No. 19-357

IN THE

Supreme Court of the United States

CITY OF CHICAGO,

Petitioner,

v.

ROBBIN L. FULTON, JASON S. HOWARD, GEORGE PEAKE, AND TIMOTHY SHANNON,

Respondents.

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

BRIEF FOR *AMICI CURIAE* NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER, NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS, AND LEGAL AID CHICAGO IN SUPPORT OF RESPONDENTS

HENRY J. SOMMER
NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER
233 S. 6th St., Apt 1201
Philadelphia, PA 19106

G. ERIC BRUNSTAD, JR.
Counsel of Record
MELANIE C. MACKAY
SHRIRAM HARID
GREGORY T. NOORIGIAN
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999
eric.brunstad@dechert.com

Counsel for Amici Curiae

(Counsel continued)

TARA TWOMEY
NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS
2200 Pennsylvania Avenue NW
4th Floor
Washington, D.C. 20037

DAVID S. YEN
DANIEL P. LINDSEY
JAMES A. BRADY
MIRIAM HALLBAUER
LEGAL AID CHICAGO
120 S. LaSalle Street
Suite 900
Chicago, IL 60603

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

Amici curiae are three nonprofit organizations focused on protecting the rights of consumers in bankruptcy.

The National Consumer Bankruptcy Rights Center ("NCBRC") is a nonprofit organization dedicated to preserving the rights of consumer debtors and protecting the integrity of the bankruptcy system. NCBRC advances the interests of debtors, who often lack either the financial resources or exposure to the bankruptcy system to adequately protect their own rights in litigation. NCBRC files amicus briefs in cases of systemic importance to ensure that courts have a full understanding of the applicable bankruptcy laws, their underlying policies, and their effect on consumer debtors.

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a nonprofit organization consisting of more than 2,000 consumer bankruptcy attorneys throughout the United States. NACBA strives to educate the legal community about the uses and abuses of the consumer bankruptcy process and advocates on behalf of consumer debtors. NACBA and its members are frequently called to testify before Congress, and the organization has filed numerous amicus briefs in this Court and courts

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[1] No counsel for any party has authored this brief in whole or in part. No person other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. All parties have consented to the filing of this brief.

across the country in cases implicating the rights of consumer debtors.

Legal Aid Chicago provides free civil legal assistance to people who are living in poverty or otherwise vulnerable. Through litigation and other advocacy, Legal Aid Chicago strives to secure economic stability for its clients while addressing poverty's root causes. In addition to individual legal representation, Legal Aid Chicago advocates for underserved communities by combatting policies that contribute to poverty and inequality. Legal Aid Chicago's consumer attorneys practice extensively in bankruptcy court, and coordinate the volunteers who assist pro se debtors at the Bankruptcy Help Desk in the Northern District of Illinois. These experiences have provided Legal Aid Chicago with a deep understanding of the particular disadvantages and barriers low-income debtors face.

SUMMARY OF ARGUMENT

By operation of law, the commencement of a bankruptcy case creates a "bankruptcy estate" consisting of all of the debtor's property "wherever located and by whomever held." 11 U.S.C. §§ 541, 1306. The bankruptcy estate includes property that a creditor holds pending foreclosure at the time of the bankruptcy filing because, until the foreclosure process is completed, the debtor still owns the property. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203–05, 209–11 (1983). In turn, the bankruptcy court is vested with exclusive *in rem* jurisdiction over all property of the estate, which is constituted *in custodia legis*—in the custody of the

court. *See, e.g.*, *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447–48 (2004).

The filing of a bankruptcy case also triggers the automatic stay—a statutory injunction set out in section 362(a) of the Bankruptcy Code that generally bars debt collection activities against the debtor or the estate, and likewise prohibits creditors from exercising control over assets of the estate or the fixing of liens on those assets. 11 U.S.C. § 362(a); *see Bd. of Governors of Fed. Res. Sys. v. McCorp Fin., Inc.*, 502 U.S. 32, 39 (1991). In pertinent part, section 362(a) provides that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . (3) any act to obtain possession of property of the estate . . . or to exercise control over property of the estate; (4) any act to create, perfect, or enforce any lien against property of the estate; (5) any act to create, perfect, or enforce against property of the debtor any lien . . .; [and] (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case . . . ." 11 U.S.C. § 362(a). As explained in the legislative history, the stay is essential to the sound functioning of the bankruptcy process. *See* H.R. Rep. No. 95-595, at 340–41 (1977). With certain delineated exceptions, it arises in every bankruptcy case as a primary means to protect the debtor's property, the competing rights of creditors, the integrity and sound administration of the estate, and the exclusive jurisdiction of the bankruptcy court over property of the estate.

