

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 CITY OF CHICAGO, ILLINOIS,)
4 Petitioner,)
5 v.) No. 19-357
6 ROBBIN L. FULTON, ET AL.,)
7 Respondents.)
8 - - - - -

9
10 Washington, D.C.
11 Tuesday, October 13, 2020

12
13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 11:04 a.m.

16
17 APPEARANCES:

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25 on behalf of the Respondents.

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P R O C E E D I N G S

(11:04 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 19-357, City of Chicago versus Fulton.

Mr. Goldblatt.

ORAL ARGUMENT OF CRAIG GOLDBLATT

ON BEHALF OF THE PETITIONER

MR. GOLDBLATT: Mr. Chief Justice, and may it please the Court:

This case presents the question whether the Bankruptcy Code's automatic stay requires a creditor in lawful possession of estate property when a bankruptcy petition is filed to return that property to the debtor immediately or else pay damages.

It does not. The automatic stay freezes the state of affairs as of the bankruptcy filing by enjoining creditors from taking post-petition acts to improve their position vis-a-vis the debtor. As this Court has repeatedly observed, the automatic stay's purpose is to preserve the status quo. It does not require creditors to turn over property lawfully in their possession.

1 An entirely separate provision of the
2 code, the turnover provision, addresses that
3 situation. But, unlike the automatic stay, the
4 turnover provision does not operate as an
5 injunction or mandate the payment of damages if
6 property is not immediately turned over.

7 The turnover provision contains a
8 number of statutory exceptions and defenses.
9 For example, a creditor is not required to turn
10 over an asset if the debtor cannot provide
11 adequate protection for the creditor's interest
12 in the asset.

13 A creditor that contends in good faith
14 that an asset is not subject to turnover is
15 entitled to judicial process to resolve that
16 dispute without owing damages if the debtor
17 ultimately repairs.

18 Respondents' contrary argument fails
19 for multiple reasons. First, reading the
20 automatic stay to require turnover contravenes
21 the ordinary meaning of the term "stay," which
22 is status quo preserving.

23 Second, it would render the actual
24 turnover provision superfluous and would nullify
25 the statutory exceptions and defenses to

1 turnover.

2 Finally, no one contends that the
3 automatic stay imposed a turnover duty before
4 the 1984 amendment that added the words
5 "exercise control." Reading that amendment to
6 the automatic stay to effect a sea change in
7 turnover practice violates this Court's repeated
8 admonition that changes to the Bankruptcy Code
9 should not be read to disrupt established
10 practice absent an indication that Congress so
11 intended.

12 CHIEF JUSTICE ROBERTS: Counsel, you
13 agree that you're exercising control over the
14 car; your argument is simply that exercising
15 control is not an action, right?

16 MR. GOLDBLATT: Mr. Chief Justice, we
17 don't -- we don't intend to -- our position
18 doesn't turn on fine distinction between action
19 and inaction. Our fundamental position is that
20 the entire statutory phrase "acts to exercise
21 control" is a prohibition on actions that change
22 the status quo. And because what we did
23 preserved the status quo, it is not inconsistent
24 with the command of the automatic stay.

25 CHIEF JUSTICE ROBERTS: So we should

1 understand that -- I understood your brief to
2 put a different emphasis on it. We should
3 understand that you're covered by subsection (3)
4 because you're in -- are engaged in an action?

5 MR. GOLDBLATT: Your -- Your Honor, we
6 think that the question here about whether or
7 not this is or isn't an act recalls the
8 discussion in Your Honor's opinion in NFIB, in
9 which you correctly observe that drawing the
10 distinction between action and inaction at the
11 extremes devolves into the work of -- of
12 metaphysical philosophy.

13 And just like you observed the
14 Commerce Clause does not require a court to
15 engage in such an analysis, we think the same is
16 true of the Bankruptcy Code.

17 We think that -- that as long as
18 nothing is happening --

19 CHIEF JUSTICE ROBERTS: Well -- well,
20 just --

21 MR. GOLDBLATT: -- that's altered --

22 CHIEF JUSTICE ROBERTS: -- if I could
23 -- could just interrupt. Once the debtor asks
24 you to give back the car, that resolves this
25 metaphysical debate, right? You make the action

1 at that point to decide either to return it or
2 not, correct?

3 MR. GOLDBLATT: Your Honor, we -- we
4 -- we -- our -- our fundamental position is that
5 the work of the automatic stay, as long as we're
6 preserving the status quo, is not violated.

7 Now it is true that the debtor --
8 there is a mechanism in the Bankruptcy Code by
9 which the debtor can get back the car. That's
10 the turnover provision. And the debtor can
11 immediately --

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Thomas.

15 JUSTICE THOMAS: You do agree, though,
16 counsel, that -- that the code would prevent you
17 from -- even though you do have control, it
18 would prevent you from, for example, disposing
19 of the cars?

20 MR. GOLDBLATT: That -- that's --
21 that's correct, Justice Thomas. Our disposal of
22 the cars, our sale of the cars, anything that
23 would alter the status quo as between the debtor
24 and creditor would violate the automatic stay.

25 That's the construction of the

1 automatic stay that this Court has given in
2 cases going back to Continental Illinois in 1935
3 and running through Ritzen and Taggart in the
4 last few terms. So that's --

5 JUSTICE THOMAS: So --

6 MR. GOLDBLATT: -- that's entirely
7 correct. And that is the work of the automatic
8 stay in bankruptcy.

9 JUSTICE THOMAS: So, in his opinion in
10 Whiting Pools, Justice Blackmun makes a
11 distinction between the possessory interest and
12 other interests in the property.

13 Do you think that Whiting Pool has an
14 effect on this case, on your case?

15 MR. GOLDBLATT: Justice Thomas, yes,
16 Whiting Pools is entirely correct and consistent
17 with our view. What Justice Blackmun said for
18 this Court, what Judge Friendly said for the
19 Second Circuit in the case that this Court
20 affirmed said that, A, the entire asset becomes
21 property of the estate, so it rejected the
22 government's argument there that the possessory
23 interest stayed out of the estate and was not
24 subject to turnover; but, B, turnover could
25 proceed subject to the creditor's ability to

1 seek adequate protection.

2 In -- in that regard, Whiting Pools
3 simply set out what was the understanding of how
4 turnover worked prior to the 1984 amendment to
5 the automatic stay, and nothing in the amendment
6 to the automatic stay changes the operation of
7 turnover in that regard.

8 JUSTICE THOMAS: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Breyer.

11 JUSTICE BREYER: I just am having a
12 hard time understanding the following: If I
13 look at 542, it basically says that a creditor,
14 like you, your client, who has some property
15 belonging to the debtor -- that's a car -- shall
16 deliver to the trustee the property.

17 You're supposed to deliver it to the
18 trustee, unless it falls within the exceptions.
19 I don't think you're a life insurance company.
20 I don't -- I don't know what the exception would
21 be. And now you said: Oh, that's right.

22 So -- but then the question here is
23 whether the section before that, which says it's
24 a stay, without saying what you do with it, says
25 that you -- you exercise control over the car,

1 and stay means you ought to turn it over.

2 What difference does it make?

3 MR. GOLDBLATT: Justice --

4 JUSTICE BREYER: In either case you
5 have to turn it over.

6 MR. GOLDBLATT: Justice Breyer, if I
7 may, two -- two responses, if I may: First, on
8 the question what is the defense, Section 542
9 says expressly that the turnover power -- the
10 turnover obligation applies to property that is
11 -- it -- it says it is subject to
12 Section 363(e), a section subject to Section
13 363, and subsection 363(e) provides that the --
14 the court -- that it is -- the property is not
15 subject to the trustee's use if the credit -- if
16 the debtor cannot provide adequate protection to
17 the creditor.

18 So, here, there was a good-faith
19 dispute about whether this -- this was subject
20 to turnover. In this case, there was a -- there
21 was a real dispute about the way in which the
22 city's possessory liens operated.

23 And the position that we took, which
24 had prevailed in district court until the very
25 decision below, said this property was not

1 subject to turnover.

2 JUSTICE BREYER: Okay. So your point
3 is --

4 MR. GOLDBLATT: Now, Justice Breyer --

5 JUSTICE BREYER: -- your point is --
6 is this right, that -- that your -- your point
7 is, if we have to use 542, we have a -- we have
8 these people's cars, they never pay their
9 parking tickets, we give it back to them, that's
10 the last we'll see of them, we'll never get our
11 parking ticket money unless they put up a bond
12 or something, which is a little complicated.

13 MR. GOLDBLATT: So, Justice Breyer --

14 JUSTICE BREYER: If 362 applies, hey,
15 we just have to give them back the car and
16 that's the last we'll ever see of them.

17 MR. GOLDBLATT: So, Justice Breyer,
18 this -- this is -- the question of turnover is
19 the sub --

20 JUSTICE BREYER: Am I wrong?

21 MR. GOLDBLATT: I -- I -- I think the
22 answer to your question, Justice Breyer, with
23 respect, is that the question of turnover is a
24 subject of Section 542, and while that is a
25 shall command, that provision doesn't contain

1 injunctive language.

2 And, Justice Breyer, as you wrote for
3 a unanimous court just 16 months ago in the
4 Taggart case, where there is a -- even -- even
5 in the discharge injunction context, where the
6 statute does use injunctive language, where
7 there is fair ground of doubt, a -- a court will
8 not resort to contempt to punish a party that
9 exercises its rights in a position where --
10 where it's taking positions in good faith.

11 JUSTICE BREYER: And that's exactly --

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 JUSTICE BREYER: -- what I'm trying to
15 find out.

