



C O N T E N T S	
	PAGE
1	
2	ORAL ARGUMENT OF
3	D. KENT SAFRIET, ESQ.
4	On behalf of the Petitioner
5	SCOTT D. MAKAR, ESQ.
6	On behalf of the Respondents
7	EDWIN S. KNEEDLER, ESQ.
8	On behalf of the United States, as amici
9	curiae, supporting the Respondents
10	REBUTTAL ARGUMENT OF
11	D. KENT SAFRIET, ESQ.
12	On behalf of the Petitioner
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

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

P R O C E E D I N G S

(10:02 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 08-1151, Stop the Beach Renourishment v. The Florida Department of Environmental Protection.

Mr. Safriet.

ORAL ARGUMENT OF D. KENT SAFRIET

ON BEHALF OF THE PETITIONER

MR. SAFRIET: Mr. Chief Justice, and may it please the Court:

Today we ask this Court to expressly recognize that a State court decision, unpredictable in terms of relevant precedents, which redefines century-old property rights to no longer exist, violates the Fifth Amendment of the United States Constitution.

The Florida Supreme Court suddenly and dramatically redefined property rights, converting oceanfront property into oceanview property to avoid the finding of a taking. It did so in the context of a beach restoration project which could have been accomplished without taking any private property at all. Given this Court's jurisprudence that a State's legislative and executive branches cannot violate the Fifth Amendment, we see no reason why the judicial

1 branch should be treated any differently.

2 JUSTICE GINSBURG: I thought your basic  
3 position in the litigation in Florida was that the  
4 Florida legislation violated the takings protection, and  
5 so it's kind of strange to switch your target from the  
6 legislature, which enacted this measure, and then say,  
7 because the judiciary upheld it, the judiciary somehow  
8 is complicit in this violation by the legislature  
9 implemented by the administrative officers.

10 MR. SAFRIET: That is correct, Your Honor.  
11 Below, the case was litigated as one of a taking by the  
12 legislature when it passed the act.

13 When it passed the Beach and Shore  
14 Preservation Act, it contained a provision within  
15 Section 161.141, which is a savings clause. It said to  
16 the extent the beach restoration cannot be accomplished  
17 without taking property rights, the requesting  
18 authorities have to use eminent domain proceedings to  
19 take those rights.

20 At the First District Court of Appeal, they  
21 agreed with us that the littoral rights were being taken  
22 by the act of the legislature and that those had to be  
23 compensated for. When we arrived at the Florida Supreme  
24 Court, again all the parties were arguing those issues,  
25 whether there was a physical taking of these rights or a

1 regulatory taking of these rights by the act and whether  
2 the savings clause would apply.

3 To everybody's shock, the Florida Supreme  
4 Court said: We're going to go back to step one and  
5 decide you don't have any littoral rights. The  
6 legislature didn't eliminate any protected littoral  
7 rights that you thought you once had for over a 100  
8 years as the relevant precedents in common law indicate.  
9 So it was that decision of the Florida Supreme Court  
10 that said you have -- you no longer have property, that  
11 gives rise to the issue before this Court is, can the  
12 Florida Supreme Court redefine those 100-year-old rights  
13 to no longer exist?

14 JUSTICE GINSBURG: As applied in a new  
15 situation. There was never the kind of situation  
16 involved here with the beach restoration project. The  
17 -- the precedent did not involve the kind of situation  
18 that this case presents.

19 MR. SAFRIET: Yes, Your Honor. There is no  
20 precedent with respect to the Beach and Shore  
21 Preservation Act as it has ever been applied. We do  
22 concede that.

23 However, there are two fundamental  
24 principles of Florida law that have existed for more  
25 than 100 years, and those are property that must --

1 property that borders the mean high water line must  
2 remain in contact with the mean high water line to  
3 possess common law littoral rights. If that connection  
4 is not there there are no common law littoral rights.  
5 Common law littoral rights are constitutionally  
6 protected and cannot be taken without due process and  
7 just compensation.

8 JUSTICE SCALIA: Well, they're -- they're  
9 eliminated -- at least the right of contact with the  
10 water can be eliminated by an avulsion, right?

11 When there's -- when there's avulsion, even  
12 at common law and under Florida law, it -- it can happen  
13 that some land between the property owner and -- and the  
14 water will be owned by the State.

15 MR. SAFRIET: That is correct, Your Honor.  
16 Under the --

17 JUSTICE SCALIA: Well, why wasn't this an  
18 avulsion?

19 MR. SAFRIET: Well, because the avulsion in  
20 this case, Your Honor, was the hurricanes that the State  
21 cites as the reason for the beaches being washed away,  
22 and it was --

23 JUSTICE SCALIA: Well, well, well, well.  
24 There were -- there were two avulsions. One was the  
25 avulsion of it being washed away and the other was the

1 -- the rapid replacement of sand. That -- that is not a  
2 natural, gradual phenomenon.

3 MR. SAFRIET: That is right, Your Honor, but  
4 the -- there is no case law in Florida or no principle  
5 that says avulsion can occur by artificial means. So  
6 there is -- the beach restoration, where they placed it  
7 on the beach, is not avulsion.

8 JUSTICE SCALIA: If there is no case law, it  
9 seems to me you've lost your case.

10 MR. SAFRIET: No, the case law specifically  
11 says that avulsion is a result of natural occurrences,  
12 by the action of the wind and the water. That's what  
13 avulsion is in Florida and has been -- you know, for at  
14 least 50 years, I believe. It's --

15 JUSTICE BREYER: They have a new situation.  
16 It's sort of like an avulsion. It's sort of like an  
17 accretion. The only precedent of -- you keep talking  
18 about 100 years -- it seemed to me some dictum in a case  
19 called Sand Key, which does say that the upland property  
20 owner has the right to touch the water.

21 So in this case, the Florida Supreme Court  
22 says the purpose of that was to make certain that the  
23 upland property owner could go to the water. And so  
24 here we have a case that assures he can go to the water,  
25 and they have a new situation, which is, as I think

1 Justice Scalia said, looks an awful lot like an  
2 avulsion, though of course there are differences.

3 So it sounds like a typical common law  
4 situation. A new situation arises. You try to apply  
5 old precedent and they reached the result they did.  
6 Now, what's your response to that? Because that's the  
7 argument the other side makes.

8 MR. SAFRIET: The response to that, Your  
9 Honor, is the doctrine of avulsion -- as part of the  
10 doctrine of avulsion is the doctrine -- or the right to  
11 reclaim what was lost by the landowner. So when an  
12 avulsion event occurs the landowner that has lost  
13 property has a right under common law to reclaim what  
14 they lost.

15 JUSTICE BREYER: You didn't lose anything.  
16 It just went out the front door there. The land ended  
17 here, and the new avulsion comes in and extends it  
18 further. You didn't lose one inch. All you lost was  
19 the right to touch the water. But the Court here says  
20 you in effect have that right because you can walk right  
21 over it and get to the water.

22 MR. SAFRIET: What -- what was lost in this  
23 case, Your Honor, is the right to contact the mean high  
24 water line, and I think there's a distinction between  
25 the right to contact the mean high water line and the



1 water's edge. The Florida Supreme Court didn't address  
2 the former issue, contact with the mean high water line.  
3 That's --

4 JUSTICE BREYER: Don't you have a right to  
5 walk across and put your boat in the water and swim, and  
6 nobody can stop you?

7 MR. SAFRIET: Right. Across the foreshore,  
8 yes, Your Honor. And also, as part of the common law  
9 rights of access --

10 JUSTICE BREYER: Now you have that right.  
11 They didn't take that away from you. The statute gives  
12 it to you?

13 MR. SAFRIET: That's correct. We have that  
14 right --

15 CHIEF JUSTICE ROBERTS: If somebody wanted  
16 to put up a hot dog stand on this new land, would you  
17 have the right to tell them they can't?

18 MR. SAFRIET: Absolutely not, Your Honor,  
19 and that's the point I was getting --

20 JUSTICE BREYER: You say absolutely not. I  
21 thought there was a provision in this law that said they  
22 cannot put anything on that strip which destroys your  
23 right of enjoyment of the upland right. Now, if they  
24 put a noisy hot dog stand that keeps you up at night,  
25 doesn't that violate the statute?

1 MR. SAFRIET: I think the statute provides  
2 no permanent structures can be constructed on that new  
3 property.

4 JUSTICE BREYER: It doesn't say anything  
5 about your right to peaceful enjoyment?

6 MR. SAFRIET: It certainly does.

7 JUSTICE BREYER: And what does it say?

8 MR. SAFRIET: It says that the -- you know,  
9 your regular common law uses that cannot be --

10 JUSTICE BREYER: So what does the statute  
11 say about your right to have peaceful enjoyment of your  
12 land?

13 JUSTICE SCALIA: Well, you can have quiet  
14 hot dog stands during the daytime.

15 MR. SAFRIET: Yes. Yes. It's says no uses  
16 of that property can be injurious to the common law --

17 JUSTICE BREYER: Injurious, okay.

18 CHIEF JUSTICE ROBERTS: But do you have any  
19 --

20 MR. SAFRIET: Of course now --

21 CHIEF JUSTICE ROBERTS: Do you have any  
22 reason to suppose that that's a redefinition of property  
23 that the legislature isn't free to change tomorrow?

24 MR. SAFRIET: Yes, the legislature can  
25 change this definition of property. They can define

1 property in the State of Florida as to whatever they  
2 want it to be, but if they do so and take property, they  
3 must pay for it under the just compensation.

4 JUSTICE SOTOMAYOR: Counsel, before this  
5 legislation, in the seaward side of the land that  
6 belonged to the State, from the mean high water mark, a  
7 hot dog stand could have sat in the water, correct?

8 MR. SAFRIET: If somebody wanted to put one  
9 in the water, yes, Your Honor.

10 JUSTICE SOTOMAYOR: And someone could have  
11 stood there, a boat could have docked there, assuming  
12 that it was a shallow boat.

13 You had no control over anyone placing  
14 anything on the seaside submerged lands that belonged to  
15 the State, outside of whatever regulations the State  
16 decided it wanted to impose?

17 MR. SAFRIET: We had no exclusive right to  
18 exclude them from that property. But they could not  
19 unnecessarily interfere with our right to view or --

20 JUSTICE SOTOMAYOR: The ECL that has been  
21 created by this legislation -- you gave up any challenge  
22 to it -- it was established at that mean water mark,  
23 wasn't it?

24 MR. SAFRIET: Yes. The ECL in this case, as  
25 the case was litigated, was assumed to be located

1 directly on top of the mean high water line. We did not  
2 abandon a challenge to the ECL. What we abandoned was  
3 any challenges to where the ECL was placed in relation  
4 to --

5 JUSTICE SOTOMAYOR: So right now we just  
6 have to assume that it was -- that it -- it has  
7 established the line at a point where the State owns all  
8 the land seaward of the ECL, correct?

9 MR. SAFRIET: Yes, Your Honor.

10 JUSTICE SOTOMAYOR: So after this project  
11 finishes, that hot water -- that hot dog vendor will be  
12 on stateside land, correct?

13 MR. SAFRIET: That is correct, Your Honor.

14 JUSTICE SOTOMAYOR: No different than what  
15 exists today, before the legislation, which is if the  
16 hot dog vendor wanted to sit in a foot of water, it  
17 could have?

18 MR. SAFRIET: It certainly could sit in a  
19 foot of water.

20 JUSTICE SOTOMAYOR: Right. So none of your  
21 actual use rights, pleasure rights, or anything else has  
22 been changed. What you're arguing is that -- and what  
23 the Florida State Supreme Court described as the  
24 contingent future possibility that the high water mark  
25 might change and you could push that hot dog vendor back

1 another foot or two.

2 MR. SAFRIET: That is correct, Your Honor.

3 Anybody allowed --

4 JUSTICE SCALIA: Of course, such -- such  
5 boats floating in the water below the mean high water  
6 mark are available with respect to all littoral  
7 properties; isn't that right?

8 MR. SAFRIET: That is right, Your Honor.

9 JUSTICE SCALIA: But what can't happen with  
10 other littoral property is that folks can't come in and  
11 lay down beach blankets and occupy that sand, right, so  
12 that you have open sand in front of -- in front of your  
13 house?

14 MR. SAFRIET: That is correct, Your Honor.

15 JUSTICE SCALIA: And people pay a lot more  
16 money for beach, beachfront homes, for that reason,  
17 don't they?

18 MR. SAFRIET: Absolutely, Your Honor. The  
19 value of beachfront property is a premium.

20 JUSTICE SCALIA: And that's quite different  
21 from having a house behind the beach at Coney Island,  
22 isn't it?

23 MR. SAFRIET: Absolutely, Your Honor. And  
24 in this case --

25 JUSTICE GINSBURG: Well, can you -- can you

1 explain something that's unclear to me from the briefs  
2 and the records. That is, what is referred to as the  
3 foreshore, was that wet all the time? I thought the  
4 suggestion was that that was in effect beach, public  
5 beach, that people could walk on, not swim in.

6 MR. SAFRIET: The foreshore, Your Honor, is  
7 typically the land area between the mean high water line  
8 and the low high water line, and depending on the tide  
9 cycles of the day, some of that foreshore is dry, and  
10 then at other times --

11 JUSTICE GINSBURG: And the public -- but  
12 what was the situation here? Was there a strip of dry  
13 land that the public has been using?

14 MR. SAFRIET: There's -- the foreshore, Your  
15 Honor, which is periodically dry on any given day and  
16 periodically wet, the public can use that and they have  
17 always been able to use that. That is State-owned land,  
18 and they can use that to traverse up and down the beach.  
19 But again, because it's wet every day, you don't have  
20 hot dog vendors putting hot dog stands in the water.  
21 You don't have people laying their blankets in the water  
22 to enjoy that beach.

23 And what we're talking about here is the  
24 exclusive right to use the dry sand area that stays dry  
25 all of the time in our case, which in our case was a

1 200-foot stretch of beach before this project began, and  
2 we had 200 feet of beach and we had the right to exclude  
3 commercial vendors or anybody else from that property.

4 Now what we have after that, according to  
5 this project, is another 80 feet to 100 feet of dry sand  
6 beach owned by the State where the landowners have no  
7 ability to exclude commercial vendors or any other  
8 obnoxious uses of that property.

9 JUSTICE GINSBURG: Who owns that land? I  
10 mean, when it was submerged it belonged to the State.  
11 And is it your position that the owners in your  
12 organization, that they have title to that land that was  
13 once owned by the State?

14 MR. SAFRIET: Absolutely not, Your Honor.  
15 It's our position that the State, as a matter of public  
16 use under the takings clause can condemn that property  
17 and make a public beach in front of a private one. They  
18 absolutely can do that.

19 JUSTICE GINSBURG: No, I mean -- I mean,  
20 without condemning it, you say the title is held by the  
21 private owners even though the title was held by the  
22 State when the land was submerged.

23 MR. SAFRIET: No, Your Honor, I'm not saying  
24 that the landowners own that new 80-foot stretch of  
25 beach now, as it currently exists. What we argue is we

1 own to the erosion control line, which is the property  
2 boundary that the State created in this case. And the  
3 State, by operation of the act, claims title to the new  
4 80-foot strip of beach. And what we're trying to obtain  
5 here is the State to go through eminent domain  
6 proceedings to pay us compensation for the loss of  
7 littoral rights that they're taking by creating this  
8 public strip of beach.

9 Now, the State may at the end of the day  
10 say, well, we're not going to claim title to that; we're  
11 going to reinstate your boundary as the mean high water  
12 line -- that would be 80 feet further out -- and no  
13 compensation, in that case, would be due. But --

14 CHIEF JUSTICE ROBERTS: It would be -- what  
15 would your position be, assuming you still have title,  
16 you still have the right of littoral title, contact with  
17 the water, would you concede that the State has  
18 different regulatory interests with respect to that new  
19 strip of land versus the old strip of land?

20 It's still your property. The State can  
21 regulate your property. Presumably, they regulate your  
22 beach property now. Would their different -- would  
23 their authority to regulate be greater with respect to  
24 the new area?

25 MR. SAFRIET: As the owner of the property,



1 Your Honor? The State owned that property?

2 CHIEF JUSTICE ROBERTS: No. You would still  
3 have the title to the property; it's still your  
4 property. You know, the State regulates property all  
5 the time, zoning. Would their authority be broader with  
6 respect to that new land than with respect to the old?

7 MR. SAFRIET: No, Your Honor, I don't think  
8 so. The State already has broad authority to regulate  
9 property already, and then I wouldn't see any need for  
10 them to have any broader authority for that new strip of  
11 beach if our members owned it.

12 CHIEF JUSTICE ROBERTS: Sometimes -- and I  
13 don't actually know what the law is on this. Sometimes  
14 the State builds, you know, sidewalks in front of  
15 people. Maybe they do it on their own land, and they  
16 say, We're putting this easement, and people can walk  
17 across it. Would this be in the same category of public  
18 project? They say, well, it's your land because you  
19 have a right to the mean high water line, but we built  
20 it so we have greater rights with respect to regulation  
21 than we might have with respect to the natural beach.

22 MR. SAFRIET: No, Your Honor, I don't think  
23 they would have any greater rights to that. I mean, if  
24 the landowners are the fee simple title owner then the  
25 State has its basic police powers to regulate as it

1 would any other land, absent some type of easement or  
2 reservation of our agreement with the landowners that  
3 gives them greater rights --

4 JUSTICE SCALIA: The State gave you some  
5 quid pro quo for this, which is to say this new sand is  
6 projected to last 6 years, has to be replaced regularly,  
7 because your property is being eroded, which is the  
8 reason the State went into this. And what the State has  
9 given you in exchange is that if and when there is  
10 further erosion, you will continue to own up to whatever  
11 this new line is called.

12 MR. SAFRIET: ECL.

13 JUSTICE SCALIA: The ECL. You will continue  
14 to own up to there, despite the fact that under common  
15 law when there's more erosion, your line would recede to  
16 the new mean high water mark. So, you know, who knows?  
17 Maybe that's sufficient compensation. You know, if you  
18 go in and ask for compensation the State might say,  
19 we've given them, given them this property right in  
20 exchange, and the difference between that and what they  
21 have now is two dollars.

