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Pages: 1-60
Exhibits: 0

NORFOLK, SS. COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT Department
OF THE TRIAL COURT

CLAIRE FITZMAURICE ET AL *
Plaintiff *

v. * DOCKET NUMBER 2582CV00576

CITY OF QUINCY ET AL *
Defendant *

HEARING
BEFORE THE HONORABLE WILLIAM F. SULLIVAN

APPEARANCES:

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Dedham, Massachusetts
Courtroom 20
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I N D E X**WITNESS****DIRECT****CROSS****REDIRECT****RECROSS**

None - Hearing

P R O C E E D I N G S

(Court called to order 9:58:48 a.m.)

COURT OFFICER: Court, all rise.

Make sure all cell phones are off. You may be seated.

Court is in session.

THE CLERK: Calling Civil Action 2025-576 Fitzmaurice et al v. City of Quincy. Would the attorneys identify yourself for the Court and record?

MS. DAVIDSON: Good morning, Your Honor. Rachel Davidson for Plaintiffs and I'm joined by my colleague Suzanne Schlossberg.

THE COURT: Hi, Counsel.

MS. SCHLOSSBERG: Good morning, Your Honor.

THE COURT: Good morning.

MR. TIMMINS: Your Honor, good morning. Attorney James Timmins for the City of Quincy and Thomas Koch.

THE COURT: All right. Counsel, good morning.

MR. GILLERAN: Good morning, Your Honor. Michael Gilleran for the Quincy Firefighters and Quincy Police Unions.

THE COURT: All right. Attorney Gilleran, good morning. And I want to thank everybody who's here. Before we go in there, I'm going to log on hopefully to the Zoom call as well. (Discussion off the record.)

THE COURT: I'm having a problem logging on, but I think hopefully the people who are logged on can hear me.

1 So this is a matter I just kind of wanted to go over with
2 everybody. What we have or what I have in front of me is two
3 Motions basically. One is the Motion for the Preliminary
4 Injunction, and the second is the Motion to Dismiss filed by the
5 City of Quincy. And so my thought would be to go forward first
6 on the Preliminary Injunction arguments, and then hear from the
7 Plaintiff, hear from the Defendant, hear from the Unions, and
8 then go on to the arguments for the Motion to Dismiss,
9 understanding that a lot of the arguments for the Motions to
10 Dismiss, especially in regards to the likelihood of success,
11 will be the same as those that are raised during the Preliminary
12 Injunction, so the parties can kind of just adopt earlier
13 arguments, things like that.

14 So any questions in regards to proceeding in that manner?
15 Plaintiff?

16 MS. DAVIDSON: No, Your Honor.

17 THE COURT: All right. Defendants?

18 MR. TIMMINS: No, Your Honor. Thank you.

19 MR. GILLERAN: No, Your Honor.

20 THE COURT: Okay. All right. So why don't we do this.
21 Keeping in mind that I have had the opportunity to review the
22 pleadings on this, the Affidavits, the Memos, and so why don't I
23 hear first from the Plaintiffs?

24 MS. DAVIDSON: Good morning again, Your Honor. With the
25 Court's permission, I have some very brief remarks and then I

1 would be happy to take any questions Your Honor may have.

2 THE COURT: Sure.

3 MS. DAVIDSON: Quincy's new public safety headquarters is
4 located on a Central Street, and it will be a place where
5 residents come for many essential services, including in times
6 of crisis, such as when they need to report a crime. All
7 residents of Quincy should feel equally protected when they are
8 seeking help at this building. But Defendants' plan to spend
9 nearly \$1 million in taxpayer funds to affix two 10 foot tall
10 statues of Catholic Saints to the front of this building conveys
11 a clear message that there is a favored and majority religion of
12 Quincy. It conveys to members of other faiths or no faith that
13 they are outsiders and not full members of the political
14 community.

15 Article 3 of the Declaration of Rights prohibits exactly
16 this kind of religious favoritism. The SJC exercised its
17 independent judgment in setting forth the Colo v. Treasurer
18 General factors for consideration, and Colo is the proper
19 inquiry in this -- in this case. Plaintiffs are likely to
20 succeed under Colo because the statues are freighted with
21 religious symbolism characteristic of Catholic iconography.
22 Additionally, St. Michael the Archangel and St. Florian's
23 importance to Police and Fire stems from the fact that they are
24 Patron Saints of these communities and the belief that they
25 provide comfort and protection through prayer. This is amply

1 illustrated by Defendants' Exhibits and Amicis Affidavits.
2 Defendants asked this Court to close its eyes to the plainly
3 religious nature of these statues. Amici similarly suggests
4 that there are, quote, no religious symbols whatsoever, end
5 quote, in the image of a winged angel stepping on the neck of a
6 demon. But the Court need not close its eyes nor abandon common
7 sense when applying the Constitution in this case.

8 Finally, the statues are already indisputably divisive in
9 the Quincy community. As one City councilor observed, quote,
10 the statues are clearly contentious for everyone. Article 3 was
11 amended to prevent exactly this type of division in the
12 Commonwealth. It was amended to ensure the equal protection of
13 residents of all religious beliefs. For this and other reasons,
14 Plaintiffs not only easily clear the low bar necessary to
15 survive a Motion to Dismiss, but are also likely to succeed on
16 the merits of their claim. A Preliminary Injunction preventing
17 Defendants from installing the statues is necessary to preserve
18 the status quo and prevent the irreparable Constitutional harm
19 that would be caused to Plaintiffs and others who will be forced
20 to confront these statues when seeking essential services at the
21 public safety headquarters.

22 And with that, Your Honor, I welcome any questions you may
23 have.

24 THE COURT: All right. Counsel, I guess how would you
25 respond to the Defendants' position that -- that a different

1 test is to be applied rather than Colo? So the -- and I'm going
2 to ask the same of the Defendants. What test do you suggest I
3 use in arriving at this decision, and similar why not adopt the
4 test that the other side is requesting?

5 MS. DAVIDSON: Your Honor, I think the most straightforward
6 answer is that Colo v. Treasurer General is SJC precedent. The
7 SJC was exec -- exercising its independent judgment when it
8 adopted that -- the Lemon test and added to the Lemon test when
9 it was determining what analysis should accompany Article 3.
10 And so Your Honor is bound by SJC precedent unless and until the
11 SJC revisits that precedent.

12 And I think actually, Your Honor, Defendant submitted
13 Raftery, which is the new SJC opinion that was recently
14 published. And Raftery only underscores that the SJC is free to
15 and -- and does sometimes look to Supreme Court precedent as
16 persuasive. But the SJC is not bound to follow Supreme Court
17 precedent everywhere it may lead in the future. And it made
18 clear in Colo, it said the Lemon factors are appropriate for
19 Article 3. It certainly didn't say, and by the way, anything
20 down the road that the Supreme Court may do in 50 years is going
21 to be what we are following. And so this is precedent that --
22 that this Court is bound by unless and until the SJC revisits
23 it.

24 And for that reason, we would suggest that that -- that
25 Your Honor's analysis ends there. I can also speak to why we do

1 not think that the SJC would adopt a historical traditions
2 approach if it were to revisit its precedent. I think that's
3 for a few reasons. For one, we often see that the SJC
4 interprets our Constitution more broadly, provides broader
5 protections than the Supreme Court. And recently in Cleveland
6 v. Attorney General, which is a case decided just a few years
7 ago, the SJC explicitly rejected the Supreme Court's new turn to
8 the historical approach to, in that case, the Substantive Due
9 Process Clause. And so the SJC rejected that sort of narrow
10 approach. I think my brother Counsel is going to be addressing
11 Raftery, and I -- I understand that he takes it to indicate that
12 SJC would take a historical approach here. I would suggest in
13 terms of Raftery, Raftery is an Article 26 case. It's a very
14 different provision of our Constitution. It -- it is the, you
15 know, 8th Amendment analog. And I think that case actually
16 illustrates how intensive and specific to the Constitutional
17 provision and even the clause of the Constitutional provision
18 that the SJC's analysis would be. And so in that case, there's
19 a lot of similarities in the text and the structure of Article
20 26 and the 8th Amendment. There was very similar history and
21 purpose to those amendments. And in this case here, none of
22 that is the case here, frankly. The text of Article 3 and the
23 text of the Establishment Clause are different, completely
24 different. Article 3 speaks to equal protection and not
25 subordinating any -- any religious sects, whereas the

1 Establishment Clause speaks to the Government may not establish
2 any religion. So the text is different, the structure is
3 different, and of course, very importantly, in this case, the
4 history is different because Article 3 was amended in 1833, and
5 after many decades of our State's -- our Commonwealth's failed
6 experiment with religious establishment.

7 And so I do not believe that Your Honor even needs to reach
8 the question of what new test, if any, the SJC would adopt. But
9 if you were to reach that question, we do not think that
10 historical practices is appropriate here. And the SJC has
11 spoken frequently to the need for the Law to take into account,
12 you know, the changes that occur in our society. And I think
13 the SJC would absolutely take into account the fact that
14 Massachusetts is an increasingly religiously pluralistic society
15 and -- and take into our contemporary -- take into account the
16 contemporary nature of this issue.

17 THE COURT: What if I disagree with you in regards to what
18 test? Would you still argue that you would have a likelihood of
19 success under that test?

20 MS. DAVIDSON: Absolutely, Your Honor. The Defendants, as
21 you know, submitted many examples of other displays both in the
22 Commonwealth and around the country. Certainly under a
23 historical practices test, I would think that Your Honor would
24 be looking to understandings around the 1830s and in the
25 Commonwealth, not around the Country. So looking at the

1 examples that Defendants have provided, I think they actually
2 illustrate quite well that there has not been a historical
3 practice of placing religious figures that are primarily
4 associated with one religion on Government buildings.

5 So we have many examples of displays that are in public
6 parks, where the statues are often -- often privately donated.
7 They're -- they're far away from Government buildings. They
8 don't associate the Government in a direct manner with a
9 particular sect or a particular religion. So that's one bucket
10 of these examples that have been given.

11 Another bucket is that there are many examples of figures
12 who are important historically to Massachusetts and who also
13 happen to be religious. And -- and their religion might be an
14 important part of their identity, but they are being displayed
15 because of their relation to the very important events in our
16 Commonwealth and not to promote whichever religion they're
17 associated with. So that's another reason why there is not a
18 historical practice of these kinds of statues, which will be
19 placed directly on the entrance of this public safety building.

20 And -- and so we can talk about, you know, some of the
21 other examples if you'd like, Your Honor, but I would submit
22 that, you know, if the Historical Practice Test were to be
23 applied, we would still be likely to succeed.

24 THE COURT: Well, so the argument from -- from the
25 Defendant seems to be that these are there for a secular

1 purpose. They just happen to be Catholic Saints. And what --
2 what's the argument -- and I haven't been able to find any cases
3 as to where I set that line. Is it 51% secular, 49% religious,
4 or -- or do you know what I'm saying? Where -- where am I to
5 draw the line if something has both religious significance and
6 secular significance?

7 MS. DAVIDSON: I would say in this case, Your Honor, while
8 I certainly understand thinking about this question, and I will
9 address it, I do want to say first that it's true that
10 Defendants have submitted Mayor Koch's Affidavit that says he
11 chose these not because of religious reasons. But I think that
12 the Court should and must consider that Defendants submitted
13 Exhibits to explain who these figures are and why they're
14 important to Police and Fire, and that is the Mayor's reason.
15 He said they're important to Police and Fire. That's why I
16 chose them.

17 Defendants specifically submitted 10 Exhibits speaking to
18 the -- these figures' identity, why they're important in these
19 communities, and that's Defendants' Exhibits 4 through 12 and
20 15. And of those 10 Exhibits, eight of those Exhibits explain
21 the importance of these figures by explicit reference to
22 religion. And so many of them speak about the fact that first
23 responders pray to Saints Michael and Florian for protection and
24 guidance. That's Exhibits 6 through 8, 10, and 15. Several of
25 them refer to these individuals as Patron Saints. That's

1 Exhibits 4, 7, 9, and 15. And so the Court should take into
2 consideration that even Defendants cannot explain who these
3 individuals are and why they are important without extensive
4 reference to religion. And so I actually don't think this case
5 presents, you know, a difficult case that's on the line because
6 the Defendants, in their own words and in their own Exhibits,
7 are acknowledging that these figures are important because of
8 their religion. And I don't think that the religious nature of
9 these figures can be divorced from their importance.

10 THE COURT: Let me ask you this, and this -- you may not be
11 aware of this, the reason I -- I was thinking of this is
12 September 11th came -- came by. On September 11th, a Franciscan
13 Priest from St. Bonaventure University, obviously Catholic, was
14 the Firefighters Chaplain, goes to the towers, and is killed.
15 There has been significant statues and tributes paid to Father
16 Michael Judge. How would -- how would I deal with something
17 like that? That's -- that's kind of the -- the whole genesis --
18 careful using that, the whole origin of that question because
19 there's an individual, very religious significance as the
20 Chaplain for the Fire Department, but also a secular reason why
21 the -- the Firefighters in New York just love this guy, you
22 know, and they want to honor him because of his courage. Is --
23 is there -- is that -- how would I deal with something like
24 that? Or is that the -- a different analysis than what you
25 would ask me to give these statues?

1 MS. DAVIDSON: The analysis is always going to be somewhat
2 fact intensive. I would say with this particular Priest, you're
3 looking at someone who is in -- you know, in this community and
4 obviously was part of a, you know, absolutely traumatic and
5 transformational event for the Firefighting community. And so
6 in that case, you know, if there was to be a statue of that
7 individual in New York where this -- this Priest, you know, did
8 his work in the community, I think that would be a different
9 analysis.

10 THE COURT: All right. Let me ask you -- I won't say --
11 maybe not the final question, but another question. Do you look
12 at these two statues as what I would say a package deal? Are
13 they -- is it all or nothing? Is there an analysis that's
14 different for Florian as opposed to Michael the Archangel?

15 MS. DAVIDSON: I think they share a lot of commonalities in
16 the sense that they both are depicted, again, in the
17 characteristic Catholic iconography that they're both typically
18 depicted in, in religious art. And so, as the Berne Declaration
19 explains, in Catholic iconography, Saints typically are
20 accompanied by symbols and motifs that, you know, represent
21 their martyrdom or miracles that are attributed to them.

22 THE COURT: Right.

23 MS. DAVIDSON: So they both have this religious symbolism
24 that is -- it is quite specific to Catholicism. Florian has his
25 single bucket dowsing out a burning building, which refers to

1 the miracle that he -- is attributed to him. And St. Michael
2 has his angel's wings. He has the demon. And so they both have
3 overtly religious symbolism. And they both -- again referring
4 to my previous point, Defendants explain both of them with
5 reference to religion. And I don't think that either of them
6 can be divorced from that predominant religious nature that they
7 have.

8 THE COURT: Is one more demonstrative of the religious --
9 because I'm just saying, if -- if -- if you look at the statue
10 specifically of Florian, and he is a historical figure; right?
11 He was born, my understanding, is around 250 AD and was involved
12 in creating a brigade of Roman soldiers who put Fires out. And
13 if you look at that statue, as I looked at, I -- I didn't really
14 see any overt -- I guess I didn't know his whole history, of an
15 overt sign of the religious significance. I can't say the same
16 thing for the other statue. The other statue has wings. I
17 mean, and it's clearly, clearly a religious statue of -- I mean
18 of an angel. I mean and I think -- and I think anybody walking
19 by, knowing the -- the Catholic history, would understand that
20 person is an angel or depicts an angel, and not so much the same
21 with Florian. So that's why I was asking if there -- are
22 different gradients, I guess, of what you would say a violation
23 of the Constitution?

24 MS. DAVIDSON: I think Your Honor is right that the -- the
25 angel's wings and the demon are especially overt. But I would

1 say with regard to Florian that he only has his -- he's only
2 known because of his role in the Catholic Church, with all due
3 respect -- you know, his works, Firefighting, which I'm sure
4 were impressive. The reason he is known today and the reason
5 he's important to that community is because of the powers of
6 intercession, et cetera.

7 THE COURT: Okay. All right. Anything else you wanted to
8 -- to add?

9 MS. DAVIDSON: I would just add, Your Honor, I know we
10 state in our papers, but I just wanted to stress that the SJC
11 notes that when the Court is applying the Colo framework, these
12 factors are not mechanistic tests. They're guidelines for Your
13 Honor's analysis. And I do want to stress that although we have
14 a very strong case, in my opinion, on each of the prongs,
15 Plaintiffs do not need to win on all the prongs. A failure of
16 the Government on any of them is sufficient for an Article 3
17 violation. So I just wanted to bring that to your
18 consideration. And I think I could address any other questions
19 you have during the Motion to Dismiss as well --

20 THE COURT: All right.

21 MS. DAVIDSON: -- if you'd like.

22 THE COURT: All right. Counsel, thank you.

23 MS. DAVIDSON: Thank you, Your Honor.

24 THE COURT: All right. Attorney Timmins.

25 MR. TIMMINS: Thank you, Your Honor.

1 (Discussion off the record.)

2 MR. TIMMINS: Your Honor, what I plan on doing this morning
3 is we've presented you with a really thorny issue here, and I'm
4 hoping to make things a little more direct and simple by
5 focusing on some specific factors that relate to the Injunction,
6 by reviewing the Complaint and some significant deficiencies I
7 see with the Complaint and -- and we'll ask the Court to
8 consider and -- and then reviewing the Preliminary Injunction
9 arguments. I'll also talk briefly with you about Raftery and
10 Colo.

11 So, beginning with the Complaint, Your Honor, the first
12 significant issue is that it is not a Verified Complaint. There
13 is nothing in the record before you that is signed under oath.
14 There's not -- there's nothing beyond allegations, suggestions,
15 implications, and this Court is being asked to enter an
16 Injunction with that as the record, the foundation.

17 In addition, the introductory paragraph of the Complaint
18 reads that the Plaintiffs are bringing this action to ensure
19 that -- to protect their rights under the Massachusetts
20 Constitution and ensure that their Government respects the
21 community's rich religious pluralism.

22 Well, if that's the objective, Your Honor, that's how I got
23 off the trail onto standing and so focused on it, because I've
24 cited Case Law in my Memo, and the Courts reviewed it, that
25 individuals do not have a right to bring an action to stop a

1 Municipal Government in the manner that is -- they're attempting
2 to do here. That's that Amory case. And there are others that
3 flow from it that are cited in the Memo.

4 In this particular instance, what the individuals are
5 trying to do collectively is stop what they claim to be a -- an
6 illegal expenditure of money. They don't specifically say that,
7 however, anywhere in the Complaint. And, Your Honor, Chapter 42
8 -- get the numbers right. I'm off to a bad start.

9 Chapter 40, Section 53, the 10 Taxpayer Statute. It's very
10 specific. And the -- the Complaint begins with describing each
11 of the Plaintiffs and their status as taxpayers. So one would
12 infer from that that this is a 10 Taxpayer Statute. But then
13 you look at the opening paragraph of the Complaint and you look
14 at the relief sought, and you look at Count One of the
15 Complaint, and nowhere does it specifically say that they're
16 trying to stop any illegal expenditure of money by the
17 Government. The discussion and the Complaint flows toward
18 Article 3. But again, Count One, violation of Article 3,
19 paragraph 58, that's the only time that Article 3 is mentioned.
20 And the -- the issue is Article 3 was, as -- as the Court
21 understands, because you've read the paperwork, Massachusetts
22 was the last State in the Commonwealth -- last Commonwealth in
23 the Republic to continue to pay support private religion.
24 That's -- that was written into our Constitution and our
25 Declaration of Rights that we supported religion because they

1 regarded religious faith as so important back when Article 3 was
2 first written.

3 Then in 1833, after what both parties have conceded were
4 years of tumult and -- and -- and discord, that provision was
5 expunged from Article 3. Article 3 is about the
6 disestablishment of religion and it addresses sex and societies.
7 It doesn't address individual rights whatsoever. It says that
8 we're not going to allow Government to pay in support of any
9 particular religion anymore. That's going to stop. And no
10 sector society is to be subordinated.

11 Well, I regrettably have spent a lot of time trying to
12 figure out what subordinated means in that context. And then I
13 come back to the point that it's sex or societies that are not
14 to be subordinated. And our ten Plaintiffs are all individuals.
15 They're members of different religious societies who have come
16 together to challenge an expenditure. But they're cloaking
17 themselves in Article 3, it seems, because there's nothing
18 specific in the Complaint beyond paragraph 58, they're cloaking
19 themselves in a provision that protects sex and societies, not
20 individuals. So that's -- that's another big problem here.

21 The Complaint itself outlines in paragraphs 20 and 23 the
22 appropriation process that occurred when the funding was being
23 brought forth for this project. It extended from 2017 to 2022
24 for public meetings. And this is all set out in the Plaintiff's
25 Complaint. So they outline how this project was funded, and the

1 funding is public funding for a public building. There's no
2 religious aspect whatsoever. Not only that, but it's a public
3 building to house Police and Fire.

4 Now, one of the Colo factors, Your Honor, and I may repeat
5 myself later, but one of the Colo factors that was significant
6 was that the Court found that the Chaplains, who were conducting
7 an introductory prayer at the legislative sessions, were
8 offering that prayer to legislators who the SJC described as
9 mature individuals who clearly were not going to be influenced
10 by the prayer. The -- the ultimate finding that this was
11 primarily sectarian was it was to help them focus and inspire
12 them to -- to conduct their work. And there was no concern that
13 they would be influenced. And so, you know, inferentially, the
14 Court saying, so this wasn't really an attempt to influence or
15 promote religion. It was focused on that sectarian,
16 inspirational prayer to begin.

17 Well, that's precisely what's being talked about by the
18 City in regard to the statues that are being placed on the
19 building. I said at our last hearing, Your Honor, I kind of
20 bridle every time I hear the term Catholic Saints, statues of
21 Catholic Saints. That was first portrayed in the Patriot Ledger
22 story. It has been picked up in the Complaint. I'm sure the
23 Court noticed in reviewing the Complaint, it's a very
24 interesting document because I've never encountered a Complaint
25 before that was so heavily annotated with references to

1 newspaper stories. The Patriot Ledger is the primary source of
2 what's in the Complaint, which is probably why it's not a
3 Verified Complaint. And it is the Patriot Ledger and other
4 individuals have called these Catholic Saints. I think it's --
5 your questions alluded to the fact that you understand this key
6 issue.

7 Your Honor, if we were just picking Catholic Saints in
8 order to elevate the Catholic faith and show everybody coming by
9 Sea Street, we're Catholic and Quincy, we probably would have
10 gone with St. Peter and St. Paul because they're the two big
11 dogs in our faith. Hypothetically, if we wanted it to be more
12 well recognized, maybe it would have been St. Patrick and St.
13 Francis. I mean, it's not a coincidence that it is the Patrons
14 of Police and Fire that are going on the building. And more
15 than not a coincidence, it is why it's happening.

16 THE COURT: But who named them the Patrons?

17 MR. TIMMINS: Do you mind --

18 THE COURT: It was the Catholic Church; right?

19 MR. TIMMINS: Could you speak into the microphone?

20 THE COURT: Sure. I'm sorry.

21 MR. TIMMINS: I have hearing issues, sorry.

22 THE COURT: That's all right. And the question I have is
23 who named them as the Patrons or the protectors of the Police
24 Department and the Firefighters? It was the Catholic Church.

25 MR. TIMMINS: Well, that's an issue, Your Honor, that I

1 never got to track down. And -- and my argument, I guess, would
2 be, here --

3 THE COURT: I did. I did. The -- St. Michael the
4 Archangel was named as the protector and the Patron Saint of the
5 Police Department in 1949. So, you know, I mean, -- and -- and
6 St. Florian, my -- and again, my -- I don't want to say my
7 research, my historical research skills are probably -- may not
8 be the best, but from what I could find from -- about St.
9 Florian was, you know, it goes back a long time. He was the
10 Patron Saint also of -- one of the Patron Saints of Poland, part
11 of Austria, and the Firefighters. But it goes back, but it was
12 -- there were -- they were, for lack of a better word, assigned
13 as the Patron Saints by the Catholic Church. So -- so that --
14 that argument -- that's significant to me in regards to the
15 analysis of subordination of one sect as another that the City
16 has -- I mean, when you say, well, they're Catholic Saints on
17 there, they are Catholic Saints and they are going to be up
18 there. So that's the analysis. That's how I -- I was looking
19 at that. I don't -- I didn't see any question that -- that they
20 weren't named Saints by the Church and that they weren't -- the
21 Catholic Church basically assigned these -- these Saints as the
22 protectors of either the Firefighters or the -- the Police
23 Officers. So that, for lack -- so that's how I saw it.

