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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:

15 CRAIG G. GOLDBLATT, ESQ., Washington, D.C.; on behalf of
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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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 Number 08-538, Schwab v. Reilly.

Mr. Goldblatt.

ORAL ARGUMENT OF CRAIG 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 several

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1 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 assets 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

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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

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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 said in the
16 schedule is that she's claiming exactly what she says,
17 which is that she is claiming a \$10,718 interest in the
18 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

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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 cause --

17 JUSTICE SCALIA: Well, I mean, you say that.
18 But, boy, I wouldn't read -- I wouldn't read -- I
19 wouldn't read the -- the chart that way. It has a
20 column that says "Value of claimed exemption."

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

23 JUSTICE SCALIA: Right.

24 MR. GOLDBLATT: -- which is exactly what the
25 trustee proposes to give her.

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1 JUSTICE SCALIA: Right.

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

14 JUSTICE GINSBURG: So you're going through
15 all the administrative expenses of having an auction
16 where if the trustee had tipped her off, it would be
17 like amending the pleadings.

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

22 JUSTICE GINSBURG: And she was so -- she was
23 so upset, she said: I'll get out of the bankruptcy; I
24 want my cooking equipment.

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

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1 JUSTICE GINSBURG: It was very clear that
2 that's what the debtor wanted.

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

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

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

22 That debtor would have no alternative way to
23 express that but to do exactly what this debtor did
24 here. And we think the most plausible way to read it is
25 -- is to read it to have this debtor be expressing an

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1 intention that is consistent with law and not one that
2 is improper. There is -- there is no basis under which
3 this debtor is entitled to keep more than a \$10,718
4 interest, and under the ordinary presumption that you
5 presume parties --

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

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

20 JUSTICE ALITO: When I look at that number,
21 I -- maybe I don't understand that, so maybe you or your
22 adversary can clarify it for me. But when I look at
23 that number it seems to me there are two ways to
24 interpret it. One is that she is saying: I want the
25 full amount that I'm allowed by law, and the other is

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1 that I want the value of my equipment, and it just so
2 happens to total exactly to the dollar the amount that
3 I'm entitled to by law. Am I correct that those are the
4 two possible readings of that?

5 MR. GOLDBLATT: That's, that's certainly --
6 we think that that's right.

7 JUSTICE ALITO: The question is which of
8 those is the more plausible reading?

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

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

21 MR. GOLDBLATT: That's exactly right,
22 Justice Scalia, but the critical point is that there is
23 no requirement that any trustee come in and object to a
24 valuation if the valuation is improper.

25 Imagine she had --

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

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

21 JUSTICE BREYER: In that case -- in that
22 case I guess there wouldn't be a -- a lawsuit.

23 MR. GOLDBLATT: No, that's exactly right.

24 JUSTICE BREYER: In that case the debtor is
25 never going to object. Or we're --

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

13 JUSTICE KENNEDY: Well, they don't always
14 liquidate the asset, if they -- if they elect -- if
15 everybody agrees that they get the asset itself, they
16 don't have to sell it.

17 MR. GOLDBLATT: That's exactly right. The
18 trustee may determine to abandon an asset to the debtor
19 if there's no --

20 JUSTICE KENNEDY: What -- what -- what you
21 are doing there, you -- you argue that ambiguities are
22 construed against the person that made the form. I
23 think that's a little harsh when the trustee is a repeat
24 player and knows -- and know the rules.

25 MR. GOLDBLATT: Well --

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

6 In this case, it's -- it's -- it's clear
7 that she -- she knew that the Honda was worth more. She
8 was only claiming \$2,900, \$2,950 on the Honda.

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

11 JUSTICE KENNEDY: And -- and if you take
12 that together with -- and -- and the kitchen equipment
13 comes next, and she -- and the value is the same in each
14 column. So that indicates that she was claiming the
15 full value.

16 MR. GOLDBLATT: With -- with respect to
17 the -- the automobile, there's -- there is a claim of
18 exemption and the rest is subject to a security
19 interest. Here -- I mean, the critical point is if a
20 debtor wants to -- to -- to put it to the issue and say,
21 listen, I really want to keep the equipment itself, I
22 don't think there's any value here for the estate, there
23 is a statutory mechanism to address that. Section
24 554(b) says quite clearly that if -- if a party in
25 interest believes that there is an asset as to which

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1 there is inconsequential value, they can seek an order
2 compelling the bankruptcy -- compelling the trustee to
3 abandon that asset to the debtor.

4 So there is -- in Justice Ginsburg's
5 question, there is a mechanism for addressing the
6 concern that Your Honor has with a debtor who wants a
7 determination, that they keep a particular asset.

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

16 MR. GOLDBLATT: With respect, Justice
17 Ginsburg, a -- a -- a simpler rule would be that if a
18 debtor wants to say, I have an in-kind exemption in an
19 asset, the debtor should say that. They should use a
20 term that is understood to mean that.

