No. 23-0115

IN THE

Supreme Court of the United States

OCTOBER TERM, 2023

IN RE EUGENE CLEGG, DEBTOR

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

v.

EUGENE CLEGG, RESPONDENT

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

BRIEF FOR THE PETITIONER

TEAM NO. 5
COUNSEL FOR PETITIONER

QUESTION PRESENTED

1. Whether any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor or to the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 pursuant to 11 U.S.C. §§ 348 and 541.

2. Whether a chapter 7 trustee may sell, as property of the bankruptcy estate, the ability to avoid and recover transfers pursuant to 11 U.S.C. §§ 547 and 550.

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STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived in accordance with the Rules of the Duberstein Bankruptcy Moot Court Competition.

STATEMENT OF FACTS

THE CHAPTER 13 CASE. Cpl. Eugene Clegg (ret.) (the "Debtor") filed for bankruptcy under chapter 13 of the Bankruptcy Code on December 8, 2021 (the "Petition Date").[1] Record at 6. At that time, he stated on his Schedule A/B that his home was valued at $350,000. R. at 6. His Schedule D identified a non-contingent, liquidated, and undisputed secured debt to Another Brick in the Wall Financial Corporation (the "Servicer") in the amount of $320,000. R. at 6. The Debtor properly claimed a state law homestead exemption in the amount of $30,000, which was the maximum amount allowed in the State of Moot. R. at 6. Therefore, given the secured indebtedness and the homestead exemption, the Debtor maintained no non-exempt equity in his home as of the Petition Date. R. at 7. On Schedule E/F and Schedule H, the Debtor included a contingent and unliquidated unsecured debt in an unknown amount owed to Eclipse Credit Union ("Eclipse"). R. at 6. The Debtor has caused his business, The Final Cut, LLC (the "Final Cut") to borrow $850,000 from Eclipse for renovations in 2016, and the Debtor personally guaranteed the loan. R. at 6. Finally, the Debtor disclosed on his Statement of Financial Affairs that he had made payments to his mother, Emily "Pink" Clegg ("Pink") within one year prior to the Petition Date in the aggregate amount of $20,000 as payment toward a $50,000 loan he had borrowed from her on an unsecured basis in September of 2020. R. at 6–7.

Under his chapter 13 plan, the Debtor proposed to make payments to creditors over a three-year period solely from earnings derived from Final Cut. R. at 7. Leading up to confirmation, Eclipse discovered that the Debtor had not exhausted the $850,000 loan funds with his business renovations, but instead had donated approximately $75,000 of the loan proceeds to charity. R. at 5, 7. Eclipse commenced an adversary proceeding to have its loan declared non-dischargeable

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq.* Specific sections of the Bankruptcy Code are identified herein as "section __."

under section 523(a)(2)(A). R. 7. Additionally, the chapter 13 trustee objected that the transfer the Debtor had made to his mother within a year of the Petition Date violated section 1325(a)(4) because it was a preferential transfer under section 547. R. at 7. Therefore, in the details of his confirmed plan, the Debtor agreed that, in exchange for withdrawing its plan objection, Eclipse would have an estimated claim in the amount of $150,000, of which $25,000 was deemed non-dischargeable. R. at 8. The Debtor also agreed to increase the aggregate payments to creditors by $20,000 over the applicable commitment period in order to satisfy the chapter 13 trustee's objections and in exchange for her agreement that she would not seek to avoid and recover the payments made to Pink. R. at 8.

THE CONVERSION TO CHAPTER 7. For eight months the Debtor made timely payments under his confirmed plan, but he was unable to continue making payments when he fell ill in September of 2022 and could no longer operate the Final Cut. R. at 8. The Debtor chose to convert his case to chapter 7. R. at 8. The chapter 13 trustee reported that she had distributed $10,000 to the Servicer under the plan, and that, upon conversion, she returned the funds that had been held in reserve for Eclipse to the Debtor. Vera Lynn Floyd was appointed the chapter 7 trustee (the "Trustee") to administer the Debtor's chapter 7 estate. R. at 9. Following conversion, the Trustee commissioned an appraisal of the Debtor's home, which revealed that the non-exempt equity in the home had increased by $100,000 since the Petition Date. R. at 9. Consistent with her duties to collect and liquidate the assets of the estate for the benefit of the creditors, the Trustee began to market the Debtor's home for sale so that the $100,000 non-exempt equity would become available for creditors. R. at 9. Eclipse offered to purchase both the home and the alleged avoidance action against Pink for $470,000, thus offering the full value of the home and the full value of the claim against Pink. R. at 9.

PROCEDURAL HISTORY. Satisfied that the offer from Eclipse for the purchase of the home and the preference claim against Pink provided the estate with the maximum value for each asset, the Trustee sought authority from the bankruptcy court to sell the Debtor's home to capture the increase in its equity for the benefit of the estate and to sell of the preference action against to Pink. R. at 4, 9. The Debtor objected to both requests for relief on the grounds that post-petition, pre-conversion equity belonged to him, rather than the converted estate, and that the preference action was not a property interest that could be sold by the Trustee. R. at 10. The bankruptcy court held that any post-petition, pre-conversion increase in equity did not constitute property of the chapter 7 estate and therefore inured to the Debtor, and that an avoidance action under section 550 does not constitute estate property that can be sold by the chapter 7 trustee to maximize the estate. R. at 4. The Trustee timely appealed both determinations. R. at 4. The Thirteenth Circuit Court of Appeals affirmed the bankruptcy court on both issues. R. at 4. The Trustee appealed to the United States Supreme Court, and this Court granted the writ of certiorari.

