

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 BRANDON C. CLARK, ET UX., :

4 Petitioners, : No. 13-299

5 v. :

6 WILLIAM J. RAMEKER, :

7 TRUSTEE, ET AL. :

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9 Washington, D.C.

10 Monday, March 24, 2014

11

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States
14 at 10:05 a.m.

15 APPEARANCES:

16 KANNON K. SHANMUGAM, ESQ., Washington, D.C.; on behalf
17 of Petitioners.

18 DANIELLE SPINELLI, ESQ., Washington, D.C.; on behalf of
19 Respondents.

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1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	KANNON K. SHANMUGAM, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF	
6	DANIELLE SPINELLI, ESQ.	
7	On behalf of the Respondents	24
8	REBUTTAL ARGUMENT OF	
9	KANNON K. SHANMUGAM, ESQ.	
10	On behalf of the Petitioners	45
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:05 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 this morning in Case 13-299, Clark versus Rameker.

5 Mr. Shanmugam.

6 ORAL ARGUMENT OF KANNON K. SHANMUGAM

7 ON BEHALF OF PETITIONERS

8 MR. SHANMUGAM: Thank you, Mr. Chief
9 Justice, and may it please the Court:

10 This case concerns the Bankruptcy Code's
11 retirement funds exemption. By its plain terms, that
12 provision categorically exempts funds that have been set
13 aside for retirement in certain tax-exempt retirement
14 accounts. Funds in an inherited individual retirement
15 account qualify for the exemption first because they
16 were set aside for retirement when they were deposited
17 in the account, and second, because an IRA remains tax
18 exempt after it passes to a beneficiary upon the death
19 of its initial owner.

20 Respondents ask this Court to exclude
21 inherited IRAs by engrafting an additional limitation on
22 to the statute. Under their interpretation, the funds
23 must be in an account that not only is tax exempt, but
24 also possesses certain "objective features."

25 JUSTICE KENNEDY: It's true, I think, that

1 the Respondents have to explain why their position
2 doesn't commit us to a difficult case-by-case
3 adjudication down the line, and yours is a more simple
4 approach. On the other hand, it seems to me that you
5 really rendered the words "retirement funds"
6 superfluous.

7 MR. SHANMUGAM: Well, I don't think that
8 that is true, Justice Kennedy.

9 JUSTICE KENNEDY: I mean, the words in the
10 bankruptcy statute.

11 MR. SHANMUGAM: Yes. And -- and let me
12 explain why we think that retirement funds are not
13 superfluous here. First of all, we think that
14 retirement funds serves a clarifying function with the
15 result that in the event that if Congress were to add
16 something to one of the many tax provisions that are
17 incorporated into the provision, that is not a
18 retirement account, that would be excluded.

19 In other words, the phrase "retirement
20 funds" makes clear that only funds that have been set
21 aside in a retirement account are exempted.

22 But I want to say something more broadly
23 about this argument concerning superfluity, which I
24 think is really at the core of Respondents' textual
25 argument here. I think that argument really

1 misapprehends, with respect, the structure of the
2 statute. It may very well be true that at least as
3 matters currently stand, the phrase "retirement funds"
4 does not independently exclude anything from the scope
5 of the statute. But this statute, of course, includes a
6 "to the extent that" clause. And our interpretation
7 gives the phrase "retirement funds" meaning. It gives
8 it a broader meaning. Retirement funds --

9 JUSTICE GINSBURG: But, Mr. Shanmugam, it
10 could have meaning if it were read to refer to the
11 debtor's retirement fund, not anyone's retirement fund.

12 And let me ask you one disturbing feature of
13 this. Congress was very careful when it crafted
14 exemptions from the bankrupt estate, like the homestead
15 exemption. It said what, 22 -- something over \$22,000,
16 the car, 37-something. Is it likely that Congress would
17 have created an exemption so large that -- this one is
18 claimed to be \$300,000 -- for funds that are immediately
19 usable by the bankrupt? I mean, this big pot of money
20 gets exempt from -- from the creditors' claim, it just
21 seems incongruous considering how narrow Congress has
22 made the other exemptions.

23 MR. SHANMUGAM: Two points in response to
24 that. First, Justice Ginsburg, with regard to the
25 admittedly very high cap on retirement funds, it is true

1 that a beneficiary of an inherited IRA has the ability
2 to withdraw the funds immediately, though Congress has
3 created considerable tax incentives for such an
4 individual not to do so. But the same could be said of,
5 for example, an individual who holds a 457(b) account,
6 that's a retirement account for employees of certain
7 governmental entities and nonprofits, who has left
8 employment and then goes into bankruptcy.

9 So, too, with regard to an individual who
10 holds a Roth IRA, at least with regard to the
11 contributions that the individual made to that IRA.
12 And, in fact, while the cap limits the amount of money
13 that can be exempted at \$1.25 million, it actually also
14 contains exceptions for rollover IRAs such that an
15 individual can exempt essentially an unlimited amount.
16 All of which is to say that Congress did intend this
17 exemption to be quite expansive.

18 Now, to go to the first part of your
19 question, Justice Ginsburg, and the text of the statute.
20 The court of appeals, unlike Respondent -- Respondents
21 here --

22 JUSTICE SOTOMAYOR: How many of those other
23 items are immediately withdrawn? Meaning, the Roth IRA
24 has the 10 percent penalty if you withdraw it.

25 MR. SHANMUGAM: But not with regard to the

1 money that was originally contributed to the account.
2 That is to say --

3 JUSTICE SOTOMAYOR: No. Because the taxes
4 have already been paid. But there's a penalty. How
5 many of those others?

6 MR. SHANMUGAM: Well, there is no penalty
7 with regard to contributions. And indeed there is no
8 penalty with regard to the entire amount to the extent
9 that it is being used for one of the specified
10 non-retirement purposes, for which the funds can be
11 withdrawn without penalty. And those are the
12 educational and medical and other purposes that we set
13 out in our brief.

14 The two primary types of accounts for which
15 money can be withdrawn without penalty are Roth IRAs and
16 these 457(b)'s that I was referring to a minute earlier.

17 Now, I do want to say just one more thing
18 about the text of the statute in response to Justice
19 Ginsburg. The court of appeals, unlike Respondents
20 here, offered an interpretation under which retirement
21 funds would mean funds that have been set aside for the
22 debtor's own retirement. But the fundamental flaw with
23 that interpretation is that it reads an additional
24 limitation into the statute, this debtor-based
25 limitation.

1 And as we point out in our brief, all 11 of
2 the other exemptions in Section 522(d) contain
3 references to the debtor. And many of those references,
4 including the homestead exemption, specifically refer to
5 uses by the debtor. And so in order to invoke the
6 Federal homestead exemption --

7 JUSTICE SOTOMAYOR: How would a retirement
8 fund -- except in this situation an inherited one,
9 wouldn't that always be a debtor's?

10 MR. SHANMUGAM: Well --

11 JUSTICE SOTOMAYOR: The name is generally a
12 debtor's.

13 MR. SHANMUGAM: Well, that is certainly
14 true, which is to say that that limitation would
15 obviously exclude inherited IRAs and inherited IRAs
16 alone. And I would just note parenthetically that if
17 there were any evidence that Congress had actually
18 focused on this issue and if in fact Congress's intent
19 had been to exclude inherited IRAs, this would be a very
20 odd way of going about effectuating that intent through
21 this negative inference from the phrase "retirement
22 funds."

23 JUSTICE ALITO: Well, let's suppose there
24 are two debtors who are in a somewhat similar situation,
25 but one simply inherits \$300,000 from a parent who dies

1 and the other is the beneficiary of an IRA that the
2 parent had. Why would Congress want to give
3 preferential treatment in bankruptcy to the latter and
4 not the former? Both of them have -- can use the money
5 immediately.

6 MR. SHANMUGAM: Justice Alito, that is
7 simply because -- and this is a very important
8 "because" -- the funds remain in a tax-exempt retirement
9 account. And while it is true that the degree of tax
10 deferral in the hands of a beneficiary is perhaps not
11 quite as great as it is in the hands of an initial
12 owner, it is still considerable. The funds remain tax
13 exempt while they remain in the account. And while it
14 is true that the beneficiary of an inherited IRA must
15 take certain required minimum distributions, the
16 accountholder, the beneficiary, can stretch out the tax
17 consequences over the course of her own lifetime.

18 JUSTICE ALITO: I tend to think of this
19 in -- in rather simple terms, retirement funds. Why
20 would Congress provide this treatment for retirement
21 funds? Because it doesn't want debtors to be completely
22 without means of supporting themselves after they reach
23 retirement age.

24 But in this situation, particularly where
25 the beneficiary is a relatively young person, the money

1 is either all going to be withdrawn immediately, long
2 before retirement age is reached, or if it's taken out
3 on a -- on an annual basis, much of the money will be
4 distributed before retirement. In this case, it would
5 be roughly two-thirds, wouldn't that be correct, would
6 be distributed to -- to the beneficiary prior to 65?

7 MR. SHANMUGAM: I actually don't think that
8 that is correct as an empirical matter, Justice Alito.
9 And as we explain in our brief, as long as the annual
10 rate of return is a reasonable one, it will often be the
11 case and, indeed, it's a quite plausible scenario, that
12 a beneficiary will end up with more or roughly the same
13 amount in the account at retirement as at the time --

14 JUSTICE KAGAN: Well, at the very least, Mr.
15 Shanmugam, it's a one-way ratchet. You absolutely
16 cannot add to these funds; is that correct?

17 MR. SHANMUGAM: Yes, that is correct.

18 JUSTICE KAGAN: I mean, that seems like a
19 strange feature of a retirement fund, that you can't add
20 to the fund and that, moreover, you have to deplete the
21 fund at least to a certain amount. It may not be the
22 whole thing. You may try to keep it as a retirement
23 fund in order to get tax savings, tax benefits for it,
24 but at least in part you're going to have to deplete the
25 fund. You can't add to it. That doesn't seem like a

1 retirement fund in people's natural understanding of the
2 language.

3 MR. SHANMUGAM: Well, at the risk of seeming
4 flip, Justice Kagan, I think that one point that's
5 important to keep in mind is that this is still
6 denominated a retirement account. And why that's actually
7 substantively important and not just a formalism is
8 because that has significant tax consequences. The
9 funds remain exempt as long as they remain in the
10 account. And to go to Justice --

11 JUSTICE GINSBURG: Wasn't the purpose of
12 that, however, to see that the beneficiary wasn't going
13 to be hit with a huge tax liability if it had to take
14 the whole thing all at once?

15 MR. SHANMUGAM: But it also gives the
16 beneficiary the ability to use the funds in the account
17 for her own retirement.

18 Now, just to be clear, we don't think that
19 whether or not the beneficiary in fact does so is
20 relevant, precisely because of the language that
21 Congress chose.

22 And, Justice Alito, to go to the underlying
23 policy justifications here -- and I do so with the
24 proviso that we obviously think that the plain language
25 disposes of this case without any need to weigh the

1 policy justifications. But we think that there are, in
2 fact, important and compelling policy justifications to
3 support our interpretation, and we think that it is
4 therefore no accident that seven States in the last 3
5 years alone have expressly exempted inherited IRAs.

6 The first of those policy justifications is
7 that Congress wanted to link bankruptcy exemption to tax
8 exemption and there is some evidence in the legislative
9 history to support that as the policy justification for
10 this very expansive provision. After all, Congress
11 enacted the retirement funds exemption knowing that
12 there were already other exemptions or exceptions that
13 covered a vast range of retirement accounts and yet
14 Congress deliberately chose this very broad language in
15 order to provide even broader protection and, really, to
16 link bankruptcy exemption -- bankruptcy protection to
17 tax protection.

18 JUSTICE ALITO: Why would Congress want to
19 do that?

20 MR. SHANMUGAM: I think really for ease of
21 application. Congress in the Tax Code has obviously
22 already made judgments about which types of retirement
23 accounts should be subject to special treatment. And
24 the retirement funds exemption simply creates congruence
25 between the Bankruptcy Code and the Tax Code.

1 Now, to be sure, we don't think that that's
2 the only relevant policy justification here. And we do
3 think that the fact that Congress has made considerable
4 tax benefits available to the holders of inherited IRAs
5 is indeed significant. And Congress for two decades had
6 provided this ability for the beneficiaries of inherited
7 IRAs to stretch out the tax consequences over the course
8 of their entire lifetimes. And so exempting inherited
9 IRAs really does encourage beneficiaries to take
10 advantage of those available tax benefits.

11 JUSTICE GINSBURG: But in this very case, I
12 mean, this was a fund of what, \$400,000-odd. The
13 daughter, the beneficiary, had already spent 150,000 of
14 that.

