

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: WILLIAM G. SCHWAB, Petitioner, v. NADEJDA
REILLY.
CASE NO: No. 08-538
PLACE: Washington, D.C.
DATE: Tuesday, November 3, 2009
PAGES: 1-60

ALDERSON REPORTING COMPANY
1155 CONNECTICUT AVE., NW
WASHINGTON, D.C. 20036
(202) 289-2260

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 WILLIAM G. SCHWAB, :
4 Petitioner :
5 v. : No. 08-538
6 NADEJDA REILLY. :

7 - - - - - x
8 Washington, D.C.
9 Tuesday, November 3, 2009

10
11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 11:01 a.m.

14 APPEARANCES:
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16 the Petitioner.

17 JEFFREY B. WALL, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington,
19 D.C.; on behalf of the United States, as amicus
20 curiae, supporting the Petitioner.

21 G. ERIC BRUNSTAD, JR., ESQ., Hartford, Conn.; on behalf
22 of the Respondent.

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5	JEFFREY B. WALL, ESQ.	
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7	curiae, supporting the Petitioner	20
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P R O C E E D I N G S

(11:01 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 08-538, Schwab v. Reilly.

Mr. Goldblatt.

ORAL ARGUMENT OF CRAIG G. GOLDBLATT

ON BEHALF OF THE PETITIONER

MR. GOLDBLATT: Thank you. Mr. Chief Justice, and may it please the Court:

The debtor in this case claimed, in the third column of Schedule C, a \$10,718 exempt interest in her kitchen equipment. That claim of exemption was fully proper. The trustee did not object to it because it was unobjectionable.

The debtor's position here is that because of what she wrote in the fourth column, where she estimated the value of the equipment as the same amount of the exemption, that her claim of exemption itself should be read to say something different from and greater than what it actually says.

JUSTICE GINSBURG: Mr. Goldblatt, I thought that what she said -- I'm looking at Schedule C, property claimed as exempt. She lists, as property claimed as exempt, "See attached list of business equipment." And then we have an inventory going for

1 several handwritten pages of all these items of kitchen
2 equipment. And that's what she says is the property
3 claimed as exempt.

4 MR. GOLDBLATT: With respect, Justice
5 Ginsburg, that's incorrect. If you turn to her Schedule
6 C, which is in the joint appendix at pages 57 and 58a,
7 the first column is a description of the property, and
8 the third column contains the value of the claimed
9 exemption.

10 The property claimed as exempt here is the
11 \$10,718 interest in the asset listed in column A. And
12 the reason that's clear, Your Honor, it's clear from the
13 language of the statute itself because the statutory
14 language of 522(1) provides that the debtor files a list
15 of property that the debtor claims as exempt and that,
16 unless a party in interest objects, the property claimed
17 as exempt is exempt.

18 522(1) refers to the property claimed as
19 exempt under subsection (b), and subsection (b) in turn
20 references subsection (d), which is the basis for the
21 claim of exemption here.

22 And 522(d), when it describes the exemption,
23 says the following: "The following property may be
24 exempted: One, the debtor's aggregate interest, not to
25 exceed \$18,450 in property" -- it goes -- and it

1 enumerates a series of exemptions.

2 JUSTICE GINSBURG: But she -- in her
3 inventory, she gives figures, and they add up to the
4 amount that she's claiming, so she evidently thinks that
5 those numbers will cover all of her business equipment.

6 MR. GOLDBLATT: Justice Ginsburg, it may --
7 that may well be true. She may -- the debtor here may
8 well have believed that the value of the equipment here
9 was equal to the amount of the exemption. But no one
10 contends in any serious way that the trustee is required
11 to object to the debtor's valuation of the equipment.

12 After all --

13 JUSTICE GINSBURG: Mr. -- Mr. Goldblatt,
14 this is -- this is really my concern. It seems what she
15 wants is her cooking equipment, not the money
16 equivalent. And if the trustee had objected, she could
17 have said: Well, if they think that this cooking
18 equipment is worth more than the value that I put down,
19 I'll cut out the coffee maker, I'll cut out the
20 microwave; but what I want is the equipment, not the
21 dollar -- dollars for it.

22 MR. GOLDBLATT: Your Honor, the debtor here
23 may well have wanted the equipment. The question here
24 is, did she make a claim on her schedule that the
25 equipment was itself exempt in kind? There are a number

1 of ways that debtors can do that. They can write, "I
2 claim an exemption in the full amount." Here, take --
3 take a debtor who is saying: Look, all I want is the
4 exemption that Congress gives me. I understand that all
5 I'm entitled to here is a \$10,718 interest in my
6 equipment. I think my equipment is worth that. If it
7 turns out that I'm wrong and it's worth more, I don't
8 want any more than the Bankruptcy Code gives me.

9 CHIEF JUSTICE ROBERTS: Well, that would be
10 a remarkable coincidence if her equipment happened to be
11 worth exactly what Congress said she could exempt, which
12 is a very odd way of reading what she's put in the
13 schedule.

14 MR. GOLDBLATT: We -- Mr. Chief Justice, we
15 think the most natural way to read what she has said in
16 the schedule is that she's claiming exactly what she
17 says, which is that she is claiming a \$10,718 interest
18 in the property. To get to --

19 CHIEF JUSTICE ROBERTS: I would have thought
20 the most natural way of reading it is that she's
21 claiming the equipment because she thinks that's the
22 value of the equipment.

23 MR. GOLDBLATT: If she wanted to claim the
24 equipment itself as exempt, there were a number of ways
25 that one could do that. She could say: I claim 100

1 percent interest in the equipment; I claim an in-kind
2 interest. Here it would be odd to read that, because
3 there is no suggestion that has been made by anyone that
4 she has any entitlement to an in-kind exemption in the
5 equipment.

6 JUSTICE SCALIA: Where would she say that,
7 100 percent interest in the equipment? Would she say
8 that in -- in column 3?

9 MR. GOLDBLATT: In either column -- yes, in
10 column 3.

11 JUSTICE SCALIA: Column 3 says "Value of
12 claimed exemption."

13 MR. GOLDBLATT: Debtors can certainly list
14 in the schedule. They can list an asterisk and say: I
15 claim an interest in the property itself. Here the --
16 because --

17 JUSTICE SCALIA: Well, I mean, you say that.
18 But, boy, I wouldn't read -- I wouldn't read the -- I
19 wouldn't read the -- the chart that way.

20 MR. GOLDBLATT: There's a --

21 JUSTICE SCALIA: It has a column that says
22 "Value of claimed exemption."

23 MR. GOLDBLATT: Correct, and the value of
24 the claimed exemption here was \$10,718 --

25 JUSTICE SCALIA: Right.

1 MR. GOLDBLATT: -- which is exactly what the
2 trustee proposes to give her.

3 JUSTICE SCALIA: Right.

4 MR. GOLDBLATT: That claim of exemption was
5 proper. In response to Justice Ginsburg's fair
6 question, which is what -- what is a debtor to do here
7 if she wants equipment itself, the debtor is surely
8 entitled, Justice Ginsburg, to -- if the trustee seeks
9 to sell the equipment at auction, to participate in that
10 auction and to credit-bid her exemption. And no -- no
11 one disputes that. So if the -- if the debtor wants to
12 come to the auction and say, look, I'm bidding my
13 exemption, and that will buy me as much of my equipment
14 as it will buy me, the debtor is fully entitled to do
15 that. And in that --

16 JUSTICE GINSBURG: Then you're going through
17 all the administrative expenses of having an auction
18 where if the trustee had tipped her off, it would be
19 like amending your pleading.

20 MR. GOLDBLATT: Well, in fairness, in this
21 case itself, the trustee happened to come to the section
22 341 meeting and say: I believe that there's value here
23 for the estate. I think there's value in excess of --

24 JUSTICE GINSBURG: And she was so --
25 so upset, she said: I'll get out of the bankruptcy; I

1 want my cooking equipment.

2 MR. GOLDBLATT: That's right, but --

3 JUSTICE GINSBURG: It was very clear that
4 that's what the debtor wanted.

5 MR. GOLDBLATT: And it was equally clear
6 that the trustee took the position that she was entitled
7 to the exemption that Congress permits and no more than
8 that. And the debtor didn't say --

9 JUSTICE GINSBURG: The question is whether
10 -- the question is whether the trustee had to make an
11 objection, when it seemed really as clear as could be
12 that what she was seeking was to keep her equipment, not
13 to get the -- some monetary equivalent for it.

