretty serious health
10 consequences.

11 THE COURT: Like what?

12 MR. BERWICK: Well, I think --

13 THE COURT: And is that universal? I mean, there
14 are a lot of people who have unintended pregnancies and
15 they're gleeful about the fact that they were lucky enough
16 to become pregnant.

17 MR. BERWICK: I wouldn't say that it's universal,
18 Your Honor, but I do think there is -- unintended
19 pregnancies, there is a strong correlation between
20 unintended pregnancies and worse health outcomes, both for
21 the mother and for the infant. Not to mention the resulting
22 impacts on gender equality.

23 THE COURT: Yeah, I assume there's some anecdotal
24 proof that would support that. But has there been any type
25 of other evaluations that would show quantitatively that

1 what you say is correct?

2 MR. BERWICK: Well, I would direct the Court to
3 the Institute of Medicine report. I think it's more that
4 anecdotal, I think it's pretty overwhelming that there
5 are -- that unintended pregnancies are associated with worst
6 outcomes.

7 And I do think, Your Honor, that despite the fact,
8 assuming the Court were to find of a substantial burden and
9 strict scrutiny applies, but even in that context the
10 administration's finding of fact or the agency's finding of
11 fact are, the normal standards of administrative deference
12 still apply.

13 THE COURT: Do we have any data as to how many
14 pregnancies are avoided as a result of the use of these
15 substances? I assume there's probably no way that
16 assessment is available.

17 MR. BERWICK: I certainly don't have that at my
18 fingertips, Your Honor.

19 So, Your Honor, I do think, I think we were
20 talking about the grandfathering before.

21 THE COURT: Right.

22 MR. BERWICK: I would like to say because I think
23 plaintiffs do focus on that, grandfathering is really a
24 phase in of these requirements, it is not a permanent
25 exemption, which is what plaintiffs ultimately are asking

1 for in this case. The Court in Legatus ruled I think just
2 last week, I think had some useful analysis of that. The
3 Court there said, "The Grandfathering Rule seems to be a
4 reasonable plan for instituting an incredibly complex health
5 care law, while balancing competing interests. To find the
6 government's interests other than compelling only because of
7 the Grandfathering Rule would perviously encourage Congress
8 in the future to require immediate and direct enforcement of
9 all provisions of similar law without regard to pragmatic
10 considerations, simply an order to preserve compelling
11 interest status."

12 THE COURT: Okay. You have about five minutes
13 left and I'd like to address the final question.

14 Why couldn't the law and regulations have been
15 drawn more narrowly to accomplish the same objective without
16 the imposition that occurs here?

17 MR. BERWICK: Well, Your Honor, I think the way
18 that -- the alternative means that plaintiff propose is, as
19 I think Your Honor identifies, simply that the government
20 pay for it. But courts have recognized that an alternative
21 means is not a viable, least restrive -- less restrictive
22 means under RFRA unless it is feasible and equally effective
23 in advancing the interest of the law. And in considering
24 feasibility, Your Honor, courts have said that cost is a
25 consideration in determining whether an alternative means is

1 feasible.

2 So, here what plaintiffs are effectively
3 suggesting is that that government establish an entirely new
4 program, an entirely new administrative scheme, to provide
5 contraception at cost to the government to the employees of
6 corporations that object to providing such contraception.
7 That would require --

8 THE COURT: Do we know what the added cost would
9 be?

10 MR. BERWICK: I don't know what, exactly what the
11 number would be, Your Honor. But I think it goes without
12 saying that it would be costly. It would require, first of
13 all, of course new legislation to establish such a program.
14 It would require setting up an entirely new scheme,
15 administrative scheme, and it would require the government
16 to pay for it. And I just don't think that qualifies as a
17 feasible alternative means, even under strict scrutiny, Your
18 Honor.

19 Can I, Your Honor, address a couple of things that
20 the plaintiff said in their argument?

21 THE COURT: Yes.

22 MR. BERWICK: So, first of all, plaintiff said
23 that two courts have granted preliminary injunctions against
24 these regulations. I would just point out, Your Honor, that
25 neither of those courts actually found that plaintiffs in

1 those cases, that plaintiffs in those cases had a showing of
2 likelihood of success on the merits. Instead, both appear
3 to apply a more relaxed preliminary injunction standard that
4 I think does not apply in this circuit, Your Honor.

5 THE COURT: I think a Colorado court did apply the
6 Tenth Circuit, which is more relaxed from what we have here.

7 MR. BERWICK: I believe the Michigan court did as
8 well. I believe the Michigan court did as well, Your Honor.
9 I would say I think that decision is a little unclear, but I
10 think that the Court pretty clearly stated that neither side
11 had shown the likelihood of success on the merits. I think
12 this, in this circuit, the plaintiffs do have to show a
13 likelihood of success on the merits. So I'm not sure how
14 helpful those other cases are to them.

15 THE COURT: But you would agree that those
16 entities in those two cases were very different than this
17 entity?

18 MR. BERWICK: Certainly. Well, very different. I
19 don't think different in a way that changes the outcome, but
20 I would agree that it is a closer case as to whether this
21 entity qualifies as religious. Certainly, Your Honor.

22 THE COURT: Okay.

23 MR. BERWICK: I think if Your Honor has no other
24 questions, I think --

25 THE COURT: As I understand it, maybe I'm wrong on

1 this, but in the Title VII context a for-profit corporation
2 can under certain circumstances qualify as a religious --

3 MR. BERWICK: Again, Your Honor, it depends what
4 test is being applied. In the Ninth Circuit that is not the
5 case, a for-profit corporation can never qualify in the
6 Ninth Circuit. It is dispositive.

7 In their reply briefs, plaintiffs disagree with
8 that statement, but I think it's perfectly clear on the face
9 of the Ninth Circuit's opinion. And I would urge the Court
10 should take a look at it. We certainly don't agree with
11 plaintiffs on that point.

12 And then in the Third Circuit, the Third Circuit
13 certainly has left open the possibility that a for profit
14 could qualify under Title VII. But we're not aware of any
15 case where a court has actually found that for profit could
16 quality under Title VII.

17 THE COURT: Thank you.

18 MR. BERWICK: Thank you, Your Honor.

19 THE COURT: Rebuttal?

20 MR. BOWMAN: Thank you, Your Honor. There's also
21 no case where a court has said for-profit organizations
22 can't qualify for the First Amendment.

23 The Ninth Circuit case way a three-way split
24 decision. Judge Kleinfeld said something similar to what
25 Your Honor mentioned earlier, that the way the company

1 spends its money is the relevant inquiry, not whether -- the
2 formality of it being for or nonprofit. Judge O'Scannlain
3 pointed out that the U.S. Supreme Court left the question
4 open. So, you've got two judges in the Spencer case saying
5 that there's not a categorical exclusion of for profits.

6 The Third Circuit's decision isn't just for the
7 Third Circuit, they site several other circuits. I think
8 the Fifth and the Eleventh are cited in the Lukumi decision.
9 That's the majority view.

10 The government is proposing, therefore, a variety
11 of tests.

12 THE COURT: So, are you espousing that I should
13 take the position that a corporation can exercise religion,
14 or take the position that the Ninth Circuit is seemingly
15 taking that the corporation can exercise the rights of the
16 owners in the exercise of their religious beliefs?

17 MR. BOWMAN: Either one gets where we need to go.
18 We believe both are true, especially with a Bible, devoutly
19 religious Bible publishing company that gives its proceeds
20 to charity.

21 The government essentially, what they're doing
22 here is they're proposing a variety of tests for what
23 religion is that are much smaller than what the First
24 Amendment in RFRA says what religion is, that are
25 specialized to particular statutes like Title VII or the

1 NLRB, which talks about something being substantially
2 religious. And they are saying well, we are going
3 extrapolate from these much narrower statutory tests, we're
4 going to extrapolate this to the First Amendment, which
5 doesn't have these limitations.

6 The First Amendment in RFRA says any free exercise
7 of religion. And the government says no, no, no, since
8 Title VII says only religious corporations can exercise
9 religion, than that's what RFRA means. Well, if that's what
10 Congress meant, that's what Congress would have said.
11 Congress didn't say RFRA only applies to the Title VII
12 exemption or the NLRB exemption. Congress said in RFRA any
13 free exercise of religion.

14 The Supreme Court in Hosanna-Tabor did not say
15 that only religious organizations can exercise religion. It
16 was talking about a particular kind of establishment clause
17 free exercise interest in the autonomy of a religious
18 organization like a church choosing its leader. That's not
19 the question in this case. There is no Supreme Court case
20 saying that only, quote, unquote, religious organizations
21 can exercise religion.

22 Title VII is not RFRA, and the government is
23 proposing to this court that if the court recognized what
24 Stormans and Townley and McClure and Morr-Fitz and all these
25 other cases recognized, that no court has said opposite,

1 that yes, a Bible publisher exercises religion, that all of
2 our commercial regulations will collapse because all these
3 secular companies will suddenly be automatically entitled to
4 exemptions.

5 Again, they are collapsing the elements of RFRA.
6 Just because someone can exercise religion doesn't mean they
7 win; it means the government can -- has to show strict
8 scrutiny. Title VII Writ Large, these other commercial --
9 OSHA, these other commercial regulations may well satisfy
10 strict scrutiny. This Court doesn't have to say they don't
11 because the mandate in this case is arbitrary and selective
12 and it picks and chooses who it wants to apply itself to and
13 it exempts two-thirds of the country.

14 So, a finding for Tyndale in this case does not in
15 any way threaten the commercial regulatory system of our
16 country because there's not -- it's not an automatic win,
17 it's that the mandate in this case is so flawed it can't
18 pass strict scrutiny.

19 The government does not have evidence of
20 grandfathering, that it is a phase in, that it will go away.
21 Where does the 191 million number come from? It comes from
22 Judge Cane's decision at page one in the Westlaw citation,
23 and he drew it from the government's own regulation, I
24 believe it's 75 Federal Reg 34538. That's the grandfather
25 relation. They have a table in there projecting numbers out

1 to 2013.

2 The government says oh, well, most plans won't be
3 grandfathered. Well, but what it doesn't say is that most
4 of those plans are small. And the plans that are still
5 grandfathered contain 191 million people. And moreover, the
6 government admits on its own web page that most large
7 employer plans will continue to be grandfathered.

8 In other words, most employers similarly situate
9 to Tyndale. Large employers, over 50, are going to still be
10 grandfathered, and yet, somehow the government says it has a
11 compelling interest to force Tyndale to provide
12 abortifacients, when it's quite happy to allow women in most
13 large employers not to have what it claims is a compelling
14 interest in health and equality.

15 Now, how does this mandate improve women's health?
16 The government hasn't shown data -- our brief does discuss
17 the IOM report, which essentially says, well, it seems that
18 maybe there are some generic health consequences. The Court
19 doesn't have to say that abortifacients or contraception
20 have no benefit. That's not necessary for the ruling here.

21 What the government hasn't shown is that this
22 mandate will actually lead to a prevention of compelling
23 grave harms. So, in other words, maybe women who are
24 employed or who are in family that it's employed, can
25 already afford these things if they want them. There's no

1 evidence that the mandate will actually achieve its effect
2 of giving women things that they currently don't have.
3 There's no evidence that the grave harm -- that the -- that
4 they are going to prevent harm that's grave, and all of the
5 IOM's data, by it's only admission, is what the government
6 called associated with. In other words, unintended
7 pregnancy, which the IOM admits it doesn't know how to
8 define, is associated with some things that might be -- that
9 are negative.

10 Well, that's several steps removed from showing
11 that this mandate is necessary, what the Court said in the
12 Brown decision, to prevent an actual problem. And that
13 they've shown what Brown required was causal evidence, not
14 correlation.

15 THE COURT: Is there anything in the record about
16 what the cost of these items are? Are there generics on the
17 market, is the cost significantly low? What do we know as
18 far as what's in the record?

19 MR. BOWMAN: I think -- if the record includes the
20 federal regulations, I think there might be something in
21 there. We didn't, we didn't submit that.

