No. 19-357

In the Supreme Court of the United States

CITY OF CHICAGO, ILLINOIS, PETITIONER

v.

ROBBIN L. FULTON, ET AL.

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Under the Bankruptcy Code, the filing of a bankruptcy petition "operates as a stay" of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(3). The question presented is as follows:

Whether an entity that is passively retaining possession of property that it seized before the bankruptcy petition was filed, and in which the bankruptcy estate has an interest, violates 11 U.S.C. 362(a)(3) if it fails to return that property to the debtor or trustee immediately upon the filing of the bankruptcy petition.

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INTEREST OF THE UNITED STATES

The question presented in this case is whether the Bankruptcy Code's automatic stay requires a creditor or other entity to turn over property to the debtor or trustee as soon as a bankruptcy petition is filed. The United States is the Nation's largest creditor, and federal agencies often possess property of persons who have filed for bankruptcy. In addition, United States Trustees are charged with supervising the administration of bankruptcy cases, including overseeing private trustees who may seek to compel creditors to return property of a debtor's estate as part of the trustees' statutory duty to liquidate the property of the estate. See 28 U.S.C. 581-589a. The United States therefore has a substantial interest in the question presented.

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Bankruptcy Code are reprinted in an appendix to this brief. App., *infra*, 1a-35a.

STATEMENT

A. Statutory Framework

In 1978, Congress enacted the statute that established the modern Bankruptcy Code, 11 U.S.C. 101 *et seq*. That statute contained two provisions that are at the heart of this case: the automatic-stay provision, 11 U.S.C. 362, and the turnover provision, 11 U.S.C. 542.

1. Section 362 of the Bankruptcy Code is titled "Automatic stay." It "halts efforts to collect prepetition debts from the bankrupt debtor outside the bankruptcy forum." *Ritzen Grp., Inc.* v. *Jackson Masonry, LLC*, No. 18-938 (Jan. 14, 2020), slip op. 6 (citing 11 U.S.C. 362(a)). Section 362(a) provides that the filing of a bankruptcy petition "operates as a stay, applicable to all entities," of a variety of acts that might advance a particular creditor's interests at the expense of the debtor and other creditors. 11 U.S.C. 362(a). For example, Section 362(a) stays "the commencement or continuation" of "judicial * * * proceeding[s]" and "enforcement" actions "against the debtor." 11 U.S.C. 362(a)(1) and (2). And, as most relevant here, the provision stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(3). By staying these acts, Section 362 "maintain[s] the status quo and prevent[s] dismemberment of the [bankruptcy] estate." *Ritzen*, slip op. 6 (brackets and citation omitted).

Section 362 has several features that are designed to ensure its efficacy. The provision states that the mere filing of the bankruptcy petition "operates as a stay,"

thereby obviating the need for judicial intervention to freeze debt-collection efforts. 11 U.S.C. 362(a). Section 362 also provides that the freeze will persist until a court either disposes of the bankruptcy case or chooses to lift the stay. 11 U.S.C. 362(c)-(f). And, to deter and redress violations of the stay, Section 362 mandates that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. 362(k)(1).

2. Section 542 of the Bankruptcy Code is titled "Turnover of property to the estate." It generally provides that "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. 542(a). It therefore "requires an entity" that is "holding any property of the debtor * * * to turn that property over to the trustee," unless particular property falls outside the provision's reach. *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198, 205 (1983).

The turnover provision is a powerful aid to a trustee or debtor because it effectively "grants to the [bankruptcy] estate a possessory interest in certain property of the debtor that was not held by the debtor at the commencement of reorganization proceedings." *Whiting Pools*, 462 U.S. at 207.[1] But the provision has several

[1] In bankruptcies under Chapter 7 and Chapter 11, Section 542 may also be used by a trustee to compel the debtor himself to turn

"explicit limitations" on its coverage. *Id.* at 206. Section 542(a)'s turnover requirement applies exclusively to "property that the trustee may use, sell, or lease under section 363," or "that the debtor may exempt under section 522." 11 U.S.C. 542(a). And it does not apply to property that "is of inconsequential value or benefit to the estate," *ibid.*; when property has been unwittingly transferred before the holder learns of the bankruptcy, 11 U.S.C. 542(c); or if the property was transferred as part of an automatic life insurance payment, 11 U.S.C. 542(d). See *Whiting Pools*, 462 U.S. at 206 n.12.

The turnover provision does not contain an express enforcement mechanism akin to Section 362(k)(1)'s explicit authorization of monetary remedies for willful violations of the automatic stay. Section 105(a) of the Bankruptcy Code provides, however, that a bankruptcy court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. 105(a). And even before the Code was enacted, this Court had recognized that bankruptcy courts could issue orders compelling turnover, and could impose contempt sanctions on persons who defied those orders. *Maggio* v. *Zeitz*, 333 U.S. 56, 67 (1948); *Oriel* v. *Russell*, 278 U.S. 358, 363 (1929). Five years after the Bankruptcy Code was enacted, this Court affirmed a lower-court decision recognizing that a "turnover order could issue" against a creditor in possession to enforce compliance with Section 542(a). *Whiting Pools*, 462 U.S. at 202; see *id.* at 212.

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over property to the trustee so that it may be appropriately liquidated or dispersed. See, *e.g.*, *In re Shore*, 193 B.R. 598, 600-601 (S.D. Fla. 1996) (ordering sanctions against a Chapter 7 debtor due to his failure to turn over property in compliance with an order issued under Section 542).

B. Facts And Procedural History

1. Respondents are four individuals whose vehicles were impounded by petitioner City of Chicago. Respondent Robbin Fulton's vehicle was impounded because she was driving on a suspended license and owed the City $11,831.20. Pet. App. 4a; 18-2860 Bankr. Claims Register Claim No. 1-3 (May 14, 2018). Respondent Jason Scott Howard owed the City $17,110.80 resulting from multiple unpaid tickets. Pet. App. 7a, 29a; 17-25141 Bankr. Claims Register Claim No. 1-1 (Aug. 23, 2017). Respondent George Peake owed the City $5393.27, stemming from 22 municipal code violations. Pet. App. 6a; 18-16544 Bankr. D. Ct. Doc. 16-4, Ex. D (June 20, 2018). And respondent Timothy Shannon had failed to pay several parking tickets, had incurred three speeding violations, and had driven on a suspended license. Pet. App. 5a, 146a.

