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

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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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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,

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September 19, 2022

APPENDIX

APPENDIX A

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. 20 C 1266, Andrea R. Wood, *Judge*.

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 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-

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[1] Melissa Sanchez, *Chicago Mayor Lori Lightfoot Proposes Further Traffic Ticket Reforms to Help Low-Income Motorists*, ProPublica (Sept. 22, 2021, 5:10 PM), https://www.propublica.org/article/chicago-mayor-lori-lightfoot-proposes-further-traffic-ticket-reforms-to-help-low-income-motorists.

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 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

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[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.

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 satisfies all the requirements for discharge under 11 U.S.C. § 522(f) if her lien is considered judicial, so the classification is decisive.

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[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.

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]

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

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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 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)).

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, 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 inperson 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 twentyfour 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

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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.

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.

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]

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

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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 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).

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).

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.

APPENDIX B

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

_____

No. 20 C 0372

_____

THE CITY OF CHICAGO,
Appellant
v.
CUPREE HOWARD,
Appellee

_____

No. 20 C 1266

_____

THE CITY OF CHICAGO,
Appellant
v.
MARCELLA M. MANCE,
Appellee

_____

MEMORANDUM OPINION AND ORDER

ANDREA R. WOOD, District Judge

Appellees Cupree Howard and Marcella M. Mance each filed separate petitions for Chapter 7 bankruptcy

relief. Each Appellee also filed in their respective bankruptcy proceeding a motion to avoid a lien that Appellant City of Chicago ("City") held on their automobile. In both proceedings, the Bankruptcy Courts granted the motions, finding that the liens the City obtained by immobilizing and impounding Appellees' vehicles were avoidable judicial liens under 11 U.S.C. § 522(f)(1)(A). The City now appeals both orders. For the reasons that follow, the Bankruptcy Courts' orders are affirmed.

BACKGROUND

The facts underlying Appellants' motions to avoid the liens are undisputed and, unless otherwise noted, taken from the respective Bankruptcy Courts' decisions.

Appellee Howard filed a Chapter 7 bankruptcy petition on August 9, 2019. (Suppl. to Bankruptcy Appeal, Ex. at 117, *The City of Chicago v. Howard*, No. 20-cv-00372 (N.D. Ill. Feb. 18, 2020), Dkt. No. 6-2.) His Schedules A/B and C listed an automobile with a value of $575 and claimed an exemption of $575 for that vehicle. In his Schedule E/F, Howard listed a claim held by Appellant City for unpaid parking tickets in the amount of $8,000. Similarly, Appellee Mance filed for Chapter 7 bankruptcy relief on November 20, 2019. (Suppl. to Bankruptcy Appeal, Ex. at 35, *The City of Chicago v. Mance*, No. 20-cv-01266 (N.D. Ill. Mar. 23, 2020), Dkt. No. 7-2.). She listed an automobile worth $3,000 in her Schedule A/B

and claimed a $2,400 exemption for that vehicle in her Schedule C. At the time of her petition, Mance owed the City $12,000 for moving and parking violations. The City had impounded both Appellees' vehicles in connection with their unpaid tickets prior to each Appellee's bankruptcy filing and the City remained in possession of the vehicles as of the date of their petitions. (Appellant's Consolidated Br. at 3, *Howard*, 20-cv-00372 (Sept. 7, 2020); *Mance*, 20-cv-01266 (Sept. 7, 2020).)

In their respective bankruptcy proceedings, each Appellee filed a motion to avoid the possessory lien the City claimed over their automobiles. Those liens arose pursuant to a vehicle immobilization program created by § 9-100-120 of the Municipal Code of Chicago ("M.C.C."). Specifically, after following the procedures set out in the ordinance, the City is permitted to immobilize a vehicle whose owner "has accumulated (i) three or more final determinations of liability or (ii) two final determinations which are more than one year past the date of issuance" for certain traffic and parking violations. M.C.C. § 92-100-120(b). Once a vehicle is immobilized by the City, that vehicle is "subject to a possessory lien in favor of the [C]ity in the amount required to obtain release of the vehicle." M.C.C. § 92-100-120(j).