SUMMARY OF THE ARGUMENT

The Bankruptcy Code provides an equitable balance for the interests of an unfortunate debtor who has fallen on hard times with the interests of the creditors who will not receive the benefit of full repayment due to the debtor's misfortune. In the end, neither the debtor nor the creditors win. Instead, each walk away having lost what they were otherwise entitled to. The Bankruptcy Code, however, seeks to steer the parties and the court toward the most equitable resolution. Thus, the Bankruptcy Code is a navigational tool provided by Congress to achieve this balance, and courts should adhere closely and precisely to its guidance. The Thirteenth Circuit erred by straying from the plain language of the Bankruptcy Code and improperly relying on legislative history and its own policy to reach a contrary conclusion. Thus, this Court should

reverse.

First, post-petition, pre-conversion increases in the equity of the debtor's property belong to the converted estate under the plain meaning of sections 348(f)(1)(A) and 541. Section 541(a)(1) generally defines property of the estate as all legal and equitable interests owned by the debtor. Section 348(f)(1)(A) slightly modifies the definition of property of the estate for a converted case. It specifies that the property of the converted estate is the property of the estate as of the petition date that is still possessed by the debtor upon conversion. Reading the two statutes in conjunction, the property of the converted estate is all legal and equitable interests owned by the debtor as of the petition date that are still owned by the debtor upon conversion. Equity in an asset is an inseparable characteristic of that asset rather than a separate or distinct property interest. Therefore, equity in an asset that meets the definition of property of the converted estate under section 348(f)(1)(A) likewise belongs to the converted estate. This reasoning is consistent with the other provisions of the Bankruptcy Code, and therefore there is no ambiguity that warrants looking to legislative history. However, even the legislative history behind those sections supports that result. Therefore, the Thirteenth Circuit improperly held that post-petition, pre-conversion increases in equity belong to the Debtor.

Second, the plain language of section 541 requires that a preference action under section 547(b) is property of the estate that may be sold by the Trustee in furtherance of her duty to efficiently maximize the estate under section 704(a). This Court has previously recognized that chapter 5 causes of action are property of the estate under section 541. A preference action is a chapter 5 cause of action, and therefore it is property of the estate. Because preference actions are costly to pursue and estate resources are limited, the ability to sell preference actions is an important mechanism for trustees to ensure creditors' recovery is maximized. Therefore, both the

plain language of the Bankruptcy Code and practical policy support holding that preference actions are estate property that can be sold by the chapter 7 trustee.

Because the plain language of the Bankruptcy Code provides the clear answer to both of the issues before this Court, this Court should enforce the Code's plain language. In doing so, this Court will preserve Congress's intended balance between the interests of debtors and creditors in bankruptcy proceedings. Thus, this Court should reverse the Thirteenth Circuit and hold that post-petition, pre-conversion increases in equity inure to the converted estate, so that the Trustee may sell the home to capture its appreciated value and grant the Trustee's motion to sell the preference action as property of the estate.

ARGUMENT

The plain language of section 348(f)(1)(A), when read in conjunction with section 541, requires post-petition, pre-conversion increases in equity to inure to the chapter 7 converted estate for the benefit of the creditors. However, the Thirteenth Circuit strayed from this plain language when it held that the Debtor benefits from this increase in equity. Erroneously finding ambiguity in the statutes, the Thirteenth Circuit turned to legislative history to support its conclusion. Additionally, the Thirteenth Circuit strayed from the plain language of the Bankruptcy Code and the previous guidance of this Court when it held that avoidance actions are not property of the estate that can be sold by a chapter 7 trustee to efficiently maximize estate assets. Under section 541(a)(1), the broad definition of "property of the estate" captures avoidance actions as a legal or equitable interest of the debtor as of the commencement of the case. Because avoidance actions have long been recognized as causes of action, and causes of action have historically been recognized as property interests that can be owned by the bankruptcy estate, avoidance actions fall squarely within the definition of estate property. Thus, this Court should reverse the Thirteenth

Circuit.

I. This Court should reverse the Thirteenth Circuit because post-petition, pre-conversion increases in home equity become property of the estate upon conversion of a case from chapter 13 to chapter 7 pursuant to 11 U.S.C. 348 and 541.

Sections 348(f)(1)(A) and 541 of the Bankruptcy Code unambiguously characterize the Debtor's home, including its value, as property of the chapter 7 estate. 11 U.S.C. § 348(f)(1)(A); 11 U.S.C. § 541(a)(1). When a statute's language is plain, the court's sole function is to enforce it according to its terms. *Arlington Cent. Sch. Dist. Bd. Of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). Courts must presume a legislature says in a statute what it means, and that the statute means what it plainly says. *Id.* Whatever legislative history may suggest will not overcome what the statute clearly and unambiguously requires. *See id.* at 304. Because the Thirteenth Circuit erroneously characterized the language of the relevant statutes as ambiguous and relied on legislative history to reach a decision contrary to the Bankruptcy Code's plain language, this Court should reverse the Thirteenth Circuit and allow the Trustee to capture the home's appreciated value for the benefit of the estate.

A. The language in sections 348(f)(1)(A) and 541 unambiguously requires that the Debtor's home is property of the chapter 7 estate upon conversion, and the home's value is an inseparable characteristic of the home.

Under the plain language of section 348(f)(1)(A), the property that a debtor possesses on the petition date that remains in his possession on the date of conversion becomes property of a chapter 7 converted estate. Because the value of property is an intangible characteristic that cannot be separated from the property itself, the asset's full value is estate property upon conversion. The Thirteenth Circuit improperly concluded that an asset's appreciated value would not be estate property upon conversion, contrary to the plain language of sections 348(f)(1)(A) and 541. Thus, this Court should reverse.