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

23 MR. GOLDBLATT: Well, that's exactly what
24 the debtor is contending here. She -- the debtor here
25 is saying that this -- this said that even if I'm wrong

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1 about the value --

2 JUSTICE GINSBURG: She is complaining that
3 she would like to keep her cooking equipment and she was
4 entitled to notice before it's going to be sold at an
5 auction.

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

14 JUSTICE GINSBURG: Then -- then her claim is
15 wrong, her claim is objectionable, and the trustee
16 should have made an objection.

17 MR. GOLDBLATT: But the best reading of her
18 schedule is not to make such a claim, but rather to read
19 her schedule to -- to mean what it says, which is that
20 she claimed to have a \$10,718 exemption in the property,
21 and insofar as the property is worth more than that,
22 that that's -- that -- that is a question of valuation,
23 which isn't the subject of an obligation to raise an
24 objection.

25 Also, to the point of simplicity, Justice

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1 Ginsburg, if I may, the -- the -- the virtue of the rule
2 that we urge here is that -- that it does provide for
3 simplicity. A debtor can clearly put the trustee on
4 notice.

5 The consequence of the debtor's rule would
6 be to require trustees, whenever schedules happen to use
7 the same number, to come in and file pro forma
8 objections; and it doesn't seem that there is any reason
9 as a matter of bankruptcy policy or statutory
10 construction to simply require more paperwork to get to
11 the same result.

12 JUSTICE SOTOMAYOR: Has that happened in the
13 two circuits that apply a rule similar to this, the
14 Sixth and the --

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

19 JUSTICE BREYER: Why? I mean, you sit down
20 with the creditors and you look at the list and you try
21 to work things out. That meeting goes on as long as you
22 want. And if it appears there is an argument about
23 valuation, you file an objection.

24 MR. GOLDBLATT: And --

25 JUSTICE BREYER: If it appears everybody can

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1 work everything out, fine. What's the problem?

2 MR. GOLDBLATT: The -- the question is what
3 is the rule where -- where there remains disagreement.
4 And as --

5 JUSTICE BREYER: The rule is -- and that's
6 what it's about -- the rule is about where you object,
7 trustee objects to the list. The list, that's called
8 Schedule C. If you have an objection to the list, then
9 it says: Here's what you do, trustee: Meet with the
10 creditors, try to work it out. And if in fact 30 days
11 thereafter and you don't need any more time, so you
12 don't ask the judge for more time, file an objection.
13 What's the problem?

14 MR. GOLDBLATT: Justice Breyer, it's just
15 different from what the -- what the statute says. What
16 the statute says is that in the absence of an objection,
17 the property claimed as exempt becomes exempt. And if
18 you look at 522(d) and see its description of the
19 property that becomes exempt, that language is clear
20 that it is the debtor's interest up to a dollar amount
21 in an asset. The term "property" here is subject to
22 monetary caps, it's not the asset itself. And the
23 statutory language in that regard couldn't be clearer.

24 JUSTICE GINSBURG: If it's not the asset
25 itself and it's just about money, here I have a piece of

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1 property and it wouldn't matter whether it was a case of
2 widgets or my grandmother's diamond ring. But
3 Congress -- this is a peculiar list it has. It has
4 personal jewelry, tools of trade. It sounds like --
5 even though those have a dollar cap, it sounds like
6 Congress said these are the kinds of things a debtor
7 would want to keep in kind.

8 MR. GOLDBLATT: Well, but those have always
9 been subject -- as this Court explained in *Owen v. Owen*,
10 those types of -- of -- of assets have always been
11 subject to monetary caps, and the same is true here, and
12 522(d) makes that clear. Insofar as the debtor would
13 like to keep it, the debtor is entitled to credit-bid at
14 an auction.

15 I see my time has expired.

16 CHIEF JUSTICE ROBERTS: Well, thank you,
17 Mr. Goldblatt. I'll afford you rebuttal time.

18 MR. GOLDBLATT: I appreciate that, Your
19 Honor.

20 CHIEF JUSTICE ROBERTS: Mr. Wall.

21 ORAL ARGUMENT OF JEFFREY B. WALL

22 ON BEHALF OF THE UNITED STATES,

23 AS AMICUS CURIAE,

24 SUPPORTING THE PETITIONER

25 MR. WALL: Mr. Chief Justice, and may it

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1 please the Court:

2 The government is not saying that it's a
3 coincidence that these numbers in the third and fourth
4 columns are the same. It's a common practice. A debtor
5 will often estimates what she believes to be the market
6 value of her property and then divvy up a wild card
7 across items in hope -- hopes of keeping them.

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

12 Now, I take your concern, Justice Ginsburg,
13 that this might be unfair to debtors who wouldn't be
14 tipped off. That is not true here, where the trustee
15 came to the creditors meeting and said: I construe your
16 exemption as limited, and I think the property is worth
17 about \$7,000 more, and I intend to sell it.

18 And at that point, a debtor who really
19 believed that her schedule claimed full value would, it
20 seems to me, have said: You're misreading my schedule.
21 She didn't do that. She didn't do that until after the
22 30-day period had run when the trustee moved to sell
23 property.

