STATUTORY LIENS IN BANKRUPTCY	
	DATE: September 27, 2022 San Antonio Country Club 5:00 PM
	Patrick H. Autry, BRANSCOMB PLLC
	ATTORNEY'S PHONE: (210) 598-5401

HANDOUT MATERIAL

NO	DESCRIPTION						
1	Definitions						
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EXHIBIT 1 - Definitions

DEFINITIONS FROM THE BANKRUPTCY CODE

Section 101

(36) The term “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(50) The term “security agreement” means agreement that creates or provides for a security interest.

(53) The term “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute

EXHIBIT 2- Miscellaneous Texas Statutory Liens

PROPERTY CODE

TITLE 5. EXEMPT PROPERTY AND LIENS

SUBTITLE B. LIENS

CHAPTER 70. MISCELLANEOUS LIENS

SUBCHAPTER A. POSSESSORY LIENS

Sec. 70.001. WORKER'S LIEN. (a) A worker in this state who by labor repairs an article, including a vehicle, motorboat, vessel, or outboard motor, may retain possession of the article until:

(1) the amount due under the contract for the repairs is paid; or

(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

(b) If a worker relinquishes possession of a motor vehicle, motorboat, vessel, or outboard motor in return for a check, money order, or a credit card transaction on which payment is stopped, has been dishonored because of insufficient funds, no funds or because the drawer or maker of the order or the credit card holder has no account or the account upon which it was drawn or the credit card account has been closed, the lien provided by this section continues to exist and the worker is entitled to possession of the vehicle, motorboat, vessel, or outboard motor until the amount due is paid, unless the vehicle, motorboat, vessel, or outboard motor is possessed by a person who became a bona fide purchaser of the vehicle after a stop payment order was made. A person entitled to possession of property under this subsection is entitled to take possession thereof in accordance with the provisions of Section 9.609, Business & Commerce Code.

(b-1) Except as provided by Subsection (b), a lien provided by this section on a motor vehicle, motorboat, vessel, or outboard motor is released when a worker:

(1) receives good and sufficient payment of the amounts due under Subsection (a) and, if applicable, Subsection (d); or

(2) relinquishes possession of the motor vehicle, motorboat, vessel, or outboard motor.

(b-2) A worker's right to possession under this section may not be assigned to a third party in return for payment of any amount due under Subsection (a) or (d).

(c) A worker may take possession of an article under Subsection (b) only if the person obligated under the repair contract has signed a notice stating that the article may be subject to repossession under this section. A notice under this subsection must be:

(1) separate from the written repair contract; or

(2) printed on the written repair contract, credit agreement, or other document in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous with a separate signature line.

(d) A worker who takes possession of an article under Subsection (b) may require a person obligated under the repair contract to pay the costs of repossession as a condition of reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article. For the purpose of this subsection, charges represent the fair market value of the services required to take possession of an article if the charges represent the actual cost incurred by the worker in taking possession of the article.

(e) A worker may not transfer to a third party, and a person who performs repossession services may not accept, a check, money order, or credit card transaction that is received as payment for repair of an article and that is returned to the worker because of insufficient funds or no funds, because the drawer or maker of the check or money order or the credit card holder has no account, or because the account on which the check or money order is drawn or the credit card account has been closed.

(f) A person commits an offense if the person transfers or accepts a check, money order, or credit card transaction in violation of Subsection (e). An offense under this subsection is a Class B misdemeanor.

(g) A motor vehicle that is repossessed under this section shall be promptly delivered to the location where the repair was performed or a vehicle storage facility licensed under Chapter 2303, Occupations Code. The motor vehicle must remain at the repair location or a licensed vehicle storage facility at all times until the motor vehicle is lawfully returned to the motor vehicle's owner or a lienholder or is disposed of as provided by this subchapter.

Acts 1983, 68th Leg., p. 3579, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(b), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 275, Sec. 1, eff. June 5, 1985; Acts 1993, 73rd Leg., ch. 754, Sec. 1, 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 375, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.38,

eff. July 1, 2001; Acts 1999, 76th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.807, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1058 (H.B. 2076), Sec. 1, eff. June 19, 2015.

Sec. 70.002. LIENS ON GARMENTS. A person with whom a garment is left for repair, alteration, dyeing, cleaning, laundering, or pressing may retain possession of the garment until:

(1) the amount due the person under the contract for the work is paid; or

(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.003. STABLE KEEPER'S, GARAGEMAN'S, PASTURER'S, AND COTTON GINNER'S LIEN'S. (a) A stable keeper with whom an animal is left for care has a lien on the animal for the amount of the charges for the care.

(b) An owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for the grazing.

(c) A garageman with whom a motor vehicle, motorboat, vessel, or outboard motor is left for care has a lien on the motor vehicle, motorboat, vessel, or outboard motor for the amount of the charges for the care, including reasonable charges for towing the motor vehicle, motorboat, vessel, or outboard motor to the garageman's place of business and excluding charges for repairs.

(d)(1) A cotton ginner to whom a cotton crop has been delivered for processing or who, under an agreement, is to be paid for harvesting a cotton crop has a lien on the cotton processed or harvested for the amount of the charges for the processing or harvesting. The lienholder is entitled to retain possession of the cotton until the amount of the charge due under an agreement is paid or, if an amount is not specified by agreement, the reasonable and usual compensation is paid. If the cotton owner's address is known and the amount of the charge is not paid before the 31st day after the date the cotton ginner's work is completed or the date payment is due under a written agreement, whichever is later, the lienholder shall request the owner to pay the unpaid charge due and shall notify the owner and any other person having a lien on the cotton which is properly recorded under applicable law with the secretary of state of the

fact that unless payment is made not later than the 15th day after the date the notice is received, the lienholder is entitled to sell the cotton under any procedure authorized by Section 9.610, Business & Commerce Code. If the cotton owner's address is not known and the amount of the charge is not paid before the 61st day after the date the cotton ginner's work is completed or the date payment is due under a written agreement, whichever is later, the lienholder is entitled to sell the cotton without notice at a commercially reasonable sale. The proceeds of a sale under this subsection shall be applied first to charges due under this subsection, and any remainder shall be paid in appropriate proportion to:

(A) any other person having a lien on the cotton which is properly recorded under applicable law with the secretary of state; and

(B) the cotton owner.

(2) Nothing in this subsection shall be construed to place an affirmative burden on the cotton ginner to perform any lien searches except as may be appropriate to provide notices required by this section.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 629, Sec. 1, eff. June 14, 1989; Acts 1997, 75th Leg., ch. 462, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.39, eff. July 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 80 (S.B. 543), Sec. 1, eff. September 1, 2009.

Sec. 70.004. POSSESSION OF MOTOR VEHICLE, MOTORBOAT, VESSEL, OR OUTBOARD MOTOR. (a) A holder of a lien under Section 70.003 on a motor vehicle, motorboat, vessel, or outboard motor who obtains possession of the motor vehicle, motorboat, vessel, or outboard motor under a state law or city ordinance shall give notice for a motor vehicle, motorboat, vessel, or outboard motor registered in this state to the last known registered owner and each lienholder of record not later than the fifth day after the day possession is obtained. If the motor vehicle, motorboat, vessel, or outboard motor is registered outside this state, the notice shall be given to the last known registered owner and each lienholder of record not later than the 14th day after the day possession is obtained.

(b) Except as provided by Subsection (c), the notice must be sent by certified mail with return receipt requested and must contain:

(1) a request to remove the motor vehicle, motorboat, vessel, or outboard motor;

(2) a request for payment;

(3) the location of the motor vehicle, motorboat, vessel, or outboard motor; and

(4) the amount of accrued charges.

(c) The notice may be given by publishing the notice once in a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the motor vehicle, motorboat, vessel, or outboard motor is registered in another state;

(2) the holder of the lien submits a written request by certified mail, return receipt requested, to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(3) the holder of the lien:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered that the entity is unwilling or unable to provide information on the last known registered owner or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered on or before the 21st day after the date the holder of the lien submits a request under Subdivision (2);

(4) the identity of the last known registered owner cannot be determined;

(5) the registration does not contain an address for the last known registered owner; and

(6) the holder of the lien cannot determine the identities and addresses of the lienholders of record.

(d) The holder of the lien is not required to publish notice under Subsection (c) if a correctly addressed notice is sent with sufficient postage under Subsection (b) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address.

(e) A person is entitled to fees for towing, impoundment, preservation, and notification and to reasonable storage fees for up to five days before the day that the notice is mailed or published, as applicable. After the day that the notice is mailed or published, the person is entitled to reasonable storage, impoundment, and preservation

fees until the motor vehicle, motorboat, vessel, or outboard motor is removed and accrued charges are paid.

(f) A person charging fees under Subsection (e) commits an offense if the person charges a storage fee for a period of time not authorized by that subsection. An offense under this subsection is punishable by a fine of not less than $200 nor more than $1,000.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(c), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 308, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 629, Sec. 2, eff. June 14, 1989; Acts 1999, 76th Leg., ch. 70, Sec. 2, eff. Sept. 1, 1999.

Sec. 70.005. SALE OF PROPERTY. (a) Except as provided by Subsection (c), a person holding a lien under this subchapter on property other than a motor vehicle subject to Chapter 501, Transportation Code, or cotton under Section 70.003(d), who retains possession of the property for 60 days after the day that the charges accrue shall request the owner to pay the unpaid charges due if the owner's residence is in this state and known. If the charges are not paid before the 11th day after the day of the request, the lienholder may, after 20 days' notice, sell the property at a public sale, or if the lien is on a garment, at a public or private sale.

(b) Except as provided by Subsection (c), if the residence of the owner of property subject to sale under this section is not in this state or not known, the lienholder may sell the property without notice at a public sale after the 60th day after the day that the unpaid charges accrued.

(c) A person holding a lien under Section 70.003(a) on an animal fed in confinement for slaughter may enforce that lien in any manner authorized by Sections 9.610-9.619, Business & Commerce Code.

(d) The lienholder shall apply the proceeds of a sale under this section to the charges. If the lien is on a garment, the lienholder shall apply the proceeds to the charges and the reasonable costs of holding the sale. The lienholder shall pay excess proceeds to the person entitled to them.

Acts 1983, 68th Leg., p. 3581, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.247, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 249, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 462, Sec. 3, 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.40, eff. July 1, 2001.

Sec. 70.006. SALE OR DISPOSAL OF MOTOR VEHICLE, MOTORBOAT, VESSEL, OR OUTBOARD MOTOR. (a) A holder of a lien under this subchapter on a motor vehicle subject to Chapter 501, Transportation Code, or on a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code, as amended, who retains possession of the motor vehicle, motorboat, vessel, or outboard motor shall give written notice to the owner and each holder of a lien recorded on the certificate of title. Subject to Subsection (a-1), a holder of a possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, shall file a copy of the notice and all information required by this section with the county tax assessor-collector's office in the county in which the repairs were made with an administrative fee of $25 payable to the county tax assessor-collector. If the motor vehicle, motorboat, vessel, or outboard motor is registered outside this state, the holder of a lien under this subchapter who retains possession during that period shall give notice to the last known registered owner and each lienholder of record.

(a-1) A copy of the notice and information required to be filed with the county tax assessor-collector's office under Subsection (a) must be filed:

(1) for a motor vehicle that has a gross vehicle weight rating of less than 16,000 pounds, not later than the 30th day after the date on which the charges accrue; and

(2) for a motor vehicle that has a gross vehicle weight rating equal to or greater than 16,000 pounds, not later than the later of the 30th day after the date on which the charges accrue or the 30th day before the date of a proposed sale or disposition of the motor vehicle under Subsection (f) or (f-1).

(b) Except as provided by Subsection (c), the notice must be sent by certified mail with return receipt requested and must include the amount of the charges and a request for payment.

(b-1) A holder of a possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, who is required to give notice to a lienholder of record under this section must include in the notice:

(1) the physical address of the real property at which the repairs to the motor vehicle were made;

(2) the legal name of the person that holds the possessory lien for which the notice is required;

(3) the taxpayer identification number or employer identification number, as applicable, of the person that holds the possessory lien for which the notice is required;

(4) a signed copy of the work order authorizing the repairs on the motor vehicle; and

(5) if applicable, the proposed date of the sale or disposition of the motor vehicle under Subsection (f) or (f-1).

(b-2) If the holder of a possessory lien required to give notice in accordance with Subsection (b-1) does not comply with that subsection, a lien recorded on the certificate of title of the motor vehicle is superior to the possessory lienholder's lien.

(b-3) A person commits an offense if the person knowingly provides false or misleading information in a notice required by this section. An offense under this subsection is a Class B misdemeanor.

(c) The notice may be given by publishing the notice once in a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the holder of the lien submits a written request by certified mail, return receipt requested, to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(2) the holder of the lien:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered that the entity is unwilling or unable to provide information on the last known registered owner or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered on or before the 21st day after the date the holder of the lien submits a request under Subdivision (1);

(3) the identity of the last known registered owner cannot be determined;

(4) the registration does not contain an address for the last known registered owner; and

(5) the holder of the lien cannot determine the identities and addresses of the lienholders of record.

(d) The holder of the lien is not required to publish notice under Subsection (c) if a correctly addressed notice is sent with sufficient postage under Subsection (b) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address.

(e) After notice is given under this section to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, the owner or holder of the lien may obtain possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the holder of a lien under this subchapter before the 31st day after the date a copy of the notice is filed with the county tax assessor-collector's office.

(f) If the charges are not paid before the 31st day after the date that a copy of the notice required by Subsection (a) is filed with the county tax assessor-collector's office, the lienholder may sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges. The lienholder shall pay excess proceeds to the person entitled to them. The public sale may not take place before the 31st day after the date a copy of the notice is filed with the county tax assessor-collector's office.

(f-1) If the charges are not paid before the 31st day after the date that a copy of the notice required by Subsection (a) is filed with the county tax assessor-collector's office and the property that is the subject of the notice is a motor vehicle, the lienholder may, in lieu of selling the vehicle under Subsection (f), dispose of the vehicle in accordance with Subchapter D, Chapter 683, Transportation Code, if the lienholder determines that:

(1) the vehicle's only residual value is as a source of parts or scrap metal; or

(2) it is not economical to dispose of the vehicle at a public sale.

(f-2) If the lienholder disposes of the property under Subsection (f-1), the lienholder shall apply the fair market value of the motor vehicle to the charges due to the lienholder.

(g) After providing notice in accordance with this section, a holder of a possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, shall, on request, allow an owner and each lienholder of record to inspect or arrange an inspection of the motor vehicle by a qualified

professional to verify that the repairs were made. The inspection must be completed before the date of the public sale authorized by Subsection (f).

(h) Not later than the 15th business day after the date the county tax assessor-collector receives notice under this section, the county tax assessor-collector shall provide a copy of the notice that indicates the date the notice was filed with the county tax assessor-collector to the owner of the motor vehicle and each holder of a lien recorded on the certificate of title of the motor vehicle. Except as provided by this subsection, the county tax assessor-collector shall provide the notice required by this section in the same manner as a holder of a lien is required to provide a notice under this section, except that the county tax assessor-collector is not required to use certified mail. Notice under this section is required regardless of the date on which the charges on which the possessory lien is based accrued.

Acts 1983, 68th Leg., p. 3581, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(d), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 165, Sec. 30.248, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 70, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 80 (S.B. 543), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 7, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1204 (S.B. 266), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1058 (H.B. 2076), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1061 (H.B. 3131), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1061 (H.B. 3131), Sec. 6, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 709 (H.B. 2879), Sec. 1, eff. September 1, 2021.

Sec. 70.007. UNCLAIMED EXCESS. (a) If a person entitled to excess proceeds under this subchapter is not known or has moved from this state or the county in which the lien accrued, the person holding the excess shall pay it to the county treasurer of the county in which the lien accrued. The treasurer shall issue the person a receipt for the payment.

(b) If the person entitled to the excess does not claim it before two years after the day it is paid to the treasurer, the excess becomes a part of the county's general fund.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.008. ATTORNEY'S FEES. The court in a suit concerning possession of a motor vehicle, motorboat, vessel, or outboard motor and a debt due on it may award reasonable attorney's fees to the prevailing party.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(e), eff. Oct. 2, 1984.

Sec. 70.009. PLASTIC FABRICATOR LIENS. (a) A plastic fabricator has a lien on any die, mold, form, or pattern in his possession that belongs to a customer for the amount due from the customer for plastic fabrication work performed with the die, mold, form, or pattern. The plastic fabricator may retain possession of the die, mold, form, or pattern until the amount due is paid.

(b) In this section:

(1) "Customer" means a person who contracts with or causes a plastic fabricator to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product or products.

(2) "Plastic fabricator" means a person, including a tool or die maker, who manufactures or causes to be manufactured, or who assembles or improves, a die, form, mold, or pattern for a customer, or who uses or contracts to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product or products for a customer.

Added by Acts 1985, 69th Leg., ch. 357, Sec. 1, eff. Sept. 1, 1985.

Sec. 70.010. LIENS FOR VETERINARY CARE CHARGES FOR LARGE ANIMALS. (a) In this section, "large animal" means exotic livestock or a cow, horse, mule, ass, sheep, goat, llama, alpaca, farm elk, or hog. The term does not include a common household pet such as a cat or dog.

(b) A veterinarian licensed under Chapter 801, Occupations Code, has a lien on a large animal and the proceeds from the disposition of the large animal to secure the cost of veterinary care the veterinarian provided to the large animal.

(c) A lien under this section:

(1) attaches on the 20th day after the date the veterinarian first provides care to the large animal;

(2) attaches regardless of whether the veterinarian retains possession of the large animal;

(3) takes priority over all other liens on the large animal for the period during which the veterinarian retains possession of the large animal, regardless of whether the lien under this section was created or perfected after the date on which another lien was created or perfected, if the veterinarian retains possession; and

(4) has the priority with respect to other liens as provided by Subchapter C, Chapter 9, Business & Commerce Code, if the veterinarian does not retain possession.

(d) The veterinarian may retain possession of a large animal under this section and enforce a lien under this section as provided by Section 70.005(c).

(e) A veterinarian who does not retain possession of a large animal under this section may enforce a lien under this section in the same manner as a statutory residential landlord's lien.

Added by Acts 2009, 81st Leg., R.S., Ch. 1387 (S.B. 1806), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. LIENS ON VESSELS

Sec. 70.101. GENERAL LIEN ON VESSELS. A person who furnishes supplies or materials or who performs repairs or labor for or on account of a domestic vessel that is owned in whole or part in this state has a lien for the person's charges.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.102. LIEN OF NAVIGATION DISTRICT OR PORT. (a) A navigation district or port within the territorial limits of this state that furnishes supplies or materials, performs repairs or labor, or provides a facility or service for which charges are specified in its official published port tariff for or on account of a domestic vessel that is owned in whole or part in this state has a maritime lien for the amount of its charges.

(b) A lien under this section may be enforced in rem. A plaintiff in an action to enforce the lien need not allege or prove that credit was given to the vessel.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.103. PROPERTY SUBJECT TO LIEN. A lien under this subchapter attaches to the vessel and its tackle, apparel, furniture, and freight money.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.104. PERSONS WHO MAY BIND VESSEL. (a) The following persons are presumed to be authorized by the owner of a vessel to incur charges that give rise to a lien under this subchapter:

(1) the managing owner;

(2) the ship's husband;

(3) the master;

(4) the local agent; and

(5) a person entrusted with management of the vessel at the port of supply.

(b) A person tortiously or unlawfully in possession or charge of a vessel may not bind the vessel.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. STOCK BREEDER'S LIEN

Sec. 70.201. STOCK BREEDER'S LIEN. An owner or keeper of a stallion, jack, bull, or boar confined to be bred for profit has a preference lien on the offspring of the animal for the amount of the charges for the breeding services, unless the owner or keeper misrepresents the animal by false pedigree.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.202. ENFORCEMENT OF LIEN. The lien may be enforced in the same manner as a statutory landlord's lien. The lien remains in force for 10 months from the day that the offspring is born, but the lien may not be enforced until five months after the date of birth of the offspring.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. AIRCRAFT REPAIR AND MAINTENANCE LIEN

Sec. 70.301. LIEN. (a) A person who stores, fuels, repairs, or performs maintenance work on an aircraft has a lien on the aircraft for:

(1) the amount due under a contract for the storage, fuel, repairs, or maintenance work; or

(2) if no amount is specified by contract, the reasonable and usual compensation for the storage, fuel, repairs, or maintenance work.

(b) This subchapter applies to a contract for storage only if it is:

(1) written; or

(2) oral and provides for a storage period of at least 30 days.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.302. POSSESSION. (a) A holder of a lien under this subchapter may retain possession of the aircraft subject to the lien until the amount due is paid.

(b) Except as provided by Subsection (c), if the holder of a lien under this subchapter relinquishes possession of the aircraft before the amount due is paid, the person may retake possession of the aircraft as provided by Section 9.609, Business & Commerce Code.

(c) The holder of a lien under this subchapter may not retake possession of the aircraft from a bona fide purchaser for value who purchases the aircraft without knowledge of the lien before the date the lien is recorded under Section 70.303.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.41, eff. July 1, 2001.

Sec. 70.303. RECORDING OF LIEN: AIRCRAFT REGISTERED IN UNITED STATES. A holder of a lien under this subchapter may record the lien on the aircraft by filing with the Federal Aviation Administration Aircraft Registry not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations that states:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, fuel, repairs, or maintenance;

(3) a complete description of the aircraft; and

(4) the name and address of the owner of the aircraft and the number assigned the aircraft by the Federal Aviation Administration, if known.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 1, eff. June 17, 2005.

Sec. 70.3031. RECORDING OF LIEN: AIRCRAFT NOT REGISTERED IN UNITED STATES. (a) A holder of a lien under this subchapter on an aircraft that is registered in a nation other than the United States or that is not registered in any national jurisdiction may record the lien on the aircraft by filing with the secretary of state not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair, fueling, or maintenance an affidavit that states:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, repairs, fuel, or maintenance;

(3) a complete description of the aircraft; and

(4) the name and last known address of the owner of the aircraft and the number assigned the aircraft by the applicable jurisdiction, if known.

(b) An inaccurate address stated under Subsection (a)(4) does not invalidate the affidavit.

(c) The secretary of state shall maintain a record of information filed with the secretary of state under this section and index the records in the name of the owner of the aircraft.

(d) The fee for filing information with the secretary of state under this section is:

(1) $15 if the information is communicated in writing and consists of one or two pages;

(2) $30 if the information is communicated in writing and consists of more than two pages; and

(3) $5 if the information is communicated by another medium authorized by the secretary of state by rule.

Added by Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 2, eff. June 17, 2005.

Sec. 70.304. NOTICE TO OWNER AND LIENHOLDERS. (a) Not later than the 60th day after the date of the completion of the contractual storage period or the performance of the last fueling, repair, or maintenance, a holder of a lien under this subchapter who retains possession of the aircraft shall notify the owner shown on the certificate of registration and each holder of a lien on the aircraft as shown by the records maintained for that purpose by the Federal Aviation Administration Aircraft Registry or the secretary of state. The notice must state:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, fuel, repairs, or maintenance;

(3) a complete description of the aircraft; and

(4) the legal right of the holder of the lien under this subchapter to sell the aircraft at public auction and apply the proceeds to the amount due.

(b) The notice must be delivered by certified or registered mail, return receipt requested.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 538, Sec. 1, eff. June 15, 1991; Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 3, eff. June 17, 2005.

Sec. 70.305. SALE OF AIRCRAFT. If the holder of a lien under this subchapter provides the notice required by Section 70.304 and the amount due remains unpaid after the 90th day after the date of the completion of the contractual storage period or the performance of the last fueling, repair, or maintenance, the holder of the lien may sell the aircraft at a public sale and apply the proceeds to the amount due. The lienholder shall pay any excess proceeds to the person entitled to them.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 4, eff. June 17, 2005.

Sec. 70.306. ATTORNEY'S FEES. The court in a suit brought under this subchapter may award reasonable attorney's fees to the prevailing party.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989.

Sec. 70.307. CRIMINAL OFFENSE: IMPROPERLY OBTAINING POSSESSION OF AIRCRAFT SUBJECT TO LIEN. (a) A person commits an offense if the person, through surreptitious removal or by trick, fraud, or device perpetrated on the holder of the lien, obtains possession of all or part of an aircraft that is subject to a lien under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 5, eff. June 17, 2005.

SUBCHAPTER E. AGRICULTURAL LIENS

Sec. 70.401. DEFINITIONS. In this subchapter:

(1) "Agricultural crop" means a plant product that is grown, produced, or harvested as a result of an agricultural producer's farm operation.

(2) "Agricultural producer" means a person who is engaged in the business of growing, producing, or harvesting an agricultural crop.

(3) "Buyer in ordinary course of business" has the meaning assigned by Section 1.201, Business & Commerce Code.

(4) "Company-owned crop" means an agricultural crop:

(A) that is in the possession of a warehouse or contract purchaser located in this state and for which the agricultural producer has received full payment;

(B) that is not an open storage crop; or

(C) for which the warehouse or the contract purchaser tenders payment and the agricultural producer, without coercion, defers payment.

(5) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term includes a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

(6) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or transfers to:

(i) a warehouse for storage; or

(ii) a contract purchaser located in this state;

(B) is not covered by a warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which the crop is stored or the contract purchaser to which the crop is delivered or transferred.

(7) "Secured lender" means a person that:

(A) has loaned money to a warehouse or a contract purchaser; and

(B) holds a perfected secured lien against a company-owned crop.

(8) "Warehouse" means a facility that stores or handles any agricultural crop after the crop is harvested, including a facility operated by a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.). The term includes a person engaged in the business of operating a warehouse.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 1, eff. September 1, 2017.

Sec. 70.402. LIEN CREATED. (a) An agricultural producer who, under a contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien against that crop for the amount owed under the contract, or for the market value of the crop on the date of transfer or delivery if there is no agreement concerning the amount owed under the contract.

(b) An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against that agricultural crop for the market value of the agricultural crop:

(1) on the date of delivery or transfer; or

(2) if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse.

(c) A lien created under this subchapter is on every agricultural crop, either in raw or processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the warehouse or the contract purchaser, and if the warehouse or the contract purchaser sells all or part of the crop, on the proceeds of the sale. If an open storage crop is commingled with a company-owned crop by a warehouse or a contract purchaser after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the agricultural crop in the possession of the warehouse or the contract purchaser in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(d) For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien created by this subchapter.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 2, eff. September 1, 2017.

Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this subchapter attaches on the date on which physical possession of the agricultural crop is delivered or transferred by the agricultural producer to the warehouse or to the contract purchaser or the purchaser's agent, or if there is to be a series of deliveries, on the date of the first delivery of the agricultural crop.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 3, eff. September 1, 2017.

Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER LAW. (a) Except as provided by Section 70.4045 of this code, Chapter 9, Business &

Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

(b) Except as provided by Subsection (c), to the extent of a conflict, this subchapter controls over any other law.

(c) This subchapter does not abridge the protections afforded by any applicable law, including:

(1) Chapter 14, Agriculture Code;

(2) Chapter 7, Business & Commerce Code;

(3) the United States Warehouse Act (7 U.S.C. Section 241 et seq.); or

(4) common law, including the law of bailment.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 4, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 4, eff. September 1, 2017.

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) Notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section 70.403 and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

(1) the physical possession of the crop is delivered or transferred by the agricultural producer to the warehouse or the contract purchaser or the purchaser's agent, if there is only one delivery; or

(2) of the last delivery of the crop to the warehouse or the contract purchaser or the purchaser's agent, if there is a series of deliveries.

(b) If a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, the lien is considered unperfected.

(c) Notwithstanding Chapter 9, Business & Commerce Code, and except as provided by Subsection (d), a lien created and perfected under this subchapter has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the warehouse or the contract purchaser in favor of a third party, regardless of the date the security interest or lien created by the

warehouse or the contract purchaser attached. This subsection does not affect:

(1) the validity or priority of a security interest or lien:

(A) created and perfected to secure a loan directly to the agricultural producer; or

(B) created and perfected under Chapter 9, Business & Commerce Code, to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender;

(2) the validity or priority of a cotton ginner's lien created under Section 70.003(d); or

(3) the rights of a holder of a negotiable warehouse receipt.

(d) Subsection (c) does not apply to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under:

(1) Section 52.016, Agriculture Code; or

(2) regulations adopted by the United States Department of Agriculture under Title 7 of the United States Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 5, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 5, eff. September 1, 2017.

Sec. 70.405. DURATION OF LIEN. A lien created under this subchapter expires on the first anniversary of the date of attachment.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.406. EFFECT OF LIEN; RECOVERY. (a) A buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a warehouse or a contract purchaser, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

(b) An unequal pro rata recovery between agricultural producers is not prohibited under this subchapter if the inequality results from a lien on accounts receivable.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 6, eff. September 1, 2017.

Sec. 70.407. DISCHARGE OF LIEN. (a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the warehouse or the contract purchaser, as applicable, and the lienholder, without coercion, defers payment.

(b) If payment for the agricultural crop is received in the form of a negotiable instrument, full payment is received when the negotiable instrument clears all financial institutions.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 7, eff. September 1, 2017.

Sec. 70.408. JOINDER OF ACTIONS. Persons claiming a lien against the same agricultural crop under this subchapter may join in the same action, and if separate actions are commenced, the court may consolidate them.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.409. RECOVERY OF COSTS. An agricultural producer who prevails in an action brought to enforce a lien created under this subchapter is entitled to recover:

(1) reasonable and necessary attorney's fees and court costs; and

(2) interest on funds subject to the lien at the judgment interest rate as provided by Chapter 304, Finance Code.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An agricultural producer's agreement with a warehouse or a contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 8, eff. September 1, 2017.

SUBCHAPTER F. LIEN RELATED TO DAMAGED FENCE

Sec. 70.501. LANDOWNER'S LIEN. A person who owns real property in this state that is enclosed by a fence or other structure obviously designed to exclude intruders or to contain livestock or other animals may obtain from a court in this state a judgment entitling the person to a lien against the motor vehicle of a person who damages the landowner's fence with the motor vehicle if the person who damages the landowner's fence:

(1) owns the motor vehicle; or

(2) has the consent of the owner of the motor vehicle to drive the vehicle at the time the person damages the landowner's fence.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.502. AMOUNT OF LIEN. The amount of a landowner's lien under this subchapter is equal to the lesser of:

(1) the fair market value of the motor vehicle on the date the landowner's fence is damaged; or

(2) the actual cost incurred by the landowner to:

(A) repair the fence;

(B) recapture any livestock or other animals that escaped as a direct result of the damage to the fence; and

(C) have the vehicle towed from the property and stored.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.503. PROPERTY TO WHICH LIEN ATTACHES. A landowner's lien under this chapter attaches only to a motor vehicle that causes damage to a fence as described by Section 70.501.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.504. PERFECTING LIEN. A landowner may perfect a lien under this subchapter in the manner provided by Subchapter F, Chapter 501,

Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.505. EXPIRATION AND DISCHARGE OF LIEN. A lien under this subchapter does not expire and is discharged only when the landowner receives payment of the lien.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.506. REMOVAL OF VEHICLE FROM LANDOWNER'S PROPERTY. A landowner whose fence is damaged by a motor vehicle that is then abandoned on the owner's property, or the landowner's agent, may:

(1) select a towing service to remove the vehicle from the landowner's property; and

(2) designate the time at which the towing service may enter the property to remove the vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

EXHIBIT 3 - PACA

The Perishable Agricultural Commodities Act – An Overview

The Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §§ 499a-499t, was enacted in 1930 to regulate the marketing of perishable agricultural commodities in interstate and foreign commerce. The primary purposes of the PACA are to prevent unfair and fraudulent conduct in the marketing and selling of perishable agricultural commodities and to facilitate the orderly flow of perishable agricultural commodities in interstate and foreign commerce. The PACA is administered and regulated by the Agricultural Marketing Service, an agency within the USDA.

Key Definitions

A "perishable agricultural commodity" is any fresh fruit or vegetable, whether or not frozen or packed in ice, and includes cherries in brine, as defined by the USDA Secretary. 7 U.S.C. § 499a(b)(4). The PACA regulations define fresh fruits and vegetables as "all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, . . . [except] those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character." 7 C.F.R. § 46.2(u).

A "dealer" is "any person engaged in the business of buying or selling in wholesale or jobbing quantities . . . any perishable agricultural commodity" that has an invoice value in any calendar year in excess of $230,000.00, subject to several exceptions. 7 U.S.C. § 499a(b)(6). One of the exceptions states that a person who sells a perishable agricultural commodity of their own raising does not constitute a dealer. *Id.*

A "commission merchant" is "any person engaged in the business of receiving . . . . any perishable agricultural commodity for sale, on commission, or for or on behalf of another." *Id.* at § 499a(b)(5).

A "broker" is a person engaged in negotiating sales and purchases of perishable agricultural commodities either for or on behalf of the seller or buyer. *See id.* at § 499a(b)(7). A person who is "an independent agent negotiating sales for or on behalf of the vendor" is not considered a broker. However, if "sales of such commodities negotiated

by such person are sales of frozen fruits and vegetables having an invoice value not in excess of $230,000.00 in any calendar year." *Id. See also id.* at § 499a(b)(3), (8) (defining "interstate or foreign commerce").