According to Appellees, because the City's ability to

impound[1] their vehicles under M.C.C. § 92-100-120 is conditioned on liability determinations made in quasi-judicial administrative proceedings, its liens on Appellees' automobiles are judicial liens that may be avoided under 11 U.S.C. § 522(f)(1)(A). In response, the City argues that because it obtained its liens automatically upon its immobilization of Appellees' vehicles, the liens are statutory liens that cannot be avoided. Both Bankruptcy Courts determined that the City's lien resulting from immobilization was a judicial lien and ruled in favor of the respective Appellee. The City has appealed those determinations.[2] The sole issue on appeal is whether the lien the City obtains from immobilizing a vehicle is a judicial lien or a statutory lien.

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[1] The City's vehicle immobilization "provide[s] for immobilizing any eligible vehicle located on the public way or any city-owned property by placement of a restraint in such a manner as to prevent its operation" but also encompasses "an immediate tow" in certain circumstances. M.C.C. § 92-100-120(a). Further, an immobilized vehicle may subsequently be towed and impounded if the immobilizing device "has not been released within 24 hours of its placement." *Id.* § 92-100-120(c). Thus, even though the City's liens on Appellees' vehicles arose pursuant to a vehicle immobilization program, the City eventually towed and impounded both vehicles.

[2] The *Mance* appeal was initially assigned to a different court but was reassigned to this Court as a related case to the *Howard* appeal.

DISCUSSION

Federal district courts have jurisdiction to review bankruptcy court decisions pursuant to 28 U.S.C. § 158(a). When considering a bankruptcy appeal, a district court reviews the bankruptcy court's findings of fact for clear error while its conclusions of law are reviewed de novo. *Stamat v. Neary*, 635 F.3d 974, 979 (7th Cir. 2011); *In re Brittwood Creek*, LLC, 450 B.R. 769, 773 (N.D. Ill. 2011).

The Bankruptcy Code allows a debtor to avoid a lien that impairs a debtor's exemption when the lien is a "judicial lien." 11 U.S.C. § 522(f)(1)(A). A "judicial lien" is defined by the Bankruptcy Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." *Id.* § 101(36). By contrast, a "statutory lien" is defined as a "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." *Id.* § 101(53). As these definitions make clear, "[j]udicial liens and statutory liens are mutually exclusive." *In re Wigfall*, 606 B.R. 784, 787 (N.D. Ill. 2019). To determine the nature of a particular lien, the key question is "whether it arises solely by force of statute, or whether it results from some type of judicial process or proceeding." *In re Schick*, 418 F.3d 321, 324 (3d Cir. 2005).

To begin, the Court first considers the statutory scheme by which Appellees' automobiles were impounded. Illinois law gives municipalities and counties the right to "provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations[,] automated traffic law violations[,] and automated speed enforcement system violations." 625 ILCS 5/11-208.3(a). The City ordinances at issue here were established pursuant to that authority. *See In re Peake*, 588 B.R. 811, 817–21 (N.D. Ill. 2018), *aff'd sub nom. In re Fulton*, 926 F.3d 916 (7th Cir. 2019). Under M.C.C. § 9-100-020(a):

> The violation of any provision of the traffic code prohibiting or restricting vehicular standing or parking, or establishing a compliance, automated speed enforcement system, or automated traffic law enforcement system violation, shall be a civil offense punishable by fine, and no criminal penalty, or civil sanction other than that prescribed in the traffic code shall be imposed.