After their cars were impounded, each of the respondents filed a voluntary bankruptcy petition under Chapter 13. Pet. App. 4a-8a. Each then demanded the return of his or her vehicle, and the City refused. *Ibid.* The bankruptcy court in each case found that the City's refusal to turn over the debtor's vehicle violated the Bankruptcy Code's automatic-stay provision, 11 U.S.C. 362(a). Pet. App. 5a-7a. The court in each case ordered the return of the debtor's car, and some of the courts imposed monetary sanctions against the City. *Ibid.*[2]

In each case, the City petitioned for direct appeal to the court of appeals under 28 U.S.C. 158(d). Pet. App. 8a. The petitions were granted, and the appeals were consolidated. *Ibid.*

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[2] The City eventually returned three of the four respondents' vehicles. Pet. App. 5a-7a. Respondent Howard ultimately abandoned his interest in his automobile. *Id.* at 7a.

2. The court of appeals affirmed the judgments of the bankruptcy courts. Pet. App. 1a-27a. It held that the City's retention of the vehicles violated Section 362(a)(3), which stays "any act to obtain possession of property of the estate or of property from the estate or to *exercise control* over property of the estate." *Id.* at 8a (quoting 11 U.S.C. 362(a)(3)) (emphasis added by court of appeals). Relying on its earlier decision in *Thompson* v. *General Motors Acceptance Corp.*, 566 F.3d 699 (7th Cir. 2009), the court held that the City's failure to return the vehicles it had seized pre-bankruptcy constituted an impermissible "act to * * * exercise control" over the debtors' property. Pet. App. 8a (citation and emphasis omitted); see *id.* at 15a-16a.

The court of appeals noted that, in *Thompson*, it had "rejected [a] creditor's argument that passively holding [an] asset did not satisfy the Code's definition of exercising control." Pet. App. 9a. The court declined to revisit that holding, stating that the City's contrary argument "ignore[d] the purpose of bankruptcy—'to allow the debtor to regain his financial foothold and repay his creditors.'" *Id.* at 13a (quoting *Thompson*, 566 F.3d at 706). The court held that this purpose is best served by allowing a debtor "to use his assets" during the pendency of the bankruptcy case. *Ibid.* The court further observed that Section 542(a) of the Bankruptcy Code "compels the return of property to the estate," and it found that the City had violated the automatic stay under Section 362(a)(3) by "actively resisting § 542(a) to exercise control over debtors' vehicles." *Id.* at 14a.[3]

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[3] The court of appeals also rejected the City's arguments that an exception to the automatic stay applied. Pet. App. 17a-27a. The City has not sought review of that holding. See Pet. 13-14 nn.5-6.

3. The court of appeals' decision deepened a split among the circuits on the question presented. The Second, Eighth, Ninth, and Eleventh Circuits, like the court below, have held that the automatic stay prohibits a creditor's passive retention of property that it seized before the bankruptcy case began. *Weber* v. *SEFCU* (*In re Weber*), 719 F.3d 72, 81 (2d Cir. 2013); *Knaus* v. *Concordia Lumber Co.* (*In re Knaus*), 889 F.2d 773, 775 (8th Cir. 1989); *California Emp't Dev. Dep't* v. *Taxel* (*In re Del Mission Ltd.*), 98 F.3d 1147, 1151 (9th Cir. 1996); *Motors Acceptance Corp.* v. *Rozier* (*In re Rozier*), 376 F.3d 1323, 1324 (11th Cir. 2004) (per curiam). The Third and Tenth Circuits, by contrast, have held that a creditor does not violate the automatic stay by failing to return property that it seized pre-bankruptcy, and that questions concerning a creditor's obligations to surrender such assets are instead governed exclusively by Section 542(a). *In re Denby-Peterson*, 941 F.3d 115, 125-126 (3d Cir. 2019); *WD Equip., LLC* v. *Cowen* (*In re Cowen*), 849 F.3d 943, 950 (10th Cir. 2017); see also *United States* v. *Inslaw, Inc.*, 932 F.2d 1467, 1474 (D.C. Cir. 1991) ("The automatic stay, as its name suggests, serves as a restraint only on acts to gain possession or control over property of the estate."), cert. denied, 502 U.S. 1048 (1992).

SUMMARY OF ARGUMENT

A. Section 362(a) "stay[s]" an "act to * * * exercise control over property of the [bankruptcy] estate." Viewed in isolation, the term "exercise control" could plausibly be thought to encompass the City's passive retention of vehicles that it seized pre-bankruptcy. Other features of Section 362 make clear, however, that in this context the term "exercise control," like the automatic stay generally, is directed at acts that would change the status

quo. That reading is confirmed by Congress's enactment of a distinct statutory provision, 11 U.S.C. 542(a), that specifically addresses an entity's obligation to turn over property in which the debtor has an interest.

1. Under Section 362(a), the filing of a bankruptcy petition operates as a "stay" of various actions. The usual purpose and effect of a "stay" is to preserve the status quo. But if Section 362(a)(3) prevented a creditor from retaining property it held at the time the bankruptcy petition was filed, it would mandate a *departure* from the status quo by compelling the creditor to turn over the property. Moreover, continued possession of property that was seized pre-bankruptcy is not naturally characterized as a post-petition "act." And within Section 362(a)(3), the term "exercise control" is grouped with the term "obtain possession," which is unambiguously limited to acts that alter the status quo by giving the creditor possession of property that he did not previously possess. Accordingly, an "act to * * * exercise control over" estate property is best understood as an act through which the creditor changes the status quo by asserting a new form of control or exercising existing control in a new way.

Under other provisions within Section 362(a) as well, the filing of a bankruptcy petition triggers a statutory bar on various actions that would alter the status quo. It therefore would be anomalous to read the "exercise control" prong of Section 362(a)(3) as the sole component of the automatic stay that *requires* a creditor to take an affirmative act to change the pre-bankruptcy baseline by mandating that a creditor relinquish property in its possession.