22 The government proposes that we're requiring them
23 to create an entirely new system. That's not true.
24 Medicaid already exists, it already provides these things.
25 They already have a channel, all they'd have to do is lift

1 the income restrictions in Medicaid to do this. And then
2 say, well -- or they could just say well, look, Medicaid
3 will provide abortifacients to everyone they're already
4 giving it to plus people who work at religious
5 organizations.

6 THE COURT: Is that really realistic, considering
7 the economic health of the country and the economic health
8 of those programs from a long-term perspective? I mean,
9 obviously those programs are going to have to be revamped,
10 but they're not going to be available because they're going
11 broke.

12 MR. BOWMAN: Well.

13 THE COURT: So, I don't think we should be
14 expecting the government to expand the scope of those
15 programs and says that's a viable alternative.

16 MR. BOWMAN: The ACA is an expansion of Medicaid.
17 So, the Affordable Care Act believes that expanding Medicaid
18 is important. If the government really believes this is a
19 compelling interest, the very tiny cost of providing these
20 items through religiously objective --

21 THE COURT: It's an expansion, but as I understand
22 it, it's an expansion so that it captures more people with
23 the hope that more money is brought into the system and,
24 therefore, it would help the viability or enhance the
25 viability of those existing programs.

1 MR. BOWMAN: I'm not sure how much money would be
2 brought in by covering more Medicated recipients.

3 THE COURT: No, I mean, you expand the scope of
4 who has to pay into the system.

5 MR. BOWMAN: Sure. The point I would like to make
6 in response is twofold. First, the cost of providing items
7 to religiously-objecting entity employees through a channel
8 that the government already uses would probably be not
9 registerable as a percentage of the total U.S. multi
10 trillion dollar budget. And secondly, if the government
11 thinks it's as compelling interest, then the government has
12 already answered the question of whether that would be
13 permissible.

14 In the Riley case and other Supreme Court cases, a
15 least restrictive means is not eliminated by costs. And as
16 Your Honor pointed out, the limited liability doesn't mean
17 moral and religious separation. Stormans and Townley, all
18 these cases say that the fact that there's a corporations
19 here doesn't mean that religion isn't implicated by the
20 owners of the company. It certainly is and the free
21 exercise clause protects them.

22 THE COURT: Okay. I have to finish this because
23 we have other matters I have to get to.

24 There is some weighty issues that I have to
25 address obviously in this case. I fully appreciate the

1 government's perspective about seeking to enhance the
2 availability of medical insurance, which I think is
3 obviously a very important objective for the country to try
4 and achieve because we have all too many of our fellow
5 citizens who can't get medical help. As a result of that,
6 they have poor health and we know that there is a disparity
7 between those who have it and don't as far as the life
8 expectancy and the quality of life as it relates to their
9 health. And so, I can appreciate the significant interest
10 that the government has in that regard.

11 I also fully appreciate from the plaintiff's
12 perspective, religion is a fundamental, and the ability to
13 exercise freely one's religion is a fundamental tenet of our
14 country. It was something that the founding fathers
15 considered to be essential to our democracy, and I don't
16 tread lightly on the imposition on those rights. I totally
17 agree, and it's not denied by the government, that we have a
18 company here that's owned by individuals who clearly have
19 various strong-held religious believe. And that while this
20 is a for-profit corporation, there's no challenge to the
21 fact that the profits that it makes are used in the same way
22 that one would expect a religious organization that's for,
23 that's not for profit to use funds that come into their
24 entity, i.e., to advance their religious beliefs and to
25 provide charitable assistance to others in our society.

1 And clearly it seems to me, based upon what's been
2 presented, that the overwhelming bulk of the income that
3 this company makes does, in fact, serve the same purpose
4 that religious entities serve. So, it's a tough case
5 because it seems to me to just take the categorical position
6 that just because this company is a for-profit company,
7 considering all the other surrounding circumstances, means
8 that they should be treated differently than a nonprofit
9 religion corporation that does essentially the same things
10 that this company with the proceeds that they acquire.

11 So, I need to think about the arguments that were
12 made, to review the papers again and look at the cases very
13 closely again. And I do go on vacation next weekend, so I'm
14 going to do all I can, working with all of my clerks, to try
15 and get an opinion out by next Friday. Thank you.

16 MR. BOWMAN: Thank you, Your Honor.

17 MR. BERWICK: Thank you, Your Honor.

18 [Thereupon, the proceedings adjourned at
19 10:18 a.m.]

20

21

22

23

24

25

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

CERTIFICATE

I, Cathryn J. Jones, an Official Court Reporter for the United States District Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, the proceedings had and testimony adduced in the above case.

I further certify that the foregoing 53 pages constitute the official transcript of said proceedings as transcribed from my machine shorthand notes.

In witness whereof, I have hereto subscribed my name, this the 10th day of December, 2012.

/s/ _____
Cathryn J. Jones, RPR
Official Court Reporter

<p>B</p> <p>be [59]</p> <p>became [1] 35/22</p> <p>because [31] 6/8 8/1 8/19 8/22 11/1 11/18 15/2 19/22 20/3 22/3 25/7 26/8 26/9 27/11 28/3 29/7 32/12 33/11 33/19 40/3 41/22 42/6 48/2 48/6 48/11 48/16 51/10 52/22 53/4 54/5 54/6</p> <p>become [3] 32/18 33/4 40/16</p> <p>becomes [1] 23/6</p> <p>been [10] 3/16 3/18 6/1 11/7 17/11 18/1 37/24 40/24 42/14 54/1</p> <p>befall [1] 36/5</p> <p>before [4] 1/10 34/4 39/13 41/20</p> <p>behalf [6] 7/8 7/9 7/12 7/12 26/23 27/1</p> <p>being [13] 9/18 18/13 23/10 30/14 33/13 34/20 37/3 39/2 39/6 39/23 45/4 46/2 47/1</p> <p>belief [10] 29/9 32/20 32/21 33/4 33/18 34/6 34/22 35/2 35/9 35/24</p> <p>beliefs [15] 9/19 29/16 31/20 32/19 32/23 33/15 33/24 34/19 34/20 35/12 35/21 36/12 38/13 46/16 53/24</p> <p>believe [9] 31/2 33/12 34/25 37/15 44/7 44/8 46/18 48/24 53/19</p> <p>believers [1] 7/1</p> <p>believes [2] 51/17 51/18</p> <p>Bellotti [2] 12/7 12/8</p> <p>Ben [1] 3/12</p> <p>benefit [1] 49/20</p> <p>benefits [2] 5/15 9/21</p> <p>Benjamin [1] 1/16</p> <p>Berwick [2] 1/16 3/13</p> <p>best [1] 19/24</p> <p>between [7] 28/5 28/24 31/15 32/7 35/14 40/19 53/7</p> <p>Bible [10] 5/16 6/8 7/20 14/1 16/7 17/8 17/14 46/18 46/19 48/1</p> <p>Bibles [2] 12/15 12/20</p> <p>big [1] 19/16</p> <p>black [1] 28/4</p> <p>Board [1] 9/16</p> <p>borrowing [1] 21/24</p> <p>borrow [1] 21/25</p> <p>both [3] 40/20 44/2 46/18</p> <p>Bowman [2] 1/13 3/6</p> <p>brief [7] 6/24 9/25 15/13 15/24 25/20 30/15 49/16</p> <p>briefs [4] 25/5 25/21 27/8 45/7</p> <p>bring [3] 7/2 7/8 7/16</p> <p>bringing [2] 7/11 27/10</p> <p>broader [1] 33/19</p> <p>broke [1] 51/11</p> <p>brought [4] 27/15 27/15 51/23 52/2</p> <p>Brown [3] 15/8 50/12 50/13</p> <p>bucket [1] 22/21</p> <p>budget [1] 52/10</p> <p>bulk [1] 54/2</p> <p>burden [28] 4/17 6/12 7/2 7/3 7/21 9/13 9/13 10/3 10/18 13/1 15/3 15/5 15/6 15/10 19/23 20/7 20/8 21/9 24/16 32/1 32/2 32/12 32/14 33/6 34/16 36/9 36/24 41/8</p> <p>burdened [1] 10/16</p> <p>business [6] 9/2 9/6 9/6 9/9 21/24 21/24</p>	<p>14/10 14/25 15/25 15/25 16/24 18/4 18/5 19/24 21/17 21/20 23/1 23/20 25/2 25/12 26/23 31/9 31/16 34/11 34/15 36/11 38/15 40/4 40/4 43/19 45/2 45/5 46/13 46/15 47/8 47/15 47/21 48/6 48/7 49/24 53/9 54/14</p> <p>can't [16] 8/1 8/5 8/19 8/22 13/13 16/13 16/16 18/8 21/9 25/9 37/22 38/2 38/18 45/22 48/17 53/5</p> <p>Cane [2] 14/17 15/17</p> <p>Cane's [1] 48/22</p> <p>cannot [2] 26/17 30/23</p> <p>captured [1] 19/17</p> <p>captures [1] 51/22</p> <p>care [12] 13/3 13/4 13/14 13/18 14/12 16/13 16/21 19/19 21/16 22/3 42/5 51/17</p> <p>carrier [1] 36/16</p> <p>carry [1] 40/9</p> <p>case [56]</p> <p>cases [24] 5/13 6/20 6/24 6/25 7/5 9/8 9/17 10/6 10/11 10/22 10/25 11/7 12/4 25/19 27/1 27/13 44/1 44/1 44/14 44/16 47/25 52/14 52/18 54/12</p> <p>categorical [3] 25/11 46/5 54/5</p> <p>categorically [1] 25/6</p> <p>category [1] 37/25</p> <p>Catholic [4] 24/8 24/9 24/14 24/18</p> <p>Cathryn [3] 1/20 55/2 55/16</p> <p>causal [2] 15/11 50/13</p> <p>cause [3] 13/22 40/4 40/5</p> <p>causing [1] 35/11</p> <p>CEO [1] 3/7</p> <p>certain [8] 16/14 16/16 18/17 18/18 33/10 37/10 39/21 45/2</p> <p>certainly [9] 24/18 25/4 31/20 41/17 44/18 44/21 45/10 45/13 52/20</p> <p>CERTIFICATE [1] 55/1</p> <p>certify [3] 17/25 55/4 55/7</p> <p>challenge [2] 33/20 53/20</p> <p>changes [2] 14/10 44/19</p> <p>channel [2] 50/25 52/7</p> <p>characterize [1] 31/18</p> <p>charitable [4] 6/9 24/21 28/11 53/25</p> <p>charity [7] 11/16 11/18 11/19 12/17 17/19 18/21 46/20</p> <p>chartable [1] 28/10</p> <p>cheapest [1] 19/25</p> <p>children [1] 16/17</p> <p>choice [1] 14/22</p> <p>choose [3] 18/23 18/25 19/24</p> <p>chooses [1] 48/12</p> <p>choosing [1] 47/18</p> <p>chose [1] 20/1</p> <p>Christian [1] 17/14</p> <p>church [8] 24/8 24/9 24/14 24/18 35/20 35/21 35/22 47/18</p> <p>circuit [28] 6/22 7/14 26/7 26/13 26/14 26/15 26/19 26/22 26/25 27/7 27/8 27/12 29/3 29/4 29/11 30/9 30/12 30/16 44/4 44/6 44/12 45/4 45/6 45/12 45/12 45/23 46/7 46/14</p> <p>Circuit's [7] 26/16 29/22 29/23 29/25 30/6 45/9 46/6</p> <p>circuits [1] 46/7</p> <p>circumstance [1] 11/10</p> <p>circumstances [3] 31/9 45/2 54/7</p> <p>citation [1] 48/22</p> <p>cite [6] 6/18 6/20 6/24 15/15 15/16 15/24</p> <p>cited [5] 10/6 14/17 15/17 30/15 46/8</p> <p>citing [1] 10/24</p> <p>citizens [3] 23/15 24/3 53/5</p> <p>CIVIL [3] 1/5 1/17 3/2</p> <p>claim [17] 3/20 3/21 3/21 3/22 3/22 4/9</p>	<p>5/24 6/13 7/17 7/22 8/15 9/1 9/7 12/9 24/15 29/1 29/25</p> <p>claimant [1] 13/16</p> <p>claiming [3] 13/17 26/4 26/9</p> <p>claims [10] 3/16 3/24 5/14 7/2 7/8 7/11 8/6 9/9 27/10 49/13</p> <p>clause [11] 3/20 3/20 3/21 24/5 24/19 25/3 25/4 30/17 31/23 47/16 52/21</p> <p>clear [5] 15/4 15/24 20/24 23/15 45/8</p> <p>clearly [5] 34/5 38/12 44/10 53/18 54/1</p> <p>clerks [1] 54/14</p> <p>client [2] 6/3 17/4</p> <p>client's [1] 20/13</p> <p>close [1] 38/11</p> <p>closely [3] 35/4 38/10 54/13</p> <p>closely-held [2] 35/4 38/10</p> <p>closeness [1] 34/23</p> <p>closer [4] 25/19 31/21 34/13 44/20</p> <p>closest [1] 25/16</p> <p>cognizable [2] 7/22 22/20</p> <p>cognize [1] 7/14</p> <p>collapse [2] 22/6 48/2</p> <p>collapsing [1] 48/5</p> <p>colleague [2] 3/13 32/22</p> <p>Colorado [3] 4/10 14/18 44/5</p> <p>COLUMBIA [2] 1/2 55/4</p> <p>come [4] 3/4 8/21 48/21 53/23</p> <p>comes [6] 21/6 21/7 35/14 36/2 37/8 48/21</p> <p>coming [1] 10/11</p> <p>comment [1] 24/3</p> <p>commercial [4] 48/2 48/8 48/9 48/15</p> <p>community [1] 35/22</p> <p>companies [3] 7/1 34/14 48/3</p> <p>company [40] 7/3 8/22 11/15 11/21 12/4 16/8 17/6 17/10 17/16 17/17 25/14 26/16 26/17 29/7 30/23 31/15 31/22 32/13 32/13 32/16 32/17 32/18 33/5 33/6 33/20 33/22 33/23 33/24 34/17 35/15 36/11 36/19 45/25 46/19 52/20 53/18 54/3 54/6 54/6 54/10</p> <p>company's [1] 29/15</p> <p>compelling [23] 6/13 8/15 10/4 10/20 13/2 13/7 13/12 13/23 15/3 15/7 15/9 16/7 16/25 37/6 38/23 38/23 42/6 42/10 49/11 49/13 49/22 51/19 52/11</p> <p>competing [1] 42/5</p> <p>completely [1] 39/18</p> <p>complex [1] 42/4</p> <p>complicate [1] 11/10</p> <p>comply [4] 8/9 8/17 14/12 33/24</p> <p>component [3] 18/4 32/1 36/24</p> <p>computer [1] 1/25</p> <p>computer-aided [1] 1/25</p> <p>conceivably [1] 36/5</p> <p>concerned [2] 26/21 33/9</p> <p>conclude [1] 25/6</p> <p>conclusory [1] 9/1</p> <p>conditions [1] 16/17</p> <p>conflate [1] 10/1</p> <p>conflation [1] 10/14</p> <p>Congress [13] 14/3 14/4 15/20 16/11 16/18 22/1 22/5 22/9 42/7 47/10 47/10 47/11 47/12</p> <p>Congress' [1] 14/22</p> <p>consent [1] 5/16</p> <p>consequences [3] 40/6 40/10 49/18</p> <p>consider [1] 29/18</p> <p>consideration [1] 42/25</p> <p>considerations [1] 42/10</p> <p>considered [1] 53/15</p> <p>considering [4] 34/23 42/23 51/6 54/7</p> <p>considers [2] 5/21 12/9</p> <p>consistent [3] 17/5 23/22 36/11</p> <p>constitute [1] 55/8</p>
<p>C</p> <p>calculate [1] 14/25</p> <p>call [1] 25/19</p> <p>called [1] 50/6</p> <p>calls [3] 4/20 13/21 18/11</p> <p>came [1] 37/21</p> <p>can [48] 3/4 5/8 6/18 6/19 7/16 8/14 11/23 11/24 11/25 12/3 12/5 13/22 14/9</p>		