Once a vehicle's owner is given notice of a violation, "a vehicle owner is granted the opportunity to contest the violation either in person at a hearing or by way of mail correspondence." *Peake*, 588 B.R. at 818 (citing M.C.C. §§ 9-100-055, 070, 080). "If the vehicle owner loses or otherwise does not contest the violation, a determination of liability is entered." *Id.*

(citing M.C.C. § 9-100-090). A losing vehicle owner is entitled to appeal their liability determination under Illinois's Administrative Review Law, 735 ILCS 5/3-101 *et seq*. *Peake*, 588 B.R. at 818. "If administrative review of the decision is not sought or is not fruitful for the vehicle owner, the determination of liability becomes final." *Id.* (citing M.C.C. § 9-100-100). At the point a liability determination becomes final, it "constitute[s] a debt due and owing to the [C]ity." M.C.C. § 9-100-100(b).

As the language of the Illinois statute and the City's ordinance makes clear, these final determinations of liability for certain vehicular, parking, and traffic violations are the product of an "administrative adjudication" system. 625 ILCS 5/11-208.3(a); M.C.C. § 9-100-101(a). The Seventh Circuit has held that these final determinations of liability are "money judgments." *Fulton*, 926 F.3d at 931.[3] And where a vehicle owner has the requisite number of unpaid final determinations of liability under M.C.C. § 9-100-120(b), the City may resort to the immobilization procedures available under that Section. M.C.C. § 9-

[3] *Fulton*'s holding that the final determinations of liability were money judgments arose in the context of the Seventh Circuit's analysis of whether those determinations were excepted under 11 U.S.C. § 362(b)(4) from the Bankruptcy Code's automatic stay provision. *Fulton*, 926 F.3d at 929–31. Nonetheless, this Court sees no reason why Fulton's analysis as to the character of the final determinations of liability would not apply in the present context. Nor does the City dispute that those final determinations of liability are judgments.

100-100(b). But accumulating multiple unpaid final determinations of liability does not automatically allow the City to immobilize a vehicle. Rather, that occurrence sets in motion a separate administrative process whereby the City first sends the vehicle's owner a "notice of impending vehicle immobilization." M.C.C. § 9-100-120(b). Upon receipt of the notice, the owner has the option to pay the amounts owed within 21 days or challenge the notice by requesting a hearing in which the owner can present evidence that would disprove liability. *Id.* "Only after this process is completed can the vehicle be immobilized." *Wigfall*, 606 B.R. at 789. And once the vehicle is immobilized, the City holds a possessory lien on that vehicle. M.C.C. § 9-100-120(j).

Despite its own acknowledgment that the final determinations of liability preceding the lien created by immobilization result from administrative adjudications, the City nonetheless contends the lien is not "obtained by" the proceedings resulting in the liability determinations. It emphasizes that the definition of judicial lien in 11 U.S.C. § 101(36) requires that the lien be "obtained by" the judgment. According to the City, the phrase "obtained by" requires that the judgment itself either is a lien or becomes a lien. By contrast, here, the City argues that once each individual final determination of liability underlying the immobilization of Appellees' vehicles was made, the administrative proceeding was over. Only later, when each Appellee accumulated the requisite number of unpaid final determinations

of liability, was the City entitled without further adjudicative proceedings to immobilize their vehicles and obtain its liens. Thus, the City asserts that there is a disconnect between the administrative adjudications resulting in the final determinations of liability and the immobilization of Appellees' vehicles, such that the two processes are separate. When the immobilization procedure is properly viewed separately, the City argues, it is clear that the lien arises automatically upon the fulfillment of certain conditions—accumulation of multiple unpaid final determinations of liability and the act of immobilization—and therefore the resulting lien is a statutory lien.