22 MR. SAFRIET: That may well be the case,  
23 Your Honor. But again, they haven't provided us the  
24 opportunity to go to that trial, that jury trial, to  
25 argue that the value of this new 75-foot stretch of

1 beach on top of the 200-foot stretch of beach provides  
2 value above and beyond the taking of the --

3 JUSTICE KENNEDY: Let me ask you this  
4 question on Florida valuation. Assume you prevail,  
5 there's a cause of action for a taking. You have a  
6 beachfront area, beachfront home, in which there's a  
7 hurricane and there's a loss of the beach and a sudden  
8 drop, so that it's now a 60-foot, a 60-foot drop. The  
9 State comes in and says the only way they can fix this  
10 is to extend the beach and make it a larger beach on  
11 what was formerly our submerged land, and it does that  
12 that, and it has the same rule.

13 Under your view, is the State required to  
14 pay you for the loss of your right of contact to the  
15 beach, your littoral right, because there's let's say  
16 another 100 foot of new beach? Are they entitled to  
17 offset that against the enhanced value to your property  
18 by reason of the fact that they've saved it from further  
19 erosion and have given you a beach where there was none  
20 before?

21 MR. SAFRIET: Yes, Your Honor, they are able  
22 to offset that, and the statute provides for that  
23 offsetting such that in an eminent domain proceedings  
24 whatever value the landowners lost as a result of losing  
25 their contact with the mean high water line, that any

1 benefit provided by the additional sand would be offset.

2 JUSTICE KENNEDY: So the enhancement from  
3 the post-project benefit is a credit to the State in the  
4 takings action?

5 MR. SAFRIET: That is according to the  
6 statute that was passed, Your Honor.

7 JUSTICE SCALIA: Did any of these beachfront  
8 owners think this was a good deal, that the State has  
9 prevented further erosion of their land and, you know,  
10 the price they pay for this is that they have this  
11 60-foot stretch that the public can use, and that may  
12 wash away in 6 years anyway, and if they're lucky the  
13 State won't have enough money to put it back? Did any  
14 -- I'm not sure it's a bad deal. And they're guaranteed  
15 against -- against further loss of property because they  
16 will continue to own up to that, to that new line, even  
17 if it's all covered by water.

18 MR. SAFRIET: No, Your Honor.

19 JUSTICE SCALIA: Nobody, nobody thought it  
20 was a good deal? Everybody thought that they had been  
21 done out of this?

22 MR. SAFRIET: With respect to the  
23 Petitioner's members, they thought it was a bad deal,  
24 Your Honor.

25 JUSTICE SCALIA: Petitioner's members, but

1 other people along -- along the same coast? I mean, if  
2 I had a place and it's being eroded by hurricanes  
3 constantly, you know, I'm not sure whether I wouldn't  
4 want to have the sand replaced, even at the cost of  
5 having a 60-foot stretch that the State owns.

6 MR. SAFRIET: I think that's the fundamental  
7 misunderstanding in this case. The beach was not  
8 eroding. It was not lapping under these houses. There  
9 was 200 feet of dry beach, and the beach was accretion,  
10 meaning it grows gradually, day by day or week by week.

11 JUSTICE GINSBURG: But what happened? There  
12 were a succession of hurricanes, I thought?

13 MR. SAFRIET: With the exception of  
14 hurricanes. But hurricanes are again an avulsive event  
15 that don't change the property boundary line. We talked  
16 about the right to reclaim earlier. So this is an a  
17 accreting beach, 200-foot accreting beach. These  
18 property owners did not view that they were gaining  
19 anything.

20 JUSTICE SCALIA: It may not change the  
21 property line, but all of your property might be under  
22 water, right? That wouldn't be very good.

23 MR. SAFRIET: That's a risk that the  
24 Petitioner's members were willing to take. They bought  
25 ocean-front property.

1 JUSTICE SCALIA: Your members were, but I  
2 was asking whether some other people might not have  
3 thought it was a pretty good deal.

4 MR. SAFRIET: Sure. Sure, Your Honor, there  
5 are a lot of properties, probably even in this stretch,  
6 where water is lapping under the houses and the  
7 landowners will want sand and they will be willing to  
8 waive any types of property rights claims or  
9 compensation claims to get that sand. But that's not  
10 what happened in this case.

11 CHIEF JUSTICE ROBERTS: Could the State --  
12 could the State sell this new land to somebody else?

13 MR. SAFRIET: There's no reason they  
14 couldn't, because they own the fee simple title to it,  
15 as well as they could send the sovereign submerged lands  
16 in front of the property.

17 JUSTICE KENNEDY: But it would be subject to  
18 the easement that the State acknowledges you have, which  
19 is the easement of access?

20 MR. SAFRIET: I'm not sure it would, Your  
21 Honor. The statute provides that right of access, so  
22 basically it's not an easement per se that inheres in  
23 our title.

24 JUSTICE KENNEDY: No, no. As I understand  
25 the supreme court's opinions, you have several special

1 and exclusive -- or exclusive, or exclusive, common law  
2 littoral rights: Right to have access, right to  
3 reasonable use of the water, right to accretion and  
4 reliction, right to the unobstructed view. They can't  
5 sell that.

6 MR. SAFRIET: But we don't have common law  
7 rights any more, Your Honor, because we don't --

8 JUSTICE KENNEDY: No, no. The hypothetical  
9 is the State says that the property owner, the upland  
10 owner, has these rights. The Chief Justice asked you,  
11 could this property be sold. I think the answer would  
12 be yes, but it would be subject to the continuance of  
13 that easement in the dominant estate. That has to be  
14 the answer under the supreme court's opinion. Now, you  
15 may not agree with that.

16 MR. SAFRIET: Under the supreme court's  
17 opinion, yes, because it purports to reserve common law  
18 rights across this new stretch of State-owned beach.  
19 It's our contention that all common law rights have been  
20 lost when we lose connection to the mean high water  
21 line.

22 JUSTICE KENNEDY: All right. That gets to  
23 the question, if we agree with you that there is such a  
24 thing as a judicial taking, what is the standard by  
25 which we decide when the Federal courts can and must

1 intervene to disagree with the State law and to  
2 characterize it as a taking when the State has said that  
3 it is not? Would we just find all sorts of adjectives  
4 -- sudden, unexpected, unfounded -- just have a string  
5 of adjectives, sort of like an adequate independent  
6 State ground rule or something?

7 MR. SAFRIET: Yes, Your Honor, that would be  
8 the test that we would suggest, as Justice Stewart noted  
9 in his concurrent opinion in Hughes. And the test we  
10 propose is that a judicial taking occurs when a State  
11 court affects a sudden and dramatic change in State law,  
12 unpredictable in terms of relevant precedents, that have  
13 no fair or substantial support in well-established  
14 background principles of State law.

15 JUSTICE KENNEDY: Okay, I'm familiar with  
16 that opinion. Now, in this case, number one, it seems  
17 to me that in order to do that we have to become real  
18 experts in Florida law.

19 Number two, once we do that it seems to me  
20 that this opinion really addresses something that's --  
21 that's new, and it's grounded in common law doctrines.  
22 It's a close case. It might have gone either way.  
23 Let's assume that. Does there have to be some finding  
24 that the State decision is clearly unreasonable? I  
25 mean, if it's a close case does the State win under your



1 test?

2 MR. SAFRIET: Your Honor, I think the test,  
3 again the fair and substantial support, provides  
4 adequate deference to the State court. And objectively  
5 reviewing the precedents -- this Court doesn't have to  
6 become an expert in State law. It merely has to review  
7 those precedents to make sure that the Florida Supreme  
8 Court in fact relied on background principles of law  
9 rather than creating nonexistent rules of State  
10 substantive law.

11 JUSTICE KENNEDY: Well, it seems to me that,  
12 reading the opinion, I can get there. There was some  
13 talk about the Belvedere case as helping you. I thought  
14 it did not at all. That was a very odd case where the  
15 easement is wholly separated from the dominant. It's  
16 the reverse. They take the main property and leave the  
17 easement rather than vice versa. I just thought that  
18 was irrelevant.

19 MR. SAFRIET: Yes, the case law, Your Honor,  
20 and the incremental changes that we are dealing with  
21 here that would be part of your test is the government  
22 or the State can gradually change these property rights  
23 or property laws so long as they leave the owner with  
24 the rights. But in this case what the Florida Supreme  
25 Court has done is said we're not just gradually changing

1 them and leaving you with these common law --

2 JUSTICE KENNEDY: The State can do an  
3 accretion but not an avulsion?

4 MR. SAFRIET: Right. We're taking them.  
5 What the Petitioner's members possessed, the State now  
6 possesses.

7 JUSTICE SCALIA: I thought Martin was -- the  
8 Martin case was pretty close, the lake that the State  
9 lowered.

10 MR. SAFRIET: Yes, the Martin v. Busch case.

11 JUSTICE SCALIA: Right.

12 MR. SAFRIET: That case, ironically, has  
13 been relied upon by the State at the Florida Supreme  
14 Court level.

15 JUSTICE SCALIA: Did the Florida Supreme  
16 Court cite it?

17 MR. SAFRIET: Absolutely not, Your Honor.

18 JUSTICE SCALIA: Isn't that weird? Why  
19 didn't they cite it?

20 MR. SAFRIET: It's not weird, because in  
21 1987 in the Sand Key case the Florida Supreme Court said  
22 that the proposition that the State has cited that case  
23 for that was not the issue there in that case. It said  
24 that case dealt with a property boundary dispute. It  
25 didn't deal even deal with the doctrine of avulsion or

1 reliction or accretion.

2 JUSTICE SCALIA: Do you think that's true?

3 MR. SAFRIET: I'm sorry, Your Honor?

4 JUSTICE SCALIA: I know they said that. Do  
5 you think that's true? When I read it it seemed to me  
6 to deal with reliction precisely.

7 MR. SAFRIET: I do think that's true,  
8 because the majority Sand Key said that it dealt with  
9 it.

10 (Laughter.)

11 MR. SAFRIET: There are no further  
12 questions, I would like to reserve my time for rebuttal.

13 JUSTICE SCALIA: A good lawyerly response.

14 CHIEF JUSTICE ROBERTS: Thank you. Thank  
15 you, Mr. Safriet.

16 Mr. Makar.

17 ORAL ARGUMENT OF SCOTT D. MAKAR

18 ON BEHALF OF THE RESPONDENTS

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

21 Let me go ahead and address some issues that  
22 have come up about Florida law. Number one, this idea  
23 of artificial avulsion, that was discussed earlier, the  
24 Bryant v. Peppe case, which cites the Martin case,  
25 discussing the Martin case, talks about when the State

1 comes in on its own property and either lowers the water  
2 or in this case, puts sand on the -- on the State side  
3 of the property line, that that's an artificial  
4 avulsion, the State retains title to it, State land, the  
5 upland owner, property owner retains ownership of their  
6 land.

7 CHIEF JUSTICE ROBERTS: I suppose it depends  
8 on -- or maybe not how -- quickly it happens. I mean,  
9 if the State project is such that they add a foot a  
10 year, is that an avulsion or accretion?

11 MR. MAKAR: Well, it would be an avulsion.  
12 It would still be the State adding sand to its side of  
13 the line.

14 CHIEF JUSTICE ROBERTS: Well, is your view  
15 whenever the State does it, it's an avulsion?

16 MR. MAKAR: If it's not -- if it's not its  
17 property, that's absolutely the case.

18 JUSTICE SCALIA: Why is that? I thought  
19 avulsion by definition is a sudden change.

20 MR. MAKAR: No, no. Under, the -- the --  
21 the Bryant v. Peppe case, which was an avulsion case  
22 that arose out of a hurricane, where there was land that  
23 was previously submerged, it came up, it was over State  
24 property, the private owners wanted to get the -- get  
25 it, they asserted it was theirs in accretion, and the

1 court said no, and it cited to Martin. There is no  
2 right to having contact with the water.

3 JUSTICE SCALIA: Why -- you're -- we're  
4 wandering off the point. Why wasn't it an avulsion? It  
5 was an avulsion in that case, wasn't it, because it was  
6 sudden?

7 MR. MAKAR: But it was done by the State.  
8 I'm sorry, maybe I'm confusing cases.

9 JUSTICE SCALIA: Is -- is --

10 MR. MAKAR: Martin --

11 JUSTICE SCALIA: You have a case with the  
12 proposition that what would otherwise be an avulsion is  
13 an accretion if it's done by the State?

14 MR. MAKAR: Oh, no, no, no.

15 JUSTICE SCALIA: Or vice versa. What would  
16 otherwise be an accretion is an avulsion if done by the  
17 State?

18 MR. MAKAR: No, no, no. An -- an accretion  
19 would have to be a sudden, imperceptible change in the  
20 property line. When the State adds to its side of the  
21 line, adds sand in this case, that's not a gradual,  
22 imperceptible --

23 CHIEF JUSTICE ROBERTS: My question was what  
24 if it is?

25 JUSTICE SCALIA: What if it is?

1 CHIEF JUSTICE ROBERTS: I don't recall how  
2 quickly things happened here.

3 MR. MAKAR: Oh, well -- no --

4 CHIEF JUSTICE ROBERTS: But if it's -- if  
5 it's gradual, even though the State is doing it, it can  
6 be an accretion right?

7 MR. MAKAR: Well, if it's gradual and  
8 perceptible, the answer would be --

9 CHIEF JUSTICE ROBERTS: It's a foot a year,  
10 a foot a year.

11 MR. MAKAR: If the State came in and took  
12 that property, yes. The 100 --

13 CHIEF JUSTICE ROBERTS: So, on these  
14 facts --

15 MR. MAKAR: On these facts --

16 CHIEF JUSTICE ROBERTS: On these facts, if  
17 the State's project added sand at a foot a year, the  
18 landowner would win?

19 MR. MAKAR: I would disagree with that,  
20 because what -- that is not a gradual imperceptible  
21 changes -- water.

22 CHIEF JUSTICE ROBERTS: A foot -- are we  
23 dickering over the distance?

24 MR. MAKAR: We are, I think, because in this  
25 case what happened --

1 CHIEF JUSTICE ROBERTS: Well, then, wherever  
2 you want to say it's an accretion, an inch, six inches.

3 MR. MAKAR: But that's not the way it is  
4 under -- under Florida law, if the State comes in on its  
5 own property and adds to it, as it did in Martin, where  
6 it lowered the -- the water or in this case where they  
7 added the sand, it -- the State retains the right to it.  
8 The upland owner doesn't get it.

9 CHIEF JUSTICE ROBERTS: So, you are --

10 JUSTICE ALITO: Why isn't it a  
11 fundamental -- why isn't it a fundamental change in  
12 Florida property law to extend these concepts of  
13 accretion or avulsion to things that are done by the  
14 State. If someone owns beachfront property, they  
15 accept -- they -- they understand the risk that a  
16 hurricane may cause avulsion, a hurricane may knock down  
17 their house. Does that mean the State could come in and  
18 knock down the house and say this is an artificial  
19 avulsion?

20 MR. MAKAR: No, absolutely --

21 (Laughter.)

22 MR. MAKAR: No, absolutely not. I mean,  
23 what the State did here is -- 40 years ago is --

24 JUSTICE ALITO: Well, what's the difference?  
25 You're taking a concept that has to do with a risk that

1 you bear because of the -- the vagaries of -- of the  
2 weather and storms, and you're applying it to something  
3 that's done by the State.

4 MR. MAKAR: Maybe we're -- I'm -- because  
5 we're talking about a label. We're talking about --

6 JUSTICE ALITO: Yes, talking about a label  
7 and putting the avulsion label and the accretion label  
8 on something that the State does doesn't -- doesn't  
9 eliminate the fact that there's been a fundamental  
10 change, taking a doctrine that applies to things that  
11 occur as a result of nature and you've applied it to  
12 things that are produced by the State.

13 MR. MAKAR: Well, there's no question under  
14 Florida law that the State has the right on its  
15 sovereign lands to control those lands and use those for  
16 the public trust. What the Florida legislature did 40  
17 years ago -- keeping in mind this has been on the books  
18 40 years, 200 miles of beaches have been restored over  
19 those years, and no one has complained that this is a  
20 taking of property. That's it's a reasoned response for  
21 the Florida Supreme Court to come in and say, okay,  
22 they're challenging the act. They're saying it denies  
23 them two things: The right to future accretion and the  
24 right to have contact with the water.

25 Martin v. Busch and Bryant v. Peppe say,



1 look, if you don't have a right of contact with the  
2 water, if you have avulsion or if you have it in -- in  
3 Martin is a State draining project.

4 CHIEF JUSTICE ROBERTS: If I can -- we're  
5 arguing about the application of a doctrine to this  
6 case. I would like to step back if I can and talk about  
7 the doctrine through a hypothetical, if that's all  
8 right.

9 The -- the -- let's say the legislature  
10 passes an act saying the boundary of beachfront property  
11 is now where the sand starts and not the mean high water  
12 mark but the mean high sand mark. All right. And --  
13 and then -- so that's sued. You -- you sue under that  
14 and the court says, yes, of course that's a taking, our  
15 precedents have always said it's the mean high water  
16 line and nothing else.

17 Florida has judicial elections, say,  
18 somebody runs for election for the Florida Supreme Court  
19 and says I'm going to change that law, I'm going to say  
20 that it is not a taking. I think people should be able  
21 to walk right up to the land. And that person is  
22 elected and the law is changed.

