

In the Supreme Court of the United States

CITY OF CHICAGO, ILLINOIS,

Petitioner,

v.

ROBBIN L. FULTON, GEORGE
PEAKE, AND TIMOTHY SHANNON,

Respondents.

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

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTERESTS OF AMICI CURIAE	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	4
I. THE AUTOMATIC STAY IS A “FUNDAMENTAL DEBTOR PROTECTION” THAT FACILITATES A FRESH START	4
II. THE NATIONWIDE TREND OF RAISING REVENUE THROUGH FINES, FEES, AND IMPOUNDMENT BURIES PEOPLE IN DEBT AND CREATES A DIRE NEED FOR THE “FRESH START” THAT BANKRUPTCY AFFORDS	10
A. Nationwide, the Dramatic Expansion of Fines and Fees Used to Generate Revenue is Overwhelming Many People with Debts They Cannot Pay	11
B. Chicago’s Ticketing and Impoundment Practices Reflect the Nationwide Rise of Punitive Collection of Fines and Fees..	17
1. The City of Chicago Uses Aggressive Ticketing and Vehicle Impoundment to Fill Budget Gaps.....	18
2. The City’s Aggressive Ticketing, Collection, and Vehicle Impoundment Practices Push Many People to File for Chapter 13 Bankruptcy	27

III. ALLOWING DEBTORS TO RECOVER AND USE THEIR VEHICLES FOLLOWING IMPOUNDMENT PROMOTES THE “FRESH START” CONGRESS INTENDED WHEN IT ENACTED THE AUTOMATIC STAY AND TURNOVER PROVISIONS	31
CONCLUSION.....	34
APPENDIX: STATEMENTS OF INTEREST OF AMICI.....	1a

TABLE OF AUTHORITIES

CASES

<i>Davis, et al. v. City of Chicago</i> , No. 1:19-cv-03691 (N.D. Ill. Sept. 26, 2019), ECF No. 1	25
<i>Local Loan Co. v. Hunt</i> , 292 U.S. 234 (1934)	4, 5, 7, 9
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<i>Stellwagen v. Clum</i> , 245 U.S. 605 (1918)	4
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STATUTES AND RULES

11 U.S.C. § 361(1)	9
11 U.S.C. § 361(2)	9
11 U.S.C. § 362(a)(3)	1, 5
11 U.S.C. § 522(d)(2)	7
11 U.S.C. § 522(d)(6)	7
11 U.S.C. § 522(d)(9)	7
11 U.S.C. § 525(a)	8, 10
11 U.S.C. § 542(a)	1, 5
75 Pa.C.S.A. § 6309.1(b) (2005)	16
Cal. Veh. Code § 23112(a) (West 2020)	14

Cal. Veh. Code § 23112(b) (West 2020).....	14
Chicago, Ill., Mun. Code § 2-14-132(a) (2019).....	25
Chicago, Ill., Mun. Code § 2-14-132(a)(1) (2019)	23, 24
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INTERESTS OF AMICI CURIAE¹

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

SUMMARY OF THE ARGUMENT

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹¹ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERALINFORMATION/FORMS/ADMINFORMS/ADM295.PDF.

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

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

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

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

finer—over the course of four years, he still owed \$860.²⁵

Motivated by revenue generation, state and local governments use vehicle impoundment to collect unpaid parking, traffic, and ordinance violation tickets. In California, public agencies towed an estimated 224,900 vehicles in 2017 for unpaid parking tickets, lapsed registrations, or parking in one place for 72 hours—reasons often associated with poverty.²⁶ These vehicles are two to six times more likely to be sold at a lien sale than other towed cars, suggesting that owners cannot afford to recover them, which can cost more than \$2,500.²⁷ Texas impounds vehicles for unpaid tolls, with release only upon full payment of unpaid tolls, fees, and impoundment-related charges.²⁸ Pennsylvania permits municipalities to impound vehicles if, within 24 hours of being fined \$250 or more for violating registration, permitting, or license-plate requirements, an owner fails to pay in full or start a payment plan.²⁹ Denver permits impoundment for unpaid parking tickets and expired license plates, with release only upon full payment of fines, impoundment fees, and storage fees.³⁰

²⁵ *Id.*

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

²⁷ *Id.* at 4, 7.

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

²⁹ 75 Pa.C.S.A. § 6309.1(b) (2005).