16 CHIEF JUSTICE ROBERTS: Justice Alito.

17 JUSTICE ALITO: What --

18 CHIEF JUSTICE ROBERTS: Justice Alito.

19 JUSTICE ALITO: Yes. You say that the
20 key is whether the status quo is being preserved
21 or altered. So suppose that a city's general
22 practice is to keep cars like the cars at issue
23 here in a basically unguarded lot in a remote
24 location so that there isn't very much
25 preventing somebody who -- whose car is there

1 from entering and driving off with it.

2 But, when the City hears about a
3 particular case and thinks that it's a -- let's
4 say it's a particularly valuable car and thinks
5 that there's a real danger that the owner is
6 going to do just that, go -- go there and drive
7 off with the car, the City relocates that car to
8 a different location where it's subject to
9 24-hour guard.

10 Would that be an alteration of the
11 status quo?

12 MR. GOLDBLATT: Not the relevant
13 status quo, Justice Alito. In the bankruptcy
14 context, the automatic stay does a particular
15 thing. It freezes the relationship between the
16 debtor and its creditors as of the moment the
17 petition was filed.

18 At the moment the petition was filed,
19 there are a set of assets and liabilities, a --
20 a -- a balance sheet, so to speak, and that
21 balance sheet is frozen. No one can engage in
22 self-help during the bankruptcy case to change
23 that.

24 Instead, that's addressed through the
25 bankruptcy process under the supervision of the

1 bankruptcy judge. And if anyone --

2 JUSTICE ALITO: Right.

3 MR. GOLDBLATT: -- takes any action to
4 improve their position, that would violate the
5 stay.

6 Here, the -- the -- the act -- in your
7 hypothetical, the -- the car was held by the
8 City as of the time of the bankruptcy, and as
9 long as that remained the case, what the City
10 was doing to preserve the status quo does not
11 violate the automatic stay.

12 JUSTICE ALITO: Well, what work did
13 the addition of the exercise control language do
14 with respect to tangible objects?

15 MR. GOLDBLATT: So, as I said in
16 response to Justice Thomas's question, with
17 respect to tangible property, if here the City
18 had disposed of the car or had sold the car,
19 those would be actions that would alter the
20 status quo and violate the automatic stay.

21 JUSTICE ALITO: Okay. What does that
22 do --

23 MR. GOLDBLATT: We think that both --

24 JUSTICE ALITO: -- can you -- can you
25 give me examples of what Congress might have had

1 in mind with respect to intangible property when
2 it added this language?

3 MR. GOLDBLATT: Sure. The -- the --
4 the -- again, so the paradigmatic example, for
5 example, would be a derivative action, if -- if
6 a party wanted to take over an estate cause of
7 action and go to state court and say the estate
8 ought to be pursuing the cause of action that
9 it's not, and try to take over that claim,
10 bringing that derivative action would be an act
11 to exercise control over intangible -- over
12 estate property.

13 There are cases involving the
14 termination of a lease agreement, for example,
15 another piece of property that arguably isn't
16 subject to possession, but those actions would
17 violate the automatic stay after the words
18 "exercise control" were added in 1984.

19 JUSTICE ALITO: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Sotomayor.

22 JUSTICE SOTOMAYOR: Counsel, would
23 permitting a car to sit out in weather, in bad
24 weather, or to be broken into or bumped into
25 while in the City's possession -- does that

1 change the status quo?

2 MR. GOLDBLATT: So, Justice Sotomayor,
3 I don't believe those actions or -- or what --
4 what -- or violations of duties or -- or -- or
5 what have you violate the automatic stay.

6 I do believe that non-bankruptcy law,
7 and in this context, the UCC, imposes duties on
8 secured creditors to exercise appropriate care
9 over property that -- that they have
10 repossessed, and so it --

11 JUSTICE SOTOMAYOR: All right. May I
12 stop you a moment? Because I'm limited in time.

13 MR. GOLDBLATT: Certainly.

14 JUSTICE SOTOMAYOR: By your theory
15 right now, the plaintiff must start an adversary
16 proceeding, which has a huge amount of costs
17 associated with them.

18 As I understand it, adversary
19 proceedings take several months. And to what
20 end? Meaning you would go to court and say, I
21 have a lien. They should give me security.

22 You could do that now even if you had
23 to turn over the car immediately. How can we
24 ensure that these processes would go fast enough
25 to save the debtor from not being able to

1 rehabilitate? Because, for many of these
2 people, the cars are the only means they have to
3 get to work.

4 MR. GOLDBLATT: So, Justice Sotomayor,
5 bankruptcy judges have ample discretion and, in
6 my experience, exercise it quite wisely to set
7 schedules --

8 JUSTICE SOTOMAYOR: Well, they didn't
9 -- counsel, I want to point out that it took
10 weeks, if not -- weeks after bankruptcy orders
11 in these cases to turn over the cars for the
12 City to respond.

13 MR. GOLDBLATT: So, Justice Sotomayor,
14 with respect, in this case, there was never even
15 a turnover action brought, only an action for
16 violation of the stay.

17 In most cases, these -- these matters
18 are worked out pretty simply and consensually.
19 But, in response to your sort of analytic
20 question of does the system work, it's a fair
21 question, but the answer is yes. Bankruptcy
22 courts have plenty of ability to move these
23 things quickly, to set response dates promptly,
24 and to ensure that, to the extent there's a
25 dispute about adequate protection, that gets

1 worked out and then the cars are turned over.

2 But the City is entitled -- a secured
3 creditor is entitled to, for example, make sure
4 that there's insurance so that, if the car is
5 destroyed while the debtor has possession of it,
6 its security interest isn't lost. That's how
7 this normally works, and it normally works quite
8 well.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Justice Kagan.

12 JUSTICE KAGAN: Mr. Goldblatt, it
13 seems as though most of your argument this
14 morning is about the function of the automatic
15 stay and the fact that, in your view, what it's
16 supposed to do is to keep the status quo in
17 place, and that's what you think decides this
18 case.

19 But I'm really wondering about the
20 premise here. I mean, keeping the status quo in
21 place, that's not in the statutory language. It
22 is something that the Court has said multiple
23 times, and mostly it makes complete sense.

24 But I -- I -- I wonder whether you're
25 confusing a means and an end, that the real

1 function of an automatic stay is to consolidate
2 the estate so that it can be redistributed.

3 Now, in most cases, consolidating the
4 estate is going to mean keeping the status quo
5 in place. But, in this unusual circumstance,
6 consolidating the estate means changing the
7 status quo, and -- and -- and we should
8 understand the Bankruptcy Code to accept that
9 where that change is necessary to consolidate
10 the estate.

11 MR. GOLDBLATT: So, Justice Kagan,
12 with respect, I think that analysis sort of
13 jumbles different provisions of the Bankruptcy
14 Code. We think that the analysis is that what
15 Section 362, the automatic stay, does is
16 preserve the status quo.

17 Now, to be sure, the consolidation or
18 marshaling of assets of the estate is work to be
19 done in a bankruptcy case. We think that the --
20 that Section 542, the turnover provision, is
21 where that work is done. And Section 542 has
22 specific exceptions and defenses, and there's an
23 established way in which it works.

24 After all, no one here contended that
25 before 1984, when the words "exercise control"

1 were added to the automatic stay, that the
2 automatic stay did any of this work, but this
3 was always, since the dawn of time, the work of
4 a trustee in bankruptcy to marshal the assets of
5 the estate for the benefit of its creditors.

6 And the way it worked is that the
7 turnover provision gives one the authority to
8 come into court and say, you're holding my
9 thing, may I have it, please? And if the answer
10 is, I've got no defense, it should be turned
11 over. And if there are disputes to be worked
12 out, those are addressed by the bankruptcy
13 court. The bankruptcy court resolves it and
14 then issues an order directing turnover, which,
15 if a creditor fails to comply, is punishable
16 with contempt. And so that's how that work is
17 done. But it's respectfully incorrect --

18 JUSTICE KAGAN: Thank you,
19 Mr. Goldblatt.

20 MR. GOLDBLATT: Thank you. Thank you,
21 Justice Kagan.

22 CHIEF JUSTICE ROBERTS: Justice
23 Gorsuch.

24 JUSTICE GORSUCH: Good morning,
25 counsel. I -- I -- I know your client's

1 practice of holding onto cars is well
2 established and highly controversial. But
3 looking to the Bankruptcy Code, I guess my
4 question for you is, assume we agree with you
5 about the scope of 362, is there anything that
6 would prohibit a debtor from seeking exactly the
7 same sort of relief under 542 and 105?

8 MR. GOLDBLATT: So, Justice Gorsuch,
9 we think that the answer to that question is
10 provided by the unanimous opinion of this Court
11 in Taggart just -- just 16 months ago, where the
12 Court said that the -- the -- the discharge
13 injunction, which is a statutory provision of
14 the Bankruptcy Code that has injunctive
15 language, unlike 542, that where there is fair
16 ground of doubt about whether the action was a
17 violation, that contempt authority is not
18 available.

19 We think it follows a fortiori, if a
20 statute that has injunctive language can't be
21 punished with contempt or damages where there's
22 fair ground of doubt, then it must follow that
23 542 also isn't -- isn't punishable by contempt
24 where there is fair ground of doubt.

25 Now, if there's not fair ground of

1 doubt, if there's just bad-faith conduct where
2 someone says, I know 542 requires me to turn
3 this over to you, I just don't feel like it,
4 come and get me, whether sanctions could be
5 awarded in that case raises a different and
6 harder question not presented here.

7 But there is no question that that is
8 all about the scope of 542, and the question
9 presented by this case is whether Section 362,
10 the automatic stay, essentially allows an end
11 run around all of that, avoiding those
12 questions, skipping over the defenses, and
13 providing an automatic claim for damages,
14 attorneys' fees, and, in some cases, punitive
15 damages.