In this instance, Petitioner seized Respondents' vehicles shortly before they filed for relief under chapter 13 of the Bankruptcy Code. The question

presented is whether Petitioner's exercise of control over Respondents' vehicles violates section 362(a). *Id.* Petitioner contends that it does not because the word "act" as used in the section requires "affirmative" conduct, whereas the continued possession of vehicles constitutes merely "passive" activity. Petitioner's argument, however, presents a false dichotomy. For purposes of section 362, the "act" of holding onto property is as much an "act" as taking it—to take and to hold are both "acts" within the ordinary meaning of the term. Moreover, Petitioner's argument otherwise stands at war with the text, purpose, and history of section 362(a) as revealed by a straightforward and well-established example of its intended application: the stay applies not merely to the "affirmative" act of creating a lien by agreement on estate property, but also the "passive" activity of lien-creation by operation of law.

The weakness of Petitioner's argument is revealed by the Bankruptcy Code's treatment of "passively" created liens under section 362(a)(4). The Code defines the term "lien" to mean a "charge against or interest in property to secure payment of a debt . . . ." 11 U.S.C. § 101(37). The Code further recognizes several subcategories of liens, including "statutory lien[s]" and "security interests." 11 U.S.C. §§ 101(53), (51). The Code defines a "security interest" as a charge that arises by active, voluntary agreement between the debtor and the secured party, and a "statutory lien" as a charge that may arise passively by operation of law without the agreement of the debtor. *See* 11 U.S.C. §§ 101(51) (defining the term "security interest" as a "lien created by an agreement"), 101(53) (defining the term "statutory

lien" as a "lien arising solely by force of a statute on specified circumstances or conditions"); S. Rep. No. 95-989, 95th Cong. 2d Sess., at 27 (1978) (explaining 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" and stating that "[m]echanics', materialsmen's, and warehousemen's liens are examples"; likewise "[t]ax liens are also included in the definition of statutory lien"). Critically, it is clear that, once the bankruptcy case has commenced, the automatic stay prevents *both* kinds of liens from attaching to property of the estate. *See* S. Rep. No. 95-989, 95th Cong. 2d Sess., at 50 (section 362 "stays lien creation against property of the estate" because "to permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured"); *Collie v. Fergusson*, 281 U.S. 52, 55 (1930) (liens cannot attach to property in the custody of the court). It follows that Petitioner's argument that the stay of section 362(a)(4), which also contains the words "any act", applies only to "active" conduct cannot be true; otherwise the automatic stay would not prevent "passive" statutory liens from attaching to estate property.

In addition, Petitioner's position otherwise runs afoul of the core purposes underpinning the stay. One purpose is to protect the interests of creditors by preventing some from obtaining payment ahead of others. *See* S. Rep. No. 95-989, 95th Cong. 2d Sess., at 51. Notably, Petitioner's interpretation would thwart that purpose, allowing a subset of creditors—those who acquire liens passively—to gain financial advantage over those who cannot. Another purpose is

to give the financially strapped debtor a "breathing spell from his creditors." *See id.* at 54–55. Petitioner's interpretation—that the automatic stay does not prohibit a creditor's retention of seized property; instead the debtor must commence litigation against the creditor to recover it—requires debtors to devote scarce resources they often do not have to protect estate assets. Petitioner's approach is as unworkable as it is contrary to Congress' intentions—the whole point of the stay is to *enjoin* ongoing creditor interference.