2. Section 542(a) of the Bankruptcy Code reinforces the most natural reading of Section 362(a)(3)'s "exercise

control" language. Whereas Section 362's automatic stay is designed to freeze the status quo, Section 542(a)'s specific purpose and effect is to define the circumstances under which a creditor must *alter* the status quo by surrendering estate property that it possessed when the bankruptcy petition was filed. The existence of that specific and tailored directive counsels against reading Section 362(a)(3)'s "exercise control" prong to impose a separate turnover mandate. That is particularly so because, under the court of appeals' reading of Section 362(a)(3), that provision could compel turnover even in circumstances where Section 542(a) does not.

3. Respondents advance several textual arguments in support of their assertion that a creditor violates Section 362(a) by failing to relinquish property it obtained pre-bankruptcy. None has merit. Respondents assert, for example, that mere possession constitutes an "act to * * * exercise control." But respondents attempt to bolster this conclusion through resort to the criminal law, ignoring the multiple contextual clues that demonstrate that the phrase does not carry that meaning in the Bankruptcy Code.

Respondents also argue that Section 362(a)(3) facilitates more effective enforcement of Section 542(a) by making monetary remedies under Section 362(k)(1) available for violations of Section 542(a)'s turnover requirements. Even under respondents' reading, however, Section 362(a)(3) would be a poor tool to enforce Section 542(a) because it does not include Section 542(a)'s exceptions. And if Congress had intended to accomplish the result respondents suggest, it could have expressed that intent much more directly. Congress could have included within one or both of Sections 362(a) and 542(a)

a cross-reference to the other. It could also have included within Section 542 a remedial provision comparable to Section 362(k)'s express authorization of monetary relief for violations of the automatic stay.

Treating Section 362 as a means of enforcing Section 542 is also inconsistent with longstanding bankruptcy practice. Both before and after the Bankruptcy Code was enacted in 1978, bankruptcy courts have been authorized to issue orders directing turnover of estate property, and to impose contempt sanctions if those orders are violated. Nothing in the text of Section 362 or Section 542 suggests that Congress intended any dramatic alteration to that means of enforcement.

Respondents also contend that every violation of Section 542(a) must be a violation of Section 362(a) because Section 542(a)'s turnover mandate is "self-executing." Respondents appear to mean by that description that Section 542(a) imposes a binding legal obligation that is effective immediately upon the filing of a bankruptcy petition, even in the absence of a judicial turnover order. The Court need not decide whether or to what extent Section 542(a) imposes such an obligation. Even assuming arguendo that a creditor's failure to surrender property immediately can be a violation of Section 542(a), it would not follow that the failure *also* violates Section 362(a)(3), or that it subjects the creditor to potential monetary liability under Section 362(k)(1).

B. The history of Sections 362(a) and 542(a) confirms that the two provisions serve distinct functions. Section 362(a) was enacted in 1978 to prevent creditors from dismembering the bankruptcy estate. The current "exercise control" language was added to Section 362(a)(3) in 1984, but the history of that amendment

demonstrates that it was meant to effect a mere technical change, not a significant expansion of the role of the automatic stay. The history of Section 542(a) further confirms that Section 542, and not Section 362, is the provision that delineates a creditor's obligation to turn over property.

C. Respondents' reading of Section 362(a) also runs contrary to the policy of the Bankruptcy Code, which preserves creditors' interests through "adequate protection." Under Section 363(e), a creditor in the City's position that is required to surrender estate property may petition a court for "adequate protection" of its security interest (*e.g.*, through an insurance policy that would protect the City from financial loss if one of respondents' vehicles was returned to the debtor and subsequently damaged or destroyed) as a substitute for the protection that continued possession would otherwise have afforded. If respondents' reading of Section 362(a)(3) were adopted, the risk of monetary liability under Section 362(k)(1) could substantially deter creditors from asserting their statutory right to "adequate protection." Respondents evidently believe that, if monetary relief under Section 362(k)(1) is unavailable, the alternative remedies for breaches of Section 542(a) will not effectively deter turnover violations. But respondents' dissatisfaction with the remedies that Congress has authorized for turnover violations as such provides no sound basis for treating those breaches as violations of the automatic stay.

ARGUMENT

A. The Text And Structure Of The Bankruptcy Code Demonstrate That The Automatic Stay Does Not Compel Turnover Of Property That Was Seized By A Creditor Before The Bankruptcy Petition Was Filed

Any dispute over the scope of the Bankruptcy Code must "start with the text." *Mission Prod. Holdings, Inc.* v. *Tempnology, LLC*, 139 S. Ct. 1652, 1661 (2019). Here, the relevant statutory language provides that, when a bankruptcy petition is "filed," it "operates as a stay, applicable to all entities," of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(3). The court of appeals held that the City had violated that provision by continuing to "exercise control" over vehicles that the City had seized pre-bankruptcy, instead of turning those vehicles over to respondents for their use.

Viewed in isolation, the term "exercise control" might plausibly be thought to encompass the City's retention of respondents' vehicles at secure locations from which respondents (and others) are barred from retrieving them. Even respondents, however, do not embrace the logical implications of that reading. A creditor could cease to "exercise" that form of "control" simply by abandoning property that it had seized pre-bankruptcy, rather than surrendering it to the debtor or trustee. The City might, for example, simply relinquish "control" over respondents' cars by leaving them unlocked and unguarded in the lot, or by giving them to the first passerby that expressed interest.

Respondents and the court below obviously would agree that Congress did not intend that result. Rather, respondents seek to compel the City not simply to wash

its hands of their vehicles, but to surrender them to respondents themselves. But Section 362(a)(3)'s text cannot be read to require the City to deliver the vehicles to any particular recipient. It is an entirely distinct statutory provision, 11 U.S.C. 542(a), that potentially mandates that result. Section 542, which is titled "Turnover of property to the estate," sets out detailed rules governing the surrender to the debtor or trustee of debtor property that a creditor has obtained pre-bankruptcy.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 666 (2007) (citations and internal quotation marks omitted). Viewed in the context of the automatic-stay provision and the Bankruptcy Code as a whole, Section 362(a)(3)'s "stay" on "any act to * * * exercise control" cannot reasonably be read to prevent a creditor's continued passive retention of property it obtained before the bankruptcy petition was filed. Rather, that language is much more naturally understood to prohibit only a creditor's post-petition acts to alter the status quo by seizing control of property or exercising the creditor's existing control in new ways. Several aspects of Section 362(a)'s text support that conclusion. And Congress's enactment of Section 542(a), which specifically defines the circumstances under which creditors must surrender property to debtors or trustees, confirms the most natural reading of Section 362(a)(3).