24 MR. TIMMINS: Well, I under -- I understand. Perhaps I --
25 I should have finished the thought or whatever. I found when I

1 was in an argument with my sister for the first time in our 60
2 plus years together about this issue, that I could not segregate
3 Saint from Patron. And -- and so I understand that, and I'm not
4 attempting to do that. But what I'm saying is, I guess what the
5 big thing is, the Catholic Patron Saints, they're more than
6 that. Exhibit 22 from the Plaintiffs -- Plaintiffs' Exhibit 22
7 is a biography. I see you have a few of these on -- but it's in
8 the record about St. Michael. And when you look at the Exhibit,
9 and again, this is Plaintiffs' -- this is how St. Michael is
10 described in Exhibit 22. And -- and this is taken from, as are
11 many of the Exhibits, from a Catholic Journal. "But St.
12 Michael's presence can be traced back to early Jewish writings,
13 particularly in texts from the 2nd and 3rd Centuries BC. In
14 these ancient texts, he is depicted as the chief among angels
15 responding for -- or responsible for guarding and caring for
16 Israel. St. Michael is often referred to as the guardian prince
17 of Israel."

18 So my point is, when the Catholic Church made these
19 individual Saints, that didn't mean they took over ownership of
20 them. What the precipitating factor was for the patronage
21 adoption by Police and Fire, perhaps Attorney Gilleran's ready
22 on that. But I'll just say to the Court it's a tough issue.
23 He'll tell you that they've selected them for a certain reason.
24 It has nothing to do with Catholicism. But -- and, you know,
25 I've driven by Florian Hall my whole life. And I -- I -- I

1 remember the first -- my first reaction reading the Complaint, I
2 didn't know Florian was a Saint. I just thought Florian had
3 something to do with Firefighting. And Florian Hall is not St.
4 Florian Hall. It's Florian Hall. And the Firefighters have
5 patches that relate to the -- the one part of his life. And
6 this is something I understand you're looking at from your
7 earlier questioning, Your Honor, that there's more dimension to
8 these parties. Like, you walk into the SJC. Moses is -- is
9 there, and Moses is a religious figure, and he's up on a -- the
10 front door to the Supreme Judicial Court of the Commonwealth
11 because of -- he stands for, you know, the Law.

12 So there are -- there are two dimensions to these parties,
13 and -- and I -- I guess when I bridle about, and this is what
14 got us off on this track, is when people refer to them as
15 Catholic Saint statues, they're limiting what they're about
16 because they're more than that. You were talking about the
17 history of Florian. He was a Roman soldier. He died in roughly
18 200 AD, and I believe his veneration wasn't until 100 years
19 later. And he was venerated because he was killed by Romans
20 because he would not disavow Christianity. Well, before that,
21 he did the things you mentioned, Your Honor. He created a Fire
22 brigade, and he put out Fires.

23 And again, I think I'm going to allow Attorney Gilleran to
24 address most of this because I know he's eager to.

25 THE COURT: Let me ask you kind of the same -- the same

1 question, and I'll let you get back there just because I don't
2 want to lose my train of thought. Let me ask you the same
3 question I asked the Plaintiff. Is this a package deal? Is
4 there -- I understand the arguments regarding Florian. Is -- is
5 the analysis different for the statue of Michael with the wings
6 in -- in that type of presentation?

7 MR. TIMMINS: Your Honor, I submit the analysis is not
8 different. Mayor Koch in his Affidavit, Mayor Koch in I believe
9 it's Exhibit -- Exhibit 7, there's a Patriot Ledger newspaper
10 article. The Complaint heavily references it, and it talks --
11 there's all kinds of quotes from Mayor Koch about why he did
12 what he did, and he picked the two of them concurrently for
13 Police and Fire. And I wouldn't, you know, argue that, you
14 know, while we have a better position with Florian because he's
15 a Roman soldier, and clearly no religious, you know, inference
16 can be drawn from that appearance, but Michael has wings, so
17 that's a whole different issue. We wouldn't do that. I think
18 it's the same issue on both, because the purpose -- and that's a
19 very critical analysis that Your Honor -- the Court must
20 conduct, the purpose of the statues is to inspire both Police
21 and Fire, and the statues basically have the same origin. One
22 is a Patron Saint because of what he did in the Fire service,
23 the other because he's a guardian.

24 THE COURT: If the purpose is to inspire the Police
25 Officers and the Firefighters, I'm assuming, and I'm not trying

1 to be a wise guy here, I'm assuming you're going to have a
2 different entrance; right? They're not going to be walking
3 through the front door. That's where the public is going to
4 walk, generally, and I -- I don't know what the design is, but
5 generally the Firefighters and the Police Officers would come in
6 through a different entrance. Couldn't you put the statues
7 there? If the -- if the secular purpose is to inspire and to
8 show the respect to the Officers and the Firefighters, couldn't
9 you do it there?

10 MR. TIMMINS: Understood. Well, Your Honor, on that point,
11 this gets to another dimension of this. I submitted a number of
12 Exhibits with my material, Your Honor, and at the back end of
13 the pile is -- our -- I'll get it. Don't worry. Thank you.
14 Exhibit 16, which is a municipal Ordinance, you know, that we
15 call our Public Art Ordinance, and it talks about the origin of
16 why we're doing this, that there's all kinds of construction
17 going on in Quincy and there was at the time the Ordinance was
18 passed in 2009. And rather than have just these buildings show
19 up and have, you know, buildings that were brick and mortar, we
20 introduced a statute in Quincy -- I beg your pardon, an
21 Ordinance in Quincy that said we want public art installed as
22 part of the building. And that is what has happened in our
23 City. And there are statues that have gone up since then. The
24 City created a public common, and they put -- it's the Hancock
25 Adams Common. We have a statue of John Hancock, statue of John

1 Adams. So the statues are not merely there for the Police and
2 Fire. They're there because this is a fairly majestic building
3 that has been constructed. And precisely what happened here was
4 the Mayor, and he says this in his Affidavit, he was talking to
5 the architect during the final phase of closing out the project.
6 And the facade of the building was just flat with some -- some,
7 you know, columns or whatever, and he was not -- he was happy
8 about that. So there's a public art function that is consistent
9 with the practice that's been going on in Quincy since the
10 passage of the Ordinance. That's an Exhibit. You know, and
11 there's -- there's -- there's more to this. It's
12 multidimensional, than simply art.

13 THE COURT: So you're saying -- I don't want to put words
14 in your mouth. But make sure I get it, because that's one of
15 the issues I have, is what is the secular purpose? And so
16 you're saying that there are multiple secular purposes,
17 including the -- the art function as well as the others that are
18 listed in the Mayor's Affidavit?

19 MR. TIMMINS: Yes, Your Honor, and Plaintiffs' Counsel has
20 made the point, couldn't you have done something else in the
21 building? Sure. Something else could have been done on the
22 building, but this is entirely appropriate to put on a public
23 safety building. That's -- that's what happened. That's -- all
24 right.

25 So there's -- there's a couple of other things, and then

1 I'll -- I'll move on from the Complaint. But in paragraph -- in
2 paragraph 45, without any support for the proposition
3 whatsoever, it says that these Saints will send a predominantly
4 religious message. Nowhere -- that -- that's just in the
5 Complaint. In the Motion for Preliminary Injunction, that point
6 is not developed at all. It's unclear how that message will be
7 sent. These are statues that if you -- the average person
8 walked down the street and saw them and was not aware of this
9 kerfuffle, they would say, Roman Soldier. Why is he holding a
10 watering bucket?

11 THE COURT: What would they say, though, about the other
12 statue with the wings?

13 MR. TIMMINS: Well, Your Honor, Saints don't have wings.

14 THE COURT: I don't know that.

15 MR. TIMMINS: So the wings --

16 THE COURT: He's a Saint, according to the Catholic Church.

17 MR. TIMMINS: Well, he's an archangel. I -- I don't -- I
18 don't think he's a Saint in the Catholic Church either. But the
19 -- the interesting thing is, and this comes out of Plaintiffs'
20 paperwork, you know, the origins are in the Jewish faith, and,
21 you know, it's kind of a denial of the Judeo Christian Theology
22 to say that, you know, Christianity kind of showed up on the
23 scene, and then off he went. You know, there's the Book of
24 Daniel. There's all kinds of things. And there was a --
25 there's a bit of a transfer in -- you know, from Judeo to

1 Christian, and Michael is part of that. The origins were that
2 he was the great protect -- protector of Israel, and -- and he
3 has since been transformed.

4 Your Honor, if there were a statue of Jesus on the
5 building, that would be a problem, because there's a clear
6 distinction between how Jews and Christians view Jesus. That's
7 an issue. There's far more of a merger with regard to Michael,
8 and that's why he's an archangel and never -- you know, again, I
9 -- the fact that these two individuals are venerated does not
10 mean that the Catholic Church reeled them in and put them on the
11 boat and took off. We don't know -- well, I don't speak for the
12 Church either. The Catholic Church does not own these two. And
13 -- and it's arguable that the Firefighters have more ownership
14 over Florian than the Catholic Church and the same with Michael.
15 Michael extends into the military. And again, I'll refer to
16 Attorney Gilleran, but Michael's the great protector. And I do
17 understand what you're saying, Your Honor, about the wings, you
18 know, how one might view it might -- would someone walk by and
19 say, there's some great art or whatever, or ask, who is that?
20 What is that? But I -- I don't think that that's --

21 THE COURT: Okay.

22 MR. TIMMINS: All right. And there's -- there's a little
23 quote that finds its way through the Complaint and the -- the PI
24 Motion that over 200 people were at a public hearing. That's
25 all it says. It doesn't say anything about who was for, who was

1 against. I was hopeful that perhaps the Fire and Police would
2 explain their role at that. I didn't see it in the paperwork,
3 but, you know, I happen to be at the meeting. That's part of my
4 job. And there were -- the room was packed with Police and
5 Fire, so -- but for purposes of this matter, over 200 people is
6 a statement that in a vacuum doesn't establish anything factual.
7 And then there's a quote regarding Councilor Minton about his
8 concerns. And from that, the inference is drawn or the
9 inference is submitted that, you know, a City council was
10 against us. But Councilor Minton was in community policing.
11 And when you read what his issue is, it was more with the
12 depiction. And the direct quote that he made was us versus
13 them.

14 THE COURT: Yeah.

15 MR. TIMMINS: It doesn't address the religious. So Exhibit
16 7, Plaintiffs' Exhibits, addresses Koch's process. That's --
17 that's there, why Koch did what he did.

18 Exhibit 10, Your Honor, is very interesting. And it's a
19 Change.org Petition, and if you look at it, you will see that
20 one of the Plaintiffs started this Petition, and the Plaintiff
21 is identified in it. And when you look at it, the Petition
22 begins with this statement from the Plaintiff. "Though
23 religious subjects are not illegal, they are inappropriate."

24 So the question before this Court is the legality of the
25 expenditure. It's not appropriateness. And I would submit that

1 when you go through the Affidavits, you know, the -- the Motion,
2 most of this is on private individual objections.

3 And then finally, Your Honor, there is -- there are a
4 number of statements in the declarations or some statements in
5 the declarations that Judaism does not recognize Saints. Well,
6 as I have already discussed, Exhibit 22 talks about the fact
7 that Judaism perhaps does recognize Michael. So I -- I think
8 the status of Michael is very different. It's clear that
9 Michael -- that the language used by the Plaintiffs, which I
10 suggest is carefully crafted, fine, Judaism doesn't recognize
11 Saints. That's not the issue here. We're here because of the
12 patronage aspect.

13 And Your Honor, I -- I think I've taken up some time. I
14 hope --

15 THE COURT: That's all right. This is an important issue
16 for -- for everybody. So I -- I -- that's fine.

17 MR. TIMMINS: So I want to get into a bit and I'll close on
18 this, both Colo and Raftery. So first of all, why did I
19 introduce Raftery into the discussion? Well, first of all, came
20 online a little late for us. The Decision was rendered after we
21 had submitted our paperwork. Otherwise it probably would have
22 been incorporated. The reason I have brought this in, it was
23 prompted by a quote in the Colo case that has resonated with me
24 since I first read it. And that quote is found on page 558 of
25 Colo. And it says, "The Supreme Court has cautioned that

1 tests," in quote, "are not precise limits to the necessary
2 Constitutional inquiry, but are instead guidelines to a proper
3 analysis." And what I believe has gone on in the SJC Decisions
4 is they have referred to the Supreme Court cases where
5 appropriate. But Massachusetts, the SJC has retained its
6 independence as far as how it's going to make decisions. And
7 that independence has reflected in an evolving approach. Colo
8 is a Decision that was published in '79. That was followed, and
9 this is why I talked about Kaplan in the manner I did, by Kaplan
10 v. Acton, which is 2018, same Court, the SJC. And now we have
11 Raftery. And what I would submit in Raftery, Your Honor, the
12 case I -- the version I provided to the Court and to Counsel,
13 I'm going to refer to the pages on that. It's not official
14 citations, but on page 11, the Court, as it's beginning its
15 discussion, talks about the thrust of the Plaintiff's argument
16 and says, "Text, history, and purpose of Article 26," that's
17 what they're going to look at. And then I go to page 39, as
18 we're getting to the conclusion, and the Court states, "With the
19 benefit of this review of the text, history and Case Law and the
20 guidance it provides, we conclude that," blah, blah, blah. So
21 the SJC's approach has been evolving. And I suggest to the
22 Court that the Court's concern about getting the -- the test
23 right, which I appreciate, you -- you asked Plaintiff's Counsel
24 the question. I think all these factors that are listed in the
25 cases, it's not like the -- the SJC's ever ejected one or moved

1 on from another. I think the Court has the ability to look --
2 we can apply the Colo test to this case because if we do apply
3 the Colo test to this case, the Defendant still prevails because
4 -- on all counts. Colo is about prayers being said in a public
5 institution. Fitzmaurice is about public art going on a public
6 building paid for by the Government through appropriations that
7 are explained in the Complaint.

8 Another thing that resonated, I may have said this to you
9 already, but the SJC said clearly there's not a concern about an
10 attempt to undo influence -- unduly influence parties
11 religiously one way or another, because the legislature, they're
12 all mature individuals. Well, the Plaintiffs and their
13 declarations, they're -- they're not just mature, they're
14 sophisticated about religion. You know, I recall myself back in
15 2002 having some real issues with the fact that I was a Catholic
16 given what was going on in the Church. And I actually ended up
17 speaking at length and looking at different options with some of
18 the same people that some of the Plaintiffs are now involved
19 with. So there are issues like that, but I came to decisions
20 because I could do so, and these Plaintiffs can. And people
21 driving by Sea Street who look at this building are not going to
22 be influenced.

23 And an argument I would make by way of example is if we
24 were building a new school, elementary or junior high, we'll
25 say, and we put these same two statues on the front door and

1 said it's artwork, well, there -- there may be an argument in
2 that instance. Well, it's going to -- like you said, about the
3 wings, this is going to prompt questions, and the questions are
4 going to be answered. And because it's children, there might be
5 an argument of undue influence or an attempt to influence, an
6 attempt to open the door by way of the statues to influencing
7 what the children think. But here we have mature individuals
8 before the Court asking you, asking the Court to enjoin the
9 construction of this -- the completion of this structure due to
10 these statues because they're offended by them. And --

11 THE COURT: But aren't -- aren't unsophisticated
12 individuals also going to see these statues? I mean, Sea
13 Street, you know, it's not limited --

14 MR. TIMMINS: Right.

15 THE COURT: -- just to sophisticated people who drive by
16 there, with all due respect to people driving on Sea Street.
17 So, you know, it's not just these Plaintiffs that are going to
18 see these statues. It's -- it's everybody.

19 MR. TIMMINS: Well, I understand that, but they're -- but
20 they're the only ones --

21 THE COURT: Okay.

22 MR. TIMMINS: -- making it at this time, number one.

23 Number two, I presume that most of the people who are
24 traveling up and down Sea Street are going to be looking
25 straight ahead so they don't drive into who's in front of them.

1 But, you know, who knows what they're going to see and how
2 they're going to react. This case is to some degree a
3 subjective reaction by ten individuals to what's going on.
4 You're absolutely correct, Your Honor. There's -- I can't
5 necessarily limit the argument because of the fact it's -- these
6 are mature individuals. But the fact of the matter is, it's set
7 back. It's not like we have it out on the street. You know,
8 it's set back, and it's public art. It's -- in the same manner
9 that the Colo Court came to the conclusion that the potential
10 for influence was not there, I would argue that -- I would
11 submit that this Court can make the same finding because of the
12 nature of it.

13 THE COURT: All right. I just had one question, because on
14 both Colo and the other tests, history is important; right?
15 Everybody talks about the textual interpretations through
16 history. And I have to ask it because Quincy, it's known for a
17 lot of things, but it's really known for John Adams. And John
18 Adams, right, is -- is buried maybe a quarter of a mile from
19 where these statues are. What would John Adams say, do you
20 think, in regards to this issue?

21 MR. TIMMINS: Well, that's very -- that's an interesting
22 question, because one thing I found fascinating was, in going
23 through the history of Article 3, he didn't participate in the
24 discussion about the amendment. He intentionally absented
25 himself. And from what I saw, you know, Madison in Virginia,

1 Adams in Massachusetts, they were on different sides of the
2 coin. He just totally stepped out of it. And the Church, the
3 First Parish Church, this is -- this is from John Adams. It's
4 built on land he donated to the City, and -- and there are
5 members of the congregation here. And -- and, you know, I'm not
6 sure what he would say, Your Honor, but I do know that, you
7 know, Adams Academy, when it was built, there were all kinds of
8 things that John Adams did in Quincy, and he donated land, and
9 he did not impose restrictions. And I think that in that
10 respect, you know, I would -- in responding to your question,
11 Adams, he contributed to the City, but he didn't want to
12 dominate. One of the reasons he wasn't a more major national
13 figure was because of his -- his persona. So I think if the
14 implication behind your question is, do you think he'd object or
15 whatever, well, again, contextually, we're calling this public
16 art, and we're supporting the Police and Fire Department, and
17 I'm virtually certain he'd -- he'd accept that in a discussion.

18 THE COURT: All right.

19 MR. TIMMINS: So --

20 THE COURT: Thank you.

21 MR. TIMMINS: All right.

22 THE COURT: All right. Anything further? I didn't mean to
23 cut you off with that kind of hypothetical historical inquiry.
24 I'm sorry.

25 MR. TIMMINS: Well, no, Your Honor, I just -- I guess the -

1 - the closing thought I would have is this, that it's certainly
2 regrettable that the Plaintiffs feel the way they do. And --
3 however, they have not submitted to the Court anything that can
4 support the type of extraordinary relief -- they're trying to
5 stop this project. Nothing's under oath. It's not even clear
6 that they're coming forward under the 10 Taxpayer Statute.
7 That's not specified anywhere. And there's no particular
8 allegation that the money that's being spent violates Article 3.
9 The -- Article 3 is mentioned, and it's left there. So I would
10 just say that the -- you know, the likelihood of success is --
11 is very minimal, if at all. And in response to the Motion to
12 Dismiss discussion we'll have later, I understand that a
13 response to Rule 12 is that parties can amend a Complaint to
14 clarify whatever issues I raise; however, at this juncture,
15 there's -- there's no amending. There's no case. And I'd ask
16 the Court -- it's important for the City to complete this
17 project, and it's going to send an important message to the
18 public, to the Police and Firefighters who support this project,
19 that the -- the matter be allowed -- the build -- the completion
20 of the project be allowed to go forward.

21 THE COURT: All right. Counsel, thank you.

22 MR. TIMMINS: All right. Thank you, Your Honor.

23 THE COURT: All right. Attorney Gilleran.

24 MR. GILLERAN: Your Honor, my argument will be much more
25 technical, but if I might first bring to the attention of the

1 Court the case of Colo v. Treasurer and Receiver General. I
2 have a copy, if I might hand it up, Your Honor.

3 THE COURT: Actually, I -- I have a copy as well in regards
4 to that.

5 MR. GILLERAN: If I could turn to the endnotes, the
6 footnotes at the back, and the reason why I'm doing this is
7 because one of these footnotes is written by John Adams. His
8 language appears at the end of Colo v. Treasurer and Receiver
9 General at footnote four. And his language is Article 2. This
10 is John Adams who wrote the Massachusetts Constitution of 1780.
11 This is his language from that document, the oldest Constitution
12 in the world, which governs in this Courtroom. And he said, "It
13 is the right as well as the duty," not just the right, the duty,
14 "of all men in society publicly and its stated seasons to
15 worship the supreme being, the duty, the great creator and
16 preserver of the universe. This is our Law today. And no
17 subject shall be hurt, molested, or restrained in his person,
18 liberty, or estate for worshiping God in the manner and season
19 most agreeable to the dictates of his own conscience or for his
20 religious profession or sentiments, provided, caveat, he does
21 not disturb the public peace or obstruct others in their
22 religious purpose."

23 Okay. So this is a -- I would call this a cognate of the
24 Free Exercise Clause is what this is. But it is stated, not
25 just you've got the right. You have a duty. And also the

1 Constitution of 1780 removed the direct financial taxpayer
2 support of the Congregational Church, which was a descendant of
3 the Puritans. That was removed, so that all religions were
4 recognized in the Commonwealth. All religions were recognized
5 in the Commonwealth by John Adams, and he said that religious
6 worship was a duty. I can't say that I know what John Adams
7 would do about these statues, but I see his strong support for
8 religion in the public square. It's right here. It's right
9 here.

10 Now, I'm going to be, as I said, far more technical than my
11 brother. And I'm going to take a very -- sorry. One second,
12 Your Honor.

13 I think the question of what is the appropriate Law is an
14 important question. I think the Court, yourself, raised this
15 question. And what we have to look at here is what happens in
16 Colo v. Treasurer Receiver General and what happens in
17 subsequent cases -- cases and also in Raftery down to this day.
18 And what we see there consistently, starting with Colo, is a
19 particular interpretive -- interpretive test applied by the SJC.
20 And it's the same today. They argue that they win under Lemon
21 v. Kurtzman as applied under Colo. They don't dispute that
22 Lemon v. Kurtzman is not the Law at the U.S. Supreme Court
23 today. They don't dispute this. What they argue is Lemon v.
24 Kurtzman must be applied because it's applied in Colo v.
25 Treasurer. But what actually happens there is the SJC says in

1 this 1979 case, and I'm reading from page 558, "In determining
2 the Constitutionality of a particular statute that allowed
3 chaplains to be paid, we are aided -- aided by the criteria
4 which have been established by the U.S. Supreme Court for
5 judging claims arising under the First Amendment. First
6 Amendment, which criteria we believe are equally appropriate to
7 claims brought under cognate provisions of the Massachusetts
8 Constitution."

9 Now, what we find out is when we look at later cases, and
10 my brother cited one of those, and those cases have -- include
11 Commonwealth v. Lucas. Again, I have a copy of this case. If
12 the Court wants to see it, I can hand it up.

13 THE COURT: If you just give me the cite, no, I can pull
14 that off.

15 MR. GILLERAN: The site is 472 Mass 387. 472 Mass 387 at
16 393. This case is from 2015. Now, again, Colo is 1979.
17 Commonwealth v. Lucas is 9 -- sorry, 2015. It cites Colo v.
18 Treasurer and says, quote, this is the SJC now, "Criteria which
19 have been established by the U.S. Supreme Court for judging
20 claims arising under the First Amendment are equally appropriate
21 to claims brought under cognate provisions of the Massachusetts
22 Constitution."

23 And then finally we have Raftery. What does Raftery say?
24 This is six weeks ago, six weeks ago yesterday almost. And I'm
25 looking at page 415. Raftery is 496 Mass 402. 496 Mass 402 at

1 415. "Having reviewed the -- the relevant test -- text," my
2 brother cited this, "Text, history, and Case Law supporting the
3 excessive fine clause of Article 26, that's the Mass
4 Constitution and the 8th Amendment U.S. Constitution, we
5 conclude that the disproportionality principle is central to the
6 analysis of excessive fines under the State and Federal
7 Constitutions. We further conclude that the Supreme Court's
8 multi factor -- Supreme Court's," that's the U.S. Supreme Court,
9 "multifactor tests for evaluating disproportionality under the
10 8th Amendment," that's U.S., "Also precludes -- also provides a
11 sound basis for evaluating disproportionality under Article 26."
12 Provides a sound basis.

13 One further sentence, Your Honor. "Accordingly we adopt
14 the 8th Amendment," again the U.S. Constitution, "excessive
15 fines criteria as outlined Boujankian," which is a U.S. Supreme
16 Court case. Boujankian. "And applied by this Court in
17 Betancourt," SJC Decision, "as persuasive authority and as the
18 proper analysis under Article 26 excessive fines clause."