Under the PACA, a "person" includes "individuals, partnerships, corporations, and associations." *Id.* at § 499a(b)(1).

Unfair Conduct

The PACA prohibits certain types of conduct on commission merchants, dealers, and brokers. For example, it is unlawful for a commission merchant, dealer, or broker "to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled . . . ." *Id.* at § 499b(1). It is also unlawful for a commission merchant, dealer, or broker "to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity"; "to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction"; and "to fail or refuse truly and correctly to account and make full payment promptly" for any transaction. *Id.* at 499b(4). A full listing of the conduct that a commission merchant, dealer, or broker is prohibited from engaging in is set forth at 7 U.S.C. § 499b.

A commission merchant, dealer, or broker that violates any of the unfair conduct provisions "shall be liable to the person or persons injured thereby for the full amount of damages . . . sustained in consequence of such violation." *Id.* at § 499e(a). The injured person or persons may enforce such liability by bringing an action in federal district court or filing a reparation proceeding with the Department of Agriculture against the commission merchant, dealer, or broker Id. at § 499e(b).

Licensing

The PACA requires that all commission merchants, dealers, and brokers obtain a valid and effective license from the USDA Secretary. 7 U.S.C. § 499c(a). Once an applicant has paid a licensing fee to the Department of Agriculture, the applicant receives a license that entitles the holder to do business as a commission merchant, dealer, or broker under the PACA unless otherwise suspended or revoked by the USDA Secretary. The PACA sets forth several provisions that outline the USDA Secretary's authority to issue a license.

7 U.S.C. § 499d provides grounds for the Secretary's refusal to issue a license. The Secretary may refuse to issue a license to the following: (1) those who have previously had a PACA license revoked within the two years prior to the pending application; (2) those who have flagrantly or repeatedly engaged in unfair conduct defined by the PACA; (3) those who have violated other sections of Title 7 of the U.S. Code; or (4) those who were officers or partners of any previous enterprise that has been adjudicated or discharged as bankrupt within the three years prior to the pending application. *Id.* at § 499d(b) and (e). The Secretary may also withhold the issuance of a license pending an investigation of the applicant for prior violations under the PACA. See *Id.* at § 499d(d).

A commission merchant, dealer, or broker that fails to obtain a valid and effective license "shall be liable to a penalty of not more than $1,000 for each such offense and not more than $250 for each day it continues . . . ." *Id.* at § 499c(a). A commission merchant, dealer, or broker that can demonstrate to the Secretary that its failure to obtain a license "was not willful but was due to inadvertence" may be permitted by the Secretary to settle the matter "by the payment of fees due for the period covered by such violation and an additional sum, not in excess of $250 . . . ." *Id.* Moreover, If the Secretary determines that a commission merchant, dealer, or broker has violated any of the unfair conduct provisions, it may suspend the violator's license "for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender." *Id.* at § 499h(a).

Statutory Trust

In 1984, Congress amended the PACA to include a statutory trust for the benefit of unpaid sellers of perishable agricultural commodities. The PACA provides that:

"[p]erishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents." *Id.* at § 499e(c)(2).

The PACA statutory trust is often referred to as a "floating trust." Thus, a PACA trust beneficiary is not obligated to trace the assets to which the beneficiary's trust applies. When a controversy arises as to which assets are part of the PACA trust, the buyer has the burden of establishing which assets, if any, are not subject to the PACA trust. The PACA beneficiary only has the burden of proving the amount of its claim and that a floating pool of assets exists into which the produce-related assets have been commingled.

If a buyer files for bankruptcy, the trust assets do not become "property of the estate" pursuant to Bankruptcy Code § 541 because the buyer-debtor does not have an equitable interest in the trust assets because the buyer holds those assets for the benefit of the seller. Thus, a beneficiary of the PACA trust has priority over all other creditors with respect to the assets of the PACA trust.

An unpaid produce seller loses the benefits of the statutory trust, however, if it fails to properly preserve the benefits of the trust pursuant to § 499e(c)(3). An unpaid seller may preserve the benefits of the trust by providing a written notice to the commission merchant, broker, or dealer of intent to preserve such benefits. *See id.* at § 499e(c)(3). *See also* 7 C.F.R. § 46.46(f). The written notice must be given to the commission merchant, broker, or dealer within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in the regulations issued by the Secretary, (ii) after expiration

of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored.7 U.S.C. § 499e(c)(3).

Section 499e(c)(3) also provides that if the parties to the transaction "expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement shall be filed in the records of each party to the transaction and the terms of payment must be disclosed" on the documents relating to the transaction. *Id.* If this agreement extends the time for payment for more than thirty days, however, the seller cannot qualify for coverage under the trust. *See* 7 C.F.R. § 46.46(e)(2).

Section 499e(c)(4) provides an alternative method of preserving the benefits of the statutory trust, in addition to the methods provided in § 499e(c)(3). Under this alternative method, a PACA licensee may provide notice of its intent to preserve the benefits of the trust on the "ordinary and usual billing or invoice statements," subject to two conditions. 7 U.S.C. § 499e(c)(4). First, the bill or invoice statement must contain the terms of payment, and each party must maintain a copy of the agreement in its own records. *See id.* Second, the face of the billing or invoice statement must contain the following statement:

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act (7 U.S.C. § 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received. *Id.*

Reparation Proceedings

Any person complaining that a commission merchant, dealer, or broker has violated any PACA's unfair conduct provisions may commence a reparation proceeding by filing an informal complaint with the Secretary. *See* 7 U.S.C. § 499f(a)(1). *See also* 7 C.F.R. § 47.2 (defining a "reparations proceeding") and § 47.3 (setting forth requirements for filing informal complaints). A reparation proceedings provide a remedy in addition to remedies available under applicable state laws or common law and are governed by the PACA Rules of Practice for Reparation Proceedings, 7 C.F.R. §§ 47.1-47.49.

The informal complaint must provide a brief statement of the facts supporting the allegations against the commission merchant, dealer, or broker and must be filed within nine months from when the violation occurred. *See id.* at 7 U.S.C. § 499f(a)(1). After receiving all information and supporting evidence provided by the person filing the informal complaint, the Secretary, to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made and shall afford such person an opportunity, within a reasonable time . . ., to demonstrate or achieve compliance with the applicable requirements of the Act and regulations promulgated thereunder. *Id.* at § 47.3(b)(2).

The Secretary must conduct an investigation. *See* 7 C.F.R. § 47.3(b)(1). *See also* 7 U.S.C. § 499f(c). Suppose the informal complaint and the investigation seem to warrant such action, subject to certain exceptions. In that case, the Secretary in an effort to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made and shall afford such person an opportunity, within a reasonable time . . ., to demonstrate or achieve compliance with the applicable requirements of the Act and regulations promulgated thereunder. *Id.* at § 47.3(b)(2).

If an amicable or informal settlement is not reached, the complaining party may file a formal complaint. *See generally id.* at § 47.6 (setting forth procedures for filing a formal complaint). The formal complaint must contain the information required for filing an informal complaint and a statement of the damages claimed. After the parties have properly responded to all claims and counterclaims, the matter is assigned a docket number and scheduled for a hearing.

If a complaint claims less than $30,000.00 in damages, "a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied in the form of depositions or verified statements of facts." 7 U.S.C. § 499f(c)(2). If a complaint claims damages in excess of $30,000.00, a hearing must be provided unless waived by the parties. The Secretary must then determine whether the commission merchant, dealer, or broker has violated any PACA's unfair conduct provisions. *See id.* at § 499f(d). If the Secretary determines that a violation has occurred, it must determine the amount of damages owed and enter an order stating the date by which the offender must pay those damages. *See id.* at § 499g(a).

Either party may appeal a reparation order to the district court in which the hearing was held within thirty days from the date the order was entered. *See id.* at § 499g(c). If, however, the matter was handled without a hearing because the claim for damages was less than $30,000.00 or because the parties agreed to waive the hearing, appeal must be made to the district court in which the commission merchant, dealer, or broker is located. *See id.* The trial before the district court "shall be a trial *de novo* and shall proceed in all respect like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence of the facts stated therein." *Id.*

Disciplinary Proceedings

A "disciplinary proceeding" is any proceeding, other than a reparations proceeding, arising out of any violation of the PACA. Disciplinary proceedings are governed by the USDA's Uniform Rules of Practice for Disciplinary Proceedings, 7 C.F.R. §§ 1.130-1.151, that applies not only to certain PACA violations, but to violations under a multitude of other statutes as well. *See* 7 C.F.R. § 1.131 (setting forth the various statutes and portions thereof governed by the Uniform Rules of Practice for Disciplinary Proceedings).

Disciplinary proceedings under the PACA differ from reparation proceedings because private parties do not bring disciplinary proceedings. Rather, "[a]ny officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any other interested persons (other

than an employee of an agency of the Department of Agriculture administering this Act) may file" an informal complaint with the Secretary concerning any alleged violation of the PACA by any commission merchant, dealer, or broker. 7 U.S.C. § 499f(b). Thus, it is possible for a reparation proceeding to be brought by a private party, have a reparation order issued against a commission merchant, dealer, or broker for a violation of any of the unfair conduct provisions as a result of that reparation proceeding, and to then have a disciplinary action filed by "any officer or agency . . . and any other interested person" as a result of the filing of a reparation proceeding.

Disciplinary proceedings are commenced, similar to reparation proceedings, by filing an informal complaint. See 7 C.F.R. § 47.3. With respect to disciplinary proceedings, however, the informal complaint may be brought any time within two years after the violation occurred, as long as the complaint does not allege "flagrant or repeated violations." 7 C.F.R. § 47.3(a)(1).

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EXHIBIT4 -Packers and Stockyards Act

The Packers and Stockyards Act: An Overview

The Packers and Stockyards Act of 1921, as amended ("PSA" or "Act"), 7 U.S.C. §§ 181-229, is designed to insure effective competition and integrity in livestock, meat, and poultry markets. It was enacted in response to concerns that the "Big Five" large meat packers- Swift & Company, Armour & Company, Cudahy Packing Company, Wilson & Company, and Morris & Company- had engaged in anticompetitive practices that had a deleterious effect on producers and consumers. *See* 10 Neil E. Harl, Agricultural Law § 71.02 (1993) (providing an extensive discussion of the historical development of the PSA).

For many years, the PSA was administered by the Grain Inspection, Packers, and Stockyards Administration ("GIPSA"). However, on September 7, 2017, Agriculture Secretary Sonny Perdue announced the realignment of several offices with the United States Department of Agriculture (USDA). The GIPSA became part of the Agricultural Marketing Service (AMS), which is now responsible for GIPSA's previous activities through the Packers and Stockyards Division (PSD) of AMS.

The regulations implementing the Act are found at 9 C.F.R. Part 201-206. In its administration of the PSA and Section 1324 of the Food Security Act of 1985, PSD, through its mission, seeks to ensure fair business practices and competitive markets for livestock, meat, and poultry. The major enforcement areas are payment protection, unfair, deceptive, and fraudulent practices, and competition. PSD conducts two broad areas of activities- regulatory and investigative-in its administration and enforcement of the Act. Compliance with the PSA and regulations is confirmed by monitoring industry activities and conducting regulatory compliance reviews and investigations.

Applicability

The PSA applies to persons engaged in the business of marketing livestock, meat, and poultry in interstate or foreign commerce- packers, swine contractors, stockyard owners, market agencies, dealers, and live poultry dealers. *See* Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, tit. X, § 10502, 116 Stat. 134, 509-10 (codified at 7 U.S.C. §§ 182(a), 192-195, 209(a), 221, 223) (amending the PSA to include swine contractors as persons regulated by the PSA). The PSA does not apply to persons marketing their own livestock or buying livestock for their own stocking or feeding purposes.

A "packer" is any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. 7 U.S.C. § 191.

A "person" can be an individual, partnership, corporation, or association. *See id.* at § 182(1).

"Livestock" includes "cattle, sheep, swine, horses, mules, or goats- whether live or dead." *Id.* at § 182(4). "Livestock products" are "all products and byproducts (other than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from livestock." *Id.* at § 182(5).

A "swine contractor" is any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling swine for slaughter, if- (A) the swine is obtained by the person in commerce; or (B) the swine (including products from the swine) obtained by the person is sold or shipped in commerce. *Id.* at § 182(12).

A "stockyard owner" is "any person engaged in the business of conducting or operating a stockyard." *Id.* at § 201(a). A "stockyard" is

any place, establishment, or facility commonly known as stockyards, conducted, or operated or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. *Id.* at § 202(a).

A "market agency" is "any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services." *Id.* at § 201(c). "Stockyard services" are "services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock." *Id.* at § 201(b).

A "dealer" is "any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser." *Id.* at § 201(d).

A "live poultry dealer" is "any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another . . . ." *Id.* at § 182(10). "Poultry" includes "chickens, turkeys, ducks, geese, and other domestic fowl." *Id.* at § 182(6). A "poultry grower" is "any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such

poultry." *Id.* at § 182(8). A "poultry growing arrangement" is "any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter." *Id.* at § 182(9).

Unlawful Practices; Registration

The PSA prohibits certain unlawful conduct on the part of packers and live poultry dealers. *See id.* at § 192. Title II of the Act focuses on competition issues that arises from Packers and Live Poultry Dealers. Practices enumerated as unlawful include engaging in or using "any unfair, unjustly discriminatory, or deceptive practice or device"; making or giving "any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject[ing] any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect"; and engaging "in any course of business or do[ing] any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce." *Id.* In 2019, the USDA proposed new rules aimed at only prohibiting those preferences that are undue or unreasonable. Under the proposed regulations, the Secretary would consider the four following factors: whether the preference or advantage under consideration cannot be justified on the basis of a cost savings related to dealing with different producers, sellers, or growers, 9 C.F.R. § 201.211(a); whether the preference or advantage in question cannot be justified on the basis of meeting a competitor's prices, § 201.211(b); whether the preference or advantage in question cannot be justified on the basis of meeting other terms offered by a competitor§ 201.211(c); and whether the preference or advantage in question cannot be justified as a reasonable business decision that would be customary in the industry, § 201.211(d).

Under Title III of the Act, similar provisions as shown above apply to Stockyard Owners, Stockyards Services, Market Agencies, and Dealers. *See e.g., id at* §§ 203, 208, 209, 213. Stockyards, Market Agencies, and Dealers must register with the Packers and Stockyards Program in addition to the bond having to be posted as discussed below. The duty to register does not apply to Packers, which from a practical matter also means that a preliminary Notice of Violation with included recommended corrective actions does not have to be sent to Packers, but will be sent Stockyards, Market Agencies and Dealers.

As of note, there are very few registered Stockyards in existence within the country anymore, as the industry has evolved into use of feedlots more that are typically farther from cities and closer to the packing houses. Feedlots are exempted from the Act, pursuant to Tenth Circuit decision in 1977 that has not been challenged *See Solomon Valley Feedlot, Inc. v. Butz,* 557 F.2d 717 (10th Cir. 1977).

Bonds

Market agencies, packers whose average annual purchases of livestock exceed $500,000, and "every other person operating as a dealer" must maintain a bond as a means of protecting livestock sellers. *Id.* at § 204. The amount of the bond is typically based on the volume of business done in two business days and is usually at least

$10,000. The bonds are determined from an annual livestock report that is done through self-reporting required by the regulations and submitted to the Central Reporting Unit of the PSD.

The Secretary may, after notice and hearing, suspend a packer, market agency, or any dealer for a "reasonable specified period" if it is determined that the packer, market agency, or dealer is insolvent. 7 U.S.C. § 204. If the Secretary determines that a packer is insolvent, "he may after notice and hearing issue an order … requiring such packer to cease and desist from purchasing livestock while insolvent" or requiring the insolvent packer to purchase livestock only in accordance with conditions established by the Secretary. *Id.*

Scales and Weighing

Another major responsibility of the PSD is to monitor scales and weighing procedures that are used in calculating payments for livestock and poultry. The regulations under the Act require that tests be conducted of two in-use scales by each regulated entity per year, one to occur within the first half of the year, and the other to be conducted in the second half of the year with the tests being no closer than 120 days apart. *See* 9 C.F.R. 201.72(a).

To promote greater accuracy in livestock and poultry sales, regulations were introduced in 2014 requiring the installation and maintenance of electronic evaluation devices or systems for measuring the composition or quality constituents of live animals, livestock and poultry carcasses, and individual cuts of meat or a combination thereof for the purpose of determining value. Biannual tests are required except if scales are used on a limited seasonal basis (during any continuous 8-month period) the scales may use the scales within an 8-month period following each test.

Additionally, the process of obtaining the gross weight which may include, but is not limited to, fueling, uncoupling the trailer, changing the road tractor to a yard tractor, or weighing the trailer only, must be conducted without delay; specifically, the time period between arrival and completion of the process of obtaining the gross weight must not exceed thirty (30) minutes. (c) Live poultry dealers must not place poultry from multiple growers on a single live poultry transport trailer or other live poultry transport equipment, creating what is commonly referred to as a "split load."

Prompt Payment

Packers, market agencies, and dealers purchasing livestock must provide prompt payment to the seller for the full amount of the purchase price, usually by the close of the business day after transfer of possession. 7 U.S.C. § 228b. Packers must pay the full purchase to a livestock seller "before the close of the next business day following the purchase. . ." *Id.* at § 228b(a). If, however, the livestock is purchased for slaughter, "before close of the next business day following purchase of livestock and transfer of possession thereof," the packer must "actually deliver at the point of transfer of possession to the seller or his . . . representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price." *Id.* Also, if the seller or his representative "is not present to receive payment at the point of transfer of possession . . ., the packer . . . shall wire transfer funds or

place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time period specified in this subsection. . ." *Id.* Prompt payment rules do not apply in credit transactions, which as described later also abdicates the right in a statutory trust for Livestock, as defined in the Act.

Live poultry dealers are required to provide prompt payment prior to the close of the next business day for transactions involving live poultry obtained in a cash sale. *See id.* at § 228b-1(a). Live poultry dealers who purchase live poultry must make prompt payment to the cash seller or poultry grower from whom the live poultry was obtained "before the close of the fifteenth day following the week in which the poultry is slaughtered." *Id.*

Statutory Trust

Packers and live poultry dealers are required to maintain a statutory trust for the benefit of unpaid sellers or poultry growers. Trust assets do not become part of the bankruptcy estate if a packer or live poultry dealer files a bankruptcy petition. Thus, unpaid sellers and poultry growers have priority over secured creditors for the assets of the statutory trust. *See* Randy Rogers & Lawrence P. King, Collier Farm Bankruptcy Guide § 105[1] (1997) (discussing the PSA statutory trust).

Packers whose average annual purchases exceed $500,000 must establish a statutory trust. 7 U.S.C. § 196(b). Specifically, all livestock that a packer purchases in cash sales, "and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, shall be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers." *Id; see also id.* at § 196(c) (defining "cash sale"). The unpaid cash seller must give notice to the Secretary within thirty days from the last day in which the packer was to make prompt payment or "within fifteen business days after the seller has received notice that the payment instrument promptly presented for payment has been dishonored." *Id.* at § 196(b).

Similarly, all poultry obtained by a live poultry dealer through either cash sales or poultry growing arrangements, "and all inventories of, or receivables and proceeds from such poultry or poultry products derived therefrom, shall be held by such live poultry dealer" in trust for the unpaid seller or poultry grower. *Id.* at § 197(b). The live poultry dealer is not required to maintain a statutory trust, however, if the dealer does not have average annual sales of live poultry, or average annual value of live poultry obtained by purchase or by poultry growing arrangement, in excess of $100,000." *Id.*

To preserve an unpaid seller's rights in the assets of the statutory trust, the seller must give notice to the Secretary within thirty days of the final date for making prompt payment in accordance with § 228b or within fifteen days of receiving notice that the packer's or live poultry dealer's payment instrument has been dishonored. *Id.* at § 197(d). The unpaid seller loses the right to the statutory trust by extending credit to the buyer. The PSA does not permit an extension of credit for transactions involving poultry that was produced under a growing arrangement. *Id.*

Swine Contractors

Subject to certain exceptions, swine contractors are subject to the same restrictions and requirements as packers. *Id.* at § 192 (identifying unlawful packer practices). The PSA, however, does not include prompt payment, statutory trust, or bond requirements applicable to swine packers. *Id.* In addition, the Act requires the creation of a Swine Contract Library that allows producers to have a more transparent market, as they will see the various standard contracts offered by Swine Contractors. *See* 9 C.F.R. § 206.2.

Protections for Growers

In recent years, through the Food, Conservation and Energy Act of 2008 ("2008 Farm Bill") Congress has taken a more active role in passing laws to enable regulations providing more protections for growers due to unbalanced bargaining positions with Live Poultry Dealers and Swine Contractors. These protections include three-day cancellations by the grower, disclosure of additional capital investments that would be needed on the grower's farm and/or land, choice of law and venue, and arbitration provisions.

Enforcement

Generally, the PSD utilizes the following enforcement tools: Notice of Violations that include corrective action, Stipulation Agreements, administrative actions through the USDA Office of General Counsel, and instituting court actions through the Department of Justice. The regional USDA office, the USDA Policy and Litigation Division, the Office of General Counsel, and potentially Department of Justice all may play a role in choosing the method of enforcement.

More specifically, if any person subject to the PSA violates any of its provisions or any order of the Secretary "relating to the purchase, sale, or handling of livestock, the purchase or sale of poultry, or relating to any poultry growing arrangement or swine production contract," such person shall be liable to the injured person(s) "for the full amount of damages sustained in consequence of such violation." 7 U.S.C. § 209. The injured person(s) may file an enforcement action in federal district court or bring a reparations proceeding before the Secretary. *Id.* at § 210 (setting forth requirements applicable to reparations proceedings). A reparations proceeding must be initiated within ninety days after the cause of action accrues. *See id.* at § 210(a). Reparations proceedings cannot be filed against packers, swine contractors, or live poultry dealers. *See id.*

Further, if there is "reason to believe" that a packer has violated the PSA, the Secretary must issue a written complaint to the packer and conduct a hearing on the matter. *Id.* at § 193(a). If the Secretary determines after the hearing that the packer has violated the PSA, the Secretary "shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation." *Id.* The Secretary may assess a

civil penalty of no more than $10,000 for each violation. *See id.* A packer who fails to obey a cease-and-desist order may be assessed a fine and subject to imprisonment. *See id.* at § 195(3). Private parties also have rights to seek damages for a packer's violation of the PSA, failure to obey the Secretary's order, or both. *Id.* at § 195.

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EXHIBIT 5 - Cadwalader

Clients&FriendsMemo

Seventh Circuit Provides Rare Guidance On "Statutory Liens"

May 3, 2022

On April 21, 2022, the U.S. Circuit Court of Appeals for the Seventh Circuit issued a decision interpreting the Bankruptcy Code's definitions of "statutory lien" and "judicial lien," holding that a lien imposed by the Chicago Municipal Code was "judicial" rather than "statutory" because it arose partly as the result of a "quasi-judicial" process rather than "solely by force of a statute." *In the Matter of Mance*, No. 21-1355, 2022 WL 1182416 (7th Cir. April 21, 2022). In the Seventh Circuit's view, the fact that a "quasi-judicial" process functioned as an "essential prerequisite" to the imposition of the lien and determined the amount of the lien was sufficient for it to qualify as a "judicial" rather than a "statutory lien," notwithstanding that the lien was ultimately imposed automatically by operation of a municipal ordinance rather than directly by a court order.

Statutory liens are an important tool in municipal finance, because unlike some other types of liens, they are not cut off by Section 552 of the Bankruptcy Code in the event of a municipal issuer's bankruptcy.[1] Whether a municipal investor will qualify as a "secured" or "unsecured" creditor in a municipal bankruptcy therefore may depend on whether that investor's lien qualifies as a "statutory lien." Notwithstanding the importance of "statutory liens" to municipal finance, however, judicial decisions on the nature of "statutory liens" are relatively rare, particularly at the federal appellate court level. The Seventh Circuit's *Mance* decision now adds to the relatively small library of appellate court decisions that can offer issuers and investors guidance on the nature of "statutory liens."

Background

The *Mance* appeal arose out of a long-running series of cases—including the U.S. Supreme Court's 2021 decision in *Chicago v. Fulton*[2] —in which the City of Chicago (the "City") impounded motor vehicles for various parking- and driving-related infractions. The Chicago Municipal Code provides that any vehicles so impounded "shall be subject to a possessory lien in favor of the City in the

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1 *See* 11 U.S.C. § 552(a) ("[P]roperty acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case").

2 *See* Ingrid Bagby, Michele C. Maman, Casey John Servais, & Eric G. Waxman, *Stand Pat, Don't Act: U.S. Supreme Court Holds that Mere Retention of Debtor Property Does Not Violate Bankruptcy Code Section 362(a)(3)*, PRATT'S JOURNAL OF BANKRUPTCY LAW (April/May 2021), *available at* https://www.cadwalader.com/uploads/media/Pratt_reprint_cadwalader.pdf.

amount required to obtain release of the vehicle." M.C.C. § 9-92-080(f). The issue in this particular appeal was whether the City's possessory lien on a vehicle that it had impounded should be deemed a "judicial lien" or a "statutory lien" under the Bankruptcy Code. If the lien was found to be "judicial" rather than "statutory," then it would be avoidable pursuant to a provision of the Bankruptcy Code authorizing individual debtors to avoid liens on motor vehicles. *See* 11 U.S.C. §§ 522(f), (d)(2).

Definitions and Examples of "Statutory" and "Judicial" Liens

The Seventh Circuit concluded that the lien under the Chicago Municipal Code was "judicial," not "statutory." In doing so, it applied the Bankruptcy Code's definitions of "judicial lien" and "statutory lien."

Specifically, the Bankruptcy Code defines a "judicial lien" as one "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). By contrast, a "statutory lien" is defined as a lien "arising solely by force of a statute on specified circumstances or conditions . . . , but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." 11 U.S.C. § 101(53). The Seventh Circuit noted that, under these definitions, the classification of a lien depends on the events that must occur before the lien attaches, with a "statutory lien" arising "solely by force of a statute," and a "judicial lien" resulting from some type of "legal or equitable process or proceeding."

As an example of a "statutory lien," the Seventh Circuit cited a mechanics' lien, which by statute attaches to improved property once payment for a mechanic's work on the property is due and goes unpaid. Such a mechanics' lien may require a filing with a county clerk in order to be perfected, but this filing requirement, in the Seventh Circuit's view, did not constitute the type of "legal or equitable process or proceeding" that would convert the lien from a "statutory" to a "judicial lien."

By contrast, the "textbook" example of a "judicial lien," in the Seventh Circuit's view, was a court-ordered money judgment, where a court must enter judgment for the winning creditor before the lien can arise.

"Quasi-Judicial" Proceedings Give Rise to a Judicial Lien

With these definitions and examples in mind, the Seventh Circuit next turned to the specific procedures required in order for the City to obtain a lien on an impounded vehicle. The Court acknowledged that these procedures fell "somewhere in between" the easy examples of a mechanics' lien and a money judgment, but ultimately determined that the "quasi-judicial" nature of the required procedures placed the impoundment lien on the "judicial" rather than the "statutory" side of the line.

Among other things, before an impoundment lien can be imposed, the Chicago Municipal Code requires the underlying traffic violations to undergo an administrative process through which they become "final determinations of liability." As part of this administrative process, the vehicle owner can contest the charged violation in an in-person proceeding or by writing. If the vehicle owner is unsuccessful in this first phase of the process, the vehicle owner can also file an appeal under the Illinois Administrative Review Law. Only after the owner has lost the appeal does the traffic violation become a "final determination."

Following a "final determination," more legal process is required in order for the City to impound the vehicle if the fines go unpaid. The City must issue a notice to the vehicle owner, and the owner has the right to petition for a hearing to prove that she is not liable for the fines. Only after the owner failed to prevail at such a hearing would the City be able to impound the vehicle, at which point the impoundment lien would attach.

Notably, the Seventh Circuit acknowledged that the last step of lien attachment was "automatic," with the lien attaching automatically by operation of the ordinance upon impoundment of the vehicle, "without further action by a judge or quasi-judicial official." The City therefore had some basis to argue that the impoundment lien was a "statutory lien." The Seventh Circuit concluded, however, that it could not simply "ignore all the prior legal process that must occur before the City's possessory lien arises." In light of this prior legal process, the Court concluded that the impoundment lien did not arise "solely by statute," and instead was dependent on a "legal . . . process or proceeding." Therefore, the lien was a "judicial" rather than a "statutory lien."

Distinguishing the Third Circuit's *Schick* Case

In response to an argument by the City that the position ultimately adopted by the Seventh Circuit would create a circuit split, the Seventh Circuit attempted to distinguish the Third Circuit's decision in *In re Schick*, 418 F.3d 321 (3d Cir. 2005). The *Schick* case had some superficial similarities to *Mance*, because it addressed a New Jersey statute that imposed a lien on a motorist's property in the event the motorist failed to pay certain surcharges related to underlying traffic violations, including for reaching a certain number of violation points.

The Seventh Circuit nonetheless identified what it viewed as a "critical difference" between the processes leading to the liens in *Schick* and in *Mance*. Specifically, the New Jersey statute in *Schick* pertained only to surcharges, not to the underlying vehicle violations that were subject to judicial proceedings. The Third Circuit therefore concluded that "the underlying traffic proceeding charging the driver with a motor vehicle offense [was] too remote to constitute the required judicial process or proceeding necessary to find a judicial lien." On that basis, the Third Circuit concluded that the resulting lien was a "statutory lien."

In *Mance*, by contrast, the Seventh Circuit concluded that the statutory structure did not separate the underlying vehicle violation that was subject to quasi-judicial proceedings from any related fees (analogous to the "surcharges" at issue in *Schick*). Indeed, in *Mance* the amount of the lien itself was determined in the underlying quasi-judicial proceedings, and this lien amount included additional fees and penalties incurred in the course of those proceedings, whereas in *Schick* the amount of the surcharges was dictated separately by "statute and administrative regulations" and not determined by the underlying proceeding against the driver. The Seventh Circuit therefore concluded that in *Mance*, unlike in *Schick*, the quasi-judicial proceedings were "essential prerequisites for a valid impoundment lien," and were "not too far removed from the impoundment lien" for it to qualify as a "judicial lien."

The Seventh Circuit's method of distinguishing *Schick* suggests that, in determining whether a particular lien is "statutory" or "judicial," it may not be sufficient to perform a binary analysis of whether or not judicial proceedings play a role in the creation of the lien. Instead, it is necessary to analyze the precise relationship between any judicial proceedings and the creation of the lien, including how far "removed" the judicial proceedings are from the ultimate creation of the lien.

It will be interesting to see whether the City accepts the Seventh Circuit's attempt to distinguish *Mance* from *Schick*, or instead seeks review by the U.S. Supreme Court on the theory that *Mance* has created a circuit split between the Seventh and Third Circuits.

Tax Liens as Statutory Liens

In response to another argument by the City, the Seventh Circuit sought to reconcile its interpretation of the distinction between "judicial" and "statutory liens" with legislative history indicating that Congress intended for tax liens to qualify as "statutory liens." The City pointed out that federal tax liens result from judicial and quasi-judicial processes, such that under the Seventh Circuit's analysis in *Mance* they should technically qualify as "judicial" rather than "statutory liens," contrary to Congressional intent.

In a somewhat puzzling analysis, the Seventh Circuit conceded that "[t]ax liens are unquestionably statutory," but then suggested that the status of tax liens as statutory was not really a function of the definitions in the Bankruptcy Code and instead resulted from Congress's prerogative to "single out a particular category of liens and classify it." The Seventh Circuit's analysis on this point is arguably in tension with the general principle that statutory text should control over legislative history, because Congress "singled out" tax liens and "classified" them as statutory only in the legislative history. As such, the Seventh Circuit's interpretation of the Bankruptcy Code's statutory definitions of "judicial lien" and "statutory lien" should arguably override that Congressional classification. Given that the status of tax liens was not directly at issue in *Mance*, however, the Seventh Circuit's statements on this issue are arguably not binding, and the exact status of tax liens in light of the *Mance* analysis may need to await a future decision.

Takeaways

In bankruptcy, holding a "statutory lien" can make all the difference between being a secured creditor entitled to payment in full and being an unsecured creditor entitled only to pennies on the dollar (if that). And yet, as *Mance* illustrates, whether a particular lien qualifies as a "statutory lien" can be a surprisingly fact-intensive question, notwithstanding the deceptive simplicity of the Bankruptcy Code's definitions. In particular, the fact that the final step in imposing the lien occurs by operation of statute may not be sufficient for the lien to qualify as a "statutory lien" if judicial or quasi-judicial proceedings preceded this final, statutory step.

Mance therefore serves as a reminder that municipal issuers and investors alike should engage in a careful and nuanced analysis of exactly what type of lien is likely to be created by a particular transaction before issuing or investing in municipal debt. *Mance* helpfully provides some additional guidance on this issue, but is likely far from the final word on the matter.