24 JUSTICE GINSBURG: What she did do, she
25 said: That unsettles me so much that I'm going to

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1 withdraw from this bankruptcy proceeding; beyond
2 anything, I want to keep that, that property.

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

13 JUSTICE GINSBURG: But the -- but the
14 Bankruptcy Court did that simultaneously with saying:
15 And I'm going to deny the trustee's motion to have an
16 auction.

17 MR. WALL: That's right. And on remand it
18 would certainly be open to her to attempt to convince
19 the Bankruptcy Court again that she had shown cause
20 under 707 to dismiss.

21 I think the government's point is that there
22 is a process for sale. So even beyond the facts of this
23 case, when the trustee wants to sell property he has to
24 give 20 days' notice to the debtor and the creditors
25 under section 363 of the code and Rule 2002. So if the

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1 trustee here had not even said anything at the first
2 meeting, but had moved to sell, he would have had to
3 give notice to the debtor, who at that point could
4 always amend her schedules under Rule 1009.

5 If she had any exemption left to claim, she
6 could walk in and say: I'm going to amend my schedule
7 and I'm going to increase my exemption, because I
8 underestimated the property value. The reason she
9 didn't and couldn't do there here is because she had
10 maxed out her wild card. But it's -- indeed, even on --

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

13 MR. WALL: And she still could on remand.
14 Even on remand, she could walk in and amend her schedule
15 and say: I'm going to itemize exactly the equipment
16 that I want to keep with my wild card. And I'm going to
17 say which of my kitchen equipment I want to keep with my
18 \$10,225, and which I don't.

19 So, it's not that -- there's nothing about
20 Petitioner's approach that denies the debtor the fresh
21 start to which she is entitled under the code. She can
22 always claim right up to the legal limits.

23 JUSTICE BREYER: That sounds very
24 complicated. The thing that sort of persuades me so
25 far, this is what Collier says, the other side, it's

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1 what all the bankruptcy judges. This is a simpler
2 thing. Look at the procedural rule. It's just what I
3 said. It says: If you have an objection to the list of
4 property. The list of property is C, okay? So here's
5 what you do, trustee: Sit down with the creditors. See
6 if there's really an argument. If there's no argument,
7 fine; They'll let you do what you want.

8 If there is an argument and it has to do
9 with that list, C, particularly valuation, which is what
10 these things are all about, then file your objection.
11 That's so simple. And it seems in most places they do
12 it.

13 So why do we run around Robin's barn or
14 something to get somewhere we can get to much simpler?

15 MR. WALL: Well, there are a number of
16 questions there, Justice Breyer. But with all respect,
17 that is not what the statute and the rules say. What
18 the statute and the rules say is if you have an
19 objection to the property claimed as exempt on the list,
20 and as a historical matter over time, Schedule C has
21 required debtors to put additional information besides
22 their exemptions.

23 JUSTICE BREYER: But Rule 403 doesn't say
24 that. My Rule 403 says: "A party in interest may file
25 an objection to the list of property claimed as -- as

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1 exempt within 30 days after the meeting." Okay?

2 MR. WALL: That's right.

3 JUSTICE BREYER: It says the list. So
4 that's where I think you're becoming awfully legalistic,
5 to try to distinguish between the list and the property
6 in A and B.

7 I mean, these -- these are about valuation,
8 says Collier. That's all we're interested in.

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

17 The idea was we'll provide some useful
18 information to the trustee beyond the claim of
19 exemption, so that if he wants to file a turnover
20 complaint to get the property into the estate he knows
21 where it's located.

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

25 JUSTICE KENNEDY: And is it also true --

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1 tell me about this: One of my concerns is that the
2 trustees simply don't have time in every case to have a
3 creditors' meeting and go through every asset.

4 If they did, then Justice Breyer's
5 suggestion where they'd sit down and talk about all this
6 stuff would be -- would be fine. Am I right or wrong in
7 making that empirical assumption? I mean, I just don't
8 know.

9 MR. WALL: I think that's entirely fair.
10 They do have to have a creditors' meeting, so they do
11 have to -- you know, within 20 or 40 days of the filing
12 of petition. But I think what will happen on
13 Respondent's approach as a practical matter is the world
14 will look no different; it will just have a lot more
15 litigation.

16 Whenever the numbers in columns 3 and 4
17 match up, the trustee will file a pro forma objection or
18 extension request. Cases will proceed exactly as they
19 do now. Property can be sold. Some will be returned to
20 the debtor and some will not.

21 JUSTICE KENNEDY: He has to. Otherwise he
22 is at risk that it might be worth \$400,000 or whatever.

23 MR. WALL: Exactly. And I think the reason
24 that it's odd to set up that kind of presumption is
25 because you're basically presuming that the debtor is

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1 acting to claim an exemption in kind to which he is not
2 entitled under the code.

3 CHIEF JUSTICE ROBERTS: So what does she put
4 down if she thinks this is what the property is worth,
5 but she doesn't know for sure? I mean, I don't know how
6 you would accurately value a bunch of kitchen equipment.
7 What is she supposed to do?