1. The text of Section 362(a)(3) does not impose a turnover requirement

a. Section 362(a) states that the filing of a bankruptcy petition "operates as a stay." 11 U.S.C. 362(a).

The term "stay" ordinarily refers to a legal rule or judicial order that "'simply suspend[s] judicial alteration of the status quo.'" *Nken* v. *Holder*, 556 U.S. 418, 429 (2009) (quoting *Ohio Citizens for Responsible Energy, Inc.* v. *NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)) (brackets in original); see *The American Heritage Dictionary of the English Language* 1708 (5th ed. 2016) (to "stay" is to "suspend by legal order the implementation of (a planned action), especially pending further proceedings"); *Black's Law Dictionary* 1709 (11th ed. 2019) (a "stay" is the "postponement or halting of a proceeding, judgment, or the like"). While a typical injunction affirmatively "directs the conduct of a party," a stay generally operates to "halt[] or postpon[e]" a proceeding or to "temporarily suspend[]" an entity's "authority to act" in a manner that would change the status quo. *Nken*, 556 U.S. at 428-429.

Thus, under the ordinary meaning of "stay," Section 362(a) operates to "'maintain the status quo'" at the time the bankruptcy petition is filed. *Ritzen Grp., Inc.* v. *Jackson Masonry, LLC*, No. 18-938 (Jan. 14, 2020), slip op. 6 (brackets and citation omitted). The provision does not require creditors to take affirmative acts, like the return of seized vehicles that respondents seek here, that would alter the status quo. Rather, it merely "halt[s]" or "postpon[es]" certain actions and deprives affected parties of the "authority to act" to collect on their debts that they enjoyed before the initiation of bankruptcy proceedings. *Nken*, 556 U.S. at 428-429.

Interpreting Section 362(a)(3) to compel a creditor to turn over property in which the estate has an interest would be inconsistent with the usual meaning of the term "stay." When a creditor has legally obtained property from the debtor *before* the bankruptcy petition is

filed, the "status quo" is "maintain[ed]" by leaving that property in the creditor's hands. *Ritzen*, slip op. 6 (brackets and citation omitted). Requiring the City to turn over respondents' vehicles would not "halt[]" or "postpon[e]" an action; it would compel the creditor to act. *Nken*, 556 U.S. at 428. As one court of appeals put it, "[s]tay means stay, not go." *WD Equip., LLC* v. *Cowen* (*In re Cowen*), 849 F.3d 943, 949 (10th Cir. 2017); see also *United States* v. *Inslaw, Inc.*, 932 F.2d 1467, 1474 (D.C. Cir. 1991) ("The automatic stay, as its name suggests, serves as a restraint only on acts to gain possession or control over property of the estate."), cert. denied, 502 U.S. 1048 (1992).

b. Other aspects of Section 362(a)(3)'s text reinforce that conclusion. Under Section 362(a)(3), the filing of a bankruptcy petition operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." The mere retention of property seized prepetition would not naturally be characterized as a postpetition "*act* to * * * exercise control over" that property. Rather, the term "act" "commonly means to 'take action' or 'do something.'" *Cowen*, 849 F.3d at 949 (quoting *New Oxford American Dictionary* 15 (3d ed. 2010) (primary definition of "act")).

That is particularly so because Section 362(a)(3) groups the stay of an "act to * * * exercise control" together with a stay of acts "to obtain possession of property of" or "from" the bankruptcy estate. The term "obtain possession" in Section 362(a)(3) is unambiguously limited to conduct that *changes* the status quo by bringing within a creditor's possession assets that the creditor did not previously possess. "[I]t is a 'familiar principle of statutory construction that words grouped in a

list should be given related meaning.'" *Schreiber* v. *Burlington N., Inc.*, 472 U.S. 1, 8 (1985) (quoting *Securities Indus. Ass'n* v. *Board of Governors of the Fed. Reserve Sys.*, 468 U.S. 207, 218 (1984)) (internal quotation marks omitted). It therefore would be anomalous to construe the "exercise control" language in the same provision to *require* the creditor to alter the status quo by turning over property it obtained before the bankruptcy petition was filed.

Rather, the term "act to * * * exercise control over property of the estate" should be understood to require the same sort of affirmative step as the "obtain possession" prong: The party must either assume a form of control that it did not previously have, or exercise its existing control in a new way. Thus, a creditor who attempted to sell or reassign the tangible property of the estate to a third party would "act to * * * exercise control over" that property, in violation of the automatic stay. See *Cowen*, 849 F.3d at 949. Such acts alter the status quo in a manner directly analogous to a creditor's act to "obtain possession" for itself. A creditor likewise would violate the automatic stay by acquiring control over "intangible property rights that belong to the estate, such as contract rights or causes of action," which "are incapable of real possession unless they are reified." *Id.* at 950 (quoting *In re Hall*, 502 B.R. 650, 665 (Bankr. D.D.C. 2014)). But a creditor does not "act to * * * exercise control" when it merely declines to relinquish property that it possessed pre-bankruptcy. Indeed, in such circumstances, a creditor cannot naturally be said to perform an "act" at all.

c. Other provisions of the automatic stay confirm that understanding of Section 362(a)(3). Some of the provisions prevent a creditor from acting to enforce a

debt. See, *e.g.*, 11 U.S.C. 362(a)(2) (staying "the enforcement * * * of a judgment obtained before the commencement of the case"); 11 U.S.C. 362(a)(4) (staying "any act to create, perfect, or enforce any lien against property of the estate"); 11 U.S.C. 362(a)(6) (staying "any act to collect, assess, or recover a claim against the debtor"). Others suspend ongoing judicial or administrative proceedings. See, *e.g.*, 11 U.S.C. 362(a)(1) (staying "the commencement or continuation * * * of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced" pre-bankruptcy); 11 U.S.C. 362(a)(8) (similar). All of those provisions require regulated parties to maintain the status quo by forbearing from specified actions. It would thus be particularly anomalous to read the "exercise control" prong of Section 362(a)(3) as the sole component of the automatic stay that requires a creditor to take an affirmative act by forcing the creditor to turn over property that it possessed pre-bankruptcy. See *Schreiber*, 472 U.S. at 8 (declining to read a single term within a series to "suggest a deviation from the section's facial and primary concern").