<p>C</p> <p>constitution [2] 1/22 23/25 constitutional [1] 8/15 constraints [1] 20/4 contain [1] 49/5 contend [2] 5/19 13/22 contends [1] 4/21 content [1] 32/1 context [10] 9/9 23/16 29/5 29/23 30/24 31/1 31/13 31/16 41/9 45/1 continue [1] 49/7 contraception [10] 13/20 13/21 20/10 20/10 21/22 33/11 39/1 43/5 43/6 49/19 contraceptions [2] 32/3 33/10 contraceptive [1] 39/7 contrary [3] 33/14 35/2 35/24 convenient [1] 19/25 coreligionists [1] 17/23 corporate [2] 28/4 33/5 corporation [47] 6/19 7/18 9/2 23/6 23/6 23/11 23/16 23/19 23/21 25/4 25/16 26/10 26/18 26/23 26/25 27/1 27/17 27/17 27/18 28/6 28/9 28/14 28/16 29/7 29/9 29/19 31/10 31/18 32/9 34/4 34/7 34/11 34/25 35/4 35/7 35/17 36/2 36/7 36/19 38/12 38/12 45/1 45/5 46/13 46/15 53/20 54/9 corporation's [2] 7/15 32/19 corporations [7] 7/7 26/2 27/12 32/25 43/6 47/8 52/18 correct [2] 27/21 41/1 correlation [2] 40/19 50/14 cost [9] 20/23 20/25 42/24 43/5 43/8 50/16 50/17 51/19 52/6 costly [1] 43/12 costs [1] 52/15 could [17] 18/16 18/16 18/18 18/19 19/12 20/16 22/10 24/24 25/16 25/22 27/1 33/20 35/1 35/10 45/14 45/15 51/2 couldn't [1] 42/14 counsel [5] 3/4 3/7 3/23 3/25 28/7 counsel's [1] 3/14 country [11] 8/16 13/6 14/5 15/19 16/20 22/4 48/13 48/16 51/7 53/3 53/14 couple [2] 28/25 43/19 course [2] 28/15 43/13 court [67] Court's [1] 18/7 courts [8] 4/7 26/2 29/5 29/14 42/20 42/24 43/23 43/25 cover [1] 16/15 coverage [1] 16/14 covering [2] 18/1 52/2 create [2] 11/4 50/23 created [1] 35/17 currently [2] 37/3 50/2 cuts [1] 15/12 CV [1] 1/4</p>	<p>44/9 45/24 46/6 46/8 48/22 50/12 decisively [1] 8/25 decrease [4] 14/24 14/25 15/1 16/4 deemed [2] 32/14 33/6 deep [1] 5/8 Defendant [1] 1/6 Defendants [2] 1/16 3/13 DEFENDING [1] 1/13 Defense [1] 22/12 deference [1] 41/11 deficit [1] 22/17 define [1] 50/8 definition [1] 16/22 definitively [1] 31/9 demanding [1] 8/14 democracy [1] 53/15 denied [1] 53/17 Denver [1] 8/8 deny [1] 34/5 DEPARTMENT [1] 1/17 dependents [1] 16/15 depends [3] 26/13 29/20 45/3 depth [1] 29/15 designed [2] 12/14 12/23 desire [1] 13/3 despite [1] 41/7 determination [2] 19/13 27/6 determine [3] 25/1 29/6 30/18 determined [2] 27/12 38/25 determining [1] 42/25 device [1] 21/5 devoutly [3] 5/16 6/8 46/18 dictates [3] 17/5 33/16 34/8 did [10] 10/7 24/22 26/25 27/8 31/8 31/8 44/5 44/7 44/8 47/14 didn't [6] 10/15 11/1 17/2 47/11 50/21 50/21 difference [2] 24/21 24/23 different [11] 10/1 11/2 25/22 29/5 30/25 31/1 37/20 37/21 44/16 44/18 44/19 differently [1] 54/8 difficult [1] 31/17 direct [3] 11/7 41/2 42/8 directing [1] 12/16 directors [1] 32/24 directs [1] 6/9 disagree [4] 24/1 25/18 27/21 45/7 disagreed [1] 9/12 discrimination [3] 23/8 25/24 25/25 discuss [1] 49/16 discussed [2] 12/7 30/7 dismiss [1] 4/16 disparity [1] 53/6 dispositive [6] 26/17 29/22 29/24 30/1 30/22 45/6 dispute [5] 23/20 24/17 28/7 28/12 28/18 distinct [1] 34/10 distinction [4] 28/24 29/2 29/6 29/13 distinguish [1] 31/14 DISTRICT [10] 1/1 1/2 1/11 1/21 4/7 4/10 4/10 4/11 55/3 55/3 Division [1] 1/17 do [36] 7/24 9/19 9/22 15/1 16/12 16/12 16/20 16/22 17/25 18/16 19/3 19/11 19/11 24/23 25/6 28/7 28/23 31/22 32/1 32/4 32/25 35/25 38/3 40/18 41/7 41/13 41/19 41/23 43/8 44/12 50/17 50/25 51/1 54/13 54/14 55/4 Docket [1] 1/4 does [14] 11/4 11/9 23/13 25/8 39/6 39/7 44/4 48/14 48/19 48/21 49/15 49/16 54/3 54/9 doesn't [28] 6/6 6/7 7/13 7/16 9/5 9/5 10/23 11/12 12/9 13/1 13/7 19/23 21/1</p>	<p>22/4 22/18 23/12 23/19 33/24 34/19 40/5 47/5 48/6 48/10 49/3 49/19 50/7 52/16 52/19 doing [7] 12/11 18/22 19/5 19/12 20/9 27/4 46/21 dollar [1] 52/10 don't [60] donates [2] 11/16 11/17 done [6] 8/7 10/5 13/12 18/24 21/18 31/7 down [2] 35/14 36/2 drawn [2] 38/20 42/15 drew [1] 48/23 drop [1] 22/21 drug [2] 21/5 21/5 drugs [5] 13/24 13/25 22/8 22/12 22/19 due [1] 3/21 during [1] 3/23</p>
<p>D</p> <p>D.C [7] 1/5 1/14 1/18 1/22 29/22 30/11 30/16 damage [1] 8/5 data [9] 14/17 14/18 15/15 15/16 15/16 16/2 41/13 49/16 50/5 Davis [2] 1/16 3/14 day [1] 55/11 DC [1] 26/14 death [1] 33/13 December [1] 55/11 decided [11] 9/15 10/6 13/10 14/3 14/4 15/20 16/11 18/25 20/20 22/2 24/4 deciding [2] 9/22 30/16 decision [11] 3/19 14/18 15/8 18/6 18/7</p>	<p>E</p> <p>each [1] 7/4 earlier [1] 45/25 early [1] 13/22 Eastern [1] 4/11 economic [4] 13/6 20/3 51/7 51/7 edit [1] 17/8 effect [5] 21/6 21/8 21/8 25/12 50/1 effective [1] 42/22 effectively [1] 43/2 either [3] 23/13 28/10 46/17 element [1] 4/17 elements [5] 5/23 10/1 10/2 10/14 48/5 Eleventh [1] 46/8 eliminated [1] 52/15 else [1] 36/24 employed [2] 49/24 49/24 employee [1] 17/20 employees [22] 5/14 8/12 9/18 17/3 17/15 20/13 20/17 22/7 23/10 32/16 32/18 32/20 32/21 32/22 32/24 33/2 33/3 33/9 38/24 39/16 43/5 52/7 employer [4] 9/10 10/10 10/15 49/7 employer's [1] 39/15 employers [4] 39/16 49/8 49/9 49/13 employment [3] 9/22 23/8 25/24 encourage [1] 42/7 enforcement [1] 42/8 enforcing [1] 16/7 engage [2] 27/8 29/14 engaging [1] 29/8 enhance [2] 51/24 53/1 enough [4] 8/18 16/21 25/2 40/15 entanglement [1] 29/10 entirely [4] 43/3 43/4 43/14 50/23 entities [8] 6/2 6/3 6/6 20/17 20/20 36/3 44/16 54/4 entitled [3] 29/19 33/3 48/3 entity [10] 11/9 17/18 24/22 30/23 34/18 38/11 44/17 44/21 52/7 53/24 Environmental [1] 23/7 equality [3] 39/3 40/22 49/14 equally [1] 42/22 equivalent [3] 4/21 5/21 23/16 error [2] 9/24 10/1 especially [1] 46/18 Espirita [2] 13/11 15/4 espousing [2] 38/12 46/12 Esquire [3] 1/13 1/16 1/16 essential [1] 53/15 essentially [6] 4/16 11/14 13/9 46/21 49/17 54/9 establish [3] 23/6 43/3 43/13 establishment [2] 3/20 47/16 estimated [1] 37/9 estimates [1] 37/16</p>	