Forcing the debtor to pursue expensive litigation to physically reclaim property that is legally in the custody of the court is both nonsensical and wasteful. In addition, Petitioner gains little by holding onto seized vehicles, while debtors lose much. In chapter 13 cases, the debtor must have enough income to formulate and fund a repayment plan, 11 U.S.C. § 1325(a)(6), and many debtors have great difficulty finding or keeping their jobs without their means of transportation. Debtors likewise are less able to fulfill familial duties, including transporting children and other family members to necessary appointments, care facilities, and schools. Adding insult to injury, it is well-documented that Petitioner's practice of imposing exorbitant fines and fees for vehicle-related violations, and then seizing the vehicles for failure to pay these fees and fines, disproportionally harms minorities and the indigent. For these reasons, as well as those offered by Respondents, the Court should affirm the decision below.

ARGUMENT

I. THE AUTOMATIC STAY IS FUNDAMENTAL TO THE BANKRUPTCY PROCESS AND ENSURES PROPER ADMINISTRATION OF THE BANKRUPTCY ESTATE.

As noted, the filing of a bankruptcy petition triggers the creation of a "bankruptcy estate" consisting of all of the debtor's property "wherever located and by whomever held . . . ." 11 U.S.C. § 541(a). This includes property of the debtor that a creditor seizes on the eve of bankruptcy, even though the property is otherwise legally in the creditor's possession pending foreclosure. *See Whiting Pools, Inc.*, 462 U.S. at 203–05, 209–11 (when a lienholder, including the IRS, seizes property, it remains property of the debtor pending foreclosure and becomes property of the estate upon the bankruptcy filing). As this Court has explained, "[t]he Bankruptcy Code provides secured creditors various rights . . . and these rights *replace* the protection afforded by possession." *Id.* at 207, 210–11 (emphasis added).

Critically, the creation of the estate is both substantively and jurisdictionally foundational. Bankruptcy jurisdiction is fundamentally *in rem*, with all property of the estate constituted in the court's custody. *See, e.g.*, *Hood*, 541 U.S. at 447–48; *Straton v. New*, 283 U.S. 318, 321 (1931) (the jurisdiction of the bankruptcy court "is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition"); *Gross v. Irving Tr. Co.*, 289 U.S. 342, 344–45 (1933). Thus, the filing of a bankruptcy case not only consolidates the debtor's property into a single legal entity—the bankruptcy estate—it likewise

places that property within the bankruptcy court's exclusive jurisdiction. *See Hood*, 541 U.S. at 447; *Straton*, 283 U.S. at 321 (bankruptcy jurisdiction "is exclusive"); *Gross*, 289 U.S. at 345; 28 U.S.C. § 1334(e) (vesting "exclusive" bankruptcy jurisdiction over property of the estate).

In turn, a debtor's obligations are treated as "claims" against the bankruptcy estate, and a creditor holding a claim is entitled to file a proof of claim with the bankruptcy court. 11 U.S.C. §§ 101(5), 101(10), 501(a), 502; Fed. R. Bankr. P. 3001, 3002; *see Gardner v. New Jersey*, 329 U.S. 565, 574 (1947); *Katchen v. Landy*, 382 U.S. 323, 336 (1966) (bankruptcy "converts the creditor's legal claim into an equitable claim to a pro rata share of the *res*"). Because creditor *possession* of property does not equate to creditor *ownership*, *Whiting Pools*, 462 U.S. at 210–11, a creditor must await and abide the bankruptcy proceedings to resolve the proper disposition of that property.

In light of these provisions, together with the ancient principle of non-interference with property in the custody of a federal court, *see, e.g.*, *Straton*, 283 U.S. at 321 (liens cannot be created against property in the custody of the court); *Collie*, 281 U.S. at 55 (same), it is unsurprising that the filing of a bankruptcy petition also triggers an "automatic stay"—the statutory injunction set out in section 362(a) of the Bankruptcy Code that generally bars debt collection activities against debtors and prohibits creditors from exercising control over the debtors' assets or creating liens against their property. 11 U.S.C. § 362(a); *see McCorp Fin., Inc.*, 502 U.S. at 39

("The filing of a bankruptcy petition operates as an automatic stay of several categories of judicial and administrative proceedings" to obtain possession or ownership of a debtor's property outside the bankruptcy process). Once again, section 362(a) provides in relevant part that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . (3) any act to obtain possession of property of the estate . . . or to exercise control over property of the estate; (4) any act to create, perfect, or enforce any lien against property of the estate; (5) any act to create, perfect, or enforce against property of the debtor any lien . . .; [and] (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case . . . ." 11 U.S.C. § 362(a).[2]

Notably, the provisions of the automatic stay apply in nearly every bankruptcy case and are foundationally critical to the operation of the bankruptcy process. *See* H.R. Rep. No. 95-595, at 340–41 (1977); 11 U.S.C. § 103(a) (applying the provisions of chapter 3 of the Bankruptcy Code, including section 362, to cases under Chapters 7, 11, 12, and 13 of the Code); *see also id.* § 362(c)(4) (providing that, in limited circumstances, the automatic stay does not go into effect). As is relevant here, these provisions protect the interests of debtors by, among other things, providing a "breathing spell from . . .