* * *

If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Ivan Loncar	+1 212 504 6339	ivan.loncar@cwt.com
Michele Maman	+1 212 504 6975	michele.maman@cwt.com
Casey Servais	+1 212 504 6193	casey.servais@cwt.com

EXHIBIT 6 – Amicus Brief (Fulton)

No. 19-357

In the Supreme Court of the United States

CITY OF CHICAGO, ILLINOIS,
Petitioner,
v.
ROBBIN L. FULTON, GEORGE PEAKE, AND TIMOTHY SHANNON,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, THE CATO INSTITUTE, THE FINES AND FEES JUSTICE CENTER, THE INSTITUTE FOR JUSTICE, THE R STREET INSTITUTE, AND THE RUTHERFORD INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

CLARK M. NEILY III
JAY R. SCHWEIKERT
CATO INSTITUTE
1000 Massachusetts Ave., NW
Washington, DC 20001

LISA FOSTER
FINES AND FEES JUSTICE CENTER
185 West Broadway, C-538
New York, NY 10013

NUSRAT J. CHOUDHURY
Counsel of Record
REBECCA GLENBERG
ANA TORRES
ALLYSON BAIN
JUAN CABALLERO
ROGER BALDWIN FOUNDATION OF THE ACLU OF ILLINOIS
150 N. Michigan Ave., Suite 600
Chicago, IL 60602
(312) 201-9740
nchoudhury@aclu-il.org

(Additional counsel listed inside cover)

Counsel for Amici Curiae

INTERESTS OF AMICI CURIAE[1]

Amici curiae are non-profit organizations that share concern about states and municipalities that raise revenue through the imposition and punitive collection of steep fines and fees, sending people into bankruptcy while undermining their ability to carry out a bankruptcy plan successfully. *See* Appendix. The consolidated bankruptcy cases before this Court represent an increasingly common scenario: Petitioner City of Chicago generates revenue by impounding vehicles for unpaid tickets and specified civil infractions and charging storage fees that rapidly accrue, leading thousands of people who cannot afford to redeem their cars to seek relief under Chapter 13 of the Bankruptcy Code. Amici believe that under the plain text of 11 U.S.C. § 362(a)(3) and 11 U.S.C. § 542(a), a creditor must return estate property, including impounded vehicles, to a debtor upon the filing of a Chapter 13 bankruptcy petition. Petitioner's refusal to do so frustrates bankruptcy's purpose to provide a "fresh start" to debtors through the discharge of their debts.

SUMMARY OF THE ARGUMENT

While this case presents a question of statutory interpretation, it arises in a context that warrants this Court's particular attention. The Bankruptcy Code is designed to help debtors make a fresh start, and the provisions at issue here, which govern the automatic stay and the turnover of property, were drafted with that specific goal in mind. Today, a fresh start is

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[1] All parties have consented to the filing of this brief. Amici affirm that no counsel for any party authored this brief in whole or in part and that no person other than amici made a monetary contribution to its preparation or submission.

more important than ever, as an unprecedented rise in civil and criminal fines and fees over the past three decades has propelled people into bankruptcy. Fueled by local and state governments' quest for revenue, the explosion of fines and fees has buried millions of people under mountains of debt. Those who cannot immediately pay often face harsh collection tactics, including the seizure and impoundment of their vehicles. When such a debtor files for bankruptcy, the return of their impounded car is often a precondition for the fresh start Congress intended. This brief sheds light on the real world consequences of the statutory interpretation question before this Court.

The automatic stay and turnover provisions that govern Chapter 13 bankruptcy proceedings, 11 U.S.C. § 362(a)(3) and 11 U.S.C. § 542(a), respectively, are properly construed to require a creditor to return estate property—including impounded vehicles—when a debtor files for bankruptcy. Amici agree with Respondents that Petitioner City of Chicago's ("Chicago" or "the City") refusal to return impounded vehicles upon the filing of a Chapter 13 petition violates the automatic stay of Section 362(a)(3) and the turnover requirement of Section 542(a).

The all-too-common context in which these particular bankruptcy cases arise illustrates why Respondents' interpretation is essential to Congress's design. Allowing debtors to recover and use vehicles impounded prior to filing for bankruptcy promotes a "fresh start." Without a car, it is exceedingly difficult to meet the demands of a bankruptcy plan. People need to drive to get to work, and they need to work to repay their creditors and support themselves and their families.

Chicago's vast vehicle impoundment program is part of a nationwide trend in which municipalities rely heavily on fines, fees, and punitive collection practices for revenue. Faced with towering budget deficits, the City raised fees and fines for parking, traffic, and ordinance violations, and began aggressively enforcing ordinances permitting vehicle impoundment for unpaid fines or driving on a suspended license, including licenses suspended for unpaid tickets. Chicago levies exorbitant fees for impounding, towing, and storing vehicles, and refuses to return vehicles to their owners without full payment of all money owed. Chicago is not alone. States and cities nationwide use impoundment to collect ticket debt and require steep payments to recover vehicles.

With *four in ten* American adults facing difficulty covering a $400 emergency expense,[2] many Chicago residents like Respondents cannot pay the thousands of dollars often required to recover the vehicles they need to pursue their livelihoods. Chicago residents owe a staggering $1.45 billion in unpaid tickets alone. The City's revenue-generation practices caused a *tenfold* increase in the number of Chapter 13 filings in the Northern District of Illinois between 2007 and 2017, and caused the median debt owed to Chicago in those proceedings to *double*. A similar pattern is emerging elsewhere as states and other cities looking to close budget gaps follow Chicago's lead.

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[2] Alex Durante et al., *Report on the Economic Well-Being of U.S. Households in 2018*, Board of Governors of the Fed. Res. Sys. 21 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

This context should inform the Court's resolution of the legal question presented here. Chicago compels people to seek Chapter 13 relief from crushing ticket and impoundment debt. The retention of debtors' vehicles after they file for bankruptcy frustrates their ability to earn income, satisfy Chapter 13 repayment obligations, and secure a fresh start. Chicago's position that it need not return seized vehicles to people who have declared bankruptcy contradicts the language and purpose of the Bankruptcy Code, and should be rejected.

ARGUMENT

I. THE AUTOMATIC STAY IS A "FUNDAMENTAL DEBTOR PROTECTION" THAT FACILITATES A FRESH START

A "main purpose" of the Bankruptcy Code is "to aid the unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character, after the property which he owned at the time of bankruptcy has been administered for the benefit of creditors." *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918); *see Perez v. Campbell*, 402 U.S. 637, 648 (1971) (internal quotation marks and citation omitted) ("[O]ne of the primary purposes of the Bankruptcy Act is to give debtors a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt."). The fresh start is "not only of private but of great public interest in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life." *Stellwagen*, 245 U.S. at 617. "The various provisions of the Bankruptcy Act were adopted in the light of that view and are to be

construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act." *Local Loan Co. v. Hunt*, 292 U.S. 234, 245 (1934).

The automatic stay of Section 362(a)(3) and the turnover requirement of Section 542(a) together advance the "fresh start" goal of bankruptcy that this Court identified over one hundred years ago. Congress called the automatic stay "one of the fundamental debtor protections provided by the bankruptcy laws." S. Rep. No. 95-989, at 54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5480. The provision "gives the debtor a breathing spell from his creditors," and "permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." H.R. Rep. No. 95-595, at 340–41 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296–97. Congress broadened this protection in 1984 by extending the automatic stay to "any act . . . *to exercise control over* property of the estate." 11 U.S.C. § 362(a)(3) (emphasis added).

The automatic stay works with Section 542(a), which allows the bankruptcy trustee to bring together all of the estate's property, including "property of the debtor that has been *seized by a creditor prior to the filing* of a petition for reorganization." *United States v. Whiting Pools*, 462 U.S. 198, 209 (1983) (emphasis added). The turnover provision mandates that a creditor in possession of estate property "shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). Congress intended Section 542(a) to require "anyone holding property of the estate on the

date of the filing of the petition . . . to deliver it to the trustee," S. Rep. 95-989, at 84 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5870, regardless of whether a creditor has a secured interest in the property. *Whiting Pools, Inc.*, 462 U.S. at 203.

This Court's opinion in *Whiting Pools, Inc.* illustrates how the automatic stay and turnover provision together promote a fresh start. There, the Internal Revenue Service ("IRS") seized the corporate debtor's equipment, vehicles, inventory, and office supplies, intending to sell them for unpaid taxes. 462 U.S. at 200–01. When the debtor later filed for bankruptcy reorganization, the IRS sought a declaration that the automatic stay did not apply, or, in the alternative, relief from the stay. *Id*. Instead, the Bankruptcy Court ordered the IRS to turn over the seized property to the debtor pursuant to Section 542(a). *Id*. at 201. Affirming, this Court explained:

> Congress anticipated that the business would continue to provide jobs, to satisfy creditors' claims, and to produce a return for its owners. Congress presumed that the assets of the debtor would be more valuable if used in a rehabilitated business than if 'sold for scrap.' . . . Thus, to facilitate the rehabilitation of the debtor's business, all the debtor's property must be included in the reorganization estate.

462 U.S. at 203 (citing H.R. Rep. No. 95-595, at 220 (1977), U.S. Code Cong. & Admin News. 1978, at 5787).

For individual as well as corporate debtors, the beneficial use of personal property advances

rehabilitation from debt—particularly with property like automobiles, which may be essential to earn money, including by getting or keeping a job. Indeed, Respondents relied on their cars to drive to work and earn the necessary income to make monthly payments toward their Chapter 13 repayment plans.[3] As this Court has recognized, "[t]he power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right. To preserve its free exercise is of the utmost importance." *Local Loan Co.*, 292 U.S. at 245. Employment can give a debtor the means to succeed in a payment plan, to the benefit of all of the creditors.

For that reason, the Bankruptcy Code contains multiple provisions that ensure debtors' access to personal property needed to be gainfully employed during bankruptcy proceedings. For example, the Code exempts from the bankruptcy estate certain property in the debtor's possession that may be essential to pursuing an occupation: up to $2,400 in value for "one motor vehicle"; up to $1,500 in value for "implements, professional books, or tools[] of the trade"; and "[p]rofessionally prescribed health aids." 11 U.S.C. § 522(d)(2), (6), and (9). Similarly, the Code prohibits employment discrimination against debtors

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[3] Respondent Robbin Fulton needed her car to get to her job, take her preschool-age daughter to day care, and care for her elderly parents. *See* Pet. App. 4a. Respondent Timothy Shannon, a housekeeper, needed his car to get to work. *See* Pet. App. 102a. Respondent George Peake needed his car for his daily 45-mile commute. *See* Pet. App. 64a. Chicago impounded the cars of Shannon and Peake for unpaid tickets. *See* Pet. App. 5a–6a. The City impounded Fulton's car for driving on a license suspended for unpaid parking tickets and non-moving violations. Pet. App. 4a.

and forbids governments to "deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant" based on bankruptcy status. 11 U.S.C. § 525(a). The automatic stay and turnover provision are similarly designed to allow debtors to use their property to generate income to benefit themselves, their creditors, and the public interest.

"By its express terms, section 542(a) is self-executing, and does not require the trustee to take any action or commence a proceeding or obtain a court order to compel the turnover." 5 Collier on Bankruptcy ¶ 542.03 (16th ed. 2019). The City's insistence that debtors must nonetheless initiate an adversary proceeding to enforce their turnover rights contradicts the statute's plain language. *See* Pet. Br. at 16–25; Resp. Br. at 34–45. Placing the burden on the cash-strapped debtor, rather than on the creditor seeking to retain control over seized property, contravenes Congress's intent that property with "significant use value for the estate" be turned over upon the filing of the bankruptcy petition, so that the property can facilitate the debtor's successful reorganization or repayment. H.R. Rep. 95-595, at 369 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6325. Under the City's reading of the statutes, debtors' vehicles collect dust during bankruptcy proceedings, even as exorbitant storage costs accrue daily and further drain the estate. *See* JA 206, 345, 362 (detailing Respondents' impound debt).

The Bankruptcy Code recognizes that creditors have interests in a debtor's estate, but addresses those interests by providing "secured creditors various rights, including the right to adequate protection, and these rights *replace* the protection afforded by possession." *Whiting Pools, Inc.*, 462 U.S. at 207

(emphasis added). Thus, while a creditor may seek adequate protection, such as "periodic cash payments" or an "additional or replacement lien" to cover a "decrease in the value" of the property resulting from the automatic stay, 11 U.S.C. § 361(1)–(2), it may not simply continue to possess the debtor's property.

This Court has found that state and local measures that are "subversive of [a debtor's ability to start afresh] cannot be accepted as controlling the action of a federal court." *Local Loan Co.*, 292 U.S. at 245. In *Local Loan*, a debtor assigned his wages to the creditor in a pre-petition agreement. *Id.* at 238. After the underlying debt had been discharged in bankruptcy, the creditor sought to garnish the debtor's wages. *Id.* Although Illinois law allowed the garnishment, this Court upheld the bankruptcy court's injunction against garnishment because "the Illinois decisions as to the effect of an assignment of wages earned after bankruptcy [are] destructive of the purpose and spirit of the Bankruptcy Act." *Id.* at 245.

Likewise, in *Perez v. Campbell*, this Court invalidated an Arizona law that allowed the suspension of a driver's license and vehicle registration for failure to pay an automobile accident judgment that had been discharged in bankruptcy. 402 U.S. 637, 656 (1971). The statute was "in conflict with a federal [bankruptcy] statute that gives discharged debtors a new start 'unhampered by the pressure and discouragement of preexisting debt.'" *Id.* at 649. Congress codified this result, providing that "a governmental unit may not deny, revoke, suspend, or refuse to renew a license" of a debtor "solely because such bankrupt or debtor . . . has not paid a debt . . . that was discharged under the Bankruptcy

Act." 11 U.S.C. § 525(a); *see* S. Rep. 95-989, at 81 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5867.

Accordingly, the Seventh Circuit correctly ruled that the City violated the automatic stay by "actively resisting [Section] 542(a) to exercise control over debtors' vehicles," when it refused to return them upon the filing of bankruptcy proceedings, and instead kept the vehicles locked up and unused. Pet. App. 14a; *see* Resp. Br. at 18–20. Rather than adhering to procedures that "preserv[e] [the] property of the estate for the benefit of *all* creditors," the City kept the vehicles to "put pressure on the debtors to pay their tickets," which is "precisely what the [automatic] stay is intended to prevent." Pet. App. 14a. The City's interpretation of the automatic stay contravenes Section 362(a)(3)'s purpose as a "fundamental debtor protection" crucial to affording debtors a fresh start. S. Rep. No. 95-989, at 54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840.

II. THE NATIONWIDE TREND OF RAISING REVENUE THROUGH FINES, FEES, AND IMPOUNDMENT BURIES PEOPLE IN DEBT AND CREATES A DIRE NEED FOR THE "FRESH START" THAT BANKRUPTCY AFFORDS.

The context in which this case arises is all too common, and underscores why it is essential to enforce the Bankruptcy Code to give debtors a fresh start. The United States has experienced an unprecedented rise in fines and fees used to generate state and local government revenue, leaving millions buried under accumulating debt. Those who cannot immediately pay face additional fees and harsh collection tactics. Chicago's reliance on aggressive ticketing and vehicle

impoundment to raise revenue reflects this trend. As of 2018, people owed $1.45 billion to the City in unpaid tickets dating back to 1990,[4] and tens of thousands have sought relief through Chapter 13 bankruptcy.

A. Nationwide, the Dramatic Expansion of Fines and Fees Used to Generate Revenue is Overwhelming Many People with Debts They Cannot Pay.

State and local governments nationwide have turned to fines and fees imposed on people charged for legal violations to raise revenue because they are politically easier to impose than generally applicable taxes. "Fines" are used to punish and deter violations of law, while "fees" are designed to recoup government costs, like indigent defense expenses, or to raise revenue for government programs that may be unrelated to the legal system.[5] Those who cannot immediately pay frequently incur penalties, such as additional fees, bench warrants, wage garnishment, driver's license suspensions, and even incarceration—all of which make payment even more difficult.[6]

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[4] Melissa Sanchez & Sandhya Kambhampati, *Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy*, ProPublica Ill. (Feb. 27, 2018), https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy.

[5] Matthew Menendez et al., *The Steep Cost of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties*, Brennan Ctr. for Just. 6 (Nov. 21, 2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.

[6] *See* Alexes Harris et al., *Monetary Sanctions in the Criminal Justice System: A Review of Law and Policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas,*

Since 2010, 48 states have increased the number and/or amount of civil and criminal fees.[7] Arizona, Louisiana, Ohio, and Texas instituted new fees and raised existing ones to address 2010 budget shortfalls.[8] Florida increased court fees to address a fiscal crisis.[9] In Oklahoma, barriers to raising taxes have compelled legislators to rely largely on fines and fees to fund the state budget.[10] North Carolina raises money for the court system, jails, counties, law enforcement, and schools through 52 separate fees.[11] California uses traffic citations to collect revenue for 18 different state and county funds.[12]

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and Washington 4 (Apr. 2017), http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf (describing fees and interest imposed for unpaid fines); Menendez et al., *supra* note 5, at 20 (detailing sanctions for nonpayment).

[7] Joseph Shapiro, *Supreme Court Ruling not Enough to Prevent Debtors' Prisons*, Nat'l Pub. Radio (May 21, 2014, 5:01 AM), https://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons (describing key findings of yearlong investigation).

[8] Karin D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, Harv. Kennedy Sch. & Nat'l Inst. of Just. 6 (Jan. 2017), https://www.ncjrs.gov/pdffiles1/nij/249976.pdf.

[9] Rebekah Diller, *Court Fees As Revenue?*, Brennan Ctr. for Just. (July 30, 2008), https://www.brennancenter.org/our-work/analysis-opinion/court-fees-revenue.

[10] Menendez et al., *supra* note 5, at 6.

[11] *Id*.

[12] *See* California State Auditor Report 2017-126, *Penalty Assessment Funds: California's Traffic Penalties and Fees Provide Inconsistent Funding for State and County Programs and Have a Significant Financial Impact on Drivers* 5 (Apr. 2018),

Local governments also generate significant revenue through fines and fees. In 2017, New Jersey municipal courts collected more than $400 million in fines and fees, with more than half of that amount funneled to the general funds of municipalities and a significant portion directed to state and county governments.[13] In 2016, almost half of the $166.7 million raised by Arizona municipal courts in fines and fees funded general municipal operations.[14]

Municipalities use traffic and ordinance enforcement not just to promote public safety, but to raise revenue through ticketing—leading some to call the practice "taxation by citation."[15] Nearly 600 U.S. jurisdictions raise at least 10% of their general fund revenue through fines and fees, and at least 284 jurisdictions rely on fines and fees for

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https://www.bsa.ca.gov/pdfs/reports/2017-126.pdf (describing fees imposed on top of citations and where fee revenue is directed).

[13] New Jersey Courts, *Report of the Supreme Court Committee on Municipal Court Operations*, *Fines, and Fees* 12 (June 2018), https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf.

[14] Mark Flatten, *City Court: Money, Pressure and Politics Make it Tough to Beat the Rap*, Goldwater Inst. 6–7 (July 17, 2017), https://goldwaterinstitute.org/wp-content/uploads/2017/09/City-Court-Policy-Paper-1.pdf.

[15] *See* Dick M. Carpenter II et al., *The Price of Taxation by Citation: Case Studies of Three Georgia Cities That Rely Heavily on Fines and Fees*, Inst. for Just. 5 (Oct. 2019), https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf; Dan Kopf, *The Overlooked Reason Why Some Cities Have Strained Relationships With Cops*, Business Insider (July 11, 2016, 9:01 AM), https://www.businessinsider.com/reason-for-strained-relationship-with-police-2016-7.

20% or more of their general funds.[16] In fiscal year 2017, Boston, New Orleans, New York, and Chicago raised at least $113 per resident from fines and fees, while Washington, D.C. generated $261 per resident.[17] The AAA has since characterized the enforcement of traffic, parking, and non-moving violations in the nation's capital as "predatory" and untethered to public safety.[18]

Fines that are manageable for a person of means may be out of reach for an impoverished or low-income person. As additional fees accumulate, even moderate-income people may be unable to pay. For example, in California, the fine for littering is $100,[19] but the fine carries $390 in additional fees.[20] In New Jersey,

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[16] Mike Maciag, *Addicted to Fines: Small Towns in Much of the Country are Dangerously Dependent on Punitive Fines and Fees*, Governing: The Future of States and Localities (Sept. 2019), https://www.governing.com/topics/finance/gov-addicted-to-fines.html.

[17] Dan Kopf & Justin Rohrlich, *No US City Fines People Like Washington Fines People*, Quartz (Jan. 29, 2020), https://qz.com/1789851/no-us-city-fines-people-like-washington-dc/.

[18] Tyler Olson, *'Predatory' DC Government Issues Record $1 Billion in Fines to Drivers: Report*, Fox News (Feb. 21, 2020), https://www.foxnews.com/politics/aaa-calls-dc-parking-and-traffic-enforcement-predatory-as-city-issues-record-1-billion-in-tickets.

[19] Cal. Veh. Code § 23112(a)-(b) (West 2020); Super. Court of Cal., Cnty. of San Diego, *Bail Schedule* 47 (Dec. 12, 2019), http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/CRIMINAL2/CRIMINALRESOURCES/BAIL_SCHEDULE.PDF.

[20] Super. Ct. of Cal., Cnty of San Diego, *How the Amount Due is Calculated on Citations*, SDSC ADM-295 (Apr. 2013), http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/

marijuana possession carries a $100 fine, but the $200 public defender fee, $33 in court costs, and $675 in fees for specific government funds result in a total financial penalty of $1,008 for an indigent defendant.[21] A full-time, minimum wage worker in New Jersey would need to work almost two and half weeks to pay that sum.[22]

Those who cannot immediately pay fines and fees often face draconian penalties and collection efforts.[23] For example, James Fisher of Colorado, an indigent man who was at times homeless and without steady work, was charged $1,680 in fees to collect $678 in fines for two open container tickets and a citation for driving without proof of insurance.[24] Even after Mr. Fisher paid $1,498—more than double the initial

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GENERALINFORMATION/FORMS/ADMINFORMS/ADM295.PDF.

[21] New Jersey Courts, *supra* note 13, at 12.

[22] Minimum wage in New Jersey is currently $11/hour, which corresponds to $440 in pre-tax income for a 40-hour work week. Tom Davis, *Roll-Back of $15 NJ Minimum Wage Law is Delayed: What's Next*, Patch (Nov. 14, 2019, 1:23 PM), https://patch.com/new-jersey/morristown/roll-back-15-nj-minimum-wage-law-delayed-whats-next.

[23] *See* Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 Ann. Rev. of Criminology 471, 475 (2018), https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-032317-091915.

[24] *Debtors' Prison Settlement: Aurora Cancels Debt, Withdraws Warrants, and Repays James Fisher for Excessive Payments to Municipal Court*, ACLU of Colo. (Jan. 13, 2017), https://aclu-co.org/debtors-prison-settlement-aurora-cancels-debt-withdraws-warrants-repays-james-fisher-excessive-payments-municipal-court/.

fines—over the course of four years, he still owed $860.[25]

Motivated by revenue generation, state and local governments use vehicle impoundment to collect unpaid parking, traffic, and ordinance violation tickets. In California, public agencies towed an estimated 224,900 vehicles in 2017 for unpaid parking tickets, lapsed registrations, or parking in one place for 72 hours—reasons often associated with poverty.[26] These vehicles are two to six times more likely to be sold at a lien sale than other towed cars, suggesting that owners cannot afford to recover them, which can cost more than $2,500.[27] Texas impounds vehicles for unpaid tolls, with release only upon full payment of unpaid tolls, fees, and impoundment-related charges.[28] Pennsylvania permits municipalities to impound vehicles if, within 24 hours of being fined $250 or more for violating registration, permitting, or license-plate requirements, an owner fails to pay in full or start a payment plan.[29] Denver permits impoundment for unpaid parking tickets and expired license plates, with release only upon full payment of fines, impoundment fees, and storage fees.[30]

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[25] *Id*.

[26] Western Center on Law & Poverty et al., *Towed Into Debt: How Towing Practices in California Punish Poor People* 23 (Mar. 18, 2019), https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf.

[27] *Id*. at 4, 7.

[28] Tex. Transp. Code Ann. § 372.112 (West 2013).

[29] 75 Pa.C.S.A. § 6309.1(b) (2005).

[30] D.R.M.C. § 54-811(17), (19) (2020), https://tinyurl.com/wktslee; D.R.M.C. § 54-813 (2020), https://tinyurl.com/wktslee.

State and local governments' heavy reliance on fines and fees disproportionately harms impoverished people and communities of color. The longstanding racial and ethnic wealth gap[31] and higher rates of poverty[32] make Black and Latino people less likely to afford steep fines for traffic, parking, and ordinance violations. Moreover, municipalities that rely heavily on fines and fees for general revenue have comparatively larger Black populations.[33]

B. Chicago's Ticketing and Impoundment Practices Reflect the Nationwide Rise of Punitive Collection of Fines and Fees.

The Respondents' bankruptcies arise from Chicago's dependence on fines, fees, and vehicle impoundment for revenue. The City issues an extraordinarily high number of tickets for traffic and

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[31] A 2013 study of federal data found that the median wealth of white households was 13 times the median wealth of Black households, and more than 10 times the median wealth of Latino households. Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Res. Ctr. (Dec. 12, 2014), https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/.

[32] A 2014 study found that Black and Latino people were, on average, at least twice as likely to be poor than were white people in the United States. *See On Views of Race and Inequality, Blacks and Whites are Worlds Apart*, Pew Res. Ctr. (June 27, 2016), https://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/.

[33] *See* Kopf, *supra* note 15 ("Among the fifty cities with the highest proportion of revenues from fines, the median size of the African American population—on a percentage basis—is more than five times greater than the national median.").

ordinance infractions, adds exorbitant penalties when people cannot pay, impounds vehicles to collect unpaid tickets, and assesses additional fees on those with impounded vehicles. The results are rapidly mounting financial burdens on impoverished and low-income people, and punitive sanctions for those who do not pay, including the seizure of their vehicles. Tens of thousands of people have thus sought a fresh start through Chapter 13 bankruptcy.

1. The City of Chicago Uses Aggressive Ticketing and Vehicle Impoundment to Fill Budget Gaps.

Chicago's vehicle impoundment practices began with City leaders' effort to close a $650 million budget gap in 2011.[34] The City increased the cost of mandatory City Vehicle Stickers, raised the penalty for late purchase of a sticker from $40 to $60, and nearly doubled the fine for not having a sticker from $120 to $200—all to raise revenue.[35] It also increased fines for other ordinance violations and allowed vehicle impoundment for littering, playing music too loudly, and driving on a suspended license.[36] By fall of 2019, Chicago's collection efforts led to the suspension of 57,000 people's driver's licenses for failure to pay

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[34] C.J. Ciaramella, *Chicago is Trying to Pay Down Its Debt by Impounding People's Cars*, Reason (Apr. 25, 2018, 8:15 AM), https://reason.com/2018/04/25/chicago-debt-impound-cars-innocent/.

[35] Melissa Sanchez & Elliott Ramos, *Chicago Hiked the Cost of City Vehicle Sticker Violations to Boost Revenue, But It's Driven More Low-Income Black Motorists Into Debt*, ProPublica Ill. (July 26, 2018), https://www.propublica.org/article/chicago-vehicle-sticker-law-ticket-price-hike-black-drivers-debt.

[36] Ciaramella, *supra* note 34.

sticker, parking, or traffic tickets.[37] The City also aggressively impounded vehicles for unpaid tickets or driving under suspension and imposed additional fees for vehicle towing, impoundment, and storage.[38] A fiscal year 2020 budget deficit of $838 million continues to pressure the City to generate revenue through these practices.[39]

In 2018, Chicago collected 11% of its general fund revenue from fines and fees, the "highest of any of the nation's 50 biggest cities."[40] In 2017, Chicago raised almost $345 million in fines and fees,[41] issuing

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[37] Pascal Sabino, *Chicago Would Stop Suspending Driver's Licenses for Unpaid Tickets and Reinstate 57,000 Under Lightfoot's Reform Plan*, Block Club Chi. (Jul. 23, 2019, 12:07 PM), https://blockclubchicago.org/2019/07/23/chicago-would-stop-suspending-drivers-licenses-for-unpaid-tickets-and-reinstate-57000-under-lightfoots-reform-plan/.

[38] *See* Elliott Ramos, *Chicago's Towing Program is Broken*, WBEZ (Apr. 1, 2019), http://interactive.wbez.org/brokentowing/.

[39] *See* Gregory Pratt & John Byrne, *Facing $838 Million City Budget Shortfall, Chicago Mayor Lori Lightfoot Holds First Town Hall: 'We Actually Value Your Opinion,'* Chi. Trib. (Sept. 6, 2019, 9:14 AM), https://www.chicagotribune.com/politics/ct-lightfoot-budget-town-hall-meeting-20190905-k4ebrpfo2jbajkmxfrapyekf3m-story.html.

[40] Maciag, *supra* note 16. By comparison, Ferguson, Missouri, which received nationwide attention for policing to generate revenue, relied on fines and fees for around 12% of its general fund in 2010 and 2011. Civil Rights Division, U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* 9 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[41] Fran Spielman, *Lightfoot Defends Methodical Approach to Ending City's 'Addiction' to Fines and Fees*, Chi. Sun-Times (July 23, 2019, 3:24 PM), https://chicago.suntimes.com/city-hall/2019/

over 3.6 million vehicle-related tickets and warnings, 54% of which were for *non-moving* violations, such as missing City Vehicle Stickers, expired parking meters, improper license plates, and infractions of street cleaning and residential permit parking rules.[42]

Chicago's fines for vehicle-related offenses range from $25 to $500.[43] A single fine can be out of reach for many people; as noted above, four in ten adults in the United States face difficulty paying a $400 emergency expense.[44] A City Vehicle Sticker costs between $90 and $213,[45] and is separate from the minimum $151 annual fee to renew an Illinois license plate.[46] A sticker ticket carries a $200 fine and is "the most expensive commonly issued citation in the city."[47] A vehicle without the sticker can be cited "*each*

7/23/20707553/fines-fees-boot-red-light-cameras-city-budget-revenue-lightfoot.

[42] Laura Nolan, *The Debt Spiral: How Chicago's Vehicle Ticketing Practices Unfairly Burden Low-Income and Minority Communities,* Woodstock Inst. 1 (June 2018), https://woodstockinst.org/wp-content/uploads/2018/06/The-Debt-Spiral-How-Chicagos-Vehicle-Ticketing-Practices-Unfairly-Burden-Low-Income-and-Minority-Communities-June-2018.pdf.

[43] *Id*. at 10.

[44] Durante, *supra* note 2.

[45] Office of the City Clerk Anna M. Valencia, City of Chicago, *Chicago City Vehicle Sticker FAQs*, https://www.chicityclerk.com/city-stickers-parking/about-city-stickers (last visited Feb. 28, 2020).

[46] Office of the Illinois Secretary of State, *Fees Vehicle Services*, https://www.cyberdriveillinois.com/departments/vehicles/basicfees.html (last visited Mar. 2, 2020).

[47] Melissa Sanchez & Elliott Ramos, *Three City Sticker Tickets on the Same Car in 90 Minutes?*, ProPublica Ill. (June 27, 2018,

and every day," leading those who cannot afford the sticker to accumulate tickets rapidly.[48] Until recently, nonpayment of the sticker citation within 25 days led to an *additional* $200 penalty.[49] While the penalty was reduced to $50 in late 2019 following advocacy and media coverage, other vehicle-related fines still double after 25 days.[50] If a fine is sent to a third-party debt collector, an additional 22% fee is tacked on.[51] In

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5:30 AM), https://www.propublica.org/article/chicago-city-sticker-double-tickets.

[48] Chicago, Ill., Mun. Code § 3-56-150(b) (2019).

[49] *See* Chicago, Ill., Mun. Code § 9-100-050(e) (amended 2019) ("The penalty for late payment shall be an amount equal to the amount of the fine for the relevant violation.").

[50] *See* Chicago, Ill., Mun. Code § 9-100-050(e) (2019) (providing that "the penalty for late payment shall be an amount equal to the amount of the fine for the relevant violation," with the exception of City Vehicle Sticker violations, which carry a $50 penalty); Melissa Sanchez, *Chicago City Council Approves Ticket and Debt Collection Reforms to Help Low-Income and Minority Motorists*, ProPublica Ill. (Sept. 18, 2019 1:20 PM), https://www.propublica.org/article/chicago-city-council-approves-ticket-and-debt-collection-reforms (penalty for late payment of sticker citation reduced following task force recommendation).

