No. 23-0115

IN THE

Supreme Court of the United States

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER,

V.

EUGENE CLEGG, RESPONDENT.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

JANUARY 18, 2023

TEAM NUMBER 7
COUNSEL FOR THE PETITIONER

QUESTIONS PRESENTED

I. Section 348 of the Bankruptcy Code defines the property of a post-conversion bankruptcy estate to include the property of the estate that existed on the petition date and remains in the debtor's control on the conversion date. The Debtor's residence was property of the estate on the petition date and remained under his control until the conversion date. Does the present value of the residence inure to the benefit of the bankruptcy estate?

II. A chapter 7 trustee's primary duty is to maximize the value of the estate to benefit creditors. To fulfil this duty, the trustee may sell property of the estate under section 363. Further, sections 547(b) and 550 permit a trustee to avoid certain preferential transfers and recover the funds for the estate. May the Trustee sell a 547(b) and 550 preference action to Eclipse as property of the estate to maximize estate value?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

Federal Court of Appeals Cases

Federal District Court Cases

U.S. Banruptcy Appellate Panel Cases

U.S. Bankruptcy Court Cases

Statutes

Other Authorities

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 Final Cut, LLC ("Final Cut") owned and operated a historic, single-screen movie theater in the City of Moot. R. 5. In 2016, Final Cut's sole member, Eugene Clegg (the "Debtor"), caused Final Cut to borrow $850,000 from Eclipse Credit Union ("Eclipse") to renovate Final Cut's theater. *Id*. As security for the Loan, Eclipse was granted first priority liens on Final Cut's real and personal property, which were properly perfected. *Id*. As additional security, the Debtor executed an unconditional, unsecured, and unlimited personal guaranty. *Id*.

After completing renovations of the theater, Final Cut had $75,000 in remaining Loan proceeds. *Id*. Without notifying Eclipse, the Debtor caused Final Cut to donate the remaining proceeds to a charity in early 2017. *Id*. Final Cut was profitable for three years after the renovations. R. 6.

Final Cut's profitability, however, was irreparably damaged in March 2020, when the State of Moot Governor declared a public health emergency and issued an executive order requiring all individuals to stay at home. *Id.* Consequently, Final Cut's theater was inoperable for nearly a year. *Id*. Because the Debtor's only income came from a salary that he received from Final Cut, he was forced to borrow a $50,000 unsecured loan from his mother, Pink, on September 8, 2020. *Id*.

Despite Final Cut's theater reopening in February 2021, attendance failed to rebound to pre-pandemic levels and the Debtor's finances continued to deteriorate. *Id*. The Debtor incurred significant credit card debt and fell behind on his mortgage serviced by Another Brick in the

Wall Financial Corporation (the "Servicer"). *Id*. After months of nonpayment, the Servicer commenced foreclosure proceedings against the Debtor. *Id*.

On December 8, 2021 (the "Petition Date"), the Debtor filed for chapter 13 bankruptcy. R. 6. The Debtor's home was valued at $350,000. *Id.* Additionally, the Debtor identified a non-contingent, liquidated, and undisputed secured debt of $320,000 to the Servicer, resulting in $30,000 of equity in the residence. *Id*. The Debtor aimed to retain the residence by claiming the maximum $30,000 in the State of Moot, the Debtor aimed to retain the residence. *Id* 6–7. Further, the Debtor disclosed that he had made $20,000 in payments to Pink within one year of the Petition Date. R. 7.

The Debtor proposed a chapter 13 plan to make payments to his creditors over three years. *Id*. The plan stated that the Debtor maintained no equity in the residence as of the Petition Date because of the Servicer's security interest in the residence and the homestead exemption. *Id*. The plan was to be funded solely through future earnings derived from Final Cut. *Id*.

Both the chapter 13 trustee and Eclipse objected to the Debtor's plan. *Id.* The trustee objected that the plan failed to satisfy section 1325(a)(4), which requires that creditors receive no less than it would otherwise receive in a chapter 7 case liquidation—a reference to the alleged preferential payments to Pink. *Id.* Eclipse finally learned of the Debtor's donation of the Loan proceeds at the meeting of creditors, and subsequently commenced an adversary proceeding against the Debtor, seeking its debt to be ruled non-dischargeable. R. 7–8. After negotiating the Debtor agreed to increase the aggregate payments to creditors by $20,000 over the commitment period to satisfy the trustee's objection. R. 7. In return, the chapter 13 trustee agreed that she would not pursue the alleged preference action. R. 7–8. To satisfy Eclipse, Eclipse was granted a

$150,000 claim, of which $25,000 was deemed non-dischargeable even in the event of conversion. R. 8. Accordingly, the plan was confirmed on February 12, 2022. *Id.*

The Debtor made payments under the plan for eight months. *Id.* Nevertheless, Final Cut permanently closed in October 2022 and Eclipse commenced foreclosure proceedings against Final Cut. *Id.* Without any income, the Debtor could not make payments under the plan and converted his in good faith case to chapter 7 in October 2022 (the "Conversion Date"). *Id.* The chapter 13 trustee's final report stated that $10,000 was distributed to the Servicer under the plan and that, upon conversion, all funds held in reserve for Eclipse were returned to. R. 8–9.

Trustee Vera Lynn Floyd (the "Trustee") was appointed to administer the Debtor's chapter 7 estate. R. 9. The Debtor's conversion schedules listed the value of his residence at $350,000 and disclosed his alleged preferential transfers to Pink. *Id.* Additionally, the Debtor's schedules reflected indebtedness to Eclipse for an approximate $200,000 deficiency relating to the Debtor's guarantee of Final Cut's Loan. *Id.*

The Trustee commissioned an appraisal of the residence after learning that its value had likely increased since the Petition Date. *Id.* The appraisal confirmed that the non-exempt equity in the property had increased by $100,000. *Id.* Consistent with the Trustee's statutory duty to liquidate the property of the estate for the benefit of the Debtor's creditors, the Trustee began marketing the home for sale. *Id.* Subsequently, Eclipse offered to purchase the home and the alleged preference claim against Pink for $470,000. *Id.* Determining that Eclipse's offer maximized the value of the estate, the Trustee filed a motion (the "Sale Motion") to sell the residence and the alleged preference claim to Eclipse. *Id.*

All parties agreed that Eclipse's offer was fair and reasonable. R. 10 n.11. But the Debtor objected to the Sale Motion. First, the Debtor argued that the Trustee could not sell the residence

because, on the Petition Date, there was no non-exempt equity in the residence. R. 10. Therefore, any post-petition, pre-conversion appreciation in the value of the Debtor's residence should inure to the Debtor's benefit. *Id*. Second, the Debtor asserted that the Trustee does not have legal authority to sell the alleged preference action to Eclipse. *Id.* The U.S. Bankruptcy Court for the District of Moot agreed with the Debtor on both objections and denied the motion. *Id.*

The Trustee appealed the ruling, and the matter was certified for direct appeal to the Thirteenth Circuit. *Id.* On appeal, the Thirteenth Circuit affirmed the decision of the bankruptcy court. R. 24. The Trustee appealed to the Court, which granted cert. R. 2.

STANDARD OF REVIEW

Before the Court are two issues of law. The standard of review for issues of law is *de novo*. *See, e.g., Fox v. Hathaway* (*In re Chicago Mgmt. Consulting Grp.*), 929 F.3d 804, 809 (7th Cir. 2019). *De novo* means "anew," meaning this Court should not automatically defer to lower courts. *See Dawson v. Marshall*, 561 F.3d 930, 933 (9th Cir. 2009) (quotation omitted).