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

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

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

22 CHIEF JUSTICE ROBERTS: Well, that's right.
23 I mean, this is a government form, and you say, even
24 though it says "Value of the claimed exemption" and
25 "Current market value," that these debtors should know,

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1 oh, you should put in, as your friend said, put in an
2 asterisk and write something else in there.

3 MR. WALL: I don't even think it has to be
4 an asterisk. It's -- debtors commonly will put in on
5 these forms where they want to claim full value, even if
6 they're not entitled to it under the code, full value,
7 100 percent of value. The debtor in Taylor wrote down
8 "Unknown." Some contingent term that places the trustee
9 on notice that says: Hey, whatever the value of the
10 property is --

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

17 So your -- on your theory, in order to do
18 what she obviously wants to do, preserve her kitchen
19 equipment, she has to give no information or inaccurate
20 information.

21 If she said -- I think what you're saying is
22 if she said a 100 percent, instead of saying what she
23 thought was the -- the value or if she said unknown, she
24 would be entitled to notice from -- to an objection from
25 the trustee. But because she has tried her best to put

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1 down what the form calls for, she doesn't get any
2 objection from the trustee?

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

7 JUSTICE SCALIA: That -- is that where she
8 would write a hundred percent, in the third column,
9 rather than the fourth?

10 MR. WALL: Well, no. She should write it in
11 the third column because what she would be saying is --
12 the third column is just subjective. It's just what you
13 want to claim, and, under value of claimed exemption,
14 she would say one hundred percent of value.

15 And then, in the fourth column, she would
16 make an estimate as to what she believed that value to
17 be. And, in the event that she underestimated, she
18 could always come in and amend her exemptions.

19 I think it would be odd to read a form where
20 she cited statutory provisions that allow her to claim
21 interest up to a dollar cap and then she has put down
22 definite and fixed numbers to say to the trustee, you
23 should assume, despite the statutory text she cited and
24 the numbers she is giving you, that she is claiming an
25 unauthorized, in-kind exemption, despite the very

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1 statutory provisions on which she's relying as the bases
2 for her exemption.

3 JUSTICE SCALIA: Well, now, wait. Why would
4 the trustee object? I mean, he would still be objecting
5 to the valuation. You say that he has no -- no
6 obligation to object to the valuation.

7 But if she writes a hundred percent of value
8 in the third column, that's what she's claimed, and then
9 values it at something above the exemption, right?
10 Above the permissible objection, he's still objecting to
11 the valuation, isn't he? No?

12 MR. WALL: Justice Scalia, wherever the
13 debtor lists a contingent term in the third column,
14 whether it's unknown or a hundred percent of value, the
15 trustee absolutely has to object.

16 It -- but where the trustee doesn't object
17 is where the debtor does what she did here and lists a
18 fixed sum.

19 CHIEF JUSTICE ROBERTS: Thank you, Mr. Wall.
20 Mr. Brunstad?

21 ORAL ARGUMENT OF G. ERIC BRUNSTAD, JR.

22 ON BEHALF OF THE RESPONDENT

23 MR. BRUNSTAD: Mr. Chief Justice, and may it
24 please the Court:

25 Justice Ginsburg, your reading of the

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1 schedules is completely accurate.

2 There was nothing more that Ms. Reilly could
3 have done to indicate her intent to exempt the property
4 in full.

5 The bankruptcy court looked at this. The
6 bankruptcy judge sees thousands of these kinds of
7 schedules and made that determination.

8 JUSTICE KENNEDY: But she could have said,
9 in full. You can't say she did -- could have done
10 nothing more. She put in full.

11 MR. BRUNSTAD: Well, Justice Kennedy --

12 JUSTICE KENNEDY: Or one hundred percent of
13 value.

14 MR. BRUNSTAD: Justice Kennedy, the form
15 doesn't call for that. The form calls for --

16 JUSTICE KENNEDY: Now, you said that there
17 is nothing else she could do, and I said, of course,
18 there is something else she could do. In Taylor, the
19 case you cite, they put unknown.

20 MR. BRUNSTAD: That's --

21 JUSTICE KENNEDY: I mean, I understand your
22 position, but you can't say there is nothing else she
23 could have done. That's -- that's the issue in the
24 case.

25 MR. BRUNSTAD: Yes, Justice Kennedy, but

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1 consistent with the form and the information the form
2 requests, she completely and accurately provided the
3 information the form requests.

4 And she -- as the bankruptcy court looked at
5 this and said, this is -- she's claiming the property in
6 full. The district court looked at this, the court of
7 appeals looked at this, all to the same conclusion.

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

14 We need to know this because, under Section
15 363(b), a trustee cannot sell property if it is not
16 property of the estate. And if the property is claimed
17 as exempt and nobody files an objection, it is exempt
18 under 522(1). The trustee cannot sell it.