19 So what's happened here? The SJC over 45 years, 45 years
20 looks to the precedent for interpreting this Massachusetts
21 Constitution from the U.S. Supreme Court, finds it persuasive,
22 finds it a sound basis, and finds it is the proper analysis.
23 There is not one case offered by the Plaintiffs to suggest that
24 today the SJC would do anything different. And these cases go
25 on and on and on as to what is the governing interpretive

1 principle applied to the Massachusetts Constitution. It's the
2 cognate provisions of the U.S. Constitution in Article 1.
3 That's what it is. And those are the Free Exercise Clause and
4 the No Establishment Clause. And those provisions today, as
5 interpreted by the U.S. Supreme Court Plaintiffs would not
6 prevail. Defendants would prevail. Establishment means
7 establishment, means paid for and supported by the Government.
8 Free exercise in almost all these cases, and I'll cover this in
9 just a second, almost nothing can trump free exercise. No
10 heckler's veto. I'll cover that in just a second. Nothing else
11 can trump it. The Free Exercise Clause I would say is -- is --
12 is largely predominant and only a State supported -- State
13 supported religion could do so -- could do so. And that is the
14 current Law today at the U.S. Supreme Court.

15 Now moving on from that, I raise the question as follows.
16 My brother points out that the Plaintiffs rely upon Article 3 of
17 the Massachusetts Constitution, which is set forth in the Colo
18 case in the footnotes which I just looked to. And the Colo case
19 involves -- and it's described at -- at page 552. The Colo case
20 involved a claim brought under the First Amendment of the U.S.
21 Constitution, the 14th Amendment, Equal Protection, Articles 2
22 and 3 of the Massachusetts Declaration of Rights, which is --
23 Article 2, we've already seen is the Free Exercise clause
24 written by Adams. Article 3, which has its anomalous language.
25 Then Article 18, Section 2, Article 18, Section 2, again, that's

1 described at the back of Colo at footnote four. And this is a
2 No Establishment Clause. And it says -- this is from 1833. "No
3 grant, appropriation, or use of public money or property or a
4 loan of public credit shall be made or authorized for the
5 purpose of founding, maintaining, or aiding any Church,
6 religious denomination, or society." Now why is that important?
7 Again, that's a classic No Establishment Clause like the U.S.
8 Constitution, at least how it's interpreted today. And the
9 Plaintiffs rely in their Complaints solely on Article 3. Yet
10 here the U.S. Supreme Court in Colo applied Lemon v. Kurtzman
11 because the case was a First Amendment case, and they say so.
12 And I'm looking at page 558 again, which I already quoted. "In
13 determining the Constitutionality of the chaplain provision, we
14 are aided by the criteria which have been established by the
15 U.S. Supreme Court for judging claims arising under the First
16 Amendment." In other words, their whole argument about Lemon v.
17 Kurtzman applies, is based upon what's in Colo, which is the
18 First Amendment. It's not here. Even Article 3 doesn't even
19 have the Free Exercise Clause written by Jefferson. Sorry,
20 written by Adams. Sometimes confusing. Or Article 18, Section
21 2, there's no establishment provision. Their provision, Article
22 3, is anomalous. It's an orphan. It's not interpreted
23 anywhere. And how they have the right to argue Lemon v.
24 Kurtzman solely under Article 3 is beyond. They don't provide
25 any support for this proposition. Their argument for Lemon v.

1 Kurtzman is an argument in the air. It has no support in any
2 Case Law, any Statute or anything. It is a -- it is a made up
3 argument.

4 Now, what is the status of Lemon v. Kurtzman today? Lemon
5 v. Kurtzman has a four part test as explained by the SJC in
6 Colo. It asks, is there a secular purpose? Your Honor, you
7 asked this question, 49%, 51% what? And I'm quoting now from
8 the SJC in Colo, these criteria involve the application of the
9 following three tests. Is there a -- a secular -- secular
10 legislative purpose. Doesn't say primary or anything else, just
11 says a secular purpose. That's number one.

12 Number two, does the primary effect of the challenged
13 practice advance -- neither advance nor inhibit religion?

14 Number three is entanglement.

15 And number four is whether the practice has a divisive
16 political potential.

17 And I have a chart on this if the Court would like to see
18 it. I'm about to go through some sites from the SJC and the
19 U.S. Supreme Court which showed that each --

20 THE COURT: Yes, and I don't mean to cut you. If you're
21 going to give me that chart of the cites, do we need to go
22 through them? Because I don't have them in front of me. I'm
23 going to go read them obviously.

24 MR. GILLERAN: I -- I expect that.

25 THE COURT: You know.

1 MR. GILLERAN: But I've also got quotes, so you -- you can
2 see the right on the page if you'd like, Your Honor.

3 THE COURT: I mean, I guess I don't know how many -- I
4 don't know how many cites you're going to go through. That's
5 the question I have.

6 MR. GILLERAN: I'm not -- that won't be long.

7 THE COURT: Okay. Counsel, do you have -- all right. All
8 right. Thank you.

9 MR. GILLERAN: Now, first of all -- first off, we know that
10 the U.S. Supreme Court has abandoned specifically Lemon v.
11 Kurtzman. They did so in the 2022 case of Kennedy v. Bremerton
12 School District. Lemon v. Kurtzman is no longer the Law of the
13 land. It has been completely abrogated. I could read some
14 quotes from that case, but I think it's pretty easy to look at
15 it and see for yourself, even in the --

16 THE COURT: I've read it, so you don't need to, Counsel.
17 I've read that. I've read Kennedy and --

18 MR. GILLERAN: And Justice Sotomayor in dissent says the
19 majority has completely got rid of Lemon. That's what they did.
20 Okay.

21 Now, as to the purpose test, there is no wall of separation
22 between Church and State in our Constitution, even in our -- in
23 our Federal Constitution and in our State Constitution. That is
24 a fiction the grew out of a letter that Thomas Jefferson wrote
25 in 1802 to a Baptist Society in Connecticut. He did not write

1 the Constitution. He was a minister to France at the time. He
2 did not write the amendments which were written by Madison and
3 George Mason. He had nothing to do with any of this. This was
4 him -- simply his gloss many years later picked up by others,
5 which has nothing to do with the text, the history, or anything
6 of the First Amendment. Even our SJC -- I should say our SJC
7 has written it. And I cite it here, "The hermetic separation of
8 Church and state is an impossibility which the Constitution has
9 never required." This is our own SJC says this.

10 And a few more points, there's two others. I won't be
11 reading all of these down the pages because there -- they
12 repeat. There's no preference for secular activity. The
13 Plaintiffs say in their Complaint it's all about pluralism.
14 They even suggest that the State Constitution contains a
15 pluralism clause that requires the Court to do what they want.
16 Well, instead, the U.S. Supreme Court in Kennedy v. Bremerton as
17 written by Justice Gorsuch a few years ago, says "Rather than
18 respect the First Amendment, First Amendment double protection
19 for religious expression, the District Court would have us
20 preference secular activity." There is no such preference for
21 secular activity. There is no such thing.

22 Next, under this purpose test, for the founding generation,
23 displaying a religious -- religious symbol on Government
24 property was commonplace. Again, that's Justice Gorsuch in
25 American Legion v. American Humanist Association from 2019. Of

1 the purpose test, we already know that the U.S. Supreme Court
2 has abrogated Lemon entirely, including under Kennedy v.
3 Bremerton. But for the purpose test, there's nothing left of
4 it. The States, the SJC, and the U.S. Supreme Court do not ask
5 the question, is there a secular purpose? They don't. The same
6 points apply to the effect test. There's no wall of separation.
7 There's no preference for secular activity. Religious displays
8 of Government property were commonplace, same for entanglement,
9 same analysis --

10 THE COURT: So you say -- Counsel, let me interrupt you
11 there. So is your argument that as long as there's a secular
12 purpose, it doesn't make any difference that there's a religious
13 significance to the action of the statement?

14 MR. GILLERAN: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. GILLERAN: Even under -- even Colo, as (inaudible at
17 11:18:14, low audio) as Lemon v. Kurtzman, it simply asks, is
18 there a secular purpose? And you can see that analysis with
19 respect to the Chaplain provision. The supreme -- SJC says
20 obviously there's --

21 THE COURT: Wasn't -- wasn't --

22 MR. GILLERAN: -- religious purpose.

23 THE COURT: -- didn't -- wasn't the language in Colo
24 whether the primary effect of the challenged practice. So why
25 would they say primary effect if it didn't make any difference?

1 MR. GILLERAN: There are two different tests, Your Honor.
2 One is the -- the first one looking at page 558. Is there a
3 secular legislative purpose?

4 THE COURT: Correct.

5 MR. GILLERAN: Page 558. I have a copy if the Court wants
6 it right now.

7 THE COURT: No, I have a copy.

8 MR. GILLERAN: Sorry.

9 THE COURT: I have a copy. I'm fine, thanks.

10 MR. GILLERAN: And as for two under Lemon v. Kurtzman, then
11 the question is, does the primary effect of the challenge
12 practice neither advance nor inhibit religion? My brother
13 discusses -- discusses at length with respect to Colo and its
14 effect was as to the legislature, mature people was neither to
15 advance nor inhibit religion. But my point is that with respect
16 to these various decisions by the SJC and the U.S. Supreme
17 Court, Lemon v. Kurtzman is not the Law here. It's not the Law
18 anywhere.

19 The last point I would make, Your Honor, is the
20 divisiveness test and that is in Colo and asks whether the
21 practice has a divisive political potential. And the U.S.
22 Supreme Court said in Kennedy v. Bremerton, I have a copy if the
23 Court would like to see it, at page 534, U.S. Supreme Court
24 said, "This Court has made plain that the establishment clause
25 does not include anything like a modified heckler's veto in

1 which religious activity can be prescribed based on perceptions
2 or discomfort. In other words, the viewer has no veto. There
3 is no veto. They in their Complaint cite to the declarations of
4 numerous members of their 10 Taxpayers. Plaintiffs opposed the
5 statutes -- statutes on the basis of their religious beliefs or
6 were non-faith beliefs. As a matter of Constitutional Law,
7 that's irrelevant. They have no veto, nothing.

8 THE COURT: Doesn't the --

9 MR. GILLERAN: Further, Plaintiffs --

10 THE COURT: Can I -- can I ask you this? Because that
11 echoes to me of a level of arrogance from a Government that they
12 don't want to hear -- they can't even be addressed the public's
13 --

14 MR. GILLERAN: Oh, that's --

15 THE COURT: -- objection?

16 MR. GILLERAN: That's a political question. That's not a -
17 -

18 THE COURT: How about in this case here, the money, these
19 stat -- and I don't really want to get into this but if -- if
20 we're talking about -- it just sounds such a disrespectful type
21 phrase, a modified heckler. The money has been spent before the
22 modified hecklers knew. So how are they going to address that
23 politically?

24 MR. GILLERAN: Your Honor, I am here to address simply the
25 legal issues. I'm -- I'm going to follow the words of -- of the

1 City Solicitor who said it may be illegal but politically
2 inappropriate. But the question in this Court --

3 THE COURT: Right. You're right, I'm sorry.

4 MR. GILLERAN: -- is the legality, it maybe that -- and I
5 don't suggest this. The redress of the Plaintiffs is political
6 in the City of Quincy. It's not legal in this Court.

7 THE COURT: All right. I understand. Go ahead. I'm
8 sorry.

9 MR. GILLERAN: So this particular clause from Kennedy v.
10 Bremerton written by Justice Gorsuch and is the majority opinion
11 is critical. The Plaintiffs ignore this. They clearly impute
12 not just -- not just their religious beliefs or lack of thereof
13 or their belief in pluralism and its importance or anything
14 else. They believe they -- their opposition to these statues
15 for whatever reason should be enough in this Court to stop them,
16 stop the statue. But under the Law, under the U.S. Supreme
17 Court, under what our SJC has said it would follow, the cognate
18 provisions, they don't have a veto. Their veto is political,
19 not legal. So from the Injunction's point of view, they've got
20 to show a substantial likelihood of success. They cannot.
21 They've got to show substantial risk of irreparable harm. And
22 I'm looking at the Siemens case that they cited, and it says
23 substantial risk of irreparable harm. And then it goes on to
24 say, as weighed against -- as weighed against the party's chance
25 of success on the merits. If they have no chance of success on

1 the merits, they have no irremediable -- irremediable
2 Constitutional harm. They have none. They can't show a
3 likelihood of success on the merits. They can show they have a
4 political complaint. That's not for this Court.

5 So we would suggest, Your Honor, and our argument on the
6 Motion to Dismiss will be similar, if not exactly the same, it
7 would not be as long --

8 THE COURT: No, it's all right.

9 MR. GILLERAN: We ask that the Preliminary Injunction be
10 denied.

11 THE COURT: All right. Counsel, thank you. All right. So
12 I'm going to take the Motion for Preliminary Injunction under
13 advisement, obviously, because I'm going to need to review the
14 cases that all three Counsel have raised, also go back and
15 review the Exhibits.

16 So in regards now, let's move on to the Motion to Dismiss.
17 I know we've -- I've heard a lot of the arguments I assume are
18 going to be similar, but I -- I want to make sure that everybody
19 gets a chance if there is something else that -- that they
20 wanted to bring up. So the -- the -- this is the City's Motion
21 to Dismiss. Attorney Timmins, I'll hear from you.

22 MR. TIMMINS: Thank you, Your Honor. Your Honor, as you
23 said, you've pretty much heard what I would argue in this Motion
24 and reviewed it already. I would submit that I may simply refer
25 you to pages 12 through 19 of my Memorandum, rather than

1 repeating those arguments. The -- the core issue is that the
2 Plaintiff -- I -- I say on page 17 of my Memo, Plaintiff's Memo
3 at 16, citing the Kaplan case, there's a quote, "Government
4 support of Churches has always and inevitably been a politically
5 divisive issue in Massachusetts." And the core argument that
6 I've presented is that this is public funds for public building.
7 There's no entanglement like there was in Acton, where under the
8 community preservation, there were contingencies and there was
9 subsequent review of stained glass windows and whatnot. None of
10 that's present here.

11 So for that reason, as I came to the conclusion of my
12 Opposition for the Preliminary Injunction, I realized, as I have
13 already said to you, that there's not a lot presented to this
14 Court on this record. And so I would suggest that -- I mean,
15 the Preliminary Injunction is our priority. The Motion to
16 Dismiss, I understand that frequently Courts allow for
17 amendment, but that's at the very least in order here. There
18 has to be something presented to the Court within the four
19 corners of the Complaint to move forward with.

20 So with that, I think I'll rest.

21 THE COURT: All right.

22 MR. TIMMINS: Thank you, Your Honor.

23 THE COURT: Counsel, thank you. Mr. Gilleran, we're --
24 we're back with you very quickly.

25 MR. GILLERAN: Very brief, Your Honor.

1 THE COURT: Yeah.

2 MR. GILLERAN: The Plaintiffs say, and I'm looking at their
3 -- Plaintiff's Opposition to Defendants Motion to Dismiss and
4 Reply in Support of their Motion for Preliminary Injunction,
5 which is dated -- I don't have the Docket Number. Dated July
6 30th. They argue that Lemon still has life. It's still going.
7 It's still strong. Kennedy, it's Kennedy v. Bremerton School
8 District did not hold that the application of the Lemon
9 framework itself violated the Free Exercise Clause. I'm looking
10 at page eight of the Memorandum. In other words, Lemon still --
11 because Lemon itself is not a violation, it somehow has life.
12 Wait a minute. There's no dispute that Lemon is not the Law.
13 It doesn't matter whether or not it violates something. It's
14 not the Law. The U.S. Supreme Court has told us that in Kennedy
15 v. Bremerton School District. It's not the Law.

16 And furthermore, this is my last point, Espinosa v.
17 Montana, U.S. Supreme Court Decision 2020. I'm looking at the
18 case site is 590 U.S. 464, 590 U.S. 464 at page 485, 485. And
19 this is the majority opinion. And it says, "A State's interest
20 in achieving greater separation of Church and State than is
21 already insured under the Establishment Clause is limited by the
22 Free Exercise Clause." This is what I said earlier. State's
23 interest in achieving greater separation -- in other words,
24 that's a violation. You can't do that. That violates free
25 exercise. So to apply a more powerful test even, more powerful

1 test, violates free exercise. That's my point. Their point,
2 that somehow Lemon is preserved and can infringe on free
3 exercise rights is wrong.

4 Therefore, Your Honor, we would submit that they cannot
5 show that they -- the -- the Lemon v. Kurtzman elements which
6 they use to try to establish an Injunction, the failure of all
7 those elements is also the failure of the elements that would
8 give rise to a claim under Article 3. They don't bring any
9 other claim. Like I said, there's no Free Exercise Clause, no
10 First Amendment, no Article 2 of the Massachusetts Declaration
11 of Rights, no Article 18, nothing, just Article 3, which, as I
12 said before, is an orphan. Unexplained, unadorned, hard to
13 understand. Motion to Dismiss should be allowed, Your Honor.

14 THE COURT: All right. Counsel, thank you. Yes,
15 Plaintiff.

16 MS. DAVIDSON: Your Honor, would it be all right If I
17 respond to a few of the issues raised with regard to the
18 Preliminary Injunction?

19 THE COURT: Why don't we kind of -- very tight, because
20 what I don't want to do is then go back to Mr. Timmins and Mr.
21 Gilleran to respond to your response. But so if you want to
22 just briefly and then move on to the Motion to Dismiss.

23 MS. DAVIDSON: Yes, Your Honor. I'll keep it very brief.
24 I did want to address the issue of standing, which is relevant
25 both to the Motion to Dismiss and the Preliminary Injunction.

1 And I wanted to emphasize that Plaintiffs have two separate and
2 independent bases for standing in this case. First and
3 foremost, I would argue, is the -- the standing to raise
4 Constitutional violations in itself. So that's separate and
5 apart from the 10 Taxpayer Statute. And in Massachusetts,
6 Plaintiffs have standing to raise Constitutional claims when
7 they can allege an injury within the concern -- the area of
8 concern of a Constitutional guarantee. And so they are arguing
9 that they are being injured in a way that violates Article 3.
10 They have standing to do that. And -- and that standing is
11 supported by allegations in the Complaint and sworn declarations
12 attached to the PI explaining how they regularly interact with
13 this building. So that's one thing. They do separately have 10
14 Taxpayers standing. There's more than ten taxpayers that are
15 Plaintiffs in this case. But I want to know those are two
16 separate bases. I think it's very important, actually, that
17 Plaintiffs have Constitutional standing separate and apart from
18 the Taxpayer Statute.

19 THE COURT: Okay.

20 MS. DAVIDSON: With regard to my brother Counsel's comments
21 about the Complaint not being Verified, I did just want to note
22 for Your Honor that we have Plaintiffs' sworn declarations. We
23 have a sworn attorney declaration verifying the Exhibits that
24 are submitted in support of the Preliminary Injunction.

25 And I did want to -- again, I want to keep it brief, Your

1 Honor, but I wanted to address the argument because it keeps --
2 you know, it's -- it's raised frequently in this matter that --
3 about Michael being important or referenced in Judaism. And I
4 just wanted to have a couple quick reactions to that, the first
5 being, this only emphasizes the religious nature of Michael, and
6 it wouldn't be okay if -- if Michael was recognized only in the
7 Abrahamic religious. There are other religions in Quincy and in
8 our Commonwealth. So I just wanted to note that. And of
9 course, Florian is only recognized in Catholicism, to my
10 knowledge. And of course, as we, you know, state in the
11 declaration from Professor Byrne, Saints are not venerated or
12 created in many religions, including Judaism, including a number
13 of Protestant religions, et cetera. So I just wanted to note
14 that.

15 And I just wanted to note with respect to the suggestion
16 that this -- this case is about Plaintiffs' subjective reaction,
17 I think was my brother Counsel's words to these statues, and I
18 want to underscore that it's not just Plaintiffs who understand
19 these statues to be Catholic Saints. We have in our papers a
20 statement from one of the City Councilors who said, you know,
21 when asked in the interview, he thought that the states -- the
22 Saints would, quote, bless the first responders and that it
23 might, quote, inspire them to say a prayer before they go out on
24 duty. We have the Quincy Interfaith Network, which is 19
25 interfaith leaders and Quincy from many different religions

1 coming together and saying these are Roman Catholic statues and
2 we worry about them. So I just wanted to note that.

3 I did -- and this -- I can keep it brief. So this will be
4 my final point, and then I can turn to the Motion to Dismiss
5 specifically. I did just want to note that Article 3 is not
6 limited to the payment of Government funds to religious
7 organizations. Its text is not limited to that. And you know,
8 its text speaks of equal protection. And it is also in the
9 Declaration of Rights. It is an individual right that these
10 Plaintiffs have that they are vindicating in this Court. And so
11 those are some points I wanted to just raise briefly, Your
12 Honor.

13 With regard to the Motion to Dismiss, we set this forth in
14 our papers, but frankly, it was difficult to respond to that
15 Motion in light of the fact that -- that my brother Counsel's
16 arguments have an extensive reference to Affidavits submitted by
17 the Mayor, Exhibits regarding other statues around the country
18 and history. And none of those Affidavits or Exhibits, and the
19 Amicis Affidavits as well can be considered when adjudicating a
20 Motion of Dismiss. So I just want to note that.

21 Our -- our arguments are largely the same. And -- and
22 again, Your Honor, due to the fact that we need only win on one
23 prong ultimately in order to prevail on this case and establish
24 an Article 3 violation, I think especially when evaluating under
25 the lenient standard for Motion to Dismiss, we have absolutely

1 surpassed the bar necessary to survive that Motion to Dismiss.
2 So I would -- I would submit that, Your Honor.

3 THE COURT: All right, Counsel, thank you. So I'm going to
4 just -- unless there's any objections, I'm going to consider the
5 arguments that were made as part of the Preliminary Injunction
6 arguments, also as part of the arguments for the Motion to
7 Dismiss, just so there's no confusion in regards to the record.
8 So I'm going to take that Motion under advisement as well.

9 Is there -- is there an understanding or an agreement as to
10 the statues, what's going to happen to them or not happen to
11 them until this decision is made? I know that last time we were
12 here was about a month or so ago. So do I need to address that,
13 or can the -- have the parties -- have the parties reached an
14 agreement while this is under -- under advisement?

15 MR. TIMMINS: Your Honor, we have not talked about any
16 particular agreement. I checked on the timing on Tuesday of
17 this week so I could report to the Court and to the parties.
18 The statues are going to be shipped by the end of next week.
19 It's going to take five weeks for the statues to make it to the
20 port of Boston, and then once they're in the port of Boston,
21 I'll have more particular knowledge. But, you know, when the
22 shipment arrives, it's got to be inspected, accepted, blah,
23 blah, blah. So there's five weeks plus. But once they're in
24 Boston, I'm happy to keep everyone informed, Your Honor.

25 THE COURT: All right. Counsel?

1 MS. DAVIDSON: Your Honor, we actually have an agreement
2 that we filed -- we Memorialize in the record that Defendants
3 would not affix the statutes until the Preliminary Injunction is
4 adjudicated.

5 THE COURT: All right. So that's good. But -- and my
6 concern was they're not down at the Fore River right now, so --
7 so we've got that. I'll have the decision well before that. It
8 was -- it's kind of my way of fishing to see kind of where we
9 were in regards to the timetable. So that's -- that's fine. So
10 I'm going to take this under advisement.

11 The only thing I wanted to say was I -- you know, we
12 mentioned John Adams a couple times, and I think that Mr. Adams
13 would be very proud of the fact that -- that this is an argument
14 that means a lot to both sides, and it's done respectfully, and
15 it's done relying on the Law, which is exactly what John --
16 maybe not his cousin Sam, would have said, but I think John
17 would be very proud that this is the way this dispute is being
18 addressed. So I want to thank both Counsel as well as all --
19 all the individuals that have -- have voiced your opinion on
20 both sides, really. So I just kind of wanted to thank everybody
21 in regards to that.