SUMMARY OF THE ARGUMENT

This is a case about preserving a chapter 7 trustee's duty to liquidate property of the bankruptcy estate for the benefit of creditors. This Court should reverse the Thirteenth Circuit and hold that (I) post-petition, pre-conversion appreciation of the Debtor's residence inures to the estate's benefit and (II) a chapter 7 trustee may sell a preference action under sections 547 and 550 as property of the estate.

The Bankruptcy Code (the "Code") aims to grant a fresh start to the honest but unfortunate debtor. Chapter 13 and chapter 7 are two paths debtors may take to discharge their debts. Chapter 13 of the Code allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period. Payments under a chapter 13 plan are paid from the debtor's future earnings or other future income. The chapter

13 trustee is responsible for collecting a portion of the debtor's wages and distributing the withheld wages to creditors.

Conversely, chapter 7 allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets. The chapter 7 estate generally comprises all the debtor's property. Furthermore, section 704(a) imposes a statutory duty on the chapter 7 trustee to collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of the parties. To accomplish this task, section 363(b) permits a trustee to sell property of the estate with court approval.

When a case under chapter 13 is converted to a case under another chapter, such as chapter 7, section 348(f)(1)(A) unambiguously provides that the Debtor's residence is property of the post-conversion estate because the Debtor possessed the residence on both the Petition and Conversion Date. This plain meaning interpretation of section 348(f)(1)(A) does not treat the Debtor like a debtor converting in bad faith under section 348(f)(2) because the Debtor retained his after-acquired property. Moreover, allowing the Trustee to re-appraise the property to ensure the residence's full non-exempt value inures to the estate's benefit also does not conflict with section 522(a)(2). In fact, allowing appreciation or depreciation to only inure or detract from the estate safeguards a debtor's ability to maintain section 522 exemptions. Congressional intent supports the plain meaning interpretation of section 348(f).

The Court should also reverse the Thirteenth Circuit's decision to prohibit the Trustee from selling the alleged preference action to Eclipse. Several 541(a) subsections, which broadly define what constitutes "property of the estate," plainly includes preference actions as estate property. Preference actions are property of the estate under section 541(a)(1) because preference

actions are property, and the Debtor had a contingent interest in the alleged preference action before filing for bankruptcy. Additionally, this Court's precedent supports reading section 541(a)(3) to include preference actions as property of the estate alongside other chapter 5 causes of action the Court recognizes fall within the subsection. Further, preference actions are property of the estate at least under section 541(a)(7) because the Code makes these actions available to the estate itself upon case commencement.

This conclusion is supported by the context and statutory scheme of section 541, including other subsections of 541, and sections 547(b) and 550 themselves. Preference actions are absent from the subsections in section 541 that define what is not included as property of the estate. Additionally, creditors are capable parties to pursue section 547 and 550 preference actions and are routinely granted permission to do so in certain circumstances when a trustee refuses not to. Further, any pre-Code practices holding that preference actions are not property of the estate have since been superseded by the Code itself and are no longer the governing law.

Notably, an overwhelming majority of circuit courts have held that various chapter 5 causes of action are property of the estate under the Code. The most recent circuit case to do so is directly on point, holding that preference actions are property of the estate under section 541(a). No other circuit has properly held otherwise.

Finally, permitting a trustee to sell preference actions facilitates a trustee's statutory duty to maximize the value of the estate, whereas prohibiting such sales frustrates this goal. Not only can a trustee successfully recover funds by selling a preference action when the estate may not be able to afford to pursue the action, selling the action lowers administrative costs—all to the benefit of the estate. This practice upholds the trustee's duty to maximize the estate and

preserves the integrity of the Bankruptcy system. For all these reasons, the Court should permit the Truste to sell the alleged preference actions as property of the estate.

Accordingly, this Court should reverse the Thirteenth Circuit on both issues.

ARGUMENT

I. The Bankruptcy Code unambiguously provides that post-petition, pre-conversion appreciation of the Debtor's residence inures to the bankruptcy estate's benefit.

This Court's "precedents make clear that an analysis of any statute, including the Bankruptcy Code, must not begin with external sources, but with the text itself." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 459 (1999) (Thomas, J., concurring). "Courts presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). When a "statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (quotation omitted).

Recognizing the reality that many chapter 13 debtors fail to complete a chapter 13 plan successfully, "Congress accorded debtors a nonwaivable right to convert a chapter 13 case to one under chapter 7 'at any time.'" *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015) (quoting 11 U.S.C. § 1307(a)). To incentivize debtors to opt for reorganization over liquidation, Congress enacted section 348(f) of the Code, providing "that conversion from one chapter to another does not start a new bankruptcy case, but instead it transforms the nature of the existing bankruptcy case." *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1220 (10th Cir. 2022) (citation omitted). Section 348(f)(1)(A) states that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, 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). Moreover, section 541(a) broadly defines "property of the estate" as of "all legal or equitable

interests of the debtor in property as of the commencement of the case." *See* 11 U.S.C. § 541(a)(1).

Because the Debtor possessed the residence on both the Petition and Conversion Date, section 348(f)(1)(A) unambiguously includes the residence as property of the post-conversion estate. Unlike the cases cited by the Thirteenth Circuit, the Debtor never lost possession of the residence before the case's conversion. Therefore, the full value of the residence should inure to the estate's benefit. The plain meaning interpretation of section 348(f)(1)(A) does not render any portion of the Code conflicting or sulfurous. Section 348(f)(1)(A) does not treat the debtor like a debtor converting in bad faith under section 348(f)(2), nor does its allowance of the Trustee to retain non-exempt value in estate property conflict with section 522(a)'s exemption provisions. Instead, section 348(f)'s legislative history supports that the plain meaning of section 348(f)(1)(A) fulfills its intended purpose of excluding after-acquired property from the post-conversion estate.

A. The plain language of sections 348(f)(1) and 541(a) unambiguously includes the Debtor's residence and its appreciated value in the bankruptcy estate.

A statute is unambiguous when "Congress has directly spoken to the precise question at issue[.]" *See Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 239 (2004) (quotation omitted). When a statute is unambiguous, the Court must give effect to the expressed intent of Congress. *Id*. "Mere disagreement among litigants over the meaning of a statute does not prove ambiguity; it usually means that one of the litigants is simply wrong." *Bank of Am. Nat'l Tr. & Sav. Ass'n*, 526 U.S. at 461 (Thomas, J., concurring). Additionally, when a statute has a plain, non-absurd meaning, it is unnecessary to rely on legislative history when interpreting the statute. *See Lamie v. United States Tr.*, 540 U.S. 526, 538–39 (2004).

Section 348(f)(1)(A) is facially unambiguous—a fact even the Thirteenth Circuit concedes. R. 12. Section 348(1)(A) states that when a case under chapter 13 is converted to a case under another chapter of the Bankruptcy Code, "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, 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). Accordingly, to be property of the post-conversion estate, the property must first have been property of the estate on the Petition Date. *Id.* Second, the debtor must have remained in possession of the property on the Conversion Date. *Id*.

The Debtor's property was property of the bankruptcy estate on the Petition Date. Although section 348(f)(1)(A) does not define "property" or "property of the estate", the phrase "is a term of art which appears throughout the Bankruptcy Code." *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023). Section 541(a)(1) clarifies the term and states that the estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." *See* 11 U.S.C. § 541(a)(1). Moreover, in a chapter 13 case, section 1306(a)(1) relies on section 541 to define property of the estate as all property that the debtor possesses on the petition date and "all property of the kind specified in [section 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a cause under chapter 7[.]" 11 U.S.C. § 1306(a)(1). It is uncontested that the Debtor possessed the residence on the Petition Date. Accordingly, the residence was property of the original chapter 13 bankruptcy estate.