The City's argument ignores the separate administrative process to which it must adhere before immobilizing a vehicle—namely, the issuance of a notice of impending immobilization and the vehicle owner's right to challenge the notice in a hearing. *See 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."); *In re Beck*, No. 15-29541-svk, 2016 WL 489892, at * (E.D. Wis. Feb. 5, 2016) ("[T]he existence of [administrative] procedures in the statutory scheme supports the conclusion that [the] lien against the Debtor is a judicial lien, not a statutory lien."). Regardless, the Court concludes that the City's interpretation of the "obtained by" language as requiring a direct link between the final determinations of liability and the lien is entirely too

narrow. It is not necessary that the instrument embodying a final determination of liability expressly create a lien; it is enough that the City's ability to immobilize a vehicle and thus obtain a lien is dependent on prior judicial action. Put differently, because the lien is based on the combined effect of a certain number of judgments, it is obtained by those judgments.[4] *See id.* at 323 ("[A] statutory lien is only one that arises automatically and ***is not based*** on . . . judicial action." (emphasis added) (quoting H.R. Rep. No. 95-595 (1977))); *see also In re Cunningham*, 478 B.R. 346, 350 (N.D. Ind. 2012) ("[T]he nature of a lien as either a 'judicial lien' or a 'statutory lien' is determined by means of the manner in which the lien arises originally . . . .").

Moreover, the City's narrow interpretation of the supposed plain language meaning of "obtained by" is undermined by the Supreme Court's interpretation of

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[4] The Court recognizes that, in certain circumstances, not all liens created by or based on judgments are necessarily judicial liens. For example, the Third Circuit found that a lien created by a mere ministerial act that had the force and effect of a civil judgment was nonetheless a statutory lien when the underlying debt was not sufficiently connected to any form of judicial process or proceeding. *See Schick*, 418 F.3d at 325–26 (finding a statutory lien where the lien was established by superior court clerk docketing a certificate of debt on the record of judgments because "the mere act of docketing a debt by the [c]lerk . . . as part of his ministerial duties is insufficient to" create a judicial lien). Those circumstances are not present here, however, where there was a full quasi-judicial administrative proceeding underlying the judgments upon which the City's liens are based.

the phrase in a different context. In interpreting a provision in the Bankruptcy Code prohibiting the discharge of debts "to the extent obtained by . . . false pretenses, a false representation, or actual fraud," 11 U.S.C. § 523(a)(2)(A), the Supreme Court recognized that there is an "element of causation inherent in the phrase 'obtained by.'" *Field v. Mans*, 516 U.S. 59, 66 (1995). Subsequently, the Supreme Court stated that in cases of actual fraud, the phrase encompassed "any debts 'traceable' to [a] fraudulent conveyance." *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581, 1589 (2016); *see also id.* at 1591 (Thomas, J., dissenting) ("[T]he plain meaning of the phrase 'obtained by' . . . has an 'inherent' 'element of causation,' and refers to those debts 'resulting from' or traceable to' fraud." (quoting *Field*, 516 U.S. at 59, 61, 64, 66)). And here, the City's ability to immobilize a vehicle is certainly traceable to the final determinations of liability. While the City attempts to distinguish *Husky* by stating that it involved a different statute and different facts and circumstances than those here, that does nothing to detract from the Supreme Court's recognition that the phrase "obtained by" is more expansive than the City's interpretation.

This Court's conclusion that the liens at issue are judicial liens because of their basis in prior judicial action is reinforced by the definition of statutory lien. Specifically, a statutory lien is defined as "arising ***solely*** by force of a statute on specified circumstances or conditions" and does not include a judicial lien even if the lien "is provided by or is dependent on a statute"

or "made fully effective by statute." 11 U.S.C. § 101(53) (emphasis added). For example, a mechanic's lien, identified by Congress as a "prime example of a statutory lien," is a lien that "attaches by statute to improved property from the date that payment for labor and materials to make the improvement is due. No judicial administrative, or other process must be followed before the claimant obtains the lien." *In re Wigfall*, 606 B.R. at 787 (citing H.R. Rep. No. 95-595 (1977) and 770 ILCS 60/1).

But the liens here do not arise solely by force of a statute; they arise by force of the underlying final liability determinations resulting from administrative adjudications. And the amount of the lien is "determined by the judgment on each ticket." *Wigfall*, 606 B.R. at 790. There is simply no way to disaggregate the final determinations of liability from the lien resulting from immobilization. The lien is a method to enforce the unpaid judgments, and it is therefore a judicial lien.