22 So with that, we'll be in recess and this matter be taken
23 under advisement.

24 MR. TIMMINS: Thank you, Your Honor.

25 THE COURT: Okay. Counsel, thank you.

1 MS. DAVIDSON: Thank you, Your Honor.

2 COURT OFFICER: Court's in recess.

3 All rise.

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(Adjourned)



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Keyword Index

<p>\$</p> <p>\$1 [1] 5:9</p> <hr/> <p>1</p> <hr/> <p>1 [1] 41:2 10 [11] 5:9 11:17,20,24 17:9, 12 29:18 36:6 48:4 54:5,13 100 [1] 23:18 11 [1] 31:14 11:18:14 [1] 46:17 11th [2] 12:12,12 12 [3] 11:19 36:13 50:25 14th [1] 41:21 15 [3] 11:20,24 12:1 16 [2] 25:14 51:3 17 [1] 51:2 1780 [2] 37:10 38:1 18 [4] 41:25,25 42:20 53:11 1802 [1] 44:25 1830s [1] 9:24 1833 [3] 9:4 18:3 42:2 19 [2] 50:25 55:24 1949 [1] 21:5 1979 [2] 39:1,16</p> <hr/> <p>2</p> <hr/> <p>2 [7] 37:9 41:21,23,25,25 42: 21 53:10 20 [1] 18:21 200 [3] 23:18 28:24 29:5 2002 [1] 32:15 2009 [1] 25:18 2015 [2] 39:16,17 2017 [1] 18:23 2018 [1] 31:10 2019 [1] 45:25 2020 [1] 52:17 2022 [2] 18:23 44:11 2025-576 [1] 3:6 22 [4] 22:6,6,10 30:6 23 [1] 18:21 250 [1] 14:11 26 [6] 8:13,20 31:16 40:3, 11,18 2nd [1] 22:13</p> <hr/> <p>3</p> <hr/> <p>3 [31] 5:15 6:10 7:9,19 8:22,</p>	<p>24 9:4 15:16 17:18,18,19, 20 18:1,5,5,17 34:23 36:8, 9 41:16,22,24 42:9,18,22, 24 53:8,11 54:9 56:5,24</p> <p>30th [1] 52:6 387 [2] 39:15,15 39 [1] 31:17 393 [1] 39:16 3rd [1] 22:13</p> <hr/> <p>4</p> <hr/> <p>4 [2] 11:19 12:1 40 [1] 17:9 402 [2] 39:25,25 415 [2] 39:25 40:1 42 [1] 17:7 45 [3] 27:2 40:19,19 464 [2] 52:18,18 472 [2] 39:15,15 485 [2] 52:18,18 49% [2] 11:3 43:7 496 [2] 39:25,25</p> <hr/> <p>5</p> <hr/> <p>50 [1] 7:20 51% [2] 11:3 43:7 53 [1] 17:9 534 [1] 47:23 552 [1] 41:19 558 [5] 30:24 39:1 42:12 47: 2,5 58 [2] 17:19 18:18 590 [2] 52:18,18</p> <hr/> <p>6</p> <hr/> <p>6 [1] 11:24 60 [1] 22:1</p> <hr/> <p>7</p> <hr/> <p>7 [3] 12:1 24:9 29:16 79 [1] 31:8</p> <hr/> <p>8</p> <hr/> <p>8 [1] 11:24 8th [5] 8:15,20 40:4,10,14</p> <hr/> <p>9</p> <hr/> <p>9 [2] 12:1 39:17 9:58:48 [1] 3:2</p>	<p>A</p> <hr/> <p>a.m [1] 3:2 abandon [1] 6:6 abandoned [1] 44:10 ability [1] 32:1 able [1] 11:2 about [42] 10:20 11:8,22 16:9 18:5 19:17 21:8 22:2, 8 23:13,15,16 24:11 25:15 26:8 27:11 28:17,25 29:7 30:6 31:9,15,22 32:4,5,9, 14 33:2 34:15,24 38:7 42: 16 43:18 45:13 48:18,20 54:21 55:3,16 56:2 57:12, 15 abrahamic [1] 55:7 abrogated [2] 44:13 46:2 absented [1] 34:24 absolutely [5] 9:13,20 13: 4 34:4 56:25 academy [1] 35:7 accept [1] 35:17 accepted [1] 57:22 accompanied [1] 13:20 accompany [1] 7:9 according [1] 27:16 accordingly [1] 40:13 account [3] 9:11,13,15 achieving [2] 52:20,23 acknowledging [1] 12:7 action [4] 3:6 16:18,25 46: 13 activity [5] 45:12,20,21 46: 7 48:1 acton [2] 31:10 51:7 actually [9] 7:12 8:15 10:1 12:4 32:16 37:3 38:25 54: 16 58:1 ad [2] 14:11 23:18 adams [18] 25:25 26:1 34: 17,18,19 35:1,3,7,8,11 37: 7,10 38:5,6 41:24 42:20 58: 12,12 add [2] 15:8,9 added [1] 7:8 addition [1] 16:17 additionally [1] 5:22</p>	<p>address [10] 11:9 15:18 18:7 23:24 29:15 48:22,24 53:24 55:1 57:12 addressed [2] 48:12 58: 18 addresses [2] 18:6 29:16 addressing [1] 8:10 adjourned [1] 59:25 adjudicated [1] 58:4 adjudicating [1] 56:19 adopt [5] 4:12 7:3 8:1 9:8 40:13 adopted [1] 7:8 adoption [1] 22:21 advance [4] 43:13,13 47: 12,15 advisement [5] 50:13 57: 8,14 58:10,23 affidavit [4] 11:10 24:8 26: 4,18 affidavits [6] 4:22 6:1 30: 1 56:16,18,19 affix [2] 5:9 58:3 after [3] 9:5 18:3 30:20 again [19] 4:24 13:16 14:3 17:18 21:6 22:9 23:23 28:8, 15 35:15 39:11,16 40:14 41:25 42:7,12 45:24 54:25 56:22 against [4] 29:1,10 49:24, 24 ago [5] 8:7 39:24,24 45:17 57:12 agreeable [1] 37:19 agreement [4] 57:9,14,16 58:1 ahead [2] 33:25 49:7 aided [3] 39:3,3 42:14 aiding [1] 42:5 air [1] 43:1 al [1] 3:6 all [67] 3:3,4,17,20 4:17,20 5:6 6:13,24 13:10,13 15:2, 7,15,20,22,24 18:14,24 20: 22 24:11 25:16 26:23 27:6, 24 28:22,25 30:15,18,19 31:24 32:4,12 33:16 34:13 35:7,18,21,22 36:11,21,22,</p>
---	--	---	---

Keyword Index

<p>23 37:14 38:3,4 41:8 44:7, 7,9 45:11,13 49:7 50:8,11, 11,14 51:21 53:6,14,16 57: 3,25 58:5,18,19 59:3</p> <p>allegation [1] 36:8</p> <p>allegations [2] 16:14 54: 11</p> <p>allege [1] 54:7</p> <p>allow [3] 18:8 23:23 51:16</p> <p>allowed [4] 36:19,20 39:2 53:13</p> <p>alluded [1] 20:5</p> <p>almost [3] 39:24 41:8,9</p> <p>already [9] 6:8 30:6 32:9 41:23 42:12 46:1 50:24 51: 13 52:21</p> <p>also [16] 6:15 7:25 10:12 12:20 16:9 21:10 33:12 37: 25 38:17 40:10,10 44:1 50: 14 53:7 56:8 57:6</p> <p>although [1] 15:13</p> <p>always [2] 13:1 51:4</p> <p>am [2] 11:4 48:24</p> <p>amend [1] 36:13</p> <p>amended [3] 6:11,12 9:4</p> <p>amending [1] 36:15</p> <p>amendment [19] 8:15,20 34:24 39:5,6,20 40:4,10,14 41:20,21 42:11,16,18 45:6, 18,18 51:17 53:10</p> <p>amendments [2] 8:21 45: 2</p> <p>american [2] 45:25,25</p> <p>amici [1] 6:3</p> <p>amicis [2] 6:1 56:19</p> <p>among [1] 22:14</p> <p>amory [1] 17:2</p> <p>amply [1] 5:25</p> <p>an [48] 8:13 9:14 10:13 12: 19 13:13 14:14,18,20,20 15:16 16:15,25 17:5 18:16 19:7,14 20:25 22:1 25:20 26:10 27:17 28:7,8 30:15 31:7 32:9,23 33:1,5,5,5 34: 21 36:17 38:13 42:22 43:1 45:8 53:6,12 54:7 56:9,16, 24 57:9,9,13 58:1,13</p> <p>analog [1] 8:15</p>	<p>analysis [19] 7:9,25 8:18 12:24 13:1,9,13 15:13 21: 15,18 24:5,7,19 31:3 40:6, 18,22 46:9,18</p> <p>ancient [1] 22:14</p> <p>angel [4] 6:5 14:18,20,20</p> <p>angels [1] 22:14</p> <p>angel's [2] 14:2,25</p> <p>annotated [1] 19:25</p> <p>anomalous [2] 41:24 42: 22</p> <p>another [9] 10:11,17 13: 11 18:20 21:15 25:11 32:1, 8,11</p> <p>answer [1] 7:6</p> <p>answered [1] 33:4</p> <p>any [25] 4:14 5:1 6:22 8:25, 25 9:2,8 11:2 14:14 15:16, 18 17:16 18:8 21:19 27:2 42:5,25 43:1,2 45:3 46:12, 25 53:8 57:4,15</p> <p>anybody [1] 14:18</p> <p>anymore [1] 18:9</p> <p>anything [12] 7:19 15:7 28: 25 29:6 35:22 36:3 40:24 43:2,10 45:5 47:25 49:13</p> <p>anywhere [4] 17:7 36:7 42:23 47:18</p> <p>apart [2] 54:5,17</p> <p>appearance [1] 24:16</p> <p>appears [1] 37:8</p> <p>application [2] 43:8 52:8</p> <p>applied [9] 7:1 10:23 38: 19,21,24,24 40:16 41:1 42: 10</p> <p>applies [1] 42:17</p> <p>apply [4] 32:2,2 46:6 52:25</p> <p>applying [2] 6:7 15:11</p> <p>appreciate [1] 31:23</p> <p>approach [6] 8:2,8,10,12 31:7,21</p> <p>appropriate [7] 7:18 9:10 26:22 31:5 38:13 39:6,20</p> <p>appropriateness [1] 29: 25</p> <p>appropriation [2] 18:22 42:3</p> <p>appropriations [1] 32:6</p>	<p>archangel [5] 5:22 13:14 21:4 27:17 28:8</p> <p>architect [1] 26:5</p> <p>are [92] 3:4,25 4:11 5:7,13, 19,20,23 6:4,8,10,15 7:18, 21 8:23 10:3,5,6,11,12,14, 25 11:13 12:3,3,7,7 13:12, 16,19,21 14:21,25 15:12 16:18 17:2,3,4 18:13,14 19: 18 20:14 21:7,17,17 22:10 23:12,12 25:23 26:1,16,17 27:7,20 28:9 29:23,23 30:3 31:1,2,24 32:7,18,19,21 33: 3,17,23,24 34:6,19 35:4 39: 3,6,20 41:3 42:14 47:1 48: 22 50:17 54:8,9,14,15,24 55:7,11 56:1,10,11,21 57: 18</p> <p>area [1] 54:7</p> <p>aren't [2] 33:11,11</p> <p>arguable [1] 28:13</p> <p>argue [9] 9:18 24:13 34:10 38:20,23 42:23 50:23 52:6 54:3</p> <p>arguing [1] 54:8</p> <p>argument [20] 10:24 11:2 21:1,14 22:1 31:15 32:23 33:1,5 34:5 36:24 42:16,25 43:1,3 46:11 50:5 51:5 55: 1 58:13</p> <p>arguments [13] 4:6,8,9,13 16:9 24:4 50:17 51:1 56:16, 21 57:5,6,6</p> <p>arising [3] 39:5,20 42:15</p> <p>around [5] 9:22,24,25 14: 11 56:17</p> <p>arrives [1] 57:22</p> <p>arriving [1] 7:3</p> <p>arrogance [1] 48:11</p> <p>art [10] 13:18 25:15,21 26:8, 12,17 28:19 32:5 34:8 35: 16</p> <p>article [45] 5:15 6:10 7:9, 19 8:13,19,22,24 9:4 15:16 17:18,18,19,20 18:1,5,5,17 24:10 31:16 34:23 36:8,9 37:9 40:3,11,18 41:2,16,23, 24,25,25 42:9,18,20,21,24</p>	<p>53:8,10,11,11 54:9 56:5,24</p> <p>articles [1] 41:21</p> <p>artwork [1] 33:1</p> <p>as [73] 3:22 4:11 5:6 6:9 7: 15 9:20 11:3,25 12:19 13: 12,14,18 14:13 15:19 16: 16 17:11,20,20 18:1 19:8 20:23 21:4,13,15,21 22:10, 14,16 23:14 25:21 26:17, 17 30:6 31:6,6,14,17 37:3, 13,13 38:10,21 40:15,17, 17,25 41:4,15 43:5 44:21 45:16 46:11,11,16,17 47: 10,14 48:6 49:24,24 50:7, 22 51:11,12 53:11 55:10 56:19 57:5,6,8,9 58:18,18</p> <p>ask [13] 7:2 12:10,25 13:10 16:7 23:25 24:2 28:19 34: 16 36:15 46:4 48:10 50:9</p> <p>asked [6] 6:2 16:15 24:3 31:23 43:7 55:21</p> <p>asking [3] 14:21 33:8,8</p> <p>asks [3] 43:6 46:17 47:20</p> <p>aspect [2] 19:2 30:12</p> <p>assigned [2] 21:12,21</p> <p>associate [1] 10:8</p> <p>associated [2] 10:4,17</p> <p>association [1] 45:25</p> <p>assume [1] 50:17</p> <p>assuming [2] 24:25 25:1</p> <p>at [62] 5:8 6:20 7:3 9:25 13: 3,12 14:9,13,13 17:13,14, 14 19:7,19 21:19 22:8 23:6 25:12,17 27:6 28:24 29:2,3, 19,21 31:17 32:17,17,21 33:22 36:11,14 37:6,8,9 38: 15,22 39:9,15,25,25 41:14, 19,19 42:1,1,8,12 44:14 45: 1 46:16 47:2,13,23 49:22 51:3,17 52:2,10,17,18 58:6</p> <p>attached [1] 54:12</p> <p>attempt [4] 19:14 32:10 33:5,6</p> <p>attempting [2] 17:1 22:4</p> <p>attention [1] 36:25</p> <p>attorney [10] 3:15,20 8:6 15:24 22:21 23:23 28:16 36:23 50:21 54:23</p>
--	--	---	---

Keyword Index

<p>attorneys [1] 3:7</p> <p>attributed [2] 13:21 14:1</p> <p>audio [1] 46:17</p> <p>austria [1] 21:11</p> <p>authority [1] 40:17</p> <p>authorized [1] 42:4</p> <p>average [1] 27:7</p> <p>aware [2] 12:11 27:8</p> <p>away [1] 10:7</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back [15] 18:1,13 21:9,11 22:12 24:1 25:12 32:14 34:7,8 37:6 42:1 50:14 51:24 53:20</p> <p>bad [1] 17:8</p> <p>baptist [1] 44:25</p> <p>bar [2] 6:14 57:1</p> <p>based [2] 42:17 48:1</p> <p>bases [2] 54:2,16</p> <p>basically [3] 4:3 21:21 24:21</p> <p>basis [4] 40:11,12,22 48:5</p> <p>bc [1] 22:13</p> <p>be [77] 3:4 4:5,11 5:1,4 6:19,19 7:1,21 8:10,18 9:24 10:13,13,18,22,23,25 11:1 12:9,10 13:1,6,8 14:6 17:5 18:10,14 19:9,13 20:11 21:2,8,17 22:12 24:16 25:1,2 27:6 28:5 29:3 32:22 33:1,4,4,24 36:19,20,24 37:17 38:10,24 39:3 42:4 44:6 45:10 48:1,12 49:1,15 50:6,7,9,18 51:18 53:13,16 55:6,19 56:3,19 57:18,22 58:13,17,22,22</p> <p>because [53] 5:20 9:4 10:15 11:11 12:5,7,18,22 14:9 15:2,5 16:23 17:21,25 18:17 19:24 20:10 23:11,16,19,20,24 24:1,14,18,22,23 26:2,14 28:5 30:11 32:2,3,11,20 33:4,10 34:5,11,13,16,22 35:13 37:7 38:24 42:11 43:22 45:11 48:10 50:13 52:11 53:19 55:1</p> <p>been [18] 10:2,10 11:2 12:</p>	<p>15 19:22 20:12 26:3,9,21 28:3 30:22 31:21 39:4,19 42:14 44:13 48:21 51:4</p> <p>before [10] 3:21 16:13 19:25 23:20 29:24 33:8 48:21 53:12 55:23 58:7</p> <p>beg [1] 25:20</p> <p>begin [1] 19:16</p> <p>beginning [2] 16:11 31:14</p> <p>begins [2] 17:10 29:22</p> <p>behind [1] 35:14</p> <p>being [13] 10:14 16:15 18:22 19:17,18 32:4 36:8 37:15 54:9,21 55:3,5 58:17</p> <p>belief [2] 5:24 49:13</p> <p>beliefs [4] 6:13 48:5,6 49:12</p> <p>believe [6] 9:7 23:18 24:8 31:3 39:6 49:14</p> <p>benefit [1] 31:19</p> <p>berne [1] 13:18</p> <p>best [1] 21:8</p> <p>betancourt [1] 40:17</p> <p>better [2] 21:12 24:14</p> <p>between [2] 28:6 44:22</p> <p>beyond [3] 16:14 18:18 42:24</p> <p>big [3] 18:20 20:10 22:5</p> <p>biography [1] 22:7</p> <p>bit [2] 27:25 30:17</p> <p>blah [6] 31:20,20,20 57:22,23,23</p> <p>bless [1] 55:22</p> <p>boat [1] 28:11</p> <p>bonaventure [1] 12:13</p> <p>book [1] 27:23</p> <p>born [1] 14:11</p> <p>boston [3] 57:20,20,24</p> <p>both [17] 9:21 11:5 13:16,17,23 14:2,3,4 18:3 24:18,20 30:18 34:14 53:25 58:14,18,20</p> <p>boujankian [2] 40:15,16</p> <p>bound [3] 7:10,16,22</p> <p>bremerton [7] 44:11 45:16 46:3 47:22 49:10 52:7,15</p> <p>brick [1] 25:19</p>	<p>bridle [2] 19:20 23:13</p> <p>brief [5] 4:25 51:25 53:23 54:25 56:3</p> <p>briefly [3] 16:9 53:22 56:11</p> <p>brigade [2] 14:12 23:22</p> <p>bring [5] 15:17 16:25 36:25 50:20 53:8</p> <p>bringing [1] 16:18</p> <p>broader [1] 8:4</p> <p>broadly [1] 8:4</p> <p>brother [9] 8:10 38:11 39:10 40:2 41:16 47:12 54:20 55:17 56:15</p> <p>brought [5] 18:23 30:22 39:7,21 41:20</p> <p>bucket [4] 10:9,11 13:25 27:10</p> <p>build [1] 36:19</p> <p>building [20] 5:8,10 10:19 13:25 19:1,3,19 20:14 25:22 26:2,6,21,22,23 28:5 32:6,21,24 51:6 54:13</p> <p>buildings [4] 10:4,7 25:18,19</p> <p>built [2] 35:4,7</p> <p>buried [1] 34:18</p> <p>burning [1] 13:25</p> <p>but [74] 3:24 5:8 6:6,15 7:16 9:8 10:14,21 11:11 12:20 13:11 14:25 15:10 17:12,18 18:16 19:2,5 20:16 21:8,11,11 22:4,7,11,22,24 24:16 25:4 26:14,22 27:1,18 28:16,20 29:3,5,10 31:2,5,14 32:9,19 33:7,11,19,19 34:1,6,17 35:6,11 36:25 37:24 38:7,25 44:1,14 46:3 47:15 48:19 49:1,2,16 50:18 51:17 53:21 54:15 55:1 56:14 57:21,23 58:5,16</p> <p>by [57] 3:10 4:4 6:1 7:10,19,22 11:21 12:12 13:20 14:19 16:4,6 17:16 19:10,17 20:8 21:13,20 22:21,25 23:19 28:18 30:9,23 31:9 32:6,21,23 33:6,10,15 34:3 37:7 38:5,19 39:3,4,19 40:16,23</p>	<p>41:5,7,24 42:14,14,19,20 43:5 45:2,4,17 47:16 49:10 52:21 54:11 56:16 57:18</p> <p>byrne [1] 55:11</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c [1] 3:1</p> <p>call [3] 3:22 25:15 37:23</p> <p>called [2] 3:2 20:4</p> <p>calling [2] 3:6 35:15</p> <p>came [6] 12:12,12 30:19 32:19 34:9 51:11</p> <p>can [29] 3:25 4:12 7:25 10:20 12:9 14:6 22:12 24:16 32:2,20 34:11 36:3,13 39:12,13 41:9,11 44:1 46:18 48:1,10,10 50:3 53:2 54:7 56:3,4,19 57:13</p> <p>cannot [3] 12:2 49:20 53:4</p> <p>can't [6] 14:15 34:4 38:6 48:12 50:2 52:24</p> <p>careful [1] 12:18</p> <p>carefully [1] 30:10</p> <p>caring [1] 22:15</p> <p>case [47] 5:19 6:7 8:6,8,13,15,18,21,22 9:3 11:7 12:4,5 13:6 15:14 16:24 17:2 30:23 31:12,19 32:2,3 34:2 36:15 37:1 39:1,11,16 40:2,16,23 41:18,18,19 42:11,11 43:2 44:11,14 48:18 49:22 51:3 52:18 54:2,15 55:16 56:23</p> <p>cases [10] 11:2 31:4,25 38:17,17 39:9,10 40:24 41:8 50:14</p> <p>catholic [32] 5:10,21 11:1 12:13 13:17,19 14:19 15:2 19:20,21 20:4,7,8,9,18,24 21:13,16,17,21 22:5,11,18 23:15 27:16,18 28:10,12,14 32:15 55:19 56:1</p> <p>catholicism [3] 13:24 22:24 55:9</p> <p>caused [1] 6:19</p> <p>cautioned [1] 30:25</p> <p>caveat [1] 37:20</p> <p>cell [1] 3:4</p>
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Keyword Index

<p>central [2] 5:4 40:5</p> <p>centuries [1] 22:13</p> <p>certain [2] 22:23 35:17</p> <p>certainly [4] 7:19 9:22 11:8 36:1</p> <p>cetera [2] 15:6 55:13</p> <p>challenge [2] 18:16 47:11</p> <p>challenged [2] 43:12 46:24</p> <p>chance [3] 49:24,25 50:19</p> <p>change.org [1] 29:19</p> <p>changes [1] 9:12</p> <p>chaplain [4] 12:14,20 42:13 46:19</p> <p>chaplains [2] 19:6 39:3</p> <p>chapter [2] 17:7,9</p> <p>characteristic [2] 5:21 13:17</p> <p>chart [2] 43:17,21</p> <p>checked [1] 57:16</p> <p>chief [1] 22:14</p> <p>children [2] 33:4,7</p> <p>chose [2] 11:11,16</p> <p>christian [2] 27:21 28:1</p> <p>christianity [2] 23:20 27:22</p> <p>christians [1] 28:6</p> <p>church [21] 15:2 20:18,24 21:13,20,21 22:18 27:16,18 28:10,12,12,14 32:16 35:2,3 38:2 42:5 44:22 45:8 52:20</p> <p>churches [1] 51:4</p> <p>citations [1] 31:14</p> <p>cite [3] 39:13 45:7 48:3</p> <p>cited [5] 16:24 17:3 39:10 40:2 49:22</p> <p>cites [3] 39:17 43:21 44:4</p> <p>citing [1] 51:3</p> <p>city [15] 3:7,16 4:5 6:9 19:18 21:15 25:23,24 29:9 35:4,11 36:16 49:1,6 55:20</p> <p>city's [1] 50:20</p> <p>civil [1] 3:6</p> <p>claim [5] 6:16 17:5 41:20 53:8,9</p> <p>claims [6] 39:5,7,20,21 42:15 54:6</p>	<p>clarify [1] 36:14</p> <p>classic [1] 42:7</p> <p>clause [21] 8:9,17,23 9:137:24 40:3,18 41:3,4,11,23 42:2,7,19 45:15 47:24 49:9 52:9,21,22 53:9</p> <p>clear [6] 5:11 6:14 7:18 28:5 30:8 36:5</p> <p>clearly [7] 6:10 14:17,17 19:9 24:15 32:9 49:11</p> <p>clerk [1] 3:6</p> <p>cleveland [1] 8:5</p> <p>cloaking [2] 18:16,18</p> <p>close [3] 6:2,6 30:17</p> <p>closing [2] 26:5 36:1</p> <p>cognate [5] 37:23 39:7,21 41:2 49:17</p> <p>coin [1] 35:2</p> <p>coincidence [2] 20:13,15</p> <p>colleague [1] 3:10</p> <p>collectively [1] 17:5</p> <p>colo [39] 5:17,18,20 7:1,6,18 15:11 16:10 19:4,5 30:18,23,25 31:7 32:2,3,4 34:9,14 37:1,8 38:16,18,21,24 39:16,17 41:17,18,19 42:1,10,17 43:6,8 46:16,23 47:13,20</p> <p>columns [1] 26:7</p> <p>come [4] 5:5 18:13,15 25:5</p> <p>comes [1] 27:19</p> <p>comfort [1] 5:25</p> <p>coming [3] 20:8 36:6 56:1</p> <p>comments [1] 54:20</p> <p>common [3] 6:6 25:24,25</p> <p>commonalities [1] 13:15</p> <p>commonplace [2] 45:24 46:8</p> <p>commonwealth [12] 6:12 9:22,25 10:16 17:22,22 23:10 38:4,5 39:11,17 55:8</p> <p>commonwealth's [1] 9:5</p> <p>communities [2] 5:24 11:19</p> <p>community [8] 5:14 6:9 13:3,5,8 15:5 29:10 51:8</p> <p>community's [1] 16:21</p> <p>complaint [31] 16:6,7,11,12,17 17:7,10,13,15,17 18:18,21,25 19:22,23,24 20:2,3 23:1 24:10 27:1,5 28:23 32:7 36:13 45:13 48:3 50:4 51:19 54:11,21</p> <p>complaints [1] 42:9</p> <p>complete [1] 36:16</p> <p>completely [3] 8:23 44:13,19</p> <p>completion [2] 33:9 36:19</p> <p>conceded [1] 18:3</p> <p>concern [6] 19:12 31:22 32:9 54:7,8 58:6</p> <p>concerns [1] 29:8</p> <p>conclude [3] 31:20 40:5,7</p> <p>conclusion [3] 31:18 34:9 51:11</p> <p>concurrently [1] 24:12</p> <p>conduct [2] 19:12 24:20</p> <p>conducting [1] 19:6</p> <p>confront [1] 6:20</p> <p>confusing [1] 42:20</p> <p>confusion [1] 57:7</p> <p>congregation [1] 35:5</p> <p>congregational [1] 38:2</p> <p>connecticut [1] 44:25</p> <p>conscience [1] 37:19</p> <p>consider [3] 11:12 16:8 57:4</p> <p>consideration [3] 5:18 12:2 15:18</p> <p>considered [1] 56:19</p> <p>consistent [1] 26:8</p> <p>consistently [1] 38:18</p> <p>constitution [26] 6:7 8:4,14 14:23 16:20 17:24 37:10,11 38:1 39:8,22 40:4,4,14,21 41:1,2,17,21 42:8 44:22,23,23 45:1,8,14</p> <p>constitutional [10] 6:18 8:16,17 31:2 48:6 50:2 54:4,6,8,17</p> <p>constitutionality [2] 39:2 42:13</p> <p>constitutions [1] 40:7</p> <p>constructed [1] 26:3</p> <p>construction [2] 25:16</p>	<p>33:9</p> <p>contains [1] 45:14</p> <p>contemporary [2] 9:15,16</p> <p>contentious [1] 6:10</p> <p>context [1] 18:12</p> <p>contextually [1] 35:15</p> <p>contingencies [1] 51:8</p> <p>continue [1] 17:23</p> <p>contributed [1] 35:11</p> <p>conveys [2] 5:10,12</p> <p>copy [7] 37:2,3 39:11 47:5,7,9,22</p> <p>core [2] 51:1,5</p> <p>corners [1] 51:19</p> <p>correct [3] 34:4 46:14 47:4</p> <p>could [11] 15:18 20:19 21:8 22:2 26:21 32:20 37:5 41:13,13 44:13 57:17</p> <p>couldn't [3] 25:6,8 26:20</p> <p>council [1] 29:9</p> <p>councilor [3] 6:9 29:7,10</p> <p>councilors [1] 55:20</p> <p>counsel [20] 3:12,17 6:24 8:10 15:22 26:19 31:12,23 36:21 44:7,16 46:10 50:11,14 51:23 53:14 57:3,25 58:18,25</p> <p>counsel's [3] 54:20 55:17 56:15</p> <p>count [2] 17:14,18</p> <p>country [3] 9:22,25 56:17</p> <p>counts [1] 32:4</p> <p>couple [3] 26:25 55:4 58:12</p> <p>courage [1] 12:22</p> <p>course [3] 9:3 55:9,10</p> <p>courtroom [1] 37:12</p> <p>courts [2] 16:24 51:16</p> <p>court's [6] 4:25 8:7 31:22 40:7,8 59:2</p> <p>cousin [1] 58:16</p> <p>cover [2] 41:8,10</p> <p>crafted [1] 30:10</p> <p>created [3] 23:21 25:24 55:12</p> <p>creating [1] 14:12</p>
---	--	---