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

24 MR. BRUNSTAD: Just so I'm clear, Chief
25 Justice Roberts, if she claims that -- \$15,000, but she

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1 puts a value of \$100,000? Is that --

2 CHIEF JUSTICE ROBERTS: Oh, no, no. She--
3 she -- and it may be even in good faith or -- or bad
4 faith, depending on the rule we -- we adopt, but she
5 gets that incredible bonus because it turns out her
6 business equipment is worth a lot more than she put
7 down.

8 MR. BRUNSTAD: Well, if she undervalues her
9 equipment, for a hundred years, Chief Justice Roberts,
10 that has been grounds for objection. For a hundred
11 years, the practice has --

12 CHIEF JUSTICE ROBERTS: Well, the -- the
13 trustee doesn't know. He doesn't know. He looks at it
14 and says, oh, that sounds like kitchen equipment might
15 be worth that, and so he doesn't object.

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

20 MR. BRUNSTAD: Not quite, Chief Justice
21 Roberts, and here's why: The trustee gets the form, and
22 then there is the meeting of creditors, and the trustee
23 gets to ask questions before the deadline actually
24 occurs.

25 Here, the trustee went and asked somebody

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1 else, do you think this is worth more than she's
2 claiming? And, apparently, somebody said, perhaps it
3 is.

4 Then the trustee could ask the questions of
5 the debtor directly, and if the debtor -- if the trustee
6 needs more time, the trustee can do one of two things;
7 move for an extension of time to object or simply
8 adjourn the meeting of creditors.

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

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

19 MR. BRUNSTAD: Yes, Your Honor, but that's
20 what the statute does. It poses the burden on the
21 trustee. The rule, 4003, imposes the burden on the
22 trustee to object if the trustee has any grounds for
23 thinking what the debtor has done is improper.

24 Now, the schedules are signed under penalty
25 of perjury. There are criminal sanctions under

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1 18 U.S.C. Sections 152 and 157 if the debtor is engaged
2 in fraud. There are penalties under 727 or 707; the
3 case can be dismissed; the debtor can lose her
4 discharge. These are very serious affairs stating this
5 information. The debtor here very thoughtfully itemized
6 all the property, she filled out all the information on
7 the form, and she did something else, Chief Justice
8 Roberts. On page 28a of her schedules, she checked a
9 box that's required, and that box that the debtor
10 requires -- is supposed to check basically tells the
11 trustee: This is a no-asset case; there's not any value
12 left over for anybody else after you account for my
13 exemptions.

14 It's very clear from the box she checked
15 off, from the information that she had provided, she was
16 claiming the property in full, the very property that
17 she wanted, her tools of trade to engage in her
18 business. Again, thousands of these forms are done.
19 Here, the bankruptcy court looked at this and said she
20 was exempting the property in full. The trustee knows
21 this. The trustee sees thousands of forms. He had the
22 information that he claims forms the basis of his
23 objection well before his deadline passed, yet he
24 allowed the 30-day period to go by without presenting an
25 objection.

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

4 MR. BRUNSTAD: In the last column, Justice
5 Alito?

6 JUSTICE ALITO: Yeah.

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

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

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

15 JUSTICE ALITO: It wasn't \$10,717; it wasn't
16 \$10,719; it was \$10,718? That's what she meant?

17 MR. BRUNSTAD: That was her valuation of the
18 equipment, Justice Alito.

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

23 MR. BRUNSTAD: No, Justice Scalia, because
24 she didn't exhaust --

25 JUSTICE SCALIA: If you -- her valuation

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1 just happened to be exactly the amount that the two
2 exemptions she had would add up to.

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

13 Here, the trustee offered nothing. There is
14 nothing in the record to rebut her valuation that she
15 swore under penalty of perjury was accurate.

16 She did -- again, Justice Scalia, she had
17 more exemptions she could have used.

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

25 MR. BRUNSTAD: No, Justice Alito, because

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1 \$10,718 is not her max. That's not the maximum amount
2 of value that she could have claimed. She properly did
3 what all debtors have to do. They are required to do
4 this under the forms. They are required to inventory
5 their property in Schedule B; they are required in
6 Schedule C to state a value, if in fact they know it.

7 JUSTICE GINSBURG: Can you elaborate on this
8 additional -- you said she could have listed and --
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 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

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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

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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 kinds
16 of valuations problems, and now suddenly when the rule
17 has changed in some circuit, they do object as a matter
18 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, but
22 it was a problem or it wasn't and the creditor would
23 then file an -- the trustee would then file an
24 objection. Well, what is the case? How does the
25 practice work? I'm pretty uncertain. I'm not a

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1 bankruptcy expert.

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

5 JUSTICE BREYER: But how did it work
6 normally for years and years? You'd go to 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 was --

18 JUSTICE BREYER: He had been a bankruptcy
19 attorney. Maybe he knows. Now, I don't know if he
20 knows, because I'm worried the government hasn't looked
21 into this, and somebody's telling them who knows it's
22 the opposite.