[51] *See* City of Chicago, Finance, *Payment Plan Option (Parking, Red Light Camera and Automated Speed Camera)*, https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/parking_and_red-lightticketpaymentplans.html (last visited Mar. 2, 2020) [hereinafter Ticket Debt Payment Plan Option] (noting Chicago charges "collection costs of 22%" when people do not enter a payment plan for vehicle-related tickets); Elliott Ramos, *Mayor Lightfoot Announces her Plan to Stop Suspending Licenses for Parking Tickets*, Nat'l Pub. Radio (July 24, 2019), https://www.npr.org/local/309/2019/07/24/744595562/mayor-lightfoot-announces-her-plan-to-stop-suspending-licenses-for-parking-tickets (reporting that 22% interest will accrue on unpaid tickets

2017, the City imposed $87.59 million in late fees for vehicle-related tickets.[52]

The City employs punitive vehicle impoundment to pressure owners to pay fines and fees. It places a wheel clamp ("boot") on any vehicle whose owner either has three vehicle-related fines or two that are more than one year old.[53] Before 2019, the only way to remove the boot was for the vehicle owner to pay, within 24 hours, a $100 fee and all outstanding fines, penalties, administrative fees, attorney's fees, and collection costs for unpaid tickets.[54] Today, vehicle owners may enter a payment plan,[55] but this option remains out of reach for those who cannot afford to pay fees for booting, towing, and storage, and a down payment, which can be as high as $1,000 or 25% of the ticket debt, even for people experiencing financial hardship.[56] The City impounds

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even after the City's adoption of limited reforms to address ticket debt burdens).

[52] Nolan, *supra* note 42, at 10–11.

[53] Chicago, Ill., Mun. Code § 9-100-120(b)-(c) (2019).

[54] Chicago, Ill., Mun. Code § 9-100-120(d)(2) (amended 2019) (requiring owner to "pay[] the applicable immobilization, towing and storage fees, and all amounts, including any fines, penalties, administrative fees . . . and related collection costs and attorney's fees" due for unpaid tickets in order to secure release of booted vehicle).

[55] City of Chicago, Finance, *Booted Vehicle Information*, https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/boot_tow_information/booted_vehicle_information.html (last visited Mar. 2, 2020).

[56] *See* Ticket Debt Payment Plan Option, *supra* note 51 (describing requirements for "Hardship Payment Plans").

the vehicles of those who do not pay.[57] In 2017, the City booted approximately 67,000 vehicles and towed and impounded nearly one third of them because owners did not pay on time.[58]

Vehicle impoundment leads to rapidly escalating fees for booting, towing, and storage.[59] Storage fees accrue at $20 per day for the first five days and $35 per day thereafter.[60] Those unable to pay the tickets that led to booting are likely unable to afford these additional fees.[61]

The City also operates a Vehicle Impoundment Program ("VIP") that impounds vehicles for which there is "probable cause to believe that the vehicle was used in" the commission of any one of around two dozen municipal offenses.[62] Impoundable offenses

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[57] Chicago, Ill., Mun. Code § 9-100-120(b)-(c) (2019).

[58] Elliott Ramos, *Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt*, WBEZ (Jan. 7, 2019), https://www.wbez.org/shows/wbez-news/chicago-seizes-and-sells-cars-over-tickets-sticking-drivers-with-debt/1d73d0c1-0ed2-4939-a5b2-1431c4cbf1dd.

[59] *See* Chicago, Ill., Mun. Code § 9-92-080(a)-(b) (2019).

[60] Chicago, Ill., Mun. Code § 9-92-080(b) (2019).

[61] Nolan, *supra* note 42, at 11.

[62] *See* Chicago, Ill., Mun. Code § 2-14-132(a)(1) (2019) (listing municipal ordinance violations permitting VIP impoundment); Chicago Police Department, *Special Order S07-03-05 Impoundment of Vehicles for Municipal Code Violations* (Jan. 9, 2020), http://directives.chicagopolice.org/directives/data/a7a57bf0-1348fc77-5f913-4901-b59443605a3eb78a.html [hereinafter *Special Order S07-03-05*] (same). While the Chicago VIP program ordinance describes the standard as "probable cause," administrative law judges apply a "more likely than not" standard to determine whether a vehicle "was used in" the commission of an

include littering, playing loud music, the possession or use of illegal fireworks, and driving on a suspended license (including a license suspended for unpaid parking tickets).[63] Even drivers never charged with a crime face thousands of dollars in fines and fees for VIP impoundment.[64] Owners have three options for retrieving their vehicles: 1) full payment of an administrative penalty of up to $3,000 for the offense alleged, a $150 towing fee, and storage fees for each day of impoundment;[65] 2) full payment of all boot, towing, tampering, and storage fees and entry into a payment plan, which can require a down payment as high as 25% of the ticket debt, even for a person in financial hardship;[66] or 3) an administrative

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impoundable offense. City of Chicago, Administrative Hearings, *Vehicle Impoundment Fact Sheet*, https://www.chicago.gov/city/en/depts/ah/supp_info/vip/vip_fact_sheet.html [hereinafter *Vehicle Impoundment Fact Sheet*] (last visited Mar. 5, 2020).

[63] *See* Chicago, Ill., Mun. Code § 2-14-132(a)(1) (2019) (recognizing vehicle impoundment for violations of Chicago, Ill., Mun. Code § 10-8-480 (littering), § 9-76-145 (playing loud music), § 15-20-270 (unlawful fireworks in motor vehicle), and § 9-80-240 (driving on a suspended license)); *see also* Special Order S07-03-05, *supra* note 62 (same).

[64] *See Vehicle Impoundment Fact Sheet*, *supra* note 62; *see also* Elliott Ramos, *Lawsuit Challenges Constitutionality of Chicago's Car Impound Program*, Nat'l Pub. Radio (Apr. 30, 2019), https://www.npr.org/local/309/2019/04/30/718591680/lawsuit-challenges-constitutionality-of-chicago-s-car-impound-program.

[65] Chicago, Ill., Mun. Code § 9-92-080(a)-(b) (2019).

[66] City of Chicago, Department of Finance, *Installment Payment Plans and Traffic Enforcement Practices Rules*, Rule 2.04 (2019) (on file with the ACLU of Illinois); *see* City of Chicago, *Payment Plan, Frequently Asked Questions*, https://parkingtickets.

challenge to the impoundment.[67] Those who contest the impoundment have only three limited defenses,[68] have no right to counsel,[69] and must make multiple visits to the hearing office during business hours, which requires taking time off work and finding transportation without access to their vehicles.[70] If a driver cannot afford to retrieve a vehicle impounded

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cityofchicago.org/PaymentPlanWeb/FrequentlyAskedQuestions (last visited Mar. 3, 2020).

[67] Chicago, Ill., Mun. Code § 2-14-132(a)-(b) (2019).

[68] A vehicle is not subject to impoundment if:

> (1) the vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered; (2) the vehicle was operating as a common carrier and the violation occurred without the knowledge of the person in control of the vehicle; or (3) the alleged owner provides adequate proof that the vehicle had been sold to another person prior to the violation.

Chicago, Ill., Mun. Code § 2-14-132(h) (2019). There is no defense to impoundment for an owner who did not commit a VIP-eligible violation. *See* Andrew Wimer, *More Chicagoans Join Class Action Lawsuit Challenging Unconstitutional Impound Racket*, Inst. for Just. (Sept. 30, 2019), https://ij.org/press-release/more-chicagoans-join-class-action-lawsuit-challenging-unconstitutional-impound-racket/.

[69] City of Chicago, Department of Administrative Hearings, *Procedural Rules*, Rule 5.1 (Jan. 29, 2020), https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/DOAHRulesPubJan292020.pdf.

[70] *See* Sanchez & Ramos, *supra* note 47. The administrative redress process faces legal challenges for violating constitutional rights. *See Davis, et al. v. City of Chicago*, No. 1:19-cv-03691 (N.D. Ill. Sept. 26, 2019), ECF No. 1; *Walker et al. v. City of Chicago, et al*, No. 1:20-cv-01379 (N.D. Ill. Feb. 25, 2020), ECF No. 1.

under VIP, the City may destroy or sell it within ten days after completion of judicial review,[71] but no proceeds are credited toward the driver's debt,[72] and the City continues to seek collection.[73] Chicago sold nearly 24,000 vehicles towed in 2017 for less than $200 each, although their "market value was likely five times higher."[74]

Amendments to the Municipal Code in 2017 affirm that the purpose of Chicago's vast impoundment program is to collect debts. Under the amendment, "[a]ny vehicle immobilized by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle."[75] The City declared that the amendment would stop the "growing practice of individuals attempting to escape financial liability"

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[71] *See* Chicago, Ill., Mun. Code § 2-14-132(d) (2019).

[72] City of Chicago, Department of Finance, *Relocated & Towed Vehicle Information*, https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/boot_tow_information/relocated_towed_vehicleinformation.html (last visited Mar. 6, 2020) ("The signing over or involuntary surrender of your vehicle to the City does not waive or decrease any outstanding debt you owe the City.").

[73] *See* Illinois Legal Aid Online, *Going to a Hearing for an Impounded Car*, https://www.illinoislegalaid.org/legal-information/going-hearing-impounded-car-chicago (last visited Mar. 3, 2020) ("[A]fter the city destroys or sells the car, the city will still try to collect the fees you owe for tickets and storage.").

[74] Elliott Ramos, *Takeaways From our Investigation Into Chicago's Broken Towing Program,* WBEZ (Mar. 31, 2019), https://www.wbez.org/shows/wbez-news/takeaways-from-our-investigation-into-chicagos-broken-towing-program/21106328-2146-4f38-9938-7e25fc3b3b92.

[75] Chicago, Ill., Mun. Code § 9-100-120(j) (2019).

through bankruptcy.[76] No mention was made of public safety.

2. The City's Aggressive Ticketing, Collection, and Vehicle Impoundment Practices Push Many People to File for Chapter 13 Bankruptcy.

Chicago's ticketing, collection, and impoundment practices create staggering financial burdens that many people cannot pay. Because there is no statute of limitations on collections, ticket debt owed to the City lasts forever, creating significant hardship.[77]

Sandra Botello was unemployed and unable to pay for both the renewal of her City Vehicle Sticker and the $400 fee to register her son in the private school where he had secured a scholarship.[78] Within 45 days, she owed $1,000 for five sticker citations.[79] Although she purchased a sticker and paid the late fee, she could not afford the fines.[80] With penalties and collection fees, Ms. Botello's debt ballooned to $2,934.[81] The City booted and towed her car, eventually impounding it for 33 days before selling it

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[76] City Council of the City of Chicago, *Journal of the Proceedings of the City Council of the City of Chicago, Illinois*, Committee on the Budget and Government Operations, Vol. 1, at 51164–65 (June 28, 2017, 10:00 AM), https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/journals-proceedings/2017/2017_06_28_VI_VII_1.pdf.

[77] Sanchez & Kambhampati, *supra* note 4.

[78] Ramos, *supra* note 58.

[79] *Id*.

[80] *Id*.

[81] *Id*.

for scrap.[82] Ms. Botello struggled to pay the ticket and impoundment debt, which remained even after Chicago sold her car.[83]

Joe Walawski, a pizza delivery person, faced three outstanding City tickets he could not pay without falling behind on rent and car payments.[84] Chicago booted, towed, impounded, and ultimately sold his car for $204, even though it was less than two years old and Mr. Walawski still owed around $17,000 on his car loan.[85] No proceeds were put toward Mr. Walawski's ticket debt.[86]

The City impounded the car of Lewrance Gant, a retired limousine driver, after a friend who borrowed the car was pulled over for failure to come to a complete stop at an intersection.[87] Police discovered the friend's license was suspended for unpaid tickets and alleged there was a bag of marijuana in the car.[88] Although the charges against his friend were dropped, Mr. Gant was fined $1,000 and charged $3,750 for towing and

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[82] *Id*.

[83] *Id*.

[84] Elliott Ramos, *Chicago's Towing Program Sparks Another Lawsuit After City Sold Deliveryman's Car for $204.48*, WBEZ (Feb. 26, 2020), https://www.wbez.org/shows/wbez-news/chicagos-towing-program-sparks-another-lawsuit-after-city-sold-deliverymans-car-for-20448/e92e99be-a666-4884-bcb5-faa611a3c946.

[85] *Id*.

[86] *Id*.

[87] Institute for Justice, *Lewrance Gant*, https://ij.org/client/lewrance-gant/ (last visited Mar. 4, 2020).

[88] *Id*.

storage.[89] Because he cannot pay, Mr. Gant's car remains impounded.[90]

These drivers are not alone. Chicago's ticketing and impoundment practices disproportionately burden people who cannot pay, including people of color. In 2017, Chicago tickets were 40% more likely to be issued to drivers from zip codes with residents earning low-to-moderate incomes[91] and those with higher-than-average concentrations of minority residents,[92] than to drivers from other zip codes.[93] Eight of the ten Chicago zip codes with the most ticket debt per adult are majority Black.[94] These neighborhoods account for only 22% of all tickets issued between 2007 and 2017, but 40% of all ticket debt owed to Chicago.[95]

Faced with ruinous ticket and impoundment debt, many people have little choice but to turn to Chapter 13 bankruptcy. Between 2007 and 2017, the number of Chapter 13 bankruptcies involving debts to Chicago skyrocketed from an estimated 1,000 to an estimated 10,000, with the median amount of City debt involved more than doubling from $1,500 to

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[89] *Id*.

[90] *Id*.

[91] Nolan, *supra* note 42, at 2. "Low-to-moderate income" zip codes were defined as those where median family income was less than $74,000. *Id*. at 2 n.9.

[92] These zip codes were those where the population that is not white or of Hispanic/Latino origin exceeded the city average of 67.7%. *Id*.

[93] *Id*. at 2–3.

[94] Sanchez & Kambhampati, *supra* note 4.

[95] *Id*.

$3,900.[96] "[S]ticker violations were the largest source of ticket debt in Chicago," and "accounted for about 19 percent of citations connected to bankruptcy cases but only 4 percent of those marked paid."[97] In 2017, drivers from zip codes with low-to-moderate incomes or higher-than-average percentages of minority residents were *twice as likely* to file for bankruptcy as drivers from other zip codes.[98]

Chicago's revenue-motivated practices have made the Northern District of Illinois bankruptcy court the nation's leader in non-business Chapter 13 bankruptcy filings.[99] A 2016 study of Chapter 13 filings in Cook County, Illinois found that between one-third and one-half of those who sought relief did so because of the actual or threatened suspension of a driver's license or seizure of a vehicle for unpaid fines.[100] Chapter 13 filers "tended to have incomes near the poverty line and few to no assets."[101]

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[96] *Id*.

[97] *Id*.

[98] Nolan, *supra* note 42, at i.

[99] *See* United States Courts, *Table F-2—Bankruptcy Filings* (Dec. 31, 2019), https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2019/12/31 (showing the Northern District of Illinois leads the nation in non-business Chapter 13 filings with 15,658 cases filed in 2019).

[100] Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, Vol. 173, J. Institutional & Theoretical Econ. 174, 2 (2016), https://pdfs.semanticscholar.org/0d99/f1516fbf1e0aba857710cc1586ef86e5e591.pdf.

[101] *Id*.

III. ALLOWING DEBTORS TO RECOVER AND USE THEIR VEHICLES FOLLOWING IMPOUNDMENT PROMOTES THE "FRESH START" CONGRESS INTENDED WHEN IT ENACTED THE AUTOMATIC STAY AND TURNOVER PROVISIONS.

In a city where driving is essential to many people's livelihoods, vehicle impoundment undermines debtors' ability to satisfy the repayment program required for Chapter 13 bankruptcy.

Eighty-six percent of Americans describe a car as a "necessity of life."[102] About 70% of Chicago commuters drive alone to work.[103] A 2014 study found that "four of the Chicago region's five big employment areas are in suburbs that are not well-connected to high-quality transit, making them difficult to reach without a vehicle."[104]

Chicago's refusal to return impounded vehicles to Chapter 13 filers undermines debtors' ability to earn money and complete the repayment programs central to Chapter 13. As noted above, Respondents needed their cars to travel to work and care for

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[102] Paul Taylor et al., *The Fading Glory of the Television and Telephone*, Pew Res. Ctr. 6, 8 (Aug. 19, 2010), https://www.pewresearch.org/wp-content/uploads/sites/3/2011/01/Final-TV-and-Telephone.pdf.

[103] Richard Florida, *The Great Divide in how Americans Commute to Work*, CityLab (Jan. 22, 2019), https://www.citylab.com/transportation/2019/01/commuting-to-work-data-car-public-transit-bike/580507/.

[104] Jon Hilkevitch, *'Transit Deserts' Don't Serve Workers, Study Says*, Chi. Trib. (Aug. 3, 2014, 11:03 PM), https://www.chicagotribune.com/columns/ct-transit-deserts-met-20140804-column.html.

family members.[105] Chicago's refusal to abide by the automatic stay and turnover requirements deprived Respondents of their vehicles for more than nine months after they filed for bankruptcy.[106]

Enabling people in Chapter 13 proceedings to use their vehicles to find and maintain employment is critical to the fresh start Congress intended in enacting the Bankruptcy Code. Cars are essential to "[a] person's ability to make a living" and to "access . . . the necessities . . . of life." *Scofield v. City of Hillsborough*, 862 F.2d 759, 762 (9th Cir. 1988). Access to a vehicle "notably improve[d] employment outcomes among very-low-income adults" in a 2016 study of Welfare to Work program participants.[107] A 2005 Tennessee study found that car access increased the likelihood that an individual would leave welfare and find a better paying job.[108] A study of single mothers in Pittsburgh concluded that "mobility status had a bigger impact on employment than work experience or education."[109]

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[105] *See generally supra* note 2 (describing Respondents' reliance on their vehicles).

[106] Pet. App. 4a–5a.

[107] Evelyn Blumenberg & Gregory Pierce, *The Drive to Work: The Relationship Between Transportation Access, Housing Assistance, and Employment Among Participants in the Welfare to Work Voucher Program*, Vol. 37(1) J. Plan. Educ. Res. 66, 66 (2017), https://docplayer.net/133243359-Evelyn-blumenberg-1-and-gregory-pierce-1-introduction-research-based-article.html.

[108] Tami Gurley & Donald Bruce, *The Effects of Car Access on Employment Outcomes for Welfare Recipients*, J. Urb. Econ. 250, 269 (2005), http://web.utk.edu/~dbruce/jue05.pdf.

[109] Chicago Jobs Council, *Living in Suspension: Consequences of Driver's License Suspension Policies* 3 (Feb. 2018), https://cjc.

It is thus crucial that vehicles impounded before the filing of a Chapter 13 petition are automatically returned to the debtor for use in securing or maintaining employment to enable debt repayment, as the automatic stay and turnover provisions require.

* * *

The Bankruptcy Code is designed to give those who fall into serious debt a chance to begin anew. The increasingly common practices of imposing fines and fees to generate government revenue and of impounding vehicles as a collection tactic, fall heavily on the poorest among us. The details of the Chicago practices at the root of the cases here offer important insight into how people are led into crushing debt, and how local policies and practices undermine the purpose of bankruptcy by depriving people of the property essential to getting back on their feet. The Bankruptcy Code was enacted to deal with real-world problems. Those problems should inform the Court's interpretation of the automatic stay and turnover provisions because their proper construction and application is critical to giving debtors the fresh start that Congress intended.

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net/wp-content/uploads/2018/04/Living-in-Suspension_Report-by-CJC.pdf.

CONCLUSION

For all of the above reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

Nusrat J. Choudhury
Counsel of Record
Rebecca Glenberg
Ana Torres
Allyson Bain
Juan Caballero
ROGER BALDWIN FOUNDATION OF THE ACLU OF ILLINOIS
150 N. Michigan Ave., Suite 600
Chicago, IL 60601
(312) 201-9740
nchoudhury@aclu-il.org

David Cole
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street, NW
Washington, DC 20005

Jennesa Calvo-Friedman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004

Clark M. Neily III
Jay R. Schweikert
CATO INSTITUTE
1000 Massachusetts Ave., NW
Washington, DC 20001

Lisa Foster
FINES AND FEES JUSTICE CENTER
185 West Broadway, C-538
New York, NY 10013

William R. Maurer
Kirby Thomas West
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, VA 22203

Nila Bala
Charles Duan
R STREET INSTITUTE
1212 New York Ave., NW Suite 900
Washington, DC 20005

John W. Whitehead
Douglas R. McKusick
THE RUTHERFORD
INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911

Date: March 11, 2020

APPENDIX

STATEMENTS OF INTEREST OF AMICI

The **American Civil Liberties Union** ("ACLU") is a nationwide non-profit, non-partisan organization of approximately two million members and supporters dedicated to defending the principles of liberty and equality embedded in the U.S. Constitution and our nation's civil rights laws. Founded nearly 100 years ago, the ACLU has participated in numerous cases before this Court both as direct counsel and as amicus curiae. The ACLU engages in nationwide litigation and advocacy to enforce and protect the rights of impoverished people against the unlawful imposition and collection of fines and fees.

The **ACLU of Illinois** is the state affiliate of the ACLU, with more than 75,000 members and supporters across Illinois. The ACLU of Illinois is dedicated to the defense and promotion of the principles embodied in the U.S. Constitution, the Illinois Constitution, and state and federal civil rights laws. The ACLU of Illinois has appeared before state and federal courts, including this Court, in a wide range of cases involving the rights of impoverished people, and engages in advocacy and litigation to enforce these rights against the unlawful imposition and collection of fines and fees.

The **Cato Institute** is a non-partisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute's Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of

substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

The **Fines and Fees Justice Center** ("FFJC") is a national center for advocacy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC's mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably.

The **Institute for Justice** ("IJ") is a nonprofit public-interest law firm that litigates for greater judicial protection of individual rights. These include the right to own and use private property without unreasonable governmental interference. Many of IJ's cases involve unjust applications of systems of fines and fees on the poor and vulnerable. This case is thus squarely within a core area of concern for IJ.

The **Rutherford Institute** ("the Institute") is an international civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its president, John W. Whitehead, the Institute specializes in providing legal representation without charge to individuals whose civil liberties are threatened and in educating the public about constitutional and human rights issues. Attorneys affiliated with the Institute have represented parties and filed numerous amicus curiae briefs in the federal Courts of Appeals and Supreme Court. Through litigation and public education efforts, the Institute

vigilantly advocates against the kind of oppressive government actions that are challenged in this case.

The **R Street Institute** ("R Street") is a non-profit, non-partisan, public-policy research organization. R Street's mission is to engage in policy research and educational outreach that promotes free markets, as well as limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.

INTERESTS OF AMICI CURIAE[1]

Amici curiae are non-profit organizations that share concern about states and municipalities that raise revenue through the imposition and punitive collection of steep fines and fees, sending people into bankruptcy while undermining their ability to carry out a bankruptcy plan successfully. *See* Appendix. The consolidated bankruptcy cases before this Court represent an increasingly common scenario: Petitioner City of Chicago generates revenue by impounding vehicles for unpaid tickets and specified civil infractions and charging storage fees that rapidly accrue, leading thousands of people who cannot afford to redeem their cars to seek relief under Chapter 13 of the Bankruptcy Code. Amici believe that under the plain text of 11 U.S.C. § 362(a)(3) and 11 U.S.C. § 542(a), a creditor must return estate property, including impounded vehicles, to a debtor upon the filing of a Chapter 13 bankruptcy petition. Petitioner's refusal to do so frustrates bankruptcy's purpose to provide a "fresh start" to debtors through the discharge of their debts.

SUMMARY OF THE ARGUMENT

While this case presents a question of statutory interpretation, it arises in a context that warrants this Court's particular attention. The Bankruptcy Code is designed to help debtors make a fresh start, and the provisions at issue here, which govern the automatic stay and the turnover of property, were drafted with that specific goal in mind. Today, a fresh start is

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[1] All parties have consented to the filing of this brief. Amici affirm that no counsel for any party authored this brief in whole or in part and that no person other than amici made a monetary contribution to its preparation or submission.

more important than ever, as an unprecedented rise in civil and criminal fines and fees over the past three decades has propelled people into bankruptcy. Fueled by local and state governments' quest for revenue, the explosion of fines and fees has buried millions of people under mountains of debt. Those who cannot immediately pay often face harsh collection tactics, including the seizure and impoundment of their vehicles. When such a debtor files for bankruptcy, the return of their impounded car is often a precondition for the fresh start Congress intended. This brief sheds light on the real world consequences of the statutory interpretation question before this Court.

The automatic stay and turnover provisions that govern Chapter 13 bankruptcy proceedings, 11 U.S.C. § 362(a)(3) and 11 U.S.C. § 542(a), respectively, are properly construed to require a creditor to return estate property—including impounded vehicles—when a debtor files for bankruptcy. Amici agree with Respondents that Petitioner City of Chicago's ("Chicago" or "the City") refusal to return impounded vehicles upon the filing of a Chapter 13 petition violates the automatic stay of Section 362(a)(3) and the turnover requirement of Section 542(a).

The all-too-common context in which these particular bankruptcy cases arise illustrates why Respondents' interpretation is essential to Congress's design. Allowing debtors to recover and use vehicles impounded prior to filing for bankruptcy promotes a "fresh start." Without a car, it is exceedingly difficult to meet the demands of a bankruptcy plan. People need to drive to get to work, and they need to work to repay their creditors and support themselves and their families.

Chicago's vast vehicle impoundment program is part of a nationwide trend in which municipalities rely heavily on fines, fees, and punitive collection practices for revenue. Faced with towering budget deficits, the City raised fees and fines for parking, traffic, and ordinance violations, and began aggressively enforcing ordinances permitting vehicle impoundment for unpaid fines or driving on a suspended license, including licenses suspended for unpaid tickets. Chicago levies exorbitant fees for impounding, towing, and storing vehicles, and refuses to return vehicles to their owners without full payment of all money owed. Chicago is not alone. States and cities nationwide use impoundment to collect ticket debt and require steep payments to recover vehicles.

With *four in ten* American adults facing difficulty covering a $400 emergency expense,[2] many Chicago residents like Respondents cannot pay the thousands of dollars often required to recover the vehicles they need to pursue their livelihoods. Chicago residents owe a staggering $1.45 billion in unpaid tickets alone. The City's revenue-generation practices caused a *tenfold* increase in the number of Chapter 13 filings in the Northern District of Illinois between 2007 and 2017, and caused the median debt owed to Chicago in those proceedings to *double*. A similar pattern is emerging elsewhere as states and other cities looking to close budget gaps follow Chicago's lead.

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[2] Alex Durante et al., *Report on the Economic Well-Being of U.S. Households in 2018*, Board of Governors of the Fed. Res. Sys. 21 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

This context should inform the Court's resolution of the legal question presented here. Chicago compels people to seek Chapter 13 relief from crushing ticket and impoundment debt. The retention of debtors' vehicles after they file for bankruptcy frustrates their ability to earn income, satisfy Chapter 13 repayment obligations, and secure a fresh start. Chicago's position that it need not return seized vehicles to people who have declared bankruptcy contradicts the language and purpose of the Bankruptcy Code, and should be rejected.

ARGUMENT

I. THE AUTOMATIC STAY IS A "FUNDAMENTAL DEBTOR PROTECTION" THAT FACILITATES A FRESH START

A "main purpose" of the Bankruptcy Code is "to aid the unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character, after the property which he owned at the time of bankruptcy has been administered for the benefit of creditors." *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918); *see Perez v. Campbell*, 402 U.S. 637, 648 (1971) (internal quotation marks and citation omitted) ("[O]ne of the primary purposes of the Bankruptcy Act is to give debtors a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt."). The fresh start is "not only of private but of great public interest in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life." *Stellwagen*, 245 U.S. at 617. "The various provisions of the Bankruptcy Act were adopted in the light of that view and are to be

construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act." *Local Loan Co. v. Hunt*, 292 U.S. 234, 245 (1934).

The automatic stay of Section 362(a)(3) and the turnover requirement of Section 542(a) together advance the "fresh start" goal of bankruptcy that this Court identified over one hundred years ago. Congress called the automatic stay "one of the fundamental debtor protections provided by the bankruptcy laws." S. Rep. No. 95-989, at 54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5480. The provision "gives the debtor a breathing spell from his creditors," and "permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." H.R. Rep. No. 95-595, at 340–41 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296–97. Congress broadened this protection in 1984 by extending the automatic stay to "any act . . . *to exercise control over* property of the estate." 11 U.S.C. § 362(a)(3) (emphasis added).

The automatic stay works with Section 542(a), which allows the bankruptcy trustee to bring together all of the estate's property, including "property of the debtor that has been *seized by a creditor prior to the filing* of a petition for reorganization." *United States v. Whiting Pools*, 462 U.S. 198, 209 (1983) (emphasis added). The turnover provision mandates that a creditor in possession of estate property "shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). Congress intended Section 542(a) to require "anyone holding property of the estate on the

date of the filing of the petition . . . to deliver it to the trustee," S. Rep. 95-989, at 84 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5870, regardless of whether a creditor has a secured interest in the property. *Whiting Pools, Inc.*, 462 U.S. at 203.

This Court's opinion in *Whiting Pools, Inc.* illustrates how the automatic stay and turnover provision together promote a fresh start. There, the Internal Revenue Service ("IRS") seized the corporate debtor's equipment, vehicles, inventory, and office supplies, intending to sell them for unpaid taxes. 462 U.S. at 200–01. When the debtor later filed for bankruptcy reorganization, the IRS sought a declaration that the automatic stay did not apply, or, in the alternative, relief from the stay. *Id*. Instead, the Bankruptcy Court ordered the IRS to turn over the seized property to the debtor pursuant to Section 542(a). *Id*. at 201. Affirming, this Court explained:

> Congress anticipated that the business would continue to provide jobs, to satisfy creditors' claims, and to produce a return for its owners. Congress presumed that the assets of the debtor would be more valuable if used in a rehabilitated business than if 'sold for scrap.' . . . Thus, to facilitate the rehabilitation of the debtor's business, all the debtor's property must be included in the reorganization estate.

462 U.S. at 203 (citing H.R. Rep. No. 95-595, at 220 (1977), U.S. Code Cong. & Admin News. 1978, at 5787).

For individual as well as corporate debtors, the beneficial use of personal property advances

rehabilitation from debt—particularly with property like automobiles, which may be essential to earn money, including by getting or keeping a job. Indeed, Respondents relied on their cars to drive to work and earn the necessary income to make monthly payments toward their Chapter 13 repayment plans.[3] As this Court has recognized, "[t]he power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right. To preserve its free exercise is of the utmost importance." *Local Loan Co.*, 292 U.S. at 245. Employment can give a debtor the means to succeed in a payment plan, to the benefit of all of the creditors.

For that reason, the Bankruptcy Code contains multiple provisions that ensure debtors' access to personal property needed to be gainfully employed during bankruptcy proceedings. For example, the Code exempts from the bankruptcy estate certain property in the debtor's possession that may be essential to pursuing an occupation: up to $2,400 in value for "one motor vehicle"; up to $1,500 in value for "implements, professional books, or tools[] of the trade"; and "[p]rofessionally prescribed health aids." 11 U.S.C. § 522(d)(2), (6), and (9). Similarly, the Code prohibits employment discrimination against debtors

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[3] Respondent Robbin Fulton needed her car to get to her job, take her preschool-age daughter to day care, and care for her elderly parents. *See* Pet. App. 4a. Respondent Timothy Shannon, a housekeeper, needed his car to get to work. *See* Pet. App. 102a. Respondent George Peake needed his car for his daily 45-mile commute. *See* Pet. App. 64a. Chicago impounded the cars of Shannon and Peake for unpaid tickets. *See* Pet. App. 5a–6a. The City impounded Fulton's car for driving on a license suspended for unpaid parking tickets and non-moving violations. Pet. App. 4a.

and forbids governments to "deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant" based on bankruptcy status. 11 U.S.C. § 525(a). The automatic stay and turnover provision are similarly designed to allow debtors to use their property to generate income to benefit themselves, their creditors, and the public interest.

"By its express terms, section 542(a) is self-executing, and does not require the trustee to take any action or commence a proceeding or obtain a court order to compel the turnover." 5 Collier on Bankruptcy ¶ 542.03 (16th ed. 2019). The City's insistence that debtors must nonetheless initiate an adversary proceeding to enforce their turnover rights contradicts the statute's plain language. *See* Pet. Br. at 16–25; Resp. Br. at 34–45. Placing the burden on the cash-strapped debtor, rather than on the creditor seeking to retain control over seized property, contravenes Congress's intent that property with "significant use value for the estate" be turned over upon the filing of the bankruptcy petition, so that the property can facilitate the debtor's successful reorganization or repayment. H.R. Rep. 95-595, at 369 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6325. Under the City's reading of the statutes, debtors' vehicles collect dust during bankruptcy proceedings, even as exorbitant storage costs accrue daily and further drain the estate. *See* JA 206, 345, 362 (detailing Respondents' impound debt).

The Bankruptcy Code recognizes that creditors have interests in a debtor's estate, but addresses those interests by providing "secured creditors various rights, including the right to adequate protection, and these rights *replace* the protection afforded by possession." *Whiting Pools, Inc.*, 462 U.S. at 207

(emphasis added). Thus, while a creditor may seek adequate protection, such as "periodic cash payments" or an "additional or replacement lien" to cover a "decrease in the value" of the property resulting from the automatic stay, 11 U.S.C. § 361(1)–(2), it may not simply continue to possess the debtor's property.

This Court has found that state and local measures that are "subversive of [a debtor's ability to start afresh] cannot be accepted as controlling the action of a federal court." *Local Loan Co.*, 292 U.S. at 245. In *Local Loan*, a debtor assigned his wages to the creditor in a pre-petition agreement. *Id.* at 238. After the underlying debt had been discharged in bankruptcy, the creditor sought to garnish the debtor's wages. *Id.* Although Illinois law allowed the garnishment, this Court upheld the bankruptcy court's injunction against garnishment because "the Illinois decisions as to the effect of an assignment of wages earned after bankruptcy [are] destructive of the purpose and spirit of the Bankruptcy Act." *Id.* at 245.