<p>E</p> <p>et [3] 1/5 1/6 3/4 Ethan [2] 1/16 3/14 evaluations [1] 40/25 evangelical [2] 12/16 17/13 even [16] 8/21 9/18 13/19 13/20 15/6 16/5 19/4 22/5 22/9 22/14 22/20 33/22 38/23 39/19 41/9 43/17 everybody [1] 35/18 everyone [1] 51/3 evidence [7] 15/10 15/11 15/12 48/19 50/1 50/3 50/13 exact [1] 12/10 exactly [3] 22/15 24/22 43/10 examine [1] 39/14 example [2] 24/8 35/5 exception [2] 9/6 25/9 exclude [1] 16/16 exclusion [1] 46/5 exempt [2] 14/15 37/3 exemption [13] 6/3 14/6 14/8 15/14 26/1 26/4 26/9 26/15 29/19 37/12 41/25 47/12 47/12 exemptions [2] 6/1 48/4 exempts [1] 48/13 exercise [47] 3/20 6/19 7/2 7/4 7/15 7/16 7/17 7/17 7/22 8/22 9/5 9/7 9/9 9/13 10/2 11/11 11/23 11/25 12/3 12/5 12/9 12/13 12/13 15/5 18/25 24/5 24/19 25/2 25/2 25/3 30/17 31/10 31/23 34/11 36/6 46/13 46/15 46/16 47/6 47/8 47/13 47/15 47/17 47/21 48/6 52/21 53/13 exercised [1] 24/19 exercises [1] 48/1 exercising [7] 6/10 9/3 9/23 10/12 10/16 10/18 10/24 existing [1] 51/25 exists [1] 50/24 expand [2] 51/14 52/3 expanding [1] 51/17 expansion [3] 51/16 51/21 51/22 expect [1] 53/22 expectancy [1] 53/8 expecting [1] 51/14 expenditures [1] 20/21 explain [2] 31/5 32/6 explained [3] 27/7 29/11 30/13 explicitly [1] 7/11 extrapolate [2] 47/3 47/4</p>	<p>federal [3] 4/7 48/24 50/20 fellow [1] 53/4 felt [1] 35/11 Fifth [2] 3/21 46/8 filed [1] 17/2 final [1] 42/13 find [2] 41/8 42/5 finding [3] 41/10 41/10 48/14 fingertips [1] 41/18 finish [1] 52/22 first [22] 8/23 9/7 10/13 12/8 12/13 12/17 12/22 13/9 18/23 18/25 25/10 27/6 29/1 32/5 37/7 43/12 43/22 45/22 46/23 47/4 47/6 52/6 Fitz [2] 6/23 47/24 five [5] 4/3 18/3 22/23 23/1 42/12 flawed [1] 48/17 focus [2] 37/23 41/23 follows [1] 34/7 for-profit [20] 6/3 6/18 6/25 20/20 23/6 24/22 25/4 26/10 26/16 26/17 28/16 30/22 30/23 31/10 31/15 45/1 45/5 45/21 53/20 54/6 force [3] 13/24 13/25 49/11 forced [1] 33/15 fore [1] 30/6 foregoing [1] 55/7 form [1] 28/4 formalities [1] 12/10 formality [2] 12/6 46/2 forms [1] 21/3 forward [1] 3/4 found [4] 29/3 29/4 43/25 45/15 foundation [1] 28/19 founded [1] 17/13 founder's [1] 28/15 founding [1] 53/14 four [1] 10/2 frankly [1] 22/20 fraud [2] 18/19 18/21 free [27] 3/20 3/21 4/24 6/15 7/2 7/17 7/22 9/4 9/6 9/9 9/13 10/2 12/9 15/5 18/14 20/10 21/21 24/4 24/19 25/2 25/3 30/17 31/23 47/6 47/13 47/17 52/20 freedom [5] 1/13 3/25 9/4 12/19 12/22 freely [1] 53/13 Friday [2] 1/5 54/15 front [1] 6/21 fully [2] 52/25 53/11 fund [2] 20/20 34/25 fundamental [4] 9/24 18/15 53/12 53/13 funding [2] 19/2 35/23 funds [1] 53/23 further [1] 55/7 future [1] 42/8</p>	<p>going [15] 7/5 7/22 9/14 18/20 20/20 21/5 21/8 47/2 47/4 49/9 50/4 51/9 51/10 51/10 54/14 Good [7] 3/10 3/11 3/12 3/15 4/2 23/2 23/4 got [4] 7/21 11/8 18/3 46/4 government [99] government's [9] 9/25 14/17 15/3 15/6 15/20 19/16 42/6 48/23 53/1 governments [1] 14/18 grandfather [2] 22/5 48/24 grandfathered [5] 37/17 49/3 49/5 49/7 49/10 grandfathering [17] 14/6 14/8 15/14 15/21 15/23 15/25 16/12 16/13 16/14 16/16 16/19 37/10 41/20 41/23 42/3 42/7 48/20 granted [5] 4/8 6/1 6/1 6/2 43/23 granting [2] 5/11 6/11 grave [5] 8/13 16/24 49/23 50/3 50/4 Great [3] 29/4 29/24 30/15 grounds [1] 33/21 group [1] 32/9 groups [6] 4/20 4/23 5/14 5/22 6/15 17/21 guess [2] 34/1 39/24 guide [1] 30/14</p>
<p>F</p> <p>face [1] 45/8 fact [27] 6/6 9/8 9/12 10/22 11/16 12/18 15/23 17/21 18/12 18/17 19/12 20/25 21/4 22/17 23/20 34/5 35/3 35/23 36/2 36/20 40/15 41/7 41/10 41/11 52/18 53/21 54/3 factor [2] 29/17 30/2 factual [1] 27/3 fails [2] 8/3 8/4 faith [1] 17/10 fall [2] 32/8 37/25 falls [4] 29/4 29/24 30/15 34/17 familiar [2] 4/19 25/15 family [2] 28/15 49/24 far [7] 14/19 21/13 26/21 33/9 39/4 50/18 53/7 fashion [1] 5/9 fathers [1] 53/14 favor [1] 10/8 FDA [2] 13/21 39/1 FDA-approved [1] 39/1 feasibility [1] 42/24 feasible [3] 42/22 43/1 43/17</p>	<p>G</p> <p>gender [2] 39/3 40/22 generally [1] 40/5 generates [1] 28/9 generic [1] 49/18 generically [2] 13/14 38/18 generics [1] 50/16 generous [1] 13/18 get [5] 5/8 21/5 52/23 53/5 54/15 gets [1] 46/17 give [4] 23/12 23/19 36/4 38/2 gives [2] 22/7 46/19 giving [5] 17/22 19/1 21/21 50/2 51/4 glean [1] 17/2 gleeful [1] 40/15 go [13] 5/7 5/7 10/7 11/20 17/19 18/20 28/9 31/6 31/25 36/7 46/17 48/20 54/13 goal [4] 18/8 18/9 21/4 21/16 goes [3] 15/22 28/19 43/11</p>	<p>H</p> <p>had [12] 9/12 10/17 24/18 26/2 27/15 27/15 35/8 35/21 42/2 44/1 44/11 55/5 half [3] 5/13 6/16 37/16 happens [1] 28/8 happy [1] 49/12 harbor [7] 4/21 5/3 5/12 6/5 6/11 17/22 17/24 hard [2] 12/18 22/14 harm [2] 50/3 50/4 harms [1] 49/23 has [58] hasn't [7] 16/6 20/6 20/8 21/9 22/5 49/16 49/21 have [94] haven't [3] 14/10 14/11 18/1 having [2] 13/5 33/16 he [3] 9/12 9/12 48/23 health [32] 13/3 13/4 13/5 13/6 13/14 13/18 13/19 14/9 14/10 19/6 19/15 19/19 21/16 23/10 32/9 37/10 37/16 39/4 39/8 39/23 40/4 40/6 40/9 40/20 42/4 49/14 49/15 49/18 51/7 51/7 53/6 53/9 healths [2] 39/2 40/1 HEARING [1] 1/9 heart [1] 12/17 Heck [1] 13/19 held [7] 11/5 30/21 35/4 35/8 35/21 38/10 53/19 help [3] 6/7 51/24 53/5 helpful [1] 44/14 her [11] 35/9 35/12 35/12 35/17 35/19 35/20 35/20 35/24 36/5 36/6 36/8 here [26] 3/24 4/6 4/22 7/10 7/18 8/7 10/25 11/8 12/11 12/12 18/24 22/16 27/10 27/11 30/8 33/9 34/10 36/14 36/21 42/16 43/2 44/6 46/22 49/20 52/19 53/18 here's [1] 11/12 hereby [1] 55/4 hereto [1] 55/10 higher [1] 19/23 highest [3] 8/13 14/4 16/23 hinderance [1] 27/9 hire [1] 17/23 hiring [1] 17/8</p>

