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IN THE SUPREME COURT OF THE UNITED STATES

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JASON M. RANSOM, :

Petitioner :

v. : No. 09-907

FIA CARD SERVICES, N.A., FKA MBNA :

AMERICA BANK, N.A. :

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Washington, D.C.

Monday, October 4, 2010

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:06 a.m.

APPEARANCES:

CHRISTOPHER P. BURKE, ESQ., Las Vegas, Nevada; on behalf of Petitioner.

DEANNE E. MAYNARD, ESQ., Washington, D.C.; on behalf of Respondent.

NICOLE A. SAHARSKY, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the United States, as amicus curiae, supporting Respondent.

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P R O C E E D I N G S

(10:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this term in Case 09-907, Ransom v. FIA Card Services.

Mr. Burke.

ORAL ARGUMENT OF CHRISTOPHER P. BURKE
ON BEHALF OF THE PETITIONER

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

In 2005, Congress passed the Bankruptcy Act. It made a policy decision to limit judicial discretion on a case-by-case basis in the area of reasonable and necessary expenses. It did so by creating a formula that entailed an aggregate set amount of expenses for an individual.

Now, Congress could have created this from scratch. It could have used an arbitrary figure. But instead, there were figures that the IRS already had, based on Census Bureau statistics, that said nationwide, in a certain area, an individual would spend this much a month on average.

In the case of Mr. Ransom, that's approximately 2500 a month. Forgetting about how it's divided up, if I had 100 people come in and answer the

1 following five questions the same way Mr. Ransom did,
2 and that's age, location, household size, gross income,
3 and if you have a vehicle, how many, they would all get
4 a \$2500 standard aggregate deduction, which works out to
5 \$150,000 over a 5-year period.

6 Now, the crux of this is whether or not
7 courts are allowed to dig in and cut out pieces of the
8 standard aggregate amount.

9 JUSTICE ALITO: Why is that the crux of it?
10 Congress made reference to the local standards, right?

11 MR. BURKE: Yes.

12 JUSTICE ALITO: And were the -- was the
13 commentary in the Collection Financial Standards in
14 existence at the time when Congress enacted this
15 provision?

16 MR. BURKE: There was a Collection Financial
17 Analysis that was in place, and it was noted in 1998 as
18 a prior version of the bill that ultimately wasn't
19 passed.

20 JUSTICE ALITO: And that explains what the
21 IRS understands the local standards to mean; isn't that
22 right?

23 MR. BURKE: I would disagree with that. I
24 would say -- well, it would -- it would explain what the
25 IRS means, but that's where I would end it, because the

1 IRS standards are used to collect taxes. They are
2 discretionary. They --

3 JUSTICE ALITO: Well, I understand that, but
4 Congress decided to make reference to the local
5 standards in this bankruptcy provision, didn't it?

6 MR. BURKE: Standards.

7 JUSTICE ALITO: Yes.

8 MR. BURKE: It didn't go beyond that.

9 JUSTICE ALITO: And this -- and at the time
10 when it did that, there was official IRS commentary
11 regarding the meaning of those standards, correct?

12 MR. BURKE: For the IRS to use in collecting
13 taxes.

14 JUSTICE ALITO: And your argument is that
15 Congress intended to adopt the standards promulgated by
16 the IRS, but not the IRS's interpretation of the
17 standards.

18 MR. BURKE: Correct, not their methodology
19 or interpretation.

20 JUSTICE GINSBURG: Doesn't the chart say
21 "ownership costs"?

22 MR. BURKE: Yes.

23 JUSTICE GINSBURG: And you would read that
24 to mean non-costs as well? I mean, if the -- if the
25 table is called ownership costs, then why not use the

1 IRS's definition of what costs are, and that definition
2 says, what, loan payments and lease payments?

3 MR. BURKE: Because you -- we have to look
4 at it as a standard aggregate. And what I mean by that
5 is -- okay, the Bankruptcy Code doesn't define ownership
6 costs. And ownership costs could be the replacement
7 value. It could be buying a new vehicle. It could be
8 the costs associated with making payments on a vehicle.

9 What that -- that average number is, in this
10 case, \$471, is a nationwide figure that somebody would
11 spend on average in a month. It doesn't mean that any
12 one individual spends that amount.

13 JUSTICE SCALIA: Mr. Burke, isn't it --
14 isn't it the case that, even on the other side's
15 interpretation of it, it doesn't come down to actual
16 costs anyway? Isn't it the case, or do I misunderstand
17 it, that so long as there is one payment, you get the
18 entire deduction?

19 MR. BURKE: That's their position, or even
20 \$1.

21 JUSTICE SCALIA: Even one payment of \$1, you
22 get the entire deduction. So to argue this case as
23 though it's a question of whether you actually expend
24 the money that you're getting the credit for is
25 simply -- is simply false. You don't do that under

1 either side's interpretation, right?

2 MR. BURKE: Again, I would perhaps --

3 JUSTICE SCALIA: I'm trying to help you,

4 Mr. Burke.

5 (Laughter.)

6 JUSTICE GINSBURG: Mr. Burke, before you
7 respond to that question, isn't it so that in the event
8 that Justice Scalia just proposed, the trustee could
9 propose an amendment to the plan to reflect that that
10 cost is no longer being incurred?

11 MR. BURKE: The cost has never been
12 incurred. That's the point. And --

13 JUSTICE GINSBURG: My question is: In the
14 situation that Justice Scalia proposed, it's not
15 automatic that the \$471 gets deducted because there
16 could be proposed an amendment of the plan to reflect
17 that that -- there's no longer any expense for
18 ownership.

19 MR. BURKE: In the situation where there is
20 a dollar, of course, an amendment can be made. But see
21 the -- the dollar doesn't show up in the means test.
22 The means test is the aggregate --

23 JUSTICE GINSBURG: But it isn't -- it isn't
24 automatic that because there's one payment, then
25 forever, the rest of the 5 years, he gets to deduct the

1 \$471.

2 MR. BURKE: That's what the lower court
3 said.

4 JUSTICE SCALIA: Excuse me. What -- what
5 happens under the tax law? Do they make an adjustment
6 under the tax law as well?

7 MR. BURKE: Of course -- under the tax law,
8 you get a standard deduction.

9 JUSTICE SCALIA: A standard --

10 MR. BURKE: No different than here. Nobody
11 goes behind the scenes and says, hey, what is that
12 standard deduction?

13 JUSTICE SCALIA: Right. So that they --
14 what is suggested is that you look at it and apply the
15 IRS's approach as to whether you get into the chart, but
16 then you don't use the IRS's approach when the trustee
17 takes you out of the chart. Is that what you think is
18 the law?

19 MR. BURKE: No, that's not what I think is
20 the law. What I'm saying is Congress has given, in this
21 case, an individual like Jason Ransom \$150,000 over 5
22 years to spend. They are not saying whether he actually
23 spends it in any one category.

24 For instance, the car ownership might be --
25 equate to \$28,000 over 5 years. Rent might be 1,000.

1 That's 60,000 over 5 years. Congress did not say go
2 back and make sure Mr. Ransom is spending every dollar.
3 These are averages across the nation. And when it comes
4 to a car ownership expense, we're not saying spend \$471.
5 Oh, you have no payment? You didn't spend anything for
6 5 years?

7 No. What it's saying is, over 5 years, I
8 have a cost associated with owning that vehicle, whether
9 it's a loan or lease payment, whether it's replacing the
10 vehicle, whether it's major repairs, on average, across
11 the country.

12 JUSTICE BREYER: You do. You do, but the
13 difficulty that I -- I don't get the answer to
14 Justice Ginsburg's first question.