1. Post-petition, pre-conversion increases in equity inure to the chapter 7 estate pursuant to the plain language of sections 348(f)(1)(A) and 541.

Section 348(f)(1)(A) states that when a case is converted from chapter 13 to another chapter, the converted estate consists of "property of the estate, as of the petition date, that remains in the possession of or is under the control of the debtor on the date of conversion." 11 U.S.C. § 348(f)(1)(A). Therefore, section 348(f)(1)(A) necessarily requires a two-prong inquiry: (1) did the debtor own the property on the date of petition, and (2) does the debtor still possess the property on the date of conversion. Here, the Debtor's home is unquestionably property of the chapter 7 estate. R. at 9. Therefore, the question that must be answered in this case is whether the post-petition increased value of the home is a newly-acquired property interest distinct from the home itself, such that the appreciation is not property of the estate as of the petition date. The plain language of the Bankruptcy Code clearly shows that distinguishing between an asset and its value is improper.

Section 348(f)(1)(A) refers only to "property." 11 U.S.C. § 348(f)(1)(A). At first glance, what constitutes property for purposes of that section appears unclear. However, because "property of the estate" is a term of art in the Bankruptcy Code, the analysis next turns to section 541, which defines property of the estate. 11 U.S.C. § 541; *Castleman v. Burman (In re Castleman),* 75 F.4th 1052, 1056 (9th Cir. 2023). Section 541(a)(1) states that a bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Additionally, section 541(a)(6) provides that all "proceeds, product, offspring, rents, or profits of or from property of the estate" are also estate property, so long as they are not earnings from services the debtor performed after the petition date. 11 U.S.C. 541(a)(6). Congress defined property of the estate in broad and inclusive terms. *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 423 (8th Cir. 1999) ("The breadth of Section 541 is limited only by subsections (b) and

(c).").

Nowhere in the language of sections 348(f)(1)(A) or 541 does the Bankruptcy Code make a distinction between an ownership interest in property and a separate interest in post-petition appreciation of the same property. *Id.* at 424. Additionally, Congress has not made an express carve-out for post-petition appreciation of property. *Id.* That is because equity is inseparable from the ownership interest in the property itself. *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015). Appreciation is not a distinct asset, but rather a characteristic or attribute of property that is subsumed within the asset. *Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 297 (B.A.P. 8th Cir. 2023). Alternatively, an asset's increase in value may be viewed by some courts as a proceed or product of the asset. *See In re Potter*, 228 B.R. at 424. Even then, section 541(a)(6) ensures it is captured as estate property. *Id.* Because appreciation is a characteristic of an asset, and an asset's value is inherent and inseparable from the asset, it follows that appreciation in value cannot be separated from the asset. *See id.* Thus, the estate's interest is in the entire asset including any changes in its value occurring post-petition. *Id.*

On the date the Debtor petitioned for relief under chapter 13, his home became property of the estate. Following confirmation of his chapter 13 plan, the Debtor remained in possession and control of his home throughout the chapter 13 case and on the date of conversion. Thus, the Debtor's home is property of the chapter 7 estate. The increased non-exempt value of the home, an inseparable characteristic of the home itself, must therefore inure to the chapter 7 estate pursuant to the plain language of sections 348(f) and 541. 11 U.S.C. §§ 348(f), 541.

2. The Ninth Circuit in *In re Castleman* properly analyzed the issue of post-petition, pre-conversion increases in equity.

Proper guidance in this case is taken from the Ninth Circuit's recent decision in *In re Castleman*. 75 F.4th at 1055. In *Castleman*, the Ninth Circuit addressed the issue of post-petition,

pre-conversion increases in the equity of an asset that is property of the converted estate. *Id.* The *Castleman* analysis is particularly valuable in this case because the facts are substantially the same. In *Castleman*, the debtors likewise initially filed under chapter 13, and on the petition date they had no non-exempt equity in their home due to the value of their homestead exemption and the balance of their mortgage *Id.* at 1054. Unable to follow their chapter 13 plan due to illness, the debtors likewise converted to chapter 7. *Id.* In the interim their home value had increased by $200,000. *Id.*

The Ninth Circuit looked to other jurisdictions and its own precedent where it previously determined that the broad definition of property in sections 541(a)(1) and 541(a)(6) captures appreciation because appreciation is an inseparable characteristic of the underlying property rather than after-acquired property. *Id.* at 1055–56 (citing *In re Goins*, 539 B.R. at 516; *In re Goetz*, 647 B.R. at 416; *In re Potter*, 228 B.R. at 424; *Schwarb v. Reed (In re Reed),* 940 F.2d 1317, 1323 (9th Cir. 1991); and *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018)). Thus, because the debtors' home was clearly estate property and the appreciation of the home's value was an inseparable characteristic of the home, the Ninth Circuit held that the plain language of sections 348(f)(1)(A) and 541 required post-petition, pre-conversion increases in value to belong to the estate upon conversion. *Id.* at 1055.

The Thirteenth Circuit mischaracterized the *Castleman* decision in an attempt to discount its persuasive value. First, the Thirteenth Circuit charged *Castleman* with only relying on its own precedent in *In re Reed*, and the Thirteenth Circuit alleged that *In re Reed* was inapposite because it predates the enactment of section 348(f)(1)(A). R. at 14. However, *Castleman* supported its conclusion with the recent decisions of other jurisdictions. 75 F.4th at 1056. *Castleman* also explained that its decision in *In re Reed* had recently been reaffirmed by its decision in *Wilson*, and

thus established *In re Reed*'s continued relevance to the interpretation of section 348(f)(1)(A). *Id.* Next, the Thirteenth Circuit found fault with *Wilson* because in *Wilson* the debtor originally filed under chapter 7. R. at 14. *Castleman* explained that this distinction has no effect because section 541(a) applies equally to cases filed under chapter 7 and cases initially filed under chapter 13 and later converted to chapter 7. 75 F.4th at 1056. Finally, the Thirteenth Circuit accused *Castleman* of failing to address the ambiguity in section 348(f)(1)(A) created by sections 348(f)(2) and 522. R. at 14. However, *Castleman* explained that the meaning of section 348(f)(1)(A) is plain when read in conjunction with section 541, and thus the alleged ambiguity did not warrant further analysis. 75 F.4th at 1056.