16 JUSTICE GORSUCH: Counsel, I'm sorry
17 to interrupt. Our time is very short, and I --
18 I would appreciate maybe a shorter -- maybe even
19 possibly a yes-or-no answer.

20 Is there anything that would prohibit
21 a court, bankruptcy court, from ordering the
22 turnover of a car from the City of Chicago -- I
23 know it loves to hold onto these things -- but
24 there's an order under 542 saying discharge it.
25 Is there anything that would prohibit that?

1 MR. GOLDBLATT: No. That's -- the
2 answer --

3 JUSTICE GORSUCH: Thank you.

4 MR. GOLDBLATT: -- the reliable answer
5 is no.

6 JUSTICE GORSUCH: Thank you.

7 MR. GOLDBLATT: I mean, the sideboard
8 answer is --

9 JUSTICE GORSUCH: Thank you, counsel.

10 MR. GOLDBLATT: -- that's exactly why
11 542 actions are brought.

12 CHIEF JUSTICE ROBERTS: Justice
13 Kavanaugh.

14 JUSTICE KAVANAUGH: Thank you.

15 And good morning, Mr. Goldblatt. Just
16 to focus on the text, again, if you're holding
17 property of the estate, aren't you acting to
18 exercise control over the property?

19 MR. GOLDBLATT: Justice Kavanaugh, our
20 view is consistent with this Court's long line
21 of jurisprudence that that isn't the type of
22 exercise control that is prohibited by the
23 automatic stay. The automatic stay is -- and
24 one way of thinking about it --

25 JUSTICE KAVANAUGH: Just -- just in

1 ordinary language, though, if you're holding the
2 property, you're acting to exercise control.
3 Just ordinary language.

4 MR. GOLDBLATT: You're exercising
5 control, but it's -- but the stay -- the -- the
6 -- the -- the language "stay," which stays acts
7 to exercise control, isn't violated.

8 JUSTICE KAVANAUGH: Okay. Second, you
9 said, I think, that the system is working well
10 here the way -- under your interpretation, but
11 the ACLU brief and -- amicus brief and others
12 suggest that at least what Chicago's doing is
13 seizing cars, people have to declare bankruptcy
14 to get their cars back, they can't get their
15 cars back to get on their feet to get to work,
16 which they need, to work, to enable their debt
17 repayment.

18 If the goal of bankruptcy is fresh
19 start, according to this brief, Chicago's system
20 is -- is thwarting that, making the Northern
21 District of Illinois a leader in the country in
22 non-business Chapter 13 bankruptcy filings
23 because of what Chicago's doing.

24 I just wanted to give you a chance to
25 respond to that.

1 MR. GOLDBLATT: Sure. So -- so two
2 points if I may, Justice Kavanaugh.

3 We understand that the ACLU disagrees
4 with the City's policy judgments regarding how
5 to enforce its parking laws. For what it's
6 worth, since the -- the time of the events at
7 issue, there have been some changes to that,
8 those policies made by the City Council, which
9 we respect as the proper body to make policy
10 with respect to parking enforcement. With
11 respect -- and traffic enforcement.

12 With respect to the way Chapter 13
13 works, what actually happens in many of these
14 cases, Chapter 13 is designed to permit a debtor
15 to maintain their property while coming up with
16 a plan to repay their creditors. In light of
17 the June -- the Seventh Circuit's rulings here,
18 the practice has grown up in Chicago where
19 people file for bankruptcy not with any intent
20 to complete a five-year plan to repay their
21 creditors but simply as a device to get their
22 car back, get sanctions against the City, and
23 thereafter dismiss their cases.

24 And so our --

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel. Counsel, you have about --

2 MR. GOLDBLATT: -- our position is
3 that --

4 CHIEF JUSTICE ROBERTS: -- you have
5 about a minute to wrap up.

6 MR. GOLDBLATT: Thank you, Mr. Chief
7 Justice.

8 We think the clearest answer to the
9 questions this Court has raised are likely set
10 out in the D.C. Circuit's decision in Inslaw.
11 The critical language is there on page 1473 of
12 Volume 932 of F.2d. There, Judge Stephen
13 Williams made three points.

14 First, the automatic stay operates to
15 preserve the status quo "to make sure that
16 creditors do not destroy the bankruptcy estate
17 in their scramble for relief."

18 Second, because willful violations of
19 the stay subject creditors to compensatory
20 damages, costs, and attorneys' fees, it is
21 "difficult to believe that Congress intended a
22 violation whenever someone already in possession
23 of property mistakenly refuses to capitulate" to
24 a debtor's contention that the property is
25 subject to turnover.

1 And, third, the statutory defenses to
2 turnover "underscore the improbability" that
3 Congress would have intended the automatic stay
4 to impose its own turnover obligation since that
5 would create a "kind of universal end run around
6 the limits of turnover."

7 He had that exactly right. And for
8 those reasons, the judgment below should be
9 reversed.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Ms. Sinzduk.

13 ORAL ARGUMENT OF COLLEEN E. R. SINZDAK
14 FOR THE UNITED STATES, AS AMICUS CURIAE,
15 SUPPORTING THE PETITIONER

16 MS. SINZDAK: Mr. Chief Justice, and
17 may it please the Court:

18 Section 362(a)(3) is most naturally
19 read to preclude acts to gain possession or
20 control over estate property. Accordingly, a
21 creditor may not repossess a debtor's vehicle
22 herself, nor may she ask to exercise control
23 over the vehicle by directing a tow company to
24 take the vehicle to the company's lot.

25 Respondents assert that

1 Section 362(a)(3) should also be read to compel
2 turnover, but that reading is foreclosed for at
3 least two major reasons.

4 First, Section 362 imposes a stay, and
5 the term "stay" denotes a command to preserve
6 the status quo. Section 362(a)(3), therefore,
7 cannot be read to compel a creditor to alter the
8 status quo.

9 Second, if Section 362(a)(3) is read
10 to require a creditor to deliver property to the
11 debtor, it will effectively override the
12 exceptions to turnover in Section 542. This
13 Court rejected such a reading of the automatic
14 stay provision in *Strumpf*, and it should do the
15 same here.

16 CHIEF JUSTICE ROBERTS: Counsel, I
17 want to try to get a better handle at least for
18 myself on what's at stake here. The -- the
19 creditor is not going to be liable for any
20 sanctions if he doesn't know about the
21 bankruptcy. And if he does, at that point, he's
22 under obligations to turn over the property.
23 He's got protections, as you just said, under
24 542. But the Respondent says that he can also
25 get protections under -- I guess it's 363.

1 So what difference does it make as a
2 practical matter whether you proceed under the
3 stay provision or under 542?

4 MS. SINZDAK: One difference is that
5 Section 542 has exceptions to turnover. For
6 example, a creditor does not have to turn over
7 property that is of inconsequential value or
8 benefit to the estate.

9 So, if, for example, the IRS has
10 repossessed property and its tax lien on the
11 property greatly exceeds the value of the
12 property itself, it may be permitted to keep
13 that.

14 But, under Section 362(a)(3), it
15 refers only to property of the estate. So the
16 IRS would be required -- would be required to
17 relinquish possession of that -- of that
18 property.

19 CHIEF JUSTICE ROBERTS: But aren't the
20 --

21 MS. SINZDAK: And I'd note --

22 CHIEF JUSTICE ROBERTS: Go ahead.

23 MS. SINZDAK: I would note that they
24 -- Respondents say you can use the -- the -- the
25 -- the specific trumps the general canon to --

1 to sort of import the exceptions from 542 into
2 362. But that's not the way the canon works.

3 In RadLAX, Justice Scalia explained
4 that where you have a specific provision in a
5 statutory scheme that governs a particular
6 matter, the Court will not read another more
7 general provision that could be read to cover
8 something to cover the matter that is
9 specifically controlled by the other provision.

10 So Section 542 covers turnover, and,
11 therefore, Section 362 does not.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Thomas.

15 JUSTICE THOMAS: Yes, thank you, Chief
16 Justice.

17 Counsel, I'm -- I know others have
18 sort of dismissed this as somewhat metaphysical,
19 but I'm not so sure that's right.

20 Having control of something or having
21 possession of the car sitting on a lot, how is
22 that exercising control as opposed to, I see if
23 you disposed of it or you sold it, you auctioned
24 it, that would be exercising control over it,
25 but just having it sitting on your lot, how is

1 that exercising control?

2 MS. SINZDAK: I think that's exactly
3 right, Justice Thomas. I think that when
4 Congress used the term, the phrase "an act to
5 exercise control," it was contemplating some
6 affirmative act, I think most naturally an act
7 to seize control of something. It could also be
8 an act such as selling the property or
9 reallocating the property. But I do think that
10 merely passively retaining property doesn't --
11 doesn't quite fit as an act to exercise control.

12 We've offered other arguments that --
13 such as the fact that this is a stay and the --
14 the fact that the -- reading it as Respondents
15 would would override exceptions.

16 Those reinforce, I think, what -- what
17 you're getting at, which is the intuitive
18 reaction that your simply leaving a car on a lot
19 is not undertaking an act to exercise control.

20 JUSTICE THOMAS: If we accepted that
21 -- Petitioner's view under -- with respect to
22 362, what would be left of 541?

23 MS. SINZDAK: 541 or 542? I mean, I
24 -- I --

25 JUSTICE THOMAS: I'm sorry, 5 --

1 MS. SINZDAK: -- 541 establishes -- so
2 I think very little would be left --

3 JUSTICE THOMAS: I'm sorry, 542
4 turnover, yes, yes.

5 MS. SINZDAK: That's exact -- that's
6 exactly right, Justice Thomas. So very little
7 would be left of Section 542.

8 As noted, Petitioner's interpretation
9 would essentially follow 542. And that simply
10 isn't permitted. Again, the -- the canon of --
11 of specific trumps the general, which
12 Respondents themselves try to cite, dictates
13 that you should interpret Section 542 as a more
14 specific provision to govern turnover.