[2] The question presented concerns the proper interpretation of section 362(a)(3), not section 362(a)(1) or (a)(2), which involve distinct kinds of proscribed debt-collection activities and do not contain the words "any act". There is no doubt, for example, that a wage garnishment proceeding must be halted upon the filing of a bankruptcy petition.

creditors." S. Rep. No. 95-989, 95th Cong. 2d Sess., at 54. They protect the creditors' interests, in part, by preventing some creditors from obtaining payment ahead of others, prescribing instead an orderly process "under which all creditors are treated equally." *Id.* at 49. In particular, section 362 "stays lien creation against property of the estate" because "to permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured." *Id.* at 50. These provisions likewise protect the integrity of the estate and the bankruptcy court's exclusive jurisdiction by preventing the alteration of, or interference with, the estate's interest in the debtor's property. Quite clearly, the provisions of the automatic stay are both central and foundational to the operation of the bankruptcy process as a whole.

II. THE AUTOMATIC STAY DOES NOT DISTINGUISH BETWEEN "PASSIVE" AND "AFFIRMATIVE" ACTS, AND PETITIONER'S DISTINCTION IS A FALSE DICHOTOMY.

Petitioner contends that its "passive" act of continuing to hold Respondents' vehicles does not violate the automatic stay on the theory that only "active" conduct is proscribed. Petitioner's theory, however, is at war with the plain meaning of the term "act." As ordinarily defined, the word means not only "to take action; to do something," but also to "behave in the way specified." *See* OXFORD ENGLISH DICTIONARY (Oxford 3d ed. 2010) (defining the term in this way). The activity of holding onto property that belongs to another is plainly "behaving in a way" that exercises "control" over that property, which clearly

falls within the statutory prohibition. More importantly, Petitioner's overly narrow reading cannot be true because, if it were, it would effectively rule out one of the statute's clearly intended applications: "passive" lien creation by operation of law.

Section 362(a) of the Bankruptcy Code prohibits not simply "(3) *any act* . . . to exercise control over property of the estate," but also "(4) *any act* to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a) (emphasis added). Where, as here, both subsections of the same statute use the same phrase "any act," it should be construed to have the same meaning. *See Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears."); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 478–79 (1992) (acknowledging the "basic canon . . . that identical terms within an Act bear the same meaning"). Under Petitioner's narrow reading of the term "act," so-called "passive" lien creation that simply happens by operation of law would not be covered. Yet it is clear that, subject to certain delineated exceptions, Congress intended *all* lien creation to be covered, whether passive or not. *See, e.g.*, *In re Birney*, 200 F.3d 225, 227–28 (4th Cir. 1999) (automatic stay prohibited attachment of lien arising by operation of law); *In re Avis*, 178 F.3d 718, 722–24 (4th Cir. 1999) ("passive" attachment of lien arising by operation of law is an "act" proscribed by the automatic stay); *In re Fuller*, 134 B.R. 945, 947 (B.A.P. 9th Cir. 1992) ("Under Section 362 . . . 'act' has been interpreted broadly, so that the automatic stay prevents the

creation or perfection of a lien, even by 'operation of law' where no overt act is required.").[3] What this reveals is that Petitioner's reading of the provision is utterly alien to what Congress had in mind when it enacted section 362(a).