Likewise, in *Perez v. Campbell*, this Court invalidated an Arizona law that allowed the suspension of a driver's license and vehicle registration for failure to pay an automobile accident judgment that had been discharged in bankruptcy. 402 U.S. 637, 656 (1971). The statute was "in conflict with a federal [bankruptcy] statute that gives discharged debtors a new start 'unhampered by the pressure and discouragement of preexisting debt.'" *Id.* at 649. Congress codified this result, providing that "a governmental unit may not deny, revoke, suspend, or refuse to renew a license" of a debtor "solely because such bankrupt or debtor . . . has not paid a debt . . . that was discharged under the Bankruptcy

Act." 11 U.S.C. § 525(a); *see* S. Rep. 95-989, at 81 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5867.

Accordingly, the Seventh Circuit correctly ruled that the City violated the automatic stay by "actively resisting [Section] 542(a) to exercise control over debtors' vehicles," when it refused to return them upon the filing of bankruptcy proceedings, and instead kept the vehicles locked up and unused. Pet. App. 14a; *see* Resp. Br. at 18–20. Rather than adhering to procedures that "preserv[e] [the] property of the estate for the benefit of *all* creditors," the City kept the vehicles to "put pressure on the debtors to pay their tickets," which is "precisely what the [automatic] stay is intended to prevent." Pet. App. 14a. The City's interpretation of the automatic stay contravenes Section 362(a)(3)'s purpose as a "fundamental debtor protection" crucial to affording debtors a fresh start. S. Rep. No. 95-989, at 54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840.

II. THE NATIONWIDE TREND OF RAISING REVENUE THROUGH FINES, FEES, AND IMPOUNDMENT BURIES PEOPLE IN DEBT AND CREATES A DIRE NEED FOR THE "FRESH START" THAT BANKRUPTCY AFFORDS.

The context in which this case arises is all too common, and underscores why it is essential to enforce the Bankruptcy Code to give debtors a fresh start. The United States has experienced an unprecedented rise in fines and fees used to generate state and local government revenue, leaving millions buried under accumulating debt. Those who cannot immediately pay face additional fees and harsh collection tactics. Chicago's reliance on aggressive ticketing and vehicle

impoundment to raise revenue reflects this trend. As of 2018, people owed $1.45 billion to the City in unpaid tickets dating back to 1990,[4] and tens of thousands have sought relief through Chapter 13 bankruptcy.

A. Nationwide, the Dramatic Expansion of Fines and Fees Used to Generate Revenue is Overwhelming Many People with Debts They Cannot Pay.

State and local governments nationwide have turned to fines and fees imposed on people charged for legal violations to raise revenue because they are politically easier to impose than generally applicable taxes. "Fines" are used to punish and deter violations of law, while "fees" are designed to recoup government costs, like indigent defense expenses, or to raise revenue for government programs that may be unrelated to the legal system.[5] Those who cannot immediately pay frequently incur penalties, such as additional fees, bench warrants, wage garnishment, driver's license suspensions, and even incarceration—all of which make payment even more difficult.[6]

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[4] Melissa Sanchez & Sandhya Kambhampati, *Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy*, ProPublica Ill. (Feb. 27, 2018), https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy.

[5] Matthew Menendez et al., *The Steep Cost of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties*, Brennan Ctr. for Just. 6 (Nov. 21, 2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.

[6] *See* Alexes Harris et al., *Monetary Sanctions in the Criminal Justice System: A Review of Law and Policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas,*

Since 2010, 48 states have increased the number and/or amount of civil and criminal fees.[7] Arizona, Louisiana, Ohio, and Texas instituted new fees and raised existing ones to address 2010 budget shortfalls.[8] Florida increased court fees to address a fiscal crisis.[9] In Oklahoma, barriers to raising taxes have compelled legislators to rely largely on fines and fees to fund the state budget.[10] North Carolina raises money for the court system, jails, counties, law enforcement, and schools through 52 separate fees.[11] California uses traffic citations to collect revenue for 18 different state and county funds.[12]

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and Washington 4 (Apr. 2017), http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf (describing fees and interest imposed for unpaid fines); Menendez et al., *supra* note 5, at 20 (detailing sanctions for nonpayment).

[7] Joseph Shapiro, *Supreme Court Ruling not Enough to Prevent Debtors' Prisons*, Nat'l Pub. Radio (May 21, 2014, 5:01 AM), https://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons (describing key findings of yearlong investigation).

[8] Karin D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, Harv. Kennedy Sch. & Nat'l Inst. of Just. 6 (Jan. 2017), https://www.ncjrs.gov/pdffiles1/nij/249976.pdf.

[9] Rebekah Diller, *Court Fees As Revenue?*, Brennan Ctr. for Just. (July 30, 2008), https://www.brennancenter.org/our-work/analysis-opinion/court-fees-revenue.

[10] Menendez et al., *supra* note 5, at 6.

[11] *Id*.

[12] *See* California State Auditor Report 2017-126, *Penalty Assessment Funds: California's Traffic Penalties and Fees Provide Inconsistent Funding for State and County Programs and Have a Significant Financial Impact on Drivers* 5 (Apr. 2018),

Local governments also generate significant revenue through fines and fees. In 2017, New Jersey municipal courts collected more than $400 million in fines and fees, with more than half of that amount funneled to the general funds of municipalities and a significant portion directed to state and county governments.[13] In 2016, almost half of the $166.7 million raised by Arizona municipal courts in fines and fees funded general municipal operations.[14]

Municipalities use traffic and ordinance enforcement not just to promote public safety, but to raise revenue through ticketing—leading some to call the practice "taxation by citation."[15] Nearly 600 U.S. jurisdictions raise at least 10% of their general fund revenue through fines and fees, and at least 284 jurisdictions rely on fines and fees for

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https://www.bsa.ca.gov/pdfs/reports/2017-126.pdf (describing fees imposed on top of citations and where fee revenue is directed).

[13] New Jersey Courts, *Report of the Supreme Court Committee on Municipal Court Operations*, *Fines, and Fees* 12 (June 2018), https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf.

[14] Mark Flatten, *City Court: Money, Pressure and Politics Make it Tough to Beat the Rap*, Goldwater Inst. 6–7 (July 17, 2017), https://goldwaterinstitute.org/wp-content/uploads/2017/09/City-Court-Policy-Paper-1.pdf.

[15] *See* Dick M. Carpenter II et al., *The Price of Taxation by Citation: Case Studies of Three Georgia Cities That Rely Heavily on Fines and Fees*, Inst. for Just. 5 (Oct. 2019), https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf; Dan Kopf, *The Overlooked Reason Why Some Cities Have Strained Relationships With Cops*, Business Insider (July 11, 2016, 9:01 AM), https://www.businessinsider.com/reason-for-strained-relationship-with-police-2016-7.

20% or more of their general funds.[16] In fiscal year 2017, Boston, New Orleans, New York, and Chicago raised at least $113 per resident from fines and fees, while Washington, D.C. generated $261 per resident.[17] The AAA has since characterized the enforcement of traffic, parking, and non-moving violations in the nation's capital as "predatory" and untethered to public safety.[18]

Fines that are manageable for a person of means may be out of reach for an impoverished or low-income person. As additional fees accumulate, even moderate-income people may be unable to pay. For example, in California, the fine for littering is $100,[19] but the fine carries $390 in additional fees.[20] In New Jersey,

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[16] Mike Maciag, *Addicted to Fines: Small Towns in Much of the Country are Dangerously Dependent on Punitive Fines and Fees*, Governing: The Future of States and Localities (Sept. 2019), https://www.governing.com/topics/finance/gov-addicted-to-fines.html.

[17] Dan Kopf & Justin Rohrlich, *No US City Fines People Like Washington Fines People*, Quartz (Jan. 29, 2020), https://qz.com/1789851/no-us-city-fines-people-like-washington-dc/.

[18] Tyler Olson, *'Predatory' DC Government Issues Record $1 Billion in Fines to Drivers: Report*, Fox News (Feb. 21, 2020), https://www.foxnews.com/politics/aaa-calls-dc-parking-and-traffic-enforcement-predatory-as-city-issues-record-1-billion-in-tickets.

[19] Cal. Veh. Code § 23112(a)-(b) (West 2020); Super. Court of Cal., Cnty. of San Diego, *Bail Schedule* 47 (Dec. 12, 2019), http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/CRIMINAL2/CRIMINALRESOURCES/BAIL_SCHEDULE.PDF.

[20] Super. Ct. of Cal., Cnty of San Diego, *How the Amount Due is Calculated on Citations*, SDSC ADM-295 (Apr. 2013), http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/

marijuana possession carries a $100 fine, but the $200 public defender fee, $33 in court costs, and $675 in fees for specific government funds result in a total financial penalty of $1,008 for an indigent defendant.[21] A full-time, minimum wage worker in New Jersey would need to work almost two and half weeks to pay that sum.[22]

Those who cannot immediately pay fines and fees often face draconian penalties and collection efforts.[23] For example, James Fisher of Colorado, an indigent man who was at times homeless and without steady work, was charged $1,680 in fees to collect $678 in fines for two open container tickets and a citation for driving without proof of insurance.[24] Even after Mr. Fisher paid $1,498—more than double the initial

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GENERALINFORMATION/FORMS/ADMINFORMS/ADM295.PDF.

[21] New Jersey Courts, *supra* note 13, at 12.

[22] Minimum wage in New Jersey is currently $11/hour, which corresponds to $440 in pre-tax income for a 40-hour work week. Tom Davis, *Roll-Back of $15 NJ Minimum Wage Law is Delayed: What's Next*, Patch (Nov. 14, 2019, 1:23 PM), https://patch.com/new-jersey/morristown/roll-back-15-nj-minimum-wage-law-delayed-whats-next.

[23] *See* Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 Ann. Rev. of Criminology 471, 475 (2018), https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-032317-091915.

[24] *Debtors' Prison Settlement: Aurora Cancels Debt, Withdraws Warrants, and Repays James Fisher for Excessive Payments to Municipal Court*, ACLU of Colo. (Jan. 13, 2017), https://aclu-co.org/debtors-prison-settlement-aurora-cancels-debt-withdraws-warrants-repays-james-fisher-excessive-payments-municipal-court/.

fines—over the course of four years, he still owed $860.[25]

Motivated by revenue generation, state and local governments use vehicle impoundment to collect unpaid parking, traffic, and ordinance violation tickets. In California, public agencies towed an estimated 224,900 vehicles in 2017 for unpaid parking tickets, lapsed registrations, or parking in one place for 72 hours—reasons often associated with poverty.[26] These vehicles are two to six times more likely to be sold at a lien sale than other towed cars, suggesting that owners cannot afford to recover them, which can cost more than $2,500.[27] Texas impounds vehicles for unpaid tolls, with release only upon full payment of unpaid tolls, fees, and impoundment-related charges.[28] Pennsylvania permits municipalities to impound vehicles if, within 24 hours of being fined $250 or more for violating registration, permitting, or license-plate requirements, an owner fails to pay in full or start a payment plan.[29] Denver permits impoundment for unpaid parking tickets and expired license plates, with release only upon full payment of fines, impoundment fees, and storage fees.[30]

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[25] *Id*.

[26] Western Center on Law & Poverty et al., *Towed Into Debt: How Towing Practices in California Punish Poor People* 23 (Mar. 18, 2019), https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf.

[27] *Id*. at 4, 7.

[28] Tex. Transp. Code Ann. § 372.112 (West 2013).

[29] 75 Pa.C.S.A. § 6309.1(b) (2005).

[30] D.R.M.C. § 54-811(17), (19) (2020), https://tinyurl.com/wktslee; D.R.M.C. § 54-813 (2020), https://tinyurl.com/wktslee.

State and local governments' heavy reliance on fines and fees disproportionately harms impoverished people and communities of color. The longstanding racial and ethnic wealth gap[31] and higher rates of poverty[32] make Black and Latino people less likely to afford steep fines for traffic, parking, and ordinance violations. Moreover, municipalities that rely heavily on fines and fees for general revenue have comparatively larger Black populations.[33]

B. Chicago's Ticketing and Impoundment Practices Reflect the Nationwide Rise of Punitive Collection of Fines and Fees.

The Respondents' bankruptcies arise from Chicago's dependence on fines, fees, and vehicle impoundment for revenue. The City issues an extraordinarily high number of tickets for traffic and

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[31] A 2013 study of federal data found that the median wealth of white households was 13 times the median wealth of Black households, and more than 10 times the median wealth of Latino households. Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Res. Ctr. (Dec. 12, 2014), https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/.

[32] A 2014 study found that Black and Latino people were, on average, at least twice as likely to be poor than were white people in the United States. *See On Views of Race and Inequality, Blacks and Whites are Worlds Apart*, Pew Res. Ctr. (June 27, 2016), https://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/.

[33] *See* Kopf, *supra* note 15 ("Among the fifty cities with the highest proportion of revenues from fines, the median size of the African American population—on a percentage basis—is more than five times greater than the national median.").

ordinance infractions, adds exorbitant penalties when people cannot pay, impounds vehicles to collect unpaid tickets, and assesses additional fees on those with impounded vehicles. The results are rapidly mounting financial burdens on impoverished and low-income people, and punitive sanctions for those who do not pay, including the seizure of their vehicles. Tens of thousands of people have thus sought a fresh start through Chapter 13 bankruptcy.

1. The City of Chicago Uses Aggressive Ticketing and Vehicle Impoundment to Fill Budget Gaps.

Chicago's vehicle impoundment practices began with City leaders' effort to close a $650 million budget gap in 2011.[34] The City increased the cost of mandatory City Vehicle Stickers, raised the penalty for late purchase of a sticker from $40 to $60, and nearly doubled the fine for not having a sticker from $120 to $200—all to raise revenue.[35] It also increased fines for other ordinance violations and allowed vehicle impoundment for littering, playing music too loudly, and driving on a suspended license.[36] By fall of 2019, Chicago's collection efforts led to the suspension of 57,000 people's driver's licenses for failure to pay

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[34] C.J. Ciaramella, *Chicago is Trying to Pay Down Its Debt by Impounding People's Cars*, Reason (Apr. 25, 2018, 8:15 AM), https://reason.com/2018/04/25/chicago-debt-impound-cars-innocent/.

[35] Melissa Sanchez & Elliott Ramos, *Chicago Hiked the Cost of City Vehicle Sticker Violations to Boost Revenue, But It's Driven More Low-Income Black Motorists Into Debt*, ProPublica Ill. (July 26, 2018), https://www.propublica.org/article/chicago-vehicle-sticker-law-ticket-price-hike-black-drivers-debt.

[36] Ciaramella, *supra* note 34.

sticker, parking, or traffic tickets.[37] The City also aggressively impounded vehicles for unpaid tickets or driving under suspension and imposed additional fees for vehicle towing, impoundment, and storage.[38] A fiscal year 2020 budget deficit of $838 million continues to pressure the City to generate revenue through these practices.[39]

In 2018, Chicago collected 11% of its general fund revenue from fines and fees, the "highest of any of the nation's 50 biggest cities."[40] In 2017, Chicago raised almost $345 million in fines and fees,[41] issuing

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[37] Pascal Sabino, *Chicago Would Stop Suspending Driver's Licenses for Unpaid Tickets and Reinstate 57,000 Under Lightfoot's Reform Plan*, Block Club Chi. (Jul. 23, 2019, 12:07 PM), https://blockclubchicago.org/2019/07/23/chicago-would-stop-suspending-drivers-licenses-for-unpaid-tickets-and-reinstate-57000-under-lightfoots-reform-plan/.

[38] *See* Elliott Ramos, *Chicago's Towing Program is Broken*, WBEZ (Apr. 1, 2019), http://interactive.wbez.org/brokentowing/.

[39] *See* Gregory Pratt & John Byrne, *Facing $838 Million City Budget Shortfall, Chicago Mayor Lori Lightfoot Holds First Town Hall: 'We Actually Value Your Opinion,'* Chi. Trib. (Sept. 6, 2019, 9:14 AM), https://www.chicagotribune.com/politics/ct-lightfoot-budget-town-hall-meeting-20190905-k4ebrpfo2jbajkmxfrapyekf3m-story.html.

[40] Maciag, *supra* note 16. By comparison, Ferguson, Missouri, which received nationwide attention for policing to generate revenue, relied on fines and fees for around 12% of its general fund in 2010 and 2011. Civil Rights Division, U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* 9 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[41] Fran Spielman, *Lightfoot Defends Methodical Approach to Ending City's 'Addiction' to Fines and Fees*, Chi. Sun-Times (July 23, 2019, 3:24 PM), https://chicago.suntimes.com/city-hall/2019/

over 3.6 million vehicle-related tickets and warnings, 54% of which were for *non-moving* violations, such as missing City Vehicle Stickers, expired parking meters, improper license plates, and infractions of street cleaning and residential permit parking rules.[42]

Chicago's fines for vehicle-related offenses range from $25 to $500.[43] A single fine can be out of reach for many people; as noted above, four in ten adults in the United States face difficulty paying a $400 emergency expense.[44] A City Vehicle Sticker costs between $90 and $213,[45] and is separate from the minimum $151 annual fee to renew an Illinois license plate.[46] A sticker ticket carries a $200 fine and is "the most expensive commonly issued citation in the city."[47] A vehicle without the sticker can be cited "*each*

7/23/20707553/fines-fees-boot-red-light-cameras-city-budget-revenue-lightfoot.

[42] Laura Nolan, *The Debt Spiral: How Chicago's Vehicle Ticketing Practices Unfairly Burden Low-Income and Minority Communities,* Woodstock Inst. 1 (June 2018), https://woodstockinst.org/wp-content/uploads/2018/06/The-Debt-Spiral-How-Chicagos-Vehicle-Ticketing-Practices-Unfairly-Burden-Low-Income-and-Minority-Communities-June-2018.pdf.

[43] *Id*. at 10.

[44] Durante, *supra* note 2.

[45] Office of the City Clerk Anna M. Valencia, City of Chicago, *Chicago City Vehicle Sticker FAQs*, https://www.chicityclerk.com/city-stickers-parking/about-city-stickers (last visited Feb. 28, 2020).

[46] Office of the Illinois Secretary of State, *Fees Vehicle Services*, https://www.cyberdriveillinois.com/departments/vehicles/basicfees.html (last visited Mar. 2, 2020).

[47] Melissa Sanchez & Elliott Ramos, *Three City Sticker Tickets on the Same Car in 90 Minutes?*, ProPublica Ill. (June 27, 2018,

and every day," leading those who cannot afford the sticker to accumulate tickets rapidly.[48] Until recently, nonpayment of the sticker citation within 25 days led to an *additional* $200 penalty.[49] While the penalty was reduced to $50 in late 2019 following advocacy and media coverage, other vehicle-related fines still double after 25 days.[50] If a fine is sent to a third-party debt collector, an additional 22% fee is tacked on.[51] In

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5:30 AM), https://www.propublica.org/article/chicago-city-sticker-double-tickets.

[48] Chicago, Ill., Mun. Code § 3-56-150(b) (2019).

[49] *See* Chicago, Ill., Mun. Code § 9-100-050(e) (amended 2019) ("The penalty for late payment shall be an amount equal to the amount of the fine for the relevant violation.").

[50] *See* Chicago, Ill., Mun. Code § 9-100-050(e) (2019) (providing that "the penalty for late payment shall be an amount equal to the amount of the fine for the relevant violation," with the exception of City Vehicle Sticker violations, which carry a $50 penalty); Melissa Sanchez, *Chicago City Council Approves Ticket and Debt Collection Reforms to Help Low-Income and Minority Motorists*, ProPublica Ill. (Sept. 18, 2019 1:20 PM), https://www.propublica.org/article/chicago-city-council-approves-ticket-and-debt-collection-reforms (penalty for late payment of sticker citation reduced following task force recommendation).

[51] *See* City of Chicago, Finance, *Payment Plan Option (Parking, Red Light Camera and Automated Speed Camera)*, https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/parking_and_red-lightticketpaymentplans.html (last visited Mar. 2, 2020) [hereinafter Ticket Debt Payment Plan Option] (noting Chicago charges "collection costs of 22%" when people do not enter a payment plan for vehicle-related tickets); Elliott Ramos, *Mayor Lightfoot Announces her Plan to Stop Suspending Licenses for Parking Tickets*, Nat'l Pub. Radio (July 24, 2019), https://www.npr.org/local/309/2019/07/24/744595562/mayor-lightfoot-announces-her-plan-to-stop-suspending-licenses-for-parking-tickets (reporting that 22% interest will accrue on unpaid tickets

2017, the City imposed $87.59 million in late fees for vehicle-related tickets.[52]

The City employs punitive vehicle impoundment to pressure owners to pay fines and fees. It places a wheel clamp ("boot") on any vehicle whose owner either has three vehicle-related fines or two that are more than one year old.[53] Before 2019, the only way to remove the boot was for the vehicle owner to pay, within 24 hours, a $100 fee and all outstanding fines, penalties, administrative fees, attorney's fees, and collection costs for unpaid tickets.[54] Today, vehicle owners may enter a payment plan,[55] but this option remains out of reach for those who cannot afford to pay fees for booting, towing, and storage, and a down payment, which can be as high as $1,000 or 25% of the ticket debt, even for people experiencing financial hardship.[56] The City impounds

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even after the City's adoption of limited reforms to address ticket debt burdens).

[52] Nolan, *supra* note 42, at 10–11.

[53] Chicago, Ill., Mun. Code § 9-100-120(b)-(c) (2019).

[54] Chicago, Ill., Mun. Code § 9-100-120(d)(2) (amended 2019) (requiring owner to "pay[] the applicable immobilization, towing and storage fees, and all amounts, including any fines, penalties, administrative fees . . . and related collection costs and attorney's fees" due for unpaid tickets in order to secure release of booted vehicle).

[55] City of Chicago, Finance, *Booted Vehicle Information*, https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/boot_tow_information/booted_vehicle_information.html (last visited Mar. 2, 2020).

[56] *See* Ticket Debt Payment Plan Option, *supra* note 51 (describing requirements for "Hardship Payment Plans").

the vehicles of those who do not pay.[57] In 2017, the City booted approximately 67,000 vehicles and towed and impounded nearly one third of them because owners did not pay on time.[58]

Vehicle impoundment leads to rapidly escalating fees for booting, towing, and storage.[59] Storage fees accrue at $20 per day for the first five days and $35 per day thereafter.[60] Those unable to pay the tickets that led to booting are likely unable to afford these additional fees.[61]

The City also operates a Vehicle Impoundment Program ("VIP") that impounds vehicles for which there is "probable cause to believe that the vehicle was used in" the commission of any one of around two dozen municipal offenses.[62] Impoundable offenses

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[57] Chicago, Ill., Mun. Code § 9-100-120(b)-(c) (2019).

[58] Elliott Ramos, *Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt*, WBEZ (Jan. 7, 2019), https://www.wbez.org/shows/wbez-news/chicago-seizes-and-sells-cars-over-tickets-sticking-drivers-with-debt/1d73d0c1-0ed2-4939-a5b2-1431c4cbf1dd.

[59] *See* Chicago, Ill., Mun. Code § 9-92-080(a)-(b) (2019).

[60] Chicago, Ill., Mun. Code § 9-92-080(b) (2019).

[61] Nolan, *supra* note 42, at 11.

[62] *See* Chicago, Ill., Mun. Code § 2-14-132(a)(1) (2019) (listing municipal ordinance violations permitting VIP impoundment); Chicago Police Department, *Special Order S07-03-05 Impoundment of Vehicles for Municipal Code Violations* (Jan. 9, 2020), http://directives.chicagopolice.org/directives/data/a7a57bf0-1348fc77-5f913-4901-b59443605a3eb78a.html [hereinafter *Special Order S07-03-05*] (same). While the Chicago VIP program ordinance describes the standard as "probable cause," administrative law judges apply a "more likely than not" standard to determine whether a vehicle "was used in" the commission of an

include littering, playing loud music, the possession or use of illegal fireworks, and driving on a suspended license (including a license suspended for unpaid parking tickets).[63] Even drivers never charged with a crime face thousands of dollars in fines and fees for VIP impoundment.[64] Owners have three options for retrieving their vehicles: 1) full payment of an administrative penalty of up to $3,000 for the offense alleged, a $150 towing fee, and storage fees for each day of impoundment;[65] 2) full payment of all boot, towing, tampering, and storage fees and entry into a payment plan, which can require a down payment as high as 25% of the ticket debt, even for a person in financial hardship;[66] or 3) an administrative

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impoundable offense. City of Chicago, Administrative Hearings, *Vehicle Impoundment Fact Sheet*, https://www.chicago.gov/city/en/depts/ah/supp_info/vip/vip_fact_sheet.html [hereinafter *Vehicle Impoundment Fact Sheet*] (last visited Mar. 5, 2020).

[63] *See* Chicago, Ill., Mun. Code § 2-14-132(a)(1) (2019) (recognizing vehicle impoundment for violations of Chicago, Ill., Mun. Code § 10-8-480 (littering), § 9-76-145 (playing loud music), § 15-20-270 (unlawful fireworks in motor vehicle), and § 9-80-240 (driving on a suspended license)); *see also* Special Order S07-03-05, *supra* note 62 (same).

[64] *See Vehicle Impoundment Fact Sheet*, *supra* note 62; *see also* Elliott Ramos, *Lawsuit Challenges Constitutionality of Chicago's Car Impound Program*, Nat'l Pub. Radio (Apr. 30, 2019), https://www.npr.org/local/309/2019/04/30/718591680/lawsuit-challenges-constitutionality-of-chicago-s-car-impound-program.

[65] Chicago, Ill., Mun. Code § 9-92-080(a)-(b) (2019).

[66] City of Chicago, Department of Finance, *Installment Payment Plans and Traffic Enforcement Practices Rules*, Rule 2.04 (2019) (on file with the ACLU of Illinois); *see* City of Chicago, *Payment Plan, Frequently Asked Questions*, https://parkingtickets.

challenge to the impoundment.[67] Those who contest the impoundment have only three limited defenses,[68] have no right to counsel,[69] and must make multiple visits to the hearing office during business hours, which requires taking time off work and finding transportation without access to their vehicles.[70] If a driver cannot afford to retrieve a vehicle impounded

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cityofchicago.org/PaymentPlanWeb/FrequentlyAskedQuestions (last visited Mar. 3, 2020).

[67] Chicago, Ill., Mun. Code § 2-14-132(a)-(b) (2019).

[68] A vehicle is not subject to impoundment if:

> (1) the vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered; (2) the vehicle was operating as a common carrier and the violation occurred without the knowledge of the person in control of the vehicle; or (3) the alleged owner provides adequate proof that the vehicle had been sold to another person prior to the violation.

Chicago, Ill., Mun. Code § 2-14-132(h) (2019). There is no defense to impoundment for an owner who did not commit a VIP-eligible violation. *See* Andrew Wimer, *More Chicagoans Join Class Action Lawsuit Challenging Unconstitutional Impound Racket*, Inst. for Just. (Sept. 30, 2019), https://ij.org/press-release/more-chicagoans-join-class-action-lawsuit-challenging-unconstitutional-impound-racket/.

[69] City of Chicago, Department of Administrative Hearings, *Procedural Rules*, Rule 5.1 (Jan. 29, 2020), https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/DOAHRulesPubJan292020.pdf.

[70] *See* Sanchez & Ramos, *supra* note 47. The administrative redress process faces legal challenges for violating constitutional rights. *See Davis, et al. v. City of Chicago*, No. 1:19-cv-03691 (N.D. Ill. Sept. 26, 2019), ECF No. 1; *Walker et al. v. City of Chicago, et al*, No. 1:20-cv-01379 (N.D. Ill. Feb. 25, 2020), ECF No. 1.

under VIP, the City may destroy or sell it within ten days after completion of judicial review,[71] but no proceeds are credited toward the driver's debt,[72] and the City continues to seek collection.[73] Chicago sold nearly 24,000 vehicles towed in 2017 for less than $200 each, although their "market value was likely five times higher."[74]

Amendments to the Municipal Code in 2017 affirm that the purpose of Chicago's vast impoundment program is to collect debts. Under the amendment, "[a]ny vehicle immobilized by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle."[75] The City declared that the amendment would stop the "growing practice of individuals attempting to escape financial liability"

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[71] *See* Chicago, Ill., Mun. Code § 2-14-132(d) (2019).

[72] City of Chicago, Department of Finance, *Relocated & Towed Vehicle Information*, https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/boot_tow_information/relocated_towed_vehicleinformation.html (last visited Mar. 6, 2020) ("The signing over or involuntary surrender of your vehicle to the City does not waive or decrease any outstanding debt you owe the City.").

[73] *See* Illinois Legal Aid Online, *Going to a Hearing for an Impounded Car*, https://www.illinoislegalaid.org/legal-information/going-hearing-impounded-car-chicago (last visited Mar. 3, 2020) ("[A]fter the city destroys or sells the car, the city will still try to collect the fees you owe for tickets and storage.").

[74] Elliott Ramos, *Takeaways From our Investigation Into Chicago's Broken Towing Program,* WBEZ (Mar. 31, 2019), https://www.wbez.org/shows/wbez-news/takeaways-from-our-investigation-into-chicagos-broken-towing-program/21106328-2146-4f38-9938-7e25fc3b3b92.

[75] Chicago, Ill., Mun. Code § 9-100-120(j) (2019).

through bankruptcy.[76] No mention was made of public safety.

2. The City's Aggressive Ticketing, Collection, and Vehicle Impoundment Practices Push Many People to File for Chapter 13 Bankruptcy.

Chicago's ticketing, collection, and impoundment practices create staggering financial burdens that many people cannot pay. Because there is no statute of limitations on collections, ticket debt owed to the City lasts forever, creating significant hardship.[77]

Sandra Botello was unemployed and unable to pay for both the renewal of her City Vehicle Sticker and the $400 fee to register her son in the private school where he had secured a scholarship.[78] Within 45 days, she owed $1,000 for five sticker citations.[79] Although she purchased a sticker and paid the late fee, she could not afford the fines.[80] With penalties and collection fees, Ms. Botello's debt ballooned to $2,934.[81] The City booted and towed her car, eventually impounding it for 33 days before selling it

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[76] City Council of the City of Chicago, *Journal of the Proceedings of the City Council of the City of Chicago, Illinois*, Committee on the Budget and Government Operations, Vol. 1, at 51164–65 (June 28, 2017, 10:00 AM), https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/journals-proceedings/2017/2017_06_28_VI_VII_1.pdf.

[77] Sanchez & Kambhampati, *supra* note 4.

[78] Ramos, *supra* note 58.

[79] *Id*.

[80] *Id*.

[81] *Id*.

for scrap.[82] Ms. Botello struggled to pay the ticket and impoundment debt, which remained even after Chicago sold her car.[83]

Joe Walawski, a pizza delivery person, faced three outstanding City tickets he could not pay without falling behind on rent and car payments.[84] Chicago booted, towed, impounded, and ultimately sold his car for $204, even though it was less than two years old and Mr. Walawski still owed around $17,000 on his car loan.[85] No proceeds were put toward Mr. Walawski's ticket debt.[86]

The City impounded the car of Lewrance Gant, a retired limousine driver, after a friend who borrowed the car was pulled over for failure to come to a complete stop at an intersection.[87] Police discovered the friend's license was suspended for unpaid tickets and alleged there was a bag of marijuana in the car.[88] Although the charges against his friend were dropped, Mr. Gant was fined $1,000 and charged $3,750 for towing and

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[82] *Id*.

[83] *Id*.

[84] Elliott Ramos, *Chicago's Towing Program Sparks Another Lawsuit After City Sold Deliveryman's Car for $204.48*, WBEZ (Feb. 26, 2020), https://www.wbez.org/shows/wbez-news/chicagos-towing-program-sparks-another-lawsuit-after-city-sold-deliverymans-car-for-20448/e92e99be-a666-4884-bcb5-faa611a3c946.

[85] *Id*.

[86] *Id*.

[87] Institute for Justice, *Lewrance Gant*, https://ij.org/client/lewrance-gant/ (last visited Mar. 4, 2020).

[88] *Id*.

storage.[89] Because he cannot pay, Mr. Gant's car remains impounded.[90]

These drivers are not alone. Chicago's ticketing and impoundment practices disproportionately burden people who cannot pay, including people of color. In 2017, Chicago tickets were 40% more likely to be issued to drivers from zip codes with residents earning low-to-moderate incomes[91] and those with higher-than-average concentrations of minority residents,[92] than to drivers from other zip codes.[93] Eight of the ten Chicago zip codes with the most ticket debt per adult are majority Black.[94] These neighborhoods account for only 22% of all tickets issued between 2007 and 2017, but 40% of all ticket debt owed to Chicago.[95]

Faced with ruinous ticket and impoundment debt, many people have little choice but to turn to Chapter 13 bankruptcy. Between 2007 and 2017, the number of Chapter 13 bankruptcies involving debts to Chicago skyrocketed from an estimated 1,000 to an estimated 10,000, with the median amount of City debt involved more than doubling from $1,500 to

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[89] *Id*.