<p>H</p> <p>his [1] 9/13 hold [1] 26/25 honest [1] 34/6 Honor [77] HONORABLE [1] 1/10 hope [1] 51/23 hopefully [1] 19/18 Hosana [1] 24/4 Hosana-Tabor [1] 24/4 Hosanna [1] 47/14 Hosanna-Tabor [1] 47/14 host [1] 23/7 HOUSE [15] 1/3 3/3 3/8 5/17 7/10 7/20 8/12 11/13 11/24 12/1 17/12 20/15 21/7 22/7 22/12 how [20] 14/14 14/25 20/5 22/15 28/23 32/16 33/5 33/22 34/2 37/24 37/25 38/6 39/6 39/7 39/24 41/13 44/13 49/15 50/7 52/1 However [2] 14/13 26/1 human [1] 33/13 hundred [7] 8/8 11/18 14/5 14/16 14/20 15/18 16/3 hypothetical [1] 21/13</p>	<p>instances [1] 7/9 Instead [1] 44/2 Institute [4] 38/25 39/22 40/8 41/3 instituting [1] 42/4 insurance [3] 36/15 36/16 53/2 insured [3] 36/16 36/18 36/21 intended [2] 12/18 39/20 interest [30] 6/13 8/6 8/13 8/16 8/17 10/4 10/21 13/12 13/14 13/15 13/23 14/3 14/4 15/3 15/7 16/7 16/23 16/23 16/24 16/25 37/6 38/23 42/11 42/23 47/17 49/11 49/14 51/19 52/11 53/9 interesting [1] 39/5 interests [3] 6/8 42/5 42/6 IOM [2] 49/17 50/7 IOM's [1] 50/5 irrelevant [2] 27/24 28/1 is [225] isn't [12] 10/12 12/6 13/17 16/3 19/16 19/20 27/3 36/8 38/16 38/17 46/6 52/19 issue [2] 23/9 39/4 issues [3] 29/10 40/4 52/24 it [168] it's [67] items [7] 24/10 35/11 39/7 39/7 50/16 51/20 52/6 its [39] 5/12 6/7 6/9 6/11 6/13 7/11 7/12 7/12 8/18 11/16 11/18 13/12 13/13 15/10 15/10 15/13 17/18 18/8 18/9 20/6 21/9 22/7 22/21 23/12 23/19 25/4 25/16 26/23 27/1 28/22 28/23 32/7 32/9 32/14 46/1 46/19 47/18 49/6 50/1 itself [7] 14/3 17/10 34/11 38/24 39/25 40/5 48/12</p>	<p>layout [1] 25/21 lead [1] 49/22 leader [1] 47/18 least [13] 6/16 10/5 18/5 19/20 20/1 20/2 21/1 21/10 23/16 31/2 32/22 42/21 52/15 leave [1] 8/5 leaving [1] 5/13 Lee [4] 9/10 9/11 10/9 10/15 left [4] 18/3 42/13 45/13 46/3 legal [6] 28/5 32/7 34/17 35/14 35/16 36/3 legalisms [1] 12/10 Legatus [1] 42/1 legislation [3] 37/4 38/20 43/13 legitimate [1] 24/9 less [1] 42/21 lesser [1] 21/11 let's [3] 12/25 16/2 31/25 letter [1] 28/5 letting [1] 16/9 level [8] 7/5 7/23 7/25 8/2 9/14 10/7 10/19 10/21 liability [3] 35/18 36/6 52/16 LIBERTIES [1] 1/5 life [3] 35/1 53/7 53/8 lifetime [1] 16/14 lift [1] 50/25 light [1] 13/2 lightly [1] 53/16 like [12] 4/3 9/25 14/9 23/9 31/22 37/1 40/11 41/22 42/13 46/25 47/18 52/5 likelihood [3] 44/2 44/11 44/13 limit [1] 35/17 limitation [2] 33/8 36/5 limitations [1] 47/5 limited [2] 33/4 52/16 limits [1] 16/14 line [1] 29/18 list [1] 22/2 literature [1] 17/14 litmus [1] 29/13 little [1] 44/9 long [2] 15/25 51/8 long-term [1] 51/8 longer [1] 37/17 look [9] 6/23 11/17 12/10 18/14 31/6 34/4 45/10 51/2 54/12 looking [3] 9/9 18/10 26/13 lost [1] 10/23 lot [3] 31/7 34/13 40/14 low [1] 50/17 lucky [1] 40/15 Lukumi [2] 8/4 46/8 lying [1] 18/20</p>
<p>I</p> <p>I'd [5] 3/23 4/3 9/25 37/1 42/13 I'll [2] 31/6 39/15 I'm [11] 3/13 19/10 19/11 22/15 33/1 37/7 39/9 44/13 44/25 52/1 54/13 I've [2] 31/7 37/1 i.e [1] 53/24 idea [1] 14/8 ideas [1] 34/10 identifies [1] 42/19 identify [1] 3/5 Illinois [2] 6/23 20/16 imagine [1] 12/18 immediate [1] 42/8 impact [1] 13/5 impacts [1] 40/22 implicated [1] 52/19 implications [2] 6/15 33/19 important [15] 8/17 16/21 19/14 19/17 22/6 23/24 25/5 30/2 32/11 38/16 38/17 38/22 39/1 51/18 53/3 impose [3] 8/18 16/14 22/3 imposes [1] 19/22 imposing [1] 39/13 imposition [2] 42/16 53/16 impossible [3] 20/4 20/7 39/20 improve [3] 39/7 39/25 49/15 INC [1] 1/3 includes [1] 50/19 including [2] 25/25 39/1 income [2] 51/1 54/2 incorporated [2] 3/3 6/25 increase [2] 20/21 38/1 incredibly [1] 42/4 individual [6] 11/11 27/25 34/24 35/18 35/19 36/7 individuals [6] 11/8 12/5 13/6 23/5 28/4 53/18 infant [1] 40/21 informative [1] 31/2 injunction [7] 4/7 5/6 5/9 5/20 6/14 15/6 44/3 injunctions [2] 4/8 43/23 injunctive [1] 4/21 inquires [1] 29/9 inquiries [1] 29/15 inquiry [3] 38/3 39/10 46/1 instance [1] 7/13</p>	<p>J</p> <p>janitor [1] 17/9 joined [1] 3/13 Jones [3] 1/20 55/2 55/16 JUDGE [7] 1/10 1/11 14/17 15/17 45/24 46/2 48/22 judges [1] 46/4 July [1] 5/4 July 2014 [1] 5/4 jurisdiction [4] 29/23 30/17 31/13 31/14 jurisprudence [1] 13/13 just [24] 8/17 9/11 10/22 13/18 13/20 13/22 16/2 18/19 18/21 20/25 27/11 29/17 33/10 33/14 38/3 38/18 42/1 43/16 43/24 46/6 48/6 51/2 54/5 54/6 JUSTICE [1] 1/17 justification [1] 5/20 justify [1] 27/4</p>	<p>M</p> <p>machine [3] 1/24 55/4 55/9 made [9] 14/10 14/11 15/4 19/13 25/11 35/9 37/1 37/24 54/12 major [1] 13/4 majority [1] 46/9 make [11] 12/25 14/10 20/22 24/21 24/23 28/23 34/3 37/1 39/17 39/20 52/5 makes [5] 15/23 20/24 23/15 53/21 54/3 making [1] 33/2 mandate [23] 4/9 4/24 5/15 6/11 6/16 8/1 8/3 8/9 8/18 11/2 14/7 14/21 15/19 16/10 16/21 22/2 22/11 48/11 48/17 49/15 49/22 50/1 50/11 many [11] 5/1 14/14 19/17 23/21 23/21 36/12 36/12 37/24 38/6 41/13 53/4 Mark [1] 3/7 market [1] 50/17 Mars [1] 35/5</p>
	<p>K</p> <p>Kaemmerling [2] 18/6 21/2 KATHLEEN [2] 1/5 3/3 keep [2] 14/9 15/25 kind [4] 12/13 22/14 31/17 47/16 kinds [1] 13/21 Kleinfeld [1] 45/24 knew [1] 32/20 know [16] 13/3 14/24 16/18 17/3 18/12 28/21 34/6 35/1 35/20 38/9 38/14 43/8 43/10 50/7 50/17 53/6 known [1] 35/9 knows [3] 8/1 8/19 21/13</p> <p>L</p> <p>lack [1] 13/3 large [5] 37/25 48/8 49/6 49/9 49/13 last [3] 5/10 12/19 42/2 law [13] 8/15 13/2 13/8 20/24 22/19 28/5 33/3 33/20 33/24 42/5 42/9 42/14 42/23 laws [6] 11/1 23/7 23/8 23/8 23/8 23/9</p>	

M
Massachusetts [1] 1/18
massive [2] 5/22 19/6
matter [7] 7/13 7/16 21/4 32/16 33/5 33/22 34/19
matters [1] 52/23
Matthew [2] 1/13 3/6
may [8] 4/1 4/2 4/5 20/23 21/13 22/25 32/22 48/9
maybe [4] 31/21 44/25 49/18 49/23
McClure [3] 6/22 8/24 47/24
me [3] 3/7 54/1 54/5
mean [24] 6/7 10/23 21/1 25/15 27/25 28/13 28/21 28/21 29/21 32/15 34/19 35/5 35/6 35/16 37/8 38/24 39/4 40/3 40/13 48/6 51/8 52/3 52/16 52/19
means [17] 10/5 18/5 19/20 19/24 20/1 20/2 21/2 21/11 42/18 42/21 42/22 42/25 43/17 47/9 48/7 52/15 54/7
meant [1] 47/10
measure [1] 39/25
mechanisms [1] 20/17
Medicaid [6] 22/13 50/24 51/1 51/2 51/16 51/17
medical [5] 35/6 35/9 35/19 53/2 53/5
Medicated [1] 52/2
Medicine [4] 38/25 39/22 40/8 41/3
members [1] 35/22
mention [1] 40/21
mentioned [1] 45/25
mere [2] 6/6 10/22
merely [1] 37/23
merits [4] 4/16 44/2 44/11 44/13
met [3] 20/6 20/8 21/9
Michigan [3] 4/11 44/7 44/8
might [3] 20/25 50/8 50/20
million [11] 8/8 14/5 14/16 14/21 15/18 16/4 16/4 16/9 37/7 48/21 49/5
minimum [1] 8/5
mining [1] 31/22
miniscule [1] 22/20
Minnesota [2] 6/22 8/24
minutes [4] 4/3 18/3 22/23 42/12
mission [3] 17/15 17/18 25/17
Missouri [1] 4/14
model [3] 37/19 37/21 37/22
money [9] 11/19 18/20 21/15 21/24 22/18 22/21 46/1 51/23 52/1
months [1] 5/10
moral [1] 52/17
more [15] 5/12 10/19 11/17 20/23 21/1 29/8 29/14 35/2 41/3 42/15 44/3 44/6 51/22 51/23 52/2
moreover [1] 49/5
morning [7] 3/10 3/11 3/12 3/15 4/2 23/3 23/4
Morr [2] 6/23 47/24
Morr-Fitz [2] 6/23 47/24
most [11] 8/14 9/8 19/25 23/24 24/3 28/18 49/2 49/3 49/6 49/8 49/12
mother [1] 40/21
motion [3] 1/9 4/15 5/5
much [6] 14/12 21/24 33/19 46/23 47/3 52/1
multi [1] 52/9
multiple [1] 6/20
my [11] 3/13 4/3 27/4 32/21 34/12 35/6 39/24 41/17 54/14 55/9 55/10

N
N.W [2] 1/14 1/22
name [2] 27/16 55/11
narrower [1] 47/3
narrowly [3] 18/4 38/20 42/15

National [2] 12/8 22/12
nature [1] 39/15
necessarily [2] 17/9 24/14
necessary [2] 49/20 50/11
need [4] 5/10 18/11 46/17 54/11
needed [1] 5/8
needs [3] 5/7 5/7 6/12
negative [1] 50/9
neither [2] 43/25 44/10
never [4] 10/20 25/13 31/16 45/5
new [5] 43/3 43/4 43/13 43/14 50/23
Newman [1] 14/18
next [3] 16/5 54/13 54/15
nine [1] 6/24
ninety [6] 8/8 14/5 14/16 14/21 15/18 16/3
ninety-one [4] 14/16 14/21 15/18 16/3
ninety-one million [1] 14/5
Ninth [18] 6/21 7/14 26/7 26/15 26/15 26/22 26/25 27/7 27/8 27/12 29/3 29/11 29/21 45/4 45/6 45/9 45/23 46/14
NLRB [6] 29/23 30/17 31/12 31/14 47/1 47/12
no [35] 1/4 5/19 9/6 15/22 17/16 17/19 17/24 20/14 21/2 21/4 21/15 23/14 24/16 27/9 27/20 31/9 32/16 33/5 33/22 36/7 36/25 37/16 41/15 44/23 45/21 47/7 47/7 47/7 47/19 47/25 49/20 49/25 50/3 52/3 53/20
non [1] 12/24
nonenforcement [4] 4/20 5/11 5/16 5/23
nonprofit [12] 6/2 6/6 6/9 11/13 11/20 11/22 12/1 29/2 29/6 29/13 46/2 54/8
nonprofit/for [1] 29/6
nonprofits [3] 11/23 12/3 38/19
nonreligious [1] 30/20
norm [1] 29/18
normal [1] 41/11
not [82]
note [1] 28/13
notes [1] 55/9
nothing [1] 32/10
notion [1] 12/19
November [1] 1/5
now [13] 4/12 4/18 5/13 6/16 7/24 12/15 14/2 14/8 19/1 19/16 24/23 26/6 49/15
number [10] 3/2 3/15 3/17 14/23 37/3 37/7 37/13 38/14 43/11 48/21
numbers [4] 11/17 37/21 38/3 48/25