As noted at the outset, many liens attach to property automatically without anyone having to do anything. These include "statutory liens" that characteristically arise by operation of law, such as tax liens and the like, which may arise upon the occurrence of certain triggering events without the creditor having to take any affirmative steps to impose the lien. 11 U.S.C. §§ 101(51) (defining the term "security interest" as a "lien created by agreement"), 101(53) (defining the term "statutory lien" as a "lien arising solely by force of a statute on specified circumstances or conditions"). They are created "passively" when the circumstances necessary for their creation arise, which may or may not require any affirmative creditor conduct after the debtor commences a bankruptcy case. S. Rep. No. 95-989, 95th Cong. 2d Sess., at 27 (1978) (explaining 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"). "Statutory liens" are thus distinct from "security interests," which arise by agreement

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[3] *But see In re Garcia*, 740 F. App'x 163 (10th Cir. 2018), *cert. denied sub nom. Davis v. Tyson Prepared Foods, Inc.*, 139 S. Ct. 2614 (2019) (holding that "passive" lien creation did not violate the automatic stay). For the reasons explained herein, the Tenth Circuit's decision in *Garcia* is wrong. Among other things, it conflicts with this Court's precedents establishing that liens cannot attach to property in the custody of the court, which is the rule section 362(a)(4) codifies.

between the debtor and the secured party. *See* 11 U.S.C. § 101(51) (defining the term "security interest" as a "lien created by agreement").

The statutory lien at issue in a recent decision of the Tenth Circuit illustrates how such liens may arise without the creditor having to take any "affirmative" steps to acquire it. *See In re Garcia*, 740 F. App'x 163 (10th Cir. 2018), *cert. denied sub nom. Davis v. Tyson Prepared Foods, Inc.*, 139 S. Ct. 2614 (2019). *Garcia* concerned a Kansas statute that automatically grants employers who pay workers' compensation benefits a lien on any tort recovery the injured employee later receives. *See* KAN. STAT. ANN. § 44–504(b). Because the injured employee in *Garcia* filed for bankruptcy, her tort recovery belonged to her bankruptcy estate at the time the employer's lien arose. Because the employer did not have to do anything to obtain the lien, the Tenth Circuit concluded that it arose "passively," and therefore did not violate section 362. In spite of this Court's precedents establishing that liens cannot attach to property in the custody of the court, the Tenth Circuit ruled that the lien was proper owing to its "passive" nature.

Notably, section 362(a)(4) prevents not simply the creation of a lien by agreement (*i.e.*, a "security interest"), it prevents the creation of "any lien" against property of the estate, including statutory liens. *See* 11 U.S.C. § 101(37) (defining the term "lien" to mean a "charge against or interest in property to secure payment of a debt"); S. Rep. No. 95-989, 95th Cong. 2d Sess., at 27 (1978) (explaining that, in addition to a security interest, a statutory lien is "another kin[d] of

lien"). Indeed, section 362(a) *must* apply generally to statutory liens that arise "passively" by operation of law, otherwise the exception to the automatic stay set forth in section 362(b)(18) for certain state law statutory tax liens would make no sense. *See* 11 U.S.C. § 362(b)(18) (excepting from the scope of section 362(a) the creation or perfection of certain state law statutory tax liens, including those that may arise simply with the passage of time if the relevant tax is not paid); *Avis*, 178 F.3d 718, 723 ("Because § 362(b)(18) explicitly addresses the perfection of statutory tax liens—exempting from stay only state and local property tax liens and not federal income tax liens—the conclusion to be drawn is that the perfection of federal tax liens was left to be stayed by § 362(a)."). Because many statutory liens arise automatically without the creditor having to do anything, it follows that section 362(a)(4) cannot be limited to "affirmative" conduct in the way Petitioner contends.

The prohibition against lien creation simply codifies the ancient principle that liens cannot be created against property in the custody of the court. *See, e.g.*, *Straton*, 283 U.S. at 321 (liens cannot be created against property in the custody of the court); *Collie*, 281 U.S. at 55 (same); *see also Hood*, 541 U.S. at 447–48; *Straton*, 283 U.S. at 321 (the jurisdiction of the bankruptcy court "is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition"); S. Rep. No. 95-989, 95th Cong. 2d Sess., at 50 (section 362 "stays lien creation against property of the estate" because "[t]o permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of

unsecured"). And there is no reason to believe that Congress intended this ancient principle to apply only to liens created by "affirmative" conduct. Indeed, the Bankruptcy Code is written in a way that makes it clear that, subject to certain express exceptions set forth in section 362(b), *all* lien creation is proscribed whether "passive" or not. Not only does this protect the integrity of the estate, it ensures non-interference with the bankruptcy court's exclusive jurisdiction and control over property of the estate. *See Gross*, 289 U.S. at 344–45; 28 U.S.C. § 1334(e) (vesting "exclusive" bankruptcy jurisdiction over property of the estate).