[90] *Id*.

[91] Nolan, *supra* note 42, at 2. "Low-to-moderate income" zip codes were defined as those where median family income was less than $74,000. *Id*. at 2 n.9.

[92] These zip codes were those where the population that is not white or of Hispanic/Latino origin exceeded the city average of 67.7%. *Id*.

[93] *Id*. at 2–3.

[94] Sanchez & Kambhampati, *supra* note 4.

[95] *Id*.

$3,900.[96] "[S]ticker violations were the largest source of ticket debt in Chicago," and "accounted for about 19 percent of citations connected to bankruptcy cases but only 4 percent of those marked paid."[97] In 2017, drivers from zip codes with low-to-moderate incomes or higher-than-average percentages of minority residents were *twice as likely* to file for bankruptcy as drivers from other zip codes.[98]

Chicago's revenue-motivated practices have made the Northern District of Illinois bankruptcy court the nation's leader in non-business Chapter 13 bankruptcy filings.[99] A 2016 study of Chapter 13 filings in Cook County, Illinois found that between one-third and one-half of those who sought relief did so because of the actual or threatened suspension of a driver's license or seizure of a vehicle for unpaid fines.[100] Chapter 13 filers "tended to have incomes near the poverty line and few to no assets."[101]

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[96] *Id*.

[97] *Id*.

[98] Nolan, *supra* note 42, at i.

[99] *See* United States Courts, *Table F-2—Bankruptcy Filings* (Dec. 31, 2019), https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2019/12/31 (showing the Northern District of Illinois leads the nation in non-business Chapter 13 filings with 15,658 cases filed in 2019).

[100] Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, Vol. 173, J. Institutional & Theoretical Econ. 174, 2 (2016), https://pdfs.semanticscholar.org/0d99/f1516fbf1e0aba857710cc1586ef86e5e591.pdf.

[101] *Id*.

III. ALLOWING DEBTORS TO RECOVER AND USE THEIR VEHICLES FOLLOWING IMPOUNDMENT PROMOTES THE "FRESH START" CONGRESS INTENDED WHEN IT ENACTED THE AUTOMATIC STAY AND TURNOVER PROVISIONS.

In a city where driving is essential to many people's livelihoods, vehicle impoundment undermines debtors' ability to satisfy the repayment program required for Chapter 13 bankruptcy.

Eighty-six percent of Americans describe a car as a "necessity of life."[102] About 70% of Chicago commuters drive alone to work.[103] A 2014 study found that "four of the Chicago region's five big employment areas are in suburbs that are not well-connected to high-quality transit, making them difficult to reach without a vehicle."[104]

Chicago's refusal to return impounded vehicles to Chapter 13 filers undermines debtors' ability to earn money and complete the repayment programs central to Chapter 13. As noted above, Respondents needed their cars to travel to work and care for

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[102] Paul Taylor et al., *The Fading Glory of the Television and Telephone*, Pew Res. Ctr. 6, 8 (Aug. 19, 2010), https://www.pewresearch.org/wp-content/uploads/sites/3/2011/01/Final-TV-and-Telephone.pdf.

[103] Richard Florida, *The Great Divide in how Americans Commute to Work*, CityLab (Jan. 22, 2019), https://www.citylab.com/transportation/2019/01/commuting-to-work-data-car-public-transit-bike/580507/.

[104] Jon Hilkevitch, *'Transit Deserts' Don't Serve Workers, Study Says*, Chi. Trib. (Aug. 3, 2014, 11:03 PM), https://www.chicagotribune.com/columns/ct-transit-deserts-met-20140804-column.html.

family members.[105] Chicago's refusal to abide by the automatic stay and turnover requirements deprived Respondents of their vehicles for more than nine months after they filed for bankruptcy.[106]

Enabling people in Chapter 13 proceedings to use their vehicles to find and maintain employment is critical to the fresh start Congress intended in enacting the Bankruptcy Code. Cars are essential to "[a] person's ability to make a living" and to "access . . . the necessities . . . of life." *Scofield v. City of Hillsborough*, 862 F.2d 759, 762 (9th Cir. 1988). Access to a vehicle "notably improve[d] employment outcomes among very-low-income adults" in a 2016 study of Welfare to Work program participants.[107] A 2005 Tennessee study found that car access increased the likelihood that an individual would leave welfare and find a better paying job.[108] A study of single mothers in Pittsburgh concluded that "mobility status had a bigger impact on employment than work experience or education."[109]

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[105] *See generally supra* note 2 (describing Respondents' reliance on their vehicles).

[106] Pet. App. 4a–5a.

[107] Evelyn Blumenberg & Gregory Pierce, *The Drive to Work: The Relationship Between Transportation Access, Housing Assistance, and Employment Among Participants in the Welfare to Work Voucher Program*, Vol. 37(1) J. Plan. Educ. Res. 66, 66 (2017), https://docplayer.net/133243359-Evelyn-blumenberg-1-and-gregory-pierce-1-introduction-research-based-article.html.

[108] Tami Gurley & Donald Bruce, *The Effects of Car Access on Employment Outcomes for Welfare Recipients*, J. Urb. Econ. 250, 269 (2005), http://web.utk.edu/~dbruce/jue05.pdf.

[109] Chicago Jobs Council, *Living in Suspension: Consequences of Driver's License Suspension Policies* 3 (Feb. 2018), https://cjc.

It is thus crucial that vehicles impounded before the filing of a Chapter 13 petition are automatically returned to the debtor for use in securing or maintaining employment to enable debt repayment, as the automatic stay and turnover provisions require.

* * *

The Bankruptcy Code is designed to give those who fall into serious debt a chance to begin anew. The increasingly common practices of imposing fines and fees to generate government revenue and of impounding vehicles as a collection tactic, fall heavily on the poorest among us. The details of the Chicago practices at the root of the cases here offer important insight into how people are led into crushing debt, and how local policies and practices undermine the purpose of bankruptcy by depriving people of the property essential to getting back on their feet. The Bankruptcy Code was enacted to deal with real-world problems. Those problems should inform the Court's interpretation of the automatic stay and turnover provisions because their proper construction and application is critical to giving debtors the fresh start that Congress intended.

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net/wp-content/uploads/2018/04/Living-in-Suspension_Report-by-CJC.pdf.

CONCLUSION

For all of the above reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

Nusrat J. Choudhury
Counsel of Record
Rebecca Glenberg
Ana Torres
Allyson Bain
Juan Caballero
ROGER BALDWIN FOUNDATION OF THE ACLU OF ILLINOIS
150 N. Michigan Ave., Suite 600
Chicago, IL 60601
(312) 201-9740
nchoudhury@aclu-il.org

David Cole
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street, NW
Washington, DC 20005

Jennesa Calvo-Friedman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004

Clark M. Neily III
Jay R. Schweikert
CATO INSTITUTE
1000 Massachusetts Ave., NW
Washington, DC 20001

Lisa Foster
FINES AND FEES JUSTICE CENTER
185 West Broadway, C-538
New York, NY 10013

William R. Maurer
Kirby Thomas West
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, VA 22203

Nila Bala
Charles Duan
R STREET INSTITUTE
1212 New York Ave., NW Suite 900
Washington, DC 20005

John W. Whitehead
Douglas R. McKusick
THE RUTHERFORD
INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911

Date: March 11, 2020

APPENDIX

STATEMENTS OF INTEREST OF AMICI

The **American Civil Liberties Union** ("ACLU") is a nationwide non-profit, non-partisan organization of approximately two million members and supporters dedicated to defending the principles of liberty and equality embedded in the U.S. Constitution and our nation's civil rights laws. Founded nearly 100 years ago, the ACLU has participated in numerous cases before this Court both as direct counsel and as amicus curiae. The ACLU engages in nationwide litigation and advocacy to enforce and protect the rights of impoverished people against the unlawful imposition and collection of fines and fees.

The **ACLU of Illinois** is the state affiliate of the ACLU, with more than 75,000 members and supporters across Illinois. The ACLU of Illinois is dedicated to the defense and promotion of the principles embodied in the U.S. Constitution, the Illinois Constitution, and state and federal civil rights laws. The ACLU of Illinois has appeared before state and federal courts, including this Court, in a wide range of cases involving the rights of impoverished people, and engages in advocacy and litigation to enforce these rights against the unlawful imposition and collection of fines and fees.

The **Cato Institute** is a non-partisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute's Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of

substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

The **Fines and Fees Justice Center** ("FFJC") is a national center for advocacy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC's mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably.

The **Institute for Justice** ("IJ") is a nonprofit public-interest law firm that litigates for greater judicial protection of individual rights. These include the right to own and use private property without unreasonable governmental interference. Many of IJ's cases involve unjust applications of systems of fines and fees on the poor and vulnerable. This case is thus squarely within a core area of concern for IJ.

The **Rutherford Institute** ("the Institute") is an international civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its president, John W. Whitehead, the Institute specializes in providing legal representation without charge to individuals whose civil liberties are threatened and in educating the public about constitutional and human rights issues. Attorneys affiliated with the Institute have represented parties and filed numerous amicus curiae briefs in the federal Courts of Appeals and Supreme Court. Through litigation and public education efforts, the Institute

vigilantly advocates against the kind of oppressive government actions that are challenged in this case.

The **R Street Institute** ("R Street") is a non-profit, non-partisan, public-policy research organization. R Street's mission is to engage in policy research and educational outreach that promotes free markets, as well as limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.

EXHIBIT 7 – Mance Motion to Avoid Lien

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

IN RE:

Marcella Mance

Case No.: 19-33057

Judge: COX

Chapter: 7

, Debtor(s)

NOTICE OF MOTION

TO: See Attached Service List

PLEASE TAKE NOTICE that on December 18 2019 at 9:30 AM

or as soon thereafter as I may be heard, I shall appear before the Honorable Judge COX

or any other Bankruptcy Judge presiding in his/her place in

✓ Room 680, the courtroom usually occupied by said Judge, in the Dirksen Federal Building, 219 S. Dearborn, Chicago, IL 60604,

_____ Joliet City Hall, 150 West Jefferson St, 2nd Floor, Joliet, IL 60432.

_____ Park City Branch Court, Courtroom B, 301 S. Greenleaf Ave, Park City IL 60085

_____ Kane County Courthouse, 100 S. Third Street, Room 240, Geneva, IL. 60134

and then and there present the attached Motion .

12/11/19
Date

Marcella Mance
Debtor, *Pro se*

PROOF OF SERVICE
DECLARATION UNDER PENALTY OF PERJURY

I, Marcella Mance, declare, **under penalty of perjury**, that I have

____ PERSONALLY DELIVERED

OR

X SENT, by first class mail, postage prepaid,

a copy of the foregoing Notice of Motion, and the attached Motion, to the City of Chicago, postage paid, on this 11 day of December, 2019 to the following addresses:

· Anna Valencia, City Clerk
121 N. LaSalle St
Room 107
Chicago IL 60602

AND

Arnold Scott Harris
111 W. Jackson #602
(attorneys for City of Chicago)
Chicago IL 60604

If applicable: I have also sent a copy by first class mail, postage prepaid, to the following creditors who have a security interest in the vehicle, at the following address(es). This is for notice only as this motion does not seek to avoid the lien of those creditors on debtor's vehicle.

_____.

_____.

_____.

_____.

The Chapter 7/13 Trustee and the U.S. Trustee are registrants with the Court's ECF (electronic case filing) system, have waived service by mail, and will receive notice of this motion through the court's ECF system.

12/11/19
Date

Marcella Mance
Debtor, *Pro se*

Penalty for making a false statement or concealing property:
Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

IN RE: Marcella Marce

Case No.: 19 33057

Judge: COX

Chapter: 7

, Debtor(s)

MOTION TO AVOID LIEN

Now comes Marcella Marce, Debtor, Pro Se, and moves this Honorable Court, pursuant to 11 U.S.C 522(f), for entry of the attached Order to avoid the judicial lien of the City of Chicago on debtor's vehicle and in support thereof, respectfully represents as follows:

1. On November 20 2019, Debtor filed a petition for relief under Chapter 7/13 of the Bankruptcy Code.

2. Debtor is the owner of a vehicle, a 2007 Mitshubishi Outlander, which has been impounded by the City of Chicago for unpaid tickets. The total amount of vehicle related debt owed by debtor to the City of Chicago is $12,245.63

3. The vehicle is worth $3,000.00.

4. The value of debtor's ownership interest in the vehicle, after deduction of all liens, if any, other than the lien of the City of Chicago, is $3,000.000.

5. Debtor has listed his/her ownership interest in the vehicle on Schedule B with a value as stated in paragraph 4, above, and has claimed the entire amount of his/her interest in the vehicle as exempt on Schedule C.
Amended

6. The City of Chicago has a lien on debtor's vehicle in the amount of $12,245.63, which it has by virtue of administrative findings that he/she is responsible for violations of ordinances of the City of Chicago related to this vehicle, or that debtor was otherwise personally responsible for violations of vehicle related ordinances.

7. The lien of of the City of Chicago is a "judicial lien" as that term is used in the Bankruptcy Code. *See, In re Shuntavia Wigfall,* 606 B.R. 784 (Bankr. N.D. Ill. 2019)(Doyle, B.J.)

8. The lien of the City of Chicago impairs debtor's exemption(s) in his/her vehicle.

9. Pursuant to 11 U.S.C. § 522(f), a judicial lien that impairs a debtor's exemption can be avoided to the extent that it impairs the debtor's exemption.

10. Debtor files this motion to avoid the judicial lien of the City of Chicago in its entirety,

11. Once the City of Chicago's judicial lien is avoided, the City of Chicago will have no right to retain possession of debtor's vehicle, and will have a legal duty to turn over the vehicle to the owner of the vehicle, which is the debtor.

WHEREFORE, Debtor prays that this Honorable Court enter an order:

A avoiding the judicial lien of the City of Chicago on debtor's vehicle;

B. that the City of Chicago release the vehicle to the debtor; and

C. granting such other, further and different relief as may be just and proper.

Respectfully submitted,

Marcella Mlaver,
Debtor, Pro Se
312-905 4054

EXHIBIT 8 – Mance Circuit Decision

In the

United States Court of Appeals

For the Seventh Circuit

No. 21-1355

IN THE MATTER OF: MARCELLA M. MANCE,

Debtor,

CITY OF CHICAGO,

Appellant,

v.

MARCELLA M. MANCE,

Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:20-cv-01266 — **Andrea R. Wood**, *Judge*.

ARGUED OCTOBER 29, 2021 — DECIDED APRIL 21, 2022

Before SYKES, *Chief Judge*, and KANNE and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This appeal presents a new chapter in a long-term effort by the City of Chicago to collect parking fines and other traffic fees from drivers who seek bankruptcy protection. Some of the City's tactics have worked and others have not. See *In re Fulton*, 926 F.3d 916, 924 (7th

Cir. 2019) (City's refusal to turn over vehicles to petitioners during bankruptcy proceedings violated automatic stay), vacated and remanded sub nom. *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021); *In re Steenes*, 942 F.3d 834, 839 (7th Cir. 2019) (vehicular tickets incurred during course of a Chapter 13 bankruptcy are administrative expenses that must be paid in full).

The issue in this appeal is whether the City's possessory lien on a vehicle that it impounds due to unpaid tickets should be deemed a "judicial lien" or a "statutory lien" under the Bankruptcy Code. If the lien is judicial, all parties agree, it is avoidable in bankruptcy under 11 U.S.C. § 522(f). If the lien is instead deemed statutory, it is not avoidable under the same provision.

We agree with the bankruptcy and district courts that the City's possessory lien on impounded vehicles is properly classified as judicial and therefore avoidable. Part I lays out the stakes of this particular issue. Part II explains how judicial and statutory liens are defined in the Bankruptcy Code. Part III outlines the specific procedures the City must follow before it can impose a lien on an impounded vehicle. Part IV explains why a lien that flows from these procedures is judicial.

I. *The Stakes*

This case may appear to be a technical dispute with modest stakes, but it's a test case that is important to the City and will affect many drivers. Outstanding debt for Chicago traffic tickets surpassed $1.8 billion last year.[1] On average, the City

[1] Melissa Sanchez, *Chicago Mayor Lori Lightfoot Proposes Further Traffic Ticket Reforms to Help Low-Income Motorists*, ProPublica (Sept. 22, 2021, 5:10

issues around three million tickets a year, and by one recent estimate, revenue from those tickets in 2016 exceeded a quarter of a billion dollars and constituted seven percent of the City's operating budget. Melissa Sanchez & Sandhya Kambhampati, *Driven into Debt: How Chicago Ticket Debt Sends Black Motorists into Bankruptcy*, ProPublica Ill. (Feb. 27, 2018), https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy.

As the dockets in this court and the Northern District of Illinois show, aggressive ticketing practices may help push many drivers into bankruptcy. *Id.* (explaining that "[p]arking, traffic and vehicle compliance tickets prompt so many bankruptcies the court [in Chicago] [led] the nation in Chapter 13 filings" at the time); see also *Table F-2—Bankruptcy Filings (December 31, 2019)*, U.S. Courts, https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2019/12/31 (last visited Apr. 21, 2022) (Northern District of Illinois led nation in non-business Chapter 13 filings with 15,851 cases in 2019). Even with recent reforms to ticketing practices, bankruptcy filings remain high by comparison to other districts. *Table F-2—Bankruptcy Filings (December 31, 2021)*, U.S. Courts, https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2021/12/31 (last visited Apr. 21, 2022) (in 2021 the Northern District of Illinois had the second most non-business Chapter 13 filings (5,198)).

When a vehicle owner's parking-ticket debt accumulates, the City has the legal right to impound the vehicle and can eventually sell the vehicle to help pay off the debt. If the

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PM), https://www.propublica.org/article/chicago-mayor-lori-lightfoot-proposes-further-traffic-ticket-reforms-to-help-low-income-motorists.

impoundment lien can be discharged in bankruptcy, however, the owner may be able to recover her vehicle through the bankruptcy court. Classifying an impoundment lien as judicial or statutory can make the difference between, on one hand, allowing drivers to avoid a debt and denying the City the sums owed, and on the other hand the owner permanently losing the vehicle and putting more money in the hands of the City.

The foundation for this particular issue was laid in 2016. See *Fulton*, 926 F.3d at 920. The City Council passed a new ordinance that granted the City a lien on impounded vehicles for ticket debts. Municipal Code of Chicago ("M.C.C.") § 9-92-080(f). Once a driver incurs the needed number of outstanding tickets and final liability determinations, the City is authorized to impound her vehicle and to attach a possessory lien. The amount of the lien is based on how much the driver owes in unpaid traffic tickets, plus additional fees. § 9-100-120(d)(2).

Many drivers cannot afford to pay their outstanding tickets and fees, let alone the liens imposed on their cars through this process. As a result, some drivers declare bankruptcy and seek to avoid them. Debtor-appellee Marcella Mance, for instance, incurred several unpaid parking tickets and saw her car impounded and subject to a possessory lien that totaled $12,245, more than four times her car's value. Facing this liability with a monthly income of $197 in food stamps, Mance filed for bankruptcy under Chapter 7 and sought to avoid the lien under 11 U.S.C § 522(f). When a vehicle owner files for bankruptcy through Chapter 7, she can avoid a lien under § 522(f) if the lien qualifies as judicial and its value exceeds the value of her exempt property (in this case, her car).

Conversely, if the lien is statutory, it is not avoidable under the same provision.[2]

The bankruptcy and district courts concluded that the lien was judicial and avoidable. Both courts reasoned that the lien was tied inextricably to the prior adjudications of Mance's parking and other infractions, so it did not arise solely by statute, as the Bankruptcy Code requires for a statutory lien. As the district court explained in its opinion in this case: "There is simply no way to disaggregate the final determinations of liability from the lien resulting from immobilization. … Without the requisite number of judgments, the City would have no right to immobilize the vehicles and no liens could arise." *City of Chicago v. Howard*, 625 B.R. 384, 390 (N.D. Ill. 2021).[3]

II. *Lien Definitions in the Bankruptcy Code*

The classification of a lien under the Bankruptcy Code is a question of law that we review de novo. *In re Willett*, 544 F.3d 787, 790 (7th Cir. 2008). The Code sorts liens into three mutually exclusive categories—statutory liens, judicial liens, and security interests. *In re Financial Oversight & Management Board for Puerto Rico*, 899 F.3d 1, 10 (1st Cir. 2018); *In re Wigfall*, 606 B.R. 784, 786–87 (Bankr. N.D. Ill. 2019); see also S. Rep. No. 95-989, at 25 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5811 ("Those three categories are mutually exclusive and are [exhaustive] except for certain common law liens."). Only the first two are relevant here. The parties agree that Mance

[2] These figures come from Mance's Chapter 7 bankruptcy petition, i.e., Form 106. We accept Mance's declarations for the purposes of this appeal.

[3] Mance's case was consolidated with that of another debtor (Cupree Howard) in the district court and initially on appeal. We dismissed Howard's appeal as moot before oral argument.

satisfies all the requirements for discharge under 11 U.S.C. § 522(f) if her lien is considered judicial, so the classification is decisive.

A. *The Statutory Text*

We begin our analysis with the statutory text. The Bankruptcy Code defines judicial and statutory liens in 11 U.S.C. § 101. Here is each definition in full:

> (36) The term "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.
>
> …
>
> (53) The term "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

§ 101(36), (53).

Both definitions focus on the events (or the lack thereof) that precede creation of the lien. The two definitions use distinct language to describe how the two different types of liens arise. We see this in the use of "arising solely" for statutory liens versus "obtained by" for judicial liens. "Solely" seems clear enough and signals that prior legal proceedings leading to a lien would exclude the lien from the category of statutory liens. The definition of a judicial lien—"obtained by judgment, levy, sequestration, or other legal or equitable process

or proceeding," § 101(36)—has an "element of causation inherent in the phrase 'obtained by.'" See *Field v. Mans*, 516 U.S. 59, 66 (1995) (interpreting § 523(a)(2), which prohibits discharge of certain debts "obtained by … false pretenses, a false representation, or actual fraud"). The statutory definition of a judicial lien indicates that the term applies when the lien is caused by or results from the broad categories of process identified in the latter part of the definition. These textual differences are noted in the history of the Bankruptcy Reform Act of 1978. The House and Senate reports on the Act explained: "A statutory lien is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action." H.R. Rep. No. 95-595, at 314 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963, 6271; S. Rep. No. 95-989, at 27, as reprinted in 1978 U.S.C.C.A.N. at 5811; see also 5 Collier on Bankruptcy ¶ 545.01 (16th ed. 2021).

Under these definitions, classification of a lien depends on the events, if any, that must occur before the lien attaches. *In re Schick*, 418 F.3d 321, 324 (3d Cir. 2005) ("The relevant inquiry is to determine the nature of the [] lien, i.e., whether it arises solely by force of statute, or whether it results from some type of judicial process or proceeding."); see also 2 Collier on Bankruptcy ¶ 101.53 ("[A] judicial lien arises only by virtue of judicial proceedings in the absence of which there would not be such a lien. The statutory lien by definition arises without any judicial proceeding." (footnote omitted)).

B. *Illustrations*

Common examples of statutory and judicial liens are generally consistent with this focus on the prior events needed for the lien to arise and attach to property. Take mechanics' liens first, often cited as an example of a statutory lien. See, e.g.,

Schick, 418 F.3d at 324; *In re Cunningham*, 478 B.R. 346, 350 (Bankr. N.D. Ind. 2012) ("Case law throughout the country has routinely determined that a mechanic's lien, or similar liens arising by means of a state's statutory enactment, are at their base statutory liens."); see also *id.* at 351 (collecting cases); H.R. Rep. No. 95-595, at 314, as reprinted in 1978 U.S.C.C.A.N. at 6271 (listing mechanics' liens in the examples of statutory liens, as well as materialmen's liens, warehousemen's liens, and tax liens). In simple terms, a statute provides a mechanic a lien on improved property as soon as payment for the mechanic's work on the property is due and goes unpaid. The mechanic need not go to a judge to secure a lien; rather, the lien arises solely by statute once the condition—a lack of payment—occurs. A mechanic's lien may be perfected by filing the lien with a county clerk or similar official, but that filing is not considered a "legal or equitable process or proceeding" within the definition of a judicial lien. 11 U.S.C. § 101(36); see *Schick*, 418 F.3d at 326, citing *In re Fennelly*, 212 B.R. 61, 65 (D.N.J. 1997) ("The mere ministerial act of recording the lien does not create the requisite legal process or proceeding required to be a judicial lien."). The critical point is that a mechanic's lien attaches to the property automatically when the debtor fails to make a payment for the services due. Accord, *Wigfall*, 606 B.R. at 787. No judicial or similar process is needed.[4]

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[4] Perfection is necessary for the statutory lien's continued effectiveness and protection against other creditors. It also has implications under 11 U.S.C. § 545, which allows a bankruptcy trustee to avoid certain statutory liens. But the fact that a lien must be perfected does not transform it into a judicial lien. See 2 Collier on Bankruptcy ¶ 101.53 ("[M]erely because [statutory liens] require some form of judicial filing for their perfection against other creditors or continued effectiveness, they are not

Contrast this example of a statutory lien with the textbook judicial lien: a court-ordered money judgment. There are several ways a dispute could make its way into a court and result in a money judgment. But before the lien can arise at all, a court must enter judgment for the winning creditor. That party then records it as a lien on the losing party's property. Because the lien is "obtained by" a court proceeding, it is considered judicial. 2 Collier on Bankruptcy ¶ 101.36; see also *Schick*, 418 F.3d at 328 ("[F]or a lien to be judicial, there must be some judicial or administrative process or proceeding that ultimately results in the obtaining of the lien.").

As we will see next, Chicago's impoundment lien in this case lies somewhere in between these easy illustrations. We find decisive the substantial quasi-judicial proceedings needed for the City to obtain an impoundment lien. The City's possessory lien thus did not arise "solely" by statute.

III. *The City's Lien Program*

To classify the City's impoundment lien, we examine how it arises or is obtained, beginning with unpaid tickets and continuing through the process of impoundment and attachment of the lien.

First, the owner must accrue the required number of traffic violations and final determinations. A car may be impounded only after an owner has three or more "final determinations of liability," or two final determinations that have been outstanding for more than a year, "for parking, standing,

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transformed into judicial liens. While the filing of the lien may determine whether it is perfected to the extent that it may not be avoided by the trustee under section 545, it does not transmute a statutory lien into a different kind of lien." (footnotes omitted)).

compliance, automated traffic law enforcement system, or automated speed enforcement system violation[s]." M.C.C. § 9-100-120(b).

The underlying traffic violation undergoes an administrative process before it turns into a final determination of liability. First, a police officer or other official observes and records a traffic or parking violation. The official then gives the operator of the vehicle a notice of the violation (e.g., by hand or by placing it on the vehicle). § 9-100-030(b)(i)–(ii). If, however, the operator drives away before the official can serve the notice, the City mails the owner of the vehicle a notice of the traffic violation. § 9-100-030(b)(iii). Alternatively, an automated speed or traffic system records a violation and the City sends a notice to the registered owner. § 9-100-045.

The owner can contest the charged violation in an in-person proceeding or by writing. §§ 9-100-050, -055, -070, -080. If the owner loses or fails to contest the violation, a determination of liability is entered. § 9-100-090. The owner can then file an appeal under the Illinois Administrative Review Law. *Id.*; see also *Van Harken v. City of Chicago*, 713 N.E.2d 754, 759 (Ill. App. 1999). If she loses on appeal or fails to contest the liability determination, the City obtains a "final determination." § 9-100-100. In *Fulton*, we concluded that these final determinations of liability amounted to "money judgments." See 926 F.3d at 930–31, vacated on other grounds, 141 S. Ct. 585.

At that point, the owner must pay the fine for the violation. § 9-100-100(b). "The fines for violations of the City's Traffic Code range from $25 (*e.g.*, parallel parking violation) to $500 (*e.g.*, parking on a public street without displaying a wheel tax license emblem)." *Fulton*, 926 F.3d at 920, citing § 9-100-

020(b)–(c). These fines can grow quickly. "Failure to pay the fine within twenty-five days automatically doubles the penalty" in most cases. *Id.*, citing § 9-100-050(e).

If the fines go unpaid, the next enforcement step for the City is impoundment. That step requires more legal process. The City must issue notice of the impending vehicle immobilization to the owner. § 9-100-120(b). The owner then has twenty-one days to either pay the fines or petition for a hearing and appear in person to prove that she is not liable for the outstanding tickets. If the owner fails to file a timely petition or if her petition is denied, a final determination of eligibility is entered.

After such a determination of liability and eligibility for impoundment, the City may physically immobilize the car (with a "boot," for example). § 9-100-120(c). If the owner does not obtain release of the immobilizing device within twenty-four hours or request additional compliance time, the City can finally tow the car to an impoundment facility. *Id.* When the vehicle is immobilized or impounded, the outstanding ticket debt becomes a lien on the vehicle: "Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle." § 9-92-080(f); § 9-100-120(j) (same for immobilized vehicles).[5]

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[5] The City impounded and sold nearly 50,000 cars from 2011 to 2019. Elliott Ramos, *Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners with Debt*, WBEZ Chi. (Jan. 7, 2019, 5:01 AM), https://www.wbez.org/stories/chicago-seized-and-sold-nearly-50000-cars-over-tickets-since-2011-sticking-owners-with-debt/1d73d0c1-0ed2-4939-a5b2-1431c4cbf1dd.

Turning to the details of this case, at the time of appellee Mance's bankruptcy filing, the City's lien on her vehicle totaled $12,245 on a car allegedly worth $3,000. The amount of the lien is based on the amount of the outstanding tickets, the fees accumulated from storage and towing costs, and even attorney fees incurred by the City in the immobilization process, among other costs. § 9-100-120(d)(2).[6]

IV. *Classification of the City's Lien*

A. *The Lien Is "Obtained by" Adjudicating the Traffic Violations*

The very last step of the lien attachment is automatic. Under the terms of the city ordinance, the lien arises upon impoundment, without further action by a judge or quasi-judicial official. On that basis, the City contends the impoundment lien is a statutory lien, asserting that it arises "solely" by statute. Like our colleagues on the bankruptcy and district courts, however, we see the issue differently. Under the statutory definitions of the two types of liens, we do not think we can ignore all the prior legal process that must occur before the City's possessory lien arises. The lien is "obtained by … other legal or equitable process or proceeding," 11 U.S.C. § 101(36), in that the lien arises from and is based upon the prior quasi-judicial adjudications and money judgments that determine the lien's validity and amount. The lien is judicial and avoidable in bankruptcy.

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[6] The City offers various repayment plan options for eligible drivers that might eliminate some of those fees. See § 9-100-120(d)(1); see also §§ 9-100-160 (installment payment plans), -170 (Clear Path Relief Pilot Program). The parties have not indicated to the court that Mance is enrolled in any of those programs.

The City asks us to treat this prior process as irrelevant. The City relies on the language "shall be subject to a possessory lien" in the ordinance. The City treats the needed number of tickets, final adjudications, and later impoundment as mere "conditions" that trigger the lien. In the City's view, those conditions should have no bearing on the classification of the lien because they do not govern how the lien "arises."

The City's narrow focus on only the very last step leading to attachment of an impoundment lien is not consistent with the statutory definition of a judicial lien. A judicial lien is not a statutory lien, "whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." 11 U.S.C. § 101(53). This language makes clear that the fact that a lien resulted from a process that is "purely a creature of statute" is not sufficient to classify the lien as statutory. *In re Weatherspoon*, 101 B.R. 533, 535 (Bankr. N.D. Ill. 1989) (citation omitted). Put differently, "[t]he fact that a statute describes the characteristics and effects of a lien does not by itself make the lien a statutory lien." 2 Collier on Bankruptcy ¶ 101.53. That description fits the City's impoundment lien in this case. A statute (the ordinance) authorizes the lien and describes its characteristics and effects, but we must still consider whether the lien arises "solely by force of a statute on specified circumstances or conditions." § 101(53).

Under both definitions, the relevant inquiry is not whether a statute authorizes or governs the lien but what is necessary for the lien to arise. If the lien requires a "judgment, levy, sequestration, or other legal or equitable process or proceeding," the lien is judicial. If the lien arises "solely" by statute once specific conditions are met, the lien is statutory.

In the case of a Chicago impoundment lien, without the judicial or quasi-judicial procedures needed for final determinations for each traffic violation and without the quasi-judicial impoundment procedures, the City could not impose a lien on the indebted driver's vehicle. While the lien is authorized by and defined by statute, the City's possessory lien does not arise "solely" by statute.