15 MR. SHANMUGAM: She had taken out more than
16 the required minimum distributions before she went into
17 bankruptcy and then she took out one additional extra
18 distribution immediately after going into bankruptcy.
19 But I think it is fair to say that, regardless of the
20 circumstances of my clients, many individuals who are in
21 this position will use these inherited IRAs as
22 retirement tools or at a minimum as long-term financial
23 planning tools. And again, it is certainly congruent
24 with that policy interest, an interest that is expressed
25 in the relevant tax provisions, to exempt inherited

1 IRAs as well.

2 JUSTICE KAGAN: Mr. Shanmugam, can I go back
3 to Justice Kennedy's statement, because I wasn't quite
4 sure I understood your answer. He asked why did they
5 use this retirement -- "retirement funds" phrase at all
6 and you said, well, just in case Congress adds something
7 later to these sections. And then you thought that
8 there was a second point, too. And what was the second
9 point?

10 MR. SHANMUGAM: I think my second point,
11 Justice Kagan, was simply that the use of the phrase
12 "retirement funds" really makes clear the purpose of
13 this provision in a way that I think would obviously not
14 be clear absent that reference.

15 JUSTICE KAGAN: Well, why would that be
16 important to Congress, that it wanted to clarify the
17 purpose of the provision, if you're saying that
18 everything that was currently in, that was currently --
19 that currently received tax protection in these
20 sections, counted?

21 MR. SHANMUGAM: Well, I think that it is
22 admittedly descriptive. And to be sure, Congress at the
23 time it enacted this provision may not have been 100
24 percent sure that everything in those tax provisions was
25 in fact a retirement account. Because if you take a

1 look at Section 501 of the Internal Revenue Code, it may
2 be many things, but immediately clear it certainly is
3 not. And so Congress may have just wanted to ensure
4 that only funds that have been set aside in retirement
5 accounts are exempted, whether with reference to the Tax
6 Code as it currently stands or with regard to anything
7 that might subsequently be added to the tax code in the
8 future.

9 But again, I think it's really important to
10 underscore the structure of this particular provision.
11 I think when you have a statute that contains a phrase
12 like "to the extent that," it is in fact entirety
13 natural for what comes before that clause, the
14 antecedent, if you will, to set out a broad category
15 which is then narrowed by the "to the extent that"
16 clause.

17 And so, for example, if you had a statute
18 that created a tax break for sports teams to the extent
19 that they are members of the major professional sports
20 leagues, you wouldn't immediately think that the phrase
21 "sports teams" has to somehow do some exclusionary work.
22 It would be perfectly natural to view "sports teams" as
23 an incredibly broad category that could include little
24 league teams as well, but then view the "to the extent
25 that" clause to narrow it to teams that play in Major

1 League Baseball or the National Football League.

2 So too here, "retirement funds" simply
3 refers to funds that have been set aside for retirement
4 and the "to the extent that" clause narrows that broad
5 category to funds that have been set aside and remain in
6 the enumerated types of retirement accounts.

7 CHIEF JUSTICE ROBERTS: Well, you still have
8 the problem of figuring out set aside, you know, by --
9 by whom. It seems to me that if you inherit one of
10 these IRAs and somebody, you know, asked you about it,
11 you could say, well, my mother -- you know, you wouldn't
12 say, would you, my mother left me a retirement account?
13 You would say my mother left me \$300,000.

14 MR. SHANMUGAM: Well, you might say either
15 of those things, Mr. Chief Justice.

16 CHIEF JUSTICE ROBERTS: I know, but I think
17 it's more likely that you would be describing -- if you
18 said a retirement account, it would seem to me to be
19 confusing to the normal English speaker, while if you
20 say what the amount is, I mean, that's what you got and
21 you could take it all out the next day, which is why the
22 retirement aspect would seem to be incidental.

23 MR. SHANMUGAM: Well, I don't think that
24 there actually is anything odd about that, and I think
25 in part that's because of what these accounts actually

1 are. We refer to them as inherited individual
2 retirement accounts, and there are a few references to
3 inherited IRAs in the statute, but they really remain
4 individual retirement accounts in the most relevant
5 sense.

6 I don't think there's really any dispute
7 that, even in the hands of a beneficiary, an individual
8 retirement account remains tax exempt under Section
9 408(e) of the Internal Revenue Code.

10 JUSTICE SOTOMAYOR: I'm not sure why tax
11 exemption is the point. I thought the point of
12 retirement funds was that you would keep the money to a
13 certain designated age, 59-1/2. I think that's what
14 your opponent is arguing. The tax consequences are
15 irrelevant to the Roth IRA, so it can't be that tax
16 exemption is the meaning of a retirement fund.

17 MR. SHANMUGAM: But I think, Justice
18 Sotomayor, that is what it means in the context of this
19 statute. And our interpretation --

20 JUSTICE SOTOMAYOR: But why? This includes
21 Roth IRAs.

22 MR. SHANMUGAM: Right. The Roth IRAs remain
23 tax exempt. That is to say, as long as the funds are in
24 the account, they remain tax exempt.

25 JUSTICE SOTOMAYOR: They are tax exempt,

1 period, because taxes were paid when the money was put
2 in.

3 MR. SHANMUGAM: That's correct. But they
4 also remain tax exempt while they're in the account.
5 And so to give you an example, if, for instance, you
6 have an IRA or a Roth IRA and you engage in certain
7 transactions, you move funds out of a particular stock
8 and move them into another stock, you would ordinarily
9 have to pay capital gains. But as long as they remain
10 in the account, they are not subject to taxation.
11 That's all that "tax exempt" means in the statute.

12 But I think more broadly, our interpretation
13 of the statute really reads the statute as an integrated
14 whole. To be sure, it might be a very different statute
15 if it stopped after the phrase "retirement funds," and
16 someone might be able to argue, for instance, that if
17 they put money aside in a general purpose investment
18 account, that would qualify as long as they intended to
19 use those funds for retirement.

20 But under our interpretation, "retirement
21 funds" has to be read in the context of the "to the
22 extent that" clause, and that clause really explains how
23 it is that the funds are set aside for retirement.
24 Funds have to be set aside in one of the enumerated
25 types of accounts in order to qualify. And I think this

1 discussion really points up the fundamental textual flaw
2 with Respondents' interpretation.

3 Respondents talk at great length in their
4 brief about the supposed objective features that define
5 a retirement account. As we explain in our reply brief,
6 many of those features are not shared by all of the
7 enumerated accounts in the statute. But more
8 importantly, Congress specified, Justice Sotomayor, the
9 one objective feature that matters for purposes of the
10 application of the exemption, and that is the tax-exempt
11 status of the funds in the account, and that is all that
12 is required in order to trigger this very expansive
13 provision.

14 JUSTICE GINSBURG: So for your purposes, you
15 wouldn't need -- I mean, you would be -- you would have
16 a, I think, an airtight case if the statute didn't use
17 the word "retirement funds," it just exempted funds
18 in -- in an account that is exempt from taxation,
19 period?

20 MR. SHANMUGAM: It -- it may very well be,
21 Justice Ginsburg, that such a statute would have the
22 same meaning, at least as the Tax Code is currently
23 constituted. But again, we think that it gives meaning
24 to the word "retirement," which is really the only term
25 that Respondents argue would be superfluous under our

1 interpretation, by saying that the word "retirement"
2 serves a clarifying function. It makes clear that only
3 funds that have been set aside in retirement accounts
4 can be exempted. And so if Congress were, say, to tack
5 some new form of educational savings account onto the
6 back end of Section 408 of the Tax Code, money that is
7 set aside in that account would be excluded and that
8 would be a circumstance under which the term
9 "retirement" would do some additional work.

10 But I think it's important to underscore,
11 and this is why I really want to focus on the structure
12 of this particular statutory provision, that "retirement
13 funds" has meaning under our interpretation. It is a
14 broader category which the phrase "to the extent that"
15 then narrows. It is simply that the word "retirement"
16 does not necessarily do any exclusionary work. But that
17 does not mean that the word "retirement" is superfluous.
18 It simply means that as a matter of natural grammar
19 Congress started with a broader category, retirement
20 funds, and then proceeded to narrow it with the "to the
21 extent that" clause that follows.

22 Our interpretation naturally follows from
23 the structure of the text of the statute and it is
24 certainly preferable as a textual matter to Respondents'
25 interpretation, which, however it is sliced, ultimately

1 reads an additional limitation into the text of the
2 statute. And this is not the paradigmatic sort of
3 statutory interpretation case where --

4 JUSTICE GINSBURG: But it would just be
5 defining "retirement funds" to mean the debtor's
6 retirement funds.

7 MR. SHANMUGAM: And that is the additional
8 limitation that the court of appeals read into the
9 statute. I would respectfully submit that that is not
10 quite the interpretation that Respondents are advancing.
11 But this is the one exemption in Section 522(d) that
12 contains no reference to the debtor. And if Congress
13 had intended to set -- to limit the provision to funds
14 that have been set aside for the debtor's own
15 retirement, Congress certainly knew how to say so.

16 And I would just say one other thing before
17 reserving the balance of my time, and that is, that this
18 is not the paradigmatic statutory interpretation case
19 where you have the text of the statute on the one hand
20 and the legislative history of this statute on the
21 other. There is no relevant legislative history here.
22 There is no evidence in the long history of BAPCPA --

23 JUSTICE KENNEDY: So all we have is the
24 statute on one hand and common sense on the other.

25 MR. SHANMUGAM: I would respectfully submit

1 that if you think that this is that sort of case, that
2 seven State legislatures might have a beef with that,
3 Justice Kennedy, because seven States --

4 JUSTICE GINSBURG: Could you explain in that
5 context? You said something about uniformity. Seven
6 states isn't a particularly high percentage of the
7 States. Does the -- does the debtor's home State -- has
8 the debtor's home State adopted this exemption?

9 MR. SHANMUGAM: No, Justice Ginsburg. But
10 what is really unique about this exemption is that it
11 applies to individuals regardless of whether they opt
12 for the Federal or the State exemption regime. So this
13 was a case in which my clients, Petitioners, opted for
14 the Wisconsin exemption regime, but were entitled to
15 invoke this exemption precisely because it applies
16 regardless of which regime debtors proceed under.

17 And in our view, that is an additional
18 policy argument in addition to the ones that I set out
19 earlier that supports our interpretation. Congress
20 clearly wanted to provide uniformity across the Federal
21 and State regimes. Our interpretation provides that
22 uniformity. I am sure --

23 JUSTICE GINSBURG: So would the other
24 interpretation that says it has to be the debtor's
25 retirement account.

1 MR. SHANMUGAM: Well, no, because under that
2 interpretation, by virtue of the fact that States have
3 as a policy matter opted to provide protection for
4 inherited IRAs, you would have disuniformity, depending
5 on whether or not an individual was proceeding under the
6 exemption regimes of one of these States.

7 Justice Kennedy --

8 JUSTICE KENNEDY: Well, if we -- if we
9 look -- if we look to what the States did, are there
10 some statements, some recitation of purpose that does
11 weigh in on the common sense side of the equation in
12 your favor; in other words, the States were doing this
13 for some --for some particular reason?

14 MR. SHANMUGAM: We have been unable to find
15 any legislative history in those seven States and we
16 have certainly looked for it. I would respectfully
17 submit that the policy interests are the ones that I've
18 articulated. And in addition to the ones I've
19 articulated, I would just add that our interpretation
20 does provide additional encouragement for individuals to
21 save for retirement in the first instance, knowing that
22 if they leave funds to an intended beneficiary, those
23 funds will be protected in the event that the
24 beneficiary goes into bankruptcy.

25 My point is simply that in the absence of

1 any legislative history, this is not a case in which
2 this Court should weigh the policy judgments itself and
3 impose them on the broad language that Congress actually
4 wrote. It should give effect to that language and if
5 the -- in the event that Congress wants to create an
6 exception, it can obviously do so.

7 And I would reserve the balance of my time.

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.

9 Ms. Spinelli.

10 ORAL ARGUMENT OF DANIELLE SPINELLI

11 ON BEHALF OF THE RESPONDENTS

12 MS. SPINELLI: Mr. Chief Justice, and may it
13 please the Court:

14 The parties agree that retirement funds are
15 funds set aside for the day when an individual stops
16 working. Funds in an inherited IRA do not meet that
17 definition. When the beneficiary of an inherited IRA
18 files for bankruptcy, the funds in the inherited IRA are
19 no longer set aside for the original owner's retirement,
20 nor are they set aside for the beneficiary's retirement.
21 The beneficiary of an inherited IRA can withdraw all the
22 funds in the account at any time for any reason without
23 restriction.

24 JUSTICE SOTOMAYOR: But that's true of a
25 beneficiary who receives a retirement fund from an

1 employer-sponsored retirement account. And there is at
2 least one amici, Tribune, who says that makes -- why
3 would we impute into -- to Congress a desire to treat
4 employer-sponsored retirement funds differently from
5 employee-sponsored funds?