23 MR. BRUNSTAD: Justice Breyer, under the
24 rules, the trustee has the burden of objecting if the
25 trustee has any basis for objection, including

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

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

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

18 MR. BRUNSTAD: Yes, Justice Sotomayor, and
19 the trustee has had that burden for about 100 years.
20 And under the Formal Bankruptcy Act, they had much
21 shorter deadlines, 20 days, 15 days.

22 JUSTICE SOTOMAYOR: No, there's a huge
23 difference between a rule that says you don't have to
24 actually go after this information in the formal way.
25 If someone's claiming only the exempt amount, then I'll

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1 go ahead and I'll administer the estate, and over time
2 I'll talk informally to people and get a sense of
3 whether the valuation is right or not, but I won't
4 actually -- actually have to get a formal appraisal
5 because I'll just use my judgment.

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

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

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

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

23 JUSTICE KENNEDY: What if he claims the
24 whole property is exempt?

25 MR. BRUNSTAD: Well, if the debtor claims

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1 the property is exempt, then it's not property of the
2 estate unless the trustee inter poses a timely and
3 successful obligation, because section 362 of the
4 Bankruptcy Code which authorizes sales only specifically
5 authorizes sales of property of the estate; and if
6 someone claims property as exempt, if no objection is
7 interposed under 522(1), then the property claim --

8 JUSTICE KENNEDY: My question was, I thought
9 I understood your remark to say anytime there is a sale
10 there has to be a valuation or an appraisal before the
11 sale.

12 MR. BRUNSTAD: If, in fact, the debtor
13 claims the property is exempt, that's correct, unless
14 the debtor concedes the trustee can sell it. That has
15 to happen anyway, Justice Kennedy.

16 JUSTICE GINSBURG: Do we know what --

17 JUSTICE KENNEDY: But the very fact that
18 there's going to be a sale may indicate that your
19 premise is not true most of the time.

20 MR. BRUNSTAD: No, Justice Kennedy, and
21 here's why, because the statute, for example, points
22 that the court is going to determine in the first
23 instance whether the objection claim is valid, if there
24 is in fact an objection. How do we know this? Because
25 Section 522(a) says value is determined as of the date

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1 the debtor files for bankruptcy.

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

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

17 MR. BRUNSTAD: I'm sorry, Justice?

18 JUSTICE BREYER: You used to have less time.
19 Which isn't much of an answer, but it's something. Now,
20 I would have thought you were going to say but it's 30
21 days from the creditors meeting ending, and that's a
22 movable feast that could last five years. You can keep
23 postponing it, you go to the judge and say, judge, give
24 me an extension, which he'll do. So there's no problem
25 here. But you didn't say that.

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1 So the fact that you didn't say that
2 suggests to me you're not certain about what this
3 practical impact is.

4 MR. BRUNSTAD: I am --

5 JUSTICE BREYER: You are certain.

6 MR. BRUNSTAD: I would say that, Justice
7 Breyer; I am certain about that. I have just --
8 answered one question, then taken off to another one, I
9 didn't --

10 JUSTICE BREYER: How long do these creditors
11 meetings last? How easy are they to postpone? How --
12 how easy is it for the trustee to get the information
13 together during the creditors meeting, et cetera, et
14 cetera; where do I look to find out the answer to that
15 question?

16 MR. BRUNSTAD: Justice Breyer, the practical
17 reality is that there are over a million bankruptcy
18 cases that are filed a year. Most of those are chapter
19 13 or Chapter 7 cases, hundreds and hundreds of
20 thousands of them. And that's why that the box that's
21 checked on page 28a is a key piece of information for
22 the trustee. When the debtor says this is basically a
23 no-asset case; after you take account of my exemptions
24 there's no property left over for unsecured creditors,
25 The trustee looks at that. And as a practical matter,

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1 the trustee makes a judgment -- a judgment call. "Hmm.
2 I look at all the things, does it look right?" If I
3 feel I need to ask questions, I will ask them at the
4 meeting of creditors, which is what happened here.

5 If the trustee then is still suspicious in
6 some way, then the trustee can seek an appraisal, and if
7 the trustee wants to get that appraisal, then the
8 trustee can ask for additional time to do it. If the
9 court thinks that there's perhaps merit to it, the trust
10 will give -- the court will give the trustee additional
11 time.

12 JUSTICE GINSBURG: Here I thought that the
13 trustee got the appraisal before the creditors meeting,
14 because at the creditors meeting he said to her, you put
15 down, what, 10,000; I have an estimate that says
16 \$17,000.

17 MR. BRUNSTAD: Yes. The facts of this case
18 are exactly that, Justice Ginsburg. The trustee here
19 before the meeting of creditors went and talked to an
20 auctioneer. In the ordinary situation, it will happen a
21 little bit differently, where the trustee will look at
22 the schedule, and perhaps before the meeting of
23 creditors the trustee may inquire of someone else, but
24 oftentimes the trustee might ask questions at the
25 meeting of creditors. And then if the trustee wants to,

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1 if he thinks it's worth it to get an appraisal, then the
2 trustee will ask for the -- for the additional time to
3 do - to do the appraisal, by either asking the court for
4 an extension or by adjourning the meeting of the
5 creditors.