B. Including the home's increased value in the converted estate is consistent with other Bankruptcy Code provisions.

While the Thirteenth Circuit accused *Castleman* of "sacrific[ing] the text of the bankruptcy statutes on the altar of simplicity," it is the Thirteenth Circuit that has sacrificed the text of the bankruptcy code on the altar of legislative history by conjuring ambiguity where none exists. R. at 14. The Thirteenth Circuit improperly held that the language of section 348(f)(1)(A) is ambiguous in light of sections 348(f)(2) and 522. R. at 14; 11 U.S.C. §§ 348(f)(2), 522. It held that allowing the increased equity in the home to inure to the converted estate would conflict with sections 348(f)(2) and 522. R. at 13–14. However, because post-petition, pre-conversion appreciation is not a newly-acquired property interest, and because the 522 "snapshot" rule is limited in application to exemptions, neither section prevents post-petition, pre-conversion increases in value from inuring to the converted estate. Additionally, section 1327—governing the vesting of property under a chapter 13 case—does not apply to a case in chapter 7. 11 U.S.C. § 1327.Thus, no ambiguity exists that would require an understanding other than the plain meaning of sections 348(f)(1)(A) and 541.

1. Appreciation in property's value inuring to the converted estate is consistent with section 348(f)(2).

Recognizing post-petition, pre-conversion increases in equity as property of the chapter 7 converted estate does not conflict with section 348(f)(2), because appreciation is not a newly-acquired property interest. *See In re Goins*, 539 B.R. at 516 (recognizing that the equity attributed to the post-petition appreciation of property is not separate, after-acquired property). Section 348(f)(2) modifies the 348(f)(1)(A) definition of property in a converted estate for cases where the debtor converts in bad faith. In such bad-faith conversions, the converted estate is no longer limited to property of the estate on the petition date that is still in the debtor's possession, but instead consists of "property of the estate as of the date of conversion." 11 U.S.C. § 348(f)(2).

Section 348(f)(2) is designed to capture earnings from post-petition services that would otherwise be exempted from the estate under section 541(a)(6). 11 U.S.C. §§ 348(f)(2), 541(a)(6). Section 348(f)(2) serves to punish bad faith conversions by superseding section 541(a)(6) and changing the test for what property enters the converted estate. *Harris v. Viegelahn*, 575 U.S. 510, 517 (2015). Section 348(f)(1)(A)'s two-prong test keeps after-acquired property out of the estate, because the first prong requires that the property was owned on the date of petition. Section 348(f)(2) therefore modifies a bad-faith converted estate by requiring only one prong—ownership on the conversion date. The single-prong analysis makes after-acquired interests part of the converted estate, even though in a good faith conversion they would remain exempt based on the two-prong analysis.

Beyond capturing after-acquired earnings, wages, and property, section 348(f)(2) does not otherwise alter section 348(f)(1)(A). *In re Castleman*, 75 F.4th at 1058; *see In re Goetz*, 651 B.R. at 299 ("The bad faith provision neither hinders nor advances Goetz's claim to the equity increase in her residence. It simply does not apply."). The Thirteenth Circuit improperly expanded the

purpose and impact of section 348(f)(2) to find ambiguity in section 341(f)(1)(A). R. at 13. However, appreciation in the value of the Debtor's home is not a newly acquired interest or new property. Therefore, section 348(f)(2) does not change that fact that the increased equity in a home possessed at the time of petition and still possessed at the date of conversion is part of the chapter 7 converted estate.

Additionally, holding that post-petition, pre-conversion equity inures to the estate does not render section 348(f)(2) inconsequential. Section 348(f)(2) still functions to punish debtors who convert in bad faith by capturing their after-acquired property for the benefit of the estate. On the other hand, inuring post-petition changes in value to the estate is a function of 348(f)(1)(A) that will sometimes benefit the debtor and sometimes benefit the estate. *See In re Castleman*, 75 F.4th at 1058 (recognizing that the value of an estate asset may also decline post-petition).

2. Section 522 does not prevent appreciated value from inuring to the converted estate because that section does not affect conversions.

The valuation requirement of section 522 does not create ambiguity in the meaning of section 348(f)(1)(A) because section 522 applies to valuing the debtor's exemptions rather than determining what constitutes property of the converted estate. 11 U.S.C. § 522(a)(2); *see* 11 U.S.C. § 348(f). Section 522, titled "Exemptions," limits the value of property exempted under section 522 to its value as of the petition date. 11 U.S.C. § 522(a). The language of the Bankruptcy Code does not require the statutory limit on exemptions to also limit the value of estate property upon conversion. Sections 522 and 348 serve two entirely distinct purposes.