15 Of course you have all kinds of costs
16 dealing with ownership, but what the IRS says, what it
17 says in the statute, is you are supposed to take the
18 applicable costs from IRS. And what it has on page 5a
19 is it has something called "ownership costs."

20 MR. BURKE: Correct.

21 JUSTICE BREYER: And it defines those as
22 \$471.

23 MR. BURKE: Correct.

24 JUSTICE BREYER: And then on 3a, where it
25 says what ownership costs are, it says the

1 transportation standards consist of nationwide figures
2 for monthly loan or lease payments, referred to as
3 ownership costs. So when I read that, I said ownership
4 costs means monthly loan or lease payments, nothing
5 else.

6 Now, you have all kinds of other things.
7 It's just these words "ownership costs" don't refer to
8 those other things, because of that definition given
9 right there. That's what I thought Justice Ginsburg was
10 initially asking.

11 JUSTICE GINSBURG: Yes, I was.

12 JUSTICE BREYER: And I -- and how -- how do
13 you get out of that what I think of as very, very clear
14 language which says what these standards refer to?

15 MR. BURKE: Because the standards refer to
16 the numbers. It's a chart.

17 JUSTICE BREYER: Yes, but it doesn't -- for
18 example, suppose you buy a dozen apples every month, and
19 they cost you \$48 extra. You're not going to say the
20 ownership costs refer to the apples, even if you
21 decorate the car with them.

22 (Laughter.)

23 MR. BURKE: What -- what --

24 JUSTICE BREYER: I mean, ownership costs
25 refers to lease and loan payments. Nothing else.

1 JUSTICE SCALIA: What's the language we're
2 dealing with, Mr. Burke? Do you want to quote the
3 language to us?

4 Nobody's quoted the language. What does it
5 say is applicable?

6 MR. BURKE: What the statute says is the
7 applicable -- you shall get, mandatory, the applicable
8 amounts specified based on where a debtor resides --

9 JUSTICE SCALIA: Wait. The -- the
10 applicable amounts specified where?

11 MR. BURKE: In the national local standards.

12 JUSTICE SCALIA: Read the text of the
13 statute, would you, please, for me? I couldn't even get
14 it from your brief. You had to refer me back to the
15 petition. Why isn't in an appendix to your brief or
16 printed in the beginning of your brief, instead of
17 kicking me back to dig out your petition?

18 MR. BURKE: "The debtor's monthly expenses
19 shall be the debtor's applicable monthly expense amounts
20 specified under the national local standards."

21 JUSTICE SCALIA: "Amount specified under"
22 the standard.

23 MR. BURKE: Specific amount, "applicable"
24 modifies "amounts specified."

25 JUSTICE SCALIA: "Applicable amounts

1 specified," not the amounts specified if applicable.

2 MR. BURKE: Correct, based on where a debtor
3 resides.

4 Now, the only way a court can say that an
5 individual has to have a debt on a car to get this
6 deduction -- there's two ways: One --

7 JUSTICE ALITO: Look at the local standard,
8 which is on page 8 of the appendix to your brief, right?
9 And all it says is "Ownership Costs," "First Car,"
10 "\$471." That's the relevant text, isn't it?

11 MR. BURKE: Yes.

12 JUSTICE ALITO: What if a person leases a
13 car? Do you think they get ownership costs?

14 MR. BURKE: Yes, because they get the cost
15 whether they owe on it or not.

16 JUSTICE ALITO: But they don't own the car,
17 so how can they get ownership costs?

18 MR. BURKE: There's a different definition.
19 "Ownership" doesn't mean -- it can mean possession.

20 But --

21 JUSTICE ALITO: Where do you get that, from
22 the --

23 MR. BURKE: Black's Law Dictionary.

24 JUSTICE ALITO: -- from the Collection
25 Financial Standards?

1 MR. BURKE: No. The Collection Financial
2 Standards say you get the lease -- you get the deduction
3 if you have a loan or a lease payment.

4 JUSTICE ALITO: Where do you get the
5 definition that somebody who leases something owns it?

6 MR. BURKE: I don't. I'm not sure they do
7 own it.

8 JUSTICE ALITO: Then how do they get
9 ownership costs?

10 MR. BURKE: Because you have possession of
11 it. It's based on having the item. It's costs
12 associated with having the item, whether it's paid off
13 or not.

14 JUSTICE ALITO: If somebody rents an
15 apartment, do they own the apartment?

16 MR. BURKE: Probably under ownership, their
17 possession is some type of an ownership. It may be just
18 possessory.

19 JUSTICE BREYER: Is there something wrong
20 with the IRS saying what they mean? It says ownership
21 costs means monthly loan or lease payments. Now, is
22 there something --

23 MR. BURKE: The problem --

24 JUSTICE BREYER: That's what it says it
25 means. Now, is there something illegal about it

1 defining ownership costs in that way?

2 MR. BURKE: No, for the collection of taxes,
3 there is not. But if you're going to use -- start
4 digging into the manual, you might as well bring it all
5 into 707(b), and, as we discussed earlier, there was
6 language that said the collection financial analysis
7 should be brought in, but that was deleted in the final
8 version.

9 JUSTICE GINSBURG: Why not just -- it says
10 you are supposed to look at the form; it says ownership
11 costs. So the only thing you'd look at the IRS for
12 is -- the manual -- is to define ownership costs. And
13 they say ownership costs means those two things.

14 MR. BURKE: Well, I don't -- there's no
15 reason to limit it. If you're going to -- the text
16 doesn't say -- it says national local standards. It
17 doesn't discriminate or give disparate treatment to that
18 one item. If you're going to give it to one item, then
19 it can be pulled in, and it should be -- the same
20 treatment should be given to all items, and we should
21 have to prove some type of a --

22 JUSTICE GINSBURG: I don't follow that. If
23 the simple thing is to just -- what does the word
24 "costs" mean? And then you look to the IRS manual, and
25 it tells you that "costs" means loan or lease payments.

1 MR. BURKE: To collect taxes, that's how
2 they defined it. But in the statute it says you get
3 "local standard amounts specified." It does not stretch
4 it and say "under the IRS's interpretation." That
5 language was taken out. And if we were to use the IRS's
6 interpretation, here's the whole problem: It's
7 discretionary. It goes up and down. It's based on an
8 IRS revenue agent. It -- let me give you a separate
9 example. Nobody --

10 JUSTICE KAGAN: Mr. Burke, if we could stay
11 with this. The \$471 is derived by looking at the
12 average loan or lease payments nationwide. Then, in
13 addition to that, we know that the IRS has a separate
14 category for operating costs that is meant to reflect
15 costs of having a car that are not your loan and lease
16 payments. So, between those two things, why wouldn't we
17 say that ownership costs means your loan and lease
18 payments, but operating costs means your other costs of
19 having a car, and that you get the operating costs if
20 you have a car but don't make loan and lease payments,
21 and you get the ownership costs if you do make loan and
22 lease payments?

23 MR. BURKE: Because to reach that, you have
24 to go into the Internal Revenue Manual. It's not in the
25 statute that says you have to owe on it to get it. And

1 if you go into the Internal Revenue Manual -- let's look
2 at operating expenses. What it says, in collecting
3 taxes -- and it's in the Joint Appendix at pages 83
4 through 88. But what it says, when it comes to local
5 national other expenses, an internal revenue agent has
6 discretion. You only get these expenses -- this is the
7 overall idea -- if they produce income or if it's for
8 health and welfare.

9 And so, when we look at the Joint Appendix
10 page 88, section B, under the local standard
11 transportation expenses, when it talks about operating
12 costs, which is something you just mentioned, it says
13 you only get transportation expenses that are used to
14 produce income or the health and welfare of an
15 individual and their family.