To be sure, as Mance acknowledged at oral argument, liens on some impounded vehicles should be treated as statutory liens. If a driver has committed a violation under M.C.C. § 9-92-030, such as blocking an alleyway, obstructing traffic, parking in a "tow zone," or the like, the vehicle can be towed on the spot, without any prior judicial process. *Id.* The City then sends the vehicle owner notice after the fact. § 9-92-070. When a vehicle is towed for one of these violations**,** it is also subject to a lien. § 9-92-080(f) ("Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle."); see also § 2-14-132(*l*) (same). Such violations lead to immediate impoundment liens that do not require advance notice to drivers or any other quasi-judicial procedures before they can be imposed. Instead, a car is automatically impounded upon a violation and subject to a lien.[7]

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[7] In the case of a violation that results in an immediate tow, the city must offer adequate post-deprivation procedures to conform with due process. See *Miller v. City of Chicago*, 774 F.2d 188, 192–96 (7th Cir. 1985) (City not required to provide notice to owners before towing stolen vehicles to satisfy due process); *Sutton v. City of Milwaukee*, 672 F.2d 644, 645–46, 648 (7th Cir. 1982) (pre-towing notice and opportunity to be heard not required to tow illegally parked cars, but adequate post-deprivation procedures are needed to provide due process); see also *Gable v. City of*

That automatic process is quite different from what happened here. For Mance, several legal proceedings had to be completed before impoundment. Vehicle owners who incur liens like Mance's therefore face judicial liens and can avoid them under 11 U.S.C. § 522(f). Vehicle owners whose violations resulted in immediate impoundment, by contrast, face statutory liens and cannot avoid them under the same provision.

Next, the City argues that if we agree with appellee Mance, we will create a circuit split with the Third Circuit's decision in *In re Schick*, 418 F.3d 321 (3d Cir. 2005). We are not convinced. There is a critical difference between the processes leading to the liens in the two cases.

Schick concluded that a lien held by the New Jersey Motor Vehicles Commission was a statutory lien. Under New Jersey law, a vehicle owner who committed a traffic violation faces potential surcharges in various situations, such as reaching a certain number of violation points or having been convicted of refusing to take a breathalyzer test, among other examples. The amount of the surcharges was dictated by "statute and administrative regulations." 418 F.3d at 324. If a driver failed to pay the surcharges, the Commission was entitled to a lien on the driver's property in the amount of the surcharges and interest. The Third Circuit concluded that such a lien held by the Commission was statutory and therefore not avoidable under 11 U.S.C. § 522(f).

Chicago, 296 F.3d 531, 539–40 (7th Cir. 2002) (due process rights not violated when City deprived plaintiffs of impounded vehicles because City was not deliberately indifferent and adequate post-deprivation remedies were available).

The statutory scheme analyzed in *Schick* was markedly different from the impoundment process leading to Chicago's lien. The New Jersey statute pertained to only the surcharges, not the underlying vehicle violations. This bifurcated structure contributed to the court's view that "the underlying traffic proceeding charging the driver with a motor vehicle offense [was] too remote to constitute the required judicial process or proceeding necessary to find a judicial lien." 418 F.3d at 326. The underlying proceeding therefore bore "*no relation* to the creation of the lien in favor of the [Commission], which instead [arose] as a result of the filing of the certificate of debt and its docketing by the Clerk of the Superior Court." *Id.* (emphasis added).

Here, by contrast, the statutory structure does not separate the underlying vehicle violation and any fees imposed after the final determinations of the tickets, let alone the impoundment process. These steps are all tied together. Unlike the situation in *Schick*, Chicago's administrative structures for challenging tickets and pending impoundments are not too far removed from the impoundment lien. They are essential prerequisites for a valid impoundment lien, and they determine the amount of the lien.

In *Schick* the amount of the surcharge—and therefore the amount of the lien—was "set forth either in the statute or administrative regulation and [was] *not determined by the underlying proceeding against the driver*." 418 F.3d at 326 (emphasis added). The opposite is true here. The amount of the Chicago impoundment lien is determined precisely in and by the underlying proceedings. Indeed, to secure release, the driver must pay immobilization and impoundment costs, as well as "all amounts, including any fines, penalties, administrative

fees …, if any, and related collection costs and attorney's fees … remaining due on each final determination for liability issued to the owner." M.C.C. § 9-100-120(d)(2). The City says correctly that the total amount of the lien is not limited to the underlying traffic fees, but all of the additional charges pertain to and result directly from the quasi-judicial processes leading up to the lien. In this respect, the situation here is similar to money judgments, which routinely include interest, court costs, and sometimes attorney fees and other associated costs, yet are considered judicial despite these tacked-on fees because the resulting liens do not arise "solely" by statute. The same is true here. The additional fees do not eliminate the link to the underlying traffic violations and adjudications. They strengthen it.

B. *Tax Liens*

The City also argues that adopting Mance's position will call the classification of tax liens into question. Congress included tax liens in its examples of statutory liens in the legislative history of the Bankruptcy Code. H.R. Rep. No. 95-595, at 314, as reprinted in 1978 U.S.C.C.A.N. at 6271 ("Tax liens are also included in the definition of statutory lien."). The City contends, however, that federal tax liens result from judicial and quasi-judicial processes (under 26 U.S.C. §§ 6212(a), 6213(a), 6214(a), and 7482) that are similar to the processes leading to a Chicago impoundment lien. If these procedures must be followed before imposing a federal tax lien, yet everyone acknowledges that a tax lien is statutory, the City asks, how could our lien be judicial based on similar prior procedures?

Tax liens are unquestionably statutory. E.g., *Financial Oversight & Management Board*, 899 F.3d at 11; *Schick*, 418 F.3d

at 324; *IRS v. Diperna*, 195 B.R. 358, 360 (E.D.N.C. 1996); *In re O'Neil*, 177 B.R. 809, 811 (Bankr. S.D.N.Y. 1995). Our decision does not call this classification into question. We are merely evaluating the text of statutory provisions also provided by Congress to determine where the City's lien best fits under those definitions. Classifying the City's lien as judicial flows directly from the text. Congress is entitled to single out a particular category of liens and classify it accordingly. We do not disturb that prerogative or conclusion with this opinion.

Because Chicago's impoundment lien on Mance's vehicle did not arise solely by force of statute, the lien is a judicial lien for purposes of Mance's bankruptcy.

AFFIRMED.

EXHIBIT 9 – Schick Circuit Decision

418 F.3d 321
United States Court of Appeals,
Third Circuit.

In re: Tracey L. SCHICK.

No. 04–2611.
|
Argued April 18, 2005.
|
Aug. 9, 2005.

Synopsis

Background: Chapter 13 debtor moved to avoid, on exemption impairment grounds, a lien held by the New Jersey Motor Vehicle Commission (MVC) for unpaid motor vehicle surcharges and interest. The United States Bankruptcy Court for the District of New Jersey, Judith H. Wizmur, J., 301 B.R. 170, ruled that lien was "judicial lien," such as debtor could avoid to the extent that it impaired her homestead exemption, and the MVC appealed. The District Court, Robert B. Kugler, J., 308 B.R. 189, reversed and remanded. Debtor appealed.

The Court of Appeals, Fuentes, Circuit Judge, held that the MVC's lien for unpaid surcharges was a statutory lien, not a judicial lien.

District court judgment affirmed.

Attorneys and Law Firms

***322** Eric J. Clayman (Argued), John A. Gagliardi, Jenkins & Clayman, Audubon, New Jersey, for Appellant.

Peter C. Harvey, Attorney General of New Jersey, Patrick DeAlmeida, Assistant Attorney General, Tracy E. Richardson (Argued), Deputy Attorney General, Margaret A. Holland, Deputy Attorney General, R.J. Hughes Justice Complex, Trenton, New Jersey, for Appellee.

Before ROTH, FUENTES, and BECKER, Circuit Judges.

OPINION OF THE COURT

FUENTES, Circuit Judge.

This matter requires us to determine whether a lien held by the New Jersey Motor Vehicles Commission ("MVC") for unpaid motor vehicle surcharges and interest constitutes a judicial lien or a statutory lien as those terms are defined in the U.S. Bankruptcy Code (the "Code"). If it is a judicial lien, it may be avoided by the Debtor–Appellant, Tracey L. Schick, under 11 U.S.C. § 522(f) to the extent that it impairs her entitlement to a homestead exemption under 11 U.S.C. § 522(d)(1). However, if statutory, the lien may not be avoided by the Debtor. At least three bankruptcy courts within our jurisdiction have concluded that the MVC's lien is judicial, while two district courts have reached the opposite conclusion. For the reasons discussed below, we find that the MVC's lien is statutory. Accordingly, we will affirm the decision of the District Court.

I. Background

The essential facts in this matter are not in dispute. In April 2001 and February 2002, the MVC issued certificates of debt to the Clerk of the Superior Court of New Jersey against Tracey L. Schick for unpaid motor vehicle surcharges and interest.[1] Subsequently, on October 1, 2002, Schick filed a voluntary petition for bankruptcy under Chapter 13 of the Code. The Debtor's residence was listed with a value of $100,000, against which a secured proof of claim in the amount of $91,660 was filed by the first mortgagee. Schick also listed the MVC as an unsecured creditor.

Schick's Chapter 13 plan provided for the curing of arrears on her mortgage and on a car loan but included no provision for dividends to unsecured creditors. After the Bankruptcy Court confirmed the plan on February 28, 2003, the MVC filed a secured claim for $3,610, plus interest, based on motor vehicle surcharges assessed against Schick. In response, Schick moved to reclassify the MVC's secured ***323** claim as a general unsecured claim and to avoid its lien as impairing her homestead exemption. In particular, Schick argued that the MVC's claim was a judicial lien as that term is defined in the Code and could be avoided under 11 U.S.C. § 522(f) to the extent it impaired her homestead exemption arising in 11 U.S.C. § 522(d)(1).[2] In opposition, the MVC argued that its claim against Schick was a statutory lien, as that term is defined in the Code, and thus could not be avoided by the Debtor.

The Bankruptcy Court agreed with Schick, finding that the MVC's claim for unpaid surcharges and interest, which arose pursuant to New Jersey's surcharge statute, N.J. Stat. Ann. § 17:29A–35(b)(2), was a judicial lien, not a statutory lien. *See In re Schick,* 301 B.R. 170, 175 (Bankr.D.N.J.2003). On appeal, the District Court reversed, finding that the MVC had a statutory lien, not a judicial lien, that could not be avoided by the Debtor. *See In re Schick,* 308 B.R. 189, 194–95 (D.N.J.2004).

Schick now brings this timely appeal, contending that the District Court's decision was in error.

II. Jurisdiction and Standard of Review

This Court has jurisdiction over the final order of the District Court, entered in a bankruptcy proceeding, pursuant to 28 U.S.C. §§ 158(d) and 1291. Our standard of review is the same as that exercised by the District Court over the decision of the Bankruptcy Court. *See In re Zinchiak,* 406 F.3d 214, 221–22 (3d Cir.2005) (citing *In re Pillowtex, Inc.,* 349 F.3d 711, 716 (3d Cir.2003)). Accordingly, we review findings of fact for clear error and exercise plenary review over questions of law. *Id.* (citation omitted).

III. Discussion

As we noted in *Graffen v. City of Philadelphia,* the Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. 984 F.2d 91, 96 (3d Cir.1992) (citing H.R.Rep. No. 95–595, 95th Cong., 312 (1977), *reprinted in* 1978 U.S.C.C.A.N. 6269). As the MVC's lien for unpaid motor vehicle surcharges was not created by consent, it must either be statutory or judicial. We look to the Code for definitions of both terms. A judicial lien is defined as a lien "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). By contrast, a statutory lien arises "solely by force of a statute on specified circumstances or conditions ... but does not include ... [a] judicial lien, whether or not such ... lien is made fully effective by statute." 11 U.S.C. § 101(53). This distinction is amplified in the legislative history, which indicates that "[a] statutory lien is only one that arises automatically and is not based on an agreement to give a lien or on judicial action." H.R.Rep. No. 595, 95th Cong., 314 (1977); S.Rep. No. 95–989, 95th Cong., 27 (1978); 1978 U.S.C.C.A.N. 6271, 5811; *see also Gardner v. Pa., Dep't of Public Welfare,* 685 F.2d 106, 109 (3d Cir.1982) (finding that statutory lien "must be a lien arising automatically by operation of a statute, not one requiring subsequent judicial action").

In many cases, the distinction between a statutory lien and a judicial lien ***324** will be straightforward. For instance, the legislative history indicates that mechanics' liens, materialmen's liens, and warehousemen's liens, as well as tax liens, are types of statutory liens. *See* S. Rep. 95–989 at 27; H.R.Rep. No. 95–595 at 314 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5813, 6271; *see also In re Sullivan,* 254 B.R. 661, 664–65 (Bankr.D.N.J.2000) (finding that a tax lien is a statutory lien); *In re Concrete Structures, Inc.,* 261 B.R. 627, 633–34 (E.D.Va.2001) (finding that a mechanics' lien is a statutory lien); *APC Constr., Inc.; Glinka v. Hinesburg Sand & Gravel, Inc.,* 132 B.R. 690, 693–94 (D.Vt.1991) (finding that a contractor's lien is a statutory lien). However, in other contexts, the distinction between statutory and judicial liens has proven more troublesome, and some courts have remarked that the Code provides little assistance in resolving such disputes. *See, e.g., In re A & R Wholesale Distrib., Inc.,* 232 B.R. 616, 620 (Bankr.D.N.J.1999) (noting that the Code provides "very little guidance for distinguishing a judicial lien from a statutory lien") (citation omitted). The issue, raised here, of whether the MVC's claim for unpaid surcharges is a judicial lien or statutory lien is one example where courts have reached conflicting results. *Compare In re James,* 304 B.R. 131, 136 (Bankr.D.N.J.2004) (finding the New Jersey MVC surcharge lien to be judicial), *with In re Fennelly,* 212 B.R. 61, 66 (D.N.J.1997) (finding the New Jersey MVC surcharge lien to be statutory). The relevant inquiry is to determine the nature of the MVC's lien, i.e., whether it arises solely by force of statute, or whether it results from some type of judicial process or proceeding.

We will first briefly consider the statutory scheme in New Jersey which gives rise to the MVC's claim for unpaid motor vehicle surcharges and interest. We then consider our decision in *Graffen* to determine whether the lien in favor of the MVC is judicial or statutory. Finally, we explain why we are unpersuaded by the arguments as well as the theories advanced by Schick, and relied upon by the *In re Schick* and *In re James* bankruptcy courts, that the MVC's lien is judicial.

A.

One of the collateral consequences for the violation of motor vehicle laws in New Jersey is the imposition of surcharges against the driver. In particular, N.J. Stat. Ann. § 17:29A–35(b) (the "surcharge statute") establishes a rating plan under which the MVC levies surcharges on drivers in one of several different situations. *See generally* 25 Robert Ramsey, New Jersey Practice Series § 13.1–.6 (3d ed.2001). For instance, surcharges may be levied against a driver who is assessed too many violation points, or who has been convicted of drunk driving or refusing to take a breathalyzer test. *See* N.J. Stat. Ann. § 17:29A–35(b)(1)(a), (b)(2). The amount of the surcharges is set forth in the statute and administrative regulations. *See id.;* N.J. Admin. Code tit. 13, § 19–13.1(a).

The MVC has several collection methods available to ensure payment of surcharges in the event of non-payment. At issue in this case is the ability of the MVC to file a certificate of debt with the Clerk of the Superior Court in the amount of the past due surcharge. *See* N.J. Stat. Ann. § 17:29A–35(b)(2); *see also* N.J. Admin. Code tit. 13, § 19–12.12(a). The surcharge statute states in pertinent part:

> As an additional remedy, the director may issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this surcharge law in such amount as shall be stated in the certificate. The certificate shall reference the ***325** statute under which the indebtedness arises. Thereupon the clerk ... shall immediately enter upon the record of docketed judgments the name of such person as debtor; the State as creditor; the address of such person, if shown in the certificate; the amount of the debt so certified; ... and the date of making such entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the director shall have all the remedies and may take all of the proceedings for collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to any right of appeal.

N.J. Stat. Ann. § 17:29A–35(b)(2). Accordingly, the surcharge statute directs the MVC to file certificates of debt with the Clerk of the Superior Court, whose sole responsibility is to docket the debts in the amount as delivered. In New Jersey, when a judgment is docketed in the records of the Clerk of the Superior Court, it becomes a lien on the debtor's real estate. *See* N.J. Stat. Ann. § 2A:16–1.[3] Thus, the effect of the surcharge statute is to allow the MVC to obtain a lien on the driver's real property in the amount of the unpaid motor vehicle surcharges and interest.

B.

To determine whether the MVC's claim for unpaid motor vehicle surcharges and interest is a judicial lien or a statutory lien, we look to our decision in *Graffen v. City of Philadelphia.* In *Graffen,* we considered whether a lien obtained by the City of Philadelphia for unpaid water and sewer charges, pursuant to Pennsylvania's water lien statute, Pa. Stat. Ann. tit. 53, § 7106(b) (1972), created a statutory lien or a judicial lien under the Code.[4] Under the statute, a municipal claim for unpaid water bills became a lien against the debtor's property, and had the effect of a judgment, after it had been docketed by a prothonotary and entered in the judgment index. The debtors had argued that the water lien statute created a judicial lien, which could be avoided under 11 U.S.C. § 522(f).

We disagreed, finding that the lien was statutory because it was not obtained by any "legal process or proceeding" within the meaning of the definition of a judicial lien, 11 U.S.C. § 101(36). *Graffen,* 984 F.2d at 96. We explained that these terms "inherently relate to court procedures or perhaps similar administrative proceedings." *Id.* Although we recognized that in some circumstances a judicial proceeding may be *ex parte,*[5] we concluded that where the Water Department administratively determined the amount of the lien, and the prothonotary's sole responsibility was to docket the lien as delivered, the lien fell within the Code's definition of a statutory ***326** lien as it arose "solely by force of statute." *Id.* (citing 11 U.S.C. § 101(53)). In addition, we rejected the argument that the act of docketing the City's lien in the judgment index by the prothonotary rendered the lien a judicial lien:

> [D]ocketing simply would be a specified condition for creation of the statutory lien as defined in 11 U.S.C. § 101(53). The legislative history of the Bankruptcy Code, which demonstrates that mechanics' liens can be statutory, supports this conclusion. Inasmuch as at least in some states public filing is required to preserve mechanics' liens, there is no reason why the requirement that a water lien be docketed means that it cannot be statutory.

984 F.2d at 97 (internal citations omitted).

We find *Graffen* to be persuasive in this case based on the similarities between the Pennsylvania water lien statute and the New Jersey surcharge statute. For instance, as with the water lien statute in *Graffen,* the amount of the debt here

is determined either as a matter of statute or administrative regulation, as noted above. Moreover, like the prothonotary in *Graffen,* the only duty of the Clerk of the Superior Court, with respect to the lien, is to docket the certificates of debt as delivered in "the amount of the debt so certified." N.J. Stat. Ann. § 17:29A–35(b)(2). As we made clear in *Graffen,* the mere act of docketing a debt by the Clerk of the Superior Court as part of his ministerial duties is insufficient to render the MVC's lien a judicial lien. *Graffen,* 984 F.2d at 97; *see also In re Fennelly,* 212 B.R. at 65 ("[T]he mere ministerial act of recording the lien does not create the requisite legal process or proceeding to be a judicial lien."). Nor is there is any "legal process or proceeding" here within the meaning of the definition of a judicial lien, 11 U.S.C. § 101(36), nor any other type of "court procedures or perhaps similar administrative proceedings." *Graffen,* 984 F.2d at 96. Rather, the requirement that the certificates of debt be docketed is one of the specified conditions for the creation of the statutory lien. In these circumstances, the lien held by the MVC is one that arises "solely by force of statute" within the definition of a statutory lien, in 11 U.S.C. § 101(53).

At oral argument, counsel for the Debtor raised the possibility that there was sufficient judicial process or proceeding in this matter to find a judicial lien. In particular, counsel noted that, in certain instances, the MVC may not impose surcharges without a driver first being convicted in state court for driving violations. The Bankruptcy Court also suggested this approach in its opinion. *See Schick,* 301 B.R. at 175 n. 6 ("Convictions for driving while intoxicated and for motor vehicle violations are premised on the opportunity of the driver charged with the offense to be provided with a full adjudicatory process, usually in municipal court, which qualifies as a 'legal proceeding.' "). However, in our view, the underlying traffic proceeding charging the driver with a motor vehicle offense is too remote to constitute the required judicial process or proceeding necessary to find a judicial lien. Any such proceeding bears no relation to the creation of the lien in favor of the MVC, which instead arises as a result of the filing of the certificate of debt and its docketing by the Clerk of the Superior Court. Moreover, the amount of the surcharge is set forth either in the statute or administrative regulation and is not determined by the underlying proceeding against the driver. *See* N.J. Stat. Ann. § 17:29A–35(b)(1)(a), (b)(2); N.J. Admin. Code tit. 13, § 19–13.1(a). Certainly, the Clerk of the Superior Court's sole responsibility under the surcharge statute is to docket the certificate of debt as delivered ***327** in "the amount of the debt so certified," N.J. Stat. Ann. § 17:29A–35(b)(2), without any reference or reliance on the underlying proceeding against the driver. Thus, in light of our decision in *Graffen,* we are satisfied that the lien in favor of the MVC is statutory.

Our decision in *Lugo v. Paulsen,* 886 F.2d 602 (3d Cir.1989), is not to the contrary. In *Lugo,* we found that New Jersey MVC surcharges were not dischargeable in bankruptcy, relying on 11 U.S.C. § 523(a)(9), which excepts from discharge a debt "to the extent that such debt arises from a judgment ... entered against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated...." We found that "the surcharge does 'arise from' a judgment" for the purposes of non-dischargeability. *Lugo,* 886 F.2d at 608. But *Lugo* discussed a different section of the Code from that at issue here, and our concern there was to determine the ultimate source of the debt and to effectuate the congressional purpose of deterring drunk driving. That purpose is not at issue here, and our concern is not for the ultimate source of Schick's *debt* but rather the proper characterization of her *lien.* While her surcharge debt may have arisen from a judicial proceeding, the lien to enforce that debt was purely statutory.

C.

Schick seeks to distinguish *Graffen* because, unlike the water lien statute which explicitly created a lien in favor of the municipal authorities and thereafter permitted the docketing of the lien, here the surcharge statute itself does not create the lien. Rather, the lien arises only because the surcharge statute permits the MVC to file a certificate of debt, which becomes a lien on the debtor's property only because the docketing is to have the effect of a civil judgment under New Jersey law. Similarly, the Bankruptcy Court in this matter, relying essentially on this distinction, found *Graffen* to be inapplicable. In particular, the Bankruptcy Court concluded that the appropriate method to analyze the surcharge statute is by focusing not on the language "obtained ... by other legal or equitable process or proceeding" in the definition of judicial lien, but rather on the language "obtained by judgment," which is a separate component of the definition of a judicial lien in 11 U.S.C. § 101(36). *In re Schick,* 301 B.R. at 174–75. By focusing on the language "obtained by judgment," the Bankruptcy Court observed that the surcharge statute confers on the MVC all the benefits of a civil judgment, which includes a lien on the debtor's real property. *Id.* Accordingly, because the docketing grants the MVC the benefits of a civil judgment, which thereby creates a lien against the debtor's

property, the Bankruptcy Court concluded that the MVC's lien is thus "obtained by judgment" within the meaning of 11 U.S.C. § 101(36).

However, we think the Bankruptcy Court placed too much weight on the word "judgment" in 11 U.S.C. § 101(36) and read it in isolation from the rest of the definition. *See In re Zukowfsky,* 1995 WL 695108, at *3 (E.D.Pa. Nov.21, 1995) (noting that the bankruptcy court erred in placing too much weight on the word "judgment). It is a cardinal rule of statutory interpretation that the "starting point of any statutory analysis is the language of the statute." *Pa. Dep't of Envtl. Res. v. Tri–State Clinical Labs. Inc.,* 178 F.3d 685, 688 (3d Cir.1999) (citations omitted). The Code defines a judicial lien as "obtained by judgment, levy, sequestration or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). The natural reading of the definition ***328** is that "judgment," "levy," and "sequestration" are enumerated examples of types of "legal or equitable process or proceeding[s]." Thus, for a lien to be judicial, there must be some judicial or administrative process or proceeding that ultimately results in the obtaining of the lien. We implied that these terms are all related to such processes or proceedings in *Graffen,* stating that these "terms inherently related to court procedures or perhaps similar administrative proceedings." 984 F.2d at 96.

Here, this requirement is not fulfilled, as the lien obtained lacked any judicial process or proceeding. The surcharge statute grants the MVC a lien upon the docketing of the certificate of debt, which is then treated as having the effect of a civil judgment. In other words, the MVC obtains its lien not by any judgment, but rather by the ministerial act of docketing, which is treated as having the consequences of a judgment. In effect, the surcharge statute grants the MVC an expeditious path to secure a lien against the debtor's property, without having to engage in a lengthy and possibly costly judicial proceeding to obtain a judgment against the debtor. In our view, this statutorily created short-cut, in the absence of any meaningful judicial process or proceeding, renders the MVC's lien a lien that "arises solely by force of statute." 11 U.S.C. § 101(53). To hold otherwise would be to elevate form over substance and ignore the context in which "judgment" is used in 11 U.S.C. § 101(36).[6]

For this reason, we also reject Schick's reliance on the New Jersey tax lien statute, N.J. Stat. Ann. § 54:49–1, and construction lien statute, N.J. Stat. Ann. § 2A:44A–3. Schick rightly notes that the tax lien and construction lien statutes both contain language expressly granting a lien, whereas the surcharge statute contains no such language. For instance, the tax lien statute expressly grants a lien to the appropriate municipality or governmental entity: "Such [tax] debt, whether sued upon or not, shall be a lien on all property of the debtor...." Accordingly, the tax lien statute confers to the appropriate agency a valid and enforceable right to collect unpaid taxes on the day of the assessment without any judicial action. Similarly, under the construction lien statute, a contractor who provides work, services, material or equipment pursuant to a contract is entitled to a lien for the value of the work or services performed, or materials or equipment furnished in accordance with the parties' contract. *See* N.J. Stat. Ann. § 2A:44A–3 ("Any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract, shall be entitled to a lien for the value of the work or services performed, or materials or equipment furnished.... The lien shall attach to the interest of the owner in the real property."). As with the tax lien statute, the construction lien statute grants the contractor a lien for the value of the services rendered upon completion of the work without any judicial process or proceeding.

However, we do not believe that the fact that the surcharge statute lacks explicit lien-creating language, in contrast to the tax lien and construction lien statutes, is determinative in this matter. Like the tax ***329** lien and construction lien statutes, the surcharge statute contemplates that the MVC will have the right to recover unpaid motor vehicle surcharges from the debtor without any judicial action. The additional step required by the surcharge statute—the filing of the certificate of debt with the Clerk of the Superior Court—is merely a ministerial act intended to "perfect" the lien in favor of the MVC. As noted in *Graffen,* this ministerial act is only a "specified condition" for the creation of the statutory lien. *Graffen,* 984 F.2d at 97. We do believe that a statute that lacks express lien-creating language may confer a judicial lien where there is accompanying judicial process or proceeding. However, the surcharge statute, while lacking express lien-creating language, requires no such judicial action.[7]

Finally, we consider the Bankruptcy Court's reliance on our prior decision in *Gardner* as an example of where a lien was ruled judicial because it was "obtained by judgment." *See In re Schick,* 301 B.R. at 174; *see also In re James,* 304 B.R. at 136 (analogizing the MVC's lien to the lien at issue in *Gardner*). In *Gardner,* the Pennsylvania Department of Public Welfare required a debtor, as a condition of receiving public assistance, to sign reimbursement agreements. 658

F.2d at 108. These reimbursement agreements contained standard confession of judgment provisions, authorizing the entry of judgment against the recipient which would act as a lien against the recipient's real property. *Id.* Relying on the authority of *In re Ashe,* 669 F.2d 105 (3d Cir.1982), we found in *Gardner* that a lien obtained by confessed judgment was a judicial lien and thus could not be avoided by the DPW.[8] *Gardner,* 685 F.2d at 108–09.

However, we do not believe that *Gardner* is applicable in this case or supports a conclusion that the surcharge statute creates a judicial lien. In *Graffen,* we noted that, for purposes of finding a judicial lien, in some instances a judicial proceeding may be *ex parte,* and we cited *Gardner* as involving such an example. *Graffen,* 984 F.2d at 96, n. 7 (noting that "liens [in *Gardner*] were judicial as they were obtained by judgments entered upon a confession of judgment executed by the debtor"). However, in *Graffen,* we further noted that *Gardner* did not "stand for the proposition that liens requiring some administrative action to be perfected must be characterized as judicial liens." *Graffen,* 984 F.2d at 97. As noted above, the ministerial docketing required to "perfect" the MVC's lien is insufficient to render the lien to be judicial. In any event, the confession of judgment procedure bears no similarity to the ministerial docketing procedure at issue in the surcharge statute.

IV. Conclusion

For the foregoing reasons, we determine that the MVC's lien is a statutory lien. ***330** Accordingly, the judgment of the District Court will be affirmed.

All Citations

418 F.3d 321, Bankr. L. Rep. P 80,340

Footnotes

1 The New Jersey Division of Motor Vehicles ("DMV") became the MVC on January 28, 2003, following the passage of the Motor Vehicle Security and Customer Service Act, N.J. Stat. Ann. § 39:2A–1 *et seq.*

2 11 U.S.C. § 522(f) states in pertinent part:

> Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is
>
> (A) a judicial lien....

3 "No judgment of the superior court shall affect or bind any real estate, but from the time of the actual entry of such judgment on the minutes or records of the court." *See* N.J. Stat. Ann. § 2A:16–1.

4 The water lien statute stated in relevant part:

> With the exception of those claims which have been assigned, any municipal claim, including interest, penalty and costs, imposed by a city of the first class, shall be a lien only against the said property after the lien has been docketed by the prothonotary [the chief clerk]. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall enter the claim in the judgment index.
>
> Pa. Stat. Ann. tit. 53, § 7106(b).

5 For instance, in *Gardner,* we recognized that "a lien obtained by confessed judgment is a judicial lien avoidable under § 522(f)(1) of the Code, and not a security interest or a statutory lien." 685 F.2d at 108.

6 We note, hypothetically, that if the surcharge statute were to be repealed to divest the MVC of its expeditious remedy, then the MVC would have to proceed in court in a civil action to seek a judgment against Schick in order to secure a lien against the Debtor's property. In such a circumstance, there clearly would be the required judicial process or proceeding

to transform the MVC's lien into a judicial lien. The fact that the New Jersey legislature chose to give the MVC a short-cut in obtaining its lien supports our holding that the MVC's lien is statutory, not judicial.

7 We also note that, although the surcharge statute does not explicitly provide for a lien itself, that statute read in conjunction with § 2A:16–1 does explicitly provide for the lien. We do not see any reason why a lien should lose its statutory character simply because it is automatically created by the operation of two statutes, rather than one. Although 11 U.S.C. § 101(53) states that a statutory lien must arise "solely by force of a statute," we think it would be overly formalistic to interpret the use of the singular statute to bar statutory liens from being created by operation of more than one statute read in conjunction.

8 "[A] confession of judgment ... gives by consent, and without the service of process, a result which could otherwise be obtained only by process through a formal proceeding; it constitutes but one of the ways by which a person may be sued." *In re Ashe,* 712 F.2d at 872 (Becker, J., concurring and dissenting in part) (internal citation omitted).

EXHIBIT 10 – Certiorari Petition

No. 22-

IN THE

Supreme Court of the United States

CITY OF CHICAGO,

Petitioner,

v.

MARCELLA M. MANCE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Corporation Counsel
of the City of Chicago

MYRIAM ZRECZNY KASPER*
Deputy Corporation Counsel
SUZANNE M. LOOSE
Chief Assistant Corporation Counsel
DAVID PAUL HOLTKAMP
Chief Assistant Corporation Counsel
ELLEN W. MCLAUGHLIN
Assistant Corporation Counsel
2 N. LaSalle Street, Suite 580
Chicago, IL 60602
(312) 744-3564/742-5147
myriam.kasper@cityofchicago.org
*Counsel of Record

QUESTION PRESENTED

Whether a lien that arises automatically by operation of an ordinance when a vehicle is impounded is a statutory lien, and not a judicial lien avoidable in bankruptcy, even where the impoundment was preceded by judicial process to adjudicate the debt secured by the lien.

PARTIES TO THE PROCEEDINGS

Petitioner is the City of Chicago. Respondent is Marcella M. Mance. Cupree Howard was an appellee below but is not a party to this petition.

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IN THE

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

The City of Chicago respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

INTRODUCTION

This case presents an important question of federal bankruptcy law on which the courts of appeals have divided, and the Court's guidance is needed.

The issue is fundamental to the orderly administration of the bankruptcy process. In bankruptcy, the debtor may avoid a lien that impairs an asset exempted from the bankruptcy estate, but only if it is a "judicial lien." *See* 11 U.S.C. § 522(f)(1). A "statutory lien" cannot be avoided and is fully

respected in the bankruptcy process. Thus, holding a statutory rather than a judicial lien can make all the difference between being a secured creditor entitled to protection of its property interest and being an unsecured creditor potentially entitled to nothing at all.

The Bankruptcy Code defines both types of liens. A "judicial lien" is one "obtained by judgment . . . or other legal or equitable process or proceeding," 11 U.S.C. § 101(36), while a "statutory lien" is a lien "arising solely by force of a statute on specified circumstances or conditions," *id.* § 101(53).