The Thirteenth Circuit erroneously relies upon cases where lost possession of the property before conversion, therefore failing to meet section 348(f)(1)(A)'s second requirement. Confirmation of a chapter 13 plan "vests all the property of the estate in the debtor." 11 U.S.C. §

1327(b). Nevertheless, "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." *Harris*, 575 U.S. at 520. Section 1327(b)'s revesting provision is moot when, as in the Debtor's case, the case is converted from chapter 13 to chapter 7. *Id*. Instead, the more specific section 348(f)(1)(A) redefines what property of the post-conversion bankruptcy estate must constitute. 11 U.S.C. § 348(f)(1)(A); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (noting that "when interpreting statutes 'it is a commonplace of statutory construction that the specific governs the general.'"). Section 348 ushers the vested property back into the estate after conversion if the debtor still has control of it. 11 U.S.C. § 348(f)(1)(A).

A debtor's ability to lose possession of the property revested in him by section 1327(b) prior to the conversion date is the linchpin distinguishing the Debtor's situation from the primary cases that the Thirteenth Circuit relied upon. In *In re Barrera*, the Tenth Circuit held that the proceeds from the sale of the debtor's home during the pendency of a chapter 13 case were not property of the post-conversion bankruptcy estate. 22 F.4th at 1223. The *Barrera* court found that the proceeds were "a property interest distinct from the physical house from which they derived." *Id*. Further, the Tenth found because "the proceeds from the sale of the physical house did not exist on the date of filing the chapter 13 petition . . . the proceeds cannot have 'remained in the possession of or [have been] under the control of the debtor on the date of the conversion.'" *Id*. at 1223 (analyzing section 348(f)(1)(A)'s applicability to sale proceeds). The debtors in *Barrera* did not satisfy section 348(f)(1)(A)'s two requirements of possessing the property on both the petition date and conversion date. Because section 1327 vested the property in the debtors, the Tenth Circuit held that the sale proceeds did not come from property of the estate. *Id.*

Unlike the *Barrera* debtors, the Debtor here satisfies both requirements of section 348(f)(1)(A). The Debtor possessed the residence on the chapter 13 Petition Date and on the Conversion Date. Moreover, although the property was vested in the Debtor upon confirmation of his chapter 13 plan pursuant to section 1327, the Debtor never lost possession of the residence. Instead, the Debtor's residence became part of the bankruptcy estate again once the Debtor chose to convert his case to chapter 7. *See* 11 U.S.C. § 348(f)(1).

In an almost identical case to the Debtor's, the Ninth Circuit held in *In re Castleman* that post-petition, pre-conversion equity in a residence inures to the benefit of the bankruptcy estate when the residence itself is property of the bankruptcy estate. 75 F.4th at 1058. Like the Debtor, the *Castleman* debtors did not sell their home before converting the chapter 13 case to chapter 7 and sought to prevent the chapter 7 trustee from selling the home by alleging that the post-petition equity in the residence was not property of the bankruptcy estate. *Id.* at 1054. Because the residence was always in the possession of the *Castleman* debtors, the Ninth Circuit held that the residence did not fall within the "newly-acquired, post-petition property [that] would not become part of the converted estate." *Id.* at 1057–58. Ultimately, only after-acquired, post-petition property does not become part of the converted estate when the debtor acts in good faith. *Id.* at 1058.

Castleman and *Barrera* both affirm that when section 348(f)(1)(A)'s two requirements are met, property becomes property of the bankruptcy estate. The Debtor's retention of the residence from the Petition Date to the Conversion Date unambiguously renders the property part of the bankruptcy estate.

B. Honoring the plain meaning of section 348(f)(1) does not render any part of the Code superfluous.

The "interpretive canon against surplusage [is] the idea that every word and every provision is to be given effect and that none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (citation omitted). This Court has held that when there are two ways to read a statutory text – one way that results in surplusage, but the text is plain, and another way where the text does not result in surplusage, but the text is ambiguous, applying the rule against surplusage is inappropriate. *Lamie*, 540 U.S. at 536. The plain meaning of section 348(f)(1)(A) does not render section 348(f)(2) superfluous because the Debtor is treated differently than debtors converting in bad faith under section 348(f)(2).

Section 348(f)(2) provides that when a debtor converts his case "in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion." 11 U.S.C. § 348(f)(2). Unlike section 348(f)(1)(A), which shields a debtor's after-acquired property from inclusion in the post-conversion estate, section 348(f)(2) penalizes debtors who convert in bad faith by widening the post-conversion bankruptcy estate to include after-acquired property. *Id*.

Section 348(f)(1)(A) does not render section 348(f)(2) superfluous because a good faith debtor, like the Debtor here, still retains any property he acquired since filing his chapter 13 petition. The clearest distinction between the treatment of good faith and bad faith debtors under section 348 is illustrated in the handling of post-petition, pre-conversion wages withheld by the chapter 13 trustee upon conversion. This Court recognizes that "a debtor's post-petition wages, including undisbursed funds in the hands of a trustee, ordinarily do not become part of the Chapter 7 estate created by conversion." *Harris*, 575 U.S. at 517. Conversely, when a debtor

converts a case in bad faith, the debtor's post-petition wages in the hands of the trustee become part of the post-conversion bankruptcy estate. *See In re Siegfried*, 219 B.R. 581, 587 (Bankr. D. Colo. 1998).

The Thirteenth Circuit's characterization of 348(f)(1)(A)'s effect ignores the obvious benefits and protections the Debtor is provided by the statute. For example, after the conversion of the Debtor's case from chapter 13 to chapter 7, the chapter 13 trustee returned to the Debtor all funds held by the trustee in reserve for Eclipse. Had the Debtor acted in bad faith, those funds would have become property of the post-conversion bankruptcy estate. *In re Siegfried*, 219 B.R. at 587. As section 348(f)(1)(A) requires, the Debtor's after-acquired wages were returned after the conversion of the case. The Debtor's residence, however, is simply not after-acquired property that a debtor converting in good faith is entitled to retain. 11 U.S.C. § 348(f)(1)(A). While this outcome is understandably harsh to the Debtor, it is not sufficient to render the Debtor's treatment the same as a debtor acting in bad faith.

C. Appreciation or depreciation of estate property must inure to the benefit or detriment of the estate to protect chapter 7 debtors' ability to maintain the benefit of their exemptions under section 522.

Under section 522(a)(2), a debtor can exempt from the bankruptcy estate any property permitted by federal or state law. 11 U.S.C. § 522(a)(2). One "basic principal of bankruptcy law [is] that exemptions are determined when a petition is filed." *Pasquina v. Cunningham* (*In re Cunningham*), 513 F.3d 318, 324 (1st Cir. 2008); *see also White v. Stump*, 266 U.S. 310, 313 (1924). This rule is often called the "snapshot" rule. *See, e.g., Wolfe v. Jacobson* (*In re Jacobson*), 676 F.3d 1193, 1199 (9th Cir. 2012). Exemptions work to "entitle a debtor to a representative value, measured by former ownership of particular property, [and] operate as a charge against the property, much like a lien to secure payment of the specified amount, rather than title to the thing itself." *In re Adams*, 641 B.R. 147, 153 (Bankr. W.D. Mich. 2022). While it

is true that debtor exemptions are determined on the Petition Date, "this does not mean that the [p]roperty's value is for all purposes determined as of the date of filing." *In re Luckham*, 464 B.R. 67, 77 (Bankr. D. Mass. 2012).