16 Plus, the fact that you own a car, the IRS
17 under its discretion can take away the operating costs
18 if it's on four cinder blocks in your backyard. You're
19 not incurring fuel costs, mileage costs; you are not
20 probably paying registration or any of those other
21 operating costs. The IRS agent, under their manual, can
22 take away that expense.

23 So, why stop and say, well, we're just going
24 to look at the ownership costs? And all they're saying
25 here is if you owe on it, you get it; if you don't owe,

1 you don't get it. Let's not look at anything else in
2 the Internal Revenue Manual, which is a 39-part,
3 500-page document that in some ways is almost
4 incomprehensible, and direct the --

5 JUSTICE GINSBURG: Mr. Burke, the -- it's
6 unusual to allow a deduction for the purpose of
7 calculating disposable income although you don't have
8 any expense. I understand how you get to that
9 conclusion with respect to car ownership. Is there any
10 other provision that in -- in calculating disposable
11 income, you are allowed a deduction for an expense that
12 you don't incur?

13 MR. BURKE: If the Court understands my view
14 that Congress gave --

15 JUSTICE GINSBURG: No. The question -- is
16 there anything else that works like this? You don't
17 have the expense, nonetheless you have the deduction?
18 Any -- I mean, there are a whole list of deductions,
19 expenses. Is there any other one that works this way?
20 It doesn't matter whether you have the expense, in fact.

21 JUSTICE KAGAN: For example, Mr. Burke, what
22 would happen if you didn't actually have any
23 out-of-pocket medical costs? Could you still claim a
24 deduction for out-of-pocket medical costs?

25 MR. BURKE: I'm saying you get all the

1 deductions, whether you owe on it or not. Is there a
2 specific one besides the car ownership that says you
3 have to owe on it? No. But my point is --

4 JUSTICE KENNEDY: Is that the general view
5 of the courts? Is the answer that you just gave
6 supported uniformly by the courts that have looked at
7 this?

8 MR. BURKE: There's about 60 published
9 cases. They are split almost 50-50, actually more --

10 JUSTICE KENNEDY: Even -- in other words,
11 even on this point, they are split?

12 MR. BURKE: This is one line that they have
13 looked at in the cases. Basically --

14 JUSTICE SCALIA: I don't understand what
15 you're saying. He asked, are they split 50-50 on the
16 point that is before us here? Yes or no?

17 MR. BURKE: Yes, they're about 50-50.

18 JUSTICE SOTOMAYOR: Do they apply -- do the
19 courts apply the housing and utilities listed amount
20 whether or not you pay for a house or not, whether or
21 not you rent?

22 MR. BURKE: There's two published cases I'm
23 aware of, and both allowed it. One, somebody had
24 military housing; one, the house was paid off. Both
25 courts said you get it under the local standards. But

1 the IRS manual would not give that to you, because under
2 the local standards the IRS manual says you get the
3 specific amount or your actual payment, whatever is
4 less.

5 JUSTICE SCALIA: Of course, once again, Mr.
6 Burke, this is -- I don't know why you don't point this
7 out. This is not the difference between your position
8 and the position of the other side. You get the
9 deduction for the other side as well, whether or not you
10 are making the payment. Now, maybe it can be adjusted
11 by the trustee, but as far as the statute is concerned,
12 so long as you make one payment of \$1, under their
13 theory you're entitled to claim the deduction; isn't
14 that right?

15 MR. BURKE: That's correct.

16 JUSTICE SCALIA: So.

17 JUSTICE KENNEDY: My question, incidentally,
18 about courts was not with reference to the car expense.
19 It was with reference to the hypothetical or to the
20 issue proposed by one of my colleagues, that said, what
21 if you don't -- Justice Kagan -- suppose you don't have
22 the medical expense. And the answer -- and your -- and
23 I wanted to know if your answer is supported uniformly
24 by the courts that have looked at this, or if there is
25 also a split on that point?

1 MR. BURKE: I apologize for not
2 understanding it. No, every other expense deduction
3 that I have seen besides the car ownership, somebody
4 gets it.

5 CHIEF JUSTICE ROBERTS: And they get it
6 whether or not they incur that expense or not?

7 MR. BURKE: Correct.

8 CHIEF JUSTICE ROBERTS: In other words,
9 food -- you don't have to say, well, he did spend this
10 much money on food, so he gets the standard deduction.

11 MR. BURKE: Correct.

12 CHIEF JUSTICE ROBERTS: If he doesn't eat as
13 much as somebody else, he gets the same deduction,
14 right?

15 MR. BURKE: Correct. Or if he lives at home
16 and mom cooks for him.

17 JUSTICE KAGAN: But, Mr. Burke, even you
18 would say -- is this correct -- that if you don't own a
19 car at all, you can't claim the car costs?

20 MR. BURKE: Yes.

21 JUSTICE SCALIA: Is that -- is that by
22 reason of the Internal Revenue Service --

23 MR. BURKE: No.

24 JUSTICE SCALIA: -- manual, or is it by
25 reason of the Bankruptcy Code itself?

1 MR. BURKE: It's by reason of the Bankruptcy
2 Code that refers to the standards, and the standards
3 specifically say you have one car, no cars, and you get
4 a public transportation, or two cars; pick the one.

5 JUSTICE SCALIA: So it's in the chart --

6 MR. BURKE: It's in the chart.

7 JUSTICE SCALIA: -- that you claim -- okay.

8 JUSTICE ALITO: What if you own a car, but
9 it's completely inoperable and it has no value? You buy
10 it for a dollar. It's a junk car, and you're planning
11 possibly to restore it at some point. Do you get the
12 deduction then?

13 MR. BURKE: Based on a strict reading of the
14 code, you get it.

15 Now, would the IRS allow it? Again, that's
16 a discretionary standard, but any time you have an
17 objective test, there's going to be line-drawing and
18 perceived unfairness on the outskirts.

19 JUSTICE KENNEDY: And would your answer be
20 the same if the allowance was set, the decree was made,
21 and -- and the debtor then went out and bought the
22 junker to put in his driveway just in order to get the
23 400-plus dollars a month, or would that be deemed an
24 evasion of the law that could be addressed by the
25 Bankruptcy Court?

1 MR. BURKE: It can addressed by the
2 Bankruptcy Court, and that's the beauty of the statute.
3 We don't need to go into the Internal Revenue Manual.
4 We just need their tables, because there's a provision,
5 1325(a)(3), that deals with good faith. So if it
6 appears somebody is not acting in good faith, then --

7 JUSTICE BREYER: What is -- we've got about
8 half the courts in the country agreeing with you. And
9 so you've read all those arguments, and what in your
10 opinion is the best one on the point, again, where I am
11 stuck, which is Justice Ginsburg's original point? I
12 mean, I can think of millions of examples. You have a
13 form that says -- the employer says entertainment
14 expenses. Then it defines entertainment expenses as
15 food and transport, and they leave out movies, you know.
16 Or you could have vacation expenses, and vacation
17 expenses are defined as transport and hotel, and they
18 leave out meals. And here we have a definition of
19 ownership expenses, and they say leasing and loaning,
20 and they leave out other forms of ownership.

21 MR. BURKE: Because --

22 JUSTICE BREYER: Now, the argument is, well,
23 that's what they mean by it, so that's what applicable.
24 Now, what's the best argument against that in those
25 50 cases? Why is it trying -- why to try to get an

1 expense which isn't loan or lease? Have you any more
2 right to it than if you tried to get an expense to my
3 totally irrelevant apples? I mean, it doesn't fit
4 within the applicable definition. What's the answer?