14 MR. GOLDBLATT: With respect, Justice
15 Ginsburg, imagine you had a debtor who -- who came into
16 court and said: Look, I believe my equipment is worth
17 something equal to the amount that is permissible, that
18 I may permissibly claim as exempt, but I don't mean to
19 make an improper in-kind exemption. I don't -- I don't
20 want more value than Congress intends me to keep. If it
21 turns out to be worth more, that belongs to my
22 creditors. All I want is what I'm entitled to by
23 statute.

24 That debtor would have no alternative way to
25 express that but to do exactly what this debtor did

1 here. And we think the most plausible way to read it is
2 -- is to read it to have this debtor be expressing an
3 intention that is consistent with law and not one that
4 is improper. There is -- there is no basis under which
5 this debtor is entitled to keep more than a \$10,718
6 interest, and under the ordinary presumption that you
7 presume parties --

8 JUSTICE GINSBURG: Well, then she has -- on
9 your reading, her claim is improper because she's
10 claiming more than she's entitled to. If her claim is
11 improper, then the trustee has an obligation to object
12 to it.

13 MR. GOLDBLATT: Justice Ginsburg, it's only
14 improper if it's read to mean something different from
15 what it says. What she said here in the schedule is: I
16 claim an exempt interest of \$10,718 in the equipment,
17 and I believe the equipment is worth that amount. The
18 question is, should that be read to be making an
19 improper claim that the equipment itself is exempt in
20 kind, a claim that would be -- would be clearly
21 improper, or --

22 JUSTICE ALITO: When I look at that number,
23 I -- and maybe I don't understand this, so maybe you or
24 your adversary can clarify it for me. But when I look
25 at that number, it seems to me there are two ways to

1 interpret it. One is that she is saying: I want the
2 full amount that I'm allowed by law. And the other is:
3 That I want the value of my equipment, and it just so
4 happens to total exactly to the dollar the amount that
5 I'm entitled to by law. Am I correct that those are the
6 two possible readings of that?

7 MR. GOLDBLATT: That's -- that's certainly
8 -- we think that that's right.

9 JUSTICE ALITO: And the question is which of
10 those is the more plausible reading?

11 MR. GOLDBLATT: Right, and we -- we think
12 that -- that for a number of reasons, the more plausible
13 reading is to say: All I want is what the law permits
14 me. The -- the principal reason is that as a general
15 proposition you wouldn't presume someone to be making a
16 claim for which there would be no legal basis. And in
17 any --

18 JUSTICE SCALIA: Except that the -- that the
19 last column does -- it's very clearly entitled "Current
20 market value of property" without deducting exemptions.
21 There's no way to read that last figure of 10,718 except
22 as her assessment of the market value of her cooking
23 equipment.

24 MR. GOLDBLATT: That's exactly right,
25 Justice Scalia, but the critical point is that there is

1 no requirement that any trustee come in and object to a
2 valuation if the valuation is improper.

3 Imagine she had --

4 JUSTICE GINSBURG: Can you -- can you --
5 that was -- what you've just said, no requirement that
6 the trustee object to valuation, one of the briefs --
7 it may have been wrong, but it's the NACBA brief at page
8 27 -- said "Challenges to valuation are the most common
9 types of objections to exemptions."

10 MR. GOLDBLATT: Let me -- let me explain
11 this for a moment, if I may. Imagine the debtor here
12 had listed the value at \$15,000 and her exempt interest
13 as 10,718. In that case, the debtor -- the trustee
14 would surely be entitled to sell the asset. The debtor
15 themselves acknowledges that on page 30 of the
16 Respondent's brief. In that case, what the value that
17 the equipment would obtain would be whatever a willing
18 buyer and willing seller would pay. It could be
19 \$15,000, it could be \$30,000, it could be \$130,000. And
20 the fact that the actual value of what -- what a buyer
21 would pay for it was different from the debtor's
22 valuation would be of no moment. Whatever value the
23 trustee was able to obtain for the asset --

24 JUSTICE BREYER: In that case -- in that
25 case, I guess there wouldn't be a -- a lawsuit.

1 MR. GOLDBLATT: No. That's exactly right,
2 Justice Breyer.

3 JUSTICE BREYER: I mean, in that case, the
4 debtor is never going to object. So we're never going
5 to have that one.

6 MR. GOLDBLATT: That's exactly right. But
7 -- but the point here is that there is no requirement
8 that the -- when a debtor files an individual
9 bankruptcy case, on Schedule B the debtor lists the
10 valuation, their estimated valuation of all of their
11 assets. There is absolutely no requirement in the
12 Bankruptcy Code, the Bankruptcy Rules, or anywhere else
13 that a trustee go through and say whether they agree or
14 disagree with the debtor's positive valuation. Instead,
15 what a trustee does is they liquidate the asset, they
16 generate the value that is there, and they distribute
17 that value to creditors.

18 JUSTICE KENNEDY: Well, they don't always
19 liquidate the asset, if they -- if they elect -- if
20 everybody agrees that they get the asset itself, they
21 don't have to sell it.

22 MR. GOLDBLATT: That's exactly right. The
23 trustee may determine to abandon an asset to the debtor
24 if there's no --

25 JUSTICE KENNEDY: What -- what -- what you

1 are doing there, you -- you argue that ambiguities are
2 construed against the person that made the form. I
3 think that's a little harsh when the trustee is a repeat
4 player and knows -- and knows the rules.

5 MR. GOLDBLATT: Well --

6 JUSTICE KENNEDY: On the other hand, I think
7 what you have going for you is that the trustee is going
8 to always be at risk that the asset is worth more than
9 what's listed and is going to have to take steps to
10 value it in every -- every case.

11 In this case, it's -- it's clear that she --
12 she knew that the Honda was worth more. She was only
13 claiming \$2,900, \$2,950 on a Honda.

14 MR. GOLDBLATT: That's right, and that was
15 subject to a security interest here.

16 JUSTICE KENNEDY: And -- and if you take
17 that together with -- and -- and the kitchen equipment
18 comes next, and she -- and the value is the same in each
19 column. So that indicates that she was claiming the
20 full value.

21 MR. GOLDBLATT: With -- with respect to
22 the -- the automobile, there's -- there's a claim of
23 exemption and the rest is subject to a security
24 interest. Here -- I mean, the critical point is if a
25 debtor wants to -- to put to -- to the issue and say,

1 listen, I really want to keep the equipment itself, I
2 don't think there's any value here for the estate, there
3 is a statutory mechanism to address that. Section
4 554(b) says quite clearly that if -- if a party in
5 interest believes that there is an asset as to which
6 there is inconsequential value, they can seek an order
7 compelling the bankruptcy -- compelling the trustee to
8 abandon that asset to the debtor.

9 So there is -- I mean, Justice Ginsburg's
10 question -- there is a mechanism for addressing the
11 concern that Your Honor has with a debtor who wants a
12 determination that they keep a particular asset, but --

13 JUSTICE GINSBURG: My concern is keeping it
14 simple, giving fair notice to people. She's got the
15 same amount under exempt -- the last two columns. A
16 rule is proposed. It says when the two columns have the
17 same amount, that's a clue to the trustee that the
18 debtor is claiming all of the -- that particular
19 property. That's a nice, simple rule. It tells the
20 trustee when he has to object, and the end of the
21 matter.

22 MR. GOLDBLATT: With respect, Justice
23 Ginsburg, a -- a simpler rule would be that if a
24 debtor wants to say, I have an in-kind exemption in an
25 asset, the debtor should say that. They should use a

1 term that is understood to mean that.

2 JUSTICE GINSBURG: But it's not in kind in
3 the sense that she keeps the asset no matter what.

4 MR. GOLDBLATT: Well, that's exactly what
5 the debtor is contending here. She -- the debtor here
6 is saying that this -- this said even if I'm wrong
7 about the value --

8 JUSTICE GINSBURG: She is contending that
9 she would like to keep her cooking equipment and she was
10 entitled to notice before it's going to be sold at an
11 auction.

12 MR. GOLDBLATT: With respect, Justice
13 Ginsburg, that's not right. Here the debtor was told at
14 the 341 meeting that the trustee intended to sell it.
15 Her claim is that even -- even if he can get more value
16 than she said it was worth, she keeps all of that value,
17 regardless of what it's worth, because -- because her
18 schedule told us unequivocally that she got to keep it
19 regardless of its actual value.