Upon filing for bankruptcy, all of the debtor's property becomes property of the estate. *In re Castleman*, 75 F.4th at 1058. Section 522 then allows debtors to exempt property from the bankruptcy estate to the extent allowed by the debtor's state of residence. *Rockwell v. Hull*, 968 F.3d 12, 18 (1st Cir. 2020). Called the "snapshot rule," section 522 fixes the value of a debtor's

exemptions at the date of filing the petition. *Id.* at 22. Under the "snapshot rule" a debtor's homestead exemption cannot be enlarged or altered after the petition date. *Id.* Thus, section 522 applies in this case by fixing the Debtor's homestead exemption at $30,000, the maximum amount allowed under the laws of Moot. R. at 6. Congress did not go so far as to fully insulate an estate from new valuation upon good faith conversion. Section 348(f)(1)(A) requires the two-prong assessment, based on ownership at the date of petition and continued possession at the date of conversion. Thus, what property comprises a converted estate is identified at the time of conversion under section 348(f)(1)(A). Because valuation is not expressly limited to the petition date, a new valuation is not precluded.

As explained in Part I.A. above, section 348(f)(1)(A) requires a two-prong analysis for determining what property is in the converted estate. However, there is no language in section 348 regarding the valuation of the property itself. *In re Goins*, 539 B.R. at 515. Additionally, this Court has held that section 522 does not entitle the debtor to exempt an asset *per* se; rather, it only entitles a debtor to claim an exemption of a portion of an asset's value. *Schwab v. Rielly*, 560 U.S. 770, 783 (2010). The debtor does not exempt the actual asset itself from the bankruptcy estate. *Id.* In *Schwab*, this Court further explained that the estate may preserve its right to retain any value in an asset beyond the exempted interest, because the asset itself is not exempted from the bankruptcy estate. *Id.* at 774. Therefore, if an asset was owned by the debtor on the petition date and remains in the possession of the debtor on the conversion date, then upon conversion the debtor is entitled to its fixed exemption, valued at the petition date, and the estate is entitled to any value in the asset beyond the exempted amount. *See In re Goetz*, 651 B.R. at 301. This is true even if on the petition date the debtor's entire equity was exempted. *See id.* (holding that non-exempt equity that had increased since petition could be pursued by the chapter 7 trustee upon conversion).

Here, even though on the petition date there was no non-exempt equity in the home given the Debtor's homestead exemption and the home's indebtedness, the Debtor's home still entered the bankruptcy estate. The Debtor's $30,000 exemption under 522(b) fixed the amount of proceeds the debtor would be entitled to receive in the event that the home was sold. *See In re Adams*, 641 B.R. 147, 153 (Bankr. W.D. Mich. 2022)11 U. Thus, section 522 entitles the Debtor to retain his interest in $30,000 of the home's value. It did not, however, remove the home from the bankruptcy estate. Section 348(f)(1)(A) requires the home itself be part of the converted estate.

3. Section 1327 does not apply in a case converted to chapter 7.

The vesting provisions of section 1327 do not apply once a case has converted from chapter 13 to chapter 7, and therefore section 1327 has no effect on the property of the converted estate. Section 1327 provides that, upon confirmation of a chapter 13 plan, all property of the estate vests in the debtor. 11 U.S.C. § 1327(b). However, section 1327 does not apply if the chapter 13 case is converted to a chapter 7 case. *In re Goetz*, 651 B.R. at 300. Addressing the effect of section 1327 on post-petition, pre-conversion increased in equity once a case is converted to chapter 7, the Eighth Circuit Bankruptcy Appellate Panel correctly held in *Goetz* that section 1327 has no effect on a converted estate, because it only applies to chapter 13 cases. *Id.* In support of its holding, the *Goetz* cited section 103(j) which states "[c]hapter 13 of this title applies only in a case under such chapter." *Id.* (quoting 11 U.S.C. § 103(j)).

Additionally, section 348(f)(1)(A) directly refutes the notion that the increase in equity of a debtor's home is kept out of the converted estate. 11 U.S.C. § 348(f)(1)(A). Section 348(f)(1)(A) requires that property owned on the petition date and still possessed on the date of conversion is property of the converted estate. Despite section 1327 vesting the home in the debtor upon confirmation of his chapter 13 plan, conversion requires a new analysis of what constitutes estate

property governed by section 348. *See Harris*, 575 U.S. at 520 (citation omitted) ("When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway."). Section 348(f)(1)(A) overrides the initial section 1327 vesting; it vests that property in the estate if it is still in the debtor's possession. Here, though the Debtor's home vested in him at confirmation, upon conversion the home is re-vested in the chapter 7 estate, and thus any increased equity in the home inures to the estate.

C. Legislative history does not prevent post-petition increases in value from becoming property of the chapter 7 estate upon conversion.

Though the relevant Bankruptcy Code sections are unambiguous, which should preclude analysis based on legislative history, the legislative history still permits post-petition increase in equity to inure to the estate. Legislative history demonstrates that Congress enacted section 348(f) to remove disincentives from filing under chapter 13. H.R. REP. NO. 103–835 at 57 (1994), *as reprinted in* 1194 U.S.C.C.A.N. 3340, 3366. Specifically, Congress expressed its concern that, if after-acquired property became property of a chapter 7 estate upon conversion, debtors would be disincentivized from filing initially under chapter 13, because filing under chapter 7 would initially protect any post-petition acquisitions. *Id.*

To eliminate that disincentive, Congress enacted 348(f)—which expressly limited the property that could be converted and liquidated under chapter 7 to property owned at the time the debtor filed his petition under chapter 13, unless the conversion was made in bad faith. 11 U.S.C. § 348(f). Thus, legislative history demonstrates Congress's intent to exclude after-acquired property from a converted chapter 7 estate. The House Report does not, however, demonstrate any intent to totally freeze valuations at the time of the petition. It only shows Congress's intent to limit the actual items of property that would be included. Importantly, "after-acquired property" plainly means property that is newly acquired—not appreciated value in something already owned. The

language Congress actually used in section 348(f) shows that all property owned at the date of the petition and still possessed at the date of conversion enters the converted estate.