23 Now, is -- is that a judicial taking?

24 MR. MAKAR: I think under the scenario  
25 you're posing that's a possibility. That's where the --

1 CHIEF JUSTICE ROBERTS: Is it a possibility  
2 or is it a clear case?

3 MR. MAKAR: Well, I think it would -- if  
4 it -- if it -- sounds like this is the cannon beach  
5 situation, where the court judicially said, okay, you  
6 don't own the mean high water line, now you own up --  
7 only up to the vegetation line, or something along those  
8 lines where it was an ouster. Here there is no ouster  
9 of property --

10 CHIEF JUSTICE ROBERTS: No, no, I know,  
11 you're changing -- I understand you have a different  
12 view about here. But under my hypothetical, would you  
13 agree that the action of the Florida Supreme Court is a  
14 taking?

15 MR. MAKAR: Yes, I would -- I would  
16 countenance that -- that here we have a far different  
17 situation, which we have an act of the legislature that  
18 draws this line, and that the two attributes that they  
19 are claiming have no basis whatsoever in background  
20 principles of Florida law. There is no case they can  
21 point to to say that we have a right of contact --

22 JUSTICE BREYER: Well, what they say is the  
23 following, this is what they say, I think: They point  
24 to a case called Sand Key, and in Sand Key it says  
25 littoral property rights include the following vested

1 rights: One, the right of access to the water,  
2 including the right to have the property's contact with  
3 the water remain intact. That's what the Court said.

4 And in the court's opinion what it says  
5 about that is it says, in this case, the Act expressly  
6 protects the right of access to the water, which is the  
7 sole justification for the subsidiary right of contact.  
8 So what they're doing is they're reading what they said  
9 in Sand Key, and they're asking why was it there in Sand  
10 Key, and that's what they come up with.

11 Now, after this sentence I just read you,  
12 there is no citation. So I want you to add anything you  
13 would like to say why this is, that sentence I read you,  
14 justifiable under Florida law.

15 MR. MAKAR: Well, you're talking about the  
16 legislation.

17 JUSTICE BREYER: No --

18 MR. MAKAR: I'm talking about --

19 JUSTICE BREYER: I'm giving you what I took  
20 was -- I don't want to characterize the answer. I might  
21 have found it sufficient, others might not have, I don't  
22 know. I'm saying they point to Sand Key, I've read you  
23 what I thought was the answer. Tell me if I'm right,  
24 and if I am right, that that is meant to be the answer,  
25 justify it, if you can.

1           MR. MAKAR: Sure. What they're citing to is  
2 some dicta in Sand Key that had nothing to do with the  
3 holding of that case, and if you try to go back and look  
4 at the citations to the cases that Sand Key cites for  
5 proposition of contact with the water, none of them have  
6 to do with contact with the water.

7           Instead, the most important point is to look  
8 at Martin v. Busch, which was a case where the State  
9 lowered the water in a lake, the upland owners at the  
10 property line was determined not to have moved, they  
11 didn't have any contact with the water any longer, and  
12 the submerged sovereignty lands became the State's  
13 property. There's no right of contact there.

14           JUSTICE SCALIA: Sand Key's statement  
15 strikes one as -- as correct simply because I think  
16 that's -- that's the view of the common law. I -- I  
17 don't think that's unique or distinctive to Florida. I  
18 think it would be very strange to have a principle that  
19 all the -- all the littoral owner gets is a right to  
20 access the water and not the right to be on the water,  
21 to have his property on the water.

22           I think -- I think in every State a --  
23 beachfront owners would be astounded to learn that  
24 that's the case.

25           So, I -- you know, I thought that Sand Key

1 was just expressing what -- what was the common law.  
2 And the notion that the only purpose of the contact with  
3 the water is so that you can have access, that is -- is  
4 that not silly?

5 MR. MAKAR: No. Well, two points here I  
6 would like to make. Number one, let's assume there was  
7 an avulsive event that added sand on the State's  
8 property along the beach line, so now we have the  
9 property line not changing, it's exactly where it was  
10 before, but now we have, say, 75 feet of sand, new sand  
11 seaward, over the State's property. That's the State's  
12 property.

13 CHIEF JUSTICE ROBERTS: But that's not the  
14 question -- you just said that, let's assume the --  
15 assuming the property line doesn't change. The other  
16 side is saying the property line is the mean high water  
17 line, and so if you -- whoever adds sand, the State,  
18 mother nature, you dumping it -- I guess you can't do  
19 that, but whoever adds it, the property line is the mean  
20 high water line.

21 MR. MAKAR: But -- but -- well -- but under  
22 this avulsive event where there is sand added seaward,  
23 the contact by the upland owner with the water no longer  
24 exists, and that's been on the books in Florida --

25 CHIEF JUSTICE ROBERTS: But that's because

1 you think the property line is the ECL rather than the  
2 MHWL.

3 MR. MAKAR: I'm sorry, Mr. Chief Justice.  
4 What I'm talking about is put the act aside and just say  
5 at common law in Florida. If the sand is added through  
6 avulsive events, the upland owner has no contact with  
7 the water any longer. They certainly have access. And  
8 the Florida act is so solicitous of protecting the  
9 property rights of riparian ownership. You go through  
10 the statute and you see they preserve common law  
11 littoral -- littoral rights. They have a section --

12 JUSTICE SCALIA: Would that person still be  
13 considered a littoral owner?

14 MR. MAKAR: That was my second point.

15 JUSTICE SCALIA: After there has been the  
16 avulsive event that separates him from the ocean by 60  
17 feet of State-owned land, would he still be a -- a  
18 riparian owner? I thought --

19 MR. MAKAR: Absolutely, absolutely. And  
20 that's a major misnomer in this case, is that the upland  
21 owner here, even after the beach restoration project,  
22 has riparian littoral property. That's what the Florida  
23 Supreme Court has held, that's what the Florida  
24 legislation says.

25 CHIEF JUSTICE ROBERTS: Well, but it's not

1 -- it's not the same as the property right he held  
2 before, right?

3 MR. MAKAR: I -- I would disagree with that,  
4 Mr. Chief Justice.

5 CHIEF JUSTICE ROBERTS: So he can exclude  
6 people from the additional 60 feet?

7 MR. MAKAR: But it's not his -- it's not  
8 their property. It's the State's --

9 CHIEF JUSTICE ROBERTS: That's what the case  
10 is about.

11 MR. MAKAR: Well, I -- I agree that's what  
12 they have tried to make it about. What they've said is  
13 the State now has this swath of sand. It's a barrier to  
14 protect against erosion. It's no wider than this  
15 courtroom.

16 JUSTICE ALITO: Suppose -- suppose that a  
17 city decided to have -- it wanted to attract more  
18 students who were going to the beach in Florida for  
19 spring break, and so therefore it decided it was going  
20 to create a huge beach in front of -- of privately owned  
21 homes. Under the decision of the Florida Supreme Court,  
22 I don't see anything that would stop the city from doing  
23 that. So you could have -- you could have televised  
24 spring break beach parties in front of -- of somebody's  
25 house. Now, in -- as a practical matter, doesn't that

1 have a real effect on the value of the property?

2 MR. MAKAR: Well, Justice Alito, in  
3 response, what I say here is, keep in mind this is the  
4 Beach and Shore Preservation Act. It isn't designed to  
5 create some recreational playground for spring breakers.  
6 It's designed --

7 JUSTICE ALITO: No, I understand that, but  
8 if the -- but the Florida Supreme Court said that there  
9 isn't any right, if there is a manmade extension of the  
10 beach, there is no right to exclude people from it;  
11 it's -- the beach is owned by the State. So all of that  
12 could take place, couldn't it?

13 MR. MAKAR: Well, not under the act, because  
14 -- here's why. Under the act, what has to be done is a  
15 survey. You have --

16 JUSTICE SCALIA: He's not talking about the  
17 act. He's just talking about your theory of the case.  
18 Your theory of what the rights of beachfront owners  
19 consist of would permit this to happen, if not under  
20 this act, under some other act; right?

21 MR. MAKAR: Well, if there was -- if there  
22 were some other act where the legislature passes a  
23 law --

24 JUSTICE SCALIA: Right. Well, it's the  
25 Spring Break Act of 2010, okay?



1 (Laughter.)

2 JUSTICE SCALIA: They could do that,  
3 couldn't they?

4 MR. MAKAR: Well --

5 JUSTICE SCALIA: Under your theory of the  
6 case?

7 MR. MAKAR: Well, they -- they would, but  
8 the point being is that they would have to preserve the  
9 littoral rights of --

10 JUSTICE BREYER: Well, why do we have to say  
11 that? I mean, they're writing a -- a -- an opinion here  
12 against a background of an act, and as I read that  
13 opinion -- you can add something to this if you want --  
14 I make a list of what they say in effect provides, not  
15 perfectly, but provides roughly, the same kind of  
16 protection that the Sand Key statement provided.

17 One, you can go to the water; two, you have  
18 a right of ingress and egress, if that's any different  
19 from the first. I'm not positive. Three, you have a  
20 right under the act that nobody can put anything on that  
21 strip which is injurious to the upland owner. All  
22 right.

23 So those are at least three things and I  
24 think there's a fourth. Yes, the fourth is that nobody  
25 can build anything there that is harmful, except if it's

1 to do with the environment; that's not harmful, that's  
2 helpful to the beach owner; it's supposed to be helpful.  
3 And, five, you get your beach guaranteed.

4 So all of those things are things you get  
5 under this act in an intermediate case where it's a  
6 little like an avulsion and a little not like an  
7 avulsion. Now, do I add anything to my list? And do  
8 you have to go beyond that?

9 MR. MAKAR: No, well, there's -- there's  
10 even more, Justice Breyer.

11 JUSTICE BREYER: Okay, that's what I wanted  
12 to know. What more?

13 MR. MAKAR: What the legislature in Florida  
14 did as well is to say that when they do the survey, as  
15 you see in the document attached in the joint appendix,  
16 they have to set out what the width of the berm will be,  
17 the sacrificial sand that's there to erode away over  
18 time. They put the width in there. And in this  
19 particular instance it's about 75 feet. And it's going  
20 to erode away. That cannot be increased without the  
21 consent of the owners.

22 CHIEF JUSTICE ROBERTS: So why doesn't --  
23 why don't you take your list and Justice Breyer's list  
24 and submit that in the just compensation hearing? When  
25 the landowner comes in and says, look, you have taken my

1 property and it is worth \$100,000, and you come in and  
2 say oh, no, no; it's not worth \$100,000; look at all  
3 these things we saved and gave you. It's only -- what  
4 you have lost is only worth \$20,000. And a court will  
5 review that and say yes, no, whatever, and that's what  
6 you get.

7 MR. MAKAR: Well, because, Mr. Chief  
8 Justice, under background principles of Florida law they  
9 have no right to contact with the water, and this  
10 accretion right is --

11 CHIEF JUSTICE ROBERTS: Again, that is what  
12 the whole case is about, whether they have a right to  
13 contact the water or not. It seems to me if your only  
14 answer to every question is they don't have the right,  
15 you're just completely begging the question.

16 MR. MAKAR: But under -- with due respect,  
17 under Florida law they don't. And --

18 JUSTICE BREYER: Well, isn't the question  
19 here that the reason they don't under Florida law is in  
20 a situation where the law isn't clear, we draw the  
21 Florida law this way rather than that way, and that is a  
22 reasonable common law decision because of the six points  
23 that we've listed on the list?

24 MR. MAKAR: Absolutely. Given this --

25 JUSTICE BREYER: It's not that it's a taking

1 --

2 MR. MAKAR: Absolutely.

3 JUSTICE BREYER: -- and you're compensating.

4 It is a reason why this is a -- I am somewhat putting  
5 words in your mouth, but I mean --

6 (Laughter.)

7 MR. MAKAR: Well, certainly our position is  
8 that there's no --

9 JUSTICE SCALIA: You won't disagree with  
10 that.

11 (Laughter.)

12 JUSTICE GINSBURG: Do you know the answer to  
13 the question that was asked of your colleague? That is,  
14 here we have an organization representing several  
15 landowners. Is there any indication about how these  
16 beachfront owners in these communities, what their view  
17 is, that they are benefiting, that they are harmed? Is  
18 there any indication of that?

19 MR. MAKAR: Other than these Petitioners,  
20 Justice Ginsburg, no one has complained about this and  
21 said that -- and brought an action or -- or otherwise.  
22 This is a very beneficial program. It's basically a  
23 beachfront property protection act, so it's sort of  
24 anomalous that anyone would complain.

25 JUSTICE KENNEDY: But the problem with the

1 argument that I'm having is that in the last colloquy  
2 with Justice Breyer we heard how reasonable this act  
3 was. That's one thing. But you have taken the position  
4 that it's your property and you can do with it what you  
5 want anyway. Now, maybe in this case it won't make a  
6 difference, because it's so reasonable that there's not  
7 a taking. But what about -- - what do you call -- the  
8 spring fling, the spring break hypothetical, or a  
9 permanent oceanography museum.

10 MR. MAKAR: Sure, Justice Kennedy. We have  
11 cases in Florida, for example, where a bridge was built  
12 entirely across the view of the -- of the river, and the  
13 upland owner in that situation had a total impairment of  
14 their right to view, and that's compensable. So -- so  
15 -- but here what we have --

16 JUSTICE GINSBURG: And this statute  
17 provides --

18 JUSTICE KENNEDY: So you --

19 JUSTICE GINSBURG: This very statute says if  
20 -- if what happens is a taking, then there's  
21 compensation.

22 MR. MAKAR: Right.

23 JUSTICE KENNEDY: And you think there's a  
24 taking as a matter of Georgia -- pardon me, of Florida  
25 law if enjoyment of the view and access is substantially

1     impaired?  I mean, is that the test?

2                   MR. MAKAR:  That's the law in Florida,  
3     Justice Kennedy, is if there's a substantial impairment.  
4     There's cases that say that --

5                   CHIEF JUSTICE ROBERTS:  So on behalf of the  
6     State you concede if any of this list -- these -- the  
7     list of good things that the land owner gets, if the  
8     legislature next year takes them away that would be a  
9     taking?

10                  MR. MAKAR:  Sure, if they took away the --  
11     the swath of littoral rights or a substantial portion,  
12     that would be highly problematic and likely be a taking.

13                  JUSTICE KENNEDY:  Do you think that either  
14     all of the time or some of the time a public beach  
15     would -- that intervenes between the upland and the  
16     water, would be a substantial impairment of the upland  
17     owner's rights?

18                  MR. MAKAR:  No, no, no.  The -- the State  
19     owns the beach, and let me make this analogy.

20                  JUSTICE KENNEDY:  That -- that's exactly my  
21     point.  You say that the State owns the beach and it's  
22     okay because there's a protection against unreasonable  
23     use.  And I'm asking whether or not a State beach with,  
24     what do you call them, port-a-johns and hot dog stands  
25     and what-not, isn't a substantial impairment of the

1 upland owner's use? And you say, well, the State owns  
2 it --

3 MR. MAKAR: Well --

4 JUSTICE KENNEDY: But that takes away from  
5 your earlier argument that we don't need to worry  
6 because there can be no interference with substantial  
7 enjoyment. And it seems to me that Justice Alito's  
8 question has still not been answered in your argument.

9 MR. MAKAR: Well, I believe the answer is  
10 that this is a facial challenge. There could be an  
11 as-applied challenge. Keep in mind, the association  
12 here owns no property.

13 JUSTICE KENNEDY: I want you to talk to me  
14 about what the constitutional law ought to be in this  
15 case as a general matter. We'll figure out facial and  
16 -- and as-applied later. I still see that your argument  
17 leaves open this question in my mind raised by the  
18 concerns that Justice Alito has expressed.

19 MR. MAKAR: Well -- and the Florida Supreme  
20 Court was very careful in narrowing its decision and  
21 saying that the actual property owners may pursue, if  
22 they feel, beyond this opinion, they may pursue an  
23 as-applied claim, where they -- this has no takings  
24 record before this Court whatsoever, and that would have  
25 to be developed, keeping in mind that much --

1 JUSTICE KENNEDY: But when they do, they're  
2 going to be met by you when you're in the trial court  
3 and you say the State owns the property.

4 MR. MAKAR: Well, just because the State  
5 owns the property doesn't mean there can't be an  
6 impairment of the -- of the right. This is an analogy  
7 to say this is a road where -- if I might --

8 CHIEF JUSTICE ROBERTS: You can complete  
9 your thought.

10 MR. MAKAR: That if this were a road and the  
11 traffic -- there's a country road and there's very  
12 little traffic, and over the years the traffic built up,  
13 that somehow the owner of the property along that road  
14 would have a cause of action. It's just not the case.

15 Thank you very much.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.

17 Mr. Kneedler.

18 ORAL ARGUMENT OF EDWIN S. KNEEDLER

19 ON BEHALF OF THE UNITED STATES,

20 AS AMICI CURIAE, SUPPORTING THE RESPONDENTS

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

23 From the outset, this case has been a  
24 challenge to the actions of the Florida legislature and  
25 its executive branch in enacting and implementing the



1 Beach Restoration Act.

2 That is a conventional takings claim and  
3 that is the way I think it is most useful for this Court  
4 to approach it. Rather than seizing on particular  
5 statements in the opinion of the Florida Supreme Court  
6 and regarding the Florida Supreme Court's judicial act  
7 as itself a taking, it's best to focus on the act  
8 itself.

9 And with respect to the act itself, what --  
10 what has happened here is the State has exercised, not  
11 just sovereign regulatory rights; it has exercised  
12 critical sovereign proprietary rights.

13 CHIEF JUSTICE ROBERTS: Mr. Kneedler, that's  
14 a clever ploy. We're talking about judicial takings and  
15 you say, don't look at what the court did, look at what  
16 the legislature did. That changes the whole ball game.

17 MR. KNEEDLER: Well, but -- but, in  
18 fairness, first of all, that's how this case originated,  
19 was a challenge --

20 CHIEF JUSTICE ROBERTS: There's no choice.  
21 If their argument is what the court did constituted the  
22 taking, they couldn't have raised that earlier --

23 MR. KNEEDLER: No. My --

24 CHIEF JUSTICE ROBERTS: -- and say, oh, we  
25 think we know that the court is going to change things.

1           MR. KNEEDLER: My -- my point isn't -- isn't  
2 so much about whether it could have been raised earlier.  
3 It is that what -- what is -- what is being objected to  
4 here is a -- is a -- this was not a judicial  
5 declaration, for example, that somebody who has littoral  
6 property can walk up to the edge of the water and can't  
7 touch it. There was no abstract declaration on littoral  
8 rights.