6 MS. SPINELLI: Two responses to that,
7 Justice Sotomayor. First, as we point out in our brief,
8 that is a situation that's very unlikely to arise,
9 because in most qualified retirement plans, including
10 401(k)'s, the plan provides that beneficiaries have to
11 take the funds in the account in a lump sum. That's the
12 reason Congress in Section 402(c)(11) of the Tax Code
13 provided that non-spousal beneficiaries of such accounts
14 can roll those funds over into an inherited IRA.

15 The other point, though, is that qualified
16 retirement plans --

17 JUSTICE SOTOMAYOR: But an inherited IRA is
18 tax exempt. It's -- it can't be alienated. So in
19 bankruptcy, that would still be protected.

20 MS. SPINELLI: Let me -- let me clarify,
21 Justice Sotomayor. Qualified retirement plans,
22 including 401(k)'s, are subject to the provision in
23 ERISA that requires that they be non-alienable. Because
24 of that, those plans never come into the bankruptcy
25 estate to begin with under Section 541(c)(2) of the

1 Bankruptcy Code.

2 IRAs are not subject to that requirement of
3 ERISA. So there is a difference in treatment between
4 401(k)'s and IRAs to begin with. That is the result of
5 Congress's conscious decision in ERISA not to make IRAs
6 subject to that requirement. It has --

7 JUSTICE KAGAN: Please. I'm sorry.

8 MS. SPINELLI: It doesn't -- I don't think
9 it affects the interpretation of this specific
10 provision.

11 JUSTICE KAGAN: Can I go back to your
12 initial point, and just -- I mean, it seems to me that
13 these are kind of hybrids. You were saying, oh, they
14 are nothing like retirement accounts for the -- for the
15 reasons that you gave. But they are something like
16 retirement accounts, which is that they are tax-deferred
17 and that there is an enormous incentive for people
18 actually to try to use them as retirement accounts to
19 the extent that they don't have current pressing needs.

20 So, you know, given that, why shouldn't --
21 given the sort of half and half, why shouldn't we just
22 treat them as retirement accounts, if nothing else for,
23 than for administrative simplicity?

24 MS. SPINELLI: Justice Kagan, I don't
25 believe they are half and half. I do believe they are

1 fundamentally different. All the -- all the retirement
2 plans that are governed by the enumerated provisions of
3 the Tax Code share two things in common. One is that
4 there is some restriction on the ability to take funds
5 out prior to 59-1/2 or retirement age.

6 The other is that one can leave the funds to
7 grow intact until retirement. Neither of those is true
8 of an inherited IRA.

9 JUSTICE KAGAN: Yes, but in a case in which
10 one inherits one of these things as a young person or
11 even as a middle-aged person, they actually -- to the
12 extent that you don't take the option to take it out at
13 once, it really looks like a retirement account to a
14 person.

15 So I just did some back-of-the-envelope
16 calculations. Suppose you inherit a \$200,000 IRA.
17 Looks to me as though you're going -- at the age of
18 about 50 or so. Looks to me you're going to get a check
19 for about \$5,000 a year, and your account can grow far
20 more than that.

21 So it ends up sort of looking like one's
22 retirement portfolio.

23 MS. SPINELLI: It's certainly true that the
24 accounts can grow depending on the age at which they're
25 inherited and the rate of return. There's no question

1 about that. I think the question is whether the
2 tax-exempt treatment of inherited IRAs has anything to
3 do with retirement. And I don't think that -- that can
4 be reconciled with the conscious decision that Congress
5 made not to permit non-spousal beneficiaries of IRAs to
6 treat the funds as their own.

7 JUSTICE KENNEDY: Would you -- would you
8 agree that it -- pursuant to the Petitioner's counsel's
9 last comment, that it does affect the retirement
10 decision of the original owner?

11 MS. SPINELLI: No, I would not, Justice
12 Kennedy. Well, actually --

13 JUSTICE KENNEDY: In other words -- in other
14 words, there's a benefit to -- this is an encouragement
15 for the original owner to retire because he knows that
16 this can be handed down.

17 MS. SPINELLI: Two points in response to
18 that. First, I think that to the extent such a
19 motivation exists, it's extremely attenuated. But more,
20 importantly, encouraging retirement savings is not a
21 motivation behind the bankruptcy exemptions. It
22 certainly is a motivation behind the Tax Code. It's not
23 a motivation behind the bankruptcy exemptions.

24 Chapter 7 has as its basic bargain the
25 notion that the debtor gets a fresh start, that is, a

1 discharge of prepetition debt. And in return for that,
2 the debtor turns over all prepetition property to the
3 trustee for equitable distribution among creditors with
4 legitimate claims.

5 Now, there are exceptions to that, which are
6 the bankruptcy exemptions, which make sure that the
7 debtor has sufficient assets remaining after the
8 bankruptcy to provide basic life necessities, and that
9 includes assets saved to be a substitute for wages in
10 retirement.

11 So the bankruptcy exemptions really balance
12 a set of competing interests: On the one hand, the
13 debtor's interest in obtaining a fresh start; on the
14 other hand, the creditors' interest in a fair and
15 equitable distribution on account of their legitimate
16 claims, and also society at large's interest in ensuring
17 a continued flow of consumer credit.

18 Those interests have been carefully balanced
19 by Congress, and I submit that it doesn't make sense to
20 read the text of the bankruptcy exemptions in a way that
21 furthers the goal of saving for retirement. That just
22 doesn't fit into the considerations Congress balanced.

23 JUSTICE GINSBURG: The court below had a --
24 had a simple take on this. It says that "retirement
25 funds" means funds set aside for the debtor's own

1 retirement. Petitioner tells us that you don't defend
2 that definition, the definition that "retirement funds"
3 means the debtor's retirement funds. Is that so?

4 MS. SPINELLI: Well, Justice -- I apologize.

5 JUSTICE GINSBURG: Is it so that you do not
6 defend the position that "retirement funds" means funds
7 set aside for the debtor's own retirement?

8 MS. SPINELLI: I think our basic position is
9 that at the time the bankruptcy petition is filed, which
10 is at the time that the exemptions are determined and
11 the only relevant time for purposes of this case, the
12 funds are not set aside for anyone's retirement. They
13 are no longer set aside for the original owner's
14 retirement because the original owner has died. They're
15 not set aside for the debtor's retirement because of the
16 characteristics that I've previously alluded to. The
17 debtor can't make additional contributions, can't roll
18 them over into his or her own retirement account.

19 JUSTICE SOTOMAYOR: Why are you fighting
20 Justice Ginsburg? I just need to understand what you
21 see as a difference.

22 MS. SPINELLI: Let me -- let me clarify,
23 Justice Sotomayor and Justice Ginsburg. I think that
24 the upshot of our position may well be that it's -- it
25 only -- only the debtor's retirement funds are relevant.

1 I think that's so because the date on which the
2 exemptions are determined is the petition date. And
3 because of that, I think it's effectively the case that
4 it is only the debtor's retirement funds that are
5 relevant.

6 Now, that makes sense because the purpose of
7 the bankruptcy exemptions is to ensure the support of
8 the debtor and the debtor's dependents.
9 now, just to respond quickly --

10 JUSTICE GINSBURG: It's just -- it's just
11 puzzling why you want to disassociate yourself from the
12 clear position of the court below that "retirement
13 funds" means the debtor's retirement funds. Why would
14 you want to do that?

15 MS. SPINELLI: I don't want to do that,
16 Justice Ginsburg.

17 JUSTICE BREYER: You don't? Because I
18 suppose one reason I thought you might want to do it is
19 because in (d) there are a list of, "the following
20 property may be exempted," and then we have 12 items.
21 And the first item, number one, the debtor's aggregate
22 interest; two, the debtor's interest in the motor
23 vehicle; three, the debtor's interest in furnishings;
24 four, the debtor's interest in jewelry; five, the
25 debtor's interest in 1225; six, the debtor's aggregate

1 interest in; seven, et cetera, life insurance owned by
2 the debtor; eight, the debtor's interest; nine,
3 prescribed health. You know, I can go through those.

4 MS. SPINELLI: Yes.

5 JUSTICE BREYER: And then we get to number
6 12. And Number 12, oddly enough, just says retirement
7 funds.

8 MS. SPINELLI: Yes, but let --

9 JUSTICE BREYER: It doesn't say anything
10 about the debtor. And moreover, it has four paragraphs
11 earlier in which it describes retirement funds in which
12 it says nothing about the debtor. And then there are
13 three paragraphs prior to that in which, once again,
14 we're talking about State exemptions, we talk about the
15 debtor's interest in real property, et cetera, and then
16 we say retirement funds.

17 MS. SPINELLI: Yes.

18 JUSTICE BREYER: So I guess that's the
19 reason you didn't want to say it means the debtor's
20 retirement funds.

21 MS. SPINELLI: Let me respond to that,
22 Justice Breyer.

23 First, just to finish my response to Justice
24 Ginsburg's question. We are not abandoning the
25 reasoning of the court of appeals. The court of appeals

1 looked at the objective characteristics of inherited
2 IRAs and said that inherited IRAs are not set aside for
3 anyone's retirement, and we -- that is precisely the
4 argument that we're advancing.

5 Now, Justice Breyer, as to your point, I
6 don't think that the -- the use of the phrase "the
7 debtor" in those other exemptions at all helps
8 Petitioner's argument, and this is the reason: Only the
9 debtor's interest in property can come into the
10 bankruptcy estate in the first place. Section 541(a)(1)
11 --

12 JUSTICE BREYER: No, I see your argument
13 here. I -- I just thought there is no easy answer, one
14 way or the other, because this is a case where common
15 sense, frankly, in my case doesn't get me anywhere, and
16 that's why --

17 MS. SPINELLI: Well, I think to answer that
18 as well --

19 JUSTICE BREYER: And I sort of looked at the
20 statute and the statute kept talking about the debtor's
21 interest in everything else and then we get to this one,
22 it says retirement funds.

23 MS. SPINELLI: That's correct, Justice
24 Breyer.

25 JUSTICE BREYER: So I thought it means

1 retirement funds.

2 MS. SPINELLI: But the reason that these
3 other -- and by the way, this appears on Page 5-A of the
4 appendix to the red brief. The reason that the other
5 Federal exemptions use the term "the debtor" is in order
6 to set a cap on the value of the exemption. So as you
7 said, (d)(1) says, "The debtor's aggregate interest not
8 to exceed a certain amount in value in real property."

9 (2) is "The debtor's interest not to exceed
10 a certain amount in value in one motor vehicle." The
11 use of "the debtor" there does not suggest that the
12 exemption is limited to the debtor's interest in
13 property. That's already implicit because under
14 541(a)(1), only the debtor's interest in property can
15 come into the estate in the first place, so only the
16 debtor's interest in property is exempt.

17 The reason similar language doesn't appear
18 in (d)(12) is that the cap on the value of the
19 retirement funds exemption appears elsewhere in the
20 statute at Section 522(n).

21 There are also certain -- just to offer a
22 complete response to this, there are also certain of the
23 exemptions that talk about assets for the use
24 of --

25 JUSTICE BREYER: You don't have to, on my

1 account, go into this, because I was just giving that as
2 an example of why I find this not an easy case. I don't
3 see an easy answer to it. That's all. I -- I
4 understand your point and that's why you're making a
5 different point of what retirement funds are.

6 MS. SPINELLI: Well, I think once -- once
7 one agrees that retirement funds are funds set aside for
8 retirement, this does become a fairly easy case, because
9 these funds are not set aside --

10 JUSTICE BREYER: Oh, no, but they were.

11 MS. SPINELLI: They were at one time.

12 JUSTICE BREYER: And so a retirement fund is
13 a fund that was set aside for retirement. At some point
14 in time, someone set aside for retirement. Now the
15 question is, they were set aside for retirement and no
16 one denies that and so --

17 MS. SPINELLI: That's correct.

18 JUSTICE BREYER: -- do they change their
19 nature because a different person now owns the fund?

20 MS. SPINELLI: And they do --

21 JUSTICE BREYER: Now, if you were talking
22 about pearl earrings, you would say they stay pearl
23 earrings no matter who retains it. If you say
24 retirement funds, you say, but they were retirement
25 funds. When did they change their nature? And at that

1 point you have to make your argument, which I think is a
2 more -- is complicated, but perhaps I understand and he
3 makes his argument and says, let's keep this simple.
4 They were retirement funds, period, okay? And that --
5 that's where I am, if you want to know. I mean, that's
6 -- I have to figure it out.

7 MS. SPINELLI: Justice Breyer, two -- two
8 points. First, the nature -- unlike a pearl earring,
9 the nature of these funds fundamentally changes when the
10 original owner dies and the interest passes to a
11 non-spousal beneficiary. And one thing that might help
12 make that clearer is the difference between what happens
13 when a spousal beneficiary receives the interest and
14 when a non-spousal beneficiary receives the interest.