Keyword Index

<p>creator ^[1] 37:15</p> <p>credit ^[1] 42:4</p> <p>crime ^[1] 5:6</p> <p>crisis ^[1] 5:6</p> <p>criteria ^[6] 39:3,6,18 40:15 42:14 43:8</p> <p>critical ^[2] 24:19 49:11</p> <p>current ^[1] 41:14</p> <p>cut ^[2] 35:23 43:20</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d ^[1] 3:1</p> <p>daniel ^[1] 27:24</p> <p>dated ^[2] 52:5,5</p> <p>davidson ^[20] 3:9,9 4:16, 24 5:3 7:5 9:20 11:7 13:1, 15,23 14:24 15:9,21,23 53: 16,23 54:20 58:1 59:1</p> <p>day ^[1] 38:17</p> <p>deal ^[4] 12:16,23 13:12 24: 3</p> <p>decades ^[1] 9:5</p> <p>decided ^[1] 8:6</p> <p>decision ^[7] 7:3 30:20 31: 8 40:17 52:17 57:11 58:7</p> <p>decisions ^[4] 31:3,6 32: 19 47:16</p> <p>declaration ^[8] 5:15 13: 18 17:25 41:22 53:10 54: 23 55:11 56:9</p> <p>declarations ^[6] 30:4,5 32:13 48:3 54:11,22</p> <p>defendant ^[4] 4:7 7:12 10: 25 32:3</p> <p>defendants ^[15] 4:17 6:2, 17 7:2 9:20 10:1 11:10,12, 17 12:2,6 14:4 41:6 52:3 58:2</p> <p>defendants' ^[4] 5:8 6:1, 25 11:19</p> <p>deficiencies ^[1] 16:6</p> <p>degree ^[1] 34:2</p> <p>demon ^[3] 6:6 14:2,25</p> <p>demonstrative ^[1] 14:8</p> <p>denial ^[1] 27:21</p> <p>denied ^[1] 50:10</p> <p>denomination ^[1] 42:6</p> <p>department ^[4] 12:20 20:</p>	<p>24 21:5 35:16</p> <p>depicted ^[3] 13:16,18 22: 14</p> <p>depiction ^[1] 29:12</p> <p>depicts ^[1] 14:20</p> <p>descendant ^[1] 38:2</p> <p>described ^[4] 19:8 22:10 41:19 42:1</p> <p>describing ^[1] 17:10</p> <p>design ^[1] 25:4</p> <p>determining ^[3] 7:9 39:1 42:13</p> <p>developed ^[1] 27:6</p> <p>dictates ^[1] 37:19</p> <p>did ^[23] 13:7 21:3,3 23:21 24:11,12,22 29:17,17 30: 18 31:9 35:8,9 44:11,19,25 45:2 52:8 53:24 54:21,25 56:3,5</p> <p>didn't ^[12] 7:19 14:13,14 21:19 22:19 23:2 29:2 34: 23 35:11,22 46:23,25</p> <p>died ^[1] 23:17</p> <p>difference ^[2] 46:12,25</p> <p>different ^[23] 6:25 8:14,23, 24 9:2,3,4 12:24 13:8,14 14:22 18:15 24:5,8,17 25:2, 6 30:8 32:17 35:1 40:24 47: 1 55:25</p> <p>difficult ^[2] 12:5 56:14</p> <p>dimension ^[2] 23:7 25:11</p> <p>dimensions ^[1] 23:12</p> <p>direct ^[4] 10:8 16:4 29:12 38:1</p> <p>directly ^[1] 10:19</p> <p>disagree ^[1] 9:17</p> <p>disavow ^[1] 23:20</p> <p>discomfort ^[1] 48:2</p> <p>discord ^[1] 18:4</p> <p>discussed ^[1] 30:6</p> <p>discusses ^[2] 47:13,13</p> <p>discussion ^[8] 3:23 16:1 17:17 30:19 31:15 34:24 35:17 36:12</p> <p>disestablishment ^[1] 18: 6</p> <p>dismiss ^[20] 4:4,8,10 6:15 15:19 36:12 50:6,16,21 51:</p>	<p>16 52:3 53:13,22,25 56:4, 13,20,25 57:1,7</p> <p>displayed ^[1] 10:14</p> <p>displaying ^[1] 45:23</p> <p>displays ^[3] 9:21 10:5 46: 7</p> <p>disproportionality ^[3] 40:5,9,11</p> <p>dispute ^[4] 38:21,23 52:12 58:17</p> <p>disrespectful ^[1] 48:20</p> <p>dissent ^[1] 44:18</p> <p>distinction ^[1] 28:6</p> <p>district ^[4] 44:12 45:19 52: 8,15</p> <p>disturb ^[1] 37:21</p> <p>division ^[1] 6:11</p> <p>divisive ^[4] 6:8 43:15 47: 21 51:5</p> <p>divisiveness ^[1] 47:20</p> <p>divorced ^[2] 12:9 14:6</p> <p>do ^[42] 4:20 7:2,20,25 9:7,9 11:4,9 13:11 15:13,15 16: 25 17:2,5 20:17 22:4,24 23: 3 24:17 25:9 28:16 32:2,20 34:19 35:6,14 36:2 38:7 40: 24 41:13,13 43:21 44:7 45: 3,5,15 46:4 52:24 53:20 54: 10,13 57:12</p> <p>docket ^[1] 52:5</p> <p>document ^[2] 19:24 37:11</p> <p>does ^[11] 7:15 17:15 28:9, 12 30:5,7 37:20 39:23 43: 12 47:11,25</p> <p>doesn't ^[10] 18:7 28:25 29: 6,15 30:10 42:18 43:10 46: 12 48:8 52:13</p> <p>dogs ^[1] 20:11</p> <p>doing ^[3] 16:2 25:16 37:6</p> <p>dominate ^[1] 35:12</p> <p>donated ^[3] 10:6 35:4,8</p> <p>done ^[4] 26:20,21 58:14,15</p> <p>don't ^[38] 4:20,22 10:8 12: 4,8 14:5 17:6 21:6,19 24:1 25:4,13 26:13 27:13,14,17, 18 28:11,11,20 33:25 38: 21,23 42:24 43:20,22 44:3, 4,16 46:5 48:12,19 49:5,18</p>	<p>52:5 53:8,19,20</p> <p>door ^[4] 23:10 25:3 32:25 33:6</p> <p>double ^[1] 45:18</p> <p>down ^[7] 7:20 21:1 27:8 33: 24 38:17 45:11 58:6</p> <p>dowsing ^[1] 13:25</p> <p>draw ^[1] 11:5</p> <p>drawn ^[2] 24:16 29:8</p> <p>drive ^[2] 33:15,25</p> <p>driven ^[1] 22:25</p> <p>driving ^[2] 32:21 33:16</p> <p>due ^[5] 8:8 15:2 33:9,16 56: 22</p> <p>during ^[3] 4:11 15:19 26:5</p> <p>duty ^[6] 37:13,13,15,25 38: 6 55:24</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e ^[2] 3:1,1</p> <p>each ^[3] 15:14 17:10 43:19</p> <p>eager ^[1] 23:24</p> <p>earlier ^[3] 4:12 23:7 52:22</p> <p>early ^[1] 22:12</p> <p>easily ^[1] 6:14</p> <p>easy ^[1] 44:14</p> <p>echoes ^[1] 48:11</p> <p>effect ^[6] 43:12 46:6,24,25 47:11,14</p> <p>eight ^[2] 11:20 52:10</p> <p>either ^[4] 14:5 21:22 27:18 28:12</p> <p>ejected ^[1] 31:25</p> <p>elementary ^[1] 32:24</p> <p>elements ^[3] 53:5,7,7</p> <p>elevate ^[1] 20:8</p> <p>else ^[7] 15:7 26:20,21 41: 10 43:10 49:14 50:19</p> <p>emphasize ^[1] 54:1</p> <p>emphasizes ^[1] 55:5</p> <p>encountered ^[1] 19:24</p> <p>end ^[4] 6:4 25:12 37:8 57: 18</p> <p>ended ^[1] 32:16</p> <p>endnotes ^[1] 37:5</p> <p>ends ^[1] 7:25</p> <p>enjoin ^[1] 33:8</p> <p>enough ^[1] 49:15</p>
--	--	---	---

Keyword Index

<p>ensure [3] 6:12 16:18,20 entanglement [3] 43:14 46:8 51:7 enter [1] 16:15 entirely [2] 26:22 46:2 entrance [3] 10:19 25:2,6 equal [4] 6:12 8:24 41:21 56:8 equally [3] 5:7 39:6,20 especially [3] 4:10 14:25 56:24 espinosa [1] 52:16 essential [2] 5:5 6:20 establish [4] 9:1 29:6 53:6 56:23 established [3] 39:4,19 42:14 establishment [11] 8:23 9:1,6 41:4,6,7 42:2,7,21 47:24 52:21 estate [1] 37:18 et [3] 3:6 15:6 55:13 evaluating [3] 40:9,11 56:24 even [14] 8:17 9:7 12:2 36:5 42:18,18 44:15,22 45:6,14 46:16,16 48:12 52:25 event [1] 13:5 events [1] 10:15 ever [1] 31:25 every [1] 19:20 everybody [8] 3:21 4:2 20:8 30:16 33:18 34:15 50:18 58:20 everyone [2] 6:10 57:24 everywhere [1] 7:17 evolving [2] 31:7,21 exactly [4] 5:15 6:11 50:6 58:15 example [1] 32:23 examples [6] 9:21 10:1,5,10,11,21 excessive [4] 40:3,6,14,18 exec [1] 7:7 exercise [13] 37:24 41:3,8,9,11,23 42:19 52:9,22,25 53:1,3,9</p>	<p>exercised [1] 5:16 exercising [1] 7:7 exhibit [11] 22:6,6,8,10 24:9,9 25:14 26:10 29:15,18 30:6 exhibits [16] 6:1 11:13,17,19,20,20,24 12:1,6 22:11 25:12 29:16 50:15 54:23 56:17,18 expect [1] 43:24 expenditure [4] 17:6,16 18:16 29:25 experiment [1] 9:6 explain [5] 11:13,20 12:2 14:4 29:2 explained [2] 32:7 43:5 explaining [1] 54:12 explains [1] 13:19 explicit [1] 11:21 explicitly [1] 8:7 expression [1] 45:19 expunged [1] 18:5 extended [1] 18:23 extends [1] 28:15 extensive [2] 12:3 56:16 extraordinary [1] 36:4 eyes [2] 6:2,6</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facade [1] 26:6 fact [13] 5:23 9:13 11:22 13:2 20:5 28:9 30:6 32:15 34:5,6 56:15,22 58:13 factor [2] 22:20 40:8 factors [7] 5:18 7:18 15:12 16:5 19:4,5 31:24 factual [1] 29:6 failed [1] 9:5 failure [3] 15:15 53:6,7 fairly [1] 26:2 faith [5] 5:12 18:1 20:8,11 27:20 faiths [1] 5:12 far [4] 10:7 28:7 31:6 38:10 fascinating [1] 34:22 father [1] 12:15 favor [1] 5:11 favoritism [1] 5:16</p>	<p>federal [2] 40:6 44:23 feel [2] 5:7 36:2 few [6] 8:3,6 22:7 45:10,17 53:17 fiction [1] 44:24 figure [4] 14:10 18:12 23:9 35:13 figures [6] 10:3,11 11:13,21 12:7,9 figures' [1] 11:18 filed [2] 4:4 58:2 final [3] 13:11 26:5 56:4 finally [3] 6:8 30:3 39:23 financial [1] 38:1 find [3] 11:2 21:8 39:9 finding [2] 19:10 34:11 finds [4] 28:23 40:21,22,22 fine [5] 30:10,16 40:3 47:9 58:9 finer [3] 40:6,15,18 finished [1] 21:25 fire [15] 5:23 11:14,15 12:20 19:3 20:14 22:21 23:21 24:13,21,22 26:2 29:1,5 35:16 firefighters [12] 3:19 12:14,21 20:24 21:11,22 23:4 24:25 25:5,8 28:13 36:18 firefighting [3] 13:5 15:3 23:3 fires [2] 14:12 23:22 first [32] 4:5,23 11:9,22 16:11 18:2 19:21 22:1 23:1,1 30:18,19,24 35:3 36:25 39:5,5,20 41:20 42:11,15,18 44:9,9 45:6,18,18 47:2 53:10 54:2 55:4,22 fishing [1] 58:8 fitzmaurice [2] 3:6 32:5 five [2] 57:19,23 flat [1] 26:6 florian [19] 11:23 13:14,24 14:10,21 15:1 21:6,9 22:25 23:2,2,3,4,4,17 24:4,14 28:14 55:9 florian's [1] 5:22 flow [1] 17:3 flows [1] 17:17</p>	<p>focus [1] 19:11 focused [2] 16:23 19:15 focusing [1] 16:5 follow [3] 7:16 48:25 49:17 followed [1] 31:8 following [2] 7:21 43:9 follows [1] 41:15 foot [1] 5:9 footnote [2] 37:9 42:1 footnotes [3] 37:6,7 41:18 for [87] 3:7,10,16,19 4:3,8,9 5:5,18 6:10,13 7:18,24 8:3,3 9:11 10:25 11:23 12:20 13:5,14 14:16 15:12,16 18:23,24 19:1 21:12,23 22:1,15,15,15,20,23 23:11 24:5,12 26:1 27:2,5 28:11,25 29:5 30:16,16,20 32:6 34:10,16,17 36:16 37:18,19 38:7 39:4,19 40:9,11,20 41:7 42:4,15,25,25 44:15 45:12,19,20,22 46:3,7,8 47:10 49:15 50:4,12 51:6,11,12,16 52:4 54:2,22 56:25 57:6,19 forced [1] 6:19 fore [1] 58:6 foremost [1] 54:3 forth [4] 5:17 18:23 41:17 56:13 forward [4] 4:5 36:6,20 51:19 found [4] 19:6 21:25 30:24 34:22 foundation [1] 16:16 founding [2] 42:5 45:22 four [5] 37:9 42:1 43:5,15 51:18 framework [2] 15:11 52:9 france [1] 45:1 francis [1] 20:13 franciscan [1] 12:12 frankly [2] 8:22 56:14 free [14] 7:14 37:24 41:3,8,9,11,23 42:19 52:9,22,24 53:1,2,9 freighted [1] 5:20 frequently [3] 9:11 51:16 55:2</p>
---	--	--	---

Keyword Index

<p>from ^[53] 4:6,7,23 5:23 6:17 10:7,24,24 12:9,13 14:6 17:3,12 18:5,23 21:8,8 22:3,6,10,11,13 23:6 24:11,16 27:1,25 29:8,22 32:1 34:18,25 35:3 37:11 39:1,16 40:21 41:15 42:2 43:7,18 44:14 45:25 48:11 49:9,19 50:21 54:5,17 55:11,20,25</p> <p>front ^[7] 4:2 5:10 23:10 25:3 32:25 33:25 43:22</p> <p>full ^[1] 5:13</p> <p>function ^[2] 26:8,17</p> <p>funded ^[1] 18:25</p> <p>funding ^[3] 18:22 19:1,1</p> <p>funds ^[3] 5:9 51:6 56:6</p> <p>further ^[4] 35:22 40:7,13 48:9</p> <p>furthermore ^[1] 52:16</p> <p>future ^[1] 7:17</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>g ^[1] 3:1</p> <p>general ^[6] 5:18 7:6 8:6 37:1,9 38:16</p> <p>generally ^[2] 25:4,5</p> <p>generation ^[1] 45:22</p> <p>genesis ^[1] 12:17</p> <p>george ^[1] 45:3</p> <p>get ^[6] 17:8 24:1 25:13 26:14 30:17 48:19</p> <p>gets ^[2] 25:11 50:19</p> <p>getting ^[2] 31:18,22</p> <p>gilleran ^[33] 3:18,18,20 4:19 23:23 28:16 36:23,24 37:5 39:15 43:24 44:1,6,9,18 46:14,16,22 47:1,5,8,10 48:9,14,16,24 49:4,9 50:9 51:23,25 52:2 53:21</p> <p>gilleran's ^[1] 22:21</p> <p>give ^[4] 12:25 39:13 43:21 53:8</p> <p>given ^[2] 10:10 32:16</p> <p>glass ^[1] 51:9</p> <p>gloss ^[1] 45:4</p> <p>go ^[16] 3:21 4:1,5,8 30:1 31:17 36:20 40:24 43:18,21,23 44:4 49:7 50:14 53:20</p>	<p>55:23</p> <p>god ^[1] 37:18</p> <p>goes ^[4] 12:14 21:9,11 49:23</p> <p>going ^[51] 3:22 7:1,20 8:10 13:1 18:8,9 19:9 20:14 21:17 23:23 25:1,2,3,17 26:9 31:6,13,17 32:5,16,21 33:2,3,4,12,17,24 34:1,2,3,22 36:17 38:10,11 43:21,23 44:4 48:22,25 50:12,13,18 52:6 57:3,4,8,10,18,19 58:10</p> <p>gone ^[3] 20:10 25:23 31:3</p> <p>good ^[9] 3:9,13,14,15,17,18,20 4:24 58:5</p> <p>gorsuch ^[3] 45:17,24 49:10</p> <p>got ^[10] 16:22 21:1 23:14 37:25 44:1,19 49:19,21 57:22 58:7</p> <p>governing ^[1] 40:25</p> <p>government ^[16] 9:1 10:4,7,8 15:16 16:20 17:1,17 18:8 32:6 41:7 45:23 46:8 48:11 51:3 56:6</p> <p>governs ^[1] 37:12</p> <p>gradients ^[1] 14:22</p> <p>grant ^[1] 42:3</p> <p>great ^[4] 28:2,16,19 37:15</p> <p>greater ^[2] 52:20,23</p> <p>grew ^[1] 44:24</p> <p>guarantee ^[1] 54:8</p> <p>guardian ^[2] 22:16 24:23</p> <p>guarding ^[1] 22:15</p> <p>guess ^[8] 6:24 14:14,22 21:1 22:4 23:13 35:25 44:3</p> <p>guidance ^[2] 11:24 31:20</p> <p>guidelines ^[2] 15:12 31:2</p> <p>guy ^[2] 12:21 25:1</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>had ^[5] 4:21 23:2 30:21 34:13 45:3</p> <p>hall ^[4] 22:25 23:3,4,4</p> <p>hancock ^[2] 25:24,25</p> <p>hand ^[2] 37:2 39:12</p> <p>happen ^[5] 10:13 11:1 29:3 57:10,10</p> <p>happened ^[4] 25:22 26:3,23 40:19</p> <p>happening ^[1] 20:15</p> <p>happens ^[3] 38:15,16,25</p> <p>happy ^[3] 5:1 26:7 57:24</p> <p>hard ^[1] 53:12</p> <p>harm ^[4] 6:18 49:21,23 50:2</p> <p>has ^[45] 9:10 10:2 11:5 12:15 13:24 14:2,2,16 15:1 19:22 21:16 22:24 24:16 25:22 26:3,19 28:3 30:23,25 31:3,5,7,21 32:1 41:24 43:1,5,15 44:10,13,19 45:5,7,8 46:2 47:21,24 48:2,21 49:17 51:4,18 52:6,11,14</p> <p>haven't ^[1] 11:2</p> <p>having ^[3] 3:24 32:15 40:1</p> <p>he ^[52] 8:11 11:10,15 14:1,2,10,11 15:1,4 21:9 22:14 23:11,17,17,19,19,20,21,21,22 24:11,12,12,22 26:4,4,7,7 27:9,23 28:2,2 29:12,17 34:23,24 35:2,4,6,8,9,11,11,12 37:12,20 38:5 44:25 45:1,1,3 55:21</p> <p>headquarters ^[2] 5:3 6:21</p> <p>hear ^[8] 3:25 4:6,7,7,23 19:20 48:12 50:21</p> <p>heard ^[2] 50:17,23</p> <p>hearing ^[3] 19:19 20:21 28:24</p> <p>heavily ^[2] 19:25 24:10</p> <p>heckler ^[1] 48:21</p> <p>hecklers ^[1] 48:22</p> <p>heckler's ^[2] 41:10 47:25</p> <p>he'd ^[3] 35:14,17,17</p> <p>he'll ^[1] 22:23</p> <p>help ^[2] 5:8 19:11</p> <p>here ^[28] 3:21 8:12,21,22 9:10 16:3 17:2 18:20 21:2 25:1 26:3 30:11,11 33:7 35:5 38:8,9,15 40:19 42:10,18 45:7 47:17 48:18,24 51:10,17 57:12</p> <p>hermetic ^[1] 45:7</p>	<p>he's ^[10] 15:1,5 23:9,24 24:14,23 27:16,17,18 28:8</p> <p>hi ^[1] 3:12</p> <p>high ^[1] 32:24</p> <p>him ^[3] 12:22 14:1 45:4</p> <p>himself ^[1] 34:25</p> <p>his ^[25] 12:22 13:8,24 14:2,14 15:1,2,3 23:5,18 24:8 26:4 29:7,11 35:13,13 37:7,9,11,17,19,19 38:7 45:4 58:16</p> <p>historical ^[11] 8:1,8,12 9:10,23 10:2,18,22 14:10 21:7 35:23</p> <p>historically ^[1] 10:12</p> <p>history ^[13] 8:20 9:4 14:14,19 23:17 31:16,19 34:14,16,23 40:2 45:5 56:18</p> <p>hold ^[1] 52:8</p> <p>holding ^[1] 27:9</p> <p>honor ^[78] 3:9,13,15,18 4:16,18,19,24 5:1 6:22 7:5,10,12 9:7,20,23 10:21 11:7 12:22 14:24 15:9,23,25 16:2,11,22 17:7 19:4,19 20:7,25 23:7,21 24:7,19 25:10,12 26:19 27:13 28:4,17 29:18 30:3,13 31:11 34:4 35:6,25 36:22,24 37:2 38:12 40:13 43:6 44:2 46:14 47:1,19 48:24 50:5,22,22 51:22,25 53:4,13,16,23 54:22 55:1 56:12,22 57:2,15,24 58:1,24 59:1</p> <p>honor's ^[2] 7:25 15:13</p> <p>hope ^[1] 30:14</p> <p>hopeful ^[1] 29:1</p> <p>hopefully ^[2] 3:22,25</p> <p>hoping ^[1] 16:4</p> <p>house ^[1] 19:3</p> <p>how ^[22] 6:24 8:16 12:16,16,23 16:22 18:25 21:18,23 22:9 27:6 28:6,18 31:6 34:1 42:8,23 44:3,4 48:18,22 54:12</p> <p>however ^[3] 17:7 36:3,14</p> <p>humanist ^[1] 45:25</p> <p>hurt ^[1] 37:17</p>
--	---	--