9           CHIEF JUSTICE ROBERTS: Judicial -- judicial  
10 taking if that were the case?

11           MR. KNEEDLER: That -- that would be more  
12 like Hughes. I'm not sure that I would analyze it as a  
13 judicial taking. I think another way to come at this,  
14 and this may even be suggested in -- in Justice Scalia's  
15 dissent in the Cannon Beach case -- is that the -- the  
16 usual principle that where State law is interposed in a  
17 way that would -- would defeat a Federal constitutional  
18 right, a court can look to see whether there is a fair  
19 and substantial basis for it.

20           That's not really a -- there's no need to  
21 fashion a new judicial taking doctrine when you have --

22           JUSTICE BREYER: Well, why not? Because --  
23 because what they said is: We have a right to touch the  
24 water and you've taken it. That's what they said this  
25 act does.

1 MR. KNEEDLER: Right, and --

2 JUSTICE BREYER: The court said: You've  
3 never had that right. And it's just like a person who  
4 owns 40 acres in the middle of Vermont and the State  
5 wants to build a nuclear power plant, and they say, you  
6 have to pay us. No, says the State. And the court of  
7 the State upholds it on the ground there is an implicit  
8 easement under Blackstone to take land for power plants  
9 without paying for it; it's called the power plant  
10 easement. Okay?

11 Now, in such a case, it would be the  
12 judicial taking because their ground is not -- whatever  
13 you normally have, but their ground is you never had  
14 that property right in the first place.

15 Now, how -- if that ever were to happen --  
16 and that probably, perhaps, is not this case, but if  
17 that ever were to happen, wouldn't there have to be a  
18 remedy under the Constitution for it?

19 MR. KNEEDLER: And -- and maybe so, but --  
20 but, again, I think it -- it would be possible to -- to  
21 review it under the general principle about whether a  
22 State interpretation of State law that would defeat a  
23 claim to Federal right would be without any fair or  
24 substantial basis, without -- without saying that the  
25 Supreme Court itself has committed an unconstitutional

1 act. It -- it could be looked at that way.

2 But if I -- but if I could turn to the --  
3 the operation of this statute, what -- what has happened  
4 here is -- as this Court has recognized in numerous  
5 cases, the authority of the State over its submerged  
6 lands is a critical aspect of sovereignty. It is held  
7 in trust for the public and for public uses, and what  
8 has happened here is the State, with respect to its own  
9 sovereign lands, has filled that land. That does not  
10 change the ownership of the sovereign lands.

11 They remain sovereign lands, and the State  
12 has done it for a critical public purpose, And that --

13 CHIEF JUSTICE ROBERTS: Accretion --  
14 accretion, of course, would change.

15 MR. KNEEDLER: Accretion --

16 CHIEF JUSTICE ROBERTS: It would take  
17 submerged State land and give it to the landowner.

18 MR. KNEEDLER: Accretion would, but -- but  
19 avulsion or rapid change would not.

20 CHIEF JUSTICE ROBERTS: So a foot -- I'll  
21 get back to what I raised earlier. A foot a year, if  
22 the State does it and it's a foot a year, does the  
23 property owner get the foot, or does the State get the  
24 foot?

25 MR. KNEEDLER: I -- I don't want to quibble,

1 but I think it depends. The -- the Florida Supreme  
2 Court's decision in Sand Key was a situation where the  
3 State had -- had erected a jetty or an offshore  
4 structure that caused sand to accrete on the -- on the  
5 property, and the Florida Supreme Court said that  
6 belongs to the littoral property owner under the  
7 doctrine of -- of accretion.

8 On the other hand, if the State came along  
9 once a year, on one day, and added a foot, that would  
10 not be gradual and imperceptible, but would be quite  
11 perceptible because the State would have added a foot of  
12 property. And even though it's a small avulsion, I  
13 think it -- I think it would still count as an avulsion.

14 CHIEF JUSTICE ROBERTS: So it makes a  
15 difference whether it's done in a day or done in a  
16 month?

17 MR. KNEEDLER: Well, the -- the difference  
18 between accretion and avulsion is whether it's gradual  
19 and imperceptible or whether -- whether it is dramatic  
20 or --

21 JUSTICE KENNEDY: What authority is there in  
22 Florida law or in general law to say that the act of  
23 an -- an artificial person is an accretion or avulsion,  
24 instead of just an act of nature? What -- what case do  
25 I read or authority do I read?

1 MR. KNEEDLER: Well, the Florida Supreme  
2 Court's decision in the -- in the Peppe case relied on  
3 Martin v. Busch, which I agree with Justice Scalia, it's  
4 very critical here, where there was State action in  
5 draining the lake, which exposed the surface -- the --  
6 the formerly submerged land, and the Florida Supreme  
7 Court said that land belongs to the State, it was action  
8 by the State in a dramatic way.

9 And Florida --

10 JUSTICE KENNEDY: But -- but did they call  
11 it an avulsion?

12 MR. KNEEDLER: They -- they did not there,  
13 but in -- but in --

14 JUSTICE KENNEDY: That -- that -- so that  
15 doesn't answer my question.

16 MR. KNEEDLER: No, but my point was, in  
17 Peppe, where -- where there was actually an avulsion,  
18 the court characterized what happened in Martin v. Busch  
19 as an avulsive act. But you don't need to label it  
20 avulsion because there's a separate doctrine that when  
21 the State fills its own land, it remains its own land.

22 And I would like to point out -- this is not  
23 a unique doctrine --

24 JUSTICE ALITO: Can I -- Mr. Kneedler,  
25 before your time expires, what -- I agree, Martin v.

1 Busch seems to be the case that's most -- provides the  
2 greatest support for what the Florida Supreme Court did  
3 here. But what do we do about the fact that the Florida  
4 Supreme Court didn't rely on it?

5 MR. KNEEDLER: I -- I think it is  
6 surprising, although the Florida Supreme Court did  
7 discuss avulsion, but if -- if I could just make one  
8 point? This is not a -- a unique notion in Florida law.

9 This Court's decision in  
10 Hughes v. Washington, which dealt with accretion,  
11 responded to the -- to the point that was -- that was  
12 made there and said, well, the -- the littoral property  
13 right is vulnerable anyway because the owner of the  
14 adjacent submerged lands can always take action on his  
15 own lands that could affect what the upland property  
16 owner did.

17 And this -- and this Court said, yes, that's  
18 right, but we're talking, here, about natural causes.  
19 And in -- in Hughes, the Court cited two cases, one in  
20 Washington State, for example, where the -- where there  
21 was an absolute right to fill the submerged lands even  
22 if that completely cut off access.

23 It also pointed out another case from New  
24 Jersey where -- where the -- a case of this -- from this  
25 Court, where the Court said, you have a right to

1 accretion as long as nobody's filled the land  
2 in-between.

3 But one --

4 CHIEF JUSTICE ROBERTS: Counsel, what is  
5 your -- I'm sorry. What -- what is your view on the  
6 hypothetical I posed to your -- to your friend? The  
7 legislature moves it to the vegetation line. The State  
8 Supreme Court says that's a taking. Somebody runs for  
9 election to the State Supreme Court, saying, I'm going  
10 to change that. He's elected. He changes the law.

11 Is that a judicial taking?

12 MR. KNEEDLER: Again, I think I would  
13 analyze it under the fair and substantial basis. But,  
14 yes, if there -- if there is no justification in  
15 background law, if it's basically contextual, in the  
16 same way that -- that any --

17 CHIEF JUSTICE ROBERTS: Well, doesn't --  
18 it's not contextual. He says, I think they got the law  
19 wrong.

20 MR. KNEEDLER: But if there's -- but the  
21 phrasing the Court has used in the due process is  
22 whether it's unforeseen and indefensible.

23 I mean, if -- if there's just -- if there's  
24 just -- if it's just ipse dixit. But there -- but  
25 there -- but that it is by no means true here. And it's



1 important that Martin v. Busch was cited in the two --  
2 and distinguished in the two principal cases on which  
3 the Petitioner relies here.

4 In Sand Key, the Court distinguished Martin  
5 v. Busch on the ground that in Sand Key it was an  
6 accretion, but -- and it distinguished Martin v. Busch  
7 on the -- on the ground that there it was a -- it was a  
8 sudden, dramatic action by the State, and the -- and the  
9 same thing was also true in the Florida National case,  
10 where the -- the Court again distinguished Martin v.  
11 Busch on that ground.

12 JUSTICE SOTOMAYOR: Counsel, would you have  
13 answered Justice Scalia's question that there's a  
14 common -- a generally understood common law right,  
15 littoral right, to contact with the water? Would you  
16 say there is not?

17 MR. KNEEDLER: I would -- I would say  
18 there -- I would say it's tied up with the right of  
19 access, as long as the littoral property owner remains  
20 adjacent to the water.

21 But what you have here is a neighboring  
22 property owner, the sovereign, exercising critical  
23 sovereign rights over its property, which has its own  
24 property interests, and if under Florida law the -- the  
25 State is permitted to put sand on the beach -- this is

1 -- this is not filling for an amusement park. This is  
2 adding something that is very germane to the maintenance  
3 of the beach, for critical public purposes, the very --

4 CHIEF JUSTICE ROBERTS: It could be -- it  
5 could be adding an amusement park, though, under your  
6 theory, right?

7 MR. KNEEDLER: No, it -- I don't think  
8 there's any universal theory of this. As I-- as I said  
9 in -- in the Port of Seattle case --

10 CHIEF JUSTICE ROBERTS: It's the State's  
11 property. It's the State's property. If they want to  
12 put an amusement park on, they can.

13 MR. KNEEDLER: It varies. And that may be  
14 true in the Port of Seattle case discussed in Hughes,  
15 where the State had the -- you're balancing the rights  
16 of adjacent property owners, just like -- just like  
17 nuisance or other principles do. In Washington State,  
18 apparently, you could completely fill the submerged land  
19 and the upland owner had no rights.

20 In Florida, Florida is actually more  
21 protective than that. It has limited rights. You  
22 maintain a right of view, a right against unreasonable  
23 interference. So there's no one constitutionally-based  
24 rule. It's a question of Florida property law And the  
25 background principles of Florida property law under

1 Martin v. Busch and the fact that the State owns the  
2 adjacent land, I think, not only is there -- there is  
3 more than a fair and substantial basis here. There is a  
4 -- it's very solidly grounded in State law.

5 CHIEF JUSTICE ROBERTS: Let's see if there  
6 are any further questions.

7 (No response.)

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
9 Mr. Safriet, 4 minutes.

10 REBUTTAL ARGUMENT OF D. KENT SAFRIET

11 ON BEHALF OF THE PETITIONER

12 MR. SAFRIET: Thank you, Your Honor.

13 First, Martin v. Busch does not stand for  
14 the principles that the Respondents suggest they do.  
15 The Court in Sand Key said, and in -- and in  
16 distinguishing the Martin v. Busch case, and I quote,  
17 "Our subsequent decisions show there was no intent to  
18 change common law principles regarding the right to  
19 accretion and relictions in Martin v. Busch."

20 And even if it did stand for that principle,  
21 Martin v. Busch case didn't discuss whether the  
22 landowner was entitled to compensation for the severance  
23 of their waterfront property as a result of the lowering  
24 of the water.

25 What also must be noted here, that the State

1 is changing the deeds. They're changing the legal  
2 description and the deeds of the Petitioners' members.  
3 These Petitioners' members own to the mean high water  
4 line. They have a right, not only under Florida common  
5 law to own to the mean high water line, under their  
6 deeds, that's what they purchased. And there has been a  
7 lot of discussion and, I think, maybe some confusion  
8 about the right to contact the water.

9 JUSTICE SCALIA: They wouldn't own to the  
10 mean high water mark if there were an avulsion, if --  
11 right? If --

12 MR. SAFRIET: No, Your Honor.

13 JUSTICE SCALIA: If by nature, this 60-foot  
14 beach had been brought in, then their deed would be  
15 changed, wouldn't it?

16 MR. SAFRIET: Temporarily, Your Honor,  
17 because under the doctrine of reclamation, they can  
18 reclaim the boundary line they lost, just as if in a  
19 case where the hurricane washes sand away, the  
20 landowner, under common law, the doctrine of  
21 reclamation, can bring in sand where the water is to  
22 reconnect to that mean high water line that would be  
23 underwater following a hurricane.

24 JUSTICE BREYER: Now, how does that work? I  
25 mean, I have a beachfront property; I wake up one

1 morning and there's a little half-mile island attached  
2 to half of it, and there we are. Mean high water mark  
3 is half a mile away. You say I can reclaim that under  
4 Florida law? What's that mean?

5 MR. SAFRIET: Yes, Florida law allows, under  
6 the doctrine of reclamation, which is what the Florida  
7 Supreme Court relied on --

8 JUSTICE BREYER: Which is, how does it work?

9 MR. SAFRIET: You'd have to remove the sand.

10 JUSTICE SCALIA: You shovel away the sand.

11 JUSTICE BREYER: Oh, no, no. This is -- you  
12 can't. You can't.

13 JUSTICE SCALIA: What if it's going the  
14 opposite way? What if it's -- if they built up sand? I  
15 mean --

16 JUSTICE BREYER: It's rock.

17 JUSTICE SCALIA: Yes.

18 JUSTICE BREYER: Okay, so what happens?

19 MR. SAFRIET: I'm not sure the common law  
20 envisioned rock coming up to --

21 JUSTICE BREYER: It can happen. Okay. So  
22 my point is, I think, which is the same, I think, as  
23 Justice Scalia, that he -- that the upland owner no  
24 longer, under the law of Florida, has a way of getting  
25 his land out to the mean high water mark. Am I right or

1 wrong?

2 MR. SAFRIET: I think that's wrong, Your  
3 Honor. The doctrine of reclamation --

4 JUSTICE BREYER: Okay. Because?

5 MR. SAFRIET: Under the doctrine of  
6 reclamation, they can reclaim the boundary line. That's  
7 by depositing new sand where the water is to reach the  
8 mean high water line, where it was prior to the  
9 hurricane. They can do that.

10 Conversely, if sand is washed up as a result  
11 of a hurricane, they can remove the sand, bring the  
12 water line back to them.

13 JUSTICE SCALIA: They can go on the State  
14 land to do that? Because that sand is sitting on State  
15 land.

16 MR. SAFRIET: That wouldn't be State -- they  
17 can -- the common law allows them to reclaim what  
18 they're lost -- what they lost, Your Honor. And the  
19 Florida Supreme Court tries to rely on this doctrine of  
20 reclamation in this case. It asserts that the State is  
21 only doing what it allowed under common law, reclaiming  
22 the land it lost.

23 But in this case, the Florida Supreme Court,  
24 or the State of Florida, didn't ever possess any dry  
25 sand land, so they can't reclaim any dry sand land. The

1 only thing they have ever owned was the foreshore and  
2 the sovereign submerged lands. So that's the only thing  
3 they can reclaim.

4 I think there was other questions about the  
5 support for this case. There is more than five  
6 landowners that don't support this case. In the lower  
7 courts, there was another group, Save Our Beaches, that  
8 had, I believe, roughly 150 members that opposed this  
9 project as well in the City of Destin.

10 In this case, we're also dealing with a  
11 physical taking.

12 JUSTICE GINSBURG: Why did they drop out?

13 MR. SAFRIET: Lack of standing at the  
14 administrative hearing, Your Honor.

15 What we're dealing with in this case is a  
16 physical taking. What rights were physically possessed  
17 by the Respondents' members -- or, excuse me, the  
18 Petitioners' members in this case are now possessed by  
19 the State. It's a wholesale transfer of these rights,  
20 along with the transfer of the deed or the description  
21 of the deed. We're not asking this --

22 JUSTICE GINSBURG: I don't understand why  
23 isn't it -- it isn't equally an addition to the private  
24 property owners' rights when they had a narrow beach and  
25 now they're claiming that -- that it's all theirs, the

1 whole 75 feet.

2 MR. SAFRIET: I'm sorry, Your Honor, I  
3 didn't hear your question.

4 JUSTICE GINSBURG: They have, under your  
5 theory, much more property than they had before. They  
6 have a wider beach that's theirs, so they have gained  
7 property, but that doesn't count?

8 MR. SAFRIET: Well, they haven't gained  
9 property, Your Honor, because the State's claiming title  
10 to that new beach. So our -- the Petitioners' members  
11 owned exactly what they owned as of September 7, 2003,  
12 when the property boundary was changed, and the new  
13 boundary would -- the new land would be State-owned.

14 CHIEF JUSTICE ROBERTS: Thank you, Counsel.  
15 The case is submitted.

16 MR. SAFRIET: Thank you.

17 (Whereupon, at 11:04 a.m., the case in the  
18 above-entitled matter was submitted.