15 A spousal beneficiary can treat the
16 retirement funds as her own. She can roll them over
17 into her own retirement accounts. She can make
18 contributions. There's a penalty for taking the funds
19 out prior to age 59 1/2, assuming it's a traditional
20 IRA.

21 None of those things are true of inherited
22 IRAs, which require the non-spousal beneficiary to begin
23 taking the funds out immediately.

24 JUSTICE KAGAN: Ms. Spinelli, here's one
25 thing that's a little bit perplexing to me. These are

1 not arcane accounts. Tons and tons of people have IRAs
2 and they die every day, and then they're inherited IRAs.
3 So, I mean, this is something that applies to masses of
4 people, and it seems to me that if -- if Congress meant
5 to exclude these inherited IRAs, why wouldn't it have
6 said so? This is not like a hidden thing and then all
7 of a sudden you realize, oh, that was there. We should
8 have said something about it. And this is -- this is
9 pretty obvious that an enormous number of people are
10 going to have these accounts and you write language that
11 suggests because of the listing of the sections, that
12 these are -- you know, these accounts are in those
13 sections, why wouldn't have Congress done something more
14 explicit to exclude them?

15 MS. SPINELLI: Well, Justice Kagan, I
16 believe Congress did exclude them by using the phrase
17 "retirement funds" as to doing something more explicit.

18 JUSTICE KAGAN: Well, that's at the least a
19 very ambiguous way to exclude them. Then we have to get
20 into this whole question of what did they mean when they
21 said retirement funds? Are these retirement funds? In
22 what way are they retirement funds? I mean, that's
23 pretty --

24 MS. SPINELLI: As -- as to whether Congress
25 could have done something more explicit, I think one

1 thing that's important to understand is that inherited
2 IRAs are not some special kind of account. Rather,
3 they're simply an IRA of whatever type, a traditional
4 IRA, a Roth IRA, any other kind of IRA that has been
5 passed to a non-spousal beneficiary, and the same thing
6 is true of qualified retirement plans.

7 For all of those plans, under our reading,
8 as they are all exempt in the hands of the original
9 owner and they are all exempt in the hands of a spousal
10 beneficiary. It's only the fundamental change in
11 treatment when they are inherited by a non-spousal
12 beneficiary that makes them not retirement funds. And
13 so for that -- for that reason, I think it was perfectly
14 understandable of Congress to put the limit "retirement
15 funds" into the statute.

16 And I also think, Justice Kennedy, that -- I
17 hope that that starts to answer your question as to why
18 our reading doesn't commit the courts to a difficult
19 case-by-case approach. I don't believe it does. I
20 think the analysis is actually quite similar to the
21 analysis this Court engaged in in Rousey where it had to
22 answer the question, is a traditional IRA similar to a
23 stock bonus, pension, profit sharing or annuity plan.

24 In that case, the Court framed the question
25 as: Do the objective characteristics of the account

1 make this more like those plans, which the Court saw as
2 substitutes for wages, or more like simply a
3 tax-deferred savings account.

4 JUSTICE ALITO: Why do you suppose seven
5 States have provided an exemption for inherited IRAs?

6 MS. SPINELLI: I don't know, Justice Alito,
7 but I would say that States frequently do provide more
8 generous exemptions than the Federal government, and --
9 but, you know, the unlimited homestead exemption that's
10 available in some States is a good example. I don't
11 believe that it's consistent with the structure and
12 purpose of the bankruptcy exemptions to permit a debtor
13 to exempt a potentially unlimited amount of funds that
14 can be used for current consumption that are not in any
15 way set aside for the debtor's own retirement. There is
16 no other exemption in the bankruptcy exemptions that
17 works that way, that withholds that kind of unlimited
18 amount of free cash from creditor's legitimate claims.

19 JUSTICE KAGAN: Can -- can I go back to the
20 language?

21 MS. SPINELLI: Of course.

22 JUSTICE KAGAN: The retirement funds, your
23 definition of retirement funds, are there any retirement
24 funds that do not fall within the denominated sections
25 under your definition?

1 MS. SPINELLI: If one looked at the phrase
2 "retirement funds" in isolation, I think it could have a
3 much broader meaning. So it could include, you know,
4 the cash in a box under the bed that someone is saving
5 for retirement. The fact that Congress chose to link
6 the exemption to the specific tax-exempt accounts
7 covered by the enumerated sections of the tax code, I
8 think, makes clear that "retirement funds" has to be
9 understood in that context and that an objective
10 interpretation of the phrase "retirement funds" is more
11 appropriate, and I think here we agree with Petitioners
12 than a subjective interpretation.

13 JUSTICE KAGAN: Well, then what's the "to
14 the extent that" language doing there?

15 MS. SPINELLI: Well --

16 JUSTICE KAGAN: Because that does seem a
17 kind of narrowing language, but --

18 MS. SPINELLI: I don't believe --

19 JUSTICE KAGAN: -- on your objective test,
20 there would be nothing to narrow.

21 MS. SPINELLI: I don't believe it
22 necessarily is narrowing language. I mean, the phrase
23 "lawyers to the extent they are women" doesn't suggest
24 that all women are lawyers. And I think the same thing
25 is true here. These set up two independent

1 requirements, which is how all the courts that have
2 addressed the question have viewed it. Were that not
3 so, Congress would not have needed to write this
4 elaborate phraseology. It could have simply said we
5 exempt funds in an account that's exempt from taxation.

6 JUSTICE KAGAN: I'm sorry. I didn't get
7 that. Because lawyers to the extent that they are
8 women, does seem -- it's saying, you know, we have this
9 big category, it's lawyers, and now we have a smaller
10 category, which is women lawyers, so the "to the extent
11 that" takes you from the big category to the small
12 category.

13 JUSTICE KENNEDY: Yes, I agree with Justice
14 Kagan's comment. And you argue against your own
15 box-under-the-bed analogy by, as Justice Kagan
16 indicates, saying that "to the extent" is -- indicates
17 that retirement funds may be greater than what's in the
18 clause. It seems to me that you should argue the other
19 way around, as Justice Kagan is indicating. Or am I
20 missing something?

21 MS. SPINELLI: Let me try to explain again.
22 I think that -- and maybe this was not a good example,
23 but I think that the phrase "lawyers to the extent they
24 are women" does not suggest that all women are lawyers,
25 which I think is what Petitioner's reading suggests.

1 "Retirement funds to the extent that those funds are in
2 a fund or account" suggests that all funds in such a
3 fund or account are retirement funds. I don't think
4 that's logically true. So --

5 CHIEF JUSTICE ROBERTS: I might have lost
6 you, but no one says "lawyers to the extent they are
7 women." They say "lawyers who are women."

8 MS. SPINELLI: Correct. But nonetheless, I
9 think that the phrase "to the extent that" is extremely
10 helpful to our analysis, because if it weren't the case
11 that these are two independent requirements that phrase
12 wouldn't be necessary. It would merely be necessary to
13 say "funds in a fund or account that is exempt from
14 taxation."

15 That wasn't what Congress did. Congress
16 chose to use the phrase "retirement funds." We think
17 that choice should be given effect. And this is a
18 particularly odd statute in which to read the phrase
19 retirement funds out of the statute altogether, as
20 Petitioners' reading would do, because it is the direct
21 object of the exemption, and it's the purpose of the
22 exemption. The purpose of the exemption is to ensure
23 that debtors are allowed to retain assets that they may
24 need to live on in retirement.

25 So it strikes me as quite odd to say that

1 "retirements funds" essentially has no function in this
2 -- in this statute. To the extent that retirement funds
3 were going to be defined as funds in a fund or account
4 that is exempt from taxation, Congress could have said
5 retirement funds defined as or retirement funds, i.e.,
6 but it didn't. It set up two separate requirements.

7 JUSTICE BREYER: The problem, I mean
8 basically, is that you're not going to make us go into
9 subjective intent. You don't want us to.

10 MS. SPINELLI: Absolutely not.

11 JUSTICE BREYER: That leaves somebody out.
12 I'm never going to retire says X, but when I'm 70- 1/2
13 I'm going to take that money out of there and buy my own
14 airplane.

15 MS. SPINELLI: It doesn't matter --

16 JUSTICE BREYER: Okay. That's beside the
17 point.

18 MS. SPINELLI: That's absolutely --

19 JUSTICE BREYER: While the daughter who
20 inherited thinks this is fabulous, I'm going to keep it
21 through my retirement, at least I'll be able to --
22 that's out of the question.

23 Okay. Once you put that aside, then you're
24 falling back on, well, are they the retirement funds of
25 the debtor? And it's pretty hard to do that -- that's

1 what the court of appeals did -- because of the language
2 of the rest of the statute.

3 And now, once you're past those two points,
4 then where are we? Because now it seems what we are
5 doing is just drawing a line that's somewhat arbitrary.
6 Makes some sense policy-wise, but it just seems like a
7 line that says: Inherited ones, no; not inherited ones,
8 yes.

9 MS. SPINELLI: There's nothing --

10 JUSTICE BREYER: You have some theory behind
11 that, but how can I do more than that?

12 MS. SPINELLI: There's nothing arbitrary
13 about that line, Justice Breyer.

14 JUSTICE BREYER: I don't think it's
15 arbitrary, either. But I mean the trouble is what is it
16 resting on? If it's not resting on subjective intent,
17 it's not resting on these words refer to the funds of
18 the debtor, what does it rest on?

19 MS. SPINELLI: It's resting on the objective
20 characteristics of the account, which is precisely what
21 this Court relied on in Rousey in determining whether
22 funds were a substitute for wages in retirement. I
23 think the question here is quite similar: Are these
24 funds set aside for retirement?

25 To answer that question in Rousey, the Court

1 looked to the objective characteristics of the account
2 and specifically the fact that there was a penalty for
3 taking funds out before age 59-1/2, and that the owner
4 was allowed to leave the funds in until age 70-1/2, at
5 which time they had to begin to be withdrawn.

6 Neither of those characteristics is present
7 here. To the contrary, beneficiaries of an inherited
8 IRA can take out all of the funds at any time and cannot
9 leave them intact for their retirement, but have to
10 begin taking them out right away. And I think that is,
11 you know, far from arbitrary. It rests on a fundamental
12 difference between retirement funds in the hands of
13 their original owners or in the hands of spousal
14 beneficiaries and those same funds in the hands of
15 non-spousal beneficiaries.

16 If there are no further questions, we ask
17 that the judgment below be affirmed.

18 CHIEF JUSTICE ROBERTS: Thank you, counsel.

19 Mr. Shanmugam, you have 5 minutes
20 remaining -- I'm sorry, 6 minutes.

21 REBUTTAL ARGUMENT OF KANNON K. SHANMUGAM

22 ON BEHALF OF PETITIONERS

23 MR. SHANMUGAM: Thank you, Mr. Chief
24 Justice.

25 I'd like to start with the text of the

1 statute. The court of appeals in its opinion defined
2 "retirement funds" as funds that have been set aside for
3 the debtor's own retirement. And I think it's clear
4 from the arguments this morning that Respondents really
5 don't defend that interpretation. And you may be left
6 wondering why. Why, I would respectfully submit that
7 the reason why is the reason that was exposed in Ms.
8 Spinelli's colloquy with Justice Breyer: That
9 interpretation really would nakedly read an additional
10 limitation into the statute.

11 And I want to address Ms. Spinelli's
12 argument as to why that is not so and explain why that
13 is in fact so. If you take a look at the 11 exemptions
14 that Justice Breyer recited, it is true that to some
15 extent the references to the debtor simply confirm what
16 Section 541 already makes clear, namely that the debtor
17 after all has to have a property interest in the
18 property in question at the time the debtor goes into
19 bankruptcy. But those exemptions also contain
20 limitations relevant to the debtor's use of the
21 property.

22 And if you take a look at page 5(a) of
23 Respondent's brief and the text of Section 522(d)(1),
24 the homestead exemption, that text makes this point
25 clear. The homestead exemption reads, and I'm quoting:

1 "The debtor's aggregate interest," not to exceed a
2 certain amount in value, "in real property or personal
3 property that the debtor or a dependent of the debtor
4 uses as a residence." That is precisely the type of
5 limitation that the court of appeals was reading into
6 the retirement funds exemption. And of course, that
7 sort of limitation is entirely absent. And it's not
8 just (d)(1). You can find them in (d)(3), (d)(4) and
9 others of the exemptions.

10 Now, I think that because of that problem
11 Respondents instead offer this objective features
12 interpretation. But while Ms. Spinelli made some
13 references to the objective features in the course of
14 her argument, she didn't actually tell us what those
15 objective features actually are. And I think that the
16 problem, once you start to identify those features, is
17 that it inevitably leads you into a fact-intensive
18 case-by-case analysis as to whether a particular --

19 JUSTICE BREYER: Not necessarily. I think
20 her point -- now, it's been very helpful to me, the
21 argument, but I think that it's a by and large point.
22 You see, by and large the funds in the hands of the
23 original setter-aside of the funds. By and large, they
24 are used for retirement of that person and therefore,
25 they are retirement funds. Not always, but by and

1 large.

