AMICUS

BY: AMANDA KELLAR,
IMLA Deputy General Counsel and Director of Legal Advocacy

Vehicles Put Municipalities on the 2019 Supreme Court Docket

The Supreme Court has now filled out its 2019 term docket and has added a number of new cases that are relevant to local governments, including *City of Chicago v. Fulton* and *Torres v. Madrid*. Both of these cases involve public safety issues, albeit in very different contexts.

IMLA filed an amicus brief at the certiorari stage in *City of Chicago*, and in prior articles, I have highlighted the importance of getting amicus support at the petition stage when seeking Supreme Court certiorari. That is because the Supreme Court receives approximately 8,000 petitions a year, while granting only 70-80 cases a year. Therefore, anything you can do as a petitioner to stand out and express the importance of the issue in your case to the Court helps increase your odds of having certiorari granted. Getting amici to do this for you can pay off.

City of Chicago v. Fulton

The issue in this case is whether a creditor violates the bankruptcy code by holding a debtor's vehicle that the creditor already had in its possession prior to the debtor's filing for bankruptcy. IMLA's amicus brief explained how the issue extended well beyond the City of Chicago and also highlighted the public safety concerns with the Seventh Circuit's ruling. We were pleased that the Court agreed and granted certiorari given the broad impacts of the issue to local governments.

The case involves four bankruptcy petitions that were consolidated on appeal to the Seventh Circuit. In each, the City of Chicago impounded the debtor's vehicles based on significant accumulated unpaid fines and penalties for parking tickets, moving violations, and driving with suspended licenses. The City has an ordinance which provides that the City may impound vehicles of individuals with three or more unpaid violations for the "purpose of enforcing" its traffic regulations until the owner pays the outstanding fines and penalties.[1] The Chicago Municipal Code further provides that "[a]ny vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle."[2]

In each of the four cases at issue, after the City had impounded the owner's vehicles, each owner filed for bankruptcy. The Bankruptcy Code's automatic stay provision provides that a petition for bankruptcy operates as a stay of "*any act to obtain possession of property* of the estate or of property from the estate or to exercise control over property of the estate."[3] The City did not release the debtor's vehicles back to the trustee of the bankruptcy estate. Each bankruptcy court held that the City violated the stay by "exercising control" over property of the bankruptcy estate and ordered the City to turn over the vehicles immediately.

The City of Chicago argued that holding a vehicle that was impounded *before* the debtors filed their bankruptcy petitions did not violate the Bankruptcy Code's automatic stay provision. Further, the City argued that the Bankruptcy Code provides a mechanism for a debtor to seek the turnover of property being held by a creditor under a possessory lien through an adversary proceeding and the court should therefore find an exception for the City's retention of the vehicles from the automatic stay under 11 U.S.C. § 362(b)(3). The City also argued that Code subsection (b)(4) which provides that the stay authorized by the Act does not extend to:

> . . . the commencement or continuation of an action or proceeding by a governmental unit . . ., to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.[4]

This police power exception often arises in bankruptcy proceedings where a debtor seeks to avoid local regulations affecting its business.

The Seventh Circuit rejected these arguments and held in favor of the debtors. By way of background, the Seventh Circuit had previously addressed this issue in *Thomson v. General Motors Acceptance Corp.*, which had held in a case where a creditor had repossessed a vehicle prior to the filing of the bankruptcy petition