In sum, this Court finds that the liens the City obtained from immobilizing Appellees' vehicles were based on Appellees' prior final determinations of liabilities, which the Seventh Circuit has recognized as money judgments. Without the requisite number of judgments, the City would have no right to immobilize the vehicles and no liens could arise. For that reason, this Court agrees with the Bankruptcy Courts that the City's liens on Appellees' vehicles

were judicial liens that could be avoided under 11 U.S.C. § 522(f)(1)(A).

CONCLUSION

For the foregoing reasons, the Bankruptcy Courts' orders granting Appellees' motions to avoid lien are affirmed.

Dated: January 29, 2021

ENTERED:

/s/ Andrea R. Wood
Andrea R. Wood
United States District Court Judge

APPENDIX C

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 19 B 33057

IN RE: MARCELLA MARIE MANCE,
Debtor

ORDER ON MOTION TO AVOID LIEN (DOCKET 22)

JACQUELINE P. COX, Bankruptcy Judge

The Debtor Marcella Marie Mance sought Chapter 7 bankruptcy relief on November 20, 2019. (The City of Chicago's Response pleading incorrectly references Chapter 13). The matter in issue is her motion seeking avoidance of the City of Chicago's lien on her motor vehicle. The City contends that its lien is a statutory lien, not capable of being avoided under 11 U.S.C. § 522(f). Section 522(f) provides that judicial liens on otherwise exempt property may be avoided under certain circumstances. Section 101(36) of the Bankruptcy Code ("Code") defines a judicial lien as a "lien obtained by judgment, levy, sequestration, or

other legal or equitable process or proceeding." 11 U.S.C. § 101(36).

Jurisdiction

Federal district courts have "original and exclusive jurisdiction" of all cases under the Bankruptcy Code. 28 U.S.C. § 1334(a). District courts may refer their bankruptcy cases to the bankruptcy judges for their districts. 28 U.S.C. § 157(a). The District Court for the Northern District of Illinois has referred its bankruptcy cases to the Bankruptcy Court for the Northern District of Illinois. N.D. Ill. Internal Operating Procedure 15(a).

This matter involves a core proceeding for which this court has authority to enter a final order or judgement. 28 U.S.C. § 157(b)(2)(B) – allowance or disallowance of claims against the estate or exemptions from property of the estate.

Background

To obtain an order avoiding a lien a debtor has to satisfy four requirements: (1) properly assert the exemption; (2) there has to be a lien on the debtor's property; (3) the lien has to impair the debtor's exemption and (4) the lien must be a judicial lien. *In re Wigfall*, 606 B.R. 784, 786 (Bankr. N.D. Ill. 2019) (citing *In re Rosol*, 114 B.R. 560, 562 (Bankr. N.D. Ill. 1989)).

The parties do not dispute that the Debtor's vehicle is worth $3000 as asserted in her Schedule A/B – Property, (Docket 16), or that she owes the City of Chicago approximately $12,000 for moving and parking violations. The Debtor's Schedule C claims a $2400 exemption in that vehicle pursuant to 735 ILCS 5/12-1001(c) which exempts from attachment, judgment and execution a debtor's interest, not to exceed $2400, in any one motor vehicle.

The only issue in dispute is the City of Chicago's contention that it holds a statutory lien which arises solely by statute and cannot be avoided by § 522(f) of the Code which allows debtors to avoid judicial liens.

Analysis

Based on the ruling in *Wigfall*, which allowed a debtor to avoid a lien under similar circumstances, this court will grant the Debtor's Motion to Avoid Lien. The lien the City has on the Debtor's motor vehicle, that it impounded for various infractions, was provided for in a statute, but arose only after the city complied with a defined administrative process, making it a quasi-judicial lien, avoidable under 11 U.S.C. § 522(f). The Illinois statute that authorizes the City's administrative adjudications system requires the City to obtain quasi-judicial determinations before it can seize or boot a vehicle to enforce its traffic regulations.