2 MR. SHANMUGAM: Well --

3 JUSTICE BREYER: And in the hands of the
4 inheriting person, by and large they are not.

5 MR. SHANMUGAM: Well --

6 JUSTICE BREYER: And so that's why she
7 thinks the one falls within and the other falls without
8 the phrase "retirement funds."

9 MR. SHANMUGAM: Well, let's focus on the
10 objective features that Respondents did identify in
11 their brief, and two of those features were limitations
12 on early withdrawals and required minimum distributions
13 after retirement. And as we explained in our reply
14 brief, at least as to some of these types of accounts,
15 even in the hands of the initial owner those limitations
16 would not apply.

17 And I would respectfully submit that if
18 there is one thing that is reasonably clear from the
19 legislative history, it's that Congress certainly wanted
20 to provide protection for all of these types of accounts
21 when they are in the hands of the initial owner. And
22 any sort of test like that, a by-and-large test, would be
23 a recipe for chaos in the lower courts, as bankruptcy
24 courts have to try to figure out whether particular
25 types of accounts, even in the hands of initial owners,

1 would qualify.

2 And I want to say just one other thing about
3 text. Ms. Spinelli referred to this --

4 JUSTICE SCALIA: Could you be more specific?
5 What are the particular aspects of other accounts that
6 you think would not qualify?

7 MR. SHANMUGAM: The limitations on early
8 withdrawals, which do not apply to Roths and to 457(b)s
9 and -- and with regard to Roths, that is true only with
10 regard to contributions, but, of course, the
11 contributions to a Roth can be a very substantial part
12 of the funds in the account. And then required minimum
13 distributions after a retirement, which Roth IRAs do not
14 possess.

15 And I want to say just one other thing on
16 the text with regard to Rousey. Rousey itself obviously
17 involved very different language, and Congress was
18 legislating against the backdrop of Rousey when it
19 adopted the retirement funds exemption. But when it
20 adopted that exemption, it contained no limitation on
21 whether or not the payments were being received on
22 account of age, but instead swept much more broadly,
23 focusing on the accounts and focusing on the one
24 objective feature of the accounts that matters, the
25 tax-exempt status of the funds in the account.

1 And so Rousey, I would respectfully submit,
2 really offers Respondents little help.

3 I want to say just a word about the policy
4 issue that we were discussing during my opening
5 argument. This question of whether beneficiaries are,
6 in fact, going to be relatively young and, therefore,
7 more likely to make free use of the funds.

8 First of all, as Justice Kagan pointed out,
9 beneficiaries have every incentive to keep the funds in
10 the account because of the tax benefits. But I think
11 it's more important to kind of understand the reality of
12 this type of situation. It is true that my client,
13 Heidi Heffron-Clark, was about 22 years old when she
14 inherited this account. Her parents tragically died at
15 a very young age. But the Department of Labor has
16 indicated that the prime age for inheritance is between
17 the age of 50 and 59. And, of course, with regard to
18 retirement accounts in the hands of an initial owner,
19 the funds can be accessed at the age of 59 1/2. So it
20 will often be the case that the beneficiaries will use
21 the funds for retirement.

22 CHIEF JUSTICE ROBERTS: Thank you counsel.

23 Counsel, the case is submitted.

24 (Whereupon, at 11:02 a.m., the case in the
25 above-entitled matter was submitted.)

<p style="text-align: center;">A</p> <p>abandoning 32:24 ability 6:1 11:16 13:6 27:4 able 18:16 43:21 aboveentitled 1:12 50:25 absence 23:25 absent 14:14 47:7 absolutely 10:15 43:10,18 accessed 50:19 accident 12:4 account 3:15,17,23 4:18,21 6:5,6 7:1 9:9,13 10:13 11:6 11:10,16 14:25 16:12,18 17:8,24 18:4,10,18 19:5 19:11,18 20:5,7 22:25 24:22 25:1 25:11 27:13,19 29:15 30:18 35:1 38:2,25 39:3 41:5 42:2,3,13 43:3 44:20 45:1 49:12 49:22,25 50:10,14 accountholder 9:16 accounts 3:14 7:14 12:13,23 15:5 16:6,25 17:2,4 18:25 19:7 20:3 25:13 26:14,16,18 26:22 27:24 36:17 37:1,10,12 40:6 48:14,20,25 49:5 49:23,24 50:18 add 4:15 10:16,19 10:25 23:19 added 15:7 addition 22:18 23:18 additional 3:21 7:23 13:17 20:9 21:1,7 22:17 23:20 30:17 46:9</p>	<p>address 46:11 addressed 41:2 adds 14:6 adjudication 4:3 administrative 26:23 admittedly 5:25 14:22 adopted 22:8 49:19 49:20 advancing 21:10 33:4 advantage 13:10 affect 28:9 affirmed 45:17 age 9:23 10:2 17:13 27:5,17,24 36:19 45:3,4 49:22 50:15,16,17,19 aggregate 31:21,25 34:7 47:1 agree 24:14 28:8 40:11 41:13 agrees 35:7 airplane 43:14 airtight 19:16 al 1:7 alienated 25:18 alito 8:23 9:6,18 10:8 11:22 12:18 39:4,6 allowed 42:23 45:4 alluded 30:16 altogether 42:19 ambiguous 37:19 amici 25:2 amount 6:12,15 7:8 10:13,21 16:20 34:8,10 39:13,18 47:2 analogy 41:15 analysis 38:20,21 42:10 47:18 annual 10:3,9 annuity 38:23 answer 14:4 33:13</p>	<p>33:17 35:3 38:17 38:22 44:25 antecedent 15:14 anyones 5:11 30:12 33:3 apologize 30:4 appeals 6:20 7:19 21:8 32:25,25 44:1 46:1 47:5 appear 34:17 appearances 1:15 appears 34:3,19 appendix 34:4 application 12:21 19:10 applies 22:11,15 37:3 apply 48:16 49:8 approach 4:4 38:19 appropriate 40:11 arbitrary 44:5,12 44:15 45:11 arcane 37:1 argue 18:16 19:25 41:14,18 arguing 17:14 argument 1:13 2:2 2:5,8 3:3,6 4:23 4:25,25 22:18 24:10 33:4,8,12 36:1,3 45:21 46:12 47:14,21 50:5 arguments 46:4 articulated 23:18 23:19 aside 3:13,16 4:21 7:21 15:4 16:3,5,8 18:17,23,24 20:3 20:7 21:14 24:15 24:19,20 29:25 30:7,12,13,15 33:2 35:7,9,13,14 35:15 39:15 43:23 44:24 46:2 asked 14:4 16:10</p>	<p>aspect 16:22 aspects 49:5 assets 29:7,9 34:23 42:23 assuming 36:19 attenuated 28:19 available 13:4,10 39:10</p> <hr/> <p style="text-align: center;">B</p> <p>b 6:5 7:16 49:8 back 14:2 20:6 26:11 39:19 43:24 backdrop 49:18 backoftheenvelope 27:15 balance 21:17 24:7 29:11 balanced 29:18,22 bankrupt 5:14,19 bankruptcy 3:10 4:10 6:8 9:3 12:7 12:16,16,25 13:17 13:18 23:24 24:18 25:19,24 26:1 28:21,23 29:6,8 29:11,20 30:9 31:7 33:10 39:12 39:16 46:19 48:23 bapcpa 21:22 bargain 28:24 baseball 16:1 basic 28:24 29:8 30:8 basically 43:8 basis 10:3 bed 40:4 beef 22:2 behalf 1:16,18 2:4 2:7,10 3:7 24:11 45:22 believe 26:25,25 37:16 38:19 39:11 40:18,21 beneficiaries 13:6,9 25:10,13 28:5</p>	<p>45:7,14,15 50:5,9 50:20 beneficiary 3:18 6:1 9:1,10,14,16 9:25 10:6,12 11:12,16,19 13:13 17:7 23:22,24 24:17,21,25 36:11 36:13,14,15,22 38:5,10,12 beneficiarys 24:20 benefit 28:14 benefits 10:23 13:4 13:10 50:10 big 5:19 41:9,11 bit 36:25 bonus 38:23 box 40:4 boxunderthebed 41:15 brandon 1:3 break 15:18 breyer 31:17 32:5,9 32:18,22 33:5,12 33:19,24,25 34:25 35:10,12,18,21 36:7 43:7,11,16 43:19 44:10,13,14 46:8,14 47:19 48:3,6 brief 7:13 8:1 10:9 19:4,5 25:7 34:4 46:23 48:11,14 broad 12:14 15:14 15:23 16:4 24:3 broader 5:8 12:15 20:14,19 40:3 broadly 4:22 18:12 49:22 buy 43:13 byandlarge 48:22</p> <hr/> <p style="text-align: center;">C</p> <p>c 1:3,9,16,18 2:1 3:1 25:12,25 calculations 27:16</p>
---	---	--	--	---

<p>cant 10:19,25 17:15 25:18 30:17,17 cap 5:25 6:12 34:6 34:18 capital 18:9 car 5:16 careful 5:13 carefully 29:18 case 3:4,10 10:4,11 11:25 13:11 14:6 19:16 21:3,18 22:1,13 24:1 27:9 30:11 31:3 33:14 33:15 35:2,8 38:24 42:10 50:20 50:23,24 casebycase 4:2 38:19 47:18 cash 39:18 40:4 categorically 3:12 category 15:14,23 16:5 20:14,19 41:9,10,11,12 certain 3:13,24 6:6 9:15 10:21 17:13 18:6 34:8,10,21 34:22 47:2 certainly 8:13 13:23 15:2 20:24 21:15 23:16 27:23 28:22 48:19 cetera 32:1,15 change 35:18,25 38:10 changes 36:9 chaos 48:23 chapter 28:24 characteristics 30:16 33:1 38:25 44:20 45:1,6 check 27:18 chief 3:3,8 16:7,15 16:16 24:8,12 42:5 45:18,23 50:22 choice 42:17</p>	<p>chose 11:21 12:14 40:5 42:16 circumstance 20:8 circumstances 13:20 claim 5:20 claimed 5:18 claims 29:4,16 39:18 clarify 14:16 25:20 30:22 clarifying 4:14 20:2 clark 1:3 3:4 clause 5:6 15:13,16 15:25 16:4 18:22 18:22 20:21 41:18 clear 4:20 11:18 14:12,14 15:2 20:2 31:12 40:8 46:3,16,25 48:18 clearer 36:12 clearly 22:20 client 50:12 clients 13:20 22:13 code 12:21,25,25 15:1,6,7 17:9 19:22 20:6 25:12 26:1 27:3 28:22 40:7 codes 3:10 colloquy 46:8 come 25:24 33:9 34:15 comes 15:13 comment 28:9 41:14 commit 4:2 38:18 common 21:24 23:11 27:3 33:14 compelling 12:2 competing 29:12 complete 34:22 completely 9:21 complicated 36:2 concerning 4:23 concerns 3:10</p>	<p>confirm 46:15 confusing 16:19 congress 4:15 5:13 5:16,21 6:2,16 8:17 9:2,20 11:21 12:7,10,14,18,21 13:3,5 14:6,16,22 15:3 19:8 20:4,19 21:12,15 22:19 24:3,5 25:3,12 28:4 29:19,22 37:4,13,16,24 38:14 40:5 41:3 42:15,15 43:4 48:19 49:17 congresss 8:18 26:5 congruence 12:24 congruent 13:23 conscious 26:5 28:4 consequences 9:17 11:8 13:7 17:14 considerable 6:3 9:12 13:3 considerations 29:22 considering 5:21 consistent 39:11 constituted 19:23 consumer 29:17 consumption 39:14 contain 8:2 46:19 contained 49:20 contains 6:14 15:11 21:12 context 17:18 18:21 22:5 40:9 continued 29:17 contrary 45:7 contributed 7:1 contributions 6:11 7:7 30:17 36:18 49:10,11 core 4:24 correct 10:5,8,16 10:17 18:3 33:23 35:17 42:8</p>	<p>counsel 24:8 45:18 50:22,23 counsels 28:8 counted 14:20 course 5:5 9:17 13:7 39:21 47:6 47:13 49:10 50:17 court 1:1,13 3:9,20 6:20 7:19 21:8 24:2,13 29:23 31:12 32:25,25 38:21,24 39:1 44:1,21,25 46:1 47:5 courts 38:18 41:1 48:23,24 covered 12:13 40:7 crafted 5:13 create 24:5 created 5:17 6:3 15:18 creates 12:24 credit 29:17 creditors 5:20 29:3 29:14 39:18 current 26:19 39:14 currently 5:3 14:18 14:18,19 15:6 19:22</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 1:9,16,18 3:1 8:2 21:11 31:19 34:7 34:18 46:23 47:8 47:8,8 danielle 1:18 2:6 24:10 date 31:1,2 daughter 13:13 43:19 day 16:21 24:15 37:2 death 3:18 debt 29:1 debtor 8:3,5 21:12</p>	<p>28:25 29:2,7 30:17 31:8 32:2 32:10,12 33:7 34:5,11 39:12 43:25 44:18 46:15 46:16,18 47:3,3 debtorbased 7:24 debtors 5:11 7:22 8:9,12,24 9:21 21:5,14 22:7,8,16 22:24 29:13,25 30:3,7,15,25 31:4 31:8,13,21,22,23 31:24,25,25 32:2 32:15,19 33:9,20 34:7,9,12,14,16 39:15 42:23 46:3 46:20 47:1 decades 13:5 decision 26:5 28:4 28:10 defend 30:1,6 46:5 deferral 9:10 define 19:4 defined 43:3,5 46:1 defining 21:5 definition 24:17 30:2,2 39:23,25 degree 9:9 deliberately 12:14 denies 35:16 denominated 11:6 39:24 department 50:15 dependent 47:3 dependents 31:8 depending 23:4 27:24 deplete 10:20,24 deposited 3:16 describes 32:11 describing 16:17 descriptive 14:22 designated 17:13 desire 25:3 determined 30:10</p>
--	---	--	---	---