Keyword Index

<p>hypothetical ^[1] 35:23</p> <p>hypothetically ^[1] 20:11</p> <hr/> <p>I</p> <hr/> <p>iconography ^[3] 5:21 13:17,19</p> <p>i'd ^[1] 36:15</p> <p>identified ^[1] 29:21</p> <p>identify ^[1] 3:7</p> <p>identity ^[2] 10:14 11:18</p> <p>if ^[47] 8:2 9:8,9,17 10:21,22 11:5 13:6 14:9,9,9,13,21 15:21 16:22 20:7,11 24:24 25:7,7 27:7 28:4 29:19 32:2,23 35:13 36:11,25 37:2,5 39:11,13 43:17,20 44:2 46:25 47:5,22 48:19,19 49:25 50:6,19 53:16,21 55:6,6</p> <p>ignore ^[1] 49:11</p> <p>i'll ^[15] 16:9 22:22 24:1 25:13 27:1,1 28:15 30:17 41:8,10 50:21 51:20 53:23 57:21 58:7</p> <p>illegal ^[4] 17:6,16 29:23 49:1</p> <p>illustrate ^[1] 10:2</p> <p>illustrated ^[1] 6:1</p> <p>illustrates ^[1] 8:16</p> <p>i'm ^[47] 3:10,22,24 7:1 11:4 14:9 15:3 16:3 17:8 19:22 20:20 22:3,4 23:23 24:25,25 25:1 31:13 35:5,17,24 37:6 38:10,11 39:1,24 42:12 43:7,18,22 44:6 47:9 48:25,25 49:3,7,22 50:12,13 52:2,9,17 57:3,4,8,24 58:10</p> <p>image ^[1] 6:5</p> <p>implication ^[1] 35:14</p> <p>implications ^[1] 16:15</p> <p>importance ^[4] 5:23 11:21 12:9 49:13</p> <p>important ^[18] 10:12,14,15 11:14,15,18 12:3,7 15:5 18:1 30:15 34:14 36:16,17 38:14 42:6 54:16 55:3</p> <p>importantly ^[1] 9:3</p> <p>impose ^[1] 35:9</p>	<p>impossibility ^[1] 45:8</p> <p>impressive ^[1] 15:4</p> <p>impute ^[1] 49:11</p> <p>inappropriate ^[2] 29:23 49:2</p> <p>inaudible ^[1] 46:16</p> <p>include ^[2] 39:10 47:25</p> <p>including ^[5] 5:5 26:17 46:2 55:12,12</p> <p>incorporated ^[1] 30:22</p> <p>increasingly ^[1] 9:14</p> <p>independence ^[2] 31:6,7</p> <p>independent ^[3] 5:17 7:7 54:2</p> <p>indicate ^[1] 8:11</p> <p>indisputably ^[1] 6:8</p> <p>individual ^[6] 12:19 13:7 18:7 22:19 30:2 56:9</p> <p>individuals ^[15] 11:25 12:3 16:25 17:4 18:14,20 19:9 20:4 28:9 32:12 33:7,12 34:3,6 58:19</p> <p>inevitably ^[1] 51:4</p> <p>infer ^[1] 17:12</p> <p>inference ^[3] 24:15 29:8,9</p> <p>inferentially ^[1] 19:13</p> <p>influence ^[6] 19:14 32:10,10 33:5,5 34:10</p> <p>influenced ^[3] 19:9,13 32:22</p> <p>influencing ^[1] 33:6</p> <p>informed ^[1] 57:24</p> <p>infringe ^[1] 53:2</p> <p>inhibit ^[3] 43:13 47:12,15</p> <p>injunction ^[19] 4:4,6,12 6:16 16:5,8,16 27:5 50:9,12 51:12,15 52:4 53:6,18,25 54:24 57:5 58:3</p> <p>injunction's ^[1] 49:19</p> <p>injured ^[1] 54:9</p> <p>injury ^[1] 54:7</p> <p>inquiry ^[3] 5:19 31:2 35:23</p> <p>inspected ^[1] 57:22</p> <p>inspirational ^[1] 19:16</p> <p>inspire ^[5] 19:11 24:20,24 25:7 55:23</p> <p>installed ^[1] 25:21</p> <p>installing ^[1] 6:17</p>	<p>instance ^[2] 17:4 33:2</p> <p>instead ^[2] 31:2 45:16</p> <p>institution ^[1] 32:5</p> <p>insured ^[1] 52:21</p> <p>intensive ^[2] 8:16 13:2</p> <p>intentionally ^[1] 34:24</p> <p>interact ^[1] 54:12</p> <p>intercession ^[1] 15:6</p> <p>interest ^[2] 52:19,23</p> <p>interesting ^[4] 19:24 27:19 29:18 34:21</p> <p>interfaith ^[2] 55:24,25</p> <p>interpretations ^[1] 34:15</p> <p>interpreted ^[3] 41:5 42:8,22</p> <p>interpreting ^[1] 40:20</p> <p>interpretive ^[3] 38:19,19 40:25</p> <p>interprets ^[1] 8:4</p> <p>interrupt ^[1] 46:10</p> <p>interview ^[1] 55:21</p> <p>into ^[13] 9:11,13,15,15 12:17 17:24 20:19 23:8 28:15 30:17,19 33:25 48:19</p> <p>introduce ^[1] 30:19</p> <p>introduced ^[1] 25:20</p> <p>introductory ^[2] 16:17 19:7</p> <p>involve ^[1] 43:8</p> <p>involved ^[3] 14:11 32:18 41:20</p> <p>involves ^[1] 41:19</p> <p>irrelevant ^[1] 48:7</p> <p>irremediable ^[2] 50:1,1</p> <p>irreparable ^[3] 6:18 49:21,23</p> <p>israel ^[3] 22:16,17 28:2</p> <p>issue ^[18] 9:16 16:3,12 17:20 20:6,25 22:2,22 24:17,18 28:7 29:11 30:11,15 34:20 51:1,5 53:24</p> <p>issues ^[7] 20:21 26:15 32:15,19 36:14 48:25 53:17</p> <p>its ^[14] 5:16 6:2,6 7:7 8:2 28:23 31:5,14 37:14 41:24 47:13 49:13 56:7,8</p> <p>it's ^[78] 8:13 11:9 14:17 17:9 18:13 19:2,23 20:2,4,13,</p>	<p>15 22:7,22 23:4 24:9,18 25:24 26:11 27:6,21 28:13 29:18,25 30:8 31:6,13,14,25 33:1,2,4,13,17,18,18 34:5,6,7,8,8,8,16,17 35:3 36:1,5,9,16,17 38:8,8,20,24 41:1,19 42:8,18,22,22 44:14 45:13 47:17 49:6 50:8 52:6,7,7,13,15 54:16 55:2,2,18 57:19,22 58:8,14,15</p> <p>itself ^[4] 18:21 52:9,11 54:4</p> <p>i've ^[10] 16:23 19:24 22:25 30:13 44:1,16,17,17 50:17 51:6</p> <hr/> <p>J</p> <hr/> <p>james ^[1] 3:15</p> <p>jefferson ^[2] 42:19 44:24</p> <p>jesus ^[2] 28:4,6</p> <p>jewish ^[2] 22:12 27:20</p> <p>jews ^[1] 28:6</p> <p>job ^[1] 29:4</p> <p>john ^[14] 25:25,25 34:17,17,19 35:3,8 37:7,10 38:5,6 58:12,15,16</p> <p>joined ^[1] 3:10</p> <p>journal ^[1] 22:11</p> <p>judaism ^[5] 30:5,7,10 55:3,12</p> <p>judeo ^[2] 27:21,25</p> <p>judge ^[1] 12:16</p> <p>judging ^[3] 39:5,19 42:15</p> <p>judgment ^[2] 5:17 7:7</p> <p>judicial ^[1] 23:10</p> <p>july ^[1] 52:5</p> <p>juncture ^[1] 36:14</p> <p>junior ^[1] 32:24</p> <p>just ^[48] 4:1,12 8:6 11:1 12:21 14:9 15:9,10,17 20:7 22:22 23:2 24:1 25:18 26:6 27:4 32:13 33:15,17 34:13 35:2,25 36:10 37:13,25 39:13 41:9,10,18 43:10 48:20 49:12,12 53:11,22 54:21 55:4,8,13,15,18 56:2,5,11,20 57:4,7 58:20</p> <p>justice ^[4] 44:18 45:17,24</p>
--	---	---	---

Keyword Index

<p>49:10</p> <hr/> <p>K</p> <hr/> <p>kaplan [3] 31:9,9 51:3 keep [4] 53:23 54:25 56:3 57:24 keeping [1] 4:21 keeps [1] 55:1 kennedy [9] 44:11,17 45:16 46:2 47:22 49:9 52:7,7,14 kerfuffle [1] 27:9 key [1] 20:5 killed [2] 12:14 23:19 kind [13] 4:1,12 5:16 12:17 19:19 23:25 27:21,22 35:23 53:19 58:8,8,20 kinds [5] 10:18 24:11 25:16 27:24 35:7 knew [1] 48:22 know [69] 8:15 9:12,21 10:20,22 11:4 12:5,22 13:3,4,6,7,20 14:14 15:3,9 19:13 21:5,9 22:24 23:2,11,24 24:13,14,15 25:4,14,19 26:7,10 27:14,20,21,22,23,25 28:8,11,18 29:3,9 30:1 32:14 33:13,17 34:1,7,25 35:5,6,7,10 36:10 38:6 43:25 44:3,4,9 46:1 50:17 54:15 55:2,10,20 56:7 57:11,21 58:11 knowing [1] 14:19 knowledge [2] 55:10 57:21 known [4] 15:2,4 34:16,17 knows [1] 34:1 koch [5] 3:16 24:8,8,11 29:17 koch's [2] 11:10 29:16 kurtzman [15] 38:21,22,24 42:10,17,24 43:1,4,5 44:11,12 46:17 47:10,17 53:5</p> <hr/> <p>L</p> <hr/> <p>lack [3] 21:12,23 49:12 land [3] 35:4,8 44:13 language [6] 30:9 37:8,9,</p>	<p>11 41:24 46:23 largely [2] 41:12 56:21 last [6] 17:22,22 19:19 47:19 52:16 57:11 late [1] 30:20 later [5] 19:5 23:19 36:12 39:9 45:4 law [19] 9:11 16:24 23:11 31:19 37:16 38:13,22 40:2 41:14 43:2 44:12 47:17,17 48:6 49:16 52:12,14,15 58:15 lead [1] 7:17 leaders [1] 55:25 least [2] 42:8 51:17 ledger [4] 19:21 20:1,3 24:9 left [2] 36:9 46:3 legal [3] 48:25 49:6,19 legality [2] 29:24 49:4 legion [1] 45:25 legislative [3] 19:7 43:10 47:3 legislators [1] 19:8 legislature [2] 32:11 47:14 lemon [26] 7:8,8,18 38:20,22,23 42:10,16,23,25 43:4,4 44:10,12,19 46:2,17 47:10,17 52:6,8,10,11,12 53:2,5 length [2] 32:17 47:13 lenient [1] 56:25 let [6] 12:10 13:10 23:25 24:1,2 46:10 let's [1] 50:16 letter [1] 44:24 level [1] 48:11 liberty [1] 37:18 life [4] 22:25 23:5 52:6,11 light [1] 56:15 like [17] 4:13 10:21 12:17,23 15:21 23:8 31:25 32:19 33:2 34:7 42:7 43:17 44:2 47:23,25 51:7 53:9 likelihood [5] 4:10 9:18 36:10 49:20 50:3 likely [3] 5:19 6:15 10:23</p>	<p>limit [1] 34:5 limited [4] 33:13 52:21 56:6,7 limiting [1] 23:15 limits [1] 31:1 line [3] 11:3,5 12:5 listed [2] 26:18 31:24 little [3] 16:4 28:22 30:20 loan [1] 42:4 located [1] 5:4 log [1] 3:22 logged [1] 3:25 logging [1] 3:24 long [4] 21:9 44:6 46:11 50:7 longer [1] 44:12 look [16] 7:15 13:11 14:9,13 17:13,13,14 22:8 29:19,21 31:17 32:1,21 38:15 39:9 44:14 looked [2] 14:13 41:18 looking [14] 9:24,25 13:3 21:18 23:6 32:17 33:24 39:25 42:12 47:2 49:22 52:2,9,17 looks [1] 40:20 lose [1] 24:2 lot [8] 4:9 8:19 13:15 18:11 34:17 50:17 51:13 58:14 love [1] 12:21 low [2] 6:14 46:17 lucas [2] 39:11,17</p> <hr/> <p>M</p> <hr/> <p>made [9] 7:17 22:18 26:20 29:12 42:4 43:2 47:24 57:5,11 madison [2] 34:25 45:2 maintaining [1] 42:5 majestic [1] 26:2 major [1] 35:12 majority [4] 5:11 44:19 49:10 52:19 make [11] 3:4 16:4 26:14 31:6 32:23 34:11 46:12,25 47:19 50:18 57:19 making [1] 33:22 manner [6] 4:14 10:8 17:1</p>	<p>31:9 34:8 37:18 many [12] 5:5 9:5,21 10:5,11 11:22 22:11 44:3,4 45:4 55:12,25 martyrdom [1] 13:21 mason [1] 45:3 mass [5] 39:15,15,25,25 40:3 massachusetts [16] 9:14 10:12 16:19 17:21 31:5 35:1 37:10 39:7,21 40:20 41:1,17,22 51:5 53:10 54:5 material [1] 25:12 matter [8] 4:1 29:5 34:6 36:19 48:6 52:13 55:2 58:22 mature [6] 19:9 32:12,13 33:7 34:6 47:14 may [13] 3:4 5:1 6:22 7:17,20 9:1 12:10 19:4 21:7 32:8 33:1 49:1 50:24 maybe [5] 13:11 20:12 34:18 49:4 58:16 mayor [6] 11:10 24:8,8,11 26:4 56:17 mayor's [2] 11:14 26:18 me [14] 3:25 4:2 12:10,25 13:10 21:14 23:25 24:2 30:23 39:13 43:21,22 46:10 48:11 mean [13] 14:17,17,18 20:13 21:5,16 22:19 28:10 33:12 35:22 43:20 44:3 51:14 means [4] 18:12 41:6,7 58:14 mechanistic [1] 15:12 meeting [1] 29:3 meetings [1] 18:24 members [5] 5:12,13 18:15 35:5 48:4 memo [4] 16:24 17:3 51:2,2 memorandum [2] 50:25 52:10 memorialize [1] 58:2 memos [1] 4:22 men [1] 37:14 mentioned [4] 17:19 23:21 36:9 58:12</p>
--	---	--	--

Keyword Index

<p>merely ^[1] 26:1 merger ^[1] 28:7 merits ^[4] 6:16 49:25 50:1, 3 message ^[4] 5:11 27:4,6 36:17 michael ^[22] 3:18 5:22 11:23 12:16 13:14 14:1 21:3 22:8,9,16 24:5,16 28:1,7, 14,15 30:7,8,9 55:3,5,6 michael's ^[2] 22:12 28:16 microphone ^[1] 20:19 might ^[7] 10:13 28:18,18 33:4 36:25 37:2 55:23 mile ^[1] 34:18 military ^[1] 28:15 million ^[1] 5:9 mind ^[2] 4:21 20:17 minimal ^[1] 36:11 minister ^[1] 45:1 minton ^[2] 29:7,10 minute ^[1] 52:12 miracle ^[1] 14:1 miracles ^[1] 13:21 modified ^[3] 47:25 48:21, 22 molested ^[1] 37:17 money ^[6] 17:6,16 36:8 42:3 48:18,21 montana ^[1] 52:17 month ^[1] 57:12 more ^[20] 8:4 14:8 16:4 20:11,14 22:5 23:7,16 26:11 28:7,13 29:11 35:12 36:24 38:10 45:10 52:25,25 54:14 57:21 morning ^[9] 3:9,13,14,15, 17,18,20 4:24 16:2 mortar ^[1] 25:19 moses ^[2] 23:8,9 most ^[5] 7:5 23:24 30:2 33:23 37:19 motifs ^[1] 13:20 motion ^[28] 4:3,4,8 6:15 15:19 27:5 28:24 30:1 36:11 50:6,12,16,20,23 51:15 52:3,4 53:13,22,25 56:4,13, 15,20,25 57:1,6,8</p>	<p>motions ^[2] 4:3,9 mouth ^[1] 26:14 move ^[4] 27:1 50:16 51:19 53:22 moved ^[1] 31:25 moving ^[1] 41:15 mr ^[60] 3:15,18 4:18,19 15:25 16:2 20:17,19,21,25 21:24 24:7 25:10 26:19 27:13, 15,17 28:22 29:15 30:17 33:14,19,22 34:21 35:19, 21,25 36:22,24 37:5 39:15 43:24 44:1,6,9,18 46:14,16, 22 47:1,5,8,10 48:9,14,16, 24 49:4,9 50:9,22 51:22,23, 25 52:2 53:20,20 57:15 58:12,24 ms ^[20] 3:9,13 4:16,24 5:3 7:5 9:20 11:7 13:1,15,23 14:24 15:9,21,23 53:16,23 54:20 58:1 59:1 much ^[3] 14:20 36:24 50:23 multi ^[1] 40:8 multidimensional ^[1] 26:12 multifactor ^[1] 40:9 multiple ^[1] 26:16 municipal ^[2] 17:1 25:14 must ^[3] 11:12 24:19 38:24 my ^[38] 3:10 4:5 8:10 14:4, 11 15:14 16:24 21:1,6,6,6, 7 22:1,18,25 23:1 24:2 25:12 29:3 36:24 38:10 39:10 40:1 41:16 47:12,15 50:25 51:2,11 52:16 53:1 54:20 55:9,17 56:4,15 58:5,8 myself ^[2] 19:5 32:14</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>n ^[1] 3:1 named ^[4] 20:16,23 21:4, 20 narrow ^[1] 8:9 national ^[1] 35:12 nature ^[6] 6:3 9:16 12:8 14:6 34:12 55:5 nearly ^[1] 5:9</p>	<p>necessarily ^[1] 34:5 necessary ^[4] 6:14,17 31:1 57:1 neck ^[1] 6:5 need ^[9] 5:6 6:6 9:11 15:15 43:21 44:16 50:13 56:22 57:12 needs ^[1] 9:7 neither ^[3] 43:13 47:12,14 network ^[1] 55:24 never ^[4] 19:24 21:1 28:8 45:9 new ^[7] 5:3 7:13 8:7 9:8 12:21 13:7 32:24 newspaper ^[2] 20:1 24:9 next ^[2] 45:22 57:18 no ^[43] 4:16,18,19 5:12 6:4 18:9 19:1,12 24:15 35:25 36:7,15,15 37:16 39:13 41:4,9 42:2,2,7,21 43:1 44:12, 21 45:12,20,21 46:6,7 47:7 48:2,3,7 49:25 50:1,8 51:7 52:12 53:9,9,10,11 57:7 none ^[4] 8:21 50:2 51:9 56:18 non-faith ^[1] 48:6 nor ^[4] 6:6 43:13 47:12,15 note ^[7] 54:21 55:8,13,15 56:2,5,20 notes ^[1] 15:11 nothing ^[12] 13:13 16:13, 14 18:17 22:24 41:9,10 45:3,5 46:3 48:7 53:11 nothing's ^[1] 36:5 noticed ^[1] 19:23 now ^[16] 19:4 31:10 32:18 38:10 39:9,16,18 41:15 42:6 43:4,7 44:9,21 47:6 50:16 58:6 nowhere ^[2] 17:15 27:4 number ^[10] 25:11 30:4 33:22,23 43:11,12,14,15 52:5 55:12 numbers ^[1] 17:8 numerous ^[1] 48:4</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>o ^[1] 3:1</p>	<p>oath ^[2] 16:13 36:5 object ^[1] 35:14 objection ^[1] 48:15 objections ^[2] 30:2 57:4 objective ^[1] 16:22 observed ^[1] 6:9 obstruct ^[1] 37:21 obviously ^[5] 12:13 13:4 43:23 46:20 50:13 occur ^[1] 9:12 occurred ^[1] 18:22 off ^[11] 3:4,23 16:1,23 17:8 23:14 27:23 28:11 35:23 39:14 44:9 offended ^[1] 33:10 offered ^[1] 40:23 offering ^[1] 19:8 officer ^[2] 3:3 59:2 officers ^[4] 21:23 24:25 25:5,8 official ^[1] 31:13 often ^[4] 8:3 10:6,6 22:16 oh ^[1] 48:14 okay ^[11] 4:20 15:7 28:21 33:21 37:23 44:7,20 46:15 54:19 55:6 58:25 oldest ^[1] 37:11 on ^[81] 3:22,24,25 4:6,8,22 5:4 6:5,15 10:4,19 12:5,12 15:14,15,16 16:2,5,23 19:15,18 20:14 21:16 22:7,22 23:9,14 24:18 25:10,17 26:9,21,22 27:1,22 28:4,10 30:2,17,24 31:3,13,14 32:1,4, 5,16,25 33:16 34:3,7,13 35:1,4 40:25,25,25 41:15 42:9 43:17 44:2 45:23 48:1,5 49:23,25,25 50:3,5,16 51:2,14 53:2,22 55:23 56:22,23 57:16,16 58:15,19 once ^[2] 57:20,23 one ^[35] 4:3 6:9 8:3 10:4,9 14:8 17:11,14,18 19:4,5 21:10,15 23:5 24:21 26:14 28:18 29:20 31:25 32:11 33:22 34:13,22 35:12 37:7 38:11 39:10 40:13,23 43:11 47:2,2 54:13 55:20 56:22</p>
--	--	---	--