20 JUSTICE GINSBURG: Then -- then her claim is
21 wrong, her claim is objectionable, and the trustee
22 should have made an objection.

23 MR. GOLDBLATT: But the best reading of her
24 schedule is not to make such a claim, but rather to read
25 her schedule to -- to mean what it says, which is that

1 she claimed to have a \$10,718 exemption in the property,
2 and insofar as the property is worth more than that,
3 that that's -- that -- that is a question of valuation,
4 which isn't the subject of an obligation to raise an
5 objection.

6 Also, to the point of simplicity, Justice
7 Ginsburg, if I may, the -- the virtue of the rule
8 that we urge here is that -- that it does provide for
9 simplicity. A debtor can clearly put the trustee on
10 notice.

11 The consequence of the debtor's rule would
12 be to require trustees, whenever schedules happen to use
13 the same number, to come in and file pro forma
14 objections. And it doesn't seem that there is any
15 reason as a matter of bankruptcy policy or statutory
16 construction to simply require more paperwork to get to
17 the same result.

18 JUSTICE SOTOMAYOR: Has that happened in the
19 two circuits that apply a rule similar to this, the
20 Sixth and the Third?

21 MR. GOLDBLATT: What I understand, Justice
22 Sotomayor, is that that -- the answer to that is yes and
23 that in the Third Circuit following this decision that
24 trustees are filing those kinds of pro forma objections.

25 JUSTICE BREYER: Why? I mean, you sit down

1 with the creditors, and you look at the list and you try
2 to work things out. That meeting goes on as long as you
3 want. And if it appears there's an argument about
4 valuation, you file an objection.

5 MR. GOLDBLATT: And --

6 JUSTICE BREYER: If it appears everybody can
7 work everything out, fine. What's the problem?

8 MR. GOLDBLATT: The -- the question is what
9 is the rule where -- where there remains disagreement?
10 And as --

11 JUSTICE BREYER: The rule is -- and that's
12 what it's about -- the rule is about where you object,
13 the trustee objects to the list. The list.

14 MR. GOLDBLATT: And -- and --

15 JUSTICE BREYER: That's called Schedule C.
16 If you have an objection to the list, then
17 it says: Here's what you do, trustee. Meet with the
18 creditors, try to work it out. And if in fact 30 days
19 thereafter and you don't need any more time, so you
20 don't ask the judge for more time, file an objection.

21 MR. GOLDBLATT: No, Justice Breyer.

22 JUSTICE BREYER: What's the problem?

23 MR. GOLDBLATT: It's just different from
24 what the -- what the statute says. What
25 the statute says is that in the absence of an objection,

1 the property claimed as exempt becomes exempt. And if
2 you look at 522(d) and see its description of the
3 property that becomes exempt, that language is clear
4 that it is the debtor's interest up to a dollar amount
5 in an asset. The term "property" here is subject to
6 monetary caps. It's not the asset itself. And the
7 statutory language in that regard couldn't be clearer.

8 JUSTICE GINSBURG: If it's not the asset
9 itself and it's just about money, here I have a piece of
10 property and it wouldn't matter whether it was a case of
11 widgets or my grandmother's diamond ring. But
12 Congress -- this is a peculiar list it has. It has
13 personal jewelry, tools of trade. It sounds like --
14 even though those have a dollar cap, it sounds like
15 Congress said these are the kinds of things a debtor
16 would want to keep in kind.

17 MR. GOLDBLATT: Well, but those have always
18 been subject -- as this Court explained in Owens v.
19 Owens, those types of -- of -- of assets have always
20 been subject to monetary caps, and the same is true
21 here, and 522(d) makes that clear. Insofar as the
22 debtor would like to keep it, the debtor is entitled to
23 credit-bid at an auction.

24 I see my time has expired.

25 CHIEF JUSTICE ROBERTS: Well, thank you,

1 Mr. Goldblatt. I'll afford you rebuttal time.

2 MR. GOLDBLATT: I appreciate that, Your
3 Honor.

4 CHIEF JUSTICE ROBERTS: Mr. Wall.

5 ORAL ARGUMENT OF JEFFREY B. WALL

6 ON BEHALF OF THE UNITED STATES,

7 AS AMICUS CURIAE,

8 SUPPORTING THE PETITIONER

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

11 The government is not saying that it's a
12 coincidence that these numbers in the third and fourth
13 columns are the same. It is a common practice. A
14 debtor will often estimate what she believes to be the
15 market value of her property and then divvy up a wild
16 card across items in hope -- hopes of keeping them.

17 The government's and Petitioner's only point
18 is that where a debtor does that, as Respondent did
19 here, she's still claiming the fixed exemption of what
20 she believes to be the market value.

21 Now, I take your concern, Justice Ginsburg,
22 this might be unfair to debtors who wouldn't be
23 tipped off. That is not true here, where the trustee
24 came to the creditors' meeting and said: I construe
25 your exemption as limited, and I think the property is

1 worth about \$7,000 more, and I intend to sell it.

2 And at that point, a debtor who really
3 believed that her schedule claimed full value would, it
4 seems to me, have said: You're misreading my schedule.
5 She didn't do that. She didn't do that until after the
6 30-day period had run when the trustee moved to sell
7 the property. Now, she --

8 JUSTICE GINSBURG: What she did do, she
9 said: That unsettles me so much that I'm going to
10 withdraw from this bankruptcy proceeding; beyond
11 anything, I want to keep that -- that property.

12 MR. WALL: That's right. But she -- but
13 she -- she did walk in. She didn't say: You're
14 misreading my schedule. She said: I don't want you to
15 sell the property if indeed it's worth more than the
16 exemption I've claimed, and so I want to dismiss my
17 bankruptcy. Which she doesn't have a right to do under
18 Chapter 7. She has to show cause under section 707(a).
19 The Bankruptcy Court found that she had not shown cause,
20 and the debtor didn't appeal that determination, which
21 is not before this Court.

22 JUSTICE GINSBURG: But the -- but the
23 Bankruptcy Court did that simultaneously with saying:
24 And I'm going to deny the trustee's motion to have an
25 auction.

1 MR. WALL: That's right. And on remand, it
2 would certainly be open to her to attempt to convince
3 the Bankruptcy Court again that she had shown cause
4 under 707 to dismiss.

5 I think the government's point is that there
6 is a process for sale. So even beyond the facts of this
7 case, when the trustee wants to sell property, he has to
8 give 20 days' notice to the debtors and the creditors
9 under section 363 of the code and Rule 2002. So if the
10 trustee here had not even said anything at the
11 creditors' meeting but had moved to sell, he would have
12 had to give notice to the debtor, who at that point
13 could always amend her schedules under Rule 1009.

14 If she had any exemption left to claim, she
15 could walk in and say: I'm going to amend my schedule,
16 and I'm going to increase my exemption, because I
17 underestimated the property value. The reason she
18 didn't and couldn't do that here is because she had
19 maxed out her wild card. But it's -- indeed, even on
20 remand --

21 JUSTICE GINSBURG: What she could have done
22 is trimmed some items from the list.

23 MR. WALL: And she still could on remand.
24 Even on remand, she could walk in and amend her schedule
25 and say: I'm going to itemize exactly the equipment

1 that I want to keep with my wild card. And I'm going to
2 say which of my kitchen equipment I want to keep with my
3 \$10,225, and which I don't.

4 So, it's not that -- there's nothing about
5 Petitioner's approach that denies the debtor the fresh
6 start to which she is entitled under the code. She --
7 she can always claim right up to the legal limits. What
8 --

9 JUSTICE BREYER: That sounds very
10 complicated. I -- I mean, the thing that sort of
11 persuaded me so far on this is this is what Collier
12 says, the other side -- it's what all the bankruptcy
13 judges. Ambro is a bankruptcy judge. This is a simpler
14 thing.

15 MR. GOLDBLATT: Well --

16 JUSTICE BREYER: Look at the procedural
17 rule. It's just what I've said. It says: If you have
18 an objection to the list of property -- the list of
19 property is C, okay? So here's what you do, trustee:
20 Sit down with the creditors. See if there's really an
21 argument. Now, if there's no argument, fine; they'll
22 let you do what you want.