2. The text of Section 542(a) confirms that Section 362(a)(3) does not impose a turnover requirement

Section 542 of the Bankruptcy Code is titled "Turnover of property to the estate," and it contains detailed provisions that define the circumstances under which a creditor must surrender property to the debtor or trustee. The existence of that distinct (and directly on-point) Bankruptcy Code provision further undermines respondents' contention that Congress separately required turnover in a more oblique manner, through the "exercise control" prong of a Code provision that is otherwise directed to maintaining the status quo.

a. Section 542(a) generally provides that "an entity" that is "in possession, custody, or control * * * of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. 542(a). The provision mandates that, with respect to a defined class of estate property, a secured creditor "in possession" of that property must "deliver"—*i.e.*, turn over—the property to the trustee or debtor. *Ibid.*

The Court confirmed that understanding of Section 542(a) in *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198 (1983). In *Whiting Pools*, the Court explained that Section 542(a) "requires an entity * * * holding any property of the debtor that the trustee can use under § 363 to turn that property over to the trustee," *id.* at 205, so long as the property does not fall within one of the specified exceptions, see *id.* at 206 & n.12. The provision therefore functions to enable "property of the debtor repossessed by a secured creditor" to "be drawn into the [bankruptcy] estate." *Id.* at 206.

b. Section 542(a)'s explicit turnover mandate reinforces the most natural reading of Section 362(a)(3). Section 542(a) defines the circumstances under which a creditor who seized debtor property pre-bankruptcy must surrender that property to the estate after a bankruptcy petition is filed. If Section 362(a)(3) is properly read simply to prohibit post-petition creditor conduct that *changes* the status quo, each of the two provisions will control within its distinct sphere. Under the decision below, by contrast, Section 362(a)(3) will impose a

separate (and potentially inconsistent) turnover mandate. There is no sound reason to suppose that Congress intended that counter-intuitive result.

In light of Section 542(a)'s explicit turnover requirements, it would violate "the canon against surplusage" to read Section 362(a)(3) as separately requiring turnover. *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 386 (2013). That canon is at its "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Ibid.* But if Section 362(a)(3) compelled a creditor to relinquish "property of the estate" in order to avoid impermissibly "exercis[ing] control over" it, then Section 542(a)'s express mandate to "deliver" certain property "to the trustee" would serve no independent purpose.

Interpreting Section 362(a)(3) to mandate turnover would also run afoul of the basic principle that, "[w]hen confronted with two" statutory provisions "allegedly touching on the same topic," a court will "strive 'to give effect to both,'" rather than lightly assuming that "one displaces the other." *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612, 1624 (2018) (citation omitted). Under Section 542(a), a creditor is required to turn over only property that a trustee may "use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522." Sections 363 and 522, in turn, impose meaningful limits on the turnover requirement. For example, Section 363(c)(2) mandates that a trustee "may not use, sell, or lease" certain "cash collateral * * * unless" the entities with an interest in the collateral consent or a court order permits it. 11 U.S.C. 363(c)(2). And even when property may be used, sold, leased, or exempted under Section 363 or 522, turnover is not required if the prop-

erty is of "inconsequential value or benefit to the estate," 11 U.S.C. 542(a); if the holder of the property has transferred it "in good faith" without "actual knowledge" of the petition, 11 U.S.C. 542(c); or if the transfer of the property has occurred as part of the automatic payment of a life insurance premium, 11 U.S.C. 542(d).

Section 362(a)(3) contains no similar exceptions. If a creditor must surrender *all* "property of the estate" in order to avoid impermissibly "exercis[ing] control over" it, Section 362(a)(3) would compel creditors to turn over property that Section 542(a) expressly permits them to retain. In other words, Section 362(a)(3) would impermissibly "displace[]" the express exceptions to turnover in Section 542(a). *Epic Sys. Corp.*, 138 S. Ct. at 1624.

This Court previously rejected an analogous attempt to give the automatic-stay provision "an interpretation that would proscribe what" Section 542 is "plainly intended to permit." *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 21 (1995). In *Strumpf*, the Court considered the interaction between 11 U.S.C. 362(a) (1988) and another turnover provision, 11 U.S.C. 542(b), which requires an entity to pay a debt it owes to the bankruptcy estate "except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor." See 516 U.S. at 18-21. The petitioner in *Strumpf* had placed an administrative hold on a portion of the debtor's bank account in order to pursue its right to offset under Section 553. *Id.* at 17-18. The respondent asserted that this hold violated the automatic stay. *Id.* at 18. But the Court declined to read Section 362(a) in a manner that would "require[] a creditor * * * to do immediately that which § 542(b) specifically excuses it from doing." *Id.* at 20.

Similar reasoning controls here. The court of appeals' interpretation of Section 362(a)(3) would require a creditor to surrender property that Section 542(a) excuses it from giving to the trustee. The Court can and should avoid that result by construing Section 362(a)(3), in accordance with the most natural reading of its text, as limited to creditor conduct that alters the status quo.