Appreciation or depreciation in the value of property is "an attribute or incident of the property, not a separate property right or interest[.]" *In re Adams*, 641 B.R. at 151; *see als*o *In re Castleman*, 75 F.4th at 1056 (affirming that "equity in a pre-petition asset cannot be a separate, after-acquired property interest."); *In re Goins*, 539 B.R. 510, 616 (Bankr. E.D. Va. 2015) ("the post-petition appreciation of property is not separate, after-acquired property . . . [t]he equity is inseparable from the real estate[.]")**.** Section 541(a)'s "broad definition captures the debtor's entire ownership interest in each asset that exists on the petition date without fixing the estate's interest to the precise characteristics the asset has on that date." *In re Goetz*, 647 B.R. 412, 416 (Bankr. W.D. Mo. 2022), *aff'd* 651 B.R. 292 (B.A.P. 8th Cir. 2023). Consequently, "because equity is not a distinct item of property, §§ 348(f) and 541(a)(1) include it in the converted estate." *Id*. "Section 522(a)(2) "says nothing about what happens when a debtor claims an exemption in post-petition appreciation to which the debtor is not entitled[.]" *Masingale v. Munding* (*In re Masingale*), 644 B.R. 530, 543 (B.A.P. 9th Cir. 2022).

The Thirteenth Circuit asserts that section 348(f)(1)(A)'s inclusion of post-petition appreciation in the estate conflicts with section 522's snapshot rule, rending the Code "non-sensical in that it could result in vastly different valuations of the same property." R. 14. This Court has held, however, that a debtor's valuation of property on the petition does not entitle the debtor to an exemption exceeding statutory limits and a Trustee may investigate the debtor's valuation of property after the petition date to ensure no non-exempt value exists. *Schwab v. Reilly*, 560 U.S. 770, 779 (2010). In *Schwab v. Reilly*, a trustee had no obligation to object to a

debtor's valuation of property to preserve for the estate any value in the debtor's property beyond the maximum statutory exemption. *Id.* at 782. The debtor's valuations of property in the petition work merely to aid the "trustee in administering the estate by helping him identify assets that may have value beyond the dollar amount the debtor claims as exempt, or whose full value may not be available for exemption." *Id*. at 785.

Regardless of any increase in value of the property, the Debtor remains entitled to the state law homestead exemption in the State of Moot, allowing the Debtor to exempt a maximum of $30,000 from the bankruptcy estate. While the exemption entitles the Debtor to a representative value in the property, it does not however entitle the Debtor to the property itself. "The trustee could sell the property and account from the exemption claim by paying the exempt portion . . . from the sale proceeds or other estate property." *In re Adams*, 641 B.R. at 153. Accordingly, including post-petition appreciation of estate property to inure to the estate's benefit does not deny the Debtor the benefit of his exemptions under section 522.

In fact, allowing appreciation or depreciation to become distinct property apart from the residence would endanger the ability of converting chapter 7 debtors to enjoy the benefits of their section 522 exemptions. When property is not removed from the estate, its equity or lack thereof is "simply a happenstance of market conditions, which sometimes will benefit the debtor and sometimes benefit the estate." *In re Castleman*, 75 F.4th at 1058. While appreciation would benefit a debtor, depreciation would "give debtors in falling property markets less than the [homestead exemption] guaranteed them by state law." *Hyman v. Plotkin* (*In re Hyman*), 967 F.2d 1316, 1321 (9th Cir. 1992). Therefore, adoption of the Debtor's interpretation would not only impermissibly threaten a debtor's ability to maintain exemptions under section 522 but could put a debtor in a worse position than had the debtor filed chapter 7 originally.

D. The legislative history of section 348(f) supports the plain meaning of the statute.

This Court does occasionally consider legislative history when interpreting the Code. *See Dewsnup v. Timm*, 502 U.S. 410, 419 (1992). "Of course, where the language [of a statute] is unambiguous, silence in the legislative history cannot be controlling." *Id*. This Court has a longstanding "unwillingness to soften the import of Congress' chosen words even if [the Court] believe[s] the words lead to a harsh outcome." *Lamie*, 540 U.S. at 538. Litigants must not be permitted to "undermine the Code by creating 'ambiguous' statutory language and then cramming into the Code any good idea that can be garnered from pre-Code practice or legislative history." *Bank of Am. Nat'l Tr. & Sav. Ass'n*, 526 U.S. at 461 (Thomas, J., concurring).

Congress explicitly sought to "clarify the Code to resolve a split in the law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7." H.R. REP. NO. 103-835, at 57, (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. Specifically, Congress announced that the amendments to section 348(f) overruled the holding of *Matter of Lybrook* and adopted the reasoning of *In re Bobroff*. *See id*. Both cases concern only the after-acquired property of the converting debtor. *See Matter of Lybrook*, 951 F.2d 136, 137 (7th Cir. 1991); *Bobroff v. Continental Bank* (*In re Bobroff*), 766 F.2d 797, 803 (3d Cir. 1985).

Admittedly, section 348(f)'s legislative history includes a hypothetical situation discussed by Congress involving post-petition appreciation in a residence. H.R. REP. NO. 103-835, at 57. Congressional "failure to address the example included in the legislative history does not mean this omission was inadvertent." *In re Goetz*, 651 B.R. at 299 (holding that legislative history does not support post-petition, pre-conversion equity inuring to the benefit of the debtor). Rather, failure to address post-petition equity is instead "the result of compromise." *Id*. Had Congress intended to exempt more than after-acquired property from the post-conversion estate, Congress

would have simply exempted post-petition, pre-conversion appreciation—as it has explicitly done so throughout the Code. *See* 11 U.S.C. § 541(a)(6) (excluding "earnings from services performed by an individual debtor after the commencement of the case"); 11 U.S.C. § 541(b) (listing property that "property of the estate does not include").

The text of section 348(f)(1)(A) unambiguously includes the Debtor's non-exempt property that he possessed on the Petition and Conversion Date. The plain meaning of section 348(f)(1)(A) does not result in surplusage, nor does it conflict with section 522(a)(2)'s "snapshot" rule. The plain meaning of the text is necessary to ensure that chapter 7 debtors are not placed in a more severe financial situation if the estate property depreciates before conversion. Ultimately, Congress intended for section 348(f)(1)(A) to only intended to exclude after-acquired property from the post-conversion estate, and the plain text accomplishes this goal.

For these reasons, the Court should reverse the Thirteenth Circuit's finding that the post-petition, pre-conversion appreciation in the Debtor's residence inures to the estate's benefit.

II. The Trustee may sell the power to avoid and recover transfers under sections 547 and 550 as property of the estate.

"Equality of distribution among creditors is a central policy of the Bankruptcy Code." *Begier v. IRS*, 496 U.S. 53, 58 (1990). For example, the Code mandates that creditors of equal priority receive pro rata shares of the debtor's property. *Id.*; *see also* 11 U.S.C. § 726(b). Several provisions in chapter 5 of the Code advance this policy by allowing a bankruptcy trustee to bring a cause of action to avoid and recover certain transfers made by a debtor for the estate's benefit. *See* 11 U.S.C. §§ 544–553. These provisions, particularly section 547, prevent the debtor from favoring one creditor over another when transferring property shortly before filing a bankruptcy petition. *See Begier*, 496 U.S. at 58.