23 If there is an argument and it has to do
24 with that list, C, particularly valuation, which is what
25 these things are all about, then file your objection.

1 That's so simple. And it seems in most places they do
2 it.

3 So why do we want to run around Robin's barn
4 or something to get somewhere we can get to much
5 simpler?

6 MR. WALL: Well, there are a number of
7 questions there, Justice Breyer. But with all respect,
8 that is not what the statute and the rules say. What
9 the statute and the rules say is if you have an
10 objection to the property claimed as exempt on the list
11 -- and as a historical matter over time, Schedule C has
12 required debtors to put additional information besides
13 their exemptions.

14 JUSTICE BREYER: But Rule 403 doesn't say
15 that. My Rule 403 says: "A party in interest may file
16 an objection to the list of property claimed as -- as
17 exempt within 30 days after the meeting." Okay?

18 MR. WALL: That's right.

19 JUSTICE BREYER: It says "the list." So
20 that's where I think you're becoming awfully legalistic,
21 to try to distinguish between the list and the property
22 in A and B.

23 I mean, what do you -- these are about
24 valuation, says Collier. That's all we're interested
25 in.

1 MR. WALL: Well, it says the list of
2 property claimed as exempt. So, for instance, for
3 nearly the first 100 years after they set up the system
4 in 1898, on Schedule C and its predecessors the debtor
5 put down the location and present use of property. But
6 no one thought that the location was part of the claim
7 of exemption, such that if the trustee believed the
8 property was in one place than another, he had to
9 object.

10 The idea was we'll provide some useful
11 information to the trustee beyond the claim of
12 exemption, so that if he wants to file a turnover
13 complaint to get the property into the estate, he knows
14 where it's located.

15 But it just isn't true, as a historical or
16 logical matter, that everything that shows up on
17 Schedule C is part of the claimed exemption.

18 JUSTICE KENNEDY: Is it also true --
19 tell me about this: One of my concerns is that the
20 trustees simply don't have time in every case to have a
21 creditors' meeting and go through every asset.

22 If they did, then Justice Breyer's
23 suggestion, where they'd sit down and talk about all
24 this stuff, would be -- would be fine. Am I right or
25 wrong in making that empirical assumption? I mean, I

1 just don't know.

2 MR. WALL: I think that's entirely fair.

3 They do have to have a creditors' meeting, so they do

4 have to -- you know, within 20 to 40 days of the filing

5 of the petition. But I think what will happen on

6 Respondent's approach as a practical matter is the world

7 will look no different; it will just have a lot more

8 litigation.

9 Whenever the numbers in columns 3 and 4

10 match up, the trustee will file a pro forma objection or

11 extension request. Cases will proceed exactly as they

12 do now. Property can be sold. Some will be returned to

13 the debtor and some will not.

14 JUSTICE KENNEDY: He has to. Otherwise, he

15 is at risk that it might be worth \$400,000 or whatever.

16 MR. WALL: Exactly. And I think the reason

17 that it's odd to set up that kind of presumption is

18 because you're basically presuming that the debtor is

19 acting to claim an exemption in kind to which he is not

20 entitled under the code.

21 CHIEF JUSTICE ROBERTS: So what does she put

22 down if she thinks this is what the property is worth,

23 but she doesn't know for sure? I mean, I don't know how

24 you would accurately value a bunch of kitchen equipment.

25 What is she supposed to do?

1 MR. WALL: Well, the debtor would do
2 exactly what she did here, and if the trustee went to
3 sell and she had remaining exemption left, she could
4 come in and amend her schedules and say --

5 CHIEF JUSTICE ROBERTS: But that goes
6 through -- I think as Justice Ginsburg pointed out, you
7 have to go through a long process if you're going to
8 have an auction, and for this sole proprietorship, it
9 seems like a waste of money and time.

10 MR. WALL: Well, if the debtor actually
11 wanted to claim, say, full value or 100 percent of value
12 -- there are debtors that commonly do that. Since at
13 least Taylor 20 years ago, debtors on the form have been
14 writing down, in the third column --

15 CHIEF JUSTICE ROBERTS: Well, that's right.
16 I mean, this is a government form, and you say, even
17 though it says "Value of the claimed exemption" and
18 "Current market value," that these debtors should know,
19 oh, you should put in, as your friend said, put in an
20 asterisk and write something else in there.

21 MR. WALL: I don't even think it has to be
22 an asterisk. It's -- debtors commonly will put in on
23 these forms where they want to claim full value, even if
24 they're not entitled to it under the code, full value,
25 100 percent of value. The debtor in Taylor wrote down

1 "Unknown." Some contingent term that places the trustee
2 on notice that says: Hey, whatever the value of the
3 property is --

4 JUSTICE GINSBURG: That's much less
5 informative than if she said -- I mean, here she -- she
6 has one list that's showing what she paid for it. She
7 makes her best guess. It's -- you're suggesting that
8 she would be entitled to the notice if she put down
9 "unknown," "value unknown" or "value 100 percent."

10 So your -- on your theory, in order to do
11 what she obviously wants to do, preserve her kitchen
12 equipment, she has to give no information or inaccurate
13 information.

14 If she said -- I think what you're saying is
15 if she said a 100 percent, instead of saying what she
16 thought was the -- the value, or if she said unknown,
17 she would be entitled to notice from -- to an objection
18 from the trustee. But because she has tried her best to
19 put down what the form calls for, she doesn't get any
20 objection from the trustee.

21 MR. WALL: Well, I think, Justice Ginsburg,
22 the debtor does have a duty to report the market value
23 in the fourth column, what she believes it to be, but
24 the third column supports her claim and --

25 JUSTICE SCALIA: That -- is that where she

1 would write 100 percent -- in the third column,
2 rather than the fourth?

3 MR. WALL: Well, no. She'd write it in
4 the third column because what she'd be saying is --
5 the third column is just subjective. It's just what you
6 want to claim, and, under "Value of claimed exemption,"
7 she'd say 100 percent of value.

8 And then, in the fourth column, she would
9 make an estimate as to what she believed that value to
10 be. And, in the event that she underestimated, she
11 could always come in and amend her exemptions.

12 I think it would be odd to read a form where
13 she cited statutory provisions that allow her to claim
14 interest up to a dollar cap and then she had put down
15 definite and fixed numbers to say to the trustee, you
16 should assume, despite the statutory text she is citing
17 and the numbers she is giving you, that she is claiming
18 an unauthorized, in-kind exemption, despite the very
19 statutory provisions on which she's relying as the bases
20 for her exemption.

21 JUSTICE GINSBURG: Would she --

22 JUSTICE SCALIA: Well, now, wait. Why would
23 the trustee object? I mean, he would still be objecting
24 to the valuation. You say that he has no -- no
25 obligation to object to the valuation.

1 But if she writes 100 percent of value
2 in the third column, that's what she's claimed, and then
3 values it at something above the exemption, right?
4 Above the permissible objection, he's still objecting to
5 the valuation, isn't he? No?

6 MR. WALL: Justice Scalia, wherever the
7 debtor lists a contingent term in the third column,
8 whether it's unknown or 100 percent of value, the
9 trustee absolutely has to object.

10 It -- but -- but where the trustee doesn't
11 object is where the debtor does what she did here and
12 lists a fixed sum.

13 JUSTICE SCALIA: I see.

14 CHIEF JUSTICE ROBERTS: Thank you, Mr. Wall.
15 Mr. Brunstad.

16 ORAL ARGUMENT OF G. ERIC BRUNSTAD, JR.

17 ON BEHALF OF THE RESPONDENT

18 MR. BRUNSTAD: Mr. Chief Justice, and may it
19 please the Court:

20 Justice Ginsburg, your reading of the
21 schedules is completely accurate. There was nothing
22 more that Ms. Reilly could have done to indicate her
23 intent to exempt the property in full.

24 The bankruptcy court looked at this. The
25 bankruptcy judge sees thousands of these kinds of

1 schedules and made that determination.

2 JUSTICE KENNEDY: But she could have said
3 "in full." You can't say she couldn't have done
4 nothing more. She'd put "in full."

5 MR. BRUNSTAD: Well, Justice Kennedy, the
6 form --

7 JUSTICE KENNEDY: Or "100 percent of
8 value."

9 MR. BRUNSTAD: Justice Kennedy, the form
10 doesn't call for that. The form calls for a list --

11 JUSTICE KENNEDY: Now, you've said that
12 there's nothing else she could do, and I said, of
13 course, there's something else she could do. In Taylor,
14 the case you cite, they put "unknown."