5 MR. BURKE: The means test is a form, and if
6 you look at the form -- the means test is a form.

7 JUSTICE BREYER: I've looked at the form.

8 MR. BURKE: If you look at the form --

9 JUSTICE BREYER: Yes.

10 MR. BURKE: It just says --

11 JUSTICE BREYER: Ownership.

12 MR. BURKE: That's it. There's no
13 definition in the form.

14 JUSTICE BREYER: But they -- two pages
15 earlier they say what they mean by the word "ownership."

16 MR. BURKE: Not the -- the IRM does.

17 JUSTICE BREYER: Yes.

18 MR. BURKE: Not the statute and not the B22
19 form that's filled out by debtors.

20 JUSTICE BREYER: You say half the courts
21 say, oh, you just sort of imagine what ownership
22 expenses are, and anything that they can fall within
23 that general English language word is what they can
24 deduct; is that their approach? Because we -- you say
25 cut off the definition, cut off the definition from the

1 word "ownership"; don't use it. So what do we use to
2 define what ownership is?

3 MR. BURKE: We don't have to. Congress gave
4 standard amounts for --

5 JUSTICE BREYER: No, I know, but it's for
6 ownership; it's not for, for example, whistling. It's
7 for ownership. So -- so how do we define what that \$471
8 attaches to? Do we use a State common law definition or
9 something? How have they done it?

10 MR. BURKE: Because you can take it as a
11 bunch of variables. It's not in the Bankruptcy Code.
12 If -- so it could be replacement costs; it could be
13 major repairs; it could be --

14 JUSTICE SCALIA: Is this a problem
15 distinctive to your case? Doesn't the other side have
16 the same problem with ownership? Don't they acknowledge
17 that even if you are leasing the car you get the
18 deduction?

19 MR. BURKE: Yes.

20 JUSTICE SCALIA: I don't see why this is
21 distinctive to your case. It's a problem both sides
22 face. And we don't avoid it by coming out against you,
23 do we?

24 MR. BURKE: No, we don't.

25 JUSTICE BREYER: Why?

1 JUSTICE ALITO: What if -- what if the
2 definition of --

3 JUSTICE BREYER: Why don't we?

4 JUSTICE ALITO: -- ownership costs was moved
5 into the local standards themselves? Would the outcome
6 be different then?

7 MR. BURKE: Are you saying in 707(b)?

8 JUSTICE ALITO: No. It's moved from the CFS
9 to the local standards, which are referred to in the --
10 in the code provision.

11 MR. BURKE: My answer would still be the
12 same because that's not a congressional formula. That's
13 a form that comes off the Department of Justice Website
14 which administers the U.S. Trustee's program and that's
15 their litigation position.

16 JUSTICE KAGAN: But, Mr. Burke, if the table
17 said loan and lease costs, you wouldn't have a case? If
18 it said -- instead of ownership costs, if it said loan
19 and lease costs, then you would sit down and you would
20 say I'm not entitled to that deduction?

21 MR. BURKE: No. I would say an individual
22 who owns a car, whether they owe or not, gets the
23 deduction because it's part of this aggregate standard.

24 JUSTICE KAGAN: Even if it's called loan and
25 lease costs?

1 MR. BURKE: Correct. It's not a breakdown
2 on what any one individual has. It's an aggregate.

3 JUSTICE GINSBURG: You may want to save the
4 rest of your time for rebuttal.

5 MR. BURKE: Thank you. I will.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Ms. Maynard.

8 ORAL ARGUMENT OF DEANNE E. MAYNARD

9 ON BEHALF OF THE RESPONDENT

10 MS. MAYNARD: Mr. Chief Justice, and may it
11 please the Court:

12 The Bankruptcy Code precludes an above-
13 median-income debtor like Petitioner from shielding from
14 his creditors \$471 a month for a car payment that he
15 does not have. A debtor with --

16 JUSTICE SOTOMAYOR: -- food costs, housing
17 costs, utility costs, by getting his parents to pay for
18 those things and still take this deduction?

19 MS. MAYNARD: The statute allows a debtor to
20 take an applicable monthly expense amount. So if the
21 debtor truly has no food costs, then the food standard
22 would be not applicable to the debtor, so --

23 JUSTICE SOTOMAYOR: Your adversary said that
24 only two courts have addressed this issue and have
25 permitted those deductions. So under what reasoning

1 would we apply a different standard to the car costs as
2 opposed to those other costs?

3 MS. MAYNARD: Well, I think, with respect --
4 I think the cases he was talking about were housing.

5 JUSTICE SOTOMAYOR: Housing.

6 MS. MAYNARD: Right. So housing and car
7 costs are part of the local standards. Food, clothing,
8 house cleaning supplies, those are part of the national
9 standards. The -- in our view, the text that goes along
10 with -- accompanies the tables, which is not the
11 Internal Revenue Manual -- it's just the pages reprinted
12 at 1a to 3a of our brief. The Collection Financial
13 Standards, the prefatory explanation for what the tables
14 mean. In our view, that is -- goes along with --
15 incorporated into the national local standards.

16 The national standards, Justice Sotomayor,
17 are allowed, as long as you have under the calculations
18 -- as explained in the standards, under the national
19 standards, a debtor would receive the allowance in the
20 table as long as they have any such expense, so
21 regardless of amount. However, if they have no such
22 expense, then they are taken out by the statutory
23 language in the means test, which says that the standard
24 must be applicable to the debtor. And --

25 CHIEF JUSTICE ROBERTS: So if they have

1 pre-purchased their food expenses, so long as they have
2 \$1 of food expense they get the entire expense even
3 though they're not incurring it?

4 MS. MAYNARD: If they are --

5 CHIEF JUSTICE ROBERTS: And there are things
6 like, you can pay up, you know, have the grocery deliver
7 your food every month and you can pay in advance, and if
8 you're paid up, you still get the full food expense that
9 is allowed?

10 MS. MAYNARD: No, Your Honor. I think if,
11 over the 60-month period looking forward, you know, that
12 you're going to -- you've already paid up for your food
13 for the next 60 months and you're not going to incur any
14 additional food expenses, no, then in that situation the
15 standard would be inapplicable to you. You would be
16 having no -- in that hypothetical --

17 CHIEF JUSTICE ROBERTS: But if you paid \$1
18 for food, you'd get the full amount for 60 months?

19 MS. MAYNARD: Under the standard. That's
20 the way the standards operate, Your Honor.

21 I haven't seen any cases litigated over food
22 expense --

23 CHIEF JUSTICE ROBERTS: So your argument
24 leads to a result that's just as absurd as your
25 colleague's result on the other side.

1 MS. MAYNARD: I don't believe so, Your
2 Honor --

3 CHIEF JUSTICE ROBERTS: I mean, that was a
4 big part of your argument. You said his position leads
5 to an absurd result, and yours is just as absurd.

6 MS. MAYNARD: I don't think so, Your Honor,
7 for this reason, which is that the national standards
8 are food, clothing, house cleaning supplies, things that
9 you expect every debtor to have. You don't see much
10 litigation about those expenses. The local standards,
11 however, operate differently. In our view -- and our
12 view's different from the government's, Justice Scalia.
13 In our view, under the local standards and the way that
14 they apply as explained in the Collection Financial
15 Standards, is that the debtor is allowed their actual
16 expense for the local standard or the amount in the
17 table, whichever is less. So in the hypothetical --

18 JUSTICE SOTOMAYOR: Where does it say that?

19 MS. MAYNARD: In our --

20 JUSTICE SOTOMAYOR: The debtor's monthly
21 expenses shall be the debtor's applicable monthly
22 expense amounts specified under the national and local
23 standards. So the national and local standards have
24 amounts listed. Where does it say you take only the
25 actual, not the national or local standard?

1 MS. MAYNARD: I read that text, Your
2 Honor -- again, the Court doesn't need to decide this
3 maximum cap issue to decide this case, because the
4 Petitioner has no expense whatsoever, and so it's not
5 applicable to him.