19

20

21

22

23

24

25



<b>A</b>	40:14,17,20,20 40:22,25 41:12 41:20 42:5 44:23 45:2 49:1,6,7,9 50:25 52:1 53:22,24 54:19	<b>AL</b> 1:9 <b>Alito</b> 31:10,24 32:6 39:16 40:2,7 47:18 54:24 <b>Alito's</b> 47:7 <b>allowed</b> 13:3 62:21 <b>allows</b> 61:5 62:17 <b>Amendment</b> 3:16,25 <b>amici</b> 1:24 2:8 48:20 <b>amusement</b> 58:1 58:5,12 <b>analogy</b> 46:19 48:6 <b>analyze</b> 50:12 56:13 <b>anomalous</b> 44:24 <b>answer</b> 23:11,14 30:8 35:20,23 35:24 43:14 44:12 47:9 54:15 <b>answered</b> 47:8 57:13 <b>anybody</b> 13:3 15:3 <b>anyway</b> 20:12 45:5 55:13 <b>apparently</b> 58:18 <b>Appeal</b> 4:20 <b>APPEARAN...</b> 1:17 <b>appendix</b> 42:15 <b>application</b> 33:5 <b>applied</b> 5:14,21 32:11 <b>applies</b> 32:10 <b>apply</b> 5:2 8:4 <b>applying</b> 32:2 <b>approach</b> 49:4 <b>area</b> 14:7,24	16:24 19:6 <b>argue</b> 15:25 18:25 <b>arguing</b> 4:24 12:22 33:5 <b>argument</b> 1:15 2:2,10 3:4,8 8:7 27:17 45:1 47:5,8,16 48:18 49:21 59:10 <b>arises</b> 8:4 <b>arose</b> 28:22 <b>arrived</b> 4:23 <b>artificial</b> 7:5 27:23 28:3 31:18 53:23 <b>aside</b> 38:4 <b>asked</b> 23:10 44:13 <b>asking</b> 22:2 35:9 46:23 63:21 <b>aspect</b> 52:6 <b>asserted</b> 28:25 <b>asserts</b> 62:20 <b>association</b> 47:11 <b>assume</b> 12:6 19:4 24:23 37:6,14 <b>assumed</b> 11:25 <b>assuming</b> 11:11 16:15 37:15 <b>assures</b> 7:24 <b>astounded</b> 36:23 <b>as-applied</b> 47:11 47:16,23 <b>attached</b> 42:15 61:1 <b>attract</b> 39:17 <b>attributes</b> 34:18 <b>authorities</b> 4:18 <b>authority</b> 16:23 17:5,8,10 52:5 53:21,25 <b>available</b> 13:6 <b>avoid</b> 3:19	<b>avulsion</b> 6:10,11 6:18,19,25 7:5 7:7,11,13,16 8:2,9,10,12,17 26:3,25 27:23 28:4,10,11,15 28:19,21 29:4 29:5,12,16 31:13,16,19 32:7 33:2 42:6 42:7 52:19 53:12,13,18,23 54:11,17,20 55:7 60:10 <b>avulsions</b> 6:24 <b>avulsive</b> 21:14 37:7,22 38:6 38:16 54:19 <b>awful</b> 8:1 <b>a.m</b> 1:16 3:2 64:17
			<b>B</b>	
			<b>back</b> 5:4 12:25 20:13 33:6 36:3 52:21 62:12 <b>background</b> 24:14 25:8 34:19 41:12 43:8 56:15 58:25 <b>bad</b> 20:14,23 <b>balancing</b> 58:15 <b>ball</b> 49:16 <b>barrier</b> 39:13 <b>basic</b> 4:2 17:25 <b>basically</b> 22:22 44:22 56:15 <b>basis</b> 34:19 50:19 51:24 56:13 59:3 <b>beach</b> 1:3 3:4,21 4:13,16 5:16 5:20 7:6,7 13:11,16,21 14:4,5,18,22	

15:1,2,6,17,25 16:4,8,22 17:11,21 19:1 19:1,7,10,10 19:15,16,19 21:7,9,9,17,17 23:18 34:4 37:8 38:21 39:18,20,24 40:4,10,11 42:2,3 46:14 46:19,21,23 49:1 50:15 57:25 58:3 60:14 63:24 64:6,10 <b>beaches</b> 6:21 32:18 63:7 <b>beachfront</b> 13:16,19 19:6 19:6 20:7 31:14 33:10 36:23 40:18 44:16,23 60:25 <b>bear</b> 32:1 <b>began</b> 15:1 <b>begging</b> 43:15 <b>behalf</b> 1:18,21 1:23 2:4,6,8,12 3:9 27:18 46:5 48:19 59:11 <b>believe</b> 7:14 47:9 63:8 <b>belonged</b> 11:6 11:14 15:10 <b>belongs</b> 53:6 54:7 <b>Belvedere</b> 25:13 <b>beneficial</b> 44:22 <b>benefit</b> 20:1,3 <b>benefiting</b> 44:17 <b>berm</b> 42:16 <b>best</b> 49:7 <b>beyond</b> 19:2 42:8 47:22 <b>Blackstone</b> 51:8 <b>blankets</b> 13:11	14:21 <b>boat</b> 9:5 11:11 11:12 <b>boats</b> 13:5 <b>books</b> 32:17 37:24 <b>borders</b> 6:1 <b>bought</b> 21:24 <b>boundary</b> 16:2 16:11 21:15 26:24 33:10 60:18 62:6 64:12,13 <b>branch</b> 4:1 48:25 <b>branches</b> 3:24 <b>break</b> 39:19,24 40:25 45:8 <b>breakers</b> 40:5 <b>Breyer</b> 7:15 8:15 9:4,10,20 10:4,7,10,17 34:22 35:17,19 41:10 42:10,11 43:18,25 44:3 45:2 50:22 51:2 60:24 61:8,11,16,18 61:21 62:4 <b>Breyer's</b> 42:23 <b>bridge</b> 45:11 <b>briefs</b> 14:1 <b>bring</b> 60:21 62:11 <b>broad</b> 17:8 <b>broader</b> 17:5,10 <b>brought</b> 44:21 60:14 <b>Bryant</b> 27:24 28:21 32:25 <b>build</b> 41:25 51:5 <b>builds</b> 17:14 <b>built</b> 17:19 45:11 48:12 61:14 <b>Busch</b> 26:10 32:25 36:8	54:3,18 55:1 57:1,5,6,11 59:1,13,16,19 59:21 <hr/> <b>C</b> <hr/> <b>C</b> 2:1 3:1 <b>call</b> 45:7 46:24 54:10 <b>called</b> 7:19 18:11 34:24 51:9 <b>cannon</b> 34:4 50:15 <b>careful</b> 47:20 <b>case</b> 3:4 4:11 5:18 6:20 7:4,8 7:9,10,18,21 7:24 8:23 11:24,25 13:24 14:25,25 16:2 16:13 18:22 21:7 22:10 24:16,22,25 25:13,14,19,24 26:8,10,12,21 26:22,23,24 27:24,24,25 28:2,17,21,21 29:5,11,21 30:25 31:6 33:6 34:2,20 34:24 35:5 36:3,8,24 38:20 39:9 40:17 41:6 42:5 43:12 45:5 47:15 48:14,23 49:18 50:10,15 51:11 51:16 53:24 54:2 55:1,2,3 55:24 57:9 58:9,14 59:16 59:21 60:19 62:20,23 63:5 63:6,10,15,18	64:15,17 <b>cases</b> 29:8 36:4 45:11 46:4 52:5 55:19 57:2 <b>category</b> 17:17 <b>cause</b> 19:5 31:16 48:14 <b>caused</b> 53:4 <b>causes</b> 55:18 <b>century-old</b> 3:15 <b>certain</b> 7:22 <b>certainly</b> 10:6 12:18 38:7 44:7 <b>challenge</b> 11:21 12:2 47:10,11 48:24 49:19 <b>challenges</b> 12:3 <b>challenging</b> 32:22 <b>change</b> 10:23,25 12:25 21:15,20 24:11 25:22 28:19 29:19 31:11 32:10 33:19 37:15 49:25 52:10,14 52:19 56:10 59:18 <b>changed</b> 12:22 33:22 60:15 64:12 <b>changes</b> 25:20 30:21 49:16 56:10 <b>changing</b> 25:25 34:11 37:9 60:1,1 <b>characterize</b> 24:2 35:20 <b>characterized</b> 54:18 <b>Chief</b> 3:3,10 9:15 10:18,21 16:14 17:2,12	22:11 23:10 27:14,19 28:7 28:14 29:23 30:1,4,9,13,16 30:22 31:1,9 33:4 34:1,10 37:13,25 38:3 38:25 39:4,5,9 42:22 43:7,11 46:5 48:8,16 48:21 49:13,20 49:24 50:9 52:13,16,20 53:14 56:4,17 58:4,10 59:5,8 64:14 <b>choice</b> 49:20 <b>citation</b> 35:12 <b>citations</b> 36:4 <b>cite</b> 26:16,19 <b>cited</b> 26:22 29:1 55:19 57:1 <b>cites</b> 6:21 27:24 36:4 <b>citing</b> 36:1 <b>city</b> 39:17,22 63:9 <b>claim</b> 16:10 47:23 49:2 51:23 <b>claiming</b> 34:19 63:25 64:9 <b>claims</b> 16:3 22:8 22:9 <b>clause</b> 4:15 5:2 15:16 <b>clear</b> 34:2 43:20 <b>clearly</b> 24:24 <b>clever</b> 49:14 <b>close</b> 24:22,25 26:8 <b>coast</b> 21:1 <b>colleague</b> 44:13 <b>colloquy</b> 45:1 <b>come</b> 13:10 27:22 31:17 32:21 35:10
--	--	---	---	--

<p>43:1 50:13  <b>comes</b> 8:17 19:9                  28:1 31:4                  42:25  <b>coming</b> 61:20  <b>commercial</b>                  15:3,7  <b>committed</b>                  51:25  <b>common</b> 5:8 6:3                  6:4,5,12 8:3,13                  9:8 10:9,16                  18:14 23:1,6                  23:17,19 24:21                  26:1 36:16                  37:1 38:5,10                  43:22 57:14,14                  59:18 60:4,20                  61:19 62:17,21  <b>communities</b>                  44:16  <b>compensable</b>                  45:14  <b>compensated</b>                  4:23  <b>compensating</b>                  44:3  <b>compensation</b>                  6:7 11:3 16:6                  16:13 18:17,18                  22:9 42:24                  45:21 59:22  <b>complain</b> 44:24  <b>complained</b>                  32:19 44:20  <b>complete</b> 48:8  <b>completely</b>                  43:15 55:22                  58:18  <b>complicit</b> 4:8  <b>concede</b> 5:22                  16:17 46:6  <b>concept</b> 31:25  <b>concepts</b> 31:12  <b>concerns</b> 47:18  <b>concurrent</b> 24:9  <b>condemn</b> 15:16</p>	<p><b>condemning</b>                  15:20  <b>Coney</b> 13:21  <b>confusing</b> 29:8  <b>confusion</b> 60:7  <b>connection</b> 6:3                  23:20  <b>consent</b> 42:21  <b>considered</b>                  38:13  <b>consist</b> 40:19  <b>constantly</b> 21:3  <b>constituted</b>                  49:21  <b>Constitution</b>                  3:16 51:18  <b>constitutional</b>                  47:14 50:17  <b>constitutionally</b>                  6:5  <b>constitutionall...</b>                  58:23  <b>constructed</b>                  10:2  <b>contact</b> 6:2,9                  8:23,25 9:2                  16:16 19:14,25                  29:2 32:24                  33:1 34:21                  35:2,7 36:5,6                  36:11,13 37:2                  37:23 38:6                  43:9,13 57:15                  60:8  <b>contained</b> 4:14  <b>contention</b>                  23:19  <b>context</b> 3:20  <b>contextual</b>                  56:15,18  <b>contingent</b>                  12:24  <b>continuance</b>                  23:12  <b>continue</b> 18:10                  18:13 20:16  <b>control</b> 11:13</p>	<p>16:1 32:15  <b>conventional</b>                  49:2  <b>Conversely</b>                  62:10  <b>converting</b> 3:18  <b>correct</b> 4:10                  6:15 9:13 11:7                  12:8,12,13                  13:2,14 36:15  <b>cost</b> 21:4  <b>counsel</b> 11:4                  48:16 56:4                  57:12 59:8                  64:14  <b>count</b> 53:13 64:7  <b>countenance</b>                  34:16  <b>country</b> 48:11  <b>course</b> 8:2 10:20                  13:4 33:14                  52:14  <b>court</b> 1:1,15                  3:11,12,13,17                  4:20,24 5:4,9                  5:11,12 7:21                  8:19 9:1 12:23                  24:11 25:4,5,8                  25:25 26:14,16                  26:21 27:20                  29:1 32:21                  33:14,18 34:5                  34:13 35:3                  38:23 39:21                  40:8 43:4                  47:20,24 48:2                  48:22 49:3,5                  49:15,21,25                  50:18 51:2,6                  51:25 52:4                  53:5 54:7,18                  55:2,4,6,17,19                  55:25,25 56:8                  56:9,21 57:4                  57:10 59:15                  61:7 62:19,23  <b>courtroom</b></p>	<p>39:15  <b>courts</b> 23:25                  63:7  <b>court's</b> 3:23                  22:25 23:14,16                  35:4 49:6 53:2                  54:2 55:9  <b>covered</b> 20:17  <b>create</b> 39:20                  40:5  <b>created</b> 11:21                  16:2  <b>creating</b> 16:7                  25:9  <b>credit</b> 20:3  <b>critical</b> 49:12                  52:6,12 54:4                  57:22 58:3  <b>curiae</b> 1:24 2:9                  48:20  <b>currently</b> 15:25  <b>cut</b> 55:22  <b>cycles</b> 14:9</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 1:18,20 2:3,5                  2:11 3:1,8                  27:17 59:10  <b>day</b> 14:9,15,19                  16:9 21:10,10                  53:9,15  <b>daytime</b> 10:14  <b>deal</b> 20:8,14,20                  20:23 22:3                  26:25,25 27:6  <b>dealing</b> 25:20                  63:10,15  <b>dealt</b> 26:24 27:8                  55:10  <b>December</b> 1:12  <b>decide</b> 5:5 23:25  <b>decided</b> 11:16                  39:17,19  <b>decision</b> 3:13                  5:9 24:24                  39:21 43:22                  47:20 53:2</p>	<p>54:2 55:9  <b>decisions</b> 59:17  <b>declaration</b> 50:5                  50:7  <b>deed</b> 60:14                  63:20,21  <b>deeds</b> 60:1,2,6  <b>defeat</b> 50:17                  51:22  <b>deference</b> 25:4  <b>define</b> 10:25  <b>definition</b> 10:25                  28:19  <b>denies</b> 32:22  <b>Department</b> 1:7                  1:23 3:5  <b>depending</b> 14:8  <b>depends</b> 28:7                  53:1  <b>depositing</b> 62:7  <b>Deputy</b> 1:22  <b>described</b> 12:23  <b>description</b> 60:2                  63:20  <b>designed</b> 40:4,6  <b>despite</b> 18:14  <b>Destin</b> 63:9  <b>destroys</b> 9:22  <b>determined</b>                  36:10  <b>developed</b> 47:25  <b>dickering</b> 30:23  <b>dicta</b> 36:2  <b>dictum</b> 7:18  <b>difference</b> 18:20                  31:24 45:6                  53:15,17  <b>differences</b> 8:2  <b>different</b> 12:14                  13:20 16:18,22                  34:11,16 41:18  <b>differently</b> 4:1  <b>directly</b> 12:1  <b>disagree</b> 24:1                  30:19 39:3                  44:9  <b>discuss</b> 55:7</p>
---	---	--	--	--

