

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.   :

8   - - - - - x

9                         Washington, D.C.

10                        Monday, March 24, 2014

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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 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.)

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