<p>31:2 determining 44:21 didnt 19:16 32:19 41:6 43:6 47:14 die 37:2 died 30:14 50:14 dies 8:25 36:10 difference 26:3 30:21 36:12 45:12 different 18:14 27:1 35:5,19 49:17 differently 25:4 difficult 4:2 38:18 direct 42:20 disassociate 31:11 discharge 29:1 discussing 50:4 discussion 19:1 disposes 11:25 dispute 17:6 distributed 10:4,6 distribution 13:18 29:3,15 distributions 9:15 13:16 48:12 49:13 disturbing 5:12 disuniformity 23:4 doesnt 4:2 9:21 10:25 26:8 29:19 29:22 32:9 33:15 34:17 38:18 40:23 43:15 doing 23:12 37:17 40:14 44:5 dont 4:7 10:7 11:18 13:1 16:23 17:6 26:8,19,24 27:12 28:3 30:1 31:15 31:17 33:6 34:25 35:2 38:19 39:6 39:10 40:18,21 42:3 43:9 44:14 46:5 drawing 44:5</p>	<p style="text-align: center;">E</p> <hr/> <p>e 2:1 3:1,1 17:9 43:5 earlier 7:16 22:19 32:11 early 48:12 49:7 earring 36:8 earrings 35:22,23 ease 12:20 easy 33:13 35:2,3,8 educational 7:12 20:5 effect 24:4 42:17 effectively 31:3 effectuating 8:20 eight 32:2 either 10:1 16:14 44:15 elaborate 41:4 empirical 10:8 employees 6:6 employeesponsor... 25:5 employersponsor... 25:1,4 employment 6:8 enacted 12:11 14:23 encourage 13:9 encouragement 23:20 28:14 encouraging 28:20 ends 27:21 engage 18:6 engaged 38:21 english 16:19 engrafting 3:21 enormous 26:17 37:9 ensure 15:3 31:7 42:22 ensuring 29:16 entire 7:8 13:8 entirely 47:7 entirety 15:12 entities 6:7</p>	<p>entitled 22:14 enumerated 16:6 18:24 19:7 27:2 40:7 equation 23:11 equitable 29:3,15 erisa 25:23 26:3,5 esq 1:16,18 2:3,6,9 essentially 6:15 43:1 estate 5:14 25:25 33:10 34:15 et 1:3,7 32:1,15 event 4:15 23:23 24:5 evidence 8:17 12:8 21:22 example 6:5 15:17 18:5 35:2 39:10 41:22 exceed 34:8,9 47:1 exception 24:6 exceptions 6:14 12:12 29:5 exclude 3:20 5:4 8:15,19 37:5,14 37:16,19 excluded 4:18 20:7 exclusionary 15:21 20:16 exempt 3:18,23 5:20 6:15 9:13 11:9 13:25 17:8 17:23,24,25 18:4 18:11 19:18 25:18 34:16 38:8,9 39:13 41:5,5 42:13 43:4 exempted 4:21 6:13 12:5 15:5 19:17 20:4 31:20 exempting 13:8 exemption 3:11,15 5:15,17 6:17 8:4,6 12:7,8,11,16,24 17:11,16 19:10</p>	<p>21:11 22:8,10,12 22:14,15 23:6 34:6,12,19 39:5,9 39:16 40:6 42:21 42:22,22 46:24,25 47:6 49:19,20 exemptions 5:14,22 8:2 12:12 28:21 28:23 29:6,11,20 30:10 31:2,7 32:14 33:7 34:5 34:23 39:8,12,16 46:13,19 47:9 exempts 3:12 exists 28:19 expansive 6:17 12:10 19:12 explain 4:1,12 10:9 19:5 22:4 41:21 46:12 explained 48:13 explains 18:22 explicit 37:14,17,25 exposed 46:7 expressed 13:24 expressly 12:5 extent 5:6 7:8 15:12,15,18,24 16:4 18:22 20:14 20:21 26:19 27:12 28:18 40:14,23 41:7,10,16,23 42:1,6,9 43:2 46:15 extra 13:17 extremely 28:19 42:9</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabulous 43:20 fact 6:12 8:18 11:19 12:2 13:3 14:25 15:12 23:2 40:5 45:2 46:13 50:6 factintensive 47:17</p>	<p>fair 13:19 29:14 fairly 35:8 fall 39:24 falling 43:24 falls 48:7,7 far 27:19 45:11 favor 23:12 feature 5:12 10:19 19:9 49:24 features 3:24 19:4 19:6 47:11,13,15 47:16 48:10,11 federal 8:6 22:12 22:20 34:5 39:8 fighting 30:19 figure 36:6 48:24 figuring 16:8 filed 30:9 files 24:18 financial 13:22 find 23:14 35:2 47:8 finish 32:23 first 3:15 4:13 5:24 6:18 12:6 23:21 25:7 28:18 31:21 32:23 33:10 34:15 36:8 50:8 fit 29:22 five 31:24 flaw 7:22 19:1 flip 11:4 flow 29:17 focus 20:11 48:9 focused 8:18 focusing 49:23,23 following 31:19 follows 20:21,22 football 16:1 form 20:5 formalism 11:7 former 9:4 four 31:24 32:10 framed 38:24 frankly 33:15 free 39:18 50:7</p>
---	---	---	--	--

<p>frequently 39:7 fresh 28:25 29:13 function 4:14 20:2 43:1 fund 5:11,11 8:8 10:19,20,21,23,25 11:1 13:12 17:16 24:25 35:12,13,19 42:2,3,13 43:3 fundamental 7:22 19:1 38:10 45:11 fundamentally 27:1 36:9 funds 3:11,12,14 3:22 4:5,12,14,20 4:20 5:3,7,8,18,25 6:2 7:10,21,21 8:22 9:8,12,19,21 10:16 11:9,16 12:11,24 14:5,12 15:4 16:2,3,5 17:12,23 18:7,15 18:19,21,23,24 19:11,17,17 20:3 20:13,20 21:5,6 21:13 23:22,23 24:14,15,16,18,22 25:4,5,11,14 27:4 27:6 28:6 29:25 29:25 30:2,3,6,6 30:12,25 31:4,13 31:13 32:7,11,16 32:20 33:22 34:1 34:19 35:5,7,7,9 35:24,25 36:4,9 36:16,18,23 37:17 37:21,21,22 38:12 38:15 39:13,22,23 39:24 40:2,8,10 41:5,17 42:1,1,2,3 42:13,16,19 43:1 43:2,3,5,5,24 44:17,22,24 45:3 45:4,8,12,14 46:2 46:2 47:6,22,23 47:25 48:8 49:12</p>	<p>49:19,25 50:7,9 50:19,21 furnishings 31:23 further 45:16 further 29:21 future 15:8</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>g 3:1 gains 18:9 general 18:17 generally 8:11 generous 39:8 ginsburg 5:9,24 6:19 7:19 11:11 13:11 19:14,21 21:4 22:4,9,23 29:23 30:5,20,23 31:10,16 ginsburgs 32:24 give 9:2 18:5 24:4 given 26:20,21 42:17 gives 5:7,7 11:15 19:23 giving 35:1 go 6:18 11:10,22 14:2 26:11 32:3 35:1 39:19 43:8 goal 29:21 goes 6:8 23:24 46:18 going 8:20 10:1,24 11:12 13:18 27:17 27:18 37:10 43:3 43:8,12,13,20 50:6 good 39:10 41:22 governed 27:2 government 39:8 governmental 6:7 grammar 20:18 great 9:11 19:3 greater 41:17 grow 27:7,19,24 guess 32:18</p>	<hr/> <p style="text-align: center;">H</p> <hr/> <p>half 26:21,21,25,25 hand 4:4 21:19,24 29:12,14 handed 28:16 hands 9:10,11 17:7 38:8,9 45:12,13 45:14 47:22 48:3 48:15,21,25 50:18 happens 36:12 hard 43:25 health 32:3 hear 3:3 heffronclark 50:13 heidi 50:13 help 36:11 50:2 helpful 42:10 47:20 helps 33:7 heres 36:24 hidden 37:6 high 5:25 22:6 history 12:9 21:20 21:21,22 23:15 24:1 48:19 hit 11:13 holders 13:4 holds 6:5,10 home 22:7,8 homestead 5:14 8:4 8:6 39:9 46:24,25 hope 38:17 huge 11:13 hybrids 26:13</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>id 45:25 identify 47:16 48:10 ill 43:21 im 17:10 26:7 41:6 43:12,12,13,20 45:20 46:25 immediately 5:18 6:2,23 9:5 10:1 13:18 15:2,20 36:23</p>	<p>implicit 34:13 important 9:7 11:5 11:7 12:2 14:16 15:9 20:10 38:1 50:11 importantly 19:8 28:20 impose 24:3 impute 25:3 incentive 26:17 50:9 incentives 6:3 incidental 16:22 include 15:23 40:3 includes 5:5 17:20 29:9 including 8:4 25:9 25:22 incongruous 5:21 incorporated 4:17 incredibly 15:23 independent 40:25 42:11 independently 5:4 indicated 50:16 indicates 41:16,16 indicating 41:19 individual 3:14 6:4 6:5,9,11,15 17:1,4 17:7 23:5 24:15 individuals 13:20 22:11 23:20 inevitably 47:17 inference 8:21 inherit 16:9 27:16 inheritance 50:16 inherited 3:14,21 6:1 8:8,15,15,19 9:14 12:5 13:4,6,8 13:21,25 17:1,3 23:4 24:16,17,18 24:21 25:14,17 27:8,25 28:2 33:1 33:2 36:21 37:2,5 38:1,11 39:5 43:20 44:7,7 45:7</p>	<p>50:14 inheriting 48:4 inherits 8:25 27:10 initial 3:19 9:11 26:12 48:15,21,25 50:18 instance 18:5,16 23:21 insurance 32:1 intact 27:7 45:9 integrated 18:13 intend 6:16 intended 18:18 21:13 23:22 intent 8:18,20 43:9 44:16 interest 13:24,24 29:13,14,16 31:22 31:22,23,24,25 32:1,2,15 33:9,21 34:7,9,12,14,16 36:10,13,14 46:17 47:1 interests 23:17 29:12,18 internal 15:1 17:9 interpretation 3:22 5:6 7:20,23 12:3 17:19 18:12,20 19:2 20:1,13,22 20:25 21:3,10,18 22:19,21,24 23:2 23:19 26:9 40:10 40:12 46:5,9 47:12 investment 18:17 invoke 8:5 22:15 involved 49:17 ira 3:17 6:1,10,11 6:23 9:1,14 17:15 18:6,6 24:16,17 24:18,21 25:14,17 27:8,16 36:20 38:3,4,4,4,22 45:8 iras 3:21 6:14 7:15 8:15,15,19 12:5</p>
---	---	---	--	--