The bankruptcy court in *In re Peakes*[1] discussed the City of Chicago's ordinances that provide a mechanism for its traffic violations enforcement program, citing the Illinois Vehicle Code:

> Any municipality or county may provide by ordinance for a system of administrative adjudication or vehicular standing and parking violations and vehicle compliance violations as described in this subsection, automated traffic law violations as defined in Section 11-208.6, 11-208.9, or 11-1201.1, and automated speed enforcement system violations as defined in Section 11-208.8. 625 ILCS 5/11-208.3(a).

Illinois law also provides that vehicles may be restrained:

> Any municipality or county establishing vehicular standing, parking, compliance automated speed enforcement system, or automated traffic law regulations under this Section may also provide by ordinance for a program of vehicle immobilization for the purpose of facilitating enforcement of those regulations. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle upon the public way by

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[1] 588 B.R. 811, 817-18 (Bankr. N.D. Ill. 2018) (*aff'd sub nom. In re Fulton*, 926 F.3d 916 (7th Cir. 2019))

> presence of a restraint in a manner to prevent operation of the vehicle. 625 ILCS 5/11-208.3(c).

An additional Illinois statute provides criteria for immobilization:

> Criteria for designation of vehicles eligible for immobilization. A vehicle shall be eligible for immobilization when the registered owner of the vehicle has accumulated the number of incomplete traffic education programs or unpaid final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability, or both, as determined by ordinance. 625 ILCS 5/11-208.3(c)(1).

Once the City obtains a certain number of determinations of liability it may take the owner's vehicle in satisfaction of its judgment debt by way of supplementary proceedings or regular execution process. *See* 735 ILCS 5/2-1402(c)(1), (e) and 735 ILCS 5/12-111, 5/12-112, 5/12-158, and 5/12-166. A court could order the judgment debtor to deliver the vehicle to the sheriff to be sold to satisfy the City's judgment. 735 ILCS 5/2-1502(c)(1), (e). In addition, the sheriff could forcibly seize the judgment debtor's vehicle to sell it to satisfy the City's judgment. *Peakes*, 588 B.R. at 819 (citing *In re Marriage of Logston*, 103 Ill.2d 266, 469 N.E.2d 167, 172 (1984) (That court noted that if a judgment goes unpaid, it

could be enforced through the remedy of execution, whereby as much of the debtor's property may be taken and sold as is necessary to satisfy the obligation)). A certified copy of a judgment serves the function of a writ of execution. *See* 735 ILCS 5/2-1501.[2]

As the *Peakes* court noted, "the legislature has authorized municipalities to take a short-cut on the path to the effective enforcement of their final determinations of liability where those final determinations are for violations of ordinances concerned with standing, parking, and automated traffic law violations." *Id.*

In *In re Fulton*, in affirming the *Peakes* ruling, the Seventh Circuit described the relevant municipal ordinances, M.C.C. §§ 9-100-120(b) and 9-18-240(a):

> The Chicago Municipal Code permits creditor-appellant the City of Chicago to immobilize and then impound a vehicle if its owner has three or more 'final determinations of liability,' or two final determinations that are over a year old, 'for parking, standing,

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[2] *See Elmhurst Auto Parts, Inc. v. Fencl-Tufo Chevrolet, Inc.*, 235 Ill. App. 3d 88, 93 (2d Dist. 1992) ("Upon presentment of the certified copy of the judgment, the sheriff may seize and levy upon the property of the debtor to satisfy the judgment. Illinois law no longer refers to 'writs of execution' but to the enforcement of judgments and levies.").

> compliance, automated traffic law enforcement system, or automated speed enforcement system violation[s].' *Fulton*, 926 F.3d at 920.

If the city did not have to pursue judicial or quasi-judicial process and obtain final determinations to receive the benefit of its lien, it would be a statutory lien, not avoidable under Section 522(f). The ordinance, however, pursuant to Illinois statute, allows the City to confiscate an owner's vehicle only after a specific number of determinations of liability have been entered.