Tellingly, nothing in the text of section 362(a) distinguishes "active" from "passive" behavior, and there is no reason to read into the text the gloss that Petitioner prefers. On the contrary, there is every reason to reject Petitioner's reading as not only at war with the plain text of the provision, but also its purpose. As noted, the legislative history explains that one of the key purposes of section 362(a)(4) is to prevent some creditors from obtaining payment ahead of others in order to ensure as much as possible a process "under which all creditors are treated equally." S. Rep. No. 95-989, 95th Cong. 2d Sess., at 49. Petitioner's proffered interpretation would permit the opposite result, allowing creditors to jump the line so long as their lien rights arise "passively"—a result at odds with Congress's carefully crafted system. *See* S. Rep. No. 95-989, 95th Cong. 2d Sess., at 50 (section 362 "stays lien creation against property of the estate" because "[t]o permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured").

The better view is the majority approach, which leverages the injunctive authority of the automatic stay to prevent the passive sabotage of the bankruptcy process by, for example, placing "the onus to return estate property . . . upon the possessor" rather than on the debtor to recover it. *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996). Permitting creditors to retain or create liens on property so long as their activities are deemed "passive" in nature would substantially impair the current bankruptcy system. Moreover, Petitioner's interpretation would burden the courts with the difficult task of discerning whether in a particular case a lien indeed arose "passively," or whether the creditor engaged in sufficiently "affirmative" acts to trigger the automatic stay—a test that is far from clear or simple to apply. For example, if a debtor demands return of the property held by the creditor, is the creditor's statement that it will not return it a "passive" act? If the creditor physically bars the debtor from obtaining access to the property, is that a "passive" act? Given that Congress made no distinction between "active" and "passive" conduct in crafting the provisions of the automatic stay, this burden is unwarranted. For these reasons, Petitioner's proffered interpretation of the Bankruptcy Code should be rejected.

III. PETITIONER'S INTERPRETATION OF THE BANKRUPTCY CODE IMPOSES UNDUE BURDENS ON DEBTORS, THE COURTS, AND OTHER CREDITORS.

In addition to ensuring the orderly and fair administration of the bankruptcy estate, Congress also created the automatic stay to, among other

things, give the debtor a "breathing spell from his creditors." S. Rep. No. 95-989, 95th Cong. 2d Sess., at 54. Courts have long recognized this "underlying purpose . . . which is to alleviate the financial strains on the debtor." *In re Del Mission Ltd.*, 98 F.3d at 1151; *see also In re Weber*, 719 F.3d 72, 76 (2d Cir. 2013) (recognizing that "enabling the debtor to get . . . relief and [a] fresh start . . . are among the goals of the bankruptcy regime"). Petitioner's interpretation of the Bankruptcy Code would plainly contravene this purpose by foisting upon the debtor the "burden of undertaking a series of adversary proceedings to pull together the bankruptcy estate," *In re Weber*, 719 F.3d at 80—an obligation that would increase, rather than alleviate, the debtor's financial stress. Relatedly, Petitioner's proffered interpretation would also increase the burdens on the courts, requiring them to process a flood of costly adversary proceedings, which, in turn, would entail additional court hearings, expense, and delays. The result of these proceedings would be the turnover of the property as required by *Whiting Pools*. Thus, whatever benefit Petitioner's approach may provide to secured creditors who prefer holding onto the debtor's property as a form of leverage, any benefit is swiftly overwhelmed by the costs on debtors, other creditors, and the court system itself. It is likewise fundamentally unfair.

In reality, the expense of commencing and pursuing adversary proceedings to regain possession of vehicles will be cost-prohibitive for many debtors. Research demonstrates that many individuals struggle to shoulder even relatively minor unexpected expenses. For example, in 2018, twenty-seven percent of adults reported that they would need to borrow

funds or sell assets to cover an unexpected expense of $400, and twelve percent reported that they would not be able to cover the expense at all. *See* Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2018* (May 2019), available at https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf. Similarly, one-fourth of all adults reported that they forwent necessary medical care in 2018 because they were unable to afford the cost of that care. *Id.* Certainly there is little reason to believe that debtors in bankruptcy characteristically have the resources to fund costly litigation with secured creditors to regain their property.