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

State and local governments' heavy reliance on fines and fees disproportionately harms impoverished people and communities of color. The longstanding racial and ethnic wealth gap³¹ and higher rates of poverty³² make Black and Latino people less likely to afford steep fines for traffic, parking, and ordinance violations. Moreover, municipalities that rely heavily on fines and fees for general revenue have comparatively larger Black populations.³³

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

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

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

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

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

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

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

Chicago's vehicle impoundment practices began with City leaders' effort to close a \$650 million budget gap in 2011.³⁴ The City increased the cost of mandatory City Vehicle Stickers, raised the penalty for late purchase of a sticker from \$40 to \$60, and nearly doubled the fine for not having a sticker from \$120 to \$200—all to raise revenue.³⁵ It also increased fines for other ordinance violations and allowed vehicle impoundment for littering, playing music too loudly, and driving on a suspended license.³⁶ By fall of 2019, Chicago's collection efforts led to the suspension of 57,000 people's driver's licenses for failure to pay

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

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

³⁶ Ciaramella, *supra* note 34.

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

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

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

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

³⁹ See Gregory Pratt & John Byrne, *Facing \$838 Million City Budget Shortfall, Chicago Mayor Lori Lightfoot Holds First Town Hall: ‘We Actually Value Your Opinion,’* Chi. Trib. (Sept. 6, 2019, 9:14 AM), <https://www.chicagotribune.com/politics/ct-lightfoot-budget-town-hall-meeting-20190905-k4ebrpfo2jbajkxmxfapyekf3m-story.html>.

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

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

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

Chicago's fines for vehicle-related offenses range from \$25 to \$500.⁴³ A single fine can be out of reach for many people; as noted above, four in ten adults in the United States face difficulty paying a \$400 emergency expense.⁴⁴ A City Vehicle Sticker costs between \$90 and \$213,⁴⁵ and is separate from the minimum \$151 annual fee to renew an Illinois license plate.⁴⁶ A sticker ticket carries a \$200 fine and is "the most expensive commonly issued citation in the city."⁴⁷ A vehicle without the sticker can be cited "*each*

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

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

⁴³ *Id.* at 10.

⁴⁴ Durante, *supra* note 2.

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

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

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

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

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

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

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

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

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

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

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

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

⁵² Nolan, *supra* note 42, at 10–11.

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

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

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

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

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

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

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

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

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

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

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

⁶¹ Nolan, *supra* note 42, at 11.

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

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

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

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

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

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

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

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

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

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

⁶⁸ A vehicle is not subject to impoundment if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sandra Botello was unemployed and unable to pay for both the renewal of her City Vehicle Sticker and the \$400 fee to register her son in the private school where he had secured a scholarship.⁷⁸ Within 45 days, she owed \$1,000 for five sticker citations.⁷⁹ Although she purchased a sticker and paid the late fee, she could not afford the fines.⁸⁰ With penalties and collection fees, Ms. Botello's debt ballooned to \$2,934.⁸¹ The City booted and towed her car, eventually impounding it for 33 days before selling it

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

⁷⁷ Sanchez & Kambhampati, *supra* note 4.

⁷⁸ Ramos, *supra* note 58.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

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

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

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

⁸² *Id.*

⁸³ *Id.*

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

⁸⁵ *Id.*

⁸⁶ *Id.*

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

⁸⁸ *Id.*

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

These drivers are not alone. Chicago's ticketing and impoundment practices disproportionately burden people who cannot pay, including people of color. In 2017, Chicago tickets were 40% more likely to be issued to drivers from zip codes with residents earning low-to-moderate incomes⁹¹ and those with higher-than-average concentrations of minority residents,⁹² than to drivers from other zip codes.⁹³ Eight of the ten Chicago zip codes with the most ticket debt per adult are majority Black.⁹⁴ These neighborhoods account for only 22% of all tickets issued between 2007 and 2017, but 40% of all ticket debt owed to Chicago.⁹⁵

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

⁸⁹ *Id.*

⁹⁰ *Id.*

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

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

⁹³ *Id.* at 2–3.

⁹⁴ Sanchez & Kambhampati, *supra* note 4.

⁹⁵ *Id.*

\$3,900.⁹⁶ “[S]ticker violations were the largest source of ticket debt in Chicago,” and “accounted for about 19 percent of citations connected to bankruptcy cases but only 4 percent of those marked paid.”⁹⁷ In 2017, drivers from zip codes with low-to-moderate incomes or higher-than-average percentages of minority residents were *twice as likely* to file for bankruptcy as drivers from other zip codes.⁹⁸

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

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Nolan, *supra* note 42, at i.

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

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

¹⁰¹ *Id.*

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

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

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

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

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

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

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

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

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

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

¹⁰⁶ Pet. App. 4a–5a.

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

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

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

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

* * *

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

CONCLUSION

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

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APPENDIX

STATEMENTS OF INTEREST OF AMICI

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

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

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

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

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

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

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

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

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