Keyword Index

<p>ones ^[1] 33:20</p> <p>online ^[1] 30:20</p> <p>only ^[13] 6:14 7:14 15:1,1 17:19 19:2 33:20 41:12 55:5,6,9 56:22 58:11</p> <p>onto ^[1] 16:23</p> <p>open ^[1] 33:6</p> <p>opening ^[1] 17:13</p> <p>opinion ^[5] 7:13 15:14 49:10 52:19 58:19</p> <p>opportunity ^[1] 4:21</p> <p>opposed ^[2] 13:14 48:4</p> <p>opposition ^[3] 49:14 51:12 52:3</p> <p>options ^[1] 32:17</p> <p>or ^[53] 4:2 5:12 10:9 11:4,4 12:24 13:13,21 14:20 18:13 19:14 20:23 21:22,25 22:15 26:7 28:19,19 29:8 30:4 31:25 32:11,24 33:5 35:14 37:17,18,19,20,21 42:3,3,3,4,5,6,20 43:2,10 45:5 48:2,5 49:12,13,13 52:13 55:3,11 56:18 57:9,10,12,13</p> <p>order ^[4] 3:2 20:8 51:17 56:23</p> <p>ordinance ^[5] 25:14,15,17,21 26:10</p> <p>organizations ^[1] 56:7</p> <p>origin ^[3] 12:18 24:21 25:15</p> <p>origins ^[2] 27:20 28:1</p> <p>orphan ^[2] 42:22 53:12</p> <p>other ^[20] 5:12 6:13 7:4 9:21 10:21 14:16,16 15:18 20:3 24:23 26:25 27:11 34:14 42:16 48:2 52:10,23 53:9 55:7 56:17</p> <p>others ^[6] 6:19 17:2 26:17 37:21 45:4,10</p> <p>otherwise ^[1] 30:21</p> <p>our ^[34] 8:4,14 9:5,5,12,15 10:15 15:10 17:24,24 18:14 19:19 20:11 22:1 25:13,15,22 30:21 37:16 44:22,22,23,23 45:6,6,9 49:17 50:5 51:15 55:8,19 56:14,21,</p>	<p>21</p> <p>out ^[13] 13:25 14:12 18:12,24 23:22 26:5 27:19 34:7 35:2 39:9 41:16 44:24 55:23</p> <p>outline ^[1] 18:25</p> <p>outlined ^[1] 40:15</p> <p>outlines ^[1] 18:21</p> <p>outsiders ^[1] 5:13</p> <p>over ^[6] 4:1 22:19 28:14,24 29:5 40:19</p> <p>overt ^[3] 14:14,15,25</p> <p>overtly ^[1] 14:3</p> <p>own ^[5] 12:6,6 28:12 37:19 45:9</p> <p>ownership ^[2] 22:19 28:13</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p ^[1] 3:1</p> <p>package ^[2] 13:12 24:3</p> <p>packed ^[1] 29:4</p> <p>page ^[14] 30:24 31:14,17 39:1,25 41:19 42:12 44:2 47:2,5,23 51:2 52:10,18</p> <p>pages ^[3] 31:13 45:11 50:25</p> <p>paid ^[4] 12:15 32:6 39:3 41:7</p> <p>papers ^[3] 15:10 55:19 56:14</p> <p>paperwork ^[4] 17:21 27:20 29:2 30:21</p> <p>paragraph ^[6] 16:17 17:13,19 18:18 27:1,2</p> <p>paragraphs ^[1] 18:21</p> <p>pardon ^[1] 25:20</p> <p>parish ^[1] 35:3</p> <p>parks ^[1] 10:6</p> <p>part ^[10] 10:14 13:4 21:10 23:5 25:22 28:1 29:3 43:5 57:5,6</p> <p>participate ^[1] 34:23</p> <p>particular ^[11] 10:9,9 13:2 17:4 18:9 36:7 38:19 39:2 49:9 57:16,21</p> <p>particularly ^[1] 22:13</p> <p>parties ^[9] 4:12 18:3 23:8,</p>	<p>12 32:10 36:13 57:13,13,17</p> <p>party's ^[1] 49:24</p> <p>passage ^[1] 26:10</p> <p>passed ^[1] 25:18</p> <p>patches ^[1] 23:5</p> <p>patrick ^[1] 20:12</p> <p>patriot ^[4] 19:21 20:1,3 24:9</p> <p>patron ^[9] 5:24 11:25 21:4,10,10,13 22:3,5 24:22</p> <p>patronage ^[2] 22:20 30:12</p> <p>patrons ^[3] 20:13,16,23</p> <p>paul ^[1] 20:10</p> <p>pay ^[2] 17:23 18:8</p> <p>payment ^[1] 56:6</p> <p>peace ^[1] 37:21</p> <p>people ^[10] 3:25 23:14 28:24 29:5 32:18,20 33:15,16,23 47:14</p> <p>perceptions ^[1] 48:1</p> <p>perhaps ^[4] 21:24 22:21 29:1 30:7</p> <p>permission ^[1] 4:25</p> <p>person ^[3] 14:20 27:7 37:17</p> <p>persona ^[1] 35:13</p> <p>persuasive ^[3] 7:16 40:17,21</p> <p>peter ^[1] 20:10</p> <p>petition ^[3] 29:19,20,21</p> <p>phase ^[1] 26:5</p> <p>phones ^[1] 3:4</p> <p>phrase ^[1] 48:21</p> <p>pi ^[2] 28:23 54:12</p> <p>picked ^[3] 19:22 24:12 45:4</p> <p>picking ^[1] 20:7</p> <p>pile ^[1] 25:13</p> <p>place ^[1] 5:4</p> <p>placed ^[2] 10:19 19:18</p> <p>placing ^[1] 10:3</p> <p>plain ^[1] 47:24</p> <p>plainly ^[1] 6:2</p> <p>plaintiff ^[7] 4:7,15 24:3 29:20,22 51:2 53:15</p> <p>plaintiffs ^[33] 3:10 4:23 5:</p>	<p>19 6:14,19 15:15 16:18 17:11 18:14 22:6 29:20 30:9 32:12,18,20 33:17 36:2 40:23 41:5,16 42:9 45:13 48:4,9 49:5,11 52:2 54:1,6,15,17 55:18 56:10</p> <p>plaintiffs' ^[7] 22:6,9 26:19 27:19 29:16 54:22 55:16</p> <p>plaintiff's ^[5] 18:24 31:15,23 51:2 52:3</p> <p>plan ^[2] 5:8 16:2</p> <p>pleadings ^[1] 4:22</p> <p>pluralism ^[4] 16:21 45:13,15 49:13</p> <p>pluralistic ^[1] 9:14</p> <p>plus ^[2] 22:2 57:23</p> <p>point ^[13] 14:4 18:13 22:18 25:10 26:20 27:5 47:15,19 49:19 52:16 53:1,1 56:4</p> <p>points ^[4] 41:16 45:10 46:6 56:11</p> <p>poland ^[1] 21:10</p> <p>police ^[19] 3:19 5:23 11:14,15 19:3 20:14,23 21:5,22 22:21 24:13,20,24 25:5 26:1 29:1,4 35:16 36:18</p> <p>policing ^[1] 29:10</p> <p>political ^[7] 5:13 43:16 47:21 48:16 49:5,18 50:4</p> <p>politically ^[3] 48:23 49:1 51:4</p> <p>port ^[2] 57:20,20</p> <p>portrayed ^[1] 19:21</p> <p>position ^[2] 6:25 24:14</p> <p>potential ^[3] 34:9 43:16 47:21</p> <p>powerful ^[2] 52:25,25</p> <p>powers ^[1] 15:5</p> <p>practice ^[9] 10:3,18,22 26:9 43:13,15 46:24 47:12,21</p> <p>practices ^[2] 9:10,23</p> <p>pray ^[1] 11:23</p> <p>prayer ^[6] 5:25 19:7,8,10,16 55:23</p> <p>prayers ^[1] 32:4</p> <p>precedent ^[8] 7:6,10,11,15,17,21 8:2 40:20</p> <p>precipitating ^[1] 22:20</p>
---	---	--	--

Keyword Index

<p>precise [1] 31:1</p> <p>precisely [2] 19:17 26:3</p> <p>precludes [1] 40:10</p> <p>predominant [2] 14:6 41:12</p> <p>predominantly [1] 27:3</p> <p>preference [4] 45:12,20, 20 46:7</p> <p>preliminary [16] 4:3,6,11 6:16 16:8 27:5 50:9,12 51:12,15 52:4 53:18,25 54:24 57:5 58:3</p> <p>prescribed [1] 48:1</p> <p>presence [1] 22:12</p> <p>present [1] 51:10</p> <p>presentation [1] 24:6</p> <p>presented [4] 16:3 51:6, 13,18</p> <p>presents [1] 12:5</p> <p>preservation [1] 51:8</p> <p>preserve [1] 6:17</p> <p>preserved [1] 53:2</p> <p>preserver [1] 37:16</p> <p>presume [1] 33:23</p> <p>pretty [2] 44:14 50:23</p> <p>prevail [3] 41:6,6 56:23</p> <p>prevails [1] 32:3</p> <p>prevent [2] 6:11,18</p> <p>preventing [1] 6:16</p> <p>previous [1] 14:4</p> <p>priest [3] 12:13 13:2,7</p> <p>primarily [2] 10:3 19:11</p> <p>primary [6] 20:1 43:10,12 46:24,25 47:11</p> <p>prince [1] 22:16</p> <p>principle [2] 40:5 41:1</p> <p>priority [1] 51:15</p> <p>private [2] 17:23 30:2</p> <p>privately [1] 10:6</p> <p>probably [4] 20:2,9 21:7 30:21</p> <p>problem [3] 3:24 18:20 28:5</p> <p>proceeding [1] 4:14</p> <p>process [3] 8:9 18:22 29:16</p> <p>profession [1] 37:20</p> <p>professor [1] 55:11</p>	<p>prohibits [1] 5:15</p> <p>project [7] 18:23,25 26:5 36:5,17,18,20</p> <p>promote [2] 10:16 19:15</p> <p>prompt [1] 33:3</p> <p>prompted [1] 30:23</p> <p>prong [1] 56:23</p> <p>prongs [2] 15:14,15</p> <p>proper [4] 5:18 31:2 40:18, 22</p> <p>property [3] 42:3 45:24 46:8</p> <p>proposition [2] 27:2 42:25</p> <p>protect [2] 16:19 28:2</p> <p>protected [1] 5:7</p> <p>protection [7] 5:25 6:12 8:24 11:23 41:21 45:18 56:8</p> <p>protections [1] 8:5</p> <p>protector [3] 21:4 28:2,16</p> <p>protectors [2] 20:23 21:22</p> <p>protects [1] 18:19</p> <p>protestant [1] 55:13</p> <p>proud [2] 58:13,17</p> <p>provide [2] 5:25 42:24</p> <p>provided [3] 10:1 31:12 37:20</p> <p>provides [4] 8:4 31:20 40:10,12</p> <p>provision [9] 8:14,17,17 18:4,19 42:13,21,21 46:19</p> <p>provisions [5] 39:7,21 41:2,4 49:18</p> <p>public [27] 5:3 6:21 10:5, 19 18:24 19:1,1,2 25:3,15, 21,24 26:8,22 28:24 32:4,5, 5 34:8 35:15 36:18 37:21 38:8 42:3,4 51:6,6</p> <p>publicly [1] 37:14</p> <p>public's [1] 48:12</p> <p>published [2] 7:14 31:8</p> <p>pull [1] 39:13</p> <p>puritans [1] 38:3</p> <p>purpose [22] 8:21 11:1 24:18,20,24 25:7 26:15 31:16 37:22 42:5 43:6,10,11 44:21 45:22 46:1,3,5,12,18,22</p>	<p>47:3</p> <p>purposes [2] 26:16 29:5</p> <p>put [8] 14:12 23:22 25:6,24 26:13,22 28:10 32:25</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quarter [1] 34:18</p> <p>question [26] 9:8,9 11:8 12:18 13:11,11 20:22 21:19 24:1,3 29:24 31:24 34:13,22 35:10,14 38:13,14, 15 41:15 43:7 44:5 46:5 47:11 48:16 49:2</p> <p>questioning [1] 23:7</p> <p>questions [7] 4:14 5:1 6:22 15:18 20:5 33:3,3</p> <p>quick [1] 55:4</p> <p>quickly [1] 51:24</p> <p>quincy [19] 3:7,16,19,19 4:5 5:7,12 6:9 20:9 25:17,20, 21 26:9 34:16 35:8 49:6 55:7,24,25</p> <p>quincy's [1] 5:3</p> <p>quite [2] 10:2 13:24</p> <p>quo [1] 6:18</p> <p>quote [13] 6:4,5,9 28:23 29:7,12 30:23,24 31:1 39:18 51:3 55:22,23</p> <p>quoted [1] 42:12</p> <p>quotes [3] 24:11 44:1,14</p> <p>quoting [1] 43:7</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>r [1] 3:1</p> <p>rachel [1] 3:9</p> <p>raftery [14] 7:13,14 8:11, 13,13 16:9 30:18,19 31:11, 11 38:17 39:23,23,25</p> <p>raise [5] 36:14 41:15 54:3, 6 56:11</p> <p>raised [5] 4:11 38:14 50:14 53:17 55:2</p> <p>rather [4] 7:1 25:18 45:17 50:25</p> <p>reach [2] 9:7,9</p> <p>reached [1] 57:13</p> <p>react [1] 34:2</p> <p>reaction [3] 23:1 34:3 55:</p>	<p>16</p> <p>reactions [1] 55:4</p> <p>read [8] 17:21 29:11 30:24 43:23 44:13,16,17,17</p> <p>reading [3] 23:1 39:1 45:11</p> <p>reads [1] 16:18</p> <p>ready [1] 22:21</p> <p>real [1] 32:15</p> <p>realized [1] 51:12</p> <p>really [6] 14:13 16:3 19:14 34:17 48:19 58:20</p> <p>reason [12] 7:24 10:17 11:14 12:11,20 15:4,4 22:23 30:22 37:6 49:15 51:11</p> <p>reasons [4] 6:13 8:3 11:11 35:12</p> <p>recall [1] 32:14</p> <p>receiver [3] 37:1,8 38:16</p> <p>recently [2] 7:13 8:5</p> <p>recess [2] 58:22 59:2</p> <p>recognize [3] 30:5,7,10</p> <p>recognized [5] 20:12 38:4, 4 55:6,9</p> <p>record [9] 3:8,23 16:1,13, 16 22:8 51:14 57:7 58:2</p> <p>redress [1] 49:5</p> <p>reeled [1] 28:10</p> <p>refer [5] 11:25 23:14 28:15 31:13 50:24</p> <p>reference [4] 11:21 12:4 14:5 56:16</p> <p>referenced [1] 55:3</p> <p>references [2] 19:25 24:10</p> <p>referred [2] 22:16 31:4</p> <p>referring [1] 14:3</p> <p>refers [1] 13:25</p> <p>reflected [1] 31:7</p> <p>regard [6] 15:1 19:18 28:7 53:17 54:20 56:13</p> <p>regarded [1] 18:1</p> <p>regarding [3] 24:4 29:7 56:17</p> <p>regards [10] 4:10,14 9:17 21:14 34:20 37:3 50:16 57:7 58:9,21</p> <p>regrettable [1] 36:2</p>
---	--	---	---

Keyword Index

<p>regrettably [1] 18:11</p> <p>regularly [1] 54:12</p> <p>rejected [2] 8:7,9</p> <p>relate [2] 16:5 23:5</p> <p>relation [1] 10:15</p> <p>relevant [2] 40:1 53:24</p> <p>relief [2] 17:14 36:4</p> <p>religion [21] 5:11 9:2 10:4, 9,13,16 11:22 12:4,8 14:5 17:23,25 18:6,9 19:15 32:14 38:8 41:13 43:13 47:12,15</p> <p>religions [6] 38:3,4 55:7,12,13,25</p> <p>religious [46] 5:16,21 6:3,4,13 8:25 9:6 10:3,13 11:3,5,11 12:8,19 13:18,23 14:3,6,8,15,17 16:21 18:1,15 19:2 23:9 24:15 27:4 29:15,23 37:20,22 38:5 42:6 45:19,23,23 46:7,12,22 48:1,5 49:12 55:5,7 56:6</p> <p>religiously [2] 9:14 32:11</p> <p>rely [2] 41:16 42:9</p> <p>relying [1] 58:15</p> <p>remarks [1] 4:25</p> <p>remember [1] 23:1</p> <p>removed [2] 38:1,3</p> <p>rendered [1] 30:20</p> <p>repeat [2] 19:4 45:12</p> <p>repeating [1] 51:1</p> <p>reply [1] 52:4</p> <p>report [2] 5:6 57:17</p> <p>represent [1] 13:20</p> <p>republic [1] 17:23</p> <p>requesting [1] 7:4</p> <p>required [1] 45:9</p> <p>requires [1] 45:15</p> <p>research [2] 21:7,7</p> <p>residents [3] 5:5,7 6:13</p> <p>resonated [2] 30:23 32:8</p> <p>respect [9] 15:3 25:8 33:16 35:10 45:18 46:19 47:13,15 55:15</p> <p>respectfully [1] 58:14</p> <p>respects [1] 16:20</p> <p>respond [4] 6:25 53:17,21 56:14</p>	<p>responders [2] 11:23 55:22</p> <p>responding [2] 22:15 35:10</p> <p>response [3] 36:11,13 53:21</p> <p>responsible [1] 22:15</p> <p>rest [1] 51:20</p> <p>restrained [1] 37:17</p> <p>restrictions [1] 35:9</p> <p>retained [1] 31:5</p> <p>review [5] 4:21 31:19 50:13,15 51:9</p> <p>reviewed [3] 16:24 40:1 50:24</p> <p>reviewing [3] 16:6,8 19:23</p> <p>revisit [1] 8:2</p> <p>revisits [2] 7:11,22</p> <p>rich [1] 16:21</p> <p>rid [1] 44:19</p> <p>right [56] 3:17,20 4:17,20 6:24 13:10,22 14:10,24 15:7,20,22,24 16:25 17:8 20:18,22 25:2 26:24 28:22 30:15 31:23 33:14 34:13,14,18 35:18,21,22 36:21,22,23 37:13,13,25 38:8,8 42:23 44:2,7,8 47:6 49:3,3,7 50:8,11,11 51:21 53:14,16 56:9 57:3,25 58:5,6</p> <p>rights [8] 5:15 16:19 17:25 18:7 41:22 53:3,11 56:9</p> <p>rise [3] 3:3 53:8 59:3</p> <p>risk [2] 49:21,23</p> <p>river [1] 58:6</p> <p>road [1] 7:20</p> <p>role [2] 15:2 29:2</p> <p>roman [5] 14:12 23:17 24:15 27:9 56:1</p> <p>romans [1] 23:19</p> <p>room [1] 29:4</p> <p>roughly [1] 23:17</p> <p>rule [1] 36:13</p>	<p>26:23</p> <p>said [23] 7:18 11:15 19:19 25:21 32:4,8,9 33:1,2 37:12 38:5,10 47:22,24 49:1,17 50:23 51:13 52:22 53:9,12 55:20 58:16</p> <p>saint [8] 21:4,10 22:3 23:2,15 24:22 27:16,18</p> <p>saints [25] 5:10,24 11:1,23,25 13:19 19:20,21 20:4,7 21:10,13,16,17,20,21 22:5,19 27:3,13 30:5,11 55:11,19,22</p> <p>sam [1] 58:16</p> <p>same [21] 4:11 7:2 14:15,20 23:25,25 24:2,18,21 28:14 31:10 32:18,25 34:8,11 38:20 46:5,8,9 50:6 56:21</p> <p>saw [3] 21:23 27:8 34:25</p> <p>say [37] 7:19 11:7,9 13:2,10,12 14:15,22 15:1 17:6,15 21:6,16 22:22 27:9,11,22 28:19,25 32:25 34:19 35:6 36:10 38:6 39:23 41:11 42:11 43:10 45:6,13 46:10,25 49:24 51:2 52:2 55:23 58:11</p> <p>saying [8] 11:4 14:9 19:14 22:4 26:13,16 28:17 56:1</p> <p>says [17] 11:10 18:7 26:4 27:3 28:25 30:25 31:16 38:25 39:18 42:2 43:11 44:18 45:9,17 46:19 49:22 52:19</p> <p>scene [1] 27:23</p> <p>schlossberg [2] 3:11,13</p> <p>school [4] 32:24 44:12 52:7,15</p> <p>sea [5] 20:9 32:21 33:12,16,24</p> <p>season [1] 37:18</p> <p>seasons [1] 37:14</p> <p>seated [1] 3:4</p> <p>second [4] 4:4 38:11 41:9,10</p> <p>sect [2] 10:9 21:15</p> <p>sectarian [2] 19:11,15</p> <p>section [4] 17:9 41:25,25 42:20</p>	<p>sector [1] 18:10</p> <p>sects [1] 8:25</p> <p>secular [19] 10:25 11:3,6 12:20 25:7 26:15,16 43:6,9,9,11 45:12,20,21 46:5,7,11,18 47:3</p> <p>see [19] 8:3 14:14 16:7 21:19 22:7 29:2,19 33:12,18 34:1 38:7,18 39:12 43:17 44:2,15 46:18 47:23 58:8</p> <p>seeking [2] 5:8 6:20</p> <p>seems [2] 10:25 18:17</p> <p>seen [1] 41:23</p> <p>segregate [1] 22:2</p> <p>selected [1] 22:23</p> <p>send [2] 27:3 36:17</p> <p>sense [2] 6:7 13:16</p> <p>sent [1] 27:7</p> <p>sentence [1] 40:13</p> <p>sentiments [1] 37:20</p> <p>separate [4] 54:1,4,16,17</p> <p>separately [1] 54:13</p> <p>separation [5] 44:21 45:7 46:6 52:20,23</p> <p>september [2] 12:12,12</p> <p>service [1] 24:22</p> <p>services [2] 5:5 6:20</p> <p>session [1] 3:5</p> <p>sessions [1] 19:7</p> <p>set [6] 11:3 18:24 34:6,8 41:17 56:13</p> <p>setting [1] 5:17</p> <p>several [1] 11:24</p> <p>sex [3] 18:6,13,19</p> <p>shall [2] 37:17 42:4</p> <p>share [1] 13:15</p> <p>shipment [1] 57:22</p> <p>shipped [1] 57:18</p> <p>should [8] 5:7 7:9 11:12 12:1 21:25 45:6 49:15 53:13</p> <p>show [8] 20:8 25:8,18 49:20,21 50:2,3 53:5</p> <p>showed [2] 27:22 43:19</p> <p>side [1] 7:4</p> <p>sides [3] 35:1 58:14,20</p> <p>siemens [1] 49:22</p> <p>sign [1] 14:15</p>
---	--	---	--