6 But in our view, Justice Sotomayor -- in our
7 view, you get it from the language of the statute that
8 says the debtor's applicable monthly expense amounts
9 specified under the national standards and local
10 standards. And the way that we understand the national
11 and local standards to work is, if you look at page --
12 it's explained on page 1a of the petition to our brief,
13 the red brief. Maximum allowance -- it's the third
14 paragraph down: "Maximum allowances for housing and
15 utilities and transportation, known as the Local
16 Standards, vary by location. Unlike the National
17 Standards, the taxpayer is allowed the amount actually
18 spent or the standard, whichever is less."

19 JUSTICE SOTOMAYOR: But that's -- but that's
20 not what the provision at issue here says. It says you
21 use the amount specified under the national standards,
22 and you use actual for everything else. That's what the
23 statute said. So now you're trying to move the actual
24 into the first half of the text?

25 MS. MAYNARD: No, Your Honor, that's not how

1 I understand the text. The text provides --

2 JUSTICE SOTOMAYOR: Why would you even
3 bother? Why don't you -- if -- if what you're arguing
4 is that only actual expenses are -- are what you can
5 claim, you wouldn't need the first half.

6 MS. MAYNARD: Yes, you would, Your Honor,
7 because what the -- what the statute's purpose here is
8 -- I mean, I think it's helpful to step back.

9 Chapter 13 sends one to chapter 7's means
10 test for the purpose of calculating the amounts
11 reasonably necessary for the maintenance and support of
12 the debtor. And Congress chose to import the -- the
13 methodology of the national standards and local
14 standards as a way both to set the categories of
15 expenses that debtors could receive payments for, and,
16 with the case of the national and local standards, to
17 set the amounts. They were worried about capping upper
18 discretion because Congress -- it's quite clear from the
19 text and the legislative history -- was concerned about
20 above-median-income debtors taking luxurious expense
21 amounts.

22 JUSTICE SOTOMAYOR: So what you would have
23 the statute read is: The debtor's monthly expenses
24 shall be the debtor's applicable monthly expense amounts
25 specified, as a -- as a maximum. You would have to add

1 "maximum" somewhere there.

2 MS. MAYNARD: No, Your Honor, because the
3 amount under the national standards, as the national
4 standards operate, is the -- is an allowance, not an
5 actual, and the amount under the local standards, as
6 they operate, is the amount actually spent or the amount
7 in the table, whichever is less. And, again --

8 CHIEF JUSTICE ROBERTS: Your -- your
9 position penalizes debtors who pay their expenses in
10 advance, who don't incur additional debt to pay for
11 things like their car. I would have thought the
12 Bankruptcy Code would think that's a good thing, that
13 they're not incurring debt that they can't afford to pay
14 off, but instead, to the extent they can, they're paying
15 expenses in advance. Why should somebody who does that
16 be in a worse position than somebody -- than somebody
17 who takes out a loan they can't afford to pay back?

18 MS. MAYNARD: Money is fungible, Your Honor,
19 so to the extent the debtor has incurred expenses before
20 going into bankruptcy instead of, as here, paying off
21 this more than \$85,000 in credit card debt, shouldn't be
22 able to --

23 CHIEF JUSTICE ROBERTS: Well, he hasn't
24 incurred -- he hasn't incurred expenses. It's the whole
25 point, I guess, that he's paid for something.

1 MS. MAYNARD: He used his money, perhaps, to
2 purchase his car outright, instead of to pay down his
3 credit card debt, and so he has a salary of \$50,000, and
4 he has a credit card debt of \$85,000, and he owns a
5 2-year car -- 2-year-old car outright. He should not be
6 able to deduct, as a measure of his reasonably necessary
7 expenses for his maintenance and support over the next
8 50 months, \$28,000 that he doesn't need for a car
9 payment that he doesn't make.

10 JUSTICE BREYER: You're --

11 CHIEF JUSTICE ROBERTS: Even though he can
12 do it -- even though he can do it for everything else --
13 he can do it for food, he can do it for housekeeping
14 expenses, he can do it for personal care expenses, he
15 can even do it -- the other, the final category is
16 miscellaneous, so he can do it for anything.

17 MS. MAYNARD: Well, the miscellaneous, all
18 those numbers are capped, and the legislative history
19 makes clear Congress thought all those numbers would
20 actually effectively act as caps. In other words, to
21 the extent there was debate in the Congress, Congress
22 was concerned that these numbers were actually too low,
23 not that they were going to give anybody a windfall.
24 But to the extent --

25 JUSTICE SOTOMAYOR: So what you're proposing

1 is that every debtor has to go to the Bankruptcy Court
2 and show what their monthly food bills have been over
3 what period of time, how much their personal supplies
4 have been over what period of time? How can you
5 calculate forward what they are going to spend on a
6 monthly basis for each of those items? Isn't that the
7 reason the tables are used, so that you don't have to do
8 that?

9 MS. MAYNARD: Yes, Your Honor, and in the
10 national standards, which all the items you just list
11 are national standards, under the national standards you
12 don't do the actuals. On page 1a, it explains:
13 "Allowances for food, clothing and other items, known as
14 the National Standards, apply nationwide except for
15 Alaska and Hawaii.... Taxpayers are allowed the total
16 National Standards amount for their family size and
17 income level, without questioning amounts actually
18 spent."

19 For -- yes, for those hard-to-calculate
20 items, you do -- our position is you do get the amounts
21 in the chart. For local standards -- the local
22 standards, however, which include home, mortgage, lease
23 expenses, utilities, and transportation, which include
24 both ownership costs and operating costs, you get the
25 actual or whichever is less.

1 JUSTICE SCALIA: I must say your position is
2 more logical than the position that you read in some of
3 the instructions applicable to the -- to the chart
4 that's referred to in the Bankruptcy Code, but not
5 others. I mean, it seems to me, if you're going to read
6 in the requirement that have to have made a lease
7 payment, you should also read in the requirement that
8 you're referring to now, which would mean your deduction
9 is limited by the -- by the amount of your lease
10 payment.

11 I don't see why -- is there any reason why
12 one would read in the other one and not read in yours?

13 MS. MAYNARD: Not in our view, Your Honor,
14 because in our view the chart is -- is ambiguous about
15 what the number stands for. And so in the national
16 standards, the text, the prefatory text, explains that
17 the amount is an allowance if you have the expense. In
18 the local standards, the prefatory text explains that
19 the amount operates as a cap.

20 But the important point for this case, Your
21 Honor, is that you don't have to decide anything about
22 the national standards because Petitioner is left at the
23 statutory door. He has no applicable monthly expense
24 amount for operating --

25 JUSTICE KAGAN: Ms. Maynard, what would

1 happen if the debtor had a car that was 200,000 miles
2 old -- 200,000 miles, and it was going to break down,
3 you know, within the next 5 years? Would the debtor
4 then be able to take the deduction?

5 MS. MAYNARD: If the debtor owns the car
6 outright at the time they file for bankruptcy, they
7 would not get the deduction.

8 JUSTICE KAGAN: Even though if you look
9 ahead, if you project forward, it's pretty clear that
10 the debtor is going to have to incur those expenses?

11 MS. MAYNARD: They would not get the
12 deduction under this calculation. However, under this
13 Court's decision in Lanning, when one goes to project
14 the disposable income, it's conceivable that the debtor
15 could prove that it's known or virtually certain that
16 they will need a new car and that that could be
17 accounted for.