While the *Goetz* court held that section 348(f)(1)(A) is unambiguous, and thus further inquiry into legislative history was unnecessary, it properly analyzed this legislative history to show that the legislative history did not conflict with its holding that post-petition increases in equity inured to the converted estate. *In re Goetz*, 651 B.R. at 298. *Goetz* explained that although the House Report discussed the issue of post-petition, pre-conversion increases in home value, Congress did not then incorporate a solution for that perceived issue into the final language of section 348(f). *Id. Goetz* properly reasoned that the omission was likely the result of compromise in the legislative process. *Id.* Congress's failure to address a home's post-petition appreciation in value is not necessarily inadvertent. *See In re Calabrese*, 689 F.3d 312, 320 (3rd Cir. 2012) ("We will never know why Congress chose not to tell us how to handle third-party sales taxes; it may have been part of an intentional omission on the path to compromise…"). Congress may have intentionally refused to exclude a home's appreciated value from the converted estate—trusting that the statute's plain language would control to make appreciated value estate property.

The House Report also stated the amendment overruled the holding of *In re Lybrook* and adopted the holding of *In re Bobroff*. H.R. REP. NO. 103–835 at 57 (1994), *as reprinted in* 1194 U.S.C.C.A.N. 3340, 3366; *In re Lybrook*, 951 F.2d 136, 136–37 (7th Cir. 1991).; *In re Bobroff*, 766 F.2d 797, 800 (3rd Cir. 1985). In *Lybrook*, the court held that farmland the debtor inherited after filing under chapter 13 became property of the chapter 7 estate upon conversion. *In re Lybrook*, 951 F.2d at 136–37. In *Bobroff*, the court held that a debtor's property interest in a cause of action which accrued after the debtor filed under chapter 13 did not become property of the chapter 7 estate upon conversion. *In re Bobroff*, 766 F.2d at 804. Both cases clearly involved after-acquired

property rather than post-petition increases in value of property that was owned by the debtor pre-petition. Because the value of a home is a characteristic of the home itself and not an after-acquired interest, the legislative history does not alter the application of the statutes' plain language here. Therefore, this Court should reverse and recognize that post-petition, pre-conversion increases in equity inure to the benefit of the bankruptcy estate upon conversion.

II. This Court should reverse the Thirteenth Circuit because an avoidance cause of action is property of the estate that a trustee may sell to maximize the estate.

Chapter 5 of the Bankruptcy Code provides trustees with avoidance actions to recover property transfers that favor one creditor over another. *See* 11 U.S.C. §§ 544, 545, 547, 548, 549, 550, 553(b). A trustee may sell these actions because they are property of the estate. *See* 11 U.S.C. § 363(b) (providing a trustee the power to sell estate property). Section 541 defines what interests constitute property of the estate. 11 U.S.C § 541. Under section 541, avoidance actions are properly understood as property of the estate. Because chapter 5 avoidance actions are property of the estate, a trustee may sell them to maximize the money recoverable for creditors and ensure a speedy bankruptcy proceeding. The Thirteenth Circuit erred in holding that chapter 5 avoidance actions are not property of the estate, making the Trustee's sale void.

A. Chapter 5 avoidance actions are property of the estate under section 541.

The nature of property is broad in the bankruptcy context. When analyzing the predecessor provision to section 541, this Court emphasized that the term "property" should be "construed most generously and an interest is not outside its reach because it is novel or contingent." *Segal v. Rochelle*, 382 U.S. 375, 379 (1983); *accord Patterson v. Shumate*, 504 U.S. 753, 757 (1992). The presumption that property is defined broadly made its way into the Bankruptcy Code. Under section 541, property of the estate includes "all legal and equitable interests of the debtor in property as of the commencement of the case" and "any interest in property that the estate acquires

after the commencement of the case." 11 U.S.C. §§ 541(a)(1), 541(a)(7). Chapter 5 avoidance actions fall within the plain text of section 541(a)(1) because an avoidance action is a property interest that a debtor had before the petition date. Alternatively, the broad catch-all language of section 541(a)(7) encompasses chapter 5 avoidance actions because they are a property interest the estate acquires post-petition. Under either provision, chapter 5 avoidance actions are property of the estate that a trustee may sell to maximize the assets of the estate.

1. Chapter 5 avoidance actions fit within the plain text of section 541(a)(1).

Section 541(a)(1) reads "all legal and equitable interests of the debtor in property as of the commencement of the case" are property of the estate. 11 U.S.C. § 541(a)(1). For an asset to fit within section 541(a)(1) two requirements must be met: (1) the asset must be property and (2) the debtor must have had an interest in the property before the petition date. Chapter 5 avoidance actions satisfy both requirements.

Under the first prong, the plain language of section 541(a)(1) clearly makes avoidance actions property of the bankruptcy estate. Causes of action fit within the broad language of "all legal and equitable interests" because (1) courts view causes of action as property and (2) this Court has viewed certain avoidance actions as causes of the action. Causes of action are considered property in many areas of the law. *E.g.*, *Fields v. Legacy Health Sys.*, 413 F.3d 943, 956 (9th Cir. 2005) (in the Due Process context "causes of action are a species of property"); *Klier v. Elf Atochem N. Am. Inc.*, 658 F.3d 468, 474 (5th Cir. 2011) (in the class action context "each class member has a constitutionally recognized property right in the claim or cause of action"). In the same way, causes of action are property interests in the bankruptcy sphere. *See Fix v. First State Bank Roscoe*, 559 F.3d 803, 809 (8th Cir. 2009). This Court has recognized that avoidance actions are causes of action. *See Granfinanciera v. Nordberg*, 492 U.S. 33, 53 (1989) (describing section 548 as a statutory cause of action). Supporting that, this Court noted that the Bankruptcy Code's

avoidance actions derive from common law causes of action and illustrated a long history of recognizing these bankruptcy procedures as such. *Id.* at 43. ("common law actions of trover and money had and received were resorted to for the recovery of preferential payments by bankrupts."). Combining (1) the view that causes of action are property with (2) this Court's view that avoidance actions are viewed as causes of action, it follows that avoidance actions are property.