S

s [1] 3:1
safety [4] 5:3 6:21 10:19

Keyword Index

<p>signed [1] 16:13</p> <p>significance [5] 11:5,6 12:19 14:15 46:13</p> <p>significant [5] 12:15 16:6, 12 19:5 21:14</p> <p>similar [4] 7:3 8:20 50:6, 18</p> <p>similarities [1] 8:19</p> <p>similarly [1] 6:3</p> <p>simple [1] 16:4</p> <p>simply [5] 26:12 45:4 46: 17 48:24 50:24</p> <p>since [4] 25:23 26:9 28:3 30:24</p> <p>single [1] 13:25</p> <p>sister [1] 22:1</p> <p>site [2] 39:15 52:18</p> <p>sites [1] 43:18</p> <p>six [2] 39:24,24</p> <p>sjc [40] 5:16 7:6,7,10,11,13, 14,16,22 8:1,3,7,9,12 9:8, 10,13 15:10 19:8 23:8 31:3, 5,10 32:9 38:19,25 39:18 40:17,19,24 43:5,8,18 45:6, 6,9 46:4,19 47:16 49:17</p> <p>sjc's [3] 8:18 31:21,25</p> <p>skills [1] 21:7</p> <p>societies [4] 18:6,13,15, 19</p> <p>society [6] 9:12,14 18:10 37:14 42:6 44:25</p> <p>soldier [3] 23:17 24:15 27: 9</p> <p>soldiers [1] 14:12</p> <p>solely [2] 42:9,24</p> <p>solicitor [1] 49:1</p> <p>some [16] 4:25 10:20 16:5, 6 26:6,6 28:19 30:4,13 32: 15,17,18 34:2 43:18 44:13 56:11</p> <p>somehow [2] 52:11 53:2</p> <p>someone [2] 13:3 28:18</p> <p>something [10] 11:5 12: 16,23 23:3,6 26:20,21 50: 19 51:18 52:13</p> <p>sometimes [2] 7:15 42:20</p> <p>somewhat [1] 13:1</p> <p>sophisticated [2] 32:14</p>	<p>33:15</p> <p>sorry [9] 20:20,21 35:24 38:11 39:17 42:19 47:8 49: 3,8</p> <p>sort [1] 8:9</p> <p>sotomayor [1] 44:18</p> <p>sought [1] 17:14</p> <p>sound [3] 40:11,12,22</p> <p>sounds [1] 48:20</p> <p>source [1] 20:1</p> <p>speak [4] 7:25 11:22 20:19 28:11</p> <p>speaking [2] 11:17 32:17</p> <p>speaks [3] 8:24 9:1 56:8</p> <p>specific [5] 8:16 13:24 16: 5 17:10 18:18</p> <p>specifically [6] 11:17 14: 10 17:6,15 44:10 56:5</p> <p>specified [1] 36:7</p> <p>spend [1] 5:8</p> <p>spent [3] 18:11 36:8 48:21</p> <p>spoken [1] 9:11</p> <p>square [1] 38:8</p> <p>st [16] 5:22,22 12:13 14:1 20:10,10,12,12 21:3,6,8 22: 8,9,11,16 23:3</p> <p>stained [1] 51:9</p> <p>standard [1] 56:25</p> <p>standing [9] 16:23 53:24 54:2,3,6,10,10,14,17</p> <p>stands [1] 23:11</p> <p>start [1] 17:8</p> <p>started [1] 29:20</p> <p>starting [1] 38:18</p> <p>stat [1] 48:19</p> <p>state [11] 15:10 17:22 40:6 41:12,12 44:22,23 45:8,14 52:20 55:10</p> <p>stated [2] 37:14,24</p> <p>statement [4] 29:6,22 46: 13 55:20</p> <p>statements [2] 30:4,4</p> <p>states [3] 31:18 46:4 55:21</p> <p>state's [3] 9:5 52:19,22</p> <p>statue [12] 13:6 14:9,13,16, 16,17 24:5 25:25,25 27:12 28:4 49:16</p> <p>statues [37] 5:10,20 6:3,8,</p>	<p>10,17,20 10:6,18 12:15,25 13:12 19:18,20 23:15 24: 20,21 25:6,23 26:1 27:7 32: 25 33:6,10,12,18 34:19 38: 7 48:5 49:14 55:17,19 56:1, 17 57:10,18,19</p> <p>status [4] 6:18 17:11 30:8 43:4</p> <p>statute [8] 17:9,12 25:20 36:6 39:2 43:2 54:5,18</p> <p>statutes [2] 48:5 58:3</p> <p>stems [1] 5:23</p> <p>stepped [1] 35:2</p> <p>stepping [1] 6:5</p> <p>still [7] 9:18 10:23 32:3 52: 6,6,7,10</p> <p>stop [7] 16:25 17:5,16 18:9 36:5 49:15,16</p> <p>stories [1] 20:1</p> <p>story [1] 19:22</p> <p>straight [1] 33:25</p> <p>straightforward [1] 7:5</p> <p>street [8] 5:4 20:9 27:8 32: 21 33:13,16,24 34:7</p> <p>stress [2] 15:10,13</p> <p>strong [3] 15:14 38:7 52:7</p> <p>structure [3] 8:19 9:2 33: 9</p> <p>subject [1] 37:17</p> <p>subjective [2] 34:3 55:16</p> <p>subjects [1] 29:23</p> <p>submit [8] 10:21 24:7 29: 25 31:11 34:11 50:24 53:4 57:2</p> <p>submitted [11] 7:12 9:21 11:10,12,17 25:11 29:9 30: 21 36:3 54:24 56:16</p> <p>subordinated [3] 18:10, 12,14</p> <p>subordinating [1] 8:25</p> <p>subordination [1] 21:15</p> <p>subsequent [2] 38:17 51: 9</p> <p>substantial [3] 49:20,21, 23</p> <p>substantive [1] 8:8</p> <p>succeed [3] 5:20 6:15 10: 23</p>	<p>success [7] 4:10 9:19 36: 10 49:20,25,25 50:3</p> <p>such [4] 5:6 45:20,21 48: 20</p> <p>sufficient [1] 15:16</p> <p>suggest [10] 7:2,24 8:12 30:10 31:21 40:23 45:14 49:5 50:5 51:14</p> <p>suggestion [1] 55:15</p> <p>suggestions [1] 16:14</p> <p>suggests [1] 6:3</p> <p>support [12] 17:23 18:8 27:2 36:4,18 38:2,7 42:25 43:1 51:4 52:4 54:24</p> <p>supported [5] 17:25 41:7, 12,13 54:11</p> <p>supporting [2] 35:16 40:2</p> <p>supreme [33] 7:15,16,20 8: 5,7 23:10 30:25 31:4 37:15 38:22 39:4,19 40:7,8,8,15, 21 41:5,14 42:10,15 43:19 44:10 45:16 46:1,4,19 47: 16,22,23 49:16 52:14,17</p> <p>sure [9] 3:4 5:2 15:3 19:22 20:20 26:14,21 35:6 50:18</p> <p>surpassed [1] 57:1</p> <p>survive [2] 6:15 57:1</p> <p>suzanne [1] 3:10</p> <p>sworn [3] 54:11,22,23</p> <p>symbol [1] 45:23</p> <p>symbolism [3] 5:21 13:23 14:3</p> <p>symbols [2] 6:4 13:20</p>
<hr/> <p style="text-align: center;">T</p> <hr/>			
<p>take [12] 5:1 8:12 9:11,13, 15,15 12:1 38:11 50:12 57: 8,19 58:10</p> <p>taken [3] 22:10 30:13 58: 22</p> <p>takes [1] 8:11</p> <p>talk [2] 10:20 16:9</p> <p>talked [3] 19:17 31:9 57:15</p> <p>talking [3] 23:16 26:4 48: 20</p> <p>talks [5] 24:10 25:15 30:6 31:15 34:15</p> <p>tall [1] 5:9</p>			

Keyword Index

<p>taxpayer ^[7] 5:9 17:9,12 36:6 38:1 54:5,18</p> <p>taxpayers ^[4] 17:11 48:4 54:14,14</p> <p>technical ^[2] 36:25 38:10</p> <p>tell ^[1] 22:23</p> <p>ten ^[3] 18:14 34:3 54:14</p> <p>term ^[1] 19:20</p> <p>terms ^[1] 8:13</p> <p>test ^[24] 7:1,2,4,8,8 9:8,18, 19,23 10:22 31:22 32:2,3 38:19 40:1 43:5 44:21 45: 22 46:1,3,6 47:20 52:25 53: 1</p> <p>tests ^[6] 15:12 31:1 34:14 40:9 43:9 47:1</p> <p>text ^[11] 8:19,22,23 9:2 31: 16,19 40:1,2 45:5 56:7,8</p> <p>texts ^[2] 22:13,14</p> <p>textual ^[1] 34:15</p> <p>than ^[14] 7:1 8:5 12:24 20: 15 22:5 23:16 25:18 26:12 28:14 38:10 45:17 50:25 52:20 54:14</p> <p>thank ^[21] 3:21 4:18 15:22, 23,25 25:13 35:20 36:21, 22 44:8 50:11,22 51:22,23 53:14 57:3 58:18,20,24,25 59:1</p> <p>thanks ^[1] 47:9</p> <p>that's ^[77] 8:2 10:9,17 11: 15,19,24,25 12:5,17,17 13: 13 14:21 16:22,22 17:2,19, 24 18:9,20,20 19:17 20:22, 25 21:14,18,18,23 24:17, 18 25:3 26:9,10,14,23,23, 23 27:4 28:6,8,20,24 29:3, 16,17 30:11,15,16 31:16 34:21,21 36:7,8 40:3,8,10 41:3,25 42:7 43:11 44:4,19 45:24 46:14 48:7,14,16,16 50:4 51:10,17 52:24 53:1 54:4,13 58:5,9,9</p> <p>their ^[31] 6:16 10:13,14,15 12:6,6,8,9 13:21 16:19,20 17:11 19:12 29:2 32:12 37: 21 42:9,16,21,25 45:13 48: 3,4,5 49:12,13,14,18 52:2,</p>	<p>4 53:1</p> <p>them ^[29] 11:16,22,25 13: 21 14:4,5 15:16 19:11,12 20:16,23 22:20,23 23:14 24:12 27:8 28:10,10 29:13 33:10,25 43:22,22,23 49: 15 55:23 56:2 57:10,11</p> <p>themselves ^[2] 18:17,19</p> <p>then ^[21] 4:6,8,25 16:8 17: 12 18:3,12 25:23 26:25 27: 23 29:7 30:3 31:17 39:23 41:25 47:10 49:23 53:20, 22 56:4 57:20</p> <p>theology ^[1] 27:21</p> <p>there ^[70] 3:22 5:11 6:4 7: 25 8:20 10:2,11,17,25 12: 15,23 13:6,13 14:21 16:12 17:2 19:12 21:12,17,18 23: 9,12,12 24:1,4 25:7,9,17, 23 26:1,2,16 27:24 28:4 29: 4,17 30:3,3 32:19 33:1,1,4, 16 34:10 35:4,7 36:9 38:18, 25 40:23 43:6,9 44:21 45: 11,20,21 46:5,11,18 47:1,2 48:2 50:19 51:7,8,8,17 55: 7 57:9,9</p> <p>therefore ^[1] 53:4</p> <p>thereof ^[1] 49:12</p> <p>there's ^[49] 8:18 12:19 16: 14,14 18:17 19:1 23:7 24:9, 11 25:16 26:8,11,11,11,25, 25 27:23,24,25 28:5,7,19, 22,22 29:7 32:9 34:4 36:7, 15,15,15 42:21 45:10,12 46:3,6,7,11,12,20 51:3,7, 13 52:12 53:9 54:14 57:4,7, 23</p> <p>these ^[53] 5:24 6:3,20 10: 10,18,25 11:11,13,18,18,21, 25 12:2,7,9,25 13:12 15:11 20:4 21:21,21 22:7,14,18 23:8,12 25:18 27:3,7 28:9, 12 31:24 32:20,25 33:10, 12,17,18 34:5,19 37:7 38:7 40:24 41:8 43:8 45:11 47: 16 48:18 49:14 55:17,19 56:1,9</p> <p>they ^[84] 5:6,7,13,23,24 10:</p>	<p>1,7,14 11:1 12:3,22 13:13, 15,16,23 14:2,3,6 17:5,6, 25 18:25 19:13 21:12,17, 17,19,20 22:19 25:24 27:9, 11 29:23 31:4 33:25 35:1 36:2,3 38:20,20,21,23,23 42:11,23,24 44:11,19 45: 11,14,15 46:5,25 48:3,7,11, 12,22 49:11,14,14,18,20,22, 25 50:1,2,2,3,3,19 52:6 53: 4,5,6,8 54:7,8,9,10,12,13 55:23 56:10</p> <p>they're ^[36] 10:7,7,16 11: 13,15,18 13:17 15:12 17:1, 15 18:15,16,18 20:10 21: 16 22:5 23:15,15,16 25:2 26:2 31:17 32:11,13,13,13 33:10,19,20 34:1,2 36:4,6 57:20,23 58:6</p> <p>they've ^[3] 22:23 49:19,21</p> <p>thing ^[8] 14:16 22:5 27:19 32:8 34:22 45:21 54:13 58: 11</p> <p>things ^[7] 4:13 16:4 23:21 26:25 27:24 34:17 35:8</p> <p>think ^[44] 3:24 7:5,12 8:1,2, 10,15 9:9,12,23 10:1 11:11 12:4,8 13:8,15 14:5,18,18, 24 15:18 20:4 23:23 24:17 27:18 28:20 30:7,13 31:24 32:1 33:7 34:20 35:9,13,14 38:13,14 44:14 51:20 54: 16 55:17 56:24 58:12,16</p> <p>thinking ^[2] 11:8 12:11</p> <p>thomas ^[2] 3:16 44:24</p> <p>thorny ^[1] 16:3</p> <p>those ^[13] 4:11 8:21 11:20, 20 39:10,10 41:3,4 51:1 53: 7 54:15 56:11,18</p> <p>though ^[2] 27:11 29:22</p> <p>thought ^[6] 4:5 21:25 23:2 24:2 36:1 55:21</p> <p>three ^[3] 43:9,14 50:14</p> <p>through ^[14] 5:25 11:19, 24 25:3,6 28:23 30:1 32:6 34:15,23 43:18,22 44:4 50: 25</p> <p>thrust ^[1] 31:15</p>	<p>tight ^[1] 53:19</p> <p>time ^[10] 17:19 18:11 19:20 21:9 22:1 25:17 30:13 33: 22 45:1 57:11</p> <p>times ^[2] 5:5 58:12</p> <p>timetable ^[1] 58:9</p> <p>timing ^[1] 57:16</p> <p>timmins ^[34] 3:15,16 4:18 15:24,25 16:2 20:17,19,21, 25 21:24 24:7 25:10 26:19 27:13,15,17 28:22 29:15 30:17 33:14,19,22 34:21 35:19,21,25 36:22 50:21, 22 51:22 53:20 57:15 58: 24</p> <p>today ^[9] 15:4 37:16 38:20, 23 40:24 41:4,14 42:8 43:4</p> <p>together ^[3] 18:16 22:2 56: 1</p> <p>told ^[1] 52:14</p> <p>took ^[2] 22:19 28:11</p> <p>totally ^[1] 35:2</p> <p>tough ^[1] 22:22</p> <p>toward ^[1] 17:17</p> <p>towers ^[1] 12:14</p> <p>traced ^[1] 22:12</p> <p>track ^[2] 21:1 23:14</p> <p>traditions ^[1] 8:1</p> <p>trail ^[1] 16:23</p> <p>train ^[1] 24:2</p> <p>transfer ^[1] 27:25</p> <p>transformational ^[1] 13: 5</p> <p>transformed ^[1] 28:3</p> <p>traumatic ^[1] 13:4</p> <p>traveling ^[1] 33:24</p> <p>treasurer ^[7] 5:17 7:6 37: 1,8 38:16,25 39:18</p> <p>tributes ^[1] 12:15</p> <p>true ^[1] 11:9</p> <p>trump ^[2] 41:9,11</p> <p>try ^[1] 53:6</p> <p>trying ^[5] 17:5,16 18:11 24: 25 36:4</p> <p>tuesday ^[1] 57:16</p> <p>tumult ^[1] 18:4</p> <p>turn ^[3] 8:7 37:5 56:4</p> <p>two ^[16] 4:2 5:9 13:12 20:</p>
--	--	---	--

Keyword Index

<p>10 23:12 24:12 28:9,12 32:25 33:23 43:12 45:10 47:1,10 54:1,15</p> <p>type [4] 6:11 24:6 36:4 48:20</p> <p>typically [2] 13:17,19</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>u.s [29] 38:22 39:4,19 40:4,8,10,14,15,21 41:2,5,14,20 42:7,10,15 43:19 44:10 45:16 46:1,4 47:16,21,23 49:16 52:14,17,18,18</p> <p>ultimate [1] 19:10</p> <p>ultimately [1] 56:23</p> <p>unadorned [1] 53:12</p> <p>unclear [1] 27:6</p> <p>under [38] 5:20 9:19,22 16:13,19 21:24 36:5,6 38:20,21 39:5,7,20,21 40:6,9,11,18 41:20 42:15,24 45:22 46:2,16 47:10 49:16,16,17 50:12 51:7 52:21 53:8 56:24 57:8,14,14 58:10,23</p> <p>underscore [1] 55:18</p> <p>underscores [1] 7:14</p> <p>understand [15] 8:11 11:8 14:19 20:5 21:24 22:3 23:6 24:4 28:17 33:19 36:12 49:7 51:16 53:13 55:18</p> <p>understanding [3] 4:9 14:11 57:9</p> <p>understandings [1] 9:24</p> <p>understands [1] 17:21</p> <p>understood [1] 25:10</p> <p>undo [1] 32:10</p> <p>undue [1] 33:5</p> <p>unduly [1] 32:10</p> <p>unexplained [1] 53:12</p> <p>unions [2] 3:19 4:7</p> <p>universe [1] 37:16</p> <p>university [1] 12:13</p> <p>unless [3] 7:10,22 57:4</p> <p>unsophisticated [1] 33:11</p> <p>until [5] 7:10,22 23:18 57:11 58:3</p> <p>up [14] 19:22 21:17 23:9 25:</p>	<p>19,23 27:22 30:13 32:16 33:24 37:2 39:12 43:2 45:4 50:20</p> <p>upon [2] 41:16 42:17</p> <p>us [6] 23:14 29:10,12 30:20 45:19 52:14</p> <p>use [3] 7:3 42:3 53:6</p> <p>used [1] 30:9</p> <p>using [1] 12:18</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v [36] 3:7 5:17 7:6 8:6 31:10 37:1,8 38:16,21,22,23,24 39:11,17,17 42:10,16,23,25 43:4,5 44:10,11,12 45:16,25 46:2,17 47:10,17,22 49:9 52:7,15,16 53:5</p> <p>vacuum [1] 29:6</p> <p>various [1] 47:16</p> <p>venerated [3] 23:19 28:9 55:11</p> <p>veneration [1] 23:18</p> <p>verified [3] 16:12 20:3 54:21</p> <p>verifying [1] 54:23</p> <p>version [1] 31:12</p> <p>versus [1] 29:12</p> <p>very [23] 4:25 8:13,20 9:3 10:15 12:19 15:14 17:9 19:23 24:19 29:18 30:8 34:21 36:11 38:11 51:17,24,25 53:19,23 54:16 58:13,17</p> <p>veto [7] 41:10 47:25 48:2,3,7 49:18,18</p> <p>view [3] 28:6,18 49:19</p> <p>viewer [1] 48:2</p> <p>vindicating [1] 56:10</p> <p>violated [1] 52:9</p> <p>violates [5] 36:8 52:13,24 53:1 54:9</p> <p>violation [6] 14:22 15:17 17:18 52:11,24 56:24</p> <p>violations [1] 54:4</p> <p>virginia [1] 34:25</p> <p>virtually [1] 35:17</p> <p>voiced [1] 58:19</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait [1] 52:12</p> <p>walk [3] 23:8 25:4 28:18</p> <p>walked [1] 27:8</p> <p>walking [2] 14:18 25:2</p> <p>wall [2] 44:21 46:6</p> <p>want [25] 3:21 11:9 12:22 15:13 21:6 24:2 25:21 26:13 30:17 35:11 45:15 48:12,19 50:18 53:20,21,24 54:15,21,25,25 55:18 56:5,20 58:18</p> <p>wanted [16] 4:1 15:7,10,17 20:11 50:20 54:1 55:1,4,8,13,15 56:2,11 58:11,20</p> <p>wants [2] 39:12 47:5</p> <p>was [89] 6:10,12 7:7,9,13 8:20 9:4 12:11,13 13:4,6 14:11,11,21 17:20,22,24 18:1,4,22,25 19:5,6,10,11,11,12,15,21,25 20:18,24 21:4,9,9,11,18 22:1,20 23:2,17,19,19 25:17,17 26:3,4,6,7,7 27:8,24 28:2,25,25 29:1,4,9,10,11,12 30:20,22 31:8,8 32:15,16 34:10,22 35:7,13 38:2,3,6 42:11 45:1,3,24 47:14,14 51:7,8 55:6,17 56:14 57:12 58:6,8,11</p> <p>wasn't [6] 19:14 23:18 35:12 46:21,21,23</p> <p>watering [1] 27:10</p> <p>way [9] 7:19 28:23 32:11,23 33:6 36:2 54:9 58:8,17</p> <p>we [67] 3:21 4:2,20 7:21,24,25 8:3 9:9 10:5,20,23 15:9,13 17:25 20:7,9,11 24:14,17 25:14,19,21,25 28:11 30:20 31:10,20 32:2,2,23,25 33:7 34:7 38:15,18 39:3,6,9,9,23 40:4,7,13 42:13 43:21 44:9 46:1 50:5,9 53:4,19 54:22,22 55:10,19,24 56:2,13,22,25 57:11,15 58:1,2,2,8,11</p> <p>week [2] 57:17,18</p> <p>weeks [4] 39:24,24 57:19,23</p> <p>weighed [2] 49:24,24</p>	<p>welcome [1] 6:22</p> <p>well [33] 3:22 10:2,24 15:19 16:22 18:11 19:17 20:12,25 21:16,24 23:20 25:10 26:17 27:13,17 28:11 30:5,19 32:12 33:1,2,19 34:21 35:15,25 37:3,13 45:16 56:19 57:8 58:7,18</p> <p>we'll [4] 16:7 32:24 36:12 58:22</p> <p>went [1] 27:23</p> <p>were [29] 8:2 9:9 10:22 15:4 18:3 19:6,7,9 20:7 21:12,12 23:16 25:19 28:1,4,24 29:4 32:24 35:1,7 38:3,4 45:2 46:8 48:6 51:8 57:5,11 58:9</p> <p>we're [10] 18:8 20:9 25:16 30:11 31:18 35:15,16 48:20 51:23,24</p> <p>weren't [2] 21:20,20</p> <p>we've [4] 16:3 41:23 50:17 58:7</p> <p>what [67] 4:2,2 7:2,9,21 9:8,17,17 11:1,4 12:24 13:12 14:22 16:2 17:4,5 18:3,12 21:8 22:4,4,20 23:13,15 24:12,22 25:4,22 26:3,15,23 27:11 28:17,20 29:11,17 31:3,11,17 32:16 33:7 34:1,19,25 35:6 37:24 38:6,13,15,15,16,18,23,25 39:9,23 40:25 41:3 43:4,7 44:19 45:15 49:17 50:23 52:22 53:20 58:15</p> <p>whatever [6] 21:25 26:7 28:19 35:15 36:14 49:15</p> <p>whatnot [1] 51:9</p> <p>what's [7] 11:2 19:17 20:2 34:3 40:19 42:17 57:10</p> <p>whatsoever [4] 6:4 18:7 19:2 27:3</p> <p>when [25] 5:6,7 6:7,20 7:7,8 15:11 18:1,22 21:16,25 22:8,18 23:13,14 29:11,21 30:1 35:7 39:9 54:6 55:21 56:19,24 57:21</p> <p>where [11] 5:4 10:6 11:3,4,</p>
---	---	---

Keyword Index

<p>4 13:7 25:3 31:4 34:19 51:7 58:8</p> <p>whereas ^[1] 8:25</p> <p>whether ^[4] 43:15 46:24 47:20 52:13</p> <p>which ^[34] 7:13 8:6 10:18 13:25 15:3 20:2 25:14 30:9 31:10,23 37:12 38:2 39:4,6,18 40:15 41:17,18,22,24 42:12,14,17 43:19 45:2,5,8 48:1 52:5 53:5,11,24 55:24 58:15</p> <p>whichever ^[1] 10:16</p> <p>while ^[3] 11:7 24:14 57:14</p> <p>who ^[26] 3:25 6:19 10:12,12 11:13 12:2 13:3 14:12 18:15 19:6,8,9 20:16,23 28:19,25,25 32:21 33:15,23 34:1 36:18 37:10 49:1 55:18,20</p> <p>whole ^[6] 12:17,18 14:14 22:25 24:17 42:16</p> <p>who's ^[2] 3:21 33:25</p> <p>why ^[24] 4:20,22 7:3,25 10:17 11:13,15,18 12:3,20 14:21 20:2,15 24:11 25:16 27:9 28:8 29:17 30:18 31:9 37:6 42:6 46:24 53:19</p> <p>will ^[11] 4:11 5:4 6:19 10:18 11:8 27:3,6 29:19 36:24 50:6 56:3</p> <p>win ^[3] 15:15 38:20 56:22</p> <p>windows ^[1] 51:9</p> <p>winged ^[1] 6:5</p> <p>wings ^[10] 14:2,16,25 24:5,16 27:12,13,15 28:17 33:3</p> <p>wise ^[1] 25:1</p> <p>with ^[60] 4:1,24 5:20 6:22 9:6,17 10:4,8,17 12:16,23 13:2 14:4,21 15:1,2 16:3,7,9,11,16 17:10 19:25 20:10 22:1,24 23:3 24:5,14 25:12 26:6,9 27:12 28:7,14 29:4,11,22 30:23 31:18 32:15,17,19 33:16 35:23 38:18 45:3,5 46:18 47:13,15 51:19,20,24 53:17 54:12,20 55:15 56:13 58:22</p>	<p>within ^[2] 51:18 54:7</p> <p>without ^[2] 12:3 27:2</p> <p>won't ^[3] 13:10 44:6 45:10</p> <p>word ^[1] 21:12</p> <p>words ^[8] 12:6 26:13 42:16 48:2,25 52:10,23 55:17</p> <p>work ^[2] 13:8 19:12</p> <p>works ^[1] 15:3</p> <p>world ^[1] 37:12</p> <p>worry ^[2] 25:13 56:2</p> <p>worship ^[2] 37:15 38:6</p> <p>worshipping ^[1] 37:18</p> <p>would ^[81] 3:7 4:5 5:1 6:19,24 7:24 8:1,12,12,18 9:8,13,18,18,23,23 10:21,23 11:7 12:16,16,23,25 13:2,8,12 14:19,22,25 15:9 17:11 19:13 20:9,12 21:1 23:20 25:5 27:9,11 28:5,18 29:1,25 30:21 31:11 32:23 34:10,10,19 35:6,10 36:1,9 37:23 38:7 40:24 41:5,6,11 43:17 45:19 46:25 47:19,23 49:17 50:5,7,23,24 51:14 53:4,7,16 54:3 55:22 57:2,2 58:3,13,16,17</p> <p>wouldn't ^[3] 24:13,17 55:6</p> <p>write ^[2] 44:25 45:2</p> <p>writings ^[1] 22:12</p> <p>written ^[10] 17:24 18:2 37:7 41:24 42:19,20 45:2,7,17 49:10</p> <p>wrong ^[1] 53:3</p> <p>wrote ^[2] 37:10 44:24</p>	<p>14:24 15:9,12,17,23,25 16:2,11,22 17:7 19:4,19 20:5,7,25 23:6,7,21 24:7,19 25:10,12,20 26:14,19 27:13 28:4,17 29:18 30:3,13 31:11 34:4 35:6,10,14,25 36:22,24 37:2 38:12 40:13 43:6 44:2 46:11,14 47:1,19 48:24 50:5,22,22 51:22,25 53:4,13,16,21,23 54:22,25 56:11,22 57:2,15,24 58:1,19,24 59:1</p> <p>you're ^[10] 13:2 23:6 25:1 26:13,16 28:17 34:4 43:20 44:4 49:3</p> <p>yourself ^[3] 3:7 38:14 44:15</p> <p>you've ^[3] 17:21 37:25 50:23</p>
<hr/> <h2>Z</h2> <hr/>		
<p>zoom ^[1] 3:22</p>		