18 But -- but also the Bankruptcy Code in 1329
19 allows for modification of a plan, and so when the time
20 arises that their car conks out and they need a new car,
21 they can move to modify their plan. I think it's --

22 JUSTICE KAGAN: Well, the modification works
23 for chapter 13, but it doesn't work for chapter 7; is
24 that right?

25 MS. MAYNARD: Well, they make that statement

1 in their reply brief, Your Honor, but I'm not sure
2 exactly what they mean by that, because in chapter 7
3 this test is being used for a very different purpose.
4 It's the gateway; it's a presumptive test for abuse.
5 And so, again, our reading makes perfect sense in that
6 context because what you want to know is, does this
7 debtor actually have moneys it can prepay its creditors,
8 should it be --

9 JUSTICE BREYER: The -- sorry. Are you
10 finished?

11 MS. MAYNARD: I was -- I actually haven't
12 answered her question.

13 JUSTICE BREYER: Go ahead.

14 CHIEF JUSTICE ROBERTS: Why don't you finish
15 answering the question?

16 JUSTICE BREYER: Finish, yes.

17 MS. MAYNARD: So, in chapter 7, once you --
18 if you decide it's presumptively --- not presumptively
19 abusive, and you stay in chapter 7, then chapter 7 is a
20 liquidation. There's no ongoing plan. So I -- all of
21 your nonexempt assets are liquidated, your creditors are
22 paid off, and then you are discharged. If 3 years from
23 now your car conks out, you're just like you and me; you
24 are not in bankruptcy, you just -- you try to make do.

25 JUSTICE BREYER: I think it is -- well, I'm

1 trying to work out what was his point. And I don't
2 blame him for this. But trying to figure it out, he
3 says look: This whole thing was written for a different
4 purpose than the IRS, and if we start reading all those
5 things from the beginning into the tables, we're really
6 going to get into a mess. For example, we are going to
7 give people deductions when they have lease payments,
8 even though they're not owners when they have lease
9 payments. The company owns -- not even an ownership
10 expense, but it does say use the lease payment. And
11 then it has all these other things.

12 So forget it; do a simple thing. It says
13 ownership expense. You go to the registry of motor
14 vehicles and you say, is Smith the owner? And they'll
15 tell you, yes or no. And if the answer is yes, he
16 deducts \$471. Sometimes that's too little; sometimes
17 that's too much. But once we depart from that, we're
18 really in a nightmare of trying to figure out what all
19 these things mean that were written for other purposes.
20 So, what do you say to that?

21 MS. MAYNARD: I say, Justice Breyer, that
22 there's nothing in the statute or the legislative
23 history that suggests this was meant to be an overall
24 budget for above-median-income debtors. This was about
25 capping upper discretion and limiting the expenses

1 available as reasonably necessary expenses for
2 above-median-income debtors.

3 And I think that point is made perfectly
4 clear by the fact that if you can compare it to what
5 happens now to a below-median-income debtor, a
6 below-median-income debtor in the same situation as
7 Petitioner, who owns his car outright, would be allowed
8 no amount as an expense for his vehicle, because he
9 doesn't have an actual expense that's reasonably
10 necessary.

11 And I think that the 2005 Congress would
12 think it was a senseless result, as they argue here,
13 that Petitioner gets \$471, above-median-income debtor,
14 the very class of debtors with whom Congress was
15 concerned in the 2005 amendments, to shield from his
16 creditors over the life of the plan when he has no
17 comparable expense.

18 CHIEF JUSTICE ROBERTS: Do you think that --

19 JUSTICE KENNEDY: What we are talking about
20 is a paradigm of someone -- we're comparing someone who
21 has a \$470-a-month car payment and he gets -- and he
22 gets the deduction. Why is that, in light of the second
23 sentence -- let's see, the third sentence of the
24 statute, which says, "Notwithstanding any other
25 provision of this clause, the monthly expenses of the

1 debtor shall not include any payments for debts." I
2 mean, that would be the car company.

3 And has -- has that point been litigated?

4 MS. MAYNARD: That -- that sentence is
5 somewhat of a conundrum, Your Honor, and I think that
6 the Court doesn't need to decide the meaning here,
7 because whatever it does, it doesn't get Petitioner
8 within the Romanette ii calculation --

9 JUSTICE KENNEDY: No -- no, but it would --

10 MS. MAYNARD: -- because he has no payment.

11 JUSTICE KENNEDY: It would eliminate the
12 anomaly that -- one of the principal anomalies. There
13 are many anomalies in each position. It would eliminate
14 one of the principal asymmetries that seems to concern
15 the counsel and the Court.

16 MS. MAYNARD: Well, my understanding of that
17 provision is that it serves two purposes.

18 JUSTICE KENNEDY: That it?

19 MS. MAYNARD: Serves two purposes. The
20 first is that it makes clear -- in the back of our
21 brief, we have the other necessary expenses from the
22 IRM. And on -- near the back, page 25a, two of the
23 categories of other necessary expenses are secured or
24 legally perfected debts and unsecured debts.

25 So I think the -- the otherwise -- the

1 "notwithstanding" sentence makes clear that Romanette ii
2 should not capture those other unsecured debts and
3 secured debts, that it's the very purpose of this whole
4 calculation to figure out how much money you have to pay
5 those things.

6 The second purpose the sentence serves is to
7 make sure that there is no double-counting, because
8 Romanette iii, the very next provision in the means
9 test, allows the debtor to claim monthly payments for
10 secured debts. Now, many car loans are probably secured
11 debts, and in our view if you actually have a car loan
12 -- now, remember again, he neither has a car loan, nor a
13 car lease payment, nor any kind of ownership payment.

14 But if -- if one actually did have a car
15 loan that was secured by the car, which I think is the
16 vast majority of car loans, in our view the debtor
17 expends nothing for that under Romanette ii, and only
18 the actual amount of that debt under Romanette iii.

19 JUSTICE GINSBURG: I thought the -- the
20 general position was you get either the actual payment
21 or the 471, of whichever is higher.

22 MS. MAYNARD: Whichever is less.

23 I think that -- that's my understanding of
24 how the local standards work, Your Honor. I think,
25 then, as a practical matter, that really will end up

1 only applying to car leases with respect to
2 transportation ownership costs, because I think that the
3 "notwithstanding" sentence removes secured car loans
4 from Romanette ii and has them calculated under
5 Romanette iii, where there is no comparable cap.

6 And the -- but -- but the point at issue in
7 this case doesn't involve the interaction between
8 Romanette ii and Romanette iii, because no matter how
9 those two things interact, when the debtor has no
10 payment whatsoever, he ought not to be able to claim any
11 car ownership costs, because what we're trying to figure
12 out is what amounts does he reasonably need for his
13 maintenance and support? And this question is a very
14 important question. This scenario happens a lot.

15 In the 2007 study that U.S. Trustees did is
16 -- at Congress's request to which Petitioner cites in
17 his reply brief, the average overpayment of a debtor in
18 claiming this transportation ownership expense was \$335,
19 which is a lot when you're talking about the standard in
20 the chart being 471. There are many debtors who are
21 getting this expense either above their amount or when
22 they have no such expense at all, and so even if the
23 Court doesn't resolve these other issues that are
24 implicated by this case, the decision here is a simple
25 one, which is: This debtor has no applicable monthly

1 expense amount for transportation ownership costs, and
2 he shouldn't be allowed to expense any amount for that.

3 If there are no further questions, the
4 Respondent requests the Court would affirm the judgment
5 below.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Ms. Saharsky.

8 ORAL ARGUMENT OF NICOLE A. SAHARSKY,
9 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,
10 SUPPORTING RESPONDENT

11 MS. SAHARSKY: Mr. Chief Justice, and may it
12 please the Court:

13 The only question this Court needs to
14 resolve in this case is whether the vehicle ownership
15 expense is applicable to Petitioner. The answer is no.