In addition to guidance from this Court, the Bankruptcy Code refers to avoidance actions as causes of action. The Code provides avoidance actions in sections 544, 545, 547, 548, 549, 550, and 553(b). Section 926 explicitly refers to these avoidance actions as causes of action. *See* 11 U.S.C. § 926 (A debtor in a municipality bankruptcy may "pursue a *cause of action* under section 544, 545, 547, 548, 549(a), or 550." (emphasis added)). Furthermore, section 926 makes it clear that a trustee may "pursue such cause of action" if the debtor in possession refuses to pursue these avoidance claims. 11 U.S.C. § 926. The plain language of section 926 shows that avoidance actions are causes of action. Additionally, section 926 shows that the drafters understood chapter 5 avoidance actions as causes of action. Thus, the Code repeatedly demonstrates that avoidance actions are causes of action. Since avoidance actions are causes of action, they fit within section 541(a)(1)'s definition of estate property.

While the plain language of section 541(a)(1) makes it clear that avoidance actions are property, the legislative history surrounding section 541 also supports viewing avoidance actions as property. This Court has emphasized that clear statutory language "obviates the need for any ... inquiry" into legislative history. *Patterson*, 504 U.S. at 761. However, to the extent a question remains whether causes of action are property under section 541, the legislative history is quite clear: "[541(a)(1)] includes all kinds of property, including tangible or intangible property, *causes of action* (see Bankruptcy Act § 70a(6)), and all other forms of property." H.R. Rep. 95-595, p.

367 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6455 (emphasis added). The legislative history shows that Congress intended causes of action to fit within section 541's definition of estate property. Section 541's plain language describing a broad list of interests, along with its legislative history, makes it clear that "property" includes causes of action such as avoidance actions.

Addressing the second prong, a debtor's interest in chapter 5 avoidance actions arise prior to the commencement of the proceedings. This Court has previously rejected the notion that possession is necessary under section 541. *See U.S. v. Whiting Pools, Inc*., 462 U.S. 198, 205–06 (1983) (holding that property of the estate includes property not in possession of the debtor at the commencement of the proceedings). Instead, estate property includes interests that are "novel or contingent" or whose "enjoyment must be postponed." *Segal*, 382 U.S. at 379 (1965).[2] Because the definition of property is expansive, what interests a debtor has before bankruptcy also is expansive.

The right to claw back transfers arises at the moment a preferential transfer exists, even though the debtor cannot exercise that right immediately. That interest is contingent upon the debtor filing for bankruptcy and either filing the action himself as a debtor in possession or through the trustee standing in his place. Such an interest, while inchoate and small, still constitutes an interest that exists prior to the commencement of the case. *See Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1009 (8th Cir. 2023) ("the debtor has an inchoate interest in the avoidance actions prior to the commencement of the bankruptcy proceedings."). The estate obtains this inchoate interest, the right to avoid a transfer, upon commencement of the proceeding as avoidance actions operate to recover debtor property. *See*

[2]While *Segal* looked at the pre-Bankruptcy Code definition of estate property, the holding that property is defined expansively was expressly adopted by the drafters of section 541. *See* H.R. Rep. No. 95-595, p. 367 (1977) ("The result of *Segal v. Rochelle*, 382 U.S. 375 (1966) is followed"). Therefore, *Segal's* holding is vital to understanding that avoidance actions are part of the property of the estate.

Darr v. Santos (In re Telexfree, LLC), 941 F.3d 576, 584 (1st Cir. 2019) (holding a trustee had standing to bring an avoidance action based upon an inchoate interest of the debtor in fraudulently transferred funds).

The fact that a cause of action is pursued post-petition does not hinder its characterization as property owned pre-petition if it relates to pre-petition acts. In *Segal*, this Court held that a claim that was sufficiently rooted in the pre-bankruptcy past would fit within the meaning of property of the estate. *Segal*, 382 U.S. at 380. This rationale has even applied to the accrual of claims post-discharge. *See Fix*, 559 F.3d at 809 (holding that a cause of action that related to a pre-petition contract was still the property of the estate, even though it accrued after discharge). Even though avoidance actions are pursued during bankruptcy, they relate back to and are sufficiently rooted in pre-petition wrongful transfers.

The argument that avoidance actions only arise at the very moment the petition is filed and, therefore, cannot exist prior to the commencement of the case is incorrect. This argument muddles section 541(a) by including pre-petition interests and post-petition interests in estate property but inexplicably excluding interests arising at the exact moment of the petition. Assuming *arguendo* that avoidance actions are property interests that come into existence precisely at the moment of the petition, they are still encompassed within the 541(a)(1). The drafters of the Bankruptcy Code knew how to reference the time period exclusively before the petition. *See* 11 U.S.C. § 547(e)(2)(c) (referring to unperfected interests being perfected "immediately before the date of the filing of the petition."); 11 U.S.C. § 365(g)(1) (referring to a rejection damages claim arising as if it were "immediately before the date of the filing of the petition."); 11 U.S.C. § 348 (treating claims arising during conversion as if they arose "immediately before the date of the filing of the petition."). In each of those situations, Congress was clear about the pre-petition timing. In contrast, section

541(a)(1) uses the language "as of the commencement of the case" instead of "immediately before the date of the filing of the petition." 11 U.S.C. § 541. To read section 541 as excluding interests arising at the exact moment of the petition is unsupported by the section's language and ignores Congress's clear difference in wording. Therefore, even assuming avoidance actions arise at the exact moment the petition is filed, they are still property of the estate under section 541(a)(1). The Debtor possessed this same inchoate interest when he transferred money to Pink.