The City's Response to the Debtor's Motion to Avoid Lien contends that its lien springs into existence pursuant to M.C.C. § 9-92-080(f)[3] which gives it a possessory lien when it impounds a vehicle and that the fact that possession occurs after liability determinations are made is not relevant. The possessory lien is not independent of the quasi-judicial process; its operation is conditioned on compliance with a quasi-judicial process, as it has to firm obtain liability determinations.

The ordinance that declares that the City has a possessory lien does not appear to be based on Illinois law which defines a "possessory lien" as an interest,

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[3] "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."

other than a security interest, which secures payment or performance of an obligation for services or materials, created by a statute and whose effectiveness depends on the person's possession of the goods furnished. 810 ILCS 5/9-333. The lien herein, is not effective on the City's possession alone.

Generally, a possessory lien allows a creditor to retain possession of its collateral until its debt gets paid independent of court processes. *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, 96 N.E.3d 61, 69-74 (2017). The legislative condition that a municipality may use the enforcement short-cut after first obtaining liability determinations, means that the City of Chicago does not have a statutory lien since it cannot immobilize vehicles unless it first obtains quasi-judicial determinations.

Conclusion

The City of Chicago's lien is a judicial lien that may be avoided under § 522(f). All elements necessary to avoid the lien have been established. The Motion to Avoid Lien is granted. The City of Chicago's lien is avoided and held for naught pursuant to § 522(f) of the Code. The City of Chicago is hereby ordered to deliver possession of the Debtor's Mitsubishi Outlander vehicle to her on or before February 10, 2020.

Date: February 6, 2020

ENTERED:

/s/ Jacqueline P. Cox
Jacqueline P. Cox
United States Bankruptcy Judge

APPENDIX D

Statutes and Ordinances

11 U.S.C. § 101

11 U.S.C. § 101. Definitions

In this title the following definitions shall apply:

* * *

(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.

11 U.S.C. § 522

11 U.S.C. § 522. Exemptions

* * *

(f)

(1) 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, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)

(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

Municipal Code of Chicago, Ill. § 2-14-132

§ 2-14-132. Impoundment

* * *

(l) 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

§ 9-92-080. Release procedure for impounded vehicles.

(a) Unless a vehicle is held pursuant to applicable state, federal or any other law, or a court order or warrant that authorizes the continued impoundment of the vehicle, the owner or other person entitled to possession of a vehicle impounded pursuant to Section 9-92-030 may obtain immediate release of the vehicle by paying the full amount of the applicable towing and storage fees, as provided in subsection (b), plus all amounts due for outstanding final determinations of parking, standing, compliance, automated traffic law enforcement system or automated speed enforcement system violations incurred by the owner, including all related collection costs and attorney's fees authorized under Section 1-19-020. Regardless of whether the owner or other person entitled to possession obtains immediate release of the vehicle through making full payment, such person may request a hearing before the department of administrative hearings to be held in accordance with Section 2-14-135 of this Code.

(b) The owner or other person entitled to possession of a vehicle lawfully impounded pursuant to Section 9-92-030 or Section 9-100-120 shall pay a fee of $150.00, or $250.00 if the vehicle has a gross weight of 8,000 pounds or more, to cover the cost of the towing and a fee of $20.00 per day for the first five days and $35.00 per day thereafter, or $60.00 per day for the

first five days and $100.00 per day thereafter if the vehicle has a gross weight of 8,000 pounds or more, to cover the cost of storage, provided that no fees shall be assessed for any tow or storage with respect to a tow which has been determined to be erroneous.

* * *

(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.

Municipal Code of Chicago, Ill. § 9-100-120

§ 9-100-120. Immobilization program.