3. Respondents' contrary textual arguments lack merit

Respondents offer several textual arguments in an attempt to bolster their view that a creditor violates Section 362(a)(3) merely by retaining property that was in the creditor's possession at the time the bankruptcy petition was filed. None has merit.

a. In arguing that the passive retention of property may constitute an "act to * * * exercise control over" that property, respondents observe that, in criminal cases, "federal courts recognize that possessing something without entitlement is an act." Br. in Opp. 23 (citing *United States* v. *Sanchez DeFundora*, 893 F.2d 1173, 1177 (10th Cir.), cert. denied, 495 U.S. 939 (1990)). The decision that respondents cite relied on a Model Penal Code provision stating that possession "is an act, *within the meaning of this Section*, if" certain additional requirements are met. Model Penal Code § 2.01(4) (1985) (emphasis added). That language clarified the meaning of the term "act" as used in a particular Model Penal Code provision, but it did not purport to announce a more general rule of construction, and it has no application to the interpretation of the Bankruptcy Code. That is particularly so in light of the additional contextual clues described above, which bear heavily on the proper interpretation of Section 362(a)(3) but have no evident analogs in the Model Penal Code.

b. Respondents also contend that their interpretation of Section 362(a)(3) is not at odds with Section 542(a) because the two provisions work together. Respondents assert that, "*when a creditor * * * decides not to comply with § 542(a)'s turnover requirement*, the creditor engages in an act to exercise control over estate property in violation of § 362(a)(3), allowing the debtor to recover his actual damages, including his attorneys' fees and costs, under § 362(k)." Br. in Opp. 14 (emphasis added). Respondents thus suggest that Section 362(a)(3) facilitates enforcement of Section 542(a)'s turnover requirement, by ensuring that the monetary remedies authorized by Section 362(k) can be imposed for Section 542(a) violations. There is no textual basis for that assertion.

If Congress had meant to make every violation of the turnover provision a violation of the automatic stay, it could have said so in as many words, or through the type of cross-reference with which the Code is replete, including in the automatic-stay and turnover provisions. *E.g.*, 11 U.S.C. 362(a) (referring to "a petition filed under section 301, 302, or 303 of this title"); 11 U.S.C. 542(a) (cross-referencing 11 U.S.C. 363 and 11 U.S.C. 522). Here, however, there is "no textual link." *Cowen*, 849 F.3d at 950.

Moreover, if Section 362(a)(3) were intended to enforce Section 542(a), then presumably it would include the same exceptions, so as to ensure that creditors are not penalized for violating the automatic stay when they retain property exempted from turnover under Section 542(a). See pp. 19-20, *supra*. Instead, Section 362(a)(3) acts as a "stay" of "any act to * * * exercise control over *property of the estate*," without limiting the scope of the estate property to which the stay applies. 11 U.S.C.

362(a)(3) (emphasis added). Respondents suggest that Section 362(a)(3)'s reach may nonetheless be limited to require relinquishment only in cases where turnover is mandated by Section 542(a). See Br. in Opp. 14, 25-26. That approach would at least alleviate the practical incongruities that would result if Section 362(a)(3) compelled turnover even in circumstances where Section 542(a) did not. That reading, however, is even more clearly untethered to the statutory text than is the view that Section 362(a)(3) categorically encompasses passive retention of estate property. There simply is no language in Section 362(a)(3) that could limit its application in the way respondents suggest.

Respondents' assertion that Section 362(a)(3) is intended to enforce compliance with Section 542(a) is also contrary to longstanding bankruptcy practice, under which turnover obligations are enforced through the issuance of a judicial order and (if necessary) contempt sanctions. Cf. *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998) (courts should "not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure") (citation omitted). Long before the enactment of the modern Bankruptcy Code, this Court recognized that bankruptcy courts were authorized to issue orders compelling turnover, and to impose contempt sanctions on parties that failed to comply with those orders. *Maggio* v. *Zeitz*, 333 U.S. 56, 67 (1948); *Oriel* v. *Russell*, 278 U.S. 358, 363 (1929). The Bankruptcy Code preserves this authority in 11 U.S.C. 105(a), which permits a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." And the Federal Rules of Bankruptcy

Procedure specifically contemplate that a party may initiate an "adversary proceeding" to "recover money or property" for the estate. Fed. R. Bankr. P. 7001(1).

Section 542(a)'s turnover requirement therefore is properly enforced through judicial orders, backed by contempt. In *Whiting Pools*, the Court observed that, under pre-Code practice, courts had used judicial orders to compel the turnover of "collateral in the hands of a secured creditor," and that "[n]othing in the legislative history" of the Bankruptcy Code "evince[d] a congressional intent to depart from that practice." 462 U.S. at 208. The *Whiting Pools* Court affirmed a Second Circuit decision recognizing that bankruptcy courts may issue turnover orders to enforce Section 542(a). *Id.* at 212; *United States* v. *Whiting Pools, Inc.*, 674 F.2d 144, 160 (2d. Cir. 1982) (Friendly, J.), aff'd, 462 U.S. 198 (1983).

Bankruptcy courts today continue to enforce turnover requirements, including the requirement in Section 542(a), by issuing turnover orders and imposing contempt sanctions on parties that violate those orders. William L. Norton, *Norton Bankruptcy Law and Practice* § 62:16, at 62-46 to 62-48 (3d ed. 2019); see, *e.g.*, *Gharib* v. *Casey* (*In re Kenny G Enters., LLC*), 692 Fed Appx. 950, 952-953 (9th Cir. 2017) (affirming issuance of a contempt sanction for failure to comply with a turnover order under Section 542(a)), cert. denied, 139 S. Ct. 794 (2019); *In re Shore*, 193 B.R. 598, 600 (S.D. Fla. 1996) (issuing sanctions against debtor for failure to comply with a turnover order). Such contempt sanctions may include monetary penalties, attorney's fees, and costs. See, *e.g.*, *In re Young*, 193 B.R. 620, 628 (Bankr. D.D.C. 1996); *Robb* v. *Sowers* (*In re Sowers*), 97 B.R. 480, 483, 487-488 (Bankr. N.D. Ind. 1989).