59:21	<b>drop</b> 19:8,8 63:12	<b>enhancement</b> 20:2	14:24 23:1,1,1	39:6 42:19 64:1
<b>discussed</b> 27:23 58:14	<b>dry</b> 14:9,12,15 14:24,24 15:5 21:9 62:24,25	<b>enjoy</b> 14:22	<b>excuse</b> 63:17	<b>Fifth</b> 3:16,25
<b>discussing</b> 27:25	<b>due</b> 6:6 16:13 43:16 56:21	<b>enjoyment</b> 9:23 10:5,11 45:25 47:7	<b>executive</b> 3:24 48:25	<b>figure</b> 47:15
<b>discussion</b> 60:7	<b>dumping</b> 37:18	<b>entirely</b> 45:12	<b>exercised</b> 49:10 49:11	<b>fill</b> 55:21 58:18
<b>dispute</b> 26:24	<b>D.C</b> 1:11,23	<b>entitled</b> 19:16 59:22	<b>exercising</b> 57:22	<b>filled</b> 52:9 56:1
<b>dissent</b> 50:15	<hr/> <b>E</b> <hr/>	<b>environment</b> 42:1	<b>exist</b> 3:15 5:13	<b>filling</b> 58:1
<b>distance</b> 30:23	<b>E</b> 2:1 3:1,1	<b>Environmental</b> 1:8 3:5	<b>existed</b> 5:24	<b>fills</b> 54:21
<b>distinction</b> 8:24	<b>earlier</b> 21:16 27:23 47:5 49:22 50:2 52:21	<b>envisioned</b> 61:20	<b>exists</b> 12:15 15:25 37:24	<b>find</b> 24:3
<b>distinctive</b> 36:17	<b>easement</b> 17:16 18:1 22:18,19 22:22 23:13 25:15,17 51:8 51:10	<b>equally</b> 63:23	<b>expert</b> 25:6	<b>finding</b> 3:20 24:23
<b>distinguished</b> 57:2,4,6,10	<b>ECL</b> 11:20,24 12:2,3,8 18:12 18:13 38:1	<b>erected</b> 53:3	<b>experts</b> 24:18	<b>finishes</b> 12:11
<b>distinguishing</b> 59:16	<b>edge</b> 9:1 50:6	<b>erode</b> 42:17,20	<b>expires</b> 54:25	<b>first</b> 4:20 41:19 49:18 51:14 59:13
<b>District</b> 4:20	<b>EDWIN</b> 1:22 2:7 48:18	<b>eroded</b> 18:7 21:2	<b>explain</b> 14:1	<b>five</b> 42:3 63:5
<b>dixit</b> 56:24	<b>effect</b> 8:20 14:4 40:1 41:14	<b>eroding</b> 21:8	<b>exposed</b> 54:5	<b>fix</b> 19:9
<b>docked</b> 11:11	<b>egress</b> 41:18	<b>erosion</b> 16:1 18:10,15 19:19 20:9 39:14	<b>expressed</b> 47:18	<b>Fla</b> 1:18,21
<b>doctrine</b> 8:9,10 8:10 26:25 32:10 33:5,7 50:21 53:7 54:20,23 60:17 60:20 61:6 62:3,5,19	<b>either</b> 24:22 28:1 46:13	<b>ESQ</b> 1:18,20,22 2:3,5,7,11	<b>expressing</b> 37:1	<b>fling</b> 45:8
<b>doctrines</b> 24:21	<b>elected</b> 33:22 56:10	<b>established</b> 11:22 12:7	<b>expressly</b> 3:12 35:5	<b>floating</b> 13:5
<b>document</b> 42:15	<b>election</b> 33:18 56:9	<b>estate</b> 23:13	<b>extend</b> 19:10 31:12	<b>Florida</b> 1:7 3:5 3:17 4:3,4,23 5:3,9,12,24 6:12 7:4,13,21 9:1 11:1 12:23 19:4 24:18 25:7,24 26:13 26:15,21 27:22 31:4,12 32:14 32:16,21 33:17 33:18 34:13,20 35:14 36:17 37:24 38:5,8 38:22,23 39:18 39:21 40:8 42:13 43:8,17 43:19,21 45:11 45:24 46:2 47:19 48:24 49:5,6 53:1,5 53:22 54:1,6,9 55:2,3,6,8 57:9 57:24 58:20,20 58:24,25 60:4 61:4,5,6,24 62:19,23,24
<b>dog</b> 9:16,24 10:14 11:7 12:11,16,25 14:20,20 46:24	<b>eliminate</b> 5:6 32:9	<b>ET</b> 1:9	<b>extent</b> 4:16	<hr/> <b>F</b> <hr/>
<b>doing</b> 30:5 35:8 39:22 62:21	<b>eliminated</b> 6:9 6:10	<b>event</b> 8:12 21:14 37:7,22 38:16	<b>facial</b> 47:10,15	<b>fact</b> 18:14 19:18 25:8 32:9 55:3 59:1
<b>dollars</b> 18:21	<b>elections</b> 33:17	<b>events</b> 38:6	<b>facts</b> 30:14,15 30:16	<b>facial</b> 47:10,15
<b>domain</b> 4:18 16:5 19:23	<b>elections</b> 33:17	<b>Everybody</b> 20:20	<b>fair</b> 24:13 25:3 50:18 51:23 56:13 59:3	<b>fact</b> 18:14 19:18 25:8 32:9 55:3 59:1
<b>dominant</b> 23:13 25:15	<b>eliminate</b> 5:6 32:9	<b>everybody's</b> 5:3	<b>fairness</b> 49:18	<b>facts</b> 30:14,15 30:16
<b>door</b> 8:16	<b>eliminated</b> 6:9 6:10	<b>exactly</b> 37:9 46:20 64:11	<b>familiar</b> 24:15	<b>fact</b> 18:14 19:18 25:8 32:9 55:3 59:1
<b>draining</b> 33:3 54:5	<b>eminent</b> 4:18 16:5 19:23	<b>example</b> 45:11 50:5 55:20	<b>far</b> 34:16	<b>facts</b> 30:14,15 30:16
<b>dramatic</b> 24:11 53:19 54:8 57:8	<b>enacted</b> 4:6	<b>exception</b> 21:13	<b>fashion</b> 50:21	<b>fair</b> 24:13 25:3 50:18 51:23 56:13 59:3
<b>dramatically</b> 3:18	<b>enacting</b> 48:25	<b>exchange</b> 18:9 18:20	<b>Federal</b> 23:25 50:17 51:23	<b>fairness</b> 49:18
<b>draw</b> 43:20	<b>ended</b> 8:16	<b>exclude</b> 11:18 15:2,7 39:5 40:10	<b>fee</b> 17:24 22:14	<b>familiar</b> 24:15
<b>draws</b> 34:18	<b>enhanced</b> 19:17	<b>exclusive</b> 11:17	<b>feel</b> 47:22	<b>far</b> 34:16
			<b>feet</b> 15:2,5,5 16:12 21:9 37:10 38:17	<b>fashion</b> 50:21
				<b>Federal</b> 23:25 50:17 51:23
				<b>fee</b> 17:24 22:14
				<b>feel</b> 47:22
				<b>feet</b> 15:2,5,5 16:12 21:9 37:10 38:17
				<b>focus</b> 49:7

<b>folks</b> 13:10	5:14 13:25	<b>half</b> 61:2,3	19:21 20:6,18	<b>inch</b> 8:18 31:2
<b>following</b> 34:23	14:11 15:9,19	<b>half-mile</b> 61:1	20:24 22:4,21	<b>inches</b> 31:2
34:25 60:23	21:11 44:12,20	<b>hand</b> 53:8	23:7 24:7 25:2	<b>include</b> 34:25
<b>foot</b> 12:16,19	45:16,19 63:12	<b>happen</b> 6:12	25:19 26:17	<b>including</b> 35:2
13:1 19:16	63:22 64:4	13:9 40:19	27:3 59:12	<b>increased</b> 42:20
28:9 30:9,10	<b>give</b> 52:17	51:15,17 61:21	60:12,16 62:3	<b>incremental</b>
30:17,22 52:20	<b>given</b> 3:23 14:15	<b>happened</b> 21:11	62:18 63:14	25:20
52:21,22,23,24	18:9,19,19	22:10 30:2,25	64:2,9	<b>indefensible</b>
53:9,11	19:19 43:24	49:10 52:3,8	<b>hot</b> 9:16,24	56:22
<b>foreshore</b> 9:7	<b>gives</b> 5:11 9:11	54:18	10:14 11:7	<b>independent</b>
14:3,6,9,14	18:3	<b>happens</b> 28:8	12:11,11,16,25	24:5
63:1	<b>giving</b> 35:19	45:20 61:18	14:20,20 46:24	<b>indicate</b> 5:8
<b>former</b> 9:2	<b>go</b> 5:4 7:23,24	<b>harmed</b> 44:17	<b>house</b> 13:13,21	<b>indication</b> 44:15
<b>formerly</b> 19:11	16:5 18:18,24	<b>harmful</b> 41:25	31:17,18 39:25	44:18
54:6	27:21 36:3	42:1	<b>houses</b> 21:8 22:6	<b>ingress</b> 41:18
<b>found</b> 35:21	38:9 41:17	<b>hear</b> 3:3 64:3	<b>huge</b> 39:20	<b>inheres</b> 22:22
<b>fourth</b> 41:24,24	42:8 62:13	<b>heard</b> 45:2	<b>Hughes</b> 24:9	<b>injurious</b> 10:16
<b>free</b> 10:23	<b>going</b> 5:4 16:10	<b>hearing</b> 42:24	50:12 55:10,19	10:17 41:21
<b>friend</b> 56:6	16:11 33:19,19	63:14	58:14	<b>instance</b> 42:19
<b>front</b> 8:16 13:12	39:18,19 42:19	<b>held</b> 15:20,21	<b>hurricane</b> 19:7	<b>intact</b> 35:3
13:12 15:17	48:2 49:25	38:23 39:1	28:22 31:16,16	<b>intent</b> 59:17
17:14 22:16	56:9 61:13	52:6	60:19,23 62:9	<b>interests</b> 16:18
39:20,24	<b>good</b> 20:8,20	<b>helpful</b> 42:2,2	62:11	57:24
<b>fundamental</b>	21:22 22:3	<b>helping</b> 25:13	<b>hurricanes</b> 6:20	<b>interfere</b> 11:19
5:23 21:6	27:13 46:7	<b>high</b> 6:1,2 8:23	21:2,12,14,14	<b>interference</b>
31:11,11 32:9	<b>government</b>	8:25 9:2 11:6	<b>hypothetical</b>	47:6 58:23
<b>further</b> 8:18	25:21	12:1,24 13:5	23:8 33:7	<b>intermediate</b>
16:12 18:10	<b>gradual</b> 7:2	14:7,8 16:11	34:12 45:8	42:5
19:18 20:9,15	29:21 30:5,7	17:19 18:16	56:6	<b>interposed</b>
27:11 59:6	30:20 53:10,18	19:25 23:20		50:16
<b>future</b> 12:24	<b>gradually</b> 21:10	33:11,12,15	<b>I</b>	<b>interpretation</b>
32:23	25:22,25	34:6 37:16,20	<b>idea</b> 27:22	51:22
<b>G</b>	<b>greater</b> 16:23	60:3,5,10,22	<b>impaired</b> 46:1	<b>intervene</b> 24:1
<b>G</b> 3:1	17:20,23 18:3	61:2,25 62:8	<b>impairment</b>	<b>intervenes</b> 46:15
<b>gained</b> 64:6,8	<b>greatest</b> 55:2	<b>highly</b> 46:12	45:13 46:3,16	<b>involve</b> 5:17
<b>gaining</b> 21:18	<b>ground</b> 24:6	<b>holding</b> 36:3	46:25 48:6	<b>involved</b> 5:16
<b>game</b> 49:16	51:7,12,13	<b>home</b> 19:6	<b>imperceptible</b>	<b>in-between</b> 56:2
<b>general</b> 1:20,22	57:5,7,11	<b>homes</b> 13:16	29:19,22 30:20	<b>ipse</b> 56:24
47:15 51:21	<b>grounded</b> 24:21	39:21	53:10,19	<b>ironically</b> 26:12
53:22	59:4	<b>Honor</b> 4:10 5:19	<b>implemented</b>	<b>irrelevant</b> 25:18
<b>generally</b> 57:14	<b>group</b> 63:7	6:15,20 7:3 8:9	4:9	<b>island</b> 13:21
<b>Georgia</b> 45:24	<b>grows</b> 21:10	8:23 9:8,18	<b>implementing</b>	61:1
<b>germane</b> 58:2	<b>guaranteed</b>	11:9 12:9,13	48:25	<b>issue</b> 5:11 9:2
<b>getting</b> 9:19	20:14 42:3	13:2,8,14,18	<b>implicit</b> 51:7	26:23
61:24	<b>guess</b> 37:18	13:23 14:6,15	<b>important</b> 36:7	<b>issues</b> 4:24
<b>Ginsburg</b> 4:2		15:14,23 17:1	57:1	27:21
	<b>H</b>	17:7,22 18:23	<b>impose</b> 11:16	

<p style="text-align: center;"><b>J</b></p> <p><b>Jersey</b> 55:24  <b>jetty</b> 53:3  <b>joint</b> 42:15  <b>judicial</b> 3:25          23:24 24:10          33:17,23 49:6          49:14 50:4,9,9          50:13,21 51:12          56:11  <b>judicially</b> 34:5  <b>judiciary</b> 4:7,7  <b>jurisprudence</b>          3:23  <b>jury</b> 18:24  <b>Justice</b> 1:23 3:3          3:10 4:2 5:14          6:8,17,23 7:8          7:15 8:1,15 9:4          9:10,15,20          10:4,7,10,13          10:17,18,21          11:4,10,20          12:5,10,14,20          13:4,9,15,20          13:25 14:11          15:9,19 16:14          17:2,12 18:4          18:13 19:3          20:2,7,19,25          21:11,20 22:1          22:11,17,24          23:8,10,22          24:8,15 25:11          26:2,7,11,15          26:18 27:2,4          27:13,14,19          28:7,14,18          29:3,9,11,15          29:23,25 30:1          30:4,9,13,16          30:22 31:1,9          31:10,24 32:6          33:4 34:1,10          34:22 35:17,19          36:14 37:13,25          38:3,12,15,25</p>	<p>39:4,5,9,16          40:2,7,16,24          41:2,5,10          42:10,11,22,23          43:8,11,18,25          44:3,9,12,20          44:25 45:2,10          45:16,18,19,23          46:3,5,13,20          47:4,7,13,18          48:1,8,16,21          49:13,20,24          50:9,14,22          51:2 52:13,16          52:20 53:14,21          54:3,10,14,24          56:4,17 57:12          57:13 58:4,10          59:5,8 60:9,13          60:24 61:8,10          61:11,13,16,17          61:18,21,23          62:4,13 63:12          63:22 64:4,14  <b>justifiable</b> 35:14  <b>justification</b>          35:7 56:14  <b>justify</b> 35:25</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>keep</b> 7:17 40:3          47:11  <b>keeping</b> 32:17          47:25  <b>keeps</b> 9:24  <b>Kennedy</b> 19:3          20:2 22:17,24          23:8,22 24:15          25:11 26:2          44:25 45:10,18          45:23 46:3,13          46:20 47:4,13          48:1 53:21          54:10,14  <b>KENT</b> 1:18 2:3          2:11 3:8 59:10  <b>Key</b> 7:19 26:21</p>	<p>27:8 34:24,24          35:9,10,22          36:2,4,25          41:16 53:2          57:4,5 59:15  <b>Key's</b> 36:14  <b>kind</b> 4:5 5:15,17          41:15  <b>Kneedler</b> 1:22          2:7 48:17,18          48:21 49:13,17          49:23 50:1,11          51:1,19 52:15          52:18,25 53:17          54:1,12,16,24          55:5 56:12,20          57:17 58:7,13  <b>knock</b> 31:16,18  <b>know</b> 7:13 10:8          17:4,13,14          18:16,17 20:9          21:3 27:4          34:10 35:22          36:25 42:12          44:12 49:25  <b>knows</b> 18:16</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>label</b> 32:5,6,7,7          54:19  <b>Lack</b> 63:13  <b>lake</b> 26:8 36:9          54:5  <b>land</b> 6:13 8:16          9:16 10:12          11:5 12:8,12          14:7,13,17          15:9,12,22          16:19,19 17:6          17:15,18 18:1          19:11 20:9          22:12 28:4,6          28:22 33:21          38:17 46:7          51:8 52:9,17          54:6,7,21,21          56:1 58:18</p>	<p>59:2 61:25          62:14,15,22,25          62:25 64:13  <b>landowner</b> 8:11          8:12 30:18          42:25 52:17          59:22 60:20  <b>landowners</b>          15:6,24 17:24          18:2 19:24          22:7 44:15          63:6  <b>lands</b> 11:14          22:15 32:15,15          36:12 52:6,9          52:10,11 55:14          55:15,21 63:2  <b>lapping</b> 21:8          22:6  <b>larger</b> 19:10  <b>Laughter</b> 27:10          31:21 41:1          44:6,11  <b>law</b> 5:8,24 6:3,4          6:5,12,12 7:4,8          7:10 8:3,13 9:8          9:21 10:9,16          17:13 18:15          23:1,6,17,19          24:1,11,14,18          24:21 25:6,8          25:10,19 26:1          27:22 31:4,12          32:14 33:19,22          34:20 35:14          36:16 37:1          38:5,10 40:23          43:8,17,19,20          43:21,22 45:25          46:2 47:14          50:16 51:22          53:22,22 55:8          56:10,15,18          57:14,24 58:24          58:25 59:4,18          60:5,20 61:4,5          61:19,24 62:17</p>	<p>62:21  <b>laws</b> 25:23  <b>lawyerly</b> 27:13  <b>lay</b> 13:11  <b>laying</b> 14:21  <b>learn</b> 36:23  <b>leave</b> 25:16,23  <b>leaves</b> 47:17  <b>leaving</b> 26:1  <b>legal</b> 60:1  <b>legislation</b> 4:4          11:5,21 12:15          35:16 38:24  <b>legislative</b> 3:24  <b>legislature</b> 4:6,8          4:12,22 5:6          10:23,24 32:16          33:9 34:17          40:22 42:13          46:8 48:24          49:16 56:7  <b>let's</b> 19:15 24:23          33:9 37:6,14          59:5  <b>level</b> 26:14  <b>limited</b> 58:21  <b>line</b> 6:1,2 8:24          8:25 9:2 12:1,7          14:7,8 16:1,12          17:19 18:11,15          19:25 20:16          21:15,21 23:21          28:3,13 29:20          29:21 33:16          34:6,7,18          36:10 37:8,9          37:15,16,17,19          37:20 38:1          56:7 60:4,5,18          60:22 62:6,8          62:12  <b>lines</b> 34:8  <b>list</b> 41:14 42:7          42:23,23 43:23          46:6,7  <b>listed</b> 43:23  <b>litigated</b> 4:11</p>
--	--	---	--	---