15 MR. BRUNSTAD: That's --

16 JUSTICE KENNEDY: I mean, I understand your
17 position, but you can't say there's nothing else she
18 could have done. That's -- that's the issue in the
19 case.

20 MR. BRUNSTAD: Yes, Justice Kennedy, but
21 consistent with the form and the information the form
22 requests, she completely and accurately provided the
23 information the form requests.

24 And she -- as the bankruptcy court looked at
25 this and said, this is -- she's claiming the property in

1 full. The district court looked at this, the court of
2 appeals looked at this, all to the same conclusion.

3 Now, I think it's important to underscore
4 the purpose of the statute and the rules. They address
5 a very practical problem. We need to know, right away,
6 at the beginning of the case, is this property the
7 debtor gets to keep, or is this property of the estate,
8 which the trustee can sell?

9 We need to know this because, under section
10 363(b), a trustee cannot sell property if it is not
11 property of the estate. And if the property is claimed
12 as exempt and nobody files an objection, it is exempt
13 under 522(1). The trustee cannot sell it. Now --

14 CHIEF JUSTICE ROBERTS: So if it turns out
15 that this business equipment was worth \$100,000 and the
16 trustee looks at it and says, oh, she's only claiming --
17 you know, less than she's entitled, \$10,000, and doesn't
18 object, she gets that dramatic windfall.

19 MR. BRUNSTAD: Just so I'm clear, Chief
20 Justice Roberts, if she claims that she -- \$15,000, but
21 she puts a value of \$100,000? Is that --

22 CHIEF JUSTICE ROBERTS: Oh, no, no. She --
23 she -- and it may be even in good faith or -- or bad
24 faith, depending on the rule we -- we adopt, but she
25 gets that incredible bonus because it turns out her

1 business equipment is worth a lot more than she put
2 down.

3 MR. BRUNSTAD: Well, if she undervalues her
4 equipment, for a hundred years, Chief Justice Roberts,
5 that has been grounds for objection. For a hundred
6 years, the practice has been --

7 CHIEF JUSTICE ROBERTS: Well, this -- the
8 trustee doesn't know. He doesn't know. He looks at it
9 and says, oh, that sounds like kitchen equipment might
10 be worth that, and so he doesn't object.

11 What you're doing is, I think Justice
12 Kennedy pointed out, you're requiring the trustee to
13 object to everything, lest he lose the \$100,000 that it
14 turns out this is worth.

15 MR. BRUNSTAD: Not quite, Chief Justice
16 Roberts, and here's why: The trustee gets the form, and
17 then there is the meeting of creditors, and the trustee
18 gets to ask questions before the deadline actually
19 occurs.

20 Here, the trustee went and asked somebody
21 else, do you think this is worth more than she's
22 claiming? And, apparently, somebody said, perhaps it
23 is.

24 Then the trustee could ask the questions of
25 the debtor directly, and if the debtor -- if the trustee

1 needs more time, the trustee can do one of two things:
2 move for an extension of time to object or simply
3 adjourn the meeting of creditors.

4 The timing is completely in the trustee's
5 control. They have plenty of time.

6 CHIEF JUSTICE ROBERTS: No, but the point
7 is, that drags out the whole process. You're imposing a
8 burden on the trustee. He loses everything if he
9 doesn't object, and I think the idea is that these
10 things move as quickly as you can, and you don't want
11 the trustees -- you know, I may be severely prejudiced;
12 the creditors might if I don't object, so I'm going to
13 object to everything; we'll sort it out later.

14 MR. BRUNSTAD: Yes, Your Honor, but that's
15 what the statute does. It poses the burden on the
16 trustee. The rule, Rule 4003, imposes the burden on the
17 trustee to object if the trustee has any grounds for
18 thinking what the debtor has done is improper.

19 Now, these schedules are signed under
20 penalty of perjury. There are criminal sanctions under
21 18 U.S.C. sections 152 and 157 if the debtor is engaged
22 in fraud. There are penalties under section 727 or 707.
23 The case can be dismissed. The debtor can lose her
24 discharge. This is very serious affair, stating this
25 information. The debtor here very thoughtfully itemized

1 all of the property, she filled out all the information
2 on the form, and she did something else, Chief Justice
3 Roberts. On page 28a of her schedules, she checked a
4 box that's required, and that box that the debtor
5 requires -- is supposed to check basically tells the
6 trustee: This is a no-asset case; there's not any value
7 left over for anybody else after you account for my
8 exemptions.

9 It's very clear from the box she checked
10 off, from the information that she provided, she was
11 claiming the property in full, the very property that
12 she wanted, her tools of trade to engage in her
13 business.

14 Again, thousands of these forms are done.
15 Here, the bankruptcy court looked at this and said she
16 was exempting the property in full. The trustee knows
17 this. The trustee sees thousands of forms. He had the
18 information that he claims forms the basis of his
19 objection well before his deadline passed, yet he
20 allowed the 30-day period to go by without presenting an
21 objection.

22 JUSTICE ALITO: Well, when she put down the
23 figure \$10,718 on page 58a of the Joint Appendix, what
24 did she mean by that?

25 MR. BRUNSTAD: In the last column, Justice

1 Alito?

2 JUSTICE ALITO: Yes.

3 MR. BRUNSTAD: She meant that the value she
4 claimed in full of her property was what she was
5 claiming as exempt. The entire --

6 JUSTICE ALITO: She meant that that was --

7 MR. BRUNSTAD: She held the property.

8 JUSTICE ALITO: She had -- she had figured
9 out the value of the property, and her estimation of its
10 fair market value was \$10,718?

11 MR. BRUNSTAD: Yes. She very carefully
12 listed it, and a debtor in bankruptcy --

13 JUSTICE ALITO: It wasn't \$10,717? It
14 wasn't \$10,719? It was \$10,718? That's what she meant?

15 MR. BRUNSTAD: That was her valuation of the
16 equipment, Justice Alito.

17 JUSTICE SCALIA: Well, it's not a realistic
18 valuation. Nobody thinks that that's an honest
19 valuation of the equipment. It's simply adding up the
20 -- the exemption she was entitled to.

21 MR. BRUNSTAD: No, Justice Scalia, because
22 she didn't exhaust --

23 JUSTICE SCALIA: It's just -- her valuation
24 just happened to be exactly the amount that the two
25 exemptions she had would add up to.

1 MR. BRUNSTAD: No, Justice Scalia, she did
2 not exhaust her exemption availability. She had
3 additional exemption availability left over after she
4 took for her equipment. She detailed, she listed the
5 assets, she listed a value. And under our law, debtors
6 in bankruptcy who own property are considered experts
7 with respect to the valuation of their own property.
8 *Shane v. Shane*, 891 F.2d at 872, the owner of property
9 is competent to testify as to its value, is competent to
10 testify to it.

11 Here, the trustee offered nothing. There's
12 nothing in the record to rebut her valuation that she
13 swore under penalty of perjury was accurate.

14 She did -- again, Justice Scalia, she had
15 more exemptions she could have used. And if --

16 JUSTICE ALITO: But that's a -- that's a
17 totally different question. It's just -- it is -- your
18 submission is that it is a pure coincidence that her
19 good faith estimation of the current market value of
20 this property just happens to add up, to the dollar, to
21 the amounts that she was entitled to exempt under the
22 specific statutory provisions that she cited in the
23 previous column?

24 MR. BRUNSTAD: No, Justice Alito, because
25 \$10,718 is not her max. That's not the maximum amount

1 of value that she could have claimed. She properly did
2 what all debtors have to do. They are required to do
3 this under the forms. They are required to inventory
4 their property in Schedule B; they are required in
5 Schedule C to state a value, if in fact they know it.
6 And in good faith --

7 JUSTICE GINSBURG: Now, can you elaborate on
8 this additional -- she -- you said she could have listed
9 something that came to a higher number. Are you talking
10 about the part of the leftover of the wildcard exemption
11 that she -- she used it for food, didn't she?

12 MR. BRUNSTAD: She used it for perishable
13 food items. She didn't have to use it for perishable
14 food items.

15 JUSTICE SCALIA: Well, but she was maxed
16 out. Once she used it for that, she was maxed out, but
17 she wanted to have her cake and eat it too. She wanted
18 to get the exemption for the food and she wanted to get
19 the exemption for the -- for the equipment. And so it
20 just so happened that the equipment valuation added up
21 to precisely what was left over after she took the
22 exemption for the -- for the food.