Applying those definitions, most courts have employed a straightforward analysis. If a lien is obtained by means of a judicial (or quasi-judicial) proceeding, such as a court order, the lien is judicial. If a lien is obtained automatically when the creditor satisfies the requirements set out in a statute or ordinance, and no additional judicial action is necessary to create the lien, the lien is statutory.

Under that well-established approach, the lien at issue in this case – a possessory lien the City of Chicago obtained when it impounded respondent Marcella Mance's vehicle for multiple unpaid traffic violations – is statutory. The City obtained the lien automatically when, by impounding the vehicle, it satisfied the conditions set out in a City ordinance.

See Municipal Code of Chicago, Ill. § 9-92-080(f) ("Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle."). No judicial action created the lien.

The Seventh Circuit, however, held in the decision on review that the City's lien was a judicial lien that Mance could avoid in bankruptcy. In so holding, it rejected the settled approach to distinguishing judicial from statutory liens and injected serious confusion into the bankruptcy process.

Instead of examining *how* the City's lien was obtained – *i.e.*, by operation of law or judicial action – the Seventh Circuit held that a lien is a "judicial lien" whenever some judicial process is required to create the statutory conditions for the lien. Here, although it was undisputed that the City's lien arose automatically upon impoundment by operation of an ordinance, the City impounded Mance's vehicle because she was liable for multiple unpaid traffic tickets, which she could have contested through an administrative process. According to the Seventh Circuit, this prior opportunity for review of the underlying traffic tickets sufficed to render the lien on Mance's vehicle judicial – and therefore avoidable.

The decision on review creates a sharp split in authority among the circuits. While other courts

have looked only to the mechanism by which a lien was obtained to categorize it as judicial or statutory, the Seventh Circuit's definition of judicial lien is far broader: a lien is judicial if any process was required to create the conditions for the lien to arise by operation of legislation. The split disrupts the uniformity of federal bankruptcy law because the same lien would be treated differently in different circuits. Indeed, on similar facts, the Third Circuit has explicitly rejected the Seventh Circuit's reasoning.

The decision below is also incorrect. The Bankruptcy's Code's plain language states that a judicial lien is obtained by judicial action, not merely after an opportunity for judicial review has occurred. And as the Seventh Circuit openly acknowledged (App. 20a), the decision is irreconcilable with the Bankruptcy Code's legislative history. Liens that Congress specifically listed as examples of statutory liens, particularly federal tax liens, would be rendered "judicial liens" under the Seventh Circuit's approach.

The proper categorization of liens matters. When liens are avoided, the debtor gets the collateral back free of the lien, without paying the debt. But statutory liens may not be avoided in bankruptcy. The Seventh Circuit's analysis would transform government liens long considered statutory into avoidable judicial liens, upsetting settled expectations

of creditors and the balance of federal and local authority in the realm of bankruptcy.

The issue in this case is important and cleanly presented. The petition should be granted.

OPINIONS BELOW

The Seventh Circuit's opinion (App. 1a - 20a) is reported at 31 F.4th 1014. The district court's decision (App. 21a - 32a) is reported at 625 B.R. 384. The bankruptcy court's decision (App. 33a - 40a) is reported at 611 B.R. 857.[1]

JURISDICTION

The U.S. Bankruptcy Court for the Northern District of Illinois, which had jurisdiction pursuant to 28 U.S.C. § 157(b)(1), entered a final judgment in Mance's underlying bankruptcy case on February 6, 2020, from which the City of Chicago filed a timely notice of appeal on February 20, 2020.

On January 29, 2021, the U.S. District Court for the Northern District of Illinois, which had jurisdiction over the appeal from the bankruptcy court

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[1] This case was decided in the district court with another bankruptcy case, *In re Howard*. App. 21a. The cases were consolidated on appeal, but the *Howard* case was voluntarily dismissed as moot prior to the court of appeals' decision. App. 6a n.3.

pursuant to 28 U.S.C. § 158(a)(1), affirmed the bankruptcy court's order and entered final judgment. The City filed a timely notice of appeal from that judgment on February 26, 2021.

The Seventh Circuit entered judgment on April 21, 2022. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The appendix reproduces 11 U.S.C. §§ 101(36), 101(53), and 522(f)(1), and Chicago Municipal Code §§ 2-14-132, 9-92-080, and 9-100-120.

STATEMENT

A. Statutory Background

A bankruptcy filing creates a bankruptcy estate, comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). In chapter 7, the trustee marshals those assets, reduces them to cash, distributes the cash to creditors, and closes the estate. *Id.* § 704.

A debtor may exempt certain property from the bankruptcy estate to protect it from creditors. 11 U.S.C. § 522(b)(1). As part of the bankruptcy petition, a debtor files a list of property claimed as

exempt. *Id.* § 522(l); Fed. R. Bank. P. 4003(a). "Exempt property is removed from the estate and retained by the debtor." *In re Jaffe*, 932 F.3d 602, 607 (7th Cir. 2019); *see also Owen v. Owen*, 500 U.S. 305, 308 (1991) ("An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor."). In Illinois, state law establishes the allowed exemptions, 735 ILCS 5/12-1201, which include "[t]he debtor's interest, not to exceed $2,400 in value, in any one motor vehicle," and "[t]he debtor's equity interest, not to exceed $4,000 in value, in any other property," *id.* 5/12-1001(b), (c).

Section 522(f)(1) of the Bankruptcy Code allows a debtor to avoid a judicial lien on exempt property that impairs the value of the exemption. It provides that:

> the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—
>
> (A) a judicial lien . . . .

11 U.S.C. § 522(f)(1).

A lien impairs an exemption if the value of the debtor's interest in the property is less than the value

of the lien, any other liens on the property, and the exemption the debtor could claim were there no lien on the property. 11 U.S.C. § 522(f)(2)(A). Thus, debtors can avoid judicial liens if, to satisfy the liens, they would have to use assets they are otherwise entitled to exempt from the bankruptcy estate.

Under the Bankruptcy Code, a debtor may avoid a lien on a property interest if the lien is judicial, but not if it is statutory. 11 U.S.C. § 522(f)(1). The Code defines a "judicial lien" as one "obtained by judgment . . . or other legal or equitable process or proceeding." *Id.* § 101(36). In contrast, a "statutory lien" is a lien "arising solely by force of a statute on specified circumstances or conditions." *Id.* § 101(53).

B. Factual and Procedural Background

Impoundment of Mance's Vehicle

The Chicago Municipal Code authorizes the City to impound vehicles and hold them until fines and penalties are satisfied, for the "purpose of enforcing" its traffic regulations. Municipal Code of Chicago, Ill. § 9-100-120. Under section 9-100-120, a vehicle is eligible for immobilization if the owner has three or more unpaid violations; it is subject to impoundment 24 hours after immobilization. *Id.* §§ 9-100-120(b), (c). The Code also authorizes impoundment for various other offenses. *Id.* §§ 9-92-030, 2-14-

132(a)(1). For example, a vehicle can be impounded incident to arrest, *id.* § 9-92-030(i); for obstructing traffic, *id.* § 9-92-030(a); or for an improper registration, *id.* § 9-80-220(c).

Regardless of the reason for impoundment, "[a]ny vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle." Municipal Code of Chicago, Ill. § 9-92-080(f). Thus, when the City impounds a vehicle, its possessory lien automatically arises by operation of a City ordinance.

The City impounded Mance's car based on unpaid penalties and fines imposed for violations of the City's laws. Mance incurred numerous parking, red-light, and speeding tickets. For each ticket, she had the opportunity for a hearing but did not request one. After three tickets, Mance's vehicle became eligible for immobilization and impoundment under section 9-100-120. The City impounded the vehicle. When it did so, a lien on the vehicle arose automatically.

Bankruptcy and District Court Proceedings

In response to the impoundment, Mance commenced a chapter 7 bankruptcy case. According to Mance's bankruptcy filings, she had accumulated $12,245.63 in ticket debt (based on over 60 unpaid tickets). Mance claimed her vehicle, worth $3,000,

as an exemption from the bankruptcy estate. She then moved to avoid the City's possessory lien on the vehicle.

It is undisputed that the City's lien impaired an exemption Mance claimed. Thus, under Bankruptcy Code section 522(f)(1), Mance could avoid the lien if it was a judicial lien. The City would then be required to release the vehicle, becoming an unsecured creditor.

The City argued that because the lien arose automatically under an ordinance, it was statutory, not judicial, and thus not avoidable under section 522(f)(1). The City explained that a judicial lien is obtained by an order or judgment from a judicial or quasi-judicial body. The City's lien was not obtained through a judicial proceeding, but automatically by operation of the Municipal Code.

The bankruptcy court held that the City's lien was an avoidable judicial lien because the underlying tickets Mance accumulated were subject to administrative adjudication, and final determinations of ticket liability were necessary before the City could impound the vehicle and thereby attain the lien. App. 38a - 39a. The court granted Mance's motion to avoid the lien. App. 40a. The City appealed to the district court, which affirmed. App. 32a.

The Court of Appeals' Decision

The Seventh Circuit affirmed the district court's judgment. App. 20a. It acknowledged that the City's lien automatically attached to Mance's vehicle upon impoundment, "[u]nder the terms of the City ordinance," and that no "further action by a judge or quasi-judicial official" was required for the City to obtain the lien. App. 14a. It stated, however, that "the events . . . that precede creation of the lien" are also relevant to its classification; that "prior legal proceedings leading to a lien would exclude the lien from the category of statutory liens," App. 7a; and that "classification of a lien depends on the events, if any, that must occur before the lien attaches," App. 8a.

Taking that approach, the Seventh Circuit reviewed the procedures required for the City to impound Mance's vehicle. App. 10a-13a. The City made available an administrative process wherein Mance could have challenged the traffic violations. App. 11a. The City can impound a vehicle only after three final determinations of liability accrue. App. *Ibid.* The City also provides vehicle owners with notice and an opportunity to challenge fines before impoundment. App. 12a. The court of appeals held that because this "prior process" occurred before the City's lien arose, the lien created upon impoundment was judicial, not statutory. App.14a - 16a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CREATES A CIRCUIT SPLIT ON THE ISSUE PRESENTED.

Until the decision below, federal courts agreed that liens should be categorized as judicial or statutory based on how they were obtained. *E.g.*, *In re Lionel Corp.*, 29 F.3d 88, 94 (2d Cir. 1994) ("[T]he Bankruptcy Code categorizes a lien by the way it is *established*.") (quotation marks omitted); *see also, e.g.*, *In re Thompson*, 240 B.R. 776, 781 (B.A.P. 10th Cir. 1999) ("the origin of the creditor's interest . . . determines the nature of the lien"); *In re APC Construction, Inc.*, 132 B.R. 690, 694 (D. Vt. 1991) ("[T]he Bankruptcy Code categorizes a lien by the way it is established."); *In re Railing*, No. 10-37540, 2011 WL 3321169, at *6 (Bankr. N.D. Ohio Aug. 2, 2011) ("[A] lien's type is fixed at the time it arises.").

As we explain, the decision on review rejects this majority approach, and in so doing, squarely splits with the Third Circuit on similar facts. *See In re Schick*, 418 F.3d 321, 324-26 (3d Cir. 2005).

A. The Majority of Circuits Define Liens By How They Are Obtained.

Under the majority approach, a "judicial lien," or "lien obtained by judgment," 11 U.S.C. § 101(36), is a lien attained by means of a judgment or judicial

process. Typically, a court enters a judgment, and once recorded, it becomes a judicial lien. For example, in *Owen*, the respondent "obtained a judgment against" the petitioner, which was recorded, and which attached to the petitioner's property. 500 U.S. at 307. This Court recognized that the lien was "a judicial lien." *Id.* at 309. The judicial lien in *In re Garran*, 338 F.3d 1 (1st Cir. 2003), was obtained "[a]fter the court entered judgment in favor of" the creditor, which "recorded the execution on the [debtor's] property." *Id.* at 4. The Eleventh Circuit similarly explained in *In re Washington*, 242 F.3d 1320 (11th Cir. 2001), that a judicial lien is "'an interest which encumbers a specific piece of property granted to a judgment creditor who was previously free to attach any property of the debtor's to satisfy his interest but who *did not have an interest in a specific piece of property before occurrence of some judicial action*.'" *Id.* at 1323 (quoting *In re Fischer*, 129 B.R. 285, 286 (Bankr. M.D. Fla. 1991), and *In re Boyd*, 31 B.R. 591, 594 (D. Minn. 1983)).

Consistent with this approach, Black's Law Dictionary defines judicial liens this way: when a "judgment has not been satisfied, the creditor can ask the court to impose a lien on specific property owned and possessed by the debtor," resulting in a judicial lien. BLACK'S LAW DICTIONARY 943 (8th ed. 2004).

"Statutory liens," in contrast, arise automatically "by force of a statute on specified circumstances or conditions." 11 U.S.C. § 101(53). The Bankruptcy Code's legislative history explains that a statutory lien "arises automatically and is not based on an agreement to give a lien or on judicial action." S. Rep. No. 95-989, at 27 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5811.

Courts have identified liens as statutory when "the relevant statute specifies a circumstance or condition . . . and provides (often through the use of mandatory, "shall" language) that when the specified circumstance or condition is satisfied, the lien attaches." *In re Financial Oversight & Management Board for Puerto Rico*, 899 F.3d 1, 11-12 (1st Cir. 2018); *see also Gardner v. Pennsylvania, Department of Public Welfare*, 685 F.2d 106, 109 (3d Cir. 1982) (a statutory lien is "a lien arising automatically by operation of a statute"). The Third Circuit described this legislative "path to secure a lien against the debtor's property" as a "statutorily created short-cut." *Schick*, 418 F.3d at 328.

Whether a lien is statutory is usually clear from the text of the legislation that creates it. Mandatory language stating that a lien arises automatically under certain conditions signals that the lien is statutory. *E.g.*, *In re Beck*, No. 15-29541-SVK, 2016 WL 489892 (Bankr. E.D. Wis. Feb. 5, 2016) (statutory

liens arise when statutes' "very text . . . . create[s] the liens automatically"). Consistent with this, the First, Third, Fifth, and Ninth Circuits have all recognized that legislation with automatic, mandatory language creates statutory liens.

The First Circuit explained in *In re Financial Oversight & Management Board* that a tax lien was statutory because it was created automatically by a federal statute, 899 F.3d at 10, which provided that if a person liable for tax fails to pay it "after demand, the amount . . . *shall be a lien* in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person," 26 U.S.C. § 6321 (emphasis added).

The Third Circuit held that similar language in Pennsylvania's water lien statute created a statutory lien. *Graffen v. City of Philadelphia*, 984 F.2d 91, 97 (3d Cir. 1992). The statute, which provided that unpaid water and sewer charges "heretofore filed are hereby ratified, confirmed and made valid subsisting liens as of the date of their original filing," 53 Pa. Stat. Ann. § 7106, created a lien automatically when a claim was docketed, *Graffen*, 984 F.2d at 97.[2]

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[2] The Third Circuit has explained that a statutory lien can also be created by a statute "lacking express lien-creating language," if the lien's creation "requires no . . . judicial action." *Schick*, 418 F.3d at 329.

The Fifth Circuit held in *In re Green*, 793 F.3d 463 (5th Cir. 2015), that a creditor's lien on a debtor's condominium was statutory. *Id.* at 439. The lien was based on the Louisiana Condominium Act, which stated that a condominium association "*shall have a privilege* on a condominium parcel for all unpaid or accelerated sums assessed by the association." La. Stat. Ann. § 9:1123.115 (emphasis added).

Likewise, the Ninth Circuit held that liens Los Angeles County obtained against a debtor's property by filing certificates with the county recorder documenting the debtor's tax delinquency were statutory liens. *In re Mainline Equipment*, Inc., 865 F.3d 1179, 1184-85 (9th Cir. 2017). The statute at issue provided that after the certificate was filed, "the amount required to be paid together with interest and penalty *constitutes a lien* upon all personal and real property in the county owned by" the person against whom taxes were assessed. Cal. Rev. & Tax. Code § 2191.4 (emphasis added).

Thus, the majority of circuits to address the question have held that legislation that includes automatic lien-creating language results in a statutory lien.

B. Under The Majority Approach, The City's Lien Is Statutory, Not Judicial.

Section 9-92-080(f) of the Chicago Municipal Code, which creates the City's possessory liens on impounded vehicles, contains explicit lien-creating language: "Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle." Municipal Code of Chicago, Ill. § 9-92-080(f). Thus, when the City impounded Mance's vehicle, the ordinance created the lien automatically. No judicial or quasi-judicial proceedings were required for the City to obtain the lien.

The administrative proceedings through which Mance could have challenged her tickets did not create a lien. The administrative process resulted in final determinations of liability. After Mance accumulated more than three such final determinations, the City was authorized to impound her vehicle. But the City did not obtain a lien until it impounded the vehicle, and again, under section 9-92-080(f), the lien on the vehicle arose automatically.

Procedures to obtain judicial liens exist under Illinois law, and the City could have used them to obtain judicial liens on Mance's property in Cook

County.[3] But the City did not use any of those procedures to obtain its lien. It did not need to, because it could avail itself of what the Third Circuit in *Schick* described as a "statutorily created short-cut." 418 F.3d at 328. Furthermore, although a judicial lien would be in the amount of the judgment, the value of the City's liens is set by ordinance and includes not only all tickets in final determination status, but also amounts that are not adjudicated, including boot, towing, storage, administrative, and attorney's fees and late payment penalties. Municipal Code of Chicago, Ill. §§ 9-100-120(d), 9-100-050(e).

Again, a judicial lien is obtained by a judgment or other legal proceeding. 11 U.S.C. § 101(36). When a legislative body grants a different "path to secure a lien against the debtor's property," this results in a statutory lien. *Schick*, 418 F.3d at 328. Here, the Chicago City Council created a legislative shortcut that automatically gives the City a possessory lien

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[3] Under Illinois' Administrative Review Law, when an administrative hearing officer imposes a fine pursuant to a final determination of liability for a code violation, and the opportunity for review is exhausted, the fine "may be collected in accordance with applicable law," 65 ILCS 5/1-2.1-8(c), and "enforced in the same manner as a judgment," *id.* 5/1-2.1-8(b), including by recording it like a judgment to obtain a lien using the procedures set out in the Illinois Code of Civil Procedure, *id.* 5/1-2.1-8(d). These procedures result in judicial liens.

when a vehicle is impounded. The lien fits squarely within the definition of a statutory lien in section 101(53) of the Bankruptcy Code: it arises "solely by force of" a City ordinance "on specified circumstances or conditions."

C. The Decision On Review Creates A Square Split With The Third Circuit.

In the decision on review, the court of appeals redefined "judicial lien" to encompass not just liens *obtained by* a legal proceeding, but any lien obtained *after* some opportunity for adjudication of a portion of the debt secured by the lien. In the Seventh Circuit's view, the fact that a quasi-judicial process was an "essential prerequisite" to the imposition of the lien, App. 18a, was sufficient for it to qualify as judicial, not statutory, notwithstanding that the lien arose automatically by operation of the Chicago Municipal Code.

The Seventh Circuit's decision not only departs from the approach to categorizing liens taken by all other circuits, but it also splits squarely with the Third Circuit on similar facts. Indeed, the Third Circuit has explicitly stated in *Schick* that procedures providing for the adjudication of the underlying debt do *not* determine how a lien is categorized. What matters is whether the lien itself was created by legislative or judicial action. *Schick*, 418 F.3d at 324

("The relevant inquiry is to determine the nature of the . . . lien, *i.e.*, whether it arises solely by force of statute.").

In *Schick*, the debtor accumulated "motor vehicle points," which New Jersey assigned to drivers convicted of certain offenses. N.J. Admin. Code § 13:19-10.1. The state imposed surcharges against drivers with "six or more motor vehicle points." N.J. Stat. Ann. § 17:29A-35. If the driver failed to pay the surcharges, the state's motor commission was authorized by statute to docket certificates of debt in state court. *Ibid.* When docketed, the certified debts became, under a different statute, a lien on the driver's real estate. *Schick*, 418 F.3d at 325 (citing N.J. Stat. Ann. § 2A:16-1).

The debtor, Schick, made an argument similar to Mance's argument here (which the Seventh Circuit adopted). She claimed "there was sufficient judicial process or proceeding . . . to find a judicial lien" because the motor vehicle points she accumulated were based on convictions for violations that required "a full adjudicatory process." *Schick*, 418 F.3d at 326. As the Third Circuit summarized:

> [C]ounsel noted that, in certain instances, the MVC may not impose surcharges without a driver first being convicted in state court for driving violations. The Bankruptcy Court

> also suggested this approach in its opinion. *See Schick*, 301 B.R. at 175 n.6 ("Convictions for driving while intoxicated and for motor vehicle violations are premised on the opportunity of the driver charged with the offense to be provided with a full adjudicatory process, usually in municipal court, which qualifies as a 'legal proceeding.'").

Schick, 418 F.3d at 326.

The Third Circuit flatly rejected the argument that the underlying "full adjudicatory process" on Schick's driving violations rendered the lien on her property judicial. *Ibid.* It explained that "the underlying traffic proceeding . . . bears no relation to the creation of the lien . . ., which instead arises as a result of the filing of the certificate of debt and its docketing by the Clerk of the Superior Court." *Ibid.* Although the chain of events at issue began with Schick's liability for traffic violations, the lien itself was established by a statute, not judicial process. The Third Circuit emphasized that its "concern [wa]s not for the ultimate source of Schick's *debt* but rather the proper characterization of her *lien*. While her surcharge debt may have arisen from a judicial proceeding, the lien to enforce that debt was purely statutory." *Id.* at 327.

Thus, applying the majority analysis, the Third Circuit explicitly rejected the same argument the

decision below embraces – that an underlying "full adjudicatory process" on vehicular violations is sufficient to render a lien judicial, even though the lien itself arises only by operation of a statute. *Schick*, 418 F.3d at 326.

The Ninth Circuit has similarly distinguished the underlying "circumstances or conditions" required for a lien from the mechanism creating the lien. *In re Badger Mountain Irrigation District*, 885 F.2d 606 (9th Cir. 1989), involved a statute providing that bonds issued to finance an irrigation project "shall become a lien upon all the water rights and other property acquired by any irrigation district," Wash. Rev. Code Ann. § 87.03.215. The court explained that, although the source of the debt the lien secured was bonds (a consensual security interest), the lien itself was statutory, because "the irrigation district statute itself creates the lien," while the underlying bonds "simply constitute[d] part of the 'specified circumstances or conditions'" upon which the lien arose. 885 F.2d at 608 n.2.

In short, these courts hold that the dispositive inquiry is how a *lien* is created, not the process that created the *debt* it secures. The bankruptcy code should not mean different things in different circuits. This Court's review is warranted.

II. THE DECISION ON REVIEW IS WRONG.

The Seventh Circuit's decision is also incorrect. Under the Bankruptcy Code's plain language, the City's lien was statutory: it arose automatically upon impoundment, by operation of the Municipal Code. It was not judicial because it was not "obtained by" a judicial proceeding. The Seventh Circuit's reasoning is also irreconcilable with the Code's legislative history.

A. The Seventh Circuit Misread The Bankruptcy Code's Plain Language.

The Bankruptcy Code defines "judicial lien" to mean a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). Courts give statutory language its ordinary, common-sense meaning. *E.g.*, *Artis v. D.C.*, 138 S. Ct. 594, 603 (2018). Using common definitions, "obtain" means "gain or attain." https://www.merriam-webster.com/dictionary/obtain. The common definition of "by" is "through the agency or instrumentality of." https://www.merriam-webster.com/dictionary/by.

Based on these definitions, a "lien obtained by judgment" is a lien attained through the instrumentality of a judgment or other legal process. Thus, to obtain a judicial lien, a creditor initiates a

judicial proceeding to obtain an order imposing a lien on property or obtains a judgment that it then registers or records to procure a lien, or a court issues process to enforce a judgment which creates a lien when served. *E.g.*, *Graffen*, 984 F.2d at 96 (judicial lien is defined in terms that "inherently relate to court procedures or perhaps similar administrative proceedings").

Instead of determining whether the City's lien was obtained by an ordinance or judicial action, the Seventh Circuit defined "judicial lien" as broadly as possible. The court stated, "If the lien *requires* a 'judgment, levy, sequestration, or other legal or equitable process or proceeding,' the lien is judicial." App. 15a (emphasis added). Thus, the court expanded the definition of "judicial lien" to include any lien that follows a judicial or administrative process. It concluded that the City's lien on Mance's vehicle was judicial because the City could not impound the car without providing an administrative process to review Mance's tickets, then stated that the lien could not be statutory, because it did "not arise 'solely' by statute." App. 16a.

That was error. The Bankruptcy Code's definition of "judicial lien" says "obtained by," not "requires." 11 U.S.C. § 101(36). The court of appeal's decision rewrites section 101(36) to eliminate the words "obtained by" altogether. In categorizing

the City's lien as judicial, the Seventh Circuit thus misread the plain language of the Bankruptcy Code.

B. The Seventh Circuit's Decision Is Inconsistent With The Bankruptcy Code's Legislative History.

The Seventh Circuit's interpretation of "judicial lien" is also inconsistent with the Bankruptcy Code's legislative history.

Congress explained that certain liens, such as tax liens, fall within the definition of a "statutory lien":

> A statutory lien is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action. Mechanics', materialmen's, and warehousemen's liens are examples. Tax liens are also included in the definition of statutory lien.

H.R. Rep. No. 95-595, at 314 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6271; *see also Schick*, 418 F.3d at 324 ("Common examples of statutory liens, cited in the legislative history, are 'mechanics' liens, materialmen's liens, and warehousemen's liens, as well as tax liens."). Clearly, Congress intended tax liens to qualify as statutory liens. And courts have categorized them as such. *E.g.*, *In re Financial Oversight & Management Board*, 899 F.3d at 10

(explaining that tax lien was statutory because it was automatically created by a federal statute).

But tax liens, like the City's liens here, arise only *after* what can be substantial judicial process, including opportunities to challenge the underlying tax liability. Before the IRS can get a tax lien, it must obtain a final determination of the taxpayer's liability, and an administrative process is available for taxpayers to contest their debt to the government. "If the IRS finds that a person has unpaid taxes for a given year, it must notify him of the deficiency before it can collect the debt." *Gyorgy v. Commissioner*, 779 F.3d 466, 472 (7th Cir. 2015) (citing 26 U.S.C. §§ 6212(a), 6213(a)). The notice of deficiency is a taxpayer's "ticket to the Tax Court," *Stoecklin v. Commissioner*, 865 F.2d 1221, 1224 (11th Cir. 1989), where the taxpayer has an opportunity to contest the deficiency, *Schiff v. United States*, 919 F.2d 830, 832 (2d Cir. 1990); *see also* 26 U.S.C. §§ 6213(a), 6214(a). From there, the taxpayer may appeal to the court of appeals. 26 U.S.C. § 7482. If a taxpayer does not contest the deficiency or is unsuccessful, the deficiency "shall be assessed, and shall be paid upon notice and demand." 26 U.S.C. § 6213(c). Only then, "[i]f the taxpayer does not pay," will the tax liability "become a lien on his real and personal property." *Gyorgy*, 779 F.3d at 472 (citing 26 U.S.C. § 6321). If the IRS did not validly assess the tax liability, it cannot obtain a lien. *E.g.*, *Hoyle v.*

Commissioner, No. 7217-04L, 131 T.C. 197, 205 (U.S. Tax Ct. Dec. 3, 2008); *see also Stonecipher v. Bray*, 653 F.2d 398, 403 (9th Cir. 1981) (statutory scheme for contesting the IRS's deficiency determination comports with due process).

As this demonstrates, significant adjudicative process is required before the IRS can obtain a lien for unpaid taxes. But the adjudicatory process that occurs prior to the creation of a federal tax lien does not make the lien judicial. That process determines the taxpayer's debt to the government, but the lien itself is created by a statute, which provides:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) *shall be a lien* in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U.S.C. § 6321 (emphasis added). Because of this statutory short-cut, the IRS need not record a tax assessment, or sue the taxpayer in state court, to obtain a lien. The statute's automatic lien-creating language results in a statutory lien.

The City's liens work like federal tax liens. An administrative process determines debtors' liability for traffic violations. That provides due process but does not create a lien. The lien is created automatically upon impoundment under the Municipal Code – just as a tax lien is created automatically by section 6321 of the Internal Revenue Code when a tax bill is not paid.

Under the Seventh Circuit's analysis, federal tax liens would be judicial liens because – like the City's lien on Mance's vehicle – they require process *before* the conditions for the lien arise. But the Bankruptcy Code's legislative history shows that is not what Congress intended – which means the Seventh Circuit's approach cannot be correct.

The Seventh Circuit conceded that "[t]ax liens are unquestionably statutory," but it suggested that the status of tax liens as statutory was a function – not of the *definitions* in the Bankruptcy Code – but of Congress's supposed "prerogative" to "single out a particular category of liens and classify it." App. 20a.

The court of appeals' attempt to reconcile its decision with the Bankruptcy Code's legislative history is unavailing. The idea that Congress "singled out" tax liens and "classified" them as statutory *only* in the Bankruptcy Code's legislative history, App. 20a, is at odds with the principle that

statutory text controls over legislative history, *e.g.*, *Bostock v. Clayton County*, 140 S. Ct. 1731, 1750 (2020) ("[L]egislative history can never defeat unambiguous statutory text."). Congress could not use the Bankruptcy Code's legislative history to carve out an exception from the application of the Code's plain language.

Defining judicial liens to include any lien that follows a legal process would mean reclassifying statutory liens like tax liens as judicial. At minimum, the decision on review renders the status of such liens unclear – despite Congress's having specifically identified them as examples of statutory liens. This Court should reject the court of appeals' incorrect definition of judicial lien.

III. THIS CASE PRESENTS AN IMPORTANT AND RECURRING QUESTION.

The issue presented in this case is both important and recurring. In bankruptcy, holding a "statutory lien" makes all the difference between being a secured creditor entitled to payment in full, and being an unsecured creditor entitled to pennies on the dollar. For government creditors, lien statutes and ordinances are a critical device used to secure payment of debts. The Seventh Circuit's approach could seriously curtail the debt-collection practices of government creditors.

Not only does the Seventh Circuit's decision upend settled precedent, but bankruptcy courts will be hard-pressed to apply it consistently. The court of appeals' definition of "judicial lien" is as vague as it is expansive. In contrast to the straightforward task of identifying whether the mechanism that created a lien was a judgment or legislation, the Seventh Circuit's decision suggests that courts must weigh whether the judicial proceedings are "too far removed" from the creation of a lien. App. 16a. "Reasons of practice . . . are as weighty as reasons of theory for rejecting" an approach that is "hard to apply, jettison[s] relative predictability . . ., [and] invit[es] complex argument in a trial court and a virtually inevitable appeal." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547 (1995).

Relatedly, the Seventh Circuit's approach will encourage outcome-oriented decisions and disrupt creditors' expectations. If all that is required to render a lien judicial is to trace it to some available prior judicial process for the debt secured, a debtor will often be able to avoid a statutory lien.

But the deference Congress afforded to statutory liens is part of federal bankruptcy policy. The distinction between judicial and statutory liens reflects Congress's decision to allow state and local legislative bodies to grant special protections to certain creditors. As the Ninth Circuit has

explained, Congress designed federal bankruptcy law so that such "interests in particular property . . . are fully respected by the general bankruptcy law," even though a legislative body might "giv[e] one creditor a greater right to payment of his claim from a given asset than that conferred on another." *In re Anchorage International Inn, Inc.*, 718 F.2d 1446, 1451 (9th Cir. 1983). Congress chose to "'defer[ ] to local policy as expressed in statutes that vary from state to state.'" *In re Loretto Winery Limited*, 898 F.2d 715, 719 (9th Cir. 1990) (quoting Collier on Bankruptcy ¶ 545.01 at 545-46 (15th ed. 1989)). "[P]references established in accordance with these lien statutes do not, therefore, conflict with federal bankruptcy policy; they are affirmatively a part of that policy." *Id.* at 718.

Because "in every case," courts "must respect the role of the Legislature, and take care not to undo what it has done," *King v. Burwell*, 576 U.S. 473, 498 (2015), courts should not undo the legislative choices embodied in lien statutes by redefining statutory liens as judicial. This court should review, and reverse, the Seventh Circuit's decision.

IV. THE QUESTION IS CLEANLY PRESENTED IN THIS CASE.

The question whether a lien that arises automatically by operation of a municipal ordinance

is a statutory lien is squarely presented here. No questions of fact are at issue. Both parties agree that if the lien is judicial, it is avoidable, but if it is statutory, it cannot be avoided. The outcome of the matter turns entirely on that legal determination, making this case well-suited for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Corporation Counsel
of the City of Chicago

MYRIAM ZRECZNY KASPER*
Deputy Corporation Counsel
SUZANNE M. LOOSE
Chief Assistant Corporation Counsel
DAVID PAUL HOLTKAMP
Chief Assistant Corporation Counsel
ELLEN W. MCLAUGHLIN
Assistant Corporation Counsel
2 N. LaSalle Street, Suite 580
Chicago, IL 60602
(312) 744-3564/742-5147
myriam.kasper@cityofchicago.org

Attorneys for Petitioner

*Counsel of Record

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