16 The ownership cost is for loan and lease
17 payments, the cost to acquiring the vehicle, and he just
18 doesn't have any payments of that type. To allow him to
19 pretend that he does would create absurd results. He'd
20 be able to shield approximately \$28,000 from his
21 unsecured creditors, and he'd be better off than lower
22 income chapter 13 debtors. And we just don't think that
23 that's a result that Congress intended. We don't think
24 it --

25 CHIEF JUSTICE ROBERTS: And if he paid --

1 JUSTICE KENNEDY: Well, I -- excuse me,
2 Chief Justice.

3 CHIEF JUSTICE ROBERTS: If he paid a dollar,
4 he would be able to shield \$27,999, and you're
5 comfortable with that result?

6 MS. SAHARSKY: Well, that goes to the
7 question of whether the amount in the table is the
8 amount to be used or a cap on actual expenses. In our
9 view, it is --

10 CHIEF JUSTICE ROBERTS: And I understood
11 your brief to say it was the amount -- you get the whole
12 amount, not simply as a cap.

13 MS. SAHARSKY: That's right. Now, of
14 course, we haven't seen -- the executive office for
15 U.S. Trustees has not seen any \$1 payments. It doesn't
16 know of any such commercially available payments. It
17 suspects the payments would be --

18 CHIEF JUSTICE ROBERTS: If the point of the
19 \$1, counsel, is to lead to the extreme hypothetical that
20 would flesh out your position, what if it were \$10,000
21 and the amount would give him \$30,000? The trustees
22 have probably seen loans like that.

23 MS. SAHARSKY: What I'm saying, Your Honor,
24 is that there are many circumstances in which an expense
25 amount is a standard amount, but you still need to make

1 a threshold showing that it's applicable to you.

2 And if I could give the Court one example:
3 When an individual does his Federal income tax forms,
4 you can take a deduction for your dependents, but you
5 can't just take a deduction for any child you have. You
6 have to take a deduction -- you can take a deduction if
7 the person lives at home with you for more than 1 year
8 and have you a certain amount of expenses to support
9 them, and that is a standard deduction that you get on
10 your tax forms. The IRS doesn't ask everyone to figure
11 out their actual costs.

12 It is the case in real life that there are
13 allowance amounts that are average amounts that are
14 given to people once they meet the criteria. And that's
15 what we are saying happens here.

16 Now, that is, again, only a disagreement as
17 to what you do with people who actually have vehicle
18 ownership expenses.

19 JUSTICE SCALIA: Why aren't -- why isn't one
20 of the criteria the -- the provision that says maximum
21 allowances for housing and utilities and transportation,
22 known as the local standards, vary by location, and
23 unlike the national standards, the taxpayer is allowed
24 the amount actually spent or the standard, whichever is
25 less? Why doesn't that apply?

1 MS. SAHARSKY: Well, because, Your Honor, in
2 that case it's the IRS commentary we are referring to
3 that's on page 1a of the red brief appendix.

4 JUSTICE SCALIA: Right.

5 MS. SAHARSKY: And that -- what that's
6 referring to is -- it says the amount actually spent or
7 the standard. And that's distinguishing between the
8 amount that's actually spent or the standard, which is
9 the standard --

10 JUSTICE SCALIA: Right.

11 MS. SAHARSKY: -- amount in the table.
12 Right.

13 And of course, we look to what -- the text
14 that Congress enacted in the Bankruptcy Code, and that
15 says that the debtor's monthly expenses shall be the
16 debtor's applicable monthly expense amounts specified
17 under the national standards and local standards.

18 JUSTICE SCALIA: It's not applicable. It's
19 not applicable if, in fact, you haven't spent that much.
20 Just as you claim it's not applicable if you have no
21 payment at all.

22 MS. SAHARSKY: I think that it is -- it
23 would further Congress's purposes to say that you
24 have to -- that you look to the actual costs that the
25 debtor has. But we just don't think the text goes that

1 far, because it says that if the expense amounts -- the
2 category is applicable to the debtor, that then you use
3 the expense amounts specified under the table. But --

4 JUSTICE KENNEDY: No, but the -- but the
5 gravamen of Justice Scalia's question is: Why are you
6 running away from 1a, which is what Respondent's counsel
7 relied on? And if that were clearly relevant to this
8 statute, it would seem to me to answer the question.

9 Are you saying we -- we don't look at this
10 because it's just simply an interpretation; it's not a
11 regulation? What is -- what is -- in your view, what
12 effect do we give to this language that Justice Scalia
13 quoted? Nothing at all?

14 MS. SAHARSKY: It would not be relevant in
15 the bankruptcy context, in our view, and the reason is
16 because the -- the statutory text refers to the
17 standards. And in our view, you can look to the IRS
18 commentary to see what the standards mean, what their
19 scope is, as Justice Breyer was discussing with his
20 apples hypothetical.

21 But this additional language is guidance to
22 IRS agents in tax delinquency cases about how to collect
23 taxes. As Petitioners --

24 JUSTICE KENNEDY: Suppose we -- suppose we
25 think the word "applicable" is ambiguous and difficult

1 to construe. Do we then look at this language at 1a, or
2 do you say it's irrelevant in all instance -- in all
3 respects?

4 MS. SAHARSKY: You -- Your Honor, you could
5 look at this language, but we think that it reflects not
6 the standards, but what -- how the IRS uses the
7 standards in individual cases of tax delinquency.

8 To the extent that the IRS is defining what
9 the standards are, what the scope of the standards are
10 -- for example, that ownership costs are loan and lease
11 payments -- of course, we would think that you would
12 look to that, but this additional guidance to IRS agents
13 we don't think is what Congress meant when it said
14 "expense amounts specified under the standards."

15 But we do think that the text could be read
16 the way you suggest.

17 JUSTICE SOTOMAYOR: So then you would be
18 comfortable with a person who owns a house outright, who
19 only pays \$100 in utilities, taking the full amount of
20 the housing and utilities allowable living expenses
21 because that's the amount specified?

22 MS. SAHARSKY: Well, the housing and
23 utilities expenses have been broken out into a mortgage
24 and rent component and a utilities component. So in
25 that circumstance, we would say the individual only is

1 allowed the utilities component, but it would be the
2 allowance amount that is specified. It would not be his
3 actual amount.

4 But, again, this is a question that was not
5 considered by the courts below. In fact, the bankruptcy
6 appellate panel said it is -- in footnote 20 of its
7 brief, said this question is not in this case; it's not
8 before us whether you use the amounts in the table or
9 whether you use the actual amounts. And we don't think
10 --

11 CHIEF JUSTICE ROBERTS: Ms. Saharsky, I
12 should -- I should probably know this, but if you do
13 have amounts that are excluded from the disposable
14 income because of car ownership, in other words, you
15 actually have, from -- in your point of view, expenses,
16 do they have to go to the -- pay off the car loan or are
17 they available for everybody? All the creditors?

18 MS. SAHARSKY: They're not available for the
19 creditors. The idea behind this calculation is that
20 there, of course, are secured debts that have priority,
21 and then this calculation is used to figure out how much
22 money is left to pay unsecured creditors. And the idea
23 is that the debtor has certain expenses, that he needs
24 to keep money for himself so he can continue with the
25 everyday business of life. For example, the car

1 ownership payment is designed to ensure that a vehicle
2 can still use and have access to a car, and if someone
3 has a loan or lease payment, they need to be able to
4 continue making that payment in bankruptcy, but if they
5 don't have any such payment, then they don't have this
6 need for this additional fund because --

7 CHIEF JUSTICE ROBERTS: But can he decide --
8 let's say he has more food expense than is allowed. Can
9 he decide of the amount that would otherwise go for the
10 car payment that he's going to pay some of that for the
11 food expenses?