If Congress had wished to alter or supplement those remedies, it could have included in Section 542 a provision akin to Section 362(k)(1), which mandates monetary remedies for willful violations of the automatic stay. Congress did not do so. The evident purpose and practical effect of respondents' theory is to rectify that omission by making Section 362(k) remedies available for violations of Section 542(a), even though Section 362(k) is limited by its terms to a "willful violation of a stay provided by this section," *i.e.*, by Section 362. 11 U.S.C. 362(k)(1). The statutory text forecloses that argument.[4]

c. Respondents' final textual argument relies on the mandatory language ("shall deliver") in Section 542(a). Respondents assert (Br. in Opp. 16-20) that violations of Section 542(a) must also constitute violations of Section 362's automatic stay because Section 542(a)'s mandatory language means that the provision is "self-executing." Respondents appear to mean by that description that a creditor in possession of covered property at the outset of a bankruptcy case has an immediate legal obligation to surrender that property to the

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[4] The contention that a violation of Section 542(a) should be enforced through Section 362(a) is also inconsistent with 11 U.S.C. 342(g). Section 342(g) provides that "[a] monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) *or* for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief." 11 U.S.C. 342(g)(2) (emphasis added). Congress's use of the disjunctive suggests that it viewed the penalties that may "be imposed on a creditor for a violation" of Section 362(a) as distinct from the penalties a creditor may face "for failure to comply with section 542." *Ibid.*

trustee, even before any court has ordered the creditor to do so. Petitioner, by contrast, disputes that characterization of Section 542. See Pet. Br. 37 ("§ 542 is not 'self-executing'"). Petitioner argues that a creditor may lawfully retain possession of debtor property that it seized pre-petition until the bankruptcy court has ruled on the creditor's objections to turnover, including the creditor's request for "adequate protection" of its interests in the property. See, *e.g.*, *id.* at 16, 29, 33-34, 35, 36, 41, 44.

The Court need not resolve that dispute in order to decide the question presented here. The Court may assume arguendo that, if a creditor objects to turnover and the bankruptcy court rejects its objections, the creditor will have violated Section 542(a)'s "shall deliver" mandate during the interval between the filing of the bankruptcy petition and the bankruptcy court's turnover order. Even if that is so, it would not follow that the creditor *also* violated Section 362(a)(3), or that it is subject to potential monetary liability under Section 362(k)(1).

Respondents also invoke Section 542(a)'s mandatory language in asserting (Br. in Opp. 25) that "at the outset of a chapter 13 debtor's bankruptcy case the status quo is that the debtor should be in possession and control of *all* estate property." Respondents thus use the term "status quo" to refer, not to the *actual* state of affairs that exists when a bankruptcy petition is filed, but to the hypothetical state of affairs that in their view *would* exist if creditors in possession of debtor property promptly fulfilled their turnover obligations under Section 542(a). That argument is inconsistent with any

usual understanding of the term "status quo," and it reflects a fundamental misunderstanding of Section 362's automatic stay.

Section 362(a) proscribes various changes to the world as it actually exists when a bankruptcy petition is filed; it does not proscribe deviations from a hypothetical world that would have existed if other legal rules had been obeyed. In apparent recognition of that fact, respondents do not argue that the City "obtain[ed] possession of" their vehicles post-petition, on the theory that the vehicles should previously have been returned to respondents but the City possesses them now. 11 U.S.C. 362(a)(3). Whether or not those vehicles *should have been* returned to respondents pursuant to Section 542(a), the relevant baseline for determining whether the City unlawfully "obtain[ed] possession" during the bankruptcy is the City's *actual* possession of the vehicles when the bankruptcy petitions were filed. Respondents' idiosyncratic view of the relevant status quo is no more plausible under the "exercise control" prong of Section 362(a)(3).

B. The History Of Sections 362(a) And 542(a) Confirms That Section 362(a)(3) Does Not Reach The City's Passive Retention Of Respondents' Vehicles

The sequence of events that produced current Sections 362(a) and 542(a) reinforces the conclusion that Section 362(a)(3) does not require the City to relinquish respondents' vehicles.

1. The history of Section 362(a) demonstrates that the automatic stay was designed to preserve the status quo

Section 362's automatic-stay provision was enacted in 1978 as part of the Bankruptcy Code. The Senate

Report prepared in conjunction with that enactment explained that the automatic stay was designed to "give[] the debtor a breathing spell from his creditors" and to "stop[] all collection efforts, all harassment, and all foreclosure actions." S. Rep. No. 989, 95th Cong., 2d Sess. 54 (1978) (Senate Report). It further observed that the automatic stay would prevent any creditor from "pursu[ing] [its] own remedies against the debtor's property" before the estate could be equitably distributed through the bankruptcy process. *Id.* at 49. The Senate Report explained that Section 362(a)(3), in particular, would serve this purpose by "prevent[ing] dismemberment of the estate" and allowing the trustee to "familiarize himself with the various rights and interests involved" before engaging in any "distribution of [the] property" of the estate. *Id.* at 50. These contemporaneous statements reinforce the conclusion that Section 362 was intended to freeze the status quo.

As first enacted in the 1978 Code, Section 362(a)(3) stayed only acts "to obtain possession of" estate property. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2570. The current language extending the automatic stay to acts to "exercise control over" estate property was added in 1984. See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, Tit. III, Subtit. H, § 441(a), 98 Stat. 371. The circumstances of that amendment do not suggest that Congress intended any dramatic change in the operation of the automatic stay in general, or of Section 362(a)(3) in particular.

The House first proposed adding the "exercise control" language in 1980, as part of several proposed amendments to a Senate Bill titled "An Act [t]o correct technical errors, clarify and make minor substantive

changes to Public Law 95-598 [the Bankruptcy Reform Act of 1978]." S. 658, 96th Cong., 2d Sess. (as referred to S. Comm. on the Judiciary, July 25, 1980). The House Report accompanying that proposal observed that each of the suggested changes was "consistent with policies adopted by Congress in its enactment of the Bankruptcy Reform Act." H.R. Rep. No. 1195, 96th Cong., 2d Sess. 2 (1980). It further explained that "[e]very effort has been made to * * * maintain existing policy intact" because "it is * * * premature to change a statute that has been in effect for such a short period of time where it is not really known to what extent [any] concerns are other than transitory." *Ibid.*; see Ralph Brubaker, *Turnover, Adequate Protection, and the Automatic Stay: A Reply to Judge Wedoff*, 38 Bankr. L. Letter No. 11, at 5-6 (Nov. 2018). Those statements effectively disavow any intent to convert a provision originally designed to "prevent dismemberment of the estate," Senate Report 50, into a provision that affirmatively requires creditors to surrender property in their possession.