Moreover, in the specific context of repossessed vehicles, Petitioner's approach would burden debtors with other costs. A creditor's retention of the debtor's vehicle will often deprive the debtor of an indispensable means of transportation, potentially leading to the loss of employment, inability to obtain child care, and other problems. *See* Jessica Silver-Greenberg and Michael Corkery, "The Car Was Repossessed, but the Debt Remains," N.Y. Times (June 18, 2017) (recognizing that "[w]ithout a car, [debtors] have no way to get to work or to doctors" and that "[w]ith their low credit scores, buying or leasing a new car is not an option"). And without employment and the income it provides, a debtor may not pursue a repayment plan under chapter 13, which requires a source of income.

An illustrative case is *In re Cowen*, 849 F.3d 943 (10th Cir. 2017). There a creditor repossessed the

debtor's trucks shortly before the debtor filed for bankruptcy relief. *Id.* at 945–46. Because the debtor's employment turned on his ability to use these trucks, the creditor's refusal to return the trucks left the debtor with "no regular income, which rendered him ineligible for Chapter 13 relief," ultimately causing "the bankruptcy court [to] dismiss[] the underlying bankruptcy case." *Id.* at 946–47. As *Cowen* aptly demonstrates, Petitioner's interpretation of the Bankruptcy Code creates a "heads I win, tails you lose" approach, with the debtor always on the losing side: although the debtor may file for chapter 13 relief after his car is repossessed, the debtor's inability to regain possession of his car may well render him unable to earn income in order to make the payments required under his chapter 13 plan. Not only is this detrimental to the debtor, it would also harm the debtor's other creditors who would have received payments under the debtor's plan. In addition, even in cases in which the debtor has the resources to pursue litigation against the secured creditor to recover property of the estate, the added expense will only reduce funds otherwise available to pay other creditors' claims. Petitioner's approach should be rejected because it assumes that Congress intended to harm the very parties Congress sought to benefit by enacting the provisions of the automatic stay.

IV. PETITIONER'S APPROACH WOULD HAVE A DISPROPORTIONATELY NEGATIVE IMPACT ON INDIGENT DEBTORS.

Finally, Petitioner's interpretation would, if accepted, cause undue and unfair harm to indigent debtors. Petitioner's fines for parking and related

traffic violations, culminating in the impoundment of vehicles, systematically and disproportionately affect the poor. If not promptly paid, Petitioner's fines ratchet upward quickly and dramatically. For example, Petitioner imposes substantial fines for routine parking and compliance violations, such as a $200 fine for failing to use car stickers.[4] *See* City of Chicago, *Parking, Compliance, and Automated Enforcement Violations*, available at https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/general_parking_ticketinformation/violations.html. Many vehicle-related fines double if they remain unpaid for 25 days after liability is determined. *See* City of Chicago, *Vehicle FAQs*, available at https://www.chicago.gov/city/en/depts/ah/supp_info/faq/vehicle_faqs.html.[5] Once a vehicle has accumulated three or more violations, the City may immobilize or "boot" it. *Id.* The fee for removing a boot is $100. *See* City of Chicago, *Booted Vehicle Information*, available at https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/boot_tow_information/booted_vehicle_information.html. If the boot fee is not paid within 24 hours (or 48 hours if the motorist

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[4] The car sticker itself costs $90.88. https://www.chicityclerk.com/city-stickers-parking/about-city-stickers. And the fee for renewing just 30 days late is $60.