<p>11:25  <b>litigation</b> 4:3  <b>little</b> 42:6,6  48:12 61:1  <b>littoral</b> 4:21 5:5  5:6 6:3,4,5  13:6,10 16:7  16:16 19:15  23:2 34:25  36:19 38:11,11  38:13,22 41:9  46:11 50:5,7  53:6 55:12  57:15,19  <b>located</b> 11:25  <b>long</b> 25:23 56:1  57:19  <b>longer</b> 3:15 5:10  5:13 36:11  37:23 38:7  61:24  <b>look</b> 33:1 36:3,7  42:25 43:2  49:15,15 50:18  <b>looked</b> 52:1  <b>looks</b> 8:1  <b>lose</b> 8:15,18  23:20  <b>losing</b> 19:24  <b>loss</b> 16:6 19:7,14  20:15  <b>lost</b> 7:9 8:11,12  8:14,18,22  19:24 23:20  43:4 60:18  62:18,18,22  <b>lot</b> 8:1 13:15  22:5 60:7  <b>low</b> 14:8  <b>lower</b> 63:6  <b>lowered</b> 26:9  31:6 36:9  <b>lowering</b> 59:23  <b>lowers</b> 28:1  <b>lucky</b> 20:12</p> <hr/> <p style="text-align: center;"><b>M</b></p>	<p><b>main</b> 25:16  <b>maintain</b> 58:22  <b>maintenance</b>  58:2  <b>major</b> 38:20  <b>majority</b> 27:8  <b>Makar</b> 1:20 2:5  27:16,17,19  28:11,16,20  29:7,10,14,18  30:3,7,11,15  30:19,24 31:3  31:20,22 32:4  32:13 33:24  34:3,15 35:15  35:18 36:1  37:5,21 38:3  38:14,19 39:3  39:7,11 40:2  40:13,21 41:4  41:7 42:9,13  43:7,16,24  44:2,7,19  45:10,22 46:2  46:10,18 47:3  47:9,19 48:4  48:10  <b>manmade</b> 40:9  <b>mark</b> 11:6,22  12:24 13:6  18:16 33:12,12  60:10 61:2,25  <b>Martin</b> 26:7,8  26:10 27:24,25  29:1,10 31:5  32:25 33:3  36:8 54:3,18  54:25 57:1,4,6  57:10 59:1,13  59:16,19,21  <b>matter</b> 1:14  15:15 39:25  45:24 47:15  64:18  <b>mean</b> 6:1,2 8:23  8:25 9:2 11:6  11:22 12:1</p>	<p>13:5 14:7  15:10,19,19  16:11 17:19,23  18:16 19:25  21:1 23:20  24:25 28:8  31:17,22 33:11  33:12,15 34:6  37:16,19 41:11  44:5 46:1 48:5  56:23 60:3,5  60:10,22,25  61:2,4,15,25  62:8  <b>meaning</b> 21:10  <b>means</b> 7:5 56:25  <b>meant</b> 35:24  <b>measure</b> 4:6  <b>members</b> 17:11  20:23,25 21:24  22:1 26:5 60:2  60:3 63:8,17  63:18 64:10  <b>merely</b> 25:6  <b>met</b> 48:2  <b>MHWL</b> 38:2  <b>middle</b> 51:4  <b>mile</b> 61:3  <b>miles</b> 32:18  <b>mind</b> 32:17 40:3  47:11,17,25  <b>minutes</b> 59:9  <b>misnomer</b> 38:20  <b>misunderstan...</b>  21:7  <b>money</b> 13:16  20:13  <b>month</b> 53:16  <b>morning</b> 3:4  61:1  <b>mother</b> 37:18  <b>mouth</b> 44:5  <b>moved</b> 36:10  <b>moves</b> 56:7  <b>museum</b> 45:9</p> <hr/> <p style="text-align: center;"><b>N</b></p>	<p><b>N</b> 2:1,1 3:1  <b>narrow</b> 63:24  <b>narrowing</b>  47:20  <b>National</b> 57:9  <b>natural</b> 7:2,11  17:21 55:18  <b>nature</b> 32:11  37:18 53:24  60:13  <b>need</b> 17:9 47:5  50:20 54:19  <b>neighboring</b>  57:21  <b>never</b> 5:15 51:3  51:13  <b>new</b> 5:14 7:15  7:25 8:4,17  9:16 10:2  15:24 16:3,18  16:24 17:6,10  18:5,11,16,25  19:16 20:16  22:12 23:18  24:21 37:10  50:21 55:23  62:7 64:10,12  64:13  <b>night</b> 9:24  <b>nobody's</b> 56:1  <b>noisy</b> 9:24  <b>nonexistent</b> 25:9  <b>normally</b> 51:13  <b>noted</b> 24:8 59:25  <b>notion</b> 37:2 55:8  <b>nuclear</b> 51:5  <b>nuisance</b> 58:17  <b>number</b> 24:16  24:19 27:22  37:6  <b>numerous</b> 52:4</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>O</b> 2:1 3:1  <b>objected</b> 50:3  <b>objectively</b> 25:4  <b>obnoxious</b> 15:8</p>	<p><b>obtain</b> 16:4  <b>occupy</b> 13:11  <b>occur</b> 7:5 32:11  <b>occurrences</b>  7:11  <b>occurs</b> 8:12  24:10  <b>ocean</b> 38:16  <b>oceanfront</b> 3:19  <b>oceanography</b>  45:9  <b>oceanview</b> 3:19  <b>ocean-front</b>  21:25  <b>odd</b> 25:14  <b>officers</b> 4:9  <b>offset</b> 19:17,22  20:1  <b>offsetting</b> 19:23  <b>offshore</b> 53:3  <b>oh</b> 29:14 30:3  43:2 49:24  61:11  <b>okay</b> 10:17  24:15 32:21  34:5 40:25  42:11 46:22  51:10 61:18,21  62:4  <b>old</b> 8:5 16:19  17:6  <b>once</b> 5:7 15:13  24:19 53:9  <b>open</b> 13:12  47:17  <b>operation</b> 16:3  52:3  <b>opinion</b> 23:14  23:17 24:9,16  24:20 25:12  35:4 41:11,13  47:22 49:5  <b>opinions</b> 22:25  <b>opportunity</b>  18:24  <b>opposed</b> 63:8  <b>opposite</b> 61:14</p>
---	--	---	---	---

<p><b>oral</b> 1:14 2:2 3:8 27:17 48:18 <b>order</b> 24:17 <b>organization</b> 15:12 44:14 <b>originated</b> 49:18 <b>ought</b> 47:14 <b>ouster</b> 34:8,8 <b>outset</b> 48:23 <b>outside</b> 11:15 <b>owned</b> 6:14 15:6 15:13 17:1,11 39:20 40:11 63:1 64:11,11 <b>owner</b> 6:13 7:20 7:23 16:25 17:24 23:9,10 25:23 28:5,5 31:8 36:19 37:23 38:6,13 38:18,21 41:21 42:2 45:13 46:7 48:13 52:23 53:6 55:13,16 57:19 57:22 58:19 61:23 <b>owners</b> 15:11,21 20:8 21:18 28:24 36:9,23 40:18 42:21 44:16 47:21 58:16 63:24 <b>ownership</b> 28:5 38:9 52:10 <b>owner's</b> 46:17 47:1 <b>owns</b> 12:7 15:9 21:5 31:14 46:19,21 47:1 47:12 48:3,5 51:4 59:1</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 3:1 <b>PAGE</b> 2:2 <b>pardon</b> 45:24</p>	<p><b>park</b> 58:1,5,12 <b>part</b> 8:9 9:8 25:21 <b>particular</b> 42:19 49:4 <b>parties</b> 4:24 39:24 <b>passed</b> 4:12,13 20:6 <b>passes</b> 33:10 40:22 <b>pay</b> 11:3 13:15 16:6 19:14 20:10 51:6 <b>paying</b> 51:9 <b>peaceful</b> 10:5,11 <b>people</b> 13:15 14:5,21 17:15 17:16 21:1 22:2 33:20 39:6 40:10 <b>Peppe</b> 27:24 28:21 32:25 54:2,17 <b>perceptible</b> 30:8 53:11 <b>perfectly</b> 41:15 <b>periodically</b> 14:15,16 <b>permanent</b> 10:2 45:9 <b>permit</b> 40:19 <b>permitted</b> 57:25 <b>person</b> 33:21 38:12 51:3 53:23 <b>Petitioner</b> 1:5 1:19 2:4,12 3:9 57:3 59:11 <b>Petitioners</b> 44:19 60:2,3 63:18 64:10 <b>Petitioner's</b> 20:23,25 21:24 26:5 <b>phenomenon</b> 7:2</p>	<p><b>phrasing</b> 56:21 <b>physical</b> 4:25 63:11,16 <b>physically</b> 63:16 <b>place</b> 21:2 40:12 51:14 <b>placed</b> 7:6 12:3 <b>placing</b> 11:13 <b>plant</b> 51:5,9 <b>plants</b> 51:8 <b>playground</b> 40:5 <b>please</b> 3:11 48:22 <b>pleasure</b> 12:21 <b>ploy</b> 49:14 <b>point</b> 9:19 12:7 29:4 34:21,23 35:22 36:7 38:14 41:8 46:21 50:1 54:16,22 55:8 55:11 61:22 <b>pointed</b> 55:23 <b>points</b> 37:5 43:22 <b>police</b> 17:25 <b>Port</b> 58:9,14 <b>portion</b> 46:11 <b>port-a-johns</b> 46:24 <b>posed</b> 56:6 <b>posing</b> 33:25 <b>position</b> 4:3 15:11,15 16:15 44:7 45:3 <b>positive</b> 41:19 <b>possess</b> 6:3 62:24 <b>possessed</b> 26:5 63:16,18 <b>possesses</b> 26:6 <b>possibility</b> 12:24 33:25 34:1 <b>possible</b> 51:20 <b>post-project</b> 20:3</p>	<p><b>power</b> 51:5,8,9 <b>powers</b> 17:25 <b>practical</b> 39:25 <b>precedent</b> 5:17 5:20 7:17 8:5 <b>precedents</b> 3:14 5:8 24:12 25:5 25:7 33:15 <b>precisely</b> 27:6 <b>premium</b> 13:19 <b>presents</b> 5:18 <b>Preservation</b> 4:14 5:21 40:4 <b>preserve</b> 38:10 41:8 <b>Presumably</b> 16:21 <b>pretty</b> 22:3 26:8 <b>prevail</b> 19:4 <b>prevented</b> 20:9 <b>previously</b> 28:23 <b>price</b> 20:10 <b>principal</b> 57:2 <b>principle</b> 7:4 36:18 50:16 51:21 59:20 <b>principles</b> 5:24 24:14 25:8 34:20 43:8 58:17,25 59:14 59:18 <b>prior</b> 62:8 <b>private</b> 3:22 15:17,21 28:24 63:23 <b>privately</b> 39:20 <b>pro</b> 18:5 <b>probably</b> 22:5 51:16 <b>problem</b> 44:25 <b>problematic</b> 46:12 <b>proceedings</b> 4:18 16:6 19:23 <b>process</b> 6:6</p>	<p>56:21 <b>produced</b> 32:12 <b>program</b> 44:22 <b>project</b> 3:21 5:16 12:10 15:1,5 17:18 28:9 30:17 33:3 38:21 63:9 <b>projected</b> 18:6 <b>properties</b> 13:7 22:5 <b>property</b> 3:15 3:18,19,19,22 4:17 5:10,25 6:1,13 7:19,23 8:13 10:3,16 10:22,25 11:1 11:2,18 13:10 13:19 15:3,8 15:16 16:1,20 16:21,22,25 17:1,3,4,4,9 18:7,19 19:17 20:15 21:15,18 21:21,21,25 22:8,16 23:9 23:11 25:16,22 25:23 26:24 28:1,3,5,17,24 29:20 30:12 31:5,12,14 32:20 33:10 34:9,25 36:10 36:13,21 37:8 37:9,11,12,15 37:16,19 38:1 38:9,22 39:1,8 40:1 43:1 44:23 45:4 47:12,21 48:3 48:5,13 50:6 51:14 52:23 53:5,6,12 55:12,15 57:19 57:22,23,24 58:11,11,16,24</p>
--	---	--	---	--



58:25 59:23 60:25 63:24 64:5,7,9,12 <b>property's</b> 35:2 <b>propose</b> 24:10 <b>proposition</b> 26:22 29:12 36:5 <b>proprietary</b> 49:12 <b>protect</b> 39:14 <b>protected</b> 5:6 6:6 <b>protecting</b> 38:8 <b>protection</b> 1:9 3:6 4:4 41:16 44:23 46:22 <b>protective</b> 58:21 <b>protects</b> 35:6 <b>provided</b> 18:23 20:1 41:16 <b>provides</b> 10:1 19:1,22 22:21 25:3 41:14,15 45:17 55:1 <b>provision</b> 4:14 9:21 <b>public</b> 14:4,11 14:13,16 15:15 15:17 16:8 17:17 20:11 32:16 46:14 52:7,7,12 58:3 <b>purchased</b> 60:6 <b>purports</b> 23:17 <b>purpose</b> 7:22 37:2 52:12 <b>purposes</b> 58:3 <b>pursue</b> 47:21,22 <b>push</b> 12:25 <b>put</b> 9:5,16,22,24 11:8 20:13 38:4 41:20 42:18 57:25 58:12 <b>puts</b> 28:2 <b>putting</b> 14:20	17:16 32:7 44:4 <hr/> <b>Q</b> <b>question</b> 19:4 23:23 29:23 32:13 37:14 43:14,15,18 44:13 47:8,17 54:15 57:13 58:24 64:3 <b>questions</b> 27:12 59:6 63:4 <b>quibble</b> 52:25 <b>quickly</b> 28:8 30:2 <b>quid</b> 18:5 <b>quiet</b> 10:13 <b>quite</b> 13:20 53:10 <b>quo</b> 18:5 <b>quote</b> 59:16 <hr/> <b>R</b> <b>R</b> 3:1 <b>raised</b> 47:17 49:22 50:2 52:21 <b>rapid</b> 7:1 52:19 <b>reach</b> 62:7 <b>reached</b> 8:5 <b>read</b> 27:5 35:11 35:13,22 41:12 53:25,25 <b>reading</b> 25:12 35:8 <b>real</b> 24:17 40:1 <b>really</b> 24:20 50:20 <b>reason</b> 3:25 6:21 10:22 13:16 18:8 19:18 22:13 43:19 44:4 <b>reasonable</b> 23:3 43:22 45:2,6 <b>reasoned</b> 32:20	<b>rebuttal</b> 2:10 27:12 59:10 <b>recall</b> 30:1 <b>recede</b> 18:15 <b>reclaim</b> 8:11,13 21:16 60:18 61:3 62:6,17 62:25 63:3 <b>reclaiming</b> 62:21 <b>reclamation</b> 60:17,21 61:6 62:3,6,20 <b>recognize</b> 3:13 <b>recognized</b> 52:4 <b>reconnect</b> 60:22 <b>record</b> 47:24 <b>records</b> 14:2 <b>recreational</b> 40:5 <b>redefine</b> 5:12 <b>redefined</b> 3:18 <b>redefines</b> 3:14 <b>redefinition</b> 10:22 <b>referred</b> 14:2 <b>regarding</b> 49:6 59:18 <b>regular</b> 10:9 <b>regularly</b> 18:6 <b>regulate</b> 16:21 16:21,23 17:8 17:25 <b>regulates</b> 17:4 <b>regulation</b> 17:20 <b>regulations</b> 11:15 <b>regulatory</b> 5:1 16:18 49:11 <b>reinstate</b> 16:11 <b>relation</b> 12:3 <b>relevant</b> 3:14 5:8 24:12 <b>reliction</b> 23:4 27:1,6 <b>relictions</b> 59:19 <b>relied</b> 25:8	26:13 54:2 61:7 <b>relies</b> 57:3 <b>rely</b> 55:4 62:19 <b>remain</b> 6:2 35:3 52:11 <b>remains</b> 54:21 57:19 <b>remedy</b> 51:18 <b>remove</b> 61:9 62:11 <b>Renourishment</b> 1:4 3:5 <b>replaced</b> 18:6 21:4 <b>replacement</b> 7:1 <b>representing</b> 44:14 <b>requesting</b> 4:17 <b>required</b> 19:13 <b>reservation</b> 18:2 <b>reserve</b> 23:17 27:12 <b>respect</b> 5:20 13:6 16:18,23 17:6,6,20,21 20:22 43:16 49:9 52:8 <b>responded</b> 55:11 <b>Respondents</b> 1:21,25 2:6,9 27:18 48:20 59:14 63:17 <b>response</b> 8:6,8 27:13 32:20 40:3 59:7 <b>restoration</b> 3:21 4:16 5:16 7:6 38:21 49:1 <b>restored</b> 32:18 <b>result</b> 7:11 8:5 19:24 32:11 59:23 62:10 <b>retains</b> 28:4,5 31:7 <b>reverse</b> 25:16	<b>review</b> 25:6 43:5 51:21 <b>reviewing</b> 25:5 <b>right</b> 6:9,10 7:3 7:20 8:10,13 8:19,20,20,23 8:25 9:4,7,10 9:14,17,23,23 10:5,11 11:17 11:19 12:5,20 13:7,8,11 14:24 15:2 16:16 17:19 18:19 19:14,15 21:16,22 22:21 23:2,2,3,4,22 26:4,11 29:2 30:6 31:7 32:14,23,24 33:1,8,12,21 34:21 35:1,2,6 35:7,23,24 36:13,19,20 39:1,2 40:9,10 40:20,24 41:18 41:20,22 43:9 43:10,12,14 45:14,22 48:6 50:18,23 51:1 51:3,14,23 55:13,18,21,25 57:14,15,18 58:6,22,22 59:18 60:4,8 60:11 61:25 <b>rights</b> 3:15,18 4:17,19,21,25 5:1,5,7,12 6:3 6:4,5 9:9 12:21 12:21 16:7 17:20,23 18:3 22:8 23:2,7,10 23:18,19 25:22 25:24 34:25 35:1 38:9,11 40:18 41:9 46:11,17 49:11
--	--	--	---	--