12 MS. SAHARSKY: Well, certainly the
13 Bankruptcy Court doesn't scrutinize, you know, what
14 happens to that regard. What it's just trying to do is
15 figure out the disposable income that is available to
16 pay unsecured creditors, that the debtor doesn't need.

17 And I should just note with respect to this
18 question of whether there is an overall budget that the
19 debtor is allowed, you know, that's certainly not the
20 case in any of the other provisions that follow this
21 applicable monthly standards and local standards. You
22 have the actual other necessary expenses, actual
23 continuation of taking care of chronically ill family
24 members. And Petitioner himself acknowledges that he
25 has to show that he has a car. So it's not the case

1 that every debtor is just getting some set amount of
2 money to do what they will with. Congress has
3 referenced the standards. The standards break this out
4 into certain expenses. It says just take the applicable
5 ones. And we just don't think it makes sense to
6 interpret "applicable" in that circumstance to --

7 JUSTICE KAGAN: Ms. Saharsky, could you
8 explain to me the government's position on when a debtor
9 with loan and lease payments gets to deduct them under
10 Romanette ii? In other words, this goes back to Justice
11 Kennedy's question, the notwithstanding clause and
12 whether the notwithstanding clause effectively excludes
13 all loan and lease payments from Romanette ii?

14 MS. SAHARSKY: It does not have that effect,
15 Your Honor. What it does is to take out the actual debt
16 payments that are part of the other necessary
17 expenses -- these are on page 25a of the red brief --
18 that counsel on our side mentioned. These are other
19 necessary expenses that are actual debt payments, and
20 the local and national standards are expense amounts.
21 We don't think that Congress defined those to be debt
22 payments.

23 So the function of the payments for debts
24 language, we agree with Respondent's counsel, would be
25 twofold. First, it would excise the other necessary

1 expenses that actually are debt payments, which makes
2 complete sense. You know, one of them is an unsecured
3 debt payment, and you wouldn't want to consider that one
4 of your expenses because the whole point of the
5 calculation is to figure out how much money you have
6 left to pay unsecured debts. And then the other
7 function that it serves is in Romanette iii because you
8 were getting secured debt payments there to not
9 double-count them in Romanette ii.

10 JUSTICE KAGAN: But, in other words, the
11 loan and lease payments don't count as debt for purposes
12 of the notwithstanding clause; they count as expense
13 amounts?

14 MS. SAHARSKY: We say that those are expense
15 amounts that are specified. They're not payments for
16 debts. I should note, because Justice Kennedy asked
17 this question, that this was not something that was
18 relied upon by the courts below. I don't believe that
19 there's any definitive court of appeals opinion that
20 goes through in detail what that provision is designed
21 to do. So I would urge this Court that it need not
22 resolve it in this case and instead do what the court of
23 appeals did, which is to say that, just looking at the
24 plain text, the word "applicable" means not everybody
25 can get these amounts in the national and local

1 standards, and it needs to be someone who actually has
2 those payment amounts. The whole point of this part of
3 this statute is to figure out what money is available to
4 pay unsecured creditors, and it's payments that need to
5 be made for expenses that matter. It's not whether the
6 individual debtor has a car.

7 I also note, just because it came up earlier
8 and is a very important point, that to the extent that
9 the Court only wants to look at the tables to figure out
10 what are ownership costs, are they loan and lease
11 payments, just looking at the title of the table,
12 Ownership Costs, you need to have costs. Looking at the
13 fact that there are two different ones -- there's
14 ownership costs as opposed to operating costs -- makes
15 clear that some of the things that Petitioner suggests
16 might be ownership costs are, in fact, operating costs.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Burke, have you 4 minutes remaining.

19 REBUTTAL ARGUMENT OF CHRISTOPHER P. BURKE

20 ON BEHALF OF THE PETITIONER

21 MR. BURKE: Thank you.

22 The means test knows when to say "actual"
23 when it wants to say "actual." It didn't say "actual"
24 in this case; it said "applicable."

25 JUSTICE GINSBURG: Mr. Burke, would you

1 explain one facet of this case to me? Given the
2 deduction, the \$471 deduction, disposable -- projected
3 disposable income comes down to \$210?

4 MR. BURKE: Correct.

5 JUSTICE GINSBURG: As opposed to -- it would
6 be 600 some dollars if you didn't count the \$471?

7 MR. BURKE: Correct.

8 JUSTICE GINSBURG: Even though the
9 disposable income figure was \$210, the debtor was
10 willing -- the debtor proposed paying \$500. Why did the
11 debtor come up with a \$500 figure when projected
12 disposable income without the car ownership would be --
13 if he gets the car ownership, would only be \$210?

14 MR. BURKE: This is exactly why our view of
15 the law works. The means test is a minimum amount.
16 It's a bottom-line quick figure based on standard
17 deductions. It was \$200 based on our calculation if
18 he's given his deductions based on age, location, et
19 cetera.

20 We then go back to I and J, and J, which is
21 on page 44 of the Joint Appendix, is his current
22 expenses. And if we look at line 13A, there is no
23 vehicle payment. He's not taking \$471. He took his
24 income and expense. The bottom line was 500. He knew
25 he had to pay at least 200. He's willing to pay the

1 500. He's not getting a \$471 deduction because there is
2 no car payment on his Schedule J.

3 And if we look at the formula that way, the
4 means test is a general form to give standard
5 deductions, to give us a quick bottom line, and the
6 debtor is either going to pay that amount or more based
7 on his income and expense, and he would pay more if he
8 really didn't have that expense. So if he didn't have a
9 rent expense of \$1,000 a month, it would show up on
10 Schedule J that he didn't have 1,000, so his payment
11 would go to \$1,500 a month. That's the good faith
12 that's involved in this case.

13 JUSTICE SCALIA: It would have to go to
14 1,500 a month, or he, out of the goodness of his heart,
15 would decide to pay that amount?

16 MR. BURKE: He's going to have to pay an
17 amount of at least \$200.

18 JUSTICE SCALIA: Right.

19 MR. BURKE: It would be hard to confirm a
20 case if he doesn't pay somewhere in that range.

21 JUSTICE SCALIA: Fine. So why -- why would
22 we assume that he -- I don't know -- your client is an
23 extraordinarily generous fellow. I don't think most
24 people, when they go through bankruptcy, are going to
25 cough up any more than they have to.

1 MR. BURKE: It's the only way for the form
2 and the law to work. The means test is a bottom-line
3 number. If you don't have one of those expenses, it
4 shows up on Schedule J, and it gives you a number. If
5 it's higher, we think you should probably pay it or in
6 that range. If it's lower, Congress isn't saying you
7 get away with it; it says you get out of chapter 13 if
8 you're not going to pay this amount. So the formula is
9 just to come up with a bottom line. Nobody is shielding
10 anything. It's all black and white on his current
11 expenses. If he doesn't have it --

12 JUSTICE ALITO: Do you think that the -- do
13 you --

14 MR. BURKE: -- he's not getting it.

15 JUSTICE ALITO: Do you think that the
16 Bankruptcy Code provision freezes the -- the national
17 and local standards to some degree or completely as they
18 existed at the time when the statute was enacted?

19 MR. BURKE: At the time the debtor files,
20 those numbers are frozen.

21 JUSTICE ALITO: But the IRS can change --
22 otherwise, they can -- going forward, they can
23 completely change the national and local standards?

24 MR. BURKE: The numbers, but not the
25 structure. They can do anything they want when they're

1 collecting taxes, but the numbers -- and I think the
2 numbers change on an annual basis.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 The case is submitted.

5 (Whereupon, at 11:04 a.m., the case in the
6 above-entitled matter was submitted.)

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