[5] The City of Chicago recently revised the penalty for failing to pay the $200-no sticker fee; now, rather than doubling the fine, the City imposes a $50 late fee, but motorists can still accrue a 22% collection fee. *See* Elliot Ramos, Chicago City Council Approves Ticket And Debt Collection Reforms (Sept. 2019), available at https://www.npr.org/local/309/2019/09/19/762057985/chicago-city-council-approves-ticket-and-debt-collection-reforms. However, as noted, other vehicle-related fines continue to double.

requests an extension), the vehicle is impounded: a tow fee of $150 is then applied, along with a storage fee of $20 per day for the first five days, and $35 per day for each day thereafter. *Id.* After 21 days of storage, the vehicle is characteristically sold for scrap. *Id.*

Accordingly, a $200 fine for a vehicle-related infraction can quickly balloon to a fine exceeding $1,000, which if not paid within 21 days after impoundment can result in the car being destroyed. Low-income people are often the targets of these vehicle-related fines because they cannot afford to park in private lots or to pay notoriously expensive street charges, which are higher in Chicago than almost any other city. *See* Shelby Bremer, *Chicago Drivers Pay More for On-Street Parking Than Other Cities: Study* (Jul. 2017). Petitioner has also been found to ticket cars in non-white areas disproportionately. *See* Elliott Ramos, Greta Johnson, *When It Snows, Chicago Police Ticket Minority Communities More* (Feb. 2018) ("Drivers and property owners in just a few South Side neighborhoods get hit with a disproportionate number of winter-related tickets."), available at https://www.wbez.org/shows/wbez-news/when-it-snows-chicago-police-ticket-minority-communities-more/aaf5175b-aff1-418b-aef5-31706f4ff677.

Moreover, Petitioner's fines have the effect of helping prevent individuals from escaping poverty and further entrenching the dynamics that gave rise to their poverty in the first place. As one author has put it, "[l]ow income people are punished with penalties that others can pay to avoid." Aditi Singh,

Driven Into Debt: The Importance of Reforming Wealth-Based Driver's License Suspension (May 2018), available at http://www.chicagoappleseed.org/driven-into-debt/. In 2017, for example, the City booted more than 67,000 vehicles for unpaid tickets, impounded 20,000, and sold 8,000 for *de minimis* amounts. *See* Elliott Ramos, *Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt*, WBEZ News (Jan. 7, 2019), available at https://www.wbez.org/shows/wbez-news/chicago-seized-and-sold-nearly-50000-cars-over-tickets-since-2011-sticking-owners-with-debt/1d73d0c1-0ed2-4939-a5b2-1431c4cbf1dd ("*WBEZ News*"). None of the sale proceeds were shared with the vehicle owners, the majority of whom came from low-income and minority communities on Chicago's South and West Sides. *Id.* Petitioner's regime, marked by high and rapidly escalating fines, thus further traps the city's poor in a quagmire of indebtedness and poverty. *See* Aditi Singh, *Driven Into Debt: The Importance of Reforming Wealth-Based Driver's License Suspension* (May 2018), available at http://www.chicagoappleseed.org/our-blog/driven-into-debt; Melissa Sanchez and Sandhya Kambhampati, *How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy*, ProPublica Illinois (Feb. 27, 2018), available at https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy.

Petitioner's approach also severely undervalues the vehicles in question and resigns them to their least optimal use—they are sold for scrap. In contrast, the same vehicles are characteristically worth far more in the debtors' hands. Impounded cars are *invariably* sold for scrap at prices that do not reflect their age or

model: even new cars are sold to towing companies for a few hundred dollars or less, and Petitioner does not even confirm a vehicle's condition before selling it for scrap. *See supra* Elliott Ramos, *WBEZ News*. This approach results in pure deadweight loss—the very kind bankruptcy seeks to avoid. In sum, Petitioner's construction of the Bankruptcy Code would help perpetuate an already draconian system of fines that disproportionately affects the poor while effectively denying them the very bankruptcy relief Congress intended them to have.

CONCLUSION

For the foregoing reasons, as well as those offered by Respondents, this Court should affirm the judgment below.

Respectfully submitted,

HENRY J. SOMMER
NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER
233 S. 6th Street, Apt. 1201
Philadelphia, PA 19106

TARA TWOMEY
NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS
2200 Pennsylvania Avenue NW
4th Floor
Washington, D.C. 20037

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G. ERIC BRUNSTAD, JR.
Counsel of Record
MELANIE C. MACKAY
SHRIRAM HARID
GREGORY T. NOORIGIAN
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999
eric.brunstad@dechert.com

DAVID S. YEN
DANIEL P. LINDSEY
JAMES A. BRADY
MIRIAM HALLBAUER
LEGAL AID CHICAGO
120 S. LaSalle Street
Suite 900
Chicago, Illinois 60603