23 MR. BRUNSTAD: Actually, the other way
24 around, Justice Scalia. She valued the equipment first.
25 Then she determined she had leftover, leftover exemption

1 ability, and she applied it to additional items.

2 JUSTICE KENNEDY: But how do you know that
3 from the form? Number one, I think both sides have --
4 have an argument as to what the form means. I don't
5 think it's at all clear-cut. As I say, I'm looking for
6 some kind of a rule to tilt the case one way or the
7 other. All right? I don't put a lot of credence in the
8 fact that she -- the ambiguities are construed against
9 her.

10 I am concerned that in every case, under
11 your rule, the trustee is at risk unless he makes an
12 objection, and I think that's just going to make
13 bankruptcy proceedings much more protracted and much
14 more complex.

15 MR. BRUNSTAD: Actually, I think, Justice
16 Kennedy, the opposite. After Taylor, after this Court's
17 decision in Taylor, trustees understood if they had a
18 valuation objection, if they had concern that the debtor
19 might be getting a windfall, they needed to make an
20 objection.

21 JUSTICE KENNEDY: Well, but therein -- the
22 problem was triggered when they put in the word
23 "unknown."

24 MR. BRUNSTAD: That's correct, Justice
25 Kennedy, but that was the appropriate thing to say for

1 that particular asset, an unliquidated lawsuit. When
2 we're talking about tangible property such as cooking
3 equipment, where you can figure out -- you look at the
4 pot and you have an idea of what it's worth, you are
5 required to state that amount.

6 Now, I think, Justice Kennedy, a good rule
7 of decision is -- or a good principle of decision here
8 is that the exemptions are part of the fresh start in
9 bankruptcy, and we construe exceptions to that fresh
10 start against creditors, against the trustee.

11 JUSTICE BREYER: Do you have any sense of
12 how it works in practice? I'm a little worried by
13 Justice Kennedy's question, because the government says
14 in practice what's been happening is that in most
15 places, trustees don't -- they don't object to these
16 kinds of valuations problems, and now suddenly when the
17 rule has changed in some circuit, they do object as a
18 matter of form, which is unnecessary paperwork.

19 The impression I had from reading Collier,
20 and it was -- the opposite was so, that normally when
21 you have the creditors' meeting, things would appear,
22 what was a problem or what wasn't, and the creditor
23 would then file an -- or the trustee would then file an
24 objection. Well, what is the case? How does the
25 practice work? I'm -- I'm pretty uncertain. I'm not a

1 bankruptcy expert.

2 MR. BRUNSTAD: Yes, Justice Breyer, there
3 has not been an avalanche of pro forma objections being
4 filed in these cases.

5 JUSTICE BREYER: Yes, but how did it work
6 normally for years and years? You'd go into a committee
7 meeting of creditors. They'd get into an argument about
8 the valuation. I'm sure that happened.

9 MR. BRUNSTAD: Yes.

10 JUSTICE BREYER: And when that happened, did
11 trustees file objections within 30 days or didn't they?

12 MR. BRUNSTAD: Yes, Justice Breyer.

13 JUSTICE BREYER: How do we know that? I
14 mean, I was impressed by Ambro. Isn't he the judge
15 here?

16 MR. BRUNSTAD: In the court of appeals, yes,
17 Your Honor. He's a former bankruptcy judge.

18 JUSTICE BREYER: He had been a bankruptcy
19 judge, so maybe he knows.

20 MR. BRUNSTAD: Certainly --

21 JUSTICE BREYER: Now, I don't know who
22 knows, because I'm worried the government has looked
23 into this, and somebody's telling them who knows it's
24 the opposite.

25 MR. BRUNSTAD: Justice Breyer, under the

1 rules, the trustee has the burden of objecting if the
2 trustee has any basis for objection, including
3 valuation, and -- but the trustee has to have a good
4 faith reason for objecting, and how that is determined
5 is the trustee looks at the schedules, asks questions at
6 the meeting of creditors, a section 341 meeting, and
7 then if the trustee has any objection at all, present
8 it. If the trustee doesn't present it, you move on. We
9 have -- finality is very important here.

10 JUSTICE SOTOMAYOR: Now, under your rule,
11 the trustee has 30 days to get this good faith basis.
12 Does that mean that he or she has to get a valuation on
13 everything that's listed at full value, that that is
14 really the burden we're talking about?

15 It's not the burden of filing a piece of
16 paper that says I want an a exemption, or even one that
17 says I have an objection. It's what it takes to support
18 that objection and how much effort goes to that
19 activity.

20 MR. BRUNSTAD: Yes, Justice Sotomayor, and
21 the trustee has had that burden for about a hundred
22 years. And under the former Bankruptcy Act, they had
23 much shorter deadlines -- 20 days, 15 days.

24 JUSTICE SOTOMAYOR: No, there's a huge
25 difference between a rule that says you don't have to

1 actually go after this information in a formal way.
2 If someone's claiming only the exempt amount, then I'll
3 go ahead and I'll administer the estate, and over time
4 I'll talk informally to people and get a sense of
5 whether the valuation is right or not, but I won't
6 actually -- actually have to get a formal appraisal
7 because I'll just use my judgment.

8 Your rule would require something else.
9 They would have to get the appraisal to lodge the
10 request for an extension or to lodge the request for an
11 objection.

12 MR. BRUNSTAD: But they'd have to do
13 that in their motion to sell anyway, Justice Sotomayor.
14 And also in most cases it's going to be simple. The
15 most common asset that this is about is a car. You take
16 the car and you check the book value of the car, and the
17 trustee can do a simple, easy, expedient comparison.
18 It's a little more complicated when --

19 JUSTICE KENNEDY: You mean in every single
20 case where an asset is sold, there has to be a valuation
21 beforehand?

22 MR. BRUNSTAD: In a situation where the
23 debtor claims the property as exempt, yes, and here's
24 why, Justice Kennedy: Because the trustee again can --

25 JUSTICE KENNEDY: If -- if he claims the

1 whole property is exempt?

2 MR. BRUNSTAD: Well, if the debtor claims
3 the whole property is exempt, then it's not property of
4 the estate unless the trustee interposes a timely and
5 successful objection, because section 362 of the
6 Bankruptcy Code, which authorizes sales, only
7 specifically authorizes sales of property of the estate;
8 and if someone claims property as exempt, if no
9 objection is interposed under 522(1), then the property
10 claimed as -- is exempt.

11 JUSTICE KENNEDY: My question was -- I
12 thought I understood your remark to say anytime there's
13 a sale, there has to be a valuation or an appraisal
14 before the sale.

15 MR. BRUNSTAD: If, in fact, the debtor
16 claims the property as exempt, that's correct. Unless
17 the debtor concedes, the trustee can sell it. That has
18 to happen anyway, Justice Kennedy.

19 JUSTICE GINSBURG: Do we know what -- what's
20 --

21 JUSTICE KENNEDY: But that -- but the very
22 fact that it's -- that there's going to be a sale may
23 indicate that your premise is not true most of the time.

24 MR. BRUNSTAD: No, Justice Kennedy, and
25 here's why: because the statute, for example, points

1 that the court is going to determine in the first
2 instance whether the objection claim is valid, if there
3 is in fact an objection. How do we know this? Because
4 section 522(a) says value is determined as of the date
5 the debtor files for bankruptcy.

6 We do not have sales to determine whether,
7 in fact, the property is what it's worth. We determine
8 whether the -- that the claim of exemption is valid.
9 First, there's a judicial determination of value. It's
10 geared towards the date of the petition date. Why?
11 Because Congress understood that debtors want this
12 property, not just a check from the trustee. It's part
13 and parcel of their fresh start. As this Court
14 explained in Rousey and in Owen, that the fresh start
15 policy embraces the exemption. That is very plain.

16 JUSTICE BREYER: I'm very confused because
17 of your answer to Justice Sotomayor. I thought what you
18 were saying -- she said, well, you only have 30 days;
19 you get all this value. That doesn't say very much.
20 You said, well -- you -- you said less. Okay?