Section 547 enumerates a particular cause of action known as a "preference" or "avoidance" action. *See, e.g.* 11 U.S.C. § 547; *Cent. Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 382 (2006) (Thomas, J., dissenting). Under section 547(b), a trustee may avoid certain preferential payments or transfers a debtor made before the petition date. 11 U.S.C. § 547(b). Once avoided, section 550(a) permits a trustee to recover the transferred property or payment "for the benefit of the estate" to be shared pro rata amongst the creditors. 11 U.S.C. § 550(a).

In addition to bringing preference actions, a chapter 7 trustee may also sell property of the estate with court approval to "maximize the value of the estate." 11 U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). Section 363(b)(1) itself does not define "property of the estate", so courts turn to the definition laid out in section 541. *See, e.g., Cadle Co. v. Mims* (*In re Moore*), 608 F.3d 253, 257 (5th Cir. 2010).

The Trustee may sell the alleged preference action as property of the estate. First, preference actions are "property of the estate" under several section 541(a) provisions, which defines what is and what is not property of the estate. *See* 11 U.S.C. §§ 541(a)–(b). This conclusion is further supported by both the context and statutory scheme section 541(a). Additionally, an overwhelming majority of circuit courts have held that chapter 5 causes of action constitute property of the estate, whereas no circuit has properly held otherwise. Finally, permitting preference actions to be sold as property of the estate facilitates the Trustee's statutory duty to maximize the value of the estate.

A. Preference actions are property of the estate within the meaning of section 541(a).

Courts must begin "with the language of the statute itself" when interpreting the Code. *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011). Section 541, suitably titled "Property of the estate," defines what is and what is not estate property. *See* 11 U.S.C. § 541(a)–(b). Section 541(a) lists seven subsections defining what "property the estate" includes. *See id.* This Court characterizes section 541(a)'s definition of "property of the estate" as "broad." *See Patterson v. Shumate*, 504 U.S. 753, 757 (1992). Overall, section 541(a) serves "as a definition of what is included in the estate, rather than as a limitation." *United States v. Whiting Pools, Inc.*, 462 U.S 198, 203 (1983).

Consistent with this broad interpretation, preference actions are property of the estate not only under one 541(a) subsection, but three: 541(a)(1), (3) and (7).

1. Preference actions may be sold as "property of the estate" under section 541(a)(1).

Section 541(a)(1) deems "all legal or equitable interests of the debtor in property as of the commencement of the case" as property of the estate. 11 U.S.C. § 541(a)(1). Accordingly, to be "property of the estate" under section 541(a), preference actions must be (1) property and (2) a legal or equitable interest of the Debtor upon Bankruptcy commencement. *Id.* Here, both requirements are clearly satisfied.

i. Preference actions are property.

"Property" is defined as the rights in a valued resource, tangible or intangible. *Property*, BLACK'S LAW DICTIONARY (11th ed. 2019). A debtor's cause of action is a type of intangible property routinely recognized as property of the estate under section 541(a)(1). *See, e.g., Parker v. Goodman* (*In re Parker*), 499 F.3d 616, 624 (6th Cir. 2007). Section 547(b) and 550 preference actions constitute a cause of action under the Code's text and this Court's precedent.

Section 926(a) of the Code explicitly describes a preference action as a cause of action; "[i]f the debtor refuses to pursue a *cause of action* under section 544, 545, *547*, 548, 549(a), or *550* . . . the court may appoint a trustee to pursue such *cause of action*." 11 U.S.C. § 926(a) (emphasis added) (describing avoidance powers in a municipal bankruptcy case). This Court has described a trustee's chapter 5 avoidance powers as a "statutory cause of action" and a "claim". *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989) ("For if a statutory cause of action, such as [the] right to recover a fraudulent conveyance under 11 U.S.C. § 548(b), is not a 'public right' . . . then Congress may not assign [it]."); *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 37 (1992) (citations omitted) ("[T]he right to recover a postpetition transfer under § 550 is clearly a 'claim.'"). Both the Code's text and this Court's precedent are clear; a preference action is a cause of action. Accordingly, preference actions are "property" within the meaning of section 541(a)(1).

Preference actions are section 541(a)(1) "property" even if characterized as the Trustee's "rights and powers" as the Code does in chapter 5. *See, e.g.*, 11 U.S.C. § 544(a) ("The trustee shall have . . . the rights and powers of, or may avoid any transfer of the debtor . . . ."). The Code itself recognizes various rights as interests in property. Section 101(5) defines a "claim" to mean "right to payment" or "right to an equitable remedy." 11 U.S.C. § 101(5)(A)–(B). These rights are routinely recognized as property within the meaning of section 541(a). *See, e.g.*, *Nordic Vill., Inc.*, 503 U.S. at 37 ("[T]he right to recover a postpetition transfer under § 550 is clearly a 'claim' . . . and is property of the estate . . . .").

Further, Congress explicitly excluded "any power the debtor may exercise solely for the benefit of an entity other than the debtor" from estate property in section 541(b). 11 U.S.C. § 541(b)(1). Congress's exclusion of this specific power from estate property in section 541(b)

indicates that a trustee's powers generally are within the scope of property of the estate under section 541(a). *See NLRB. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) ("[E]xpressing one item of [an] associated group or series excludes another left unmentioned.") (quotation omitted). Therefore, the Trustee's preference action is "property" within the meaning of section 541(a)(1).

ii. The Debtor had an interest in preference actions upon Bankruptcy commencement.

Section 541(a)(1) includes all "legal and equitable interests of the debtor" as property of the estate. 11 U.S.C. 541(a)(1). Property of the estate is not limited to the possessory interests of a debtor. *See Whiting Pools*, 462 U.S. at 206 (holding the Code does not require "that the debtor hold a possessory interest in the property at the commencement of the reorganization proceedings."). In fact, section 541(a)(1) includes "[e]very conceivable interest of the debtor, future, nonpossessory, *contingent*, speculative, and derivative." *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008) (emphasis added) (citation omitted); *see also Segal v. Rochelle*, 382 U.S. 375, 379 (1966) ("the term 'property' [is] construed most generously and an interest is not outside its reach because it is . . . contingent."). A "contingent interest" is one that the holder may enjoy only upon the occurrence of a condition precedent. *Contingent Interest*, BLACK LAW'S DICTIONARY (11th ed. 2019). One such condition precedent has been recognized by this Court, which has held that property of the estate under section 541(a) includes "any property made available to the estate by other provisions of the Bankruptcy Code." *See Whiting Pools*, 462 U.S. at 205.

The Debtor had a contingent interest in the Trustee's section 547(b) preference action prior to commencing his Bankruptcy case. No party disputes that the Debtor had the right to file for bankruptcy upon defaulting on his mortgage payments. Upon commencement, chapter 5 of the Code made available to the Trustee, as representative of the estate, the ability to bring a

preference action. *See, e.g.*, 11 U.S.C. §§ 323, 547(b). Because the Debtor had the right to file for Bankruptcy, he had a contingent interest in the preference action prior to commencement of the case—an interest realized upon the case's filing. Therefore, the preference action is included among the "interests of the debtor" within the meaning of section 541(a)(1)'s definition of property of the estate.

2. Preference actions may be sold as "property of the estate" under section 541(a)(3).

Section 541(a)(3) deems "[a]ny interest in property that the trustee recovers under section 329(b), 363(n), 543, *550*, or 723" as property of the estate. 11 U.S.C. § 541(a)(3) (emphasis added). Notably, this Court explicitly recognized that chapter 5 causes of action are property of the estate. *See Nordic Village*, 503 U.S. at 37. In *Nordic Village*, a chapter 11 trustee brought a section 549(a) post-petition preference action against the IRS, one of the creditors in the case, seeking to recover post-petition transferred funds under section 550(a). *Id.* at 31. The IRS raised a sovereign immunity defense, raising the issue of whether then-section 106(c) allowed or waived IRS immunity. *Id.* at 32. The Court held that section 106(c) did grant the IRS immunity. *Id.* at 39. Relevantly, in reaching its decision, the Court stated: "the right to recover a postpetition transfer under § 550 is clearly a 'claim' . . . and *is* '*property of the estate*' (*defined in § 541(a)(3)*)"). *Id.* at 37 (emphasis added).