15 JUSTICE THOMAS: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Breyer.

18 JUSTICE BREYER: No, go ahead. I'll
19 pass. Thank you.

20 CHIEF JUSTICE ROBERTS: Justice Alito.

21 JUSTICE ALITO: A big part of your
22 argument and Petitioner's argument is based on
23 542. Can we decide this case without saying
24 anything about how 542 works? Would the
25 decision amount to anything if we did that?

1 MS. SINZDAK: Yeah, because it would
2 establish that Section 362(a)(3) cannot be read
3 to broadly compel turnover of all property of
4 the estate at the moment the bankruptcy petition
5 is filed.

6 And I think that the Court could reach
7 that conclusion based on the text of
8 Section 362(a)(3) alone by pointing to the fact
9 that it imposes a stay, which commands the
10 preservation of the status quo, by pointing to
11 the fact that it uses the term "an act to
12 exercise control," which suggests an affirmative
13 act, and, frankly, by pointing to the fact that
14 every other provision in Section 362(a)(3) is --
15 describes some act that, if the creditor took
16 it, it would alter the status quo with respect
17 to the debtor/creditor relationship.

18 JUSTICE ALITO: Well, a -- a potential
19 difference that might matter between the two
20 provisions is that 362 is automatic and it's
21 disputed whether 552 -- 542 is automatic.

22 Is that an issue we can avoid
23 discussing?

24 MS. SINZDAK: I -- I think so in --
25 insofar as you can say that the automatic

1 sanctions provision of 362 does not attach to
2 542.

3 I think Respondents seem to believe
4 that 362 is the only way to get automatic
5 sanctions, and that presumably is why they're
6 advancing this case. But -- but that's not a
7 reason to sort of start distorting Section 362
8 to read it in different ways.

9 And I think you can just say that.
10 Respondents' belief that Section 362 is
11 necessary to obtain sanctions is not an
12 appropriate basis to distort the plain meaning
13 of 362.

14 JUSTICE ALITO: Thank you.

15 CHIEF JUSTICE ROBERTS: Justice
16 Sotomayor.

17 JUSTICE SOTOMAYOR: Counsel, there are
18 some courts that require automatic turnover of a
19 student's transcript if -- if a bankruptcy is
20 filed by the student and the university refuses
21 to release the transcript upon request.

22 Those courts come to the conclusion
23 that the decision to retain control of the
24 transcript and not release it when demanded is a
25 -- is a violation of the code and of the

1 automatic stay.

2 It seems to me that your position
3 would be that that's -- those cases are wrong.
4 Am I right?

5 MS. SINZDAK: No, Justice Sotomayor.

6 JUSTICE SOTOMAYOR: That there is no
7 act -- that your refusal to do an act that the
8 code requires to turn over property of the
9 estate -- forget about the sanctions. I'm
10 talking about --

11 MS. SINZDAK: No.

12 JUSTICE SOTOMAYOR: -- just the
13 refusal to turn over something that's requested,
14 without taking the act the code requires, for
15 you to go to the bankruptcy court and ask for
16 security or take some other action to protect
17 yourself, you're taking the position that that's
18 not exercising control sufficient to violate the
19 automatic stay?

20 MS. SINZDAK: Justice Sotomayor, the
21 transcript question -- the transcript cases are
22 decided under Section 362(a)(6), not 362(a)(3).
23 And in the transcript cases, some courts have
24 decided that when a university refuses to turn
25 over the transcript, they are essentially trying

1 to collect on a debt.

2 And Section 362(a)(6) --

3 JUSTICE SOTOMAYOR: All right,
4 counsel, I'm going to interrupt because there's
5 one last question. You note that some turnover
6 provisions are done by way of motion and not
7 adversary proceedings.

8 Are you taking a position on whether
9 that's permissible under the Bankruptcy Code, to
10 go --

11 MS. SINZDAK: I think --

12 JUSTICE SOTOMAYOR: -- by motion?

13 MS. SINZDAK: -- adversary proceedings
14 are dictated actually by the rules of -- of --
15 of bankruptcy, and those could obviously be
16 changed. It's not in the code itself. So we
17 don't think that that's required by the code
18 itself. But it is in -- required under
19 Section 7001, I believe, of the bankruptcy rule.

20 JUSTICE SOTOMAYOR: So that would have
21 to be changed to permit a more expedited
22 proceeding?

23 MS. SINZDAK: That could be changed.
24 I would also say that bankruptcy courts have the
25 ability, so if they're getting -- somebody

1 initiates an adversary proceeding and the
2 creditor has only completely frivolous defenses
3 to turnover, that adversary proceeding could be
4 decided very, very quickly, and, in fact, the --
5 the creditor who has put forward frivolous
6 defenses could be subject to sanctions, for
7 example, fee-shifting.

8 So I think that even the existing
9 system is the petition to cope with -- with --
10 with the circumstances.

11 JUSTICE SOTOMAYOR: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice Kagan.

13 JUSTICE KAGAN: Ms. Sinzduk, I'm
14 wondering whether you would respond to a
15 different set of intuitions about what this text
16 means, so two of them.

17 The first is that stay just really
18 means stop. Stay your hand means stop doing
19 something. And the second, on the question of
20 exercise and control, is that when I retain
21 property that is the debtor's and that the
22 debtor wants back, I am exercising control over
23 that property.

24 So why doesn't -- why doesn't the
25 text, in fact, lean the other way?

1 MS. SINZDAK: I think there are -- are
2 -- are -- those two questions are actually
3 interrelated. So the term "stay" is, of course,
4 part of the operative text of 362, and I do
5 think there's a meaningful distinction between
6 Congress using the very specific language that
7 filing a bankruptcy petition will operate as a
8 stay and Congress merely barring a particular
9 act.

10 And I -- I think that's significant
11 because, as this Court said in McCann, a stay is
12 something that prevents the authority to alter
13 the status quo. So I do think stay has to be --
14 has to be doing some work there.

15 As to exercise control, I think part
16 of that answer goes back to my stay response
17 because I think, even if you thought that
18 exercising control might plausibly include
19 merely passive retention, I don't think that
20 that's consistent with the use of the word
21 "stay."

22 I would also say that I think what --
23 what -- what Respondents, I think, now are
24 pointing to as the act is simply refusing to
25 surrender when they make a request. I think

1 that's what -- the import of Footnote 3 of their
2 brief.

3 And I think that that really doesn't
4 seem like an act to exercise control. That
5 seems like a refusal to undo a pre-bankruptcy
6 act to exercise control. They want to undo the
7 pre-bankruptcy feature.

8 JUSTICE KAGAN: Well, look -- looking
9 to sort of more underlying principles, why isn't
10 holding onto a debtor's property until they pay
11 you a debt from prior to the bankruptcy sound
12 like just the kind of conduct that the automatic
13 stay provision should police?

14 MS. SINZDAK: I think that if you are
15 hanging onto the property to use it as leverage
16 to encourage debt collection, then you might be
17 violating Section 362(a)(6). But I don't think
18 that the automatic stay provision is designed in
19 any way to increase -- to -- to improve the
20 status of the debtor.

21 It's merely designed to preserve the
22 status quo.

23 Now there are other provisions that do
24 improve the status of the debtor, like 542, like
25 the avoidance provision. And I think, in

1 Whiting Pools, the Court sort of looked at all
2 of those grouped together as things that do give
3 the debtor -- give the debtor a slightly
4 better -- put the debtor in a slightly better
5 position post-bankruptcy. But the --

6 JUSTICE KAGAN: Thank you, Ms.
7 Sinzduk.

8 MS. SINZDAK: -- automatic stay
9 preserves the status quo. Thank you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Gorsuch.

12 JUSTICE GORSUCH: Good morning,
13 counsel. We discussed 542, and we danced a
14 little bit around 362(a)(6), but I'd like to
15 just -- if I could get an answer to this
16 question, I'd be grateful.

17 Why isn't Chicago's conduct a
18 violation of 362(a)(6)? We don't need to engage
19 in the metaphysics of (a)(3). There's -- estate
20 means stop any act to collect a claim against
21 the debtor that arose before the case, the --
22 the bankruptcy case.

23 Why isn't holding onto someone's car
24 at least that?

25 MS. SINZDAK: The -- the Seventh

1 Circuit held that it didn't need to reach that
2 question. I would just -- and we, the
3 government, isn't taking a position on the
4 specific facts, but I would note that merely
5 retaining property is not always an act taken to
6 collect a debt.

7 For example, in Whiting Pools, the IRS
8 had seized property, and they weren't trying to
9 get the debtor to pay them back. They actually
10 just wanted to sell the property and get
11 whatever money they could.

12 So I do not think that every time that
13 a creditor retains property, they're going to
14 necessarily be violating Section 362(a)(6).

15 JUSTICE GORSUCH: Why -- why isn't
16 what you just described an act to collect on a
17 debt, to seize a car --

18 MS. SINZDAK: Merely --

19 JUSTICE GORSUCH: -- to seize the
20 property and either get payment from the debtor
21 or -- or to use the property to collect on the
22 debt by selling it?

23 MS. SINZDAK: Well, so, in -- in -- in
24 Whiting Pools, if you actually wanted to sell
25 the property in order to get money, so in order

1 to collect on the debt, you do have to make a
2 motion to lift stay. And in Whiting Pools,
3 that's what the IRS was in the process of doing.

4 They knew that merely possessing the
5 property didn't put them in violation of the
6 automatic stay, but then they wanted to actually
7 sell it, and they worried that would, in fact,
8 you know, collect on a debt or perhaps realize a
9 lien, and so they -- they were making the motion
10 to lift stay. And it's at that point that all
11 of the questions kicked in about whether
12 actually they were compelled to turn over.