O
O'Centro [3] 13/11 15/4 39/19
O'Scannlain [1] 46/2
object [3] 5/20 39/16 43/6
objecting [1] 52/7
objection [3] 17/25 18/1 33/21
objections [1] 20/18
objective [4] 19/21 42/15 51/20 53/3
objectors [1] 22/19
obviously [6] 7/17 17/7 35/17 51/9 52/25 53/3
occurs [1] 42/16
offering [1] 5/21
official [4] 1/21 55/2 55/8 55/16
oh [6] 10/25 15/14 18/20 19/3 22/24 49/2
Okay [5] 31/3 36/22 42/12 44/22 52/22
once [2] 11/9 15/4
one [21] 3/8 4/9 4/10 4/13 8/8 14/5 14/16 14/21 15/18 16/3 16/22 17/1 17/16 17/19 23/24 26/6 29/3 34/10 46/17 48/22 53/22
one's [2] 35/2 53/13
ones [1] 14/11

only [16] 5/2 5/5 5/10 6/1 6/5 8/25 15/16 17/23 21/17 24/5 42/6 47/8 47/11 47/15 47/20 50/5
open [2] 45/13 46/4
operate [2] 23/21 36/11
operated [1] 35/9
opinion [2] 45/9 54/15
opposed [1] 33/11
opposite [2] 32/12 47/25
order [8] 8/13 14/4 16/23 19/18 21/4 36/6 36/8 42/10
organization [14] 6/10 11/14 11/20 11/22 12/2 24/21 28/23 30/3 30/19 30/20 30/24 31/24 47/18 53/22
organizations [6] 12/3 24/5 45/21 47/15 47/20 51/5
OSHA [1] 48/9
other [30] 4/22 5/22 6/15 11/7 12/4 17/14 24/17 25/19 28/10 30/22 34/14 36/14 37/24 38/19 40/4 40/5 40/25 42/6 44/14 44/23 46/7 47/25 48/8 48/9 49/8 49/23 50/6 52/14 52/23 54/7
others [2] 31/21 53/25
our [16] 5/20 6/23 15/24 23/25 25/5 25/21 27/7 30/15 34/12 48/2 48/15 49/16 53/4 53/13 53/15 53/25
out [13] 10/1 14/19 16/9 17/15 19/1 28/14 37/9 37/21 43/24 46/3 48/25 52/16 54/15
outcome [2] 28/2 44/19
outcomes [2] 40/20 41/6
over [4] 15/1 30/17 37/11 49/9
overarching [1] 32/5
overwhelming [2] 41/4 54/2
own [9] 5/12 7/12 14/17 14/18 14/22 27/10 27/16 48/23 49/6
owned [5] 7/1 11/22 12/4 17/17 53/18
owner [9] 11/9 11/13 11/24 12/1 32/19 35/7 35/8 35/18 36/2
owner's [2] 7/15 33/23
owners [29] 7/1 7/4 7/8 7/10 7/12 7/18 9/2 11/11 17/6 23/20 26/23 27/2 27/9 27/15 27/25 28/6 32/7 32/10 32/14 33/5 33/7 34/15 34/16 34/24 36/20 38/11 38/13 46/16 52/20
ownership [3] 11/4 11/5 11/8

P
page [2] 48/22 49/6
pages [1] 55/7
paid [2] 18/13 18/18
papers [4] 3/18 4/19 17/2 54/12
paragraph [1] 10/17
paramount [2] 8/13 16/23
part [1] 36/18
particular [4] 16/17 25/7 46/25 47/16
particularly [4] 18/7 28/20 35/4 36/21
parties [3] 27/10 27/24 27/25
party [1] 27/8
pass [2] 8/14 48/18
passed [1] 10/21
pay [13] 9/12 9/20 19/9 21/15 24/10 24/11 32/2 33/12 33/16 35/10 42/20 43/16 52/4
people [18] 9/17 14/14 14/21 15/18 15/25 16/4 16/4 16/7 16/9 18/11 18/18 18/19 19/17 37/3 40/14 49/5 51/4 51/22
perceive [1] 16/8
percent [3] 11/13 11/18 11/20
percentage [3] 28/13 28/17 52/9
perfect [1] 29/3
perfectly [1] 45/8
period [1] 5/10
permanent [1] 41/24
permissible [1] 52/13

<p>P</p> <p>permitted [1] 7/7 perpetually [1] 16/1 person [2] 10/12 23/17 personal [1] 28/15 perspective [7] 19/15 27/23 33/12 35/10 51/8 53/1 53/12 perviously [1] 42/7 phase [3] 37/11 41/24 48/20 phone [1] 18/11 phrase [1] 15/22 picks [1] 48/12 place [6] 8/23 10/13 13/2 13/8 22/11 38/18 plaintiff [22] 1/3 3/16 4/1 5/17 10/3 10/23 10/23 11/1 11/9 15/5 16/19 24/11 24/20 30/18 30/19 33/9 37/24 38/4 38/4 42/18 43/20 43/22 plaintiff's [2] 10/7 53/11 plaintiffs [21] 1/13 3/6 3/8 16/12 16/13 16/15 16/16 27/14 27/24 28/8 37/25 38/5 38/6 41/23 41/25 43/2 43/25 44/1 44/12 45/7 45/11 plan [6] 13/19 14/9 14/10 32/9 36/18 42/4 plans [7] 22/5 37/10 37/16 49/2 49/4 49/4 49/7 please [2] 3/4 4/3 pled [1] 7/11 pledge [2] 17/5 17/5 plugged [1] 37/20 plus [1] 51/4 point [8] 6/24 9/25 28/20 32/6 33/1 43/24 45/11 52/5 pointed [3] 37/9 46/3 52/16 points [1] 37/1 pool [1] 38/1 poor [1] 53/6 position [8] 4/13 5/25 22/9 34/6 37/2 46/13 46/14 54/5 possibility [1] 45/13 possible [2] 22/14 29/10 posture [1] 4/15 potential [1] 35/17 potentially [1] 5/4 practice [3] 35/7 35/10 35/19 pragmatic [1] 42/9 prayer [1] 17/15 precise [3] 38/2 38/14 39/15 precisely [3] 34/18 37/22 39/16 preclude [1] 26/9 precluded [1] 26/3 predicate [2] 14/24 38/19 preexisting [1] 16/16 pregnancies [6] 40/9 40/14 40/19 40/20 41/5 41/14 pregnancy [3] 40/3 40/5 50/7 pregnant [1] 40/16 preliminary [8] 4/7 4/8 5/6 5/9 6/14 15/6 43/23 44/3 premise [1] 26/22 prepared [1] 33/10 presented [1] 54/2 presently [1] 22/22 preserve [1] 42/10 President [1] 3/7 pretax [1] 11/19 pretty [3] 40/9 41/4 44/10 prevent [3] 7/25 50/4 50/12 prevention [1] 49/22 preventive [4] 13/19 38/25 39/23 39/25 probably [3] 25/16 41/15 52/8 problem [5] 11/5 13/4 14/2 15/2 50/12 problematic [1] 29/8</p>	<p>proceed [1] 3/22 proceed [3] 4/1 22/25 23/1 proceedings [4] 1/24 54/18 55/5 55/8 proceeds [6] 6/9 11/16 12/16 17/18 46/19 54/10 process [1] 3/21 produced [1] 1/25 professes [1] 35/24 profit [31] 6/3 6/18 6/25 20/20 23/6 24/22 25/4 25/8 25/12 26/10 26/16 26/17 28/16 29/2 29/6 29/12 29/13 30/6 30/21 30/22 30/23 31/10 31/15 45/1 45/5 45/13 45/15 45/21 53/20 53/23 54/6 profit/nonprofit [2] 29/2 29/13 profits [10] 11/18 11/19 25/8 28/8 28/9 28/13 28/22 28/23 46/5 53/21 program [3] 36/15 43/4 43/13 programs [4] 51/8 51/9 51/15 51/25 prohibits [1] 25/24 project [1] 14/23 projected [1] 14/19 projecting [1] 48/25 projects [1] 14/19 promote [2] 13/14 17/13 proof [1] 40/24 propose [1] 42/18 proposes [1] 50/22 proposing [4] 19/4 46/10 46/22 47/23 proposition [3] 6/18 34/2 39/5 proprietor [1] 36/7 prosecute [2] 18/19 18/21 protect [5] 12/14 12/18 12/23 18/11 23/9 protection [1] 36/8 protections [2] 32/17 33/2 protects [2] 24/5 52/21 provide [15] 13/3 13/17 13/18 13/19 13/20 13/21 13/24 13/25 19/18 20/16 33/10 43/4 49/11 51/3 53/25 provided [3] 4/19 19/14 20/14 provides [1] 50/24 providing [9] 20/9 20/12 20/15 21/16 22/18 39/6 43/6 51/19 52/6 provisions [1] 42/9 public [2] 19/6 19/19 publicly [1] 15/23 publish [1] 18/16 publisher [4] 5/17 6/8 14/1 48/1 PUBLISHERS [15] 1/3 3/3 3/8 5/17 7/11 7/20 8/12 11/13 11/24 12/1 17/12 20/15 21/7 22/7 22/12 publishes [1] 7/21 publishing [4] 12/15 12/20 16/8 46/19 purpose [5] 7/19 12/16 12/20 17/13 54/3 purposes [4] 25/3 29/16 31/14 31/23 put [1] 37/14</p> <p>Q</p> <p>qualifies [2] 43/16 44/21 qualify [8] 25/9 25/13 26/17 30/3 45/2 45/5 45/14 45/22 quality [3] 39/25 45/16 53/8 quantitatively [1] 40/25 question [18] 11/24 12/5 12/6 12/7 22/15 25/20 31/20 33/18 34/15 34/18 34/21 34/21 37/6 39/24 42/13 46/3 47/19 52/12 questionable [1] 12/24 questions [1] 44/24 quite [2] 29/12 49/12 quote [1] 47/20</p> <p>R</p> <p>ran [1] 37/19 reading [1] 31/7</p>	<p>realistic [1] 51/6 realistically [1] 19/15 really [11] 7/13 17/3 27/16 29/20 30/2 31/12 34/19 37/11 41/23 51/6 51/18 reason [8] 13/2 13/7 20/9 24/9 28/2 28/23 29/5 32/11 reasonable [1] 42/4 reasons [4] 13/9 24/17 30/13 32/5 rebuttal [2] 4/4 45/19 receive [2] 18/11 22/4 recently [2] 4/11 24/4 recipients [2] 17/24 52/2 recognized [5] 8/7 39/19 42/20 47/23 47/25 recognizes [1] 23/25 recognizing [1] 6/11 recommended [1] 39/22 record [4] 3/5 50/15 50/18 50/19 recorded [1] 1/24 red [1] 29/18 reference [1] 25/7 referenced [1] 26/20 refuses [1] 5/15 Reg [1] 48/24 regard [4] 5/3 24/2 42/9 53/10 regarding [2] 34/6 36/5 regardless [4] 25/8 32/19 32/20 34/2 REGGIE [1] 1/10 registerable [1] 52/9 regulation [3] 21/3 33/21 48/23 regulations [7] 23/7 32/8 42/14 43/24 48/2 48/9 50/20 regulatory [1] 48/15 rejected [3] 4/13 8/25 8/25 rejection [1] 4/16 related [3] 25/17 28/10 29/5 relates [1] 53/8 relation [1] 48/25 relationship [2] 34/24 38/11 relaxed [2] 44/3 44/6 relevant [6] 17/3 22/15 28/20 35/4 36/21 46/1 relief [2] 4/22 5/4 religion [45] 6/10 6/19 7/15 7/16 7/17 7/21 8/22 9/3 9/5 9/13 9/23 10/3 10/12 10/16 10/18 10/24 11/11 11/23 11/25 12/3 12/5 12/22 18/9 23/22 24/19 25/2 31/10 34/7 34/12 36/6 36/12 46/13 46/23 46/24 47/7 47/9 47/13 47/15 47/21 48/1 48/6 52/19 53/12 53/13 54/9 religious [87] religious-held [1] 35/21 religious-related [1] 28/10 religiously [2] 51/20 52/7 religiously-objecting [1] 52/7 removed [2] 11/10 50/10 render [1] 3/19 reply [1] 45/7 report [3] 40/8 41/3 49/17 reported [1] 55/4 Reporter [4] 1/20 1/21 55/2 55/16 represent [1] 8/13 request [2] 4/6 5/20 requesting [1] 5/5 require [7] 32/2 34/25 42/8 43/7 43/12 43/14 43/15 required [6] 17/4 17/9 17/23 30/18 35/10 50/13 requirement [7] 8/4 17/24 32/13 33/6 33/22 34/17 39/14 requirements [5] 28/6 32/8 37/10 37/11 41/24 requires [1] 32/9 requiring [1] 50/22 reserve [1] 4/3</p>
---	--	--