Nordic Hill illustrates that even a mere claim not yet recovered under chapter 5 constitutes "property of the estate" within the meaning of section 541(a)(3). *See id.* And like the section 549(a) preference action in *Nordic Hill*, the Trustee's section 547(b) preference action would seek to recover transferred funds under section 550(a). *See* 11 U.S.C. § 550(a) (listing both sections 547 and 549 as avoidance actions under which a trustee may recover property or value for the estate). While the holding regarding section 106(c) sovereign immunity in *Nordic*

Hill has been superseded by statute, the Court's interpretation of section 541(a)(3) remains persuasive to many courts. *See* Bankruptcy Reform Act of 1994, PL 103–394, October 22, 1984, 108 Stat 4106; *E.g., In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 512 (Bankr. S.D. Ohio 2021) ("Whether or not § 541(a)(3) compels this conclusion, *Nordic Village* provides strong authority that the [avoidance actions] are property of the estate."). Therefore, under the Court's interpretation in *Nordic Hill*, the "right to recover" outlined in sections 547(b) and 550(a) constitutes "property of the estate" under section 541(a)(3).

3. Preference actions may be sold as "property of the estate" under section 531(a)(7).

Section 541(a)(7) deems "[a]ny interest in property that the estate acquires after the commencement of the case" as property of the estate. 11 U.S.C. § 541(a)(7) (emphasis added). Congress enacted section 541(a)(7) to make 541(a) an "all-embracing definition and to ensure that property interests created with or by property of the estate are themselves property of the estate." *E.g., McClain v. Newhouse* (*In re McClain*), 516 F.3d 301, 312 (5th Cir. 2008) (citation omitted).

Preference actions are property of the estate within the meaning of section 541(a)(7). Again, preference actions are "property" within the meaning of section 541(a). *See* Section A.1.i, *supra*. After the commencement of the case, the estate itself "acquires" an interest in preference actions, which is created by the existence of a preference action itself. *See* 11 U.S.C. § 550(a) ("to the extent a transfer is avoided under . . . 547 . . . the trustee may recover, for the benefit of the estate; *see also Acquire,* BLACK'S LAW DICTIONARY (11th ed. 2019) ("[t]o gain possession or control of"). Because 541(a)(7) is the broadest of all the 541(a) subsections, preference actions, at minimum, constitute property of the estate within its meaning.

B. The Trustee may sell a preference action as property of the estate under the context and statutory scheme of section 541(a).

When interpreting a statute, courts must read the words "in their context" and with "the overall statutory scheme" in mind. *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 101 (2012) (citation omitted); *see also Robinson v. Shell Oil*, 519 U.S. 337, 341 (1997) (directing courts to consider "the specific context in which that language is used, and the broader context of the statute" when interpreting statutes). Accordingly, preference actions constitute property of the estate under the remaining language of section 541, the language of sections 547 and 550, and the legislative history of the Bankruptcy Code itself.

1. Congress did not exclude preference actions from "property of the estate" in other section 541 provisions.

Concededly, section 541(a) does not explicitly reference "preference" or "avoidance" actions as property of the estate; but this omission is irrelevant. Recall that "property of the estate" is meant to be construed as broad. *Patterson*, 504 U.S. at 757. As courts have stated, "[e]very conceivable interest . . . is within the reach of § 541." *E.g., Chartschlaa*, 538 F.3d at 122 (citation omitted). Further, reading the lack of an explicit reference to preference actions in section 541(a) to automatically exclude them from property of the estate disregards this Court's instruction that section 541(a) serves as a "definition of what is included in the estate, rather than as a limitation." *Whiting Pools, Inc.*, 462 U.S at 203.

Section 541 itself already contains other provisions that limit what constitutes property of the estate. *See* 11 U.S.C. §§ 541(b); (c)(2). While section 541(a) defines what is included in "property of the estate", section 541(b) lists ten subsections defining what "property the estate" does not include. *See* 11 U.S.C. § 541(b). Additionally, section 541(c)(2) specifically excludes another property interest, which is not relevant for purposes here. *See* 11 U.S.C. § 541(c)(2). Preference actions are not expressly excluded from property of the estate in either sections

541(b) or (c)(2). *See* 11 U.S.C. §§ 541(b); (c)(2). If Congress intended to exclude preference actions from "property of the estate," it would have listed these actions in either of these sections.

The Thirteenth Circuit's reliance on the canon against surplusage to conclude that preference actions are not "property of the estate" is misguided. This canon instructs that different words in the same statute cannot have the same meaning; put differently, one word cannot be redundant or "superfluous" of another. *See Marx. v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). The Thirteenth Circuit decided that interpreting sections 541(a)(1) and (7) to include preference actions would render other 541 sections superfluous, focusing on sections 541(a)(3) and (4). *See* 11 U.S.C. § 541(a)(3) (addressing avoidance actions under section 550); 11 U.S.C. § 541(a)(4) (addressing avoidance actions under section 551).

But the canon against surplusage "is not an absolute rule," particularly when interpreting the Code. *Marx*, 568 U.S. at 385; *Connecticut Nat'l Bank*, 503 U.S. at 253 (noting that "redundancies across statutes are not unusual events in drafting" to interpret a section of the Code). Additionally, interpreting section 541(a) to include preference actions as property of the estate does not render sections 541(a)(3) and (4) superfluous. Section 541(a)(3) encompasses much more than just avoidance actions; it also encompasses interests under sections 329(b), 363(n), 543, and 723. 11 U.S.C. 541(a)(3). The same can be said about section 541(a)(4). *See* 11 U.S.C. § 541(a)(4) (addressing interests under section 510(c)). Reading section 541(a) to include preference actions merely compliments these provisions—and is consistent with the broad interpretation of section 541(a)'s "property of the estate." Therefore, the canon against surplusage is inapplicable.

2. The language in sections 547 and 550 does not preclude Eclipse from pursuing the alleged preference action.

Sections 547 and 550 state that the "trustee", without referring to any other party, may avoid and recover preferential payments. *See* 11 U.S.C. §§ 547(b); 550(a). This Court interprets "trustee" to mean that only the trustee may recover costs of preserving property securing an allowed secured claim under section 506(c) of the Code. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6–7 (2000) [hereinafter "*Hen House*"]. On first blush, this interpretation may appear extendable to section 547 and 550 of the Code—which is precisely what the Thirteenth Circuit did in this case. R. 19.

But such a reading of *Hen House* disregards the Court's actual holding, which deliberately did not decide whether an interested party may act "in the trustee's stead" in section 547(b) preference actions. *See Hen House*, 530 U.S. at 13 n. 5. Such a reading also disregards the accepted practice of creditors obtaining derivative standing to pursue preference actions when a trustee declines to do so. *See id.* (citing *Canadian Pac. Forest Prods. Ltd. v. J.D. Irving, Ltd.* (*In re Gibson Grp., Corp.*), 66 F.3d 1436, 1436 (6th Cir. 1995) ("[A] bankruptcy court may permit a single creditor . . . to initiate an action to avoid a preferential or fraudulent transfer instead of the [trustee].")). Because interests in a preference action are not solely vested in a trustee, other interested parties may pursue such actions. Therefore, the trustee may sell preference actions as property of the estate.