13 JUSTICE GORSUCH: Why isn't just
14 possessing it -- I guess we're still dancing
15 around it -- but why isn't merely possessing it
16 with the intent to do one of those two things
17 that we just talked about, any act to collect
18 the debt, that is, any act?

19 MS. SINZDAK: I think reading it that
20 broadly, again, would -- would -- would come in
21 conflict with the meaning of "stay," which is a
22 term that denotes the command to preserve the
23 status quo.

24 Reading it that broadly would also
25 fall afoul of the -- of what this Court said in

1 Strumpf, which is that it will not read the
2 automatic stay to override the exceptions in
3 542(a). So even if you thought --

4 JUSTICE GORSUCH: Thank you, counsel.

5 CHIEF JUSTICE ROBERTS: Justice
6 Kavanaugh.

7 JUSTICE KAVANAUGH: Thank you.

8 And good morning, Ms. Sinzduk. In
9 isolation, as I understand your position, but
10 correct me if I'm wrong, you're saying, in
11 isolation, holding property might be exercising
12 control over the property, perhaps, but -- for
13 purposes of 362, but, when you look at 362
14 together with 542, the turnover provision, then
15 you realize that holding property cannot be
16 exercising control over the property.

17 Is that -- or at least an act to
18 exercise control. Is that an accurate summary
19 of your position, or what nuance would you add?

20 MS. SINZDAK: I think that's a fair
21 description. I would say that I think you can
22 get our understanding from Section 362(a)(3)
23 alone because of the use of the term "stay,"
24 because of the general statutory interpretive
25 principle that says to read acts in a list in

1 the same way, all of the other acts are clearly
2 those that would alter the status quo. And an
3 act to exercise control should be interpreted
4 the same way.

5 But, otherwise, yes. We're sort of
6 saying, as this Court said in *Timbers of Inwood*
7 *Forest*, maybe you could look at that provision
8 in isolation, but you can't look at the
9 Bankruptcy Code, snippets of Bankruptcy Code
10 text and just ask what they mean in isolation.
11 You have to look at the context of the statute
12 as a whole.

13 JUSTICE KAVANAUGH: If your position
14 were to lose here, how would that affect
15 day-to-day bankruptcy practice?

16 MS. SINZDAK: It would put a lot more
17 pressure on creditors to surrender property
18 where they believe that they have fair defenses
19 to turnover under Section 542.

20 So, again, the IRS, if it has to fear
21 automatic sanctions under Section 362(a)(3),
22 might feel more pressure to surrender property
23 even when it believes that it is clearly covered
24 by the exception for in -- property of
25 inconsequential value or benefit.

1 So I think it essentially gives
2 debtors a sort of cudgel to -- to -- to force
3 creditors to surrender property they might be
4 very well entitled to hold onto.

5 JUSTICE KAVANAUGH: Thank you.

6 CHIEF JUSTICE ROBERTS: A minute to
7 wrap up, counsel.

8 MS. SINZDAK: Thank you, Mr. Chief
9 Justice.

10 I would just reiterate that read in
11 full, Section 362(a)(3) is best interpreted to
12 prevent acts that would alter the status quo
13 with respect to possession or control of estate
14 property.

15 Reading the automatic stay as
16 Respondents propose would ignore the plain
17 meaning of the term "stay," it would override
18 the express exceptions to turnover in Section
19 542(a), and it would be at odds with the
20 well-established role of the automatic stay
21 provision in the bankruptcy scene. Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Mr. Wedoff.

25

1 ORAL ARGUMENT OF EUGENE R. WEDOFF
2 ON BEHALF OF THE RESPONDENTS

3 MR. WEDOFF: Thank you, Mr. Chief
4 Justice, and may it please the Court:

5 These cases present a single question:
6 May a creditor stop a Chapter 13 debtor from
7 recovering property that the creditor seized
8 before the bankruptcy filing if the debtor does
9 not have a court order directing the return?

10 For three reasons, reflected in the
11 Court's questions today, the creditor may not
12 prevent recovery of the property.

13 First, the automatic stay in
14 Section 362(a)(3) of the Bankruptcy Code
15 provides that a creditor may not act to exercise
16 control over a debtor's property. The critical
17 language is "exercise control." Unlike action
18 to obtain possession of property, a future event
19 that the stay also prohibits, exercising control
20 over property is ongoing action, and the stay
21 expressly stops it.

22 Second, the automatic stay works
23 together with the turnover provision in Section
24 542(a) of the code, which commands that any
25 party holding estate property shall deliver it

1 to the trustee or debtor. This provision
2 operates automatically, with no requirement that
3 the debtor obtain a court order mandating
4 compliance.

5 Third, the automatic stay and the
6 turnover provision support a major purpose of
7 the Bankruptcy Code: to place all estate
8 property under the court's jurisdiction and
9 allow the trustee or debtor to control the
10 property from the outset of the case.

11 This Court recognized in *Whiting Pools*
12 that an effective reorganization of a business
13 or individual will not likely succeed if
14 creditors can withhold estate property to get
15 better treatment for themselves.

16 The automatic stay protects
17 reorganization. It allows greater payments to
18 all creditors by preventing any one creditor
19 from withholding the debtor's property.

20 Until 2016, the City of Chicago
21 complied with the code, returning seized cars
22 when debtors requested. When the City changed
23 its policy and refused to return my client's
24 cars, it acted to exercise control over them, a
25 direct violation of the automatic stay, as the

1 Seventh Circuit correctly held.

2 CHIEF JUSTICE ROBERTS: Counsel, the
3 basic question here is when an entity exercising
4 control over the property of a debtor has to
5 turn over the property to the estate. Now why
6 wouldn't we look to the section of the code
7 entitled "turnover of property to the estate" to
8 figure out the answer to that question?

9 MR. WEDOFF: I think that that
10 section, Section 542(a), works hand in hand with
11 the automatic stay in Section 362(a)(3). So,
12 yes, we do look at 542(a), which tells us that,
13 as of the outset of the case, there's a duty to
14 turn over, but 362(a)(3) enforces that
15 obligation. And what we have argued is that it
16 arises when the debtor requests the return of
17 the property.

18 CHIEF JUSTICE ROBERTS: Well, but they
19 lose the protections under 542(a) unless you
20 incorporate them by reference under 363(a). And
21 I'm just wondering, well, why don't you assume
22 those protections apply directly under 542
23 rather than indirectly under 363?

24 MR. WEDOFF: The important thing about
25 Section 363(e) is that it arises on request of

1 the creditor. If a creditor has not requested
2 adequate protection, there's no automatic
3 allowance and no obligation on the debtor's part
4 to provide it.

5 CHIEF JUSTICE ROBERTS: Well, what if
6 -- if you get the protections under 363(a) that
7 you would get under 542, and, presumably, a
8 creditor would not be subject to any kind of
9 sanctions before it learns of the bankruptcy,
10 what -- what is the -- the practical difference
11 between the two provisions?

12 MR. WEDOFF: The practical difference
13 is one of timing, and I think that's been
14 reflected in some of the questions that the
15 Court has asked. If the debtor has to wait for
16 what could be several weeks before the Court
17 rules on the return of seized property, the
18 debtor's ability to fore -- to reorganize is
19 likely to be lost.

20 CHIEF JUSTICE ROBERTS: By a -- by a
21 period of a couple weeks?

22 MR. WEDOFF: Yes, because the debtor
23 needs the car to get to work, it needs the car
24 to have the income to support a family, and if
25 that is lost, the debtor is going to be unable

1 to make the payments that would be required to
2 keep the case going.

3 CHIEF JUSTICE ROBERTS: Your friend on
4 the other side, Mr. Goldblatt, says on page 15
5 of his brief that the parties agree that
6 long-settled bankruptcy law permitted a creditor
7 to retain possession of repossessed or impounded
8 property, pending the outcome of a turnover
9 proceeding.

10 Is -- is he right that you agree with
11 that?

12 MR. WEDOFF: No, he -- he is not
13 correct about that. We cited the Larimer case,
14 a bankruptcy case from Idaho, for the
15 proposition that Section 542(a) applies when the
16 case is filed. And if there's a request to have
17 the property turned over, 542(a) itself requires
18 that that be done. And without a court order.

19 But the important thing is that when
20 the automatic stay was amended in 1984, it
21 provided a more effective enforcement mechanism
22 than what existed before in 1984.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Justice Thomas.

1 JUSTICE THOMAS: Counsel, if -- if the
2 two provisions work together, wouldn't you
3 expect that -- that there'd be a
4 cross-reference?

5 MR. WEDOFF: It's really not
6 necessary, Justice Thomas, because they so
7 clearly deal with precisely the same issue,
8 control and possession of estate property.

9 So they treat the same issue. And
10 when we have two provisions of the code that
11 treat the same issue, we read them as
12 harmonious, if that's possible. And it's
13 certainly possible here.

14 JUSTICE THOMAS: And on -- and that
15 score, it -- it would seem to me that you would
16 actually make 542 somewhat superfluous.

17 MR. WEDOFF: No, there -- there's an
18 overlap, as frequently happens in the Bankruptcy
19 Code, but 542(a) does considerably more than 362
20 does.

21 542(a) directs the party to whom
22 property of the estate ought to be delivered,
23 and it imposes a requirement of accounting for
24 any loss in the value of the property.

25 So 542(a), even with the enforcement

1 mechanism of 362, is entirely viable.

2 JUSTICE THOMAS: So you said that or
3 at least that's -- I think I heard that you say
4 that the -- there's -- the difference between
5 proceeding under 542 versus 362 is a matter of a
6 couple of weeks.