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

17 That is why we have this objection deadline,
18 to basically say to the trustee, if you have any
19 objections whatsoever about the debtor keeping this
20 property -- whether their value, or the statutory basis
21 under 522(d) is incorrect -- whatever reason it may be,
22 make your objection and we'll have a quick determination
23 by the court.

24 It cannot be true, as the trustee would like
25 it, that the trustee can sell at any particular point in

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1 time the future without having to make an objection.

2 Because --

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

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

18 JUSTICE KENNEDY: Well, once again Taylor
19 had the word unknown, and this doesn't. And that's the
20 problem.

21 MR. BRUNSTAD: Yes, Justice Kennedy, so the
22 courts have to apply the holding in Taylor to a slightly
23 different factual context. But most bankruptcy courts
24 say this is really the same situation. Because after in
25 Taylor, what the trustee was saying was that I think the

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1 debtor is getting too much, getting too much at the end
2 of the day.

3 And the same thing here, the trustee is
4 saying I think the debtor is getting too much. It may
5 be worth more. But if the debtor thinks there is a
6 problem with the valuation, again, make an objection,
7 because we need to have that finality. Finality was a
8 key concept in --

9 JUSTICE KENNEDY: You mean the if trustee
10 thinks there's a problem?

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

15 JUSTICE SOTOMAYOR: Counsel, in -- what's
16 interesting is that all of the circuits or most of the
17 majority have not address -- announced the fixed rule.
18 The rule they said is, it depends on the circumstances.
19 And so it appears to me that most of the courts are
20 saying to us, we don't want a default rule, because we
21 have to see what has happened and see what has happened
22 between the parties to determine in one situation rather
23 than another what the intent was. It's not an
24 irrational rule.

25 Why shouldn't we be considering that as an

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1 alternative? Because once we make an announcement like
2 the one that you're proposing, it is an inducement to
3 undervalue your property for a debtor because -- in the
4 hopes that an overly worked trustee won't have either
5 the time or opportunity or wherewithal to understand
6 that the value is off and that they're going to lose
7 something that the estate is entitled to.

8 MR. BRUNSTAD: I can see that, Justice
9 Sotomayor. But I think that here are much worse
10 incentives with the trustee's rule, and much worse
11 problems, much greater harm to the statutory scheme.

12 Now, Your Honor's question about these court
13 of appeals decisions, I think a lot are driven by the
14 following, which has since been cured by an amendment to
15 the rule. A lot of them involved situations where the
16 court of appeals was thinking, and looking at the
17 record, and thinking the debtor was engaging in some
18 kind of misrepresentation or manipulation. And as
19 Justice Stevens pointed out in his concurrence in
20 Taylor, you know, there is this -- what about this other
21 problem, are there 105 powers, is there authority for
22 the bankruptcy court to basically act, if you have a
23 basically bad-acting debtor.

24 Now the current version of Rule 4003 makes
25 an exception for fraud. If there were bad things that

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1 happened, that's been taken care of now under the rule.
2 But we shouldn't assume that and certainly not in this
3 case. Ms. Reilly was perfectly honest and
4 straightforward. She set forth everything that the
5 forms required. There really --

6 JUSTICE SOTOMAYOR: No. There are
7 comparable circuit court opinions and situations very
8 analogous to this one, where the circuit courts have
9 looked at what the trustee and the debtor have done
10 during the process.

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

19 That's not an irrational conclusion by those
20 circuits.

21 MR. BRUNSTAD: It's not an irrational
22 conclusion, except it is one that is contrary to the
23 statutory scheme. It basically says to the trustee, you
24 need not object by the 30 days, if you want to sell the
25 property.

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1 JUSTICE SOTOMAYOR: No. What it says is, if
2 you're engaged in good-faith negotiation over value or
3 over the claimed exemption, you should -- both sides
4 should be open about it.

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

13 And if you look --

14 JUSTICE SOTOMAYOR: Most of these cases, the
15 objection are -- the discussions are not at the time of
16 objection. They are at the time of the creditors'
17 meeting. It is part of the discussion. That's what the
18 courts are looking to. What's happening between the
19 parties? Have they made their intent clear, and what
20 does that intent reflect?

21 MR. BRUNSTAD: But if there is no objection,
22 then is no involvement of the court, and the
23 conversation stops, and the reason why you have the
24 objection is because the trustee has the burden of
25 coming forward and demonstrating that the debtor's

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1 valuation is wrong.

2 And that's important because when the
3 trustee is now saying, oh, I just need to sell, I don't
4 have to object, the trustee is evading his burden of
5 proof.

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

10 It's now under the trustee's proposal, when
11 the trustee files a motion to sell, the debtor has to
12 come forward and object and now say, wait, I have a
13 valuable exemption here.

14 What -- what the trustee then has done is
15 simply said, I don't have to comply with my burden of
16 proof that's set by the rule and the statute. After
17 all, Section 522(1) puts the burden on the trustee, as
18 well, to object.