<p>13:4,7,9,21 14:1 16:10 17:3,21,22 23:4 26:2,4,5 28:2 28:5 33:2,2 36:22 37:1,2,5 38:2 39:5 49:13</p> <p>irrelevant 17:15 isnt 22:6 isolation 40:2 issue 8:18 50:4 item 31:21 items 6:23 31:20 ive 23:17,18 30:16</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>j 1:6 jewelry 31:24 judgment 45:17 judgments 12:22 24:2 justice 3:3,9,25 4:8 4:9 5:9,24 6:19,22 7:3,18 8:7,11,23 9:6,18 10:8,14,18 11:4,10,11,22 12:18 13:11 14:2 14:3,11,15 16:7 16:15,16 17:10,17 17:20,25 19:8,14 19:21 21:4,23 22:3,4,9,23 23:7,8 24:8,12,24 25:7 25:17,21 26:7,11 26:24 27:9 28:7 28:11,13 29:23 30:4,5,19,20,23 30:23 31:10,16,17 32:5,9,18,22,23 33:5,12,19,23,25 34:25 35:10,12,18 35:21 36:7,24 37:15,18 38:16 39:4,6,19,22 40:13,16,19 41:6 41:13,13,15,19 42:5 43:7,11,16</p>	<p>43:19 44:10,13,14 45:18,24 46:8,14 47:19 48:3,6 49:4 50:8,22</p> <p>justification 12:9 13:2 justifications 11:23 12:1,2,6</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>k 1:16 2:3,9 3:6 25:10,22 26:4 45:21 kagan 10:14,18 11:4 14:2,11,15 26:7,11,24 27:9 36:24 37:15,18 39:19,22 40:13,16 40:19 41:6,15,19 50:8 kagans 41:14 kannon 1:16 2:3,9 3:6 45:21 keep 10:22 11:5 17:12 36:3 43:20 50:9 kennedy 3:25 4:8,9 21:23 22:3 23:7,8 28:7,12,13 38:16 41:13 kennedys 14:3 kept 33:20 kind 26:13 38:2,4 39:17 40:17 50:11 knew 21:15 know 16:8,10,11,16 26:20 32:3 36:5 37:12 39:6,9 40:3 41:8 45:11 knowing 12:11 23:21 knows 28:15</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labor 50:15 language 11:2,20</p>	<p>11:24 12:14 24:3 24:4 34:17 37:10 39:20 40:14,17,22 44:1 49:17</p> <p>large 5:17 47:21,22 47:23 48:1,4 larges 29:16 lawyers 40:23,24 41:7,9,10,23,24 42:6,7 leads 47:17 league 15:24 16:1,1 leagues 15:20 leave 23:22 27:6 45:4,9 leaves 43:11 left 6:7 16:12,13 46:5 legislating 49:18 legislative 12:8 21:20,21 23:15 24:1 48:19 legislatures 22:2 legitimate 29:4,15 39:18 length 19:3 liability 11:13 life 29:8 32:1 lifetime 9:17 lifetimes 13:8 limit 21:13 38:14 limitation 3:21 7:24,25 8:14 21:1 21:8 46:10 47:5,7 49:20 limitations 46:20 48:11,15 49:7 limited 34:12 limits 6:12 line 4:3 44:5,7,13 link 12:7,16 40:5 list 31:19 listing 37:11 little 15:23 36:25 50:2 live 42:24</p>	<p>logically 42:4 long 10:1,9 11:9 17:23 18:9,18 21:22 longer 24:19 30:13 longterm 13:22 look 15:1 23:9,9 46:13,22 looked 23:16 33:1 33:19 40:1 45:1 looking 27:21 looks 27:13,17,18 lost 42:5 lower 48:23 lump 25:11</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>m 1:14 3:2 50:24 major 15:19,25 making 35:4 march 1:10 masses 37:3 matter 1:12 10:8 20:18,24 23:3 35:23 43:15 50:25 matters 5:3 19:9 49:24 mean 4:9 5:19 7:21 10:18 13:12 16:20 19:15 20:17 21:5 26:12 36:5 37:3 37:20,22 40:22 43:7 44:15 meaning 5:7,8,10 6:23 17:16 19:22 19:23 20:13 40:3 means 9:22 17:18 18:11 20:18 29:25 30:3,6 31:13 32:19 33:25 meant 37:4 medical 7:12 meet 24:16 members 15:19 merely 42:12 midleaged 27:11</p>	<p>million 6:13 mind 11:5 minimum 9:15 13:16,22 48:12 49:12 minute 7:16 minutes 45:19,20 misapprehends 5:1 missing 41:20 monday 1:10 money 5:19 6:12 7:1,15 9:4,25 10:3 17:12 18:1,17 20:6 43:13 morning 3:4 46:4 mother 16:11,12,13 motivation 28:19 28:21,22,23 motor 31:22 34:10 move 18:7,8</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>n 2:1,1 3:1 34:20 nakedly 46:9 name 8:11 narrow 5:21 15:25 20:20 40:20 narrowed 15:15 narrowing 40:17 40:22 narrows 16:4 20:15 national 16:1 natural 11:1 15:13 15:22 20:18 naturally 20:22 nature 35:19,25 36:8,9 necessarily 20:16 40:22 47:19 necessary 42:12,12 necessities 29:8 need 11:25 19:15 30:20 42:24 needed 41:3 needs 26:19 negative 8:21</p>
--	--	--	---	--

<p>neither 27:7 45:6 never 25:24 43:12 new 20:5 nine 32:2 nonalienable 25:23 nonprofits 6:7 nonretirement 7:10 nonspousal 25:13 28:5 36:11,14,22 38:5,11 45:15 normal 16:19 note 8:16 notion 28:25 number 31:21 32:5 32:6 37:9</p> <hr/> <p style="text-align: center;">O</p> <p>o 2:1 3:1 object 42:21 objective 3:24 19:4 19:9 33:1 38:25 40:9,19 44:19 45:1 47:11,13,15 48:10 49:24 obtaining 29:13 obvious 37:9 obviously 8:15 11:24 12:21 14:13 24:6 49:16 odd 8:20 16:24 42:18,25 oddly 32:6 offer 34:21 47:11 offered 7:20 offers 50:2 oh 26:13 35:10 37:7 okay 36:4 43:16,23 old 50:13 once 11:14 27:13 32:13 35:6,6 43:23 44:3 47:16 ones 22:18 23:17 23:18 27:21 44:7 44:7 oneway 10:15 opening 50:4</p>	<p>opinion 46:1 opponent 17:14 opt 22:11 opted 22:13 23:3 option 27:12 oral 1:12 2:2,5 3:6 24:10 order 8:5 10:23 12:15 18:25 19:12 34:5 ordinarily 18:8 original 24:19 28:10,15 30:13,14 36:10 38:8 45:13 47:23 originally 7:1 owned 32:1 owner 3:19 9:12 28:10,15 30:14 36:10 38:9 45:3 48:15,21 50:18 owners 24:19 30:13 45:13 48:25 owns 35:19</p> <hr/> <p style="text-align: center;">P</p> <p>p 3:1 page 2:2 34:3 46:22 paid 7:4 18:1 paradigmatic 21:2 21:18 paragraphs 32:10 32:13 parent 8:25 9:2 parenthetically 8:16 parents 50:14 part 6:18 10:24 16:25 49:11 particular 15:10 18:7 20:12 23:13 47:18 48:24 49:5 particularly 9:24 22:6 42:18 parties 24:14 passed 38:5</p>	<p>passes 3:18 36:10 pay 18:9 payments 49:21 pearl 35:22,22 36:8 penalty 6:24 7:4,6 7:8,11,15 36:18 45:2 pension 38:23 people 26:17 37:1,4 37:9 peoples 11:1 percent 6:24 14:24 percentage 22:6 perfectly 15:22 38:13 period 18:1 19:19 36:4 permit 28:5 39:12 perplexing 36:25 person 9:25 27:10 27:11,14 35:19 47:24 48:4 personal 47:2 petition 30:9 31:2 petitioner 30:1 petitioners 1:4,17 2:4,10 3:7 22:13 28:8 33:8 40:11 41:25 42:20 45:22 phrase 4:19 5:3,7 8:21 14:5,11 15:11,20 18:15 20:14 33:6 37:16 40:1,10,22 41:23 42:9,11,16,18 48:8 phraseology 41:4 place 33:10 34:15 plain 3:11 11:24 plan 25:10 38:23 planning 13:23 plans 25:9,16,21,24 27:2 38:6,7 39:1 plausible 10:11 play 15:25 please 3:9 24:13</p>	<p>26:7 point 8:1 11:4 14:8 14:9,10 17:11,11 23:25 25:7,15 26:12 33:5 35:4,5 35:13 36:1 43:17 46:24 47:20,21 pointed 50:8 points 5:23 19:1 28:17 36:8 44:3 policy 11:23 12:1,2 12:6,9 13:2,24 22:18 23:3,17 24:2 50:3 policywise 44:6 portfolio 27:22 position 4:1 13:21 30:6,8,24 31:12 possess 49:14 possesses 3:24 pot 5:19 potentially 39:13 precisely 11:20 22:15 33:3 44:20 47:4 preferable 20:24 preferential 9:3 prepetition 29:1,2 prescribed 32:3 present 45:6 pressing 26:19 pretty 37:9,23 43:25 previously 30:16 primary 7:14 prime 50:16 prior 10:6 27:5 32:13 36:19 problem 16:8 43:7 47:10,16 proceed 22:16 proceeded 20:20 proceeding 23:5 professional 15:19 profit 38:23 property 29:2</p>	<p>31:20 32:15 33:9 34:8,13,14,16 46:17,18,21 47:2 47:3 protected 23:23 25:19 protection 12:15,16 12:17 14:19 23:3 48:20 provide 9:20 12:15 22:20 23:3,20 29:8 39:7 48:20 provided 13:6 25:13 39:5 provides 22:21 25:10 provision 3:12 4:17 12:10 14:13,17,23 15:10 19:13 20:12 21:13 25:22 26:10 provisions 4:16 13:25 14:24 27:2 proviso 11:24 purpose 11:11 14:12,17 18:17 23:10 31:6 39:12 42:21,22 purposes 7:10,12 19:9,14 30:11 pursuant 28:8 put 18:1,17 38:14 43:23 puzzling 31:11</p> <hr/> <p style="text-align: center;">Q</p> <p>qualified 25:9,15 25:21 38:6 qualify 3:15 18:18 18:25 49:1,6 question 6:19 27:25 28:1 32:24 35:15 37:20 38:17,22,24 41:2 43:22 44:23 44:25 46:18 50:5 questions 45:16 quickly 31:9</p>
---	---	--	--	---