7 MR. WEDOFF: Well, it could be more
8 than that. It could be much more than that. If
9 the creditor said you have to demonstrate
10 adequate protection, and there was a question
11 about whether the value of the property was
12 sufficient to provide adequate protection to a
13 creditor, it could involve expert witnesses,
14 discovery, and a proceeding that went on for
15 many weeks.

16 JUSTICE THOMAS: The -- I'm still
17 interested, and I know this is -- as I've said
18 before, this is deemed to be somewhat
19 metaphysical, but I'm still having a problem
20 seeing that merely having a car on an
21 impoundment lot is exercising control over it.

22 I understand if the city wanted to
23 dispose of it, to auction it off, that would be
24 exercising control over it, but merely passively
25 holding it, would you explain to me, again, why

1 that is exercising control?

2 MR. WEDOFF: Yes, Your Honor. The
3 question arises when the debtor asks for return
4 of the property. At that moment, the creditor
5 has a choice. Either the creditor turns the
6 property over or the creditor continues to hold
7 that property against the ability of the debtor
8 to obtain it.

9 And that holding of the property
10 against the debtor's wish to have it turned over
11 is an exercise of control. In the ordinary
12 meaning of the words.

13 JUSTICE THOMAS: I see that it would
14 be exercising control if the debtor -- I mean,
15 if the creditor or the City actually delivered
16 the property, but if the City passively said,
17 look, no, it's -- we have it, we're not going to
18 go to the effort of delivering it to you, I
19 don't see how that is anything more than
20 passively holding property, rather than acting
21 to exercise control.

22 MR. WEDOFF: Your Honor, if you
23 imagine the debtor with a key to the car coming
24 to the gate of the impound lot and trying to get
25 in so that the debtor can drive the car away, I

1 think it would be clearer that there's plainly
2 an act to exercise control as the debtor is
3 prevented from gaining access.

4 JUSTICE THOMAS: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Breyer.

7 JUSTICE BREYER: Thank you. I'm
8 trying -- I think it would be -- to see my
9 questions as trying to clarify what the chief
10 justice asked, where I tended to have the same
11 questions.

12 I'm having a hard time figuring out
13 what the difference is between the two sections.
14 If you're right and a creditor has some property
15 like a car, you say 362 says turn it over
16 immediately, and if you don't, you're going to
17 be in trouble.

18 And 542 says just the same thing. 542
19 says shall turn it over. And then there's some
20 exceptions in 542.

21 But for the most part, you -- you read
22 those into 363, except I don't know what happens
23 to life insurance, but -- and in both cases, I
24 guess if -- if you're right and the City needs
25 protection, it can say: Judge, we're ready to

1 give him the car but please give us protection.
2 And he could do that whether you're right or
3 wrong.

4 So I can't get the difference in my
5 mind.

6 MR. WEDOFF: Your Honor, the
7 difference, again, is a question of timing. If
8 the debtor needs to seek an order from the court
9 to have the property turned over, there could be
10 a very long delay between the time that the car
11 is seized and the bankruptcy is filed and the
12 time that the debtor ultimately gets that court
13 order.

14 On the other hand, if there's a
15 violation of the automatic stay, if the
16 automatic stay applies, there's an immediate --

17 JUSTICE BREYER: I see -- all right, I
18 see that. I see that. But I also say, isn't
19 that counterbalanced in the fact that there's no
20 other security? If a debtor -- if the creditor
21 has to turn it over immediately, he may lose the
22 car because of time. When he shouldn't.

23 MR. WEDOFF: The creditor --

24 JUSTICE BREYER: But -- and so I -- I
25 find that a kind of balance, six of one, a half

1 dozen of the other.

2 MR. WEDOFF: The difference is in the
3 speed with which the creditor can get relief
4 from the automatic stay. Section 363(e) allows
5 even ex parte relief from the automatic stay on
6 an immediate basis.

7 So if the creditor turned over the car
8 and immediately sought relief from the stay,
9 within a matter of hours the court could order
10 that return.

11 But -- and -- and I -- let me go even
12 further. The automatic stay can be annulled.
13 If the --

14 JUSTICE BREYER: Yeah, but he still
15 has to deal with 542. On your theory, he has to
16 deal with both.

17 MR. WEDOFF: That's -- that's
18 completely true, but the point is that if there
19 is any redundancy between the two statutes, the
20 redundancy should be resolved, as the Basic case
21 said, by harmonizing them. And here there's no
22 difficulty in harmonizing.

23 But to get back to your point, the
24 difference in the balance of harms is
25 extraordinary. The debtor can get relief under

1 Section 542 only after a proceeding that could
2 take a very long time to result in help for the
3 debtor. The creditor, on the other hand, can
4 get relief from the automatic stay almost
5 immediately. And in the case of annulment,
6 immediately.

7 So that really looking at that just
8 gives another reason why the congressional
9 approach to bankruptcy put all of the property
10 in the hands of the debtor or the trustee at the
11 outset of the case is appropriate to enforce.

12 JUSTICE BREYER: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice Alito.

14 JUSTICE ALITO: Well, to follow up on
15 Justice Breyer's question, if you are correct
16 that 542 is self-executing, then I don't really
17 understand your answers to his questions. Could
18 you just take a minute to clarify that?

19 MR. WEDOFF: When we say
20 self-executing, I think there's a -- a need to
21 look at that a little bit more. It's certainly
22 true, as we understand it, Section 542 requires
23 the turnover of property to a debtor at the
24 outset of the debtor's request for that
25 property.

1 But it's not self-enforcing in the
2 sense that the debtor would not have to take
3 action to enforce the -- the claim if it's being
4 violated. If the creditor does not turn over
5 property under 542, the debtor would have to go
6 into court with the creditor still holding the
7 property, and the creditor would quite possibly
8 argue there's no adequate protection for our
9 claim, and the matter could drag on for a
10 considerable length of time; whereas with the
11 automatic stay, the property must be turned over
12 and then the creditor seeks relief and, again,
13 that can be done quickly.

14 But the long and -- the short answer
15 to your question is --

16 JUSTICE ALITO: Well, the creditor
17 seeks relief after the car is turned over, the
18 -- the -- the City would have to turn over the
19 car and then ask for adequate -- adequate
20 protection?

21 MR. WEDOFF: Correct.

22 JUSTICE ALITO: It could not condition
23 the turning over of the car on the provision of
24 adequate protection?

25 MR. WEDOFF: No, because that, again,

1 invites long negotiation, with the creditor
2 having all of the leverage to achieve more than
3 it would get otherwise.

4 JUSTICE ALITO: All right. Let me ask
5 you -- let me ask you a different question.
6 Before 1984, would a creditor's refusal to turn
7 over property have violated 362(a)(3)?

8 MR. WEDOFF: No.

9 JUSTICE ALITO: So your argument has
10 to be that Congress made this very substantial
11 change in the way the situation is to be treated
12 under the Bankruptcy Act simply by adding,
13 without any cross-reference or other
14 clarification, the word "exercise control," the
15 phrase "exercise control"?

16 MR. WEDOFF: It certainly made a
17 change, but it was not a particularly
18 significant change. 542(a) already required the
19 property to be turned over. All that 362(a)(3)
20 added was a more efficient enforcement
21 mechanism, and one --

22 JUSTICE ALITO: Well, I thought you
23 just told me that -- I thought you just told me
24 that it makes a big difference --

25 MR. WEDOFF: It makes a difference --

1 JUSTICE ALITO: -- whether Congress --

2 MR. WEDOFF: -- in the -- excuse me.

3 JUSTICE ALITO: I thought you just
4 said it makes a big difference whether it's
5 under 362 or 542. And then you told me, well,
6 Congress didn't need to do more than just add
7 the words "exercise control" because it was no
8 big deal.

9 MR. WEDOFF: It makes a big difference
10 in the effectiveness of the enforcement
11 mechanism, but it doesn't make a big difference
12 in the substantive obligation to turn over the
13 seized property. The enforcement --

14 JUSTICE ALITO: It makes a difference
15 -- according to your argument, it makes a
16 difference in the relative rights of creditors
17 and debtors, and I don't know which is better as
18 a policy argument, but your -- I don't see how
19 you can have it both ways.

20 Either it's important or it's not
21 important, and, if it's important, then you have
22 to explain why Congress would have chosen to do
23 it in this very oblique fashion.

24 MR. WEDOFF: The difference in the
25 enforcement mechanism is important, but the

1 underlying substantive obligation was not
2 changed. And the language in 362(a)(3), as we
3 argued from the beginning, could not be clearer.

4 There is an obligation to cease
5 exercising control over the estate property, and
6 that requirement to cease exercising control
7 necessarily means turning over the property to
8 the party entitled to possess it.

9 JUSTICE ALITO: Thank you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Sotomayor.

12 JUSTICE SOTOMAYOR: Counsel, where in
13 362(a)(3) do you see a requirement that the
14 debtor has to turn it over only upon request?

15 I thought, under the terms of the
16 automatic stay, the minute the Bankruptcy Code
17 is filed, the bankruptcy proceeding is filed,
18 the automatic stay requires immediate turnover
19 in other situations without demand. Where do
20 you get demand?

21 MR. WEDOFF: Your Honor, this is a
22 necessity of interpreting a particular provision
23 of the code in context. It may very well be
24 that a trustee or a debtor-in-possession does
25 not want to have possession of the property.

1 Trustees and debtors-in-possession are
2 given the option of abandoning property that is
3 burdensome to them. And, of course, the
4 provisions of 542(a) are consistent with not
5 turning over property of inconsequential value.

6 Moreover, a debtor in Chapter 13 has
7 the ability to allow the creditor to keep the
8 property as satisfaction of the creditor's claim
9 under Section 1325 --

10 JUSTICE SOTOMAYOR: Counsel --

11 MR. WEDOFF: -- (a)(5).

12 JUSTICE SOTOMAYOR: -- counsel, if I
13 might interrupt, you're reading something into
14 the provision. Why isn't it more natural to
15 read 542 as controlling when there's been no
16 active exercise of control and that makes a
17 debtor's request the acting principle?