(a) The traffic compliance administrator is hereby authorized to direct and supervise a program of vehicle immobilization for the purpose of enforcing the parking, standing, compliance, automated traffic law enforcement system, or automated speed enforcement system ordinances of the traffic code. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle located on the public way or any city-owned property by placement of a restraint in such a manner as to prevent its operation or if the eligible vehicle is parked or left in violation of any provision of the traffic code for which such vehicle is subject to an immediate tow pursuant to Section 9-92-030, or in any place where it constitutes an

obstruction or hazard, or where it impedes city workers during such operations as snow removal, the traffic compliance administrator may cause the eligible vehicle to be towed to a city vehicle pound or relocated to a legal parking place and there restrained. As part of the immobilization program, the traffic compliance administrator may also establish a procedure for a self-release immobilization device which may be removed by the registered owner, or his designee, in compliance with any applicable rule promulgated by the traffic compliance administrator.

(b) When the registered owner of a vehicle has accumulated (i) three or more final determinations of liability or (ii) two final determinations which are more than one year past the date of issuance, for parking, standing, compliance, automated traffic law enforcement system, or automated speed enforcement system violation, or a violation of Section 9-105-020, in any combination, for which the fines, penalties, administrative fees provided pursuant to Section 9-100-160, if any, or related collection costs and attorney's fees pursuant to Section 1-19-020 or Section 1-19-030, if applicable, have not been paid in full, the traffic compliance administrator shall cause a notice of impending vehicle immobilization to be sent, in accordance with Section 9-100-050(f). The notice of impending vehicle immobilization shall state the name and address of the registered owner, the state registration number of the vehicle or vehicles registered to such owner, and the serial numbers of parking, standing, compliance, automated traffic law

enforcement system or automated speed enforcement system violation notices which have resulted in final determination of liability or which are more than one year past the date of issuance for which the fines or penalties remain unpaid. Failure to pay the fines and penalties owed within 21 days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in-person to submit evidence which would conclusively disprove liability within 21 days of the date of the notice. Documentary evidence which would conclusively disprove liability shall be based on the following grounds:

(1) That all fines and penalties for the violations cited in the notice have been paid in full;

(2) That the registered owner has not accumulated three or more final determinations, or two notices which are more than one year past the date of issuance, of parking, standing, compliance, automated speed enforcement system violation, or automated traffic law enforcement system violation liability which were unpaid at the time the notice of impending vehicle immobilization was issued; or

(3) In the case of a violation of Section 9-102-020, Section 9-101-020, or Section 9-105-020, that the

registered owner has not been issued a final determination of liability under Section 9-100-100 or Section 9-105-060.

(c) Upon immobilization of an eligible vehicle, a notice shall be affixed to the vehicle in a conspicuous space. Such notice shall (i) warn that the vehicle is immobilized and that any attempt to remove the vehicle may result in its damage; (ii) state that the unauthorized removal of or damage to the immobilizing device is a violation of Sections 16-1 and 21-1 of the Illinois Criminal Code; (iii) provide information specifying how release of the immobilizing device may be had; (iv) state how the registered owner may obtain an immobilization hearing; (v) state that if the immobilizing device has not been released within 24 hours of its placement, the device shall be released and the vehicle towed and impounded; (vi) provide information specifying how the registered owner may request an additional compliance time, as provided in rules, in addition to the 24 hours specified in (c)(v) of this section, before the immobilizing device is removed and the vehicle is towed and impounded; and (vii) provide information specifying how the registered owner may request an additional 15 days to retrieve his vehicle if impounded.

(d)

(1) The owner of an immobilized vehicle, or other person authorized by agreement with the owner

or operation of law to retrieve the vehicle, may secure the release of the vehicle by entering into a payment installment plan pursuant to Section 9-100-160 and the rules promulgated thereunder.

(2) Except as otherwise provided in subsection (d)(1), the owner of an immobilized vehicle or other authorized person may secure the release of the vehicle by paying the applicable immobilization, towing and storage fees, and all amounts, including any fines, penalties, administrative fees provided pursuant to Section 9-100-160, if any, and related collection costs and attorney's fees pursuant to Section 1-19-020 or Section 1-19-030, remaining due on each final determination for liability issued to the owner.

* * *