19 So they are inverting the burden of proof,
20 and Congress and rules have put the burden of proof
21 completely in the opposite way. And, again, we need
22 that -- we need that finality.

23 The trustee would basically have, under his
24 proposal, an ability to file a motion to sell a year
25 later, two years later, four years later, by reopening a

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1 case that's been closed, if the trustee thought that.

2 Our whole point about finality, which was a
3 key principle animating the decision below and also this
4 Court's decision in Taylor, where the Court made the
5 observation that, although these deadlines may yield, in
6 some situations, unwelcome results, they served very
7 important finality interest.

8 The debtor needs to know, is this my
9 property? Can I use it?

10 JUSTICE GINSBURG: But this debtor did know
11 at creditors' meeting, she certainly knew that the
12 trustee was claiming the property was worth more than
13 what she listed it as being worth.

14 She could have, at that point -- so she had
15 the notice of what he was thinking. She could have, at
16 that point, said, I will remove as many items as
17 necessary to bring me safely within the limit. She
18 didn't do that.

19 MR. BRUNSTAD: That's correct, Justice
20 Ginsburg, Instead she said, this -- the trustee wants to
21 sell all of the property. He's filing -- he filed a
22 motion to sell all of it.

23 The trustee did not give her an opportunity
24 to do that allocation, which she would have had, if the
25 trustee had filed an objection.

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1 In responding to the objection, she could
2 have said, well, I'm only going to allocate something
3 because the objection would have been under the
4 exemption rules, whereas the trustee, when the trustee
5 filed the motion to sell, it was under 363, which is the
6 motion to sell rule, where the debtor would then have
7 had to come forward and object to the notion for some
8 reason, but, again, you don't have that allocation
9 option under Section 363.

10 And, again, the trustee puts the cart before
11 the horse. The trustee cannot sell property, unless it
12 is property of the estate, and under Section 522, if, in
13 fact, the debtor claims property as exempt, if there is
14 no exemption -- no objection, it is exempt, and
15 therefore, it's not property of the estate.

16 Exempt means exempt from property of the
17 estate. The trustee cannot sell. Congress set up this
18 regime purposefully, to have judicial determinations of
19 exemptions right away, and that, again, is triggered by
20 an objection being filed. That way, we know, at the
21 beginning of the case, does the debtor have the
22 property? Can she use it?

23 Can she continue? Third parties, can they
24 rely on that? Or is this something the trustee is going
25 to be able to sell?

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1 Now, it's important also because the
2 practice, in bankruptcy, as reflected in the Collier
3 forms, is that the bankruptcy court can make a judicial
4 determination. Say, for example, the bankruptcy court
5 here had said, I think there is some merit to the
6 trustee's objection. The property is worth \$12,000.

7 The practice, as reflected in these sample
8 form, is for the Court then to say to the debtor,
9 debtor, if you want to keep this property, give the
10 trustee a check for the difference between what you're
11 entitled to claim and what I'm establishing the value to
12 be.

13 That can happen if an objection to the
14 exemption is filed, and we're under Section 522
15 exemption, that can't happen if we're under Section 362
16 sales.

17 So, again, the trustee's rule eliminates
18 that established practice and that established option in
19 favor of the debtor. Also, the debtor could say --
20 could reallocate -- the debtor has the right, under the
21 rules, under Rule 1009, to reallocate her -- her
22 exemptions after the trustee has -- she could have
23 sacrificed some other area or something and taken --
24 taken her additional exemption availability somewhere
25 and applied it.

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1 All those options are foreclosed, where the
2 trustee doesn't file an objection and the trustee moves
3 to sell instead.

4 Now, I see my time has not expired. If
5 there are no further questions?

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 MR. BRUNSTAD: Thank you.

8 CHIEF JUSTICE ROBERTS: Mr. Goldblatt, two
9 minutes.

10 REBUTTAL ARGUMENT OF CRAIG GOLDBLATT

11 ON BEHALF OF THE PETITIONER

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

18 Mr. Brunstad's suggestion that,
19 historically, that there was -- the deadline applied to
20 the work of liquidating the estate is simply incorrect.

21 And, in response to Justice Breyer's
22 question, you asked, where I do turn to find out how
23 hard it is to simply extend the deadline? The answer to
24 that question, with respect to the 341 meeting, is page
25 7-7 of the U.S. Trustee's Manual, which says, quite

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1 clearly, that such extensions should be granted only
2 under exceptional circumstances, and the trustee should
3 not continue the 341 meeting when the debtor appears at
4 that meeting.

5 So that -- we have a real practical problem
6 of basically undermining Congress's judgment about
7 giving the trustee adequate time to liquidate the assets
8 for the benefit of creditors.

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

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

22 And we think that one shouldn't lightly
23 impute to the debtor a claim to be making an improper
24 and unlawful claim to keep the thing itself, when
25 Congress quite clearly gave the debtor a monetary

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1 interest.

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

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.

9 The case is submitted.

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

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