18 Under 542(a), the trustee has to ask
19 for the property. We don't have to make
20 anything up. It's right there.

21 MR. WEDOFF: There's -- there's
22 nothing in Section 542(a) that requires any
23 action by the debtor or trustee in order for
24 that provision to go into effect.

25 The question is what is the mechanism

1 for enforcing it, and that, of course, would
2 require some action by the trustee or debtor.

3 JUSTICE SOTOMAYOR: Counsel, getting
4 outside the legal arguments, on a practical
5 level, what would have to be done -- and I know
6 we wouldn't do it, Congress would or whatever
7 appropriate bankruptcy committee would -- what
8 would have to be done to expedite this
9 proceeding for things like cars in a way that
10 doesn't give you everything you want but
11 provides a reasonable opportunity for a
12 debtor -- for a creditor like the City to come
13 in and ask for adequate assurances of
14 protection?

15 MR. WEDOFF: Well, Your Honor, of
16 course, I believe that they have that right now
17 and that there's no need for the --

18 JUSTICE SOTOMAYOR: Counsel, I just
19 asked you to go outside this. Assume I ruled
20 against you.

21 MR. WEDOFF: Okay. Well, but --

22 JUSTICE SOTOMAYOR: All right. Not
23 me, but the Court. But you've lost your legal
24 argument.

25 MR. WEDOFF: All right.

1 JUSTICE SOTOMAYOR: What would be your
2 then next step in Congress or wherever is
3 appropriate and what kind of legislation to
4 ensure the purpose I spoke about?

5 MR. WEDOFF: Well, there could be
6 language added to Section 542 or there could be
7 language added to Section 362(a)(3) that made it
8 abundantly clear that the interpretation that
9 we're proposing right now is the correct one.

10 JUSTICE SOTOMAYOR: All right. You're
11 not helping. Okay. Thank you, counsel.

12 CHIEF JUSTICE ROBERTS: Justice Kagan.

13 JUSTICE KAGAN: Mr. Wedoff, the City
14 of Chicago here and the SG, too, argues that the
15 only thing that the automatic stay provision is
16 about is maintaining the status quo.

17 So I just thought I'd ask, is there --
18 is there any other circumstance in which the
19 automatic stay provision compels an action that
20 alters the status quo, or is -- is -- is -- is
21 this one the only one in your view?

22 MR. WEDOFF: No, to some extent,
23 Justice Kagan, that's already been discussed.
24 The Solicitor General acknowledged that, under
25 Section 362(a)(6), a creditor may very well need

1 to turn over to the debtor a transcript of their
2 grades, that requires action to prevent the
3 ongoing collection effort that was maintaining
4 that transcript.

5 But, similarly, in Section 362(a)(1),
6 a creditor is required to stop any collection
7 action in a judicial or administrative
8 proceeding from going forward, and that requires
9 that creditor to take action to stop things like
10 garnishments.

11 It's not enough for them to say: We
12 don't need to do anything for the garnishment to
13 go forward. We just allow that to take place,
14 maintaining the status quo.

15 No. They have to take action to stop
16 the garnishment. And I think the underlying
17 issue here is that the automatic stay is
18 intended to prevent collection activity from
19 going forward. Most of the time that can be
20 done by stopping any new action from taking
21 place. But sometimes, as in this case, it -- it
22 requires the stopping of continuing action.

23 JUSTICE KAGAN: And -- and how about
24 this? I -- I take it that your argument is
25 essentially that 362(a)(3) becomes the

1 enforcement mechanism for the 542 provisions.

2 But is there another example like that
3 where the automatic stay enforces an obligation
4 that's imposed by another different provision of
5 the Bankruptcy Code?

6 MR. WEDOFF: Yes, there is. Section
7 521 imposes many obligations on the debtor,
8 including the obligation to turn over property
9 to the trustee. But the automatic stay enforces
10 that obligation, and so it puts teeth into the
11 521 obligation.

12 JUSTICE KAGAN: And if it -- if -- if
13 -- if you were right that the automatic stay is
14 an enforcement mechanism, wouldn't we expect the
15 two provisions, 362 and 542, to be completely
16 the same in scope, but, as Ms. Sinzdak pointed
17 out, they're -- they're really not. There's the
18 exception for things of minimal value in 542.
19 There are some other exceptions. So they're not
20 coterminous. If one were really enforcing the
21 other, shouldn't they be?

22 MR. WEDOFF: The general rule that was
23 announced by this Court in Germaine is one that
24 requires consideration of both statutes and
25 harmonizing them to the extent possible. And,

1 here, the differences between the two are almost
2 insignificant.

3 A debtor is not going to be asking for
4 the return of property of in -- inconsequential
5 value to the debtor. There's not an insurance
6 issue here. And there's not a situation where
7 the property has already been transferred by the
8 creditor. And those are the only exceptions in
9 542(a). So 362(a)(3) and 542(a) line up almost
10 perfectly.

11 JUSTICE KAGAN: My -- my final
12 question is, you know, there's a lot of
13 difference between you and your friends on the
14 other side about how 542 operates and what it
15 requires. And Justice Alito, I think, asked
16 before, you know, do we have to decide those
17 questions?

18 So a similar question to you: Does
19 your argument really depend on a particular view
20 of what 542 says and how it operates, or could
21 we, for example, take Chicago's view and you
22 would still win?

23 MR. WEDOFF: 542(a) is not essential
24 to our argument. 362(a)(3) on its own clearly
25 says that the creditor may not continue to

1 exercise control over the property.

2 542(a) is helpful, though, as I
3 indicated before, in indicating who should get
4 possession of the property and what should be
5 done if there's a decline in the value of the
6 property while it's being held by the creditor.

7 JUSTICE KAGAN: Thank you, Mr. Wedoff.

8 CHIEF JUSTICE ROBERTS: Justice
9 Gorsuch.

10 JUSTICE GORSUCH: Good morning. I'd
11 like to start with the 1984 amendments. Before
12 1984, the statute prohibited obtaining
13 possession.

14 MR. WEDOFF: Yes.

15 JUSTICE GORSUCH: In '84 they added
16 the "or exercise control" provision. And isn't
17 there some linguistic gap in there, for better
18 or worse, Congress never talked about just
19 retaining possession, it didn't speak about
20 keeping possession, it didn't speak about
21 anything else about possession.

22 It went on to add new and different
23 language about exercising control. What do we
24 do about that?

25 MR. WEDOFF: Well, I think the best

1 thing to do is to look at what would have
2 happened if the interpretation posed by the City
3 were put into effect really. And that is it
4 would have used the same language that was
5 already in Section 362(a), prohibiting any
6 action to obtain control of property of the
7 estate.

8 By -- by --

9 JUSTICE GORSUCH: Isn't the simplest
10 thing in the world and the most natural, though,
11 if Congress wanted to get at retaining
12 possession just to say obtain or -- obtain or
13 retain possession, something like that?

14 MR. WEDOFF: That certainly would have
15 been another way to do it, but I think that
16 exercising control is that same kind of
17 continuous action.

18 JUSTICE GORSUCH: Okay. I'd also like
19 you to address the point that nobody seems to
20 think that it would be acceptable for the City
21 to just simply abandon these cars.

22 And that, in fact, as I understand it,
23 your position is that on request, or at least on
24 request, maybe automatically, the City must hand
25 over the car to the trustee.

1 But where do we get that in 362?
2 Nothing speaks to handing anything over. It
3 just is a stay, as -- as Judge McKay put it on
4 the Tenth Circuit. It's a stay, not a go
5 provision.

6 What do we do about that?

7 MR. WEDOFF: Well, I -- I -- I'm not
8 sure that I understand the question entirely,
9 but certainly the --

10 JUSTICE GORSUCH: Well, I -- I think
11 you -- I'm -- I'm sure you do, friend. The
12 point is you want to use this as -- as a
13 self-executing requirement to hand things over,
14 not merely abandon the property.

15 And there's nothing in the -- in -- in
16 -- in this provision, unlike 542, that speaks to
17 that.

18 MR. WEDOFF: That's correct. And so
19 it would not be a violation of the automatic
20 stay if the City were to leave the car unlocked
21 in front of its impound lot and invite the
22 debtor, or anyone else who had a key, to drive
23 it away. That would not be a violation of
24 Section 362(a)(3).

25 However, it would subject the creditor

1 to violation of 541 or at least an obligation to
2 have to account for any loss of value. So they
3 really do work together.

4 JUSTICE GORSUCH: What do we do about
5 the fact that (a)(6) seems to be the much more
6 natural provision for your argument than (a)(3)?

7 MR. WEDOFF: That's to reflect the
8 reality of the automatic stay, which it has any
9 number of overlapping provisions. 540 --
10 362(a)(6), for example, talks about any action
11 to collect. Well, that would include putting
12 liens on the property, enforcing a -- an
13 obligation by sale, all sorts of things that are
14 separately prohibited by the automatic stay
15 would be incorporated under 362(a)(6), but that
16 doesn't prevent each of them from being applied.
17 The --

18 JUSTICE GORSUCH: Let's -- let's say
19 that we thought your argument under (a)(3) was
20 unsuccessful. Have you preserved an (a)(6)
21 argument? Is it something that could be
22 remanded for consideration?

23 MR. WEDOFF: Absolutely. In fact, one
24 of the cases that was decided, the Shannon
25 decision, has express findings by the bankruptcy

1 court that (a)(6) was violated by the City.

2 So in the event that the (a)(3) ground
3 of violation of the stay were not accepted by
4 the Court, (a)(6) would certainly have to be
5 something considered.