<p>quite 6:17 9:11 10:11 14:3 21:10 38:20 42:25 44:23 quoting 46:25</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>r 3:1 rameker 1:6 3:4 range 12:13 ratchet 10:15 rate 10:10 27:25 reach 9:22 reached 10:2 read 5:10 18:21 21:8 29:20 42:18 46:9 reading 38:7,18 41:25 42:20 47:5 reads 7:23 18:13 21:1 46:25 real 32:15 34:8 47:2 reality 50:11 realize 37:7 really 4:5,24,25 12:15,20 13:9 14:12 15:9 17:3,6 18:13,22 19:1,24 20:11 22:10 27:13 29:11 46:4,9 50:2 reason 23:13 24:22 25:12 31:18 32:19 33:8 34:2,4,17 38:13 46:7,7 reasonable 10:10 reasonably 48:18 reasoning 32:25 reasons 26:15 rebuttal 2:8 45:21 received 14:19 49:21 receives 24:25 36:13,14 recipe 48:23 recitation 23:10 recited 46:14</p>	<p>reconciled 28:4 red 34:4 refer 5:10 8:4 17:1 44:17 reference 14:14 15:5 21:12 references 8:3,3 17:2 46:15 47:13 referred 49:3 referring 7:16 refers 16:3 regard 5:24 6:9,10 6:25 7:7,8 15:6 49:9,10,16 50:17 regardless 13:19 22:11,16 regime 22:12,14,16 regimes 22:21 23:6 relatively 9:25 50:6 relevant 11:20 13:2 13:25 17:4 21:21 30:11,25 31:5 46:20 relied 44:21 remain 9:8,12,13 11:9,9 16:5 17:3 17:22,24 18:4,9 remaining 29:7 45:20 remains 3:17 17:8 rendered 4:5 reply 19:5 48:13 require 36:22 required 9:15 13:16 19:12 48:12 49:12 requirement 26:2,6 requirements 41:1 42:11 43:6 requires 25:23 reserve 24:7 reserving 21:17 residence 47:4 respect 5:1 respectfully 21:9 21:25 23:16 46:6</p>	<p>48:17 50:1 respond 31:9 32:21 respondent 6:20 respondents 1:19 2:7 3:20 4:1,24 6:20 7:19 19:2,3 19:25 20:24 21:10 24:11 46:4,23 47:11 48:10 50:2 response 5:23 7:18 28:17 32:23 34:22 responses 25:6 rest 44:2,18 resting 44:16,16,17 44:19 restriction 24:23 27:4 rests 45:11 result 4:15 26:4 retain 42:23 retains 35:23 retire 28:15 43:12 retirement 3:11,13 3:13,14,16 4:5,12 4:14,18,19,21 5:3 5:7,8,11,11,25 6:6 7:20,22 8:7,21 9:8 9:19,20,23 10:2,4 10:13,19,22 11:1 11:6,17 12:11,13 12:22,24 13:22 14:5,5,12,25 15:4 16:2,3,6,12,18,22 17:2,4,8,12,16 18:15,19,20,23 19:5,17,24 20:1,3 20:9,12,15,17,19 21:5,6,15 22:25 23:21 24:14,19,20 24:25 25:1,4,9,16 25:21 26:14,16,18 26:22 27:1,5,7,13 27:22 28:3,9,20 29:10,21,24 30:1 30:2,3,6,7,12,14 30:15,18,25 31:4</p>	<p>31:12,13 32:6,11 32:16,20 33:3,22 34:1,19 35:5,7,8 35:12,13,14,15,24 35:24 36:4,16,17 37:17,21,21,22 38:6,12,14 39:15 39:22,23,23 40:2 40:5,8,10 41:17 42:1,3,16,19,24 43:2,5,5,21,24 44:22,24 45:9,12 46:2,3 47:6,24,25 48:8,13 49:13,19 50:18,21 retirements 43:1 return 10:10 27:25 29:1 revenue 15:1 17:9 right 17:22 45:10 risk 11:3 roberts 3:3 16:7,16 24:8 42:5 45:18 50:22 roll 25:14 30:17 36:16 rollover 6:14 roth 6:10,23 7:15 17:15,21,22 18:6 38:4 49:11,13 roths 49:8,9 roughly 10:5,12 rousey 38:21 44:21 44:25 49:16,16,18 50:1</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>s 2:1 3:1 7:16 25:10 25:22 26:4 49:8 save 23:21 saved 29:9 saving 29:21 40:4 savings 10:23 20:5 28:20 39:3 saw 39:1 saying 14:17 20:1</p>	<p>26:13 41:8,16 says 22:24 25:2 29:24 32:6,12 33:22 34:7 36:3 42:6 43:12 44:7 scalia 49:4 scenario 10:11 scope 5:4 second 3:17 14:8,8 14:10 section 8:2 15:1 17:8 20:6 21:11 25:12,25 33:10 34:20 46:16,23 sections 14:7,20 37:11,13 39:24 40:7 see 11:12 30:21 33:12 35:3 47:22 sense 17:5 21:24 23:11 29:19 31:6 33:15 44:6 separate 43:6 serves 4:14 20:2 set 3:12,16 4:20 7:12,21 15:4,14 16:3,5,8 18:23,24 20:3,7 21:13,14 22:18 24:15,19,20 29:12,25 30:7,12 30:13,15 33:2 34:6 35:7,9,13,14 35:15 39:15 40:25 43:6 44:24 46:2 setteraside 47:23 seven 12:4 22:2,3,5 23:15 32:1 39:4 shanmugam 1:16 2:3,9 3:5,6,8 4:7 4:11 5:9,23 6:25 7:6 8:10,13 9:6 10:7,15,17 11:3 11:15 12:20 13:15 14:2,10,21 16:14 16:23 17:17,22 18:3 19:20 21:7</p>
--	---	--	---	--

<p>21:25 22:9 23:1 23:14 45:19,21,23 48:2,5,9 49:7 share 27:3 shared 19:6 sharing 38:23 shouldnt 26:20,21 side 23:11 significant 11:8 13:5 similar 8:24 34:17 38:20,22 44:23 simple 4:3 9:19 29:24 36:3 simplicity 26:23 simply 8:25 9:7 12:24 14:11 16:2 20:15,18 23:25 38:3 39:2 41:4 46:15 situation 8:8,24 9:24 25:8 50:12 six 31:25 sliced 20:25 small 41:11 smaller 41:9 society 29:16 somebody 16:10 43:11 somewhat 8:24 44:5 sorry 26:7 41:6 45:20 sort 21:2 22:1 26:21 27:21 33:19 47:7 48:22 sotomayor 6:22 7:3 8:7,11 17:10,18 17:20,25 19:8 24:24 25:7,17,21 30:19,23 speaker 16:19 special 12:23 38:2 specific 26:9 40:6 49:4 specifically 8:4</p>	<p>45:2 specified 7:9 19:8 spent 13:13 spinelli 1:18 2:6 24:9,10,12 25:6 25:20 26:8,24 27:23 28:11,17 30:4,8,22 31:15 32:4,8,17,21 33:17,23 34:2 35:6,11,17,20 36:7,24 37:15,24 39:6,21 40:1,15 40:18,21 41:21 42:8 43:10,15,18 44:9,12,19 47:12 49:3 spinellis 46:8,11 sports 15:18,19,21 15:22 spousal 36:13,15 38:9 45:13 stand 5:3 stands 15:6 start 28:25 29:13 45:25 47:16 started 20:19 starts 38:17 state 22:2,7,8,12,21 32:14 statement 14:3 statements 23:10 states 1:1,13 12:4 22:3,6,7 23:2,6,9 23:12,15 39:5,7 39:10 status 19:11 49:25 statute 3:22 4:10 5:2,5,5 6:19 7:18 7:24 15:11,17 17:3,19 18:11,13 18:13,14 19:7,16 19:21 20:23 21:2 21:9,19,20,24 33:20,20 34:20 38:15 42:18,19</p>	<p>43:2 44:2 46:1,10 statutory 20:12 21:3,18 stay 35:22 stock 18:7,8 38:23 stopped 18:15 stops 24:15 strange 10:19 stretch 9:16 13:7 strikes 42:25 structure 5:1 15:10 20:11,23 39:11 subject 12:23 18:10 25:22 26:2,6 subjective 40:12 43:9 44:16 submit 21:9,25 23:17 29:19 46:6 48:17 50:1 submitted 50:23,25 subsequently 15:7 substantial 49:11 substantively 11:7 substitute 29:9 44:22 substitutes 39:2 sudden 37:7 sufficient 29:7 suggest 34:11 40:23 41:24 suggests 37:11 41:25 42:2 sum 25:11 superfluity 4:23 superfluous 4:6,13 19:25 20:17 support 12:3,9 31:7 supporting 9:22 supports 22:19 suppose 8:23 27:16 31:18 39:4 supposed 19:4 supreme 1:1,13 sure 13:1 14:4,22 14:24 17:10 18:14 22:22 29:6</p>	<p>swept 49:22</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t 2:1,1 tack 20:4 take 9:15 11:13 13:9 14:25 16:21 25:11 27:4,12,12 29:24 43:13 45:8 46:13,22 taken 10:2 13:15 takes 41:11 talk 19:3 32:14 34:23 talking 32:14 33:20 35:21 tax 3:17,23 4:16 6:3 9:9,12,16 10:23 10:23 11:8,13 12:7,17,21,25 13:4,7,10,25 14:19,24 15:5,7 15:18 17:8,10,14 17:15,23,24,25 18:4,11 19:22 20:6 25:12,18 27:3 28:22 40:7 50:10 taxation 18:10 19:18 41:5 42:14 43:4 taxdeferred 26:16 39:3 taxes 7:3 18:1 taxexempt 3:13 9:8 19:10 28:2 40:6 49:25 teams 15:18,21,22 15:24,25 tell 47:14 tells 30:1 tend 9:18 term 19:24 20:8 34:5 terms 3:11 9:19 test 40:19 48:22,22</p>	<p>text 6:19 7:18 20:23 21:1,19 29:20 45:25 46:23 46:24 49:3,16 textual 4:24 19:1 20:24 thank 3:8 24:8 45:18,23 50:22 thats 6:6 11:4,6 13:1 16:20,25 17:13 18:3,11 24:24 25:8,11 31:1 32:18 33:16 33:23 34:13 35:3 35:4,17 36:5,5,25 37:18,22 38:1 39:9 41:5 42:4 43:16,18,22,25 44:5 48:6 theory 44:10 theres 7:4 17:6 27:25 28:14 36:18 44:9,12 theyre 18:4 27:24 30:14 37:2 38:3 thing 7:17 10:22 11:14 21:16 36:11 36:25 37:6 38:1,5 40:24 48:18 49:2 49:15 things 15:2 16:15 27:3,10 36:21 think 3:25 4:7,12 4:13,24,25 9:18 10:7 11:4,18,24 12:1,3,20 13:1,3 13:19 14:10,13,21 15:9,11,20 16:16 16:23,24 17:6,13 17:17 18:12,25 19:16,23 20:10 22:1 26:8 28:1,3 28:18 30:8,23 31:1,3 33:6,17 35:6 36:1 37:25 38:13,16,20 40:2</p>
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<p>40:8,11,24 41:22 41:23,25 42:3,9 42:16 44:14,23 45:10 46:3 47:10 47:15,19,21 49:6 50:10 thinks 43:20 48:7 thought 14:7 17:11 31:18 33:13,25 three 31:23 32:13 time 10:13 14:23 21:17 24:7,22 30:9,10,11 35:11 35:14 45:5,8 46:18 tons 37:1,1 tools 13:22,23 traditional 36:19 38:3,22 tragically 50:14 transactions 18:7 treat 25:3 26:22 28:6 36:15 treatment 9:3,20 12:23 26:3 28:2 38:11 tribune 25:2 trigger 19:12 trouble 44:15 true 3:25 4:8 5:2,25 8:14 9:9,14 24:24 27:7,23 36:21 38:6 40:25 42:4 46:14 49:9 50:12 trustee 1:7 29:3 try 10:22 26:18 41:21 48:24 turns 29:2 two 5:23 7:14 8:24 13:5 25:6 27:3 28:17 31:22 36:7 36:7 40:25 42:11 43:6 44:3 48:11 twothirds 10:5 type 38:3 47:4 50:12</p>	<p>types 7:14 12:22 16:6 18:25 48:14 48:20,25</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 20:25 unable 23:14 underlying 11:22 underscore 15:10 20:10 understand 30:20 35:4 36:2 38:1 50:11 understandable 38:14 understanding 11:1 understood 14:4 40:9 uniformity 22:5,20 22:22 unique 22:10 united 1:1,13 unlimited 6:15 39:9 39:13,17 upshot 30:24 usable 5:19 use 9:4 11:16 13:21 14:5,11 18:19 19:16 26:18 33:6 34:5,11,23 42:16 46:20 50:7,20 uses 8:5 47:4 ux 1:3</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:5 value 34:6,8,10,18 47:2 vast 12:13 vehicle 31:23 34:10 versus 3:4 view 15:22,24 22:17 viewed 41:2 virtue 23:2</p>	<hr/> <p style="text-align: center;">W</p> <hr/> <p>wages 29:9 39:2 44:22 want 4:22 7:17 9:2 9:21 12:18 20:11 31:11,14,15,18 32:19 36:5 43:9 46:11 49:2,15 50:3 wanted 12:7 14:16 15:3 22:20 48:19 wants 24:5 washington 1:9,16 1:18 wasnt 11:11,12 14:3 42:15 way 8:20 14:13 29:20 33:14 34:3 37:19,22 39:15,17 41:19 weigh 11:25 23:11 24:2 went 13:16 whats 40:13 41:17 william 1:6 wisconsin 22:14 withdraw 6:2,24 24:21 withdrawals 48:12 49:8 withdrawn 6:23 7:11,15 10:1 45:5 withholds 39:17 women 40:23,24 41:8,10,24,24 42:7,7 wondering 46:6 word 19:17,24 20:1 20:15,17 50:3 words 4:5,9,19 23:12 28:13,14 44:17 work 15:21 20:9,16 working 24:16 works 39:17 wouldnt 8:9 10:5</p>	<p>15:20 16:11 19:15 37:5,13 42:12 write 37:10 41:3 wrote 24:4</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 1:2,8 43:12</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 27:19 years 12:5 50:13 young 9:25 27:10 50:6,15 youre 10:24 14:17 27:17,18 35:4 43:8,23 44:3</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>000 5:15,18 8:25 13:13 16:13 27:16 27:19 000odd 13:12 02 50:24 05 1:14 3:2</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 6:13 33:10 34:7 34:14 36:19 43:12 46:23 47:8 50:19 10 1:14 3:2 6:24 100 14:23 11 8:1 25:12 46:13 50:24 12 31:20 32:6,6 34:18 1225 31:25 13299 1:4 3:4 150 13:13</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 17:13 25:25 27:5 34:9 36:19 43:12 45:3,4 50:19 200 27:16 2014 1:10</p>	<p>22 5:15,15 50:13 24 1:10 2:7 25 6:13</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 2:4 12:4 47:8 300 5:18 8:25 16:13 37something 5:16</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 47:8 400 13:12 401 25:10,22 26:4 402 25:12 408 17:9 20:6 45 2:10 457 6:5 7:16 49:8</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 27:19 45:19 46:22 50 27:18 50:17 501 15:1 522 8:2 21:11 34:20 46:23 541 25:25 33:10 34:14 46:16 59 36:19 50:17,19 591 17:13 27:5 45:3 5a 34:3</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 45:20 65 10:6</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 28:24 70 43:12 701 45:4</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p style="text-align: center;">9</p>
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