2. Alternatively, chapter 5 causes of action are property of the estate under section 541(a)(7).

Under section 541(a)(7), property of the estate is "any interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7). These interests include causes of action. In *U.S. v. Nordic Village, Inc*., this Court held that an avoidance action under section 550 was property of the estate when the cause of action accrued post-petition. 503 U.S. 30, 37 (1991). Viewing avoidance actions as property of the estate fits with the purpose of section 541(a)(7). *See McLain v. Newhouse (In re McLain)*, 516 F.3d 301, 312 (5th Cir. 2008) ("Congress enacted § 541(a)(7) to clarify its intention that § 541 be an 'all-embracing definition and to ensure that property interests created with or by property of the estate are themselves property of the estate."'). But-for the preferential transfer, the funds paid to Pink would be property of the estate. The avoidance action claws back what was wrongfully transferred to Pink, and rightfully should be property of the estate.

The remedial nature of avoidance actions further supports recognizing them as property under 541(a)(7). Since avoidance actions help remedy harm to the estate's size, they are property of the estate as they accrue post-petition. *See O'Dowd v. Trueger (In Re O'Dowd)*, 233 F.3d 197, 204 (3rd Cir. 2000) (holding that a legal malpractice claim accruing post-petition was property of the estate since the estate was harmed). Furthermore, avoidance actions, in a technical sense,

accrue after the petition date as a petition operates merely as a request for relief. *See* 11 U.S.C. § 301(b). It is therefore not until the order for relief is issued that an avoidance action is acquired. *Myers v. Raynor (In re Raynor*), 406 B.R. 375, 381 (B.A.P. 8th Cir. 2009), *aff'd*, 617 F.3d 1065 (8th Cir. 2010). Because avoidance actions arise after the filing of a petition, these causes of action are property of the estate. The Trustee properly sought to sell one of these actions. R. at 9.

B. Recognizing avoidance actions as property of the estate promotes the primary goals of bankruptcy by promoting efficient estate administration and maximizing estate assets.

The Bankruptcy Code imposes obligations upon bankruptcy trustees. 11 U.S.C. § 704. The Seventh Circuit described these obligations as imposing a fiduciary duty upon a trustee to (1) administer the estate in a prompt and efficient manner and (2) maximize the money available to creditors. *See Hoseman v. Weinschneider*, 322 F.3d 468, 475 (7th Cir. 2003). Recognizing avoidance actions as property of the estate that can be sold by the trustee helps trustees achieve both goals. While the statute's plain language obviates the need for policy considerations, as outlined in Part II.A. above, viewing avoidance actions as property of the estate is the correct policy. This view provides avenues for trustees to retain flexibility during bankruptcy and helps facilitate speedy resolution for all parties. Most importantly, this view ensures trustees are able to maximize the size of the estate—fulfilling their fiduciary duty.

Trustees seeking to maximize the estate's assets often exercise avoidance actions to pursue claims or reach settlements with parties. However, the costs associated with pursuing these claims often lead to trustees not pursuing every claim available to them. *See Hyundai Translead, Inc. v. Jackson Truck & Trailer Repair, Inc. (In re Trailer Source, Inc.*), 55 F.3d 231, 243 (6th Cir. 2009). Even when attorneys take the case on contingency, a significant portion of the recovery goes to the administrative costs of pursuing the case. Allowing trustees to sell avoidance actions provides money to the estate directly—eliminating burdensome administrative costs. In fact, Eclipse agreed

to pay the full cost of the avoidance action in this case, which would have provided the estate with more money than it would have received if the Trustee pursued the claim on her own. R. at 9. If the sale of avoidance actions is forbidden, trustees might not pursue valuable claims based solely on anticipated costs associated with the pursuit. Thus, creditors would be left with less money in the estate than they otherwise would receive if those anticipated costs were not a stumbling block for the trustee.

Furthermore, failing to recognize avoidance actions as property of the estate would upset the practice of using avoidance actions as collateral in other areas of the Bankruptcy Code. In the chapter 11 context, debtors in possession utilize avoidance actions as collateral when financing under section 363(c)(2). *See In re Figearo*, 79 B.R 914, 918 (Bankr. D. Nev. 1987) (holding that a pre-petition lien attached to the proceeds of the avoidance action); *Mellon Bank N.A. v. Dick Corp. (In re Qualitech Steel Corp.)*, 351 F.3d 290 (7th Cir. 2003) (declining to dismiss a preference action based on the court's previous grant of replacement liens on avoidance actions). This process allows lenders to secure themselves against the risk of funding non-credit-worthy debtors in possession. If avoidance actions are not the property of the estate, then lenders cannot use them as collateral. This would limit the ability of debtors in possession to receive financing in chapter 11 proceedings.

Finally, trustees are charged with providing a speedy resolution to bankruptcy proceedings. 11 U.S.C. § 704(a)(1). Pursuing every avoidance action without the ability to sell them would increase the time that bankruptcy proceedings last. By selling avoidance actions, a trustee is also able to speed up the bankruptcy process by receiving money from the sale directly. This also reduces the risks associated with pursuing claims, such as bringing a claim that results in no recovery. The sale of avoidance actions ensures that trustees can quickly obtain money from selling avoidance actions and then distribute that money to creditors—expediting resolution.

CONCLUSION

For the above reasons, this Court should reverse the Thirteenth Court of Appeals and hold that post-petition, pre-conversion increases inure to the converted estate and grant the Trustee's motion to sell the preference action to Eclipse.