6 JUSTICE GORSUCH: Thank you.

7 CHIEF JUSTICE ROBERTS: Justice
8 Kavanaugh.

9 JUSTICE KAVANAUGH: Thank you, Chief
10 Justice. And good afternoon, Mr. Wedoff.

11 Just to follow up on Justice Gorsuch's
12 questions at the beginning of the colloquy with
13 him, the 1984 amendment, he made the point, and
14 I think you agree, that obviously would have
15 been simple enough to put retained possession in
16 there or keep possession, as Justice Gorsuch
17 said.

18 Is your point that "exercise control"
19 covers that and covers other things? Is that
20 the nature of your response to him? I just want
21 to make sure I have that nailed down textually.

22 MR. WEDOFF: Exactly. That is
23 precisely our position.

24 JUSTICE KAVANAUGH: And what does --
25 can you give the universe of things or at least

1 a sample of things that are encompassed within
2 "exercise control"?

3 MR. WEDOFF: Well, among the things
4 that would be encompassed is the exercise of
5 control over intangible property, which is one
6 of the things that the -- a city has argued.
7 And that's one of the things that is covered,
8 but also the exercise of control over tangible
9 property.

10 JUSTICE KAVANAUGH: And I am going to
11 ask you the same question I asked the Assistant
12 to the Solicitor General in thinking about
13 debtors and creditors and also the dedicated
14 bankruptcy judges around the United States.

15 If you were to lose this case, what
16 would be the effect in your view on day-to-day
17 bankruptcy practice in bankruptcy courts?

18 MR. WEDOFF: It would make Chapter 13
19 much less effective potentially, because it
20 would put debtors in the position of not being
21 able to recover property that's essential to
22 their livelihood.

23 And so Chapter 13 filings would
24 decrease, but also, interestingly enough, I
25 believe payments to creditors would decrease,

1 payments to the other creditors who would be
2 benefitted by a Chapter 13, and even payments to
3 the City of Chicago itself, because in Chapter
4 13, they would probably get more money in
5 payment of their claim than they would get by
6 having that car liquidated in their impound lot.

7 JUSTICE KAVANAUGH: Thank you very
8 much.

9 CHIEF JUSTICE ROBERTS: Thank you.

10 Mr. Wedoff, you can take up to ten
11 additional minutes. And during that time, if
12 any of my colleagues have questions they did not
13 have an opportunity to ask, they can ask them
14 during that time.

15 MR. WEDOFF: Thank you, Mr. Chief
16 Justice.

17 I believe that the questions from the
18 Court today have spotlighted the underlying
19 basic bankruptcy policy, which is that
20 bankruptcy trustees and debtors-in-possession
21 must be given prompt access to estate property.

22 The automatic stay advances this
23 policy by preventing creditors from acting
24 against property of the estate. It prevents
25 creditors who hold the debtor's property before

1 the bankruptcy filing from acting to control
2 that property while the case is pending.

3 If the creditor were able to continue
4 to exercise control over the property, the
5 creditor would have leverage over the debtor.
6 The debtor who needs the seized property would
7 be willing to give the creditor better treatment
8 in a Chapter 13 plan or make additional payments
9 at the outset to avoid the delay that otherwise
10 would occur.

11 That kind of leverage in support of
12 one creditor over the body of creditors as a
13 whole is something that the automatic stay is
14 directed to preventing.

15 JUSTICE SOTOMAYOR: Counsel, I'm
16 sorry, this is Justice Sotomayor.

17 I don't understand that last point.
18 If a turnover provision under 542 is -- would
19 result in the debtor coming in and saying I need
20 the property to earn a living, under 542 you can
21 come in and say: I need security or raise any
22 other sorts of defenses that would delay the
23 proceedings.

24 You get to keep the property and
25 deprive the other creditors of any possibility

1 of recovery. So isn't the gamesmanship the
2 problem here? Who's going to suffer the loss?

3 MR. WEDOFF: To some extent, but I
4 think the statute --

5 JUSTICE SOTOMAYOR: But it's always
6 the estate who suffers the loss under your
7 theory, because the estate is not getting back
8 an instrument for the livelihood of the debtor.

9 MR. WEDOFF: Well, the estate is
10 getting that back under the interpretation we
11 have given, but, again, the question really is
12 what does the statute say.

13 And I want to raise the approach that
14 was taken by Whiting Pools again. And Whiting
15 Pools said -- and I am quoting now -- Section
16 542(a) simply requires the creditor to seek
17 protection of its interests according to the
18 Congressionally-established bankruptcy
19 procedures, rather than by withholding seized
20 property from the debtor's efforts to
21 reorganize.

22 So Whiting Pools itself recognizes
23 that this balance between the debtor's need to
24 reorganize and the -- and the creditor's need to
25 have the property is balanced in favor of the

1 debtor, while the matter is being resolved by
2 the bankruptcy court.

3 And, again, the creditor can get very
4 prompt relief from the bankruptcy court upon an
5 appropriate --

6 JUSTICE SOTOMAYOR: And do you believe
7 a motion for the -- a motion instead of an
8 adversary -- adversarial proceeding would be
9 adequate to get the property back by the debtor?

10 MR. WEDOFF: To get -- no, I -- -- I
11 -- well, yes, because the -- the motion can be
12 brought to enforce the automatic stay. So,
13 absolutely.

14 JUSTICE SOTOMAYOR: No, I'm not -- I'm
15 not talking about the automatic stay. I'm
16 talking about under 542.

17 MR. WEDOFF: Oh, under 542.

18 JUSTICE SOTOMAYOR: Could the debtor
19 make the motion?

20 MR. WEDOFF: The debtor could make a
21 motion under 105(a) to enforce Section 362(a)(3)
22 and Section 542(a), yes.

23 JUSTICE SOTOMAYOR: And 542(a), okay.
24 Thank you, counsel.

25 MR. WEDOFF: What I wanted to

1 conclude, then, is by saying that the rights of
2 the creditor holding the property are protected
3 by the automatic stay, but the creditor has to
4 take the action to enforce those rights. And it
5 can do it very quickly. The delay that the City
6 would impose on the debtors and trustees would
7 be fatal to accomplish the reorganizational
8 purposes of the Bankruptcy Code.

9 The Seventh Circuit's interpretation
10 of the statutory language is not only correct
11 according to its plain meaning, but correct
12 according to that underlying Bankruptcy Code
13 policy of encouraging reorganization.

14 And so for all of those reasons, we
15 believe the Seventh Circuit's interpretation is
16 correct and the judgment ought to be affirmed.

17 Thank you.

18 CHIEF JUSTICE ROBERTS: Mr. Goldblatt,
19 three minutes for rebuttal.

20 REBUTTAL ARGUMENT OF CRAIG GOLDBLATT

21 ON BEHALF OF THE PETITIONER

22 MR. GOLDBLATT: Thank you, Mr. Chief
23 Justice.

24 Just a few quick points. First,
25 Justice Gorsuch asked both of my friends about

1 the role of 362(a)(6) and whether any of these
2 actions are prohibited as prohibited debt
3 collection activity.

4 I think it's important to bear in
5 mind, as this Court's opinion in Whiting Pools
6 explains, that the Bankruptcy Code strikes a
7 careful balance between the rights of secured
8 creditors, on the one hand, and the rights of
9 debtors to marshal the assets of the estate, on
10 the other, and provides specific rights and
11 protections to secured creditors.

12 And where a secured creditor is
13 seeking to vindicate those rights by holding the
14 property in order to maximize its recovery as a
15 secured creditor, whether that's through
16 adequate protection or the treatment of its
17 claim under a plan, while in ordinary English
18 one might call that debt collection activity,
19 that isn't prohibited by (a)(6). That's simply
20 acting to vindicate the rights that the code
21 provides.

22 The Chief Justice asked my friend
23 about whether we agreed about the pre-1984
24 conduct. I'd refer there to my friend's 2018
25 article in which he says that before the 1984

1 expansion of Section 362(a)(3), if a creditor
2 was unwilling to return collateral, the debtor
3 would have to seek an order for turnover under
4 Section 542.

5 I'd also like to address the various
6 textual indications that the other side's
7 reading of this statute can't be correct. It
8 requires a host of sort of atextual turn --
9 work-arounds.

10 For example, footnote 3 of the red
11 brief says that although the text says that the
12 automatic stay goes into effect upon the filing
13 of the case, the obligation to turn over estate
14 property is not triggered until the debtor calls
15 you up and asks you for it.

16 They have similar trouble with the
17 exceptions to turnover. On page 47, they say
18 that no one is likely to seek turnover of
19 property of inconsequential value, but then on
20 page 48, they acknowledge that if someone were
21 to do that, the court could invent an exception
22 to 362(a) that mirrors the exceptions set out in
23 Section 542(a).

24 None of that has any home in the
25 actual text of the statute and makes clear that

1 their reading of Section 362 can't be correct.

2 Finally, in response to -- to Justice
3 Sotomayor's question about the requirement of an
4 adversary proceeding as opposed to a motion, the
5 principal difference is that an adversary
6 proceeding provides more elaborate notice. And
7 this is just a practical point about what
8 bankruptcy judges do in actual bankruptcy
9 courts. In most bankruptcy courts, if a
10 creditor responds to a motion by saying I should
11 have gotten an adversary, a bankruptcy judge
12 will say did you get actual notice? And if you
13 did, why do you care that much about the caption
14 on the paper?

15 So while it is true that Rule 7001
16 says what it does and that the Rules Committee
17 could address that if it thinks appropriate, in
18 the real world this isn't a problem that is
19 plaguing bankruptcy courts in actual practice.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 The case is submitted.

23 (Whereupon, at 12:25 p.m., the case
24 was submitted.)

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