<p>R</p> <p>reserved [1] 22/23 respectfully [1] 23/12 respects [1] 26/21 response [1] 52/6 Restoration [3] 3/25 9/4 12/23 restricted [1] 21/11 restriction [1] 21/11 restrictions [1] 51/1 restrictive [8] 10/5 18/5 19/20 20/1 20/2 21/2 42/21 52/15 restrive [1] 42/21 result [4] 20/4 20/8 41/14 53/5 resulting [1] 40/21 results [1] 33/13 revamped [1] 51/9 review [2] 9/16 54/12 RFRA [19] 4/9 5/24 8/2 9/7 10/2 10/2 10/14 13/11 24/15 31/24 39/20 42/22 46/24 47/6 47/9 47/11 47/12 47/22 48/5 right [12] 13/17 15/25 17/8 18/15 19/16 27/18 27/20 28/14 28/16 31/25 36/8 41/21 rights [8] 23/13 23/19 23/24 23/25 32/17 33/2 46/15 53/16 Riley [3] 18/7 18/9 52/14 Room [1] 1/21 RPR [2] 1/20 55/16 rule [3] 15/20 42/3 42/7 ruled [1] 42/1 ruling [1] 49/20 run [2] 31/7 32/25 runs [2] 9/24 22/17</p>	<p>see [2] 10/12 40/4 seeking [2] 4/22 53/1 seemingly [1] 46/14 seems [5] 25/15 42/3 49/17 54/1 54/5 selective [1] 48/11 self [4] 36/15 36/16 36/18 36/20 self-insurance [1] 36/15 self-insured [1] 36/18 send [1] 17/15 sense [3] 21/23 33/13 39/15 separate [4] 34/17 36/3 36/3 36/19 separation [5] 28/5 32/7 35/14 35/16 52/17 serious [1] 40/9 serve [2] 54/3 54/4 service [2] 19/7 19/14 services [4] 13/19 39/1 39/16 39/23 set [2] 38/25 39/22 sets [1] 29/18 setting [1] 43/14 several [5] 11/6 25/22 37/20 46/7 50/10 share [1] 32/23 shared [1] 32/21 she [11] 35/7 35/8 35/9 35/9 35/10 35/11 35/16 35/20 35/23 35/24 35/24 she'd [2] 36/4 36/6 she's [2] 35/7 35/18 Sherbert [1] 9/17 short [1] 31/11 shorthand [3] 1/24 55/5 55/9 should [10] 19/9 19/11 24/10 24/11 33/15 35/24 45/10 46/12 51/13 54/8 shouldn't [1] 8/21 show [11] 10/4 13/23 15/7 15/9 20/7 21/9 21/9 21/20 40/25 44/12 48/7 showed [1] 40/8 showing [6] 12/25 15/10 15/15 16/3 44/1 50/10 shown [5] 16/6 44/11 49/16 49/21 50/13 shows [3] 14/19 15/5 21/14 side [1] 44/10 significant [4] 13/5 14/11 36/9 53/9 significantly [1] 50/17 similar [2] 42/9 45/24 similarly [3] 38/4 38/6 49/8 similarly-situated [2] 38/4 38/6 simple [1] 20/8 simply [2] 42/10 42/19 since [2] 14/11 47/7 sincerity [2] 25/20 31/20 site [2] 18/17 46/7 situate [1] 49/8 situated [2] 38/4 38/6 situation [1] 4/18 small [3] 28/13 28/17 49/4 smaller [1] 46/23 Smith [1] 10/19 so [62] Social [1] 22/13 society [5] 13/4 21/17 22/6 23/24 53/25 sole [3] 35/7 35/8 35/18 solely [1] 32/8 solicitation [1] 18/11 solicitor [1] 18/12 solicitors [1] 18/19 some [18] 5/13 7/9 7/12 10/6 16/12 17/7 25/19 28/13 31/21 32/6 32/22 37/20 37/21 40/23 42/2 49/18 50/8 52/24 somehow [3] 8/12 8/14 49/10 someone [1] 48/6 something [10] 9/19 9/22 19/4 19/5 31/22 35/23 45/24 47/1 50/20 53/14 sort [2] 29/15 32/5 specialized [1] 46/25 specific [1] 13/15</p>	<p>speech [2] 3/21 18/14 Spencer [3] 29/3 29/12 46/4 spending [1] 22/18 spends [2] 22/21 46/1 split [1] 45/23 squarely [1] 12/21 stage [1] 15/7 standard [1] 44/3 standards [2] 8/3 41/11 standing [3] 26/21 27/6 27/9 started [2] 31/4 32/6 state [3] 13/13 13/15 18/10 stated [2] 32/22 44/10 statement [3] 17/9 25/11 45/8 STATES [9] 1/1 1/11 4/9 9/10 9/11 10/9 10/15 21/25 55/3 status [4] 25/4 26/16 30/22 42/11 statute [2] 19/18 25/7 statutes [1] 46/25 statutory [1] 47/3 steps [1] 50/10 still [12] 14/20 15/18 16/6 16/20 21/16 24/16 30/1 36/18 36/19 41/12 49/4 49/9 stock [1] 35/8 stop [1] 22/18 Stormans [4] 6/21 26/24 47/24 52/17 strange [1] 19/4 Street [1] 1/14 strict [12] 8/2 8/3 8/20 18/15 19/22 19/23 19/25 41/9 43/17 48/7 48/10 48/18 strong [3] 35/21 40/19 53/19 strong-held [1] 53/19 strongly [1] 35/8 strongly-held [1] 35/8 structure [4] 11/4 12/6 12/11 30/25 subject [5] 14/7 14/21 18/15 23/7 32/18 submit [2] 12/15 50/21 subscribed [1] 55/10 subsidies [1] 20/16 subsidizing [1] 20/11 substances [1] 41/15 substantial [10] 4/17 10/3 13/1 15/5 24/16 32/1 32/2 32/14 34/16 41/8 substantially [1] 47/1 succeed [2] 8/20 11/1 success [3] 44/2 44/11 44/13 such [3] 34/11 43/6 43/13 suddenly [1] 48/3 sue [2] 26/23 27/1 sufficient [1] 10/18 suggest [1] 15/1 suggested [1] 25/23 suggesting [4] 19/8 19/10 20/19 43/3 Suite [1] 1/14 sunset [1] 15/22 support [4] 3/16 6/18 15/10 40/24 suppose [2] 16/2 22/13 Supreme [16] 6/22 8/24 9/8 9/21 13/10 15/3 15/8 16/24 18/6 18/10 18/14 24/3 46/3 47/14 47/19 52/14 sure [6] 22/15 37/8 39/9 44/13 52/1 52/5 surrounding [1] 54/7 system [4] 48/15 50/23 51/23 52/4</p>
<p>S</p> <p>safe [7] 4/20 5/3 5/11 6/5 6/11 17/22 17/24 said [34] 7/2 7/13 7/14 9/1 9/11 9/21 10/9 10/16 10/20 12/8 13/13 15/9 16/18 18/10 18/14 22/5 24/3 25/5 25/12 28/3 30/14 31/13 36/11 42/3 42/24 43/20 43/22 45/21 45/24 47/10 47/12 47/25 50/11 55/8 same [15] 8/6 8/17 16/9 20/17 21/6 21/8 27/4 28/22 32/15 35/21 37/25 42/15 53/21 54/3 54/9 satisfy [2] 16/24 48/9 say [31] 5/1 8/21 9/5 10/15 15/21 15/21 15/22 19/3 19/23 24/2 25/11 27/16 28/1 28/9 31/9 33/14 37/22 38/15 39/15 40/17 41/1 41/22 44/9 47/11 47/14 48/10 49/3 49/19 51/2 51/2 52/18 saying [14] 10/12 10/17 10/25 13/18 15/13 18/20 19/11 20/24 24/11 29/17 43/12 46/4 47/2 47/20 says [20] 7/14 8/11 8/11 9/4 12/12 15/14 15/17 16/25 18/7 20/1 21/2 28/8 46/24 47/6 47/7 47/8 49/2 49/10 49/17 51/15 scale [3] 19/6 20/11 22/20 scenario [1] 27/4 scenarios [1] 37/20 scheme [4] 39/18 43/4 43/14 43/15 schemes [1] 39/21 scope [3] 19/18 51/14 52/3 scrutiny [1] 7/23 scrutiny [19] 7/6 7/25 8/2 8/2 8/4 8/20 9/14 10/7 10/19 10/21 18/15 19/22 19/23 20/1 41/9 43/17 48/8 48/10 48/18 SEBELIUS [2] 1/5 3/4 second [2] 14/2 34/15 secondly [1] 52/10 secular [8] 25/3 31/15 31/18 32/16 33/5 33/23 34/2 48/3 Security [1] 22/13</p>	<p>showed [1] 40/8 showing [6] 12/25 15/10 15/15 16/3 44/1 50/10 shown [5] 16/6 44/11 49/16 49/21 50/13 shows [3] 14/19 15/5 21/14 side [1] 44/10 significant [4] 13/5 14/11 36/9 53/9 significantly [1] 50/17 similar [2] 42/9 45/24 similarly [3] 38/4 38/6 49/8 similarly-situated [2] 38/4 38/6 simple [1] 20/8 simply [2] 42/10 42/19 since [2] 14/11 47/7 sincerity [2] 25/20 31/20 site [2] 18/17 46/7 situate [1] 49/8 situated [2] 38/4 38/6 situation [1] 4/18 small [3] 28/13 28/17 49/4 smaller [1] 46/23 Smith [1] 10/19 so [62] Social [1] 22/13 society [5] 13/4 21/17 22/6 23/24 53/25 sole [3] 35/7 35/8 35/18 solely [1] 32/8 solicitation [1] 18/11 solicitor [1] 18/12 solicitors [1] 18/19 some [18] 5/13 7/9 7/12 10/6 16/12 17/7 25/19 28/13 31/21 32/6 32/22 37/20 37/21 40/23 42/2 49/18 50/8 52/24 somehow [3] 8/12 8/14 49/10 someone [1] 48/6 something [10] 9/19 9/22 19/4 19/5 31/22 35/23 45/24 47/1 50/20 53/14 sort [2] 29/15 32/5 specialized [1] 46/25 specific [1] 13/15</p>	<p>T</p> <p>table [3] 3/7 3/14 48/25 Tabor [2] 24/4 47/14 tailored [1] 18/4 take [7] 17/4 17/9 28/4 45/10 46/13 46/14 54/5 taken [1] 28/14 takes [2] 11/19 22/9 taking [3] 10/11 35/1 46/15 talking [6] 11/7 14/14 24/8 24/13 41/20</p>