Section 550 also states that a trustee may recover funds in a 547(b) preference actions "for the benefit of the estate." 11 U.S.C. § 550(a). The Thirteenth Circuit opted to read this language as barring the sale of preference actions since pursuing the action would recover funds for the purchaser themselves, not the estate. The Thirteenth Circuit failed to note that the sale of a preference action itself recovers funds for the benefit of the estate; the sale proceeds. Here, the

Trustee has sought court approval to sell the preference actions to Eclipse, the proceeds of which would directly benefit the estate, consistent with the language of section 550. Therefore, the trustee may sell preference actions as property of the estate.

3. Prior practice under the Bankruptcy Act does not preclude Eclipse from pursuing the alleged preference action.

The current Bankruptcy Code was enacted in 1978, which is recent compared to the former law governing bankruptcy, the Bankruptcy Act ("Act") of 1898. 11 U.S.C. § 101 *et seq.* (effective Nov. 6, 1978). When the Act was effective, it recognized the power to avoid preferential transfers. *See Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. at 372–73 (citations omitted). Under the now null Act, courts endorsed the principle that a trustee may not sell avoidance powers. *United Cap. Corp. v. Sapolin, Inc.* (*In re Sapolin Paints, Inc.*), 11 B.R. 930, 937 (Bankr. E.D.N.Y. 1981) (discussing pre-Bankruptcy Code caselaw).

These prior interpretations are no longer applicable. As a preliminary matter, these interpretations were made under outdated law. *See, e.g., Grass v. Osborne*, 39 F.2d 461, 461 (9th Cir. 1930), *superseded by statute as stated in Briggs v. Kent* (*In re Pro. Inv. Props. of Am.*), 955 F.2d 623, 626 (9th Cir. 1992). When Congress enacted the Code, it gave "a clear indication that Congress intended such a departure" by defining "property of the estate" as broad as possible. *See Hamilton v. Lanning*, 560 U.S. 505, 517 (2010) (citations omitted); *Patterson*, 504 U.S. at 757. Further, these pre-Code interpretations are no longer followed by an overwhelming majority of courts. *See, e.g., Pitman Farms v. ARRK Food Co.* (*In re Simply Essentials, LLC*), 78 F.4th 1006, 1009 (8th Cir. 2023) (holding that preference actions constitute "property of the estate" under sections 541(a)(1) and (a)(7)); *see also infra* Section C. Therefore, prior practices under the Act do not preclude the sale of preference actions as property of the estate.

C. The Court should join the overwhelming majority of circuits that conclude chapter 5 avoidance actions can be sold by a trustee as property of the estate.

Several circuits have concluded that chapter 5 preference and avoidance actions may be sold as "property of the estate" under one or more provisions of section 541(a). *See Morley v. Ontos, Inc.* (*In re Ontos*), 478 F.3d 427, 431 (1st Cir. 2007) (holding that a fraudulent conveyance claim constitutes property of the estate under section 541(a)(1)); *In re Moore*, 608 F.3d at 262 ("fraudulent-transfer claims are property of the estate under § 541(a)(1)"); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705, 708–09 (7th Cir. 1994) (concluding that "the right to collect" . . . is "property of the estate" under section 541(a)(1)); *In re Simply Essentials, LLC*, 78 F.4th at 1009 (holding that preference actions constitute "property of the estate" under sections 541(a)(1) and (a)(7)); *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020) (holding that a trustee "may sell an estate's avoidance claims").

The Eighth Circuit on the matter is particularly notable. In *Simply Essentials*, the chapter 7 trustee sought to sell preference actions it held against the owner of the corporate debtor after determining that the estate did not have sufficient funds to pursue the action. *In re Simply Essentials, LLC*, 1006 at 1007–08. The bankruptcy court permitted the sale of the action to one of the debtor's creditors. *Id.* at 1008. The owner objected to the sale and argued that the chapter 5 avoidance action was not property of the estate the trustee could sell. *Id.* The Eighth Circuit affirmed the bankruptcy court. *Id.* at 1011. The Eighth Circuit first held that the avoidance actions were property of the estate under section 541(a)(1) because the debtor had an "inchoate interest in the avoidance actions" prior bankruptcy commencement. *Id.* at 1009 (citing *Whiting Pools*, 462 U.S. at 206; *Segal*, 382 U.S. at 379). Additionally, the Eighth Circuit held that the avoidance actions constituted property of the estate under section 541(a)(7) because the "Code makes these assets available to the estate after commencement of the case." *Id.*

Like the trustee in *Simply Essentials*, the Trustee here seeks to sell preference actions she holds against Pink, rather than utilize estate funds to pursue the action. Additionally, the Debtor possessed an inchoate (contingent) interest in the preference actions by being eligible to file for bankruptcy. *See* Section A.1.ii, *supra*. Furthermore, the Code made the alleged preference action against Pink available to the estate. *See* Section A.3, *supra*. Just as the Eighth Circuit did, this Court should conclude that the preference actions against Pink are property of the estate under sections 541(a)(1), (7), or even (3) as previously addressed. *See* Section A, *supra*.

The Thirteenth Circuit's attempt to distinguish *Simply Essentials* is unpersuasive. The majority declined to follow *Simply Essentials*, determining that the Eighth Circuit focused on the wrong question: whether the funds transferred were property of the estate, rather than the preference actions themselves. R. 20. This mischaracterizes the Eighth Circuit's holding. Rather, the Eighth Circuit began its analysis by stating "[t]he only issue on appeal is the legal question of whether avoidance actions can be sold as property of the estate." *In re Simply Essentials, LLC*, 78 F.4th at 1008. Additionally, the Eighth Circuit clearly stated that a debtor "has in inchoate interest *in the avoidance actions*" themselves, not the funds transferred. *Id.* at 1009 (emphasis added). *Simply Essentials* clearly addressed the question of whether preference actions themselves constitute property of the estate. Therefore, the Court should join the Eighth Circuit in concluding that preference actions may be sold as property of the estate.

The only other arguably contrary circuit on the matter is also unpersuasive. In *Official Comm. of Unsecured Creditors of Cybergenics Corp*. v. *Chinery* (*In re Cybergenics Corp.*), the chapter 11 corporate-debtor, Cybergenics, agreed to sell nearly all its assets to satisfy its debts. 226 F.3d 237, 239 (3d Cir. 2000). The sale agreement purported to sell "all the rights, title, and interest of Cybergenics" to a third-party buyer. *Id.* Upon the successful sale, Cybergenics moved

to dismiss its case, but Cybergenics' creditors objected, arguing that Cybergenics, as debtor-in-possession, still could bring several 544 avoidance actions to maximize estate value. *Id.* at 239–40. While the creditors sought the bankruptcy court's permission to pursue the avoidance actions, the would-be defendants argued that the actions were unavailable since they had been sold in the sale agreement. *Id.* at 240. Concluding that avoidance actions were not sold in the asset sale, the Third Circuit stated "that the fraudulent transfer claims . . . were never assets of [the debtor]." *Id.* at 245. A minority of courts have erroneously on this statement to construe that preference actions cannot be "property of the estate" under section 541(a). *See In re Tribune Co.*, 464 B.R. 126, 200 (Bankr. D. Del. 2011), *on reconsideration in part*, 464 B.R. 208, 213–21 (Bankr. D. Del. 2012).