21 MR. BRUNSTAD: I'm sorry, Justice Breyer.

22 JUSTICE BREYER: You said less time.
23 Which isn't much of an answer, but it's something. Now,
24 I would have thought you were going to say but it's 30
25 days from the creditors' meeting ending, and that's a

1 movable feast that could last 5 years. You could keep
2 postponing it. You can go to the judge and say, Judge,
3 give me an extension, which he'll do. So there's no
4 problem here. But you didn't say that.

5 So the fact that you didn't say that
6 suggests to me you're not certain about what this
7 practical impact is.

8 MR. BRUNSTAD: I am certain about it.

9 JUSTICE BREYER: You are certain?

10 MR. BRUNSTAD: I would say that, Justice
11 Breyer. I am certain about that. I have just --
12 answered one question, then taken off to another one. I
13 didn't get to --

14 JUSTICE BREYER: All right. How long do
15 these creditors' meetings last? How easy are they to
16 postpone? How -- how easy is it for the trustee to get
17 this information together during the creditors' meeting,
18 et cetera, et cetera? Where do I look to find out the
19 answer to that question?

20 MR. BRUNSTAD: Justice Breyer, the practical
21 reality is that there are over a million bankruptcy
22 cases that are filed a year. Most of those are Chapter
23 13 or Chapter 7 cases, hundreds and hundreds of
24 thousands of them.

25 And that's why the box that's checked on

1 page 28a is a key piece of information for the trustee.
2 When the debtor says, this is basically a no-asset case;
3 after you take account of my exemptions, there's no
4 property left over for unsecured creditors -- the
5 trustee looks at that. And as a practical matter, the
6 trustee makes a judgment -- a judgment call: Hmm. I
7 look at all the things, does it look right? If I feel
8 like I need to ask questions, I will ask them at the
9 meeting of creditors. Which is what happened here.

10 If the trustee then is still suspicious in
11 some way, then the trustee can seek an appraisal, and if
12 the trustee wants to get that appraisal, then the
13 trustee can ask for additional time to do it. If the
14 court thinks that there's perhaps merit to it, the
15 trustee will give -- the court will give the trustee
16 additional time. More --

17 JUSTICE GINSBURG: Here I thought that the
18 trustee got the appraisal before the creditors' meeting,
19 because at the creditors' meeting he said to her, you
20 put down, what, 10,000; I have an estimate that says
21 \$17,000.

22 MR. BRUNSTAD: Yes. The facts of this case
23 are exactly that, Justice Ginsburg. The trustee here,
24 before the meeting of creditors, went and talked to an
25 auctioneer. In the ordinary situation, it will happen a

1 little bit differently, where the trustee will look at
2 the schedules, and perhaps before the meeting of
3 creditors, the trustee might inquire with someone else,
4 but oftentimes the trustee might ask questions at the
5 meeting of creditors. And then if the trustee wants to,
6 if the trustee thinks it's worth it to get an appraisal,
7 then the trustee will ask for the -- for the additional
8 time to do -- do the appraisal, by either asking the
9 court for an extension or by adjourning the meeting of
10 the creditors.

11 But it's very important at the beginning of
12 the case -- there's a very important finality question
13 here, a finality principle. The debtor needs to know as
14 soon as possible -- and this is why we have an objection
15 deadline. The debtor needs to know as soon as possible:
16 Is this my property? Can I take this cooking equipment
17 and can I use it? Am I the one who is to insure it?
18 Can I conduct my business? Can other creditors lend me
19 money now, now that I'm going through bankruptcy and I
20 have my discharge? Or is this something that the
21 trustee is going to take and sell?

22 That is why we have this objection deadline,
23 to basically say to the trustee, if you have any
24 objections whatsoever about the debtor keeping this
25 property -- whether their value, or the statutory basis

1 under 522(d) is incorrect -- whatever reason it may be,
2 make your objection and we'll have a quick determination
3 by the court.

4 It cannot be true, as the trustee would like
5 it, that the trustee can sell at any particular point in
6 time in the future without having to make an objection,
7 because that --

8 JUSTICE GINSBURG: Mr. Brunstad, do we know
9 what is the division among bankruptcy judges on this
10 issue? I mean, you are urging that when those columns 3
11 and 4 match, that's a tip-off that the debtor is
12 claiming the entire property is exempt. Do we know what
13 is the lay of the land among bankruptcy judges?

14 MR. BRUNSTAD: Not precisely, Justice
15 Ginsburg, because many of these issues are resolved by
16 unpublished orders. That it is very difficult to
17 evaluate and get a hold of. But I think by and large
18 the vast majority of bankruptcy courts follow Taylor in
19 this -- in this area and will say, well, when you list
20 the value of the asset, if the trustee has an objection
21 as to value, then the trustee must make the objection.
22 If the trustee doesn't make the objection --

23 JUSTICE KENNEDY: Well, once again, Taylor
24 had the word "unknown," and this doesn't. And that's
25 the problem.

1 MR. BRUNSTAD: Yes, Justice Kennedy, so the
2 courts have to apply the holding in Taylor to a slightly
3 different factual context. But most bankruptcy courts
4 say this is really the same situation. Because after
5 all, in Taylor, what the trustee was saying was that I
6 think the debtor is getting too much -- was getting too
7 much at the end of the day. And the same thing here,
8 the trustee is saying: I think the debtor is getting
9 too much; it may be worth more.

10 But if the debtor thinks there's a
11 problem with the valuation -- again, make an objection,
12 because we need to have that finality. Finality was a
13 key concept in --

14 JUSTICE KENNEDY: You mean if the trustee
15 thinks there's a problem?

16 MR. BRUNSTAD: Yes, Justice Kennedy, thank
17 you for correcting me. If the trustee thinks there is a
18 problem, the trustee has to make an objection. We get
19 that finality taken care of, and then we can move on.

20 JUSTICE SOTOMAYOR: Counsel, in -- what's
21 interesting is that all of the circuits or most, the
22 majority, have not announced the fixed rule. The rule
23 they've said is: It depends on the circumstances.
24 And so it appears to me that most of the courts are
25 saying to us: We don't want a default rule, because we

1 have to see what has happened and see what has happened
2 between the parties to determine in one situation rather
3 than another what the intent was.

4 It's not an irrational rule. Why shouldn't
5 we be considering that as an alternative? Because once
6 we make an announcement like the one that you're
7 proposing, it is an inducement to undervalue your
8 property, for a debtor, because -- in the hopes that an
9 overly worked trustee won't have either the time or
10 opportunity or wherewithal to understand that the value
11 is off and that they're going to lose something that the
12 estate is entitled to.

13 MR. BRUNSTAD: I can see that, Justice
14 Sotomayor, but I think that here are much worse
15 incentives with the trustee's rule, and much worse
16 problems, much greater harm to the statutory scheme.

17 Now, Your Honor's question about these court
18 of appeals' decisions -- I think a lot of them are
19 driven by the following, which has since been cured by
20 an amendment to the rule. A lot of them involve
21 situations where the court of appeals was thinking --
22 and looking at the record and thinking the debtor was
23 engaging in some kind of misrepresentation or
24 manipulation. And, as Justice Stevens pointed out in
25 his concurrence in Taylor, you know, there is this --

1 what about this problem? Are there 105 powers? Are
2 there -- is there authority for the bankruptcy court to
3 basically act, if you have a basically bad-acting
4 debtor?

5 Now the current version of Rule 4003 makes
6 an exception for fraud. If there were bad things that
7 happened, that's been taken care of now under the rule.
8 But we shouldn't assume that and certainly not in this
9 case. Ms. Reilly was perfectly honest and
10 straightforward. She set forth everything that the
11 forms required. The really --

12 JUSTICE SOTOMAYOR: No. There are
13 comparable circuit court opinions and situations very
14 analogous to this one, where the circuit courts have
15 looked at what the trustee and the debtor have done
16 during the process.

17 And if the debtor has not made it clear that
18 they're seeking the full value of the property, as
19 happened here, there was a conversation that the value
20 was off, the debtor did not tell the trustee that she
21 was claiming the full amount of the property. And there
22 are analogous situations where the circuits have said,
23 no, that doesn't show your intent because you didn't
24 articulate it to the trustee in the informal meetings.

25 That's not an irrational conclusion by those

1 circuits.

2 MR. BRUNSTAD: It's not an irrational
3 conclusion, except it is one that is contrary to the
4 statutory scheme. It basically says to the trustee, you
5 need not object by the 30 days, if you want to sell the
6 property.