<p>49:12 50:8                      57:23 58:15,19                      58:21 63:16,19                      63:24  <b>riparian</b> 38:9,18                      38:22  <b>rise</b> 5:11  <b>risk</b> 21:23 31:15                      31:25  <b>river</b> 45:12  <b>road</b> 48:7,10,11                      48:13  <b>ROBERTS</b> 3:3                      9:15 10:18,21                      16:14 17:2,12                      22:11 27:14                      28:7,14 29:23                      30:1,4,9,13,16                      30:22 31:1,9                      33:4 34:1,10                      37:13,25 38:25                      39:5,9 42:22                      43:11 46:5                      48:8,16 49:13                      49:20,24 50:9                      52:13,16,20                      53:14 56:4,17                      58:4,10 59:5,8                      64:14  <b>rock</b> 61:16,20  <b>roughly</b> 41:15                      63:8  <b>rule</b> 19:12 24:6                      58:24  <b>rules</b> 25:9  <b>runs</b> 33:18 56:8</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>S</b> 1:22 2:1,7 3:1                      48:18  <b>sacrificial</b> 42:17  <b>Safriet</b> 1:18 2:3                      2:11 3:7,8,10                      4:10 5:19 6:15                      6:19 7:3,10 8:8                      8:22 9:7,13,18                      10:1,6,8,15,20</p>	<p>10:24 11:8,17                      11:24 12:9,13                      12:18 13:2,8                      13:14,18,23                      14:6,14 15:14                      15:23 16:25                      17:7,22 18:12                      18:22 19:21                      20:5,18,22                      21:6,13,23                      22:4,13,20                      23:6,16 24:7                      25:2,19 26:4                      26:10,12,17,20                      27:3,7,11,15                      59:9,10,12                      60:12,16 61:5                      61:9,19 62:2,5                      62:16 63:13                      64:2,8,16  <b>sand</b> 7:1,19                      13:11,12 14:24                      15:5 18:5 20:1                      21:4 22:7,9                      26:21 27:8                      28:2,12 29:21                      30:17 31:7                      33:11,12 34:24                      34:24 35:9,9                      35:22 36:2,4                      36:14,25 37:7                      37:10,10,17,22                      38:5 39:13                      41:16 42:17                      53:2,4 57:4,5                      57:25 59:15                      60:19,21 61:9                      61:10,14 62:7                      62:10,11,14,25                      62:25  <b>sat</b> 11:7  <b>Save</b> 63:7  <b>saved</b> 19:18 43:3  <b>savings</b> 4:15 5:2  <b>saying</b> 15:23                      32:22 33:10                      35:22 37:16</p>	<p>47:21 51:24                      56:9  <b>says</b> 7:5,11,22                      8:19 10:8,15                      19:9 23:9                      33:14,19 34:24                      35:4,5 38:24                      42:25 45:19                      51:6 56:8,18  <b>Scalia</b> 6:8,17,23                      7:8 8:1 10:13                      13:4,9,15,20                      18:4,13 20:7                      20:19,25 21:20                      22:1 26:7,11                      26:15,18 27:2                      27:4,13 28:18                      29:3,9,11,15                      29:25 36:14                      38:12,15 40:16                      40:24 41:2,5                      44:9 54:3 60:9                      60:13 61:10,13                      61:17,23 62:13  <b>Scalia's</b> 50:14                      57:13  <b>scenario</b> 33:24  <b>SCOTT</b> 1:20 2:5                      27:17  <b>se</b> 22:22  <b>seaside</b> 11:14  <b>Seattle</b> 58:9,14  <b>seaward</b> 11:5                      12:8 37:11,22  <b>second</b> 38:14  <b>section</b> 4:15                      38:11  <b>see</b> 3:25 17:9                      38:10 39:22                      42:15 47:16                      50:18 59:5  <b>seizing</b> 49:4  <b>sell</b> 22:12 23:5  <b>send</b> 22:15  <b>sentence</b> 35:11                      35:13  <b>separate</b> 54:20</p>	<p><b>separated</b> 25:15  <b>separates</b> 38:16  <b>September</b>                      64:11  <b>set</b> 42:16  <b>severance</b> 59:22  <b>shallow</b> 11:12  <b>shock</b> 5:3  <b>Shore</b> 4:13 5:20                      40:4  <b>shovel</b> 61:10  <b>show</b> 59:17  <b>side</b> 8:7 11:5                      28:2,12 29:20                      37:16  <b>sidewalks</b> 17:14  <b>silly</b> 37:4  <b>simple</b> 17:24                      22:14  <b>simply</b> 36:15  <b>sit</b> 12:16,18  <b>sitting</b> 62:14  <b>situation</b> 5:15                      5:15,17 7:15                      7:25 8:4,4                      14:12 34:5,17                      43:20 45:13                      53:2  <b>six</b> 31:2 43:22  <b>small</b> 53:12  <b>sold</b> 23:11  <b>sole</b> 35:7  <b>Solicitor</b> 1:20,22  <b>solicitous</b> 38:8  <b>solidly</b> 59:4  <b>somebody</b> 9:15                      11:8 22:12                      33:18 50:5                      56:8  <b>somebody's</b>                      39:24  <b>somewhat</b> 44:4  <b>sorry</b> 27:3 29:8                      38:3 56:5 64:2  <b>sort</b> 7:16,16                      24:5 44:23  <b>sorts</b> 24:3</p>	<p><b>SOTOMAYOR</b>                      11:4,10,20                      12:5,10,14,20                      57:12  <b>sounds</b> 8:3 34:4  <b>sovereign</b> 22:15                      32:15 49:11,12                      52:9,10,11                      57:22,23 63:2  <b>sovereignty</b>                      36:12 52:6  <b>special</b> 22:25  <b>specifically</b> 7:10  <b>spring</b> 39:19,24                      40:5,25 45:8,8  <b>stand</b> 9:16,24                      11:7 59:13,20  <b>standard</b> 23:24  <b>standing</b> 63:13  <b>stands</b> 10:14                      14:20 46:24  <b>starts</b> 33:11  <b>State</b> 3:13 6:14                      6:20 11:1,6,15                      11:15 12:7,23                      15:6,10,13,15                      15:22 16:2,3,5                      16:9,17,20                      17:1,4,8,14,25                      18:4,8,8,18                      19:9,13 20:3,8                      20:13 21:5                      22:11,12,18                      23:9 24:1,2,6                      24:10,11,14,24                      24:25 25:4,6,9                      25:22 26:2,5,8                      26:13,22 27:25                      28:2,4,4,9,12                      28:15,23 29:7                      29:13,17,20                      30:5,11 31:4,7                      31:14,17,23                      32:3,8,12,14                      33:3 36:8,22                      37:17 39:13                      40:11 46:6,18</p>
---	--	--	---	---

46:21,23 47:1 48:3,4 49:10 50:16 51:4,6,7 51:22,22 52:5 52:8,11,17,22 52:23 53:3,8 53:11 54:4,7,8 54:21 55:20 56:7,9 57:8,25 58:15,17 59:1 59:4,25 62:13 62:14,16,20,24 63:19 <b>statement</b> 36:14 41:16 <b>statements</b> 49:5 <b>States</b> 1:1,15,24 2:8 3:16 48:19 <b>stateside</b> 12:12 <b>State's</b> 3:23 30:17 36:12 37:7,11,11 39:8 58:10,11 64:9 <b>State-owned</b> 14:17 23:18 38:17 64:13 <b>statute</b> 9:11,25 10:1,10 19:22 20:6 22:21 38:10 45:16,19 52:3 <b>stays</b> 14:24 <b>step</b> 5:4 33:6 <b>Stewart</b> 24:8 <b>stood</b> 11:11 <b>stop</b> 1:3 3:4 9:6 39:22 <b>storms</b> 32:2 <b>strange</b> 4:5 36:18 <b>stretch</b> 15:1,24 18:25 19:1 20:11 21:5 22:5 23:18 <b>strikes</b> 36:15 <b>string</b> 24:4	<b>strip</b> 9:22 14:12 16:4,8,19,19 17:10 41:21 <b>structure</b> 53:4 <b>structures</b> 10:2 <b>students</b> 39:18 <b>subject</b> 22:17 23:12 <b>submerged</b> 11:14 15:10,22 19:11 22:15 28:23 36:12 52:5,17 54:6 55:14,21 58:18 63:2 <b>submit</b> 42:24 <b>submitted</b> 64:15 64:18 <b>subsequent</b> 59:17 <b>subsidiary</b> 35:7 <b>substantial</b> 24:13 25:3 46:3,11,16,25 47:6 50:19 51:24 56:13 59:3 <b>substantially</b> 45:25 <b>substantive</b> 25:10 <b>succession</b> 21:12 <b>sudden</b> 19:7 24:4,11 28:19 29:6,19 57:8 <b>suddenly</b> 3:17 <b>sue</b> 33:13 <b>sued</b> 33:13 <b>sufficient</b> 18:17 35:21 <b>suggest</b> 24:8 59:14 <b>suggested</b> 50:14 <b>suggestion</b> 14:4 <b>support</b> 24:13 25:3 55:2 63:5 63:6	<b>supporting</b> 1:24 2:9 48:20 <b>suppose</b> 10:22 28:7 39:16,16 <b>supposed</b> 42:2 <b>supreme</b> 1:1,15 3:17 4:23 5:3,9 5:12 7:21 9:1 12:23 22:25 23:14,16 25:7 25:24 26:13,15 26:21 32:21 33:18 34:13 38:23 39:21 40:8 47:19 49:5,6 51:25 53:1,5 54:1,6 55:2,4,6 56:8,9 61:7 62:19,23 <b>sure</b> 20:14 21:3 22:4,4,20 25:7 36:1 45:10 46:10 50:12 61:19 <b>surface</b> 54:5 <b>surprising</b> 55:6 <b>survey</b> 40:15 42:14 <b>swath</b> 39:13 46:11 <b>swim</b> 9:5 14:5 <b>switch</b> 4:5	<b>talk</b> 25:13 33:6 47:13 <b>talked</b> 21:15 <b>talking</b> 7:17 14:23 32:5,5,6 35:15,18 38:4 40:16,17 49:14 55:18 <b>talks</b> 27:25 <b>Tallahassee</b> 1:18,20 <b>target</b> 4:5 <b>televised</b> 39:23 <b>tell</b> 9:17 35:23 <b>Temporarily</b> 60:16 <b>terms</b> 3:14 24:12 <b>test</b> 24:8,9 25:1 25:2,21 46:1 <b>Thank</b> 27:14,14 48:15,16 59:8 59:12 64:14,16 <b>theirs</b> 28:25 63:25 64:6 <b>theory</b> 40:17,18 41:5 58:6,8 64:5 <b>thing</b> 23:24 45:3 57:9 63:1,2 <b>things</b> 30:2 31:13 32:10,12 32:23 41:23 42:4,4 43:3 46:7 49:25 <b>think</b> 7:25 8:24 10:1 17:7,22 20:8 21:6 23:11 25:2 27:2,5,7 30:24 33:20,24 34:3 34:23 36:15,17 36:18,22,22 38:1 41:24 45:23 46:13 49:3,25 50:13 51:20 53:1,13	53:13 55:5 56:12,18 58:7 59:2 60:7 61:22,22 62:2 63:4 <b>thought</b> 4:2 5:7 9:21 14:3 20:19,20,23 21:12 22:3 25:13,17 26:7 28:18 35:23 36:25 38:18 48:9 <b>three</b> 41:19,23 <b>tide</b> 14:8 <b>tied</b> 57:18 <b>time</b> 14:3,25 17:5 27:12 42:18 46:14,14 54:25 <b>times</b> 14:10 <b>title</b> 15:12,20,21 16:3,10,15,16 17:3,24 22:14 22:23 28:4 64:9 <b>today</b> 3:12 12:15 <b>tomorrow</b> 10:23 <b>top</b> 12:1 19:1 <b>total</b> 45:13 <b>touch</b> 7:20 8:19 50:7,23 <b>traffic</b> 48:11,12 48:12 <b>transfer</b> 63:19 63:20 <b>traverse</b> 14:18 <b>treated</b> 4:1 <b>trial</b> 18:24,24 48:2 <b>tried</b> 39:12 <b>tries</b> 62:19 <b>true</b> 27:2,5,7 56:25 57:9 58:14 <b>trust</b> 32:16 52:7 <b>try</b> 8:4 36:3
<b>T</b>				
<b>T</b> 2:1,1 <b>take</b> 4:19 9:11 11:2 21:24 25:16 40:12 42:23 51:8 52:16 55:14 <b>taken</b> 4:21 6:6 42:25 45:3 50:24 <b>takes</b> 46:8 47:4 <b>takings</b> 4:4 15:16 20:4 47:23 49:2,14				

<b>trying</b> 16:4	31:8 36:9	45:25 56:5	28:1 29:2	64:6
<b>turn</b> 52:2	37:23 38:6,20	58:22	30:21 31:6	<b>width</b> 42:16,18
<b>two</b> 5:23 6:24	41:21 45:13	<b>violate</b> 3:24 9:25	32:24 33:2,11	<b>willing</b> 21:24
13:1 18:21	46:15,16 47:1	<b>violated</b> 4:4	33:15 34:6	22:7
24:19 32:23	55:15 58:19	<b>violates</b> 3:15	35:1,3,6 36:5,6	<b>win</b> 24:25 30:18
34:18 37:5	61:23	<b>violation</b> 4:8	36:9,11,20,20	<b>wind</b> 7:12
41:17 55:19	<b>use</b> 4:18 12:21	<b>vulnerable</b>	36:21 37:3,16	<b>words</b> 44:5
57:1,2	14:16,17,18,24	55:13	37:20,23 38:7	<b>work</b> 60:24 61:8
<b>type</b> 18:1	15:16 20:11		41:17 43:9,13	<b>worry</b> 47:5
<b>types</b> 22:8	23:3 32:15	<b>W</b>	46:16 50:6,24	<b>worth</b> 43:1,2,4
<b>typical</b> 8:3	46:23 47:1	<b>waive</b> 22:8	57:15,20 59:24	<b>wouldn't</b> 17:9
<b>typically</b> 14:7	<b>useful</b> 49:3	<b>wake</b> 60:25	60:3,5,8,10,21	21:3,22 51:17
	<b>uses</b> 10:9,15	<b>walk</b> 8:20 9:5	60:22 61:2,25	60:9,15 62:16
<b>U</b>	15:8 52:7	14:5 17:16	62:7,8,12	<b>writing</b> 41:11
<b>unclear</b> 14:1	<b>usual</b> 50:16	33:21 50:6	<b>waterfront</b>	<b>wrong</b> 56:19
<b>unconstitutio...</b>		<b>wandering</b> 29:4	59:23	62:1,2
51:25	<b>V</b>	<b>want</b> 11:2 21:4	<b>water's</b> 9:1	<b>X</b>
<b>understand</b>	<b>v</b> 1:6 3:5 26:10	22:7 31:2	<b>way</b> 19:9 24:22	x 1:2,10
22:24 31:15	27:24 28:21	35:12,20 41:13	31:3 43:21,21	<b>Y</b>
34:11 40:7	32:25,25 36:8	45:5 47:13	49:3 50:13,17	<b>year</b> 28:10 30:9
63:22	54:3,18,25	52:25 58:11	52:1 54:8	30:10,17 46:8
<b>understood</b>	55:10 57:1,5,6	<b>wanted</b> 9:15	56:16 61:14,24	52:21,22 53:9
57:14	57:10 59:1,13	11:8,16 12:16	<b>weather</b> 32:2	<b>years</b> 5:8,25
<b>underwater</b>	59:16,19,21	28:24 39:17	<b>Wednesday</b>	7:14,18 18:6
60:23	<b>vagaries</b> 32:1	42:11	1:12	20:12 31:23
<b>unexpected</b> 24:4	<b>valuation</b> 19:4	<b>wants</b> 51:5	<b>week</b> 21:10,10	32:17,18,19
<b>unforeseen</b>	<b>value</b> 13:19	<b>wash</b> 20:12	<b>weird</b> 26:18,20	48:12
56:22	18:25 19:2,17	<b>washed</b> 6:21,25	<b>well-established</b>	<b>Z</b>
<b>unfounded</b> 24:4	19:24 40:1	62:10	24:13	<b>zoning</b> 17:5
<b>unique</b> 36:17	<b>varies</b> 58:13	<b>washes</b> 60:19	<b>went</b> 8:16 18:8	<b>\$</b>
54:23 55:8	<b>vegetation</b> 34:7	<b>Washington</b>	<b>wet</b> 14:3,16,19	<b>\$100,000</b> 43:1,2
<b>United</b> 1:1,15,24	56:7	1:11,23 55:10	<b>We'll</b> 47:15	<b>\$20,000</b> 43:4
2:8 3:16 48:19	<b>vendor</b> 12:11,16	55:20 58:17	<b>we're</b> 5:4 14:23	<b>0</b>
<b>universal</b> 58:8	12:25	<b>wasn't</b> 6:17	16:4,10,10	<b>08-1151</b> 1:6 3:4
<b>unnecessarily</b>	<b>vendors</b> 14:20	11:23 29:4,5	17:16 25:25	<b>1</b>
11:19	15:3,7	<b>water</b> 6:1,2,10	26:4 29:3 32:4	<b>10:02</b> 1:16 3:2
<b>unobstructed</b>	<b>Vermont</b> 51:4	6:14 7:12,20	32:5,5 33:4	<b>100</b> 5:7,25 7:18
23:4	<b>versa</b> 25:17	7:23,24 8:19	49:14 55:18	15:5 19:16
<b>unpredictable</b>	29:15	8:21,24,25 9:2	63:10,15,21	30:12
3:13 24:12	<b>versus</b> 16:19	9:5 11:6,7,9,22	<b>we've</b> 18:19	<b>100-year-old</b>
<b>unreasonable</b>	<b>vested</b> 34:25	12:1,11,16,19	43:23	5:12
24:24 46:22	<b>vice</b> 25:17 29:15	12:24 13:5,5	<b>whatsoever</b>	<b>11:04</b> 64:17
58:22	<b>view</b> 11:19	14:7,8,20,21	34:19 47:24	
<b>upheld</b> 4:7	19:13 21:18	16:11,17 17:19	<b>what-not</b> 46:25	
<b>upholds</b> 51:7	23:4 28:14	18:16 19:25	<b>wholesale</b> 63:19	
<b>upland</b> 7:19,23	34:12 36:16	20:17 21:22	<b>wholly</b> 25:15	
9:23 23:9 28:5	44:16 45:12,14	22:6 23:3,20	<b>wider</b> 39:14	

<b>150</b> 63:8 <b>161.141</b> 4:15 <b>1987</b> 26:21 <hr/> <b>2</b> <hr/> <b>2</b> 1:12 <b>200</b> 15:2 21:9 32:18 <b>200-foot</b> 15:1 19:1 21:17 <b>2003</b> 64:11 <b>2009</b> 1:12 <b>2010</b> 40:25 <b>27</b> 2:6 <hr/> <b>3</b> <hr/> <b>3</b> 2:4 <hr/> <b>4</b> <hr/> <b>4</b> 59:9 <b>40</b> 31:23 32:16 32:18 51:4 <b>48</b> 2:9 <hr/> <b>5</b> <hr/> <b>50</b> 7:14 <b>59</b> 2:12 <hr/> <b>6</b> <hr/> <b>6</b> 18:6 20:12 <b>60</b> 38:16 39:6 <b>60-foot</b> 19:8,8 20:11 21:5 60:13 <hr/> <b>7</b> <hr/> <b>7</b> 64:11 <b>75</b> 37:10 42:19 64:1 <b>75-foot</b> 18:25 <hr/> <b>8</b> <hr/> <b>80</b> 15:5 16:12 <b>80-foot</b> 15:24 16:4				
--	--	--	--	--