But *Cybergenics* is inapplicable to the case before the Court. The Third Circuit itself stated that "*Cybergenics* does not hold that trustees cannot transfer causes of actions." *Artesanias Hacienda Real S.A. de. C.V. v. North Mill Cap., LLC* (*In re Wilton Armetale, Inc.*), 968 F.3d 273, 285 (3d Cir. 2020) ("[*Cybergenics*] leaves that question open because the asset transfer at issue did not reach the creditor's claims."). Courts within the Third Circuit regularly approve a trustee's sale of avoidance actions, actively disregarding the *Cybergenics* statement. *See, e.g., Official Comm. of Unsecured Creditors of HDR Holdings, Inc. v. Gennx360 Cap. Partners, L.P.* (*In re HDR Holdings, Inc.*), No. BR 19-11396 (MFW), 2020 WL 6561270, at *2 (D. Del. Nov. 9, 2020) (discussing the Bankruptcy Court of Delaware's approval of a Sale Order in which the trustee proposed to sell avoidance actions). *Cybergenics* does not hold that preference actions are not property of the estate, is not authoritative over courts within the Third Circuit, and, as such, has no authority over this case. Therefore, the Court should join the overwhelming majority of

circuits and conclude that the alleged preference action may be sold by the Trustee as property of the estate.

D. Permitting sections 547(b) and 550 preference actions to be sold as "property of the estate" facilitates the Trustee's statutory duty to maximize the estate.

Section 704(a) defines several duties of a chapter 7 trustee. *See* 11 U.S.C. § 704(a). But section 704(a) first lists that the trustee's duty is to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest" in a chapter 7 trustee. 11 U.S.C. § 704(a)(1). Put simply, a chapter 7 trustee has the primary duty to "maximize the value of the estate." *See Weintraub*, 471 U.S. at 352. To fulfill this duty in practice, trustees not only work to bring all possible assets into the estate, but trustees also seek to reduce or eliminate administrative costs. *See, e.g., In re Easterday Ranches, Inc.*, 647 B.R. 236, 247 (Bankr. E.D. Wash. 2022) (citations omitted).

Permitting preference actions to be sold as property of the estate facilitates a trustee's 704(a) duty to maximize the estate. In many bankruptcy cases, trustees are forced to abandon pursuing various chapter 5 causes of action because the estate simply does not have enough funds to litigate such claims. *See, e.g., In re Simply Essentials, LLC*, 640 B.R. 922, 930 (Bankr. N.D. Iowa 2022); *In re Wilton Armetale, Inc.*, 618 B.R. 424, 426–27 (Bankr. E.D. Pa. 2020) (granting a trustee's motion to abandon property of the estate, who sought to abandon a section 544 cause of action because of the "necessary time, energy, and cost to continue"). Permitting a trustee to sell preference actions to a willing bidder ensures that the estate itself receives some benefit from the availability of the preference action. Additionally, selling a preference action eliminates the need for a trustee to incur the administrative expenses associated with pursuing the action. Permitting a trustee to sell a preference action as property of the estate allows the trustee

to weigh the benefits and costs of pursuing the action and decide which path will maximize estate value. This is precisely what the Trustee seeks to do in this case: eliminate the costs of litigating the preference action by selling it to Eclipse for a purchase price that all parties agree is fair and reasonable.

Any concern that permitting a creditor, rather than a neutral trustee, will compromise the integrity of the bankruptcy system is dispelled by several standard bankruptcy practices. Again, non-neutral creditors are already permitted to pursue preference actions on behalf of the trustee in certain circumstances. *See, e.g., Hen House*, 530 U.S. at 13 n.5 (discussing the practice of courts granting creditors derivative standing to pursue preference actions). Additionally, even if a preference action is litigated by a creditor, there will still be neutral, judicial oversight over the matter. Further, in courts where preference actions have been permitted to be sold, creditors often bid against each other for the rights to pursue the action. *See, e.g., In re Simply Essential, LLC*, 78 F.4th at 1008 (discussing how both creditors involved entered bids for the trustee's proposed sale of the pertinent preference actions). This practice ensures that the purchasing creditor intends to vigorously pursue the action, dispelling any concerns of collusion amongst the purchasing creditor and would-be defendant and the overall integrity of the bankruptcy system.

These standard practices are applicable in the present case. Here, the Trustee has selected the highest bidding creditor to sell the alleged preference action to. All parties agree that the purchase price Eclipse offered is fair and reasonable. The Servicer, the only other creditor who is eligible to purchase the alleged preference action, has not offered to purchase the preference action, meaning that Eclipse is the highest "bidder" amongst the Debtor's creditors. Further, it is the Debtor who has brought the instant suit before the Court challenging the Trustee's ability to sell a preference action. Considering that the would-be defendant is the Debtor's mother, the

Debtor clearly believes that Eclipse plans to vigorously pursue the action against Pink and there is no indication to the contrary. Further, upon sale and Eclipse's pursuit of the action, the action will remain under neutral, judicial oversight. Accordingly, all parties and the Court can be assured that no collusion is afoot, and the integrity of this Bankruptcy action remains intact.

Selling the alleged preference action is consistent with the Trustee's statutory duty to maximize the estate. Therefore, the Trustee should be permitted to sell the alleged preference action as property of the estate. For all reasons stated above, the Court should reverse the Thirteenth Circuit regarding the Trustee's ability to sell the alleged preference action.

CONCLUSION

Loans allow people to attend college, build homes, and establish businesses. All the opportunities that these loans provide are possible only because creditors feel secure in issuing loans. A trustee's ability to liquidate property of the estate ensures that financial institutions, like Eclipse, feel confident in issuing these loans. Holding that (1) post-petition, pre-conversion appreciation of the Debtor's residence inures to the estate's benefit and (2) the Trustee may sell the alleged preference action as property of the estate effectuates the Code's text, current case law, and goals of the bankruptcy system. Therefore, this Court should reverse the decision of the Thirteenth Circuit

APPENDIX A

11 U.S.C. § 101(5). Definitions.

…

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 323. Role and Capacity of Trustee.

(a) The trustee in a case under this title is the representative of the estate.

(b) The trustee in a case under this title has capacity to sue and be sued.

11 U.S.C. § 348. Effect of Conversion.

…

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 363. Use, Sale, or Lease of Property.

…

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

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

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

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

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

11 U.S.C. § 522. Exemptions.

(a) In this section--

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

11 U.S.C. § 541. Property of the Estate.

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.
(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--
(A) by bequest, devise, or inheritance;
(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
(C) as a beneficiary of a life insurance policy or of a death benefit plan.
(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include--
(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;
(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;
(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;
(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that--
(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and
(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or
(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and
(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;
(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--
(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;
(B) only to the extent that such funds--
(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $7,575 [originally "$5,000", adjusted effective April 1, 2022][1];

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $7,575 [originally "$5,000", adjusted effective April 1, 2022][1];

(7) any amount--

(A) withheld by an employer from the wages of employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an

employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where--

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made--

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor), unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $7,575 [originally "$6,225", adjusted effective April 1, 2022].[1]

…

(c)(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. § 547. Preferences.

…

(b) Except as provided in subsections (c), (i), and (j) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made--

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 550. Liability of Transferee of Avoided Transfer.

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 704. Duties of Trustee.

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
(6) if advisable, oppose the discharge of the debtor;
(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;
(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;
(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);
(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and
(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that--
(A) is in the vicinity of the health care business that is closing;
(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and
(C) maintains a reasonable quality of care.

11 U.S.C. § 726. Distribution of Property of the Estate.
…

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

11 U.S.C. § 926. Avoiding Powers.

(a) If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.

11 U.S.C. § 1307. Conversion or Dismissal.

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

11 U.S.C. § 1327. Effect of Confirmation.

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.