T
talking... [1] 47/16
talks [1] 47/1
tax [3] 9/12 10/10 10/10
taxation [1] 23/8
Taylor [1] 3/7
tells [2] 7/19 7/20
temporary [3] 5/2 5/4 5/5
ten [2] 16/4 16/9
tenet [1] 53/13
Tenth [1] 44/6
term [1] 51/8
test [22] 8/14 8/20 8/22 10/21 16/25
18/4 18/6 25/1 26/6 26/7 26/14 26/16
26/19 29/13 29/21 29/22 29/23 29/25
30/8 30/9 30/12 45/4
testimony [1] 55/5
tests [8] 25/22 25/23 30/2 30/4 30/6
46/11 46/22 47/3
than [14] 5/12 11/2 11/17 19/23 25/19
31/21 33/19 34/13 35/2 42/6 44/16
46/23 47/9 54/8
Thank [9] 4/6 22/24 23/2 45/17 45/18
45/20 54/15 54/16 54/17
that [404]
that's [31] 4/4 5/17 8/20 10/14 10/19
15/2 19/4 22/9 27/20 27/21 27/22 28/19
30/25 32/11 33/14 39/5 39/10 46/9 47/9
47/9 47/10 47/18 48/24 49/20 50/4
50/10 50/23 51/15 53/18 53/22 53/23
the Kaemmerling [1] 18/6
their [28] 5/25 9/19 14/24 17/15 23/21
23/22 25/20 27/10 27/15 28/14 28/16
31/20 32/23 33/12 33/14 33/16 33/18
34/6 34/18 36/11 36/12 37/2 43/20 45/7
46/16 53/8 53/23 53/24
them [11] 3/17 9/20 26/9 32/2 33/12
34/25 38/18 44/14 49/25 50/22 52/21
theme [1] 9/25
then [12] 10/4 11/19 12/16 15/8 17/25
19/19 27/18 34/15 39/11 45/12 51/1
52/11
theoretical [1] 21/20
theoretically [3] 21/12 22/10 33/20
there [44] 3/15 3/17 6/17 9/15 11/7
13/12 14/20 15/1 15/17 16/2 16/3 17/1
18/17 18/18 24/16 25/21 26/6 27/7 28/3
28/4 28/5 32/4 32/6 34/6 34/10 35/14
37/13 37/19 38/7 40/13 40/18 40/19
40/24 41/4 42/3 47/19 48/25 49/18
50/15 50/16 50/20 50/21 52/24 53/6
there's [18] 7/17 9/6 9/24 15/22 17/24
21/15 26/1 26/6 27/9 40/23 41/15 45/20
46/5 48/16 49/25 50/3 52/18 53/20
therefore [5] 7/4 27/17 33/15 46/10
51/24
thereon [1] 10/3
Thereupon [1] 54/18
these [31] 4/22 5/14 10/11 10/25 12/4
13/24 13/25 18/2 24/10 32/2 32/8 33/11
35/11 35/21 37/11 39/6 39/7 41/14
41/24 43/24 47/3 47/5 47/24 48/2 48/8
48/9 49/25 50/16 50/24 51/19 52/18
they [77]
they'd [2] 34/3 50/25
they're [11] 9/3 16/8 17/4 17/7 34/20
40/15 46/21 46/22 51/3 51/10 51/10
they've [1] 50/13
thing [4] 18/25 27/4 32/15 36/14
things [16] 13/21 13/22 16/12 16/20
16/22 18/2 18/22 18/22 22/3 31/7 43/19
49/25 50/2 50/8 50/24 54/9
think [98]
thinks [3] 19/24 19/25 52/11

third [8] 26/19 27/8 29/25 30/5 45/12
45/12 46/6 46/7
third-party [1] 27/8
thirds [6] 8/16 14/5 15/18 16/19 22/4
48/13
this [117]
Thomas [1] 9/16
thoroughly [4] 11/15 11/21 17/10 17/17
those [35] 5/1 6/25 7/5 7/8 8/3 9/17 11/1
11/3 13/22 17/21 17/23 18/22 20/17
23/9 25/8 27/1 27/12 28/9 30/2 30/4
33/3 34/7 43/25 44/1 44/1 44/14 44/15
44/16 49/4 51/8 51/9 51/14 51/25 53/7
53/16
though [2] 33/22 39/19
thousands [7] 4/20 4/23 5/13 5/22 6/15
17/21 17/23
threaten [1] 48/15
three [4] 13/9 33/11 39/6 45/23
three-way [1] 45/23
through [11] 5/4 5/7 9/2 9/25 11/6 14/6
20/16 20/17 21/17 51/20 52/7
throughout [1] 13/12
ties [1] 11/18
time [4] 3/23 4/4 15/1 37/11
timely [1] 5/9
tiny [1] 51/19
Title [21] 19/6 19/6 25/23 25/24 26/1
26/4 26/6 26/8 26/18 29/22 29/25 30/12
30/13 45/1 45/14 45/16 46/25 47/8
47/11 47/22 48/8
today [2] 3/24 5/5
together [1] 31/7
told [1] 9/18
too [1] 53/4
top [1] 22/2
total [1] 52/9
totally [3] 33/14 35/23 53/16
tough [1] 54/4
Townley [4] 6/21 26/25 47/24 52/17
transcribed [1] 55/9
transcript [3] 1/9 1/24 55/8
transcription [1] 1/25
tread [1] 53/16
treated [2] 32/15 54/8
treatment [1] 19/19
trickle [2] 15/15 15/16
tried [1] 25/21
trillion [1] 52/10
trips [1] 17/15
trough [1] 19/16
true [7] 6/5 16/5 18/21 22/10 32/12
46/18 50/23
truly [1] 36/3
trust [1] 32/25
trusts [1] 11/6
try [2] 53/3 54/14
trying [1] 11/2
turns [1] 8/11
two [13] 4/7 8/16 14/5 15/18 16/19 22/4
28/24 32/5 34/10 43/23 44/16 46/4
48/13
two-thirds [6] 8/16 14/5 15/18 16/19
22/4 48/13
twofold [1] 52/6
TYNDALE [33] 1/3 3/3 3/8 5/17 7/10
7/20 8/12 11/13 11/24 12/1 13/17 13/18
13/24 13/25 17/12 20/15 21/6 22/7
22/12 23/20 25/1 30/3 31/24 32/7 32/8
36/11 38/23 38/24 39/12 39/13 48/14
49/9 49/11
Tyndale's [2] 32/10 32/22
type [5] 19/14 35/21 38/10 39/14 40/24
types [4] 28/11 33/10 33/11 35/11

U
U.S [4] 1/17 1/21 46/3 52/9
ultimately [2] 11/1 41/25
un [1] 39/18
un-administrable [1] 39/18
uncertain [1] 17/19
uncertainty [1] 15/11
unclear [2] 17/16 44/9
under [32] 3/24 4/9 7/22 8/20 13/10
13/11 15/19 16/12 16/20 18/6 18/6 22/4
24/19 25/2 25/23 26/3 26/14 26/15
26/18 29/21 29/22 30/2 30/3 30/5 31/9
31/16 33/3 42/22 43/17 45/2 45/14
45/16
undermines [1] 5/23
undermining [1] 6/13
understand [7] 11/6 26/8 31/21 36/15
39/5 44/25 51/21
unemployment [1] 9/20
unintended [6] 40/8 40/14 40/18 40/20
41/5 50/6
UNION [1] 1/6
UNITED [11] 1/1 1/11 4/9 9/10 9/11 10/9
10/15 21/25 23/15 24/3 55/3
universal [3] 21/16 40/13 40/17
University [3] 29/4 29/24 30/14
unless [2] 22/6 42/22
unquote [1] 47/20
unsupported [1] 9/1
until [1] 23/1
unusual [1] 19/4
up [7] 5/12 6/24 16/15 23/12 23/19 36/4
43/14
upheld [1] 10/10
upon [3] 3/19 14/15 54/1
urge [1] 45/9
us [1] 5/24
use [5] 11/2 28/15 38/19 41/14 53/23
used [2] 29/6 53/21
useful [3] 29/13 30/13 42/2
uses [2] 28/23 52/8
using [1] 28/22

V
vacation [1] 54/13
variety [2] 46/10 46/22
various [1] 53/19
Verner [1] 9/17
versus [8] 3/3 9/10 9/11 9/16 9/17 10/9
10/15 12/8
very [17] 12/18 15/4 15/24 18/24 19/16
20/8 22/20 22/25 28/17 30/25 35/20
38/11 44/16 44/18 51/19 53/3 54/12
viability [2] 51/24 51/25
viable [3] 20/5 42/21 51/15
view [2] 8/25 46/9
VII [19] 25/23 25/24 26/1 26/4 26/6 26/8
26/18 29/22 29/25 30/12 30/13 45/1
45/14 45/16 46/25 47/8 47/11 47/22
48/8
violate [5] 7/20 18/9 30/16 33/15 35/12
violated [1] 34/20
violates [1] 33/23
voluntarily [3] 4/19 4/23 5/21

W
WALTON [1] 1/10
want [7] 3/23 9/22 13/14 13/20 16/1
25/11 49/25
wanted [1] 9/20
wants [3] 7/24 19/11 48/12
was [29] 4/15 7/9 9/1 9/10 9/12 9/13
9/14 10/20 11/7 17/1 18/10 18/25 21/20
21/21 21/24 24/16 24/20 25/14 30/16

W
was... [10] 30/18 30/19 31/12 33/5 35/11 35/20 37/19 47/16 50/13 53/14
Washington [4] 1/5 1/14 1/18 1/22
wasn't [2] 10/15 10/24
way [14] 18/8 18/16 19/3 21/15 21/17 28/22 41/15 42/17 44/19 45/23 45/23 45/25 48/15 53/21
ways [3] 18/22 23/21 36/12
we [71]
we'd [2] 21/15 27/18
we're [10] 4/22 5/5 7/22 14/14 19/3 20/24 21/14 45/14 47/3 50/22
we've [12] 7/10 7/21 21/18 25/5 25/11 25/12 25/21 26/19 27/7 28/3 30/13 36/11
web [2] 18/17 49/6
week [1] 42/2
weekend [1] 54/13
weekly [1] 17/14
weighty [1] 52/24
well [62]
well-being [3] 23/10 39/2 39/23
went [1] 37/22
were [25] 4/16 9/17 9/17 9/19 10/17 11/1 16/2 16/5 17/2 17/13 20/20 21/23 24/7 24/13 27/24 27/25 32/12 32/13 32/15 33/6 40/15 41/8 41/19 44/16 54/11
weren't [2] 9/18 24/22
Westlaw [1] 48/22
what [74]
what's [9] 5/8 12/6 12/10 12/12 12/12 37/18 39/5 50/18 54/1
Whatever [1] 21/8
when [12] 5/20 6/14 9/1 12/9 16/8 19/2 23/5 24/25 28/3 29/19 34/16 49/12
where [13] 9/17 12/8 25/16 26/7 30/6 30/15 36/13 37/8 38/11 45/15 45/21 46/17 48/21
Whereas [2] 11/6 11/8
whereof [1] 55/10
whether [17] 7/14 21/6 21/7 25/1 27/24 29/7 30/16 30/19 32/20 32/21 35/14 37/6 38/20 42/25 44/20 46/1 52/12
which [21] 4/21 6/3 7/10 11/9 14/17 15/17 15/24 16/5 26/19 28/15 30/15 36/19 39/16 39/17 41/25 44/6 47/1 47/4 49/17 50/7 53/2
while [3] 31/8 42/5 53/19
who [18] 12/5 14/15 17/3 18/11 18/18 21/4 21/13 37/3 38/10 40/14 48/12 49/23 49/24 51/4 52/4 53/5 53/7 53/18
who's [1] 12/11
whole [1] 10/17
why [9] 8/20 11/12 13/1 13/7 19/19 25/6 27/22 35/24 42/14
wide [1] 20/11
wider [1] 19/18
wife [1] 35/6
will [20] 3/18 5/1 14/15 14/20 14/23 15/1 15/15 15/15 15/17 16/4 22/6 29/14 37/16 48/2 48/3 48/20 49/7 49/22 50/1 51/3
win [2] 48/7 48/16
within [2] 12/21 17/20
without [5] 5/14 12/19 42/9 42/15 43/11
withstand [1] 8/1
witness [1] 55/10
women [10] 19/14 21/5 21/21 39/2 39/8 39/23 40/1 49/12 49/23 50/2
women's [2] 19/15 49/15
won't [1] 49/2
words [5] 4/22 30/22 49/8 49/23 50/6

work [2] 17/3 51/4
working [2] 17/16 54/14
worse [1] 40/20
worst [1] 41/5
would [65]
would not [1] 26/9
wouldn't [5] 23/20 24/14 26/3 29/25 40/17
Writ [1] 48/8
wrong [1] 44/25

X
XIX [1] 19/6

Y
Yeah [3] 22/1 28/18 40/23
year [7] 5/12 5/12 6/16 16/4 16/9 17/12 24/4
years [2] 12/19 16/5
yes [18] 4/15 5/3 6/20 9/21 10/16 10/17 26/24 28/2 30/10 31/12 32/4 33/1 33/17 36/17 40/3 40/7 43/21 48/1
yet [5] 5/15 8/11 8/16 26/14 49/10
you [58]
you're [8] 9/21 9/22 9/23 16/19 19/8 20/19 26/13 29/17
you've [4] 11/7 11/8 18/3 46/4
your [88]
yourselves [1] 3/5