7 JUSTICE SOTOMAYOR: No. What it says is, if
8 you're engaged in good faith negotiation over a value or
9 over the claimed exemption, you should -- both sides
10 should be open about it.

11 MR. BRUNSTAD: Yes, but, Justice Sotomayor,
12 it is the filing of the objection that triggers the
13 negotiation, and this is key. This is -- this is really
14 quite key because the practice is that, if the trustee
15 exempts to the -- exempts -- sorry -- objects to the
16 valuation, then there is a court hearing, and the court
17 will resolve the objection if the parties can't
18 negotiate it afterwards.

19 And if you look --

20 JUSTICE SOTOMAYOR: Most of these cases, the
21 objections are -- the discussions are not at the time of
22 objection. They are at the time of the creditors'
23 meeting. It is part of the discussion. That's what the
24 courts are looking to. What's happening between the
25 parties? Have they made their intent clear, and what

1 does that intent reflect?

2 MR. BRUNSTAD: But if there is no objection,
3 then is no involvement of the court, and the
4 conversation stops. And the reason why you have the
5 objection is because the trustee has the burden of
6 coming forward and demonstrating that the debtor's
7 valuation is wrong. And that's important because when
8 the trustee is now saying, oh, I just need to sell, I
9 don't have to object, the trustee is evading his burden
10 of proof.

11 By just simply saying, I'm authorized to
12 sell, I am going to sell, as long as it is not the
13 debtor who doesn't object. The trustee's proposal
14 inverts the burden of proof.

15 It's now under the trustee's proposal, when
16 the trustee files a motion to sell, the debtor has to
17 come forward and object and now say, wait, I have a
18 valuable exemption here.

19 What -- what the trustee then has done is
20 simply said, I don't have to comply with my burden of
21 proof that's set by the rule and the statute. After
22 all, section 522(1) puts the burden on the trustee, as
23 well, to object.

24 So they are inverting the burden of proof,
25 and Congress and rules have put the burden of proof

1 completely in the opposite way. And, again, we need
2 that -- we need that finality.

3 The trustee would basically have, under his
4 proposal, an ability to file a motion to sell a year
5 later, 2 years later, 4 years later, by reopening a
6 case that's been closed, if the trustee thought that.

7 Our whole point about finality, which was a
8 key principle animating the decision below and also this
9 Court's decision in Taylor, where the Court made the
10 observation that, although these deadlines may yield, in
11 some situations, unwelcome results, they serve very
12 important finality interests.

13 The debtor needs to know, is this my
14 property? Can I use it?

15 JUSTICE GINSBURG: But this debtor did know
16 at the creditors' meeting -- she certainly knew that the
17 trustee was claiming the property was worth more than
18 what she listed it as being worth.

19 She could have, at that point -- so she had
20 the notice of what he was thinking. She could have, at
21 that point, said, I will remove as many items as
22 necessary to bring me safely within the limit. She
23 didn't do that.

24 MR. BRUNSTAD: That's correct, Justice
25 Ginsburg. Instead she said, this -- the trustee wants

1 to sell all of the property. He's filing -- he filed a
2 motion to sell all of it.

3 The trustee did not give her an opportunity
4 to do that allocation, which she would have had if the
5 trustee had filed an objection.

6 In responding to the objection, she could
7 have said, well, I'm only going to allocate something,
8 because the objection would have been under the
9 exemption rules; whereas, the trustee, when the trustee
10 filed the motion to sell, it was under 363, which is the
11 motion to sell rules, where the debtor would then have
12 had to come forward and object to the motion for some
13 reason, but, again, you don't have that allocation
14 option under section 363.

15 And, again, the trustee puts the cart before
16 the horse. The trustee cannot sell property, unless it
17 is property of the estate, and under section 522, if, in
18 fact, the debtor claims property as exempt, if there is
19 no exemption -- no objection, it is exempt, and,
20 therefore, it's not property of the estate. "Exempt"
21 means exempt from property of the estate. A trustee
22 cannot sell.

23 Congress set up this regime purposefully, to
24 have judicial determinations of exemptions right away,
25 and that, again, is triggered by an objection being

1 filed. That way, we know, at the beginning of the case,
2 does the debtor have the property? Can she use it? Can
3 she continue? Third parties -- can they rely on that?
4 Or is this something the trustee is going to be able to
5 sell?

6 Now, it's important also because the
7 practice, in bankruptcy, as reflected in the Collier
8 forms, is that the bankruptcy court can make a judicial
9 determination. Say, for example, the bankruptcy court
10 here had said: I think there is some merit to the
11 trustee's objection; the property is worth \$12,000.
12 The practice, as reflected in the sample form, is for
13 the court then to say to the debtor: Debtor, if you
14 want to keep this property, give the trustee a check for
15 the difference between what you're entitled to claim and
16 what I'm establishing the value to be.

17 That can happen if an objection to the
18 exemption is filed, and we're under section 522
19 exemptions. That can't happen if we're under section
20 362 sales.

21 So, again, the trustee's rule eliminates
22 that established practice and that established option in
23 favor of the debtor. Also, the debtor could say --
24 could reallocate -- the debtor has the right, under the
25 rules, under Rule 1009, to reallocate her -- her

1 exemptions after the trustee has -- she could have
2 sacrificed some other area or something and taken --
3 taken her additional exemption availability somewhere
4 and applied it.

5 All those options are foreclosed, where the
6 trustee doesn't file an objection and the trustee moves
7 to sell instead.

8 Now -- I see my time has not expired. If
9 there are no further questions?

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.

11 MR. BRUNSTAD: Thank you.

12 CHIEF JUSTICE ROBERTS: Now, Mr. Goldblatt,
13 2 minutes.

14 REBUTTAL ARGUMENT OF CRAIG G. GOLDBLATT

15 ON BEHALF OF THE PETITIONER

16 MR. GOLDBLATT: Thank you. I have two
17 points, one practical and one about what the forms here
18 mean. First, as a practical matter, the task of
19 liquidating and selling the -- the assets of the
20 estates is the work that is done throughout
21 bankruptcy case.

22 Mr. Brunstad's suggestion that,
23 historically, that there was -- the deadline applied to
24 the work of liquidating the estate is simply incorrect.

25 And, in response to Justice Breyer's

1 question, you asked, where do I turn to find out how
2 hard it is to simply extend the deadline? The answer to
3 that question, with respect to the 341 meeting, is page
4 7-7 of the U.S. Trustees' Manual, which says, quite
5 clearly, that such extensions should be granted only
6 under exceptional circumstances, and the trustee should
7 not continue the 341 meeting when the debtor appears at
8 that meeting.

9 So that we have a real practical problem
10 of basically undermining Congress's judgment about
11 giving the trustee adequate time to liquidate the assets
12 for the benefit of creditors.

13 With respect to what these schedules mean
14 and whether the debtor was claiming an in-kind
15 exemption, Chief Justice Roberts, you had it right when
16 you said -- you know, when the debtor files what the
17 value of the property is worth is unclear, the debtor
18 doesn't know, when they file, what this will obtain at
19 auction.

20 The debtor is giving an estimate. The
21 question is whether one should read these forms to say,
22 if it turns out that my estimate is wrong, I want that
23 anyway, or if the -- or if you should read these forms
24 to say, if it turns out that my estimate is wrong, all I
25 want is what Congress gave me.

1 And we think that one shouldn't lightly
2 impute to the debtor a claim to be making an improper
3 and unlawful claim to keep the thing itself, when
4 Congress quite clearly gave the debtor a monetary
5 interest.

6 And, finally, with respect to the question
7 of allocation, the debtor can, at any time, Justice
8 Ginsburg, reallocate, including after the motion to
9 sell, their schedules. Rule 1009 says you can amend as
10 a matter of course. So there is still the opportunity to
11 give the debtor exactly what Congress intended.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel.

13 The case is submitted.

14 (Whereupon, at 12:03 p.m., the case in the
15 above-entitled matter was submitted.)

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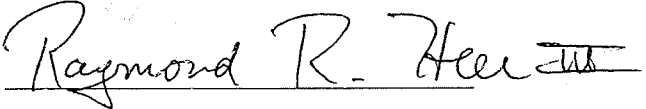
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CERTIFICATION

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Handwritten signature of Raymond R. Heer in cursive script, underlined.

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