2. The statutory history confirms Congress's intent that Section 542(a) would define the circumstances under which creditors must turn over property that they possess at the commencement of a bankruptcy case

Congress included Section 542(a) in the Bankruptcy Reform Act of 1978 after House and Senate hearings in which witnesses testified to the "need for a [Bankruptcy Code] provision authorizing the turnover of property of the debtor in the possession of secured creditors." *Whiting Pools*, 462 U.S. at 207; see *Whiting Pools*, 674 F.2d at 152-156 (Friendly, J.) (analyzing the history of Section 542 and concluding that it was designed to

codify bankruptcy courts' existing power to issue turnover orders to secured creditors in possession of estate property); see also *Whiting Pools*, 462 U.S. at 208 n.16 ("find[ing] Judge Friendly's careful analysis of this history" "to be unassailable"). At that time, Congress could not have contemplated that Section 362(a) would play any role in addressing turnover because the current "exercise control" language was not added to Section 362(a)(3) until 1984. Thus, before 1984, "if a creditor was unwilling to return collateral, the debtor would have to seek a court order requiring turnover under § 542(a)." Eugene R. Wedoff, *The Automatic Stay Under § 362(a)(3)—One More Time*, 38 Bankr. L. Letter No. 7, at 2 (July 2018); see also *Hall*, 502 B.R. at 664.

Respondents suggest (Br. in Opp. 26-27) that the 1984 amendment to Section 362(a)(3) dramatically altered the legal landscape by extending the automatic stay to conduct (passive retention of debtor property that the creditor had seized pre-petition) that is different in kind from the conduct the stay had previously covered. That is inconsistent with the legislative history, which portrays the 1984 amendment as a minor technical change. See pp. 28-29, *supra.* And if Congress had viewed the existing remedies for turnover violations as inadequate, it would have been more natural to address that problem by amending the turnover provision itself, not the automatic stay.

C. Enforcing Turnover Through Section 362(a)(3) Is Inconsistent With The Broader Policy Of The Bankruptcy Code

1. Respondents' position is also incompatible with the broader policy of the Bankruptcy Code, which substitutes "adequate protection" of a creditor's interests

for the possessory right that the creditor surrenders through turnover.

The turnover obligation that Section 542(a) imposes is limited by its terms to "property that the trustee may use, sell, or lease under section 363." 11 U.S.C. 542(a). Under 11 U.S.C. 363(e), an "entity that has an interest in property" that may be impaired during the pendency of a bankruptcy case may seek an order from the bankruptcy court ensuring "adequate protection" of that interest. Thus, a creditor who is in possession of debtor property when the bankruptcy case commences need not retain possession in order to protect its interest in the property. Rather, the statutory "right to adequate protection * * * replace[s] the protection afforded by possession." *Whiting Pools*, 462 U.S. at 207. In a case like this one, for example, "adequate protection" might take the form of an insurance policy that would protect the creditor's security interest if a vehicle was returned to the debtor and subsequently damaged or destroyed. See *In re Denby-Peterson*, 576 B.R. 66, 81-83 (Bankr. D.N.J. 2017); Pet. Br. 34.

Acceptance of respondents' approach to Section 362(a)(3) would create substantial disincentives to creditors' invocation of their right to adequate protection. Under that approach, a creditor would expose itself to monetary sanctions under Section 362(k) if it retained property in its possession while it sought adequate protection under Section 363(e).

2. Respondents assert (Br. in Opp. 27-28) that, if monetary sanctions under Section 362(k) are unavailable, a creditor has no incentive to turn over property in exchange for adequate protection, as the Code requires. They contend (*id.* at 6) that the process of seeking and

litigating a turnover order may be lengthy and expensive. But if a creditor opposes a debtor's request for turnover based on frivolous objections, it may be subject to the sanctions that deter any litigant from advancing a meritless position. See, *e.g.*, *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 45-46 (1991) ("[A] court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.") (citations and internal quotation marks omitted).

In addition, while many courts have required debtors to initiate adversary proceedings to obtain turnover orders, some courts have granted those orders based solely on a motion. See, *e.g.*, *Cowen*, 849 F.3d at 945-946 (observing that bankruptcy court had ordered turnover three days after debtor's motion to show cause). At least one court has also suggested that a flagrant violation of Section 542(a) is "probably contumacious" even in the absence of a court order. *Fitzgerald* v. *United States ex rel. IRS* (*In re Larimer*), 27 B.R. 514, 516 (Bankr. D. Idaho 1983).

Because respondents sought to vindicate their interests by invoking Section 362(a) and (k), see Pet. App. 4a-8a, this case provides no occasion for the Court to determine what alternative remedies might be available for violations (or for particularly egregious violations) of the turnover obligation imposed by Section 542(a). But the text, structure, and history of the Code make clear that a creditor does not violate Section 362(a)(3) (and therefore cannot be subjected to monetary liability under Section 362(k)(1)) simply by retaining property that it possessed when a bankruptcy petition was filed. Respondents' evident view that Congress has failed to establish adequate sanctions for turnover violations as

such provides no sound basis for adopting an unnaturally broad construction of the automatic stay.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 11 U.S.C. 362 provides:

Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub. L. 105-277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-866;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termina-

tion value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as

defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (*l*), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or

any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any

lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to

provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was

part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the

conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(*l*)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition

is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor

not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(*o*) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

2. 11 U.S.C. 363 provides:

Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the trans-

fer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then—

(A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of

Justice, of the notification required under such subsection (a), unless such waiting period is extended—

(i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;

(ii) pursuant to subsection (g)(2) of such section; or

(iii) by the court after notice and a hearing.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a rea-

sonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section—

(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and

(2) only to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(*l*) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a

lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(*o*) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January

1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

(p) In any hearing under this section—

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

3. 11 U.S.C. 542 provides:

Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b) Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may

be offset under section 553 of this title against a claim against the debtor.

(c) Except as provided in section 362(a)(7) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

(d) A life insurance company may transfer property of the estate or property of the debtor to such company in good faith, with the same effect with respect to such company as if the case under this title concerning the debtor had not been commenced, if such transfer is to pay a premium or to carry out a nonforfeiture insurance option, and is required to be made automatically, under a life insurance contract with such company that was entered into before the date of the filing of the petition and that is property of the estate.

(e) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.