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 THE PETITIONER

Team 9
Counsel for Petitioner

QUESTIONS 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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OPINIONS BELOW

The decision of the United States Court of Appeals for the Thirteenth Circuit is available at No. 22-0359 and reproduced at Record 2. The Bankruptcy Court for the District of Moot decided in favor of Cpl. Eugene Clegg (ret.) ("Debtor"). On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the Bankruptcy Court's decision in favor of Debtor.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

This case involves questions of statutory construction of provisions in Title 11 of the United States Code.

The relevant portion of 11 U.S.C. § 348(f)(1) provides:

> **(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;

The relevant portion of 11 U.S.C. § 541 provides:

> **(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.
> > . . .
> > **(7)** Any interest in property that the estate acquires after the commencement of the case.

The relevant portion of 11 U.S.C. § 547 provides:

> **(b)** Except as provided in subsections (c) and (i) 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.

The relevant portion of 11 U.S.C. § 550 provides:

(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

STATEMENT OF THE CASE

This case arises from Respondent Cpl. Eugene Clegg's ("the Debtor") challenge to the proper reading of the Bankruptcy Code ("the Code") after converting his case from chapter 13 to chapter 7.[1] By objecting to Vera Lynn Floyd's ("the Trustee") motion to sell his home and the estate's preference claim, the Debtor seeks to prevent the Trustee from exercising her statutory duty to liquidate the property of the bankruptcy estate for creditors' benefit. R. at 10

I. The Debtor becomes insolvent.

In 2011, the Debtor's mother, Emily "Pink" Clegg ("Pink"), transferred to the Debtor her 100 percent ownership interest in Final Cut, LLC ("Final Cut"), a small business operating a single-screen movie theater in the City of Moot. R. at 5. The Debtor subsequently operated Final Cut and received a salary. R. at 5.

In 2016, the Debtor took out an $850,000 commercial loan from Eclipse Credit Union ("Eclipse") to renovate the theater. R. at 5. The loan was secured both by first priority liens on Final Cut's real and personal property and by the Debtor's unconditional, unsecured personal guarantee. R. at 5. After completing the renovations with volunteer help from local veterans, the Debtor, unbeknownst to Eclipse, donated the remaining $75,000 from the loan to the Veterans of Foreign Wars ("VFW"). R. at 5.

In 2020, the theater closed for over a year due to the COVID-19 pandemic. R. at 6. Left without an income from Final Cut, the Debtor borrowed $50,000 from Pink on an unsecured basis. R. at 6. When the theater re-opened for business in 2021, attendance remained low, forcing the Debtor to forego his normal salary. R. at 6. During this period, the Debtor incurred significant credit card debt and fell behind on his home mortgage payments serviced by Another

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq.*

Brick in the Wall Financial Corporation ("the Servicer"). R. at 6. The Servicer commenced foreclosure proceedings against the Debtor after he failed to make payments for several months. R. at 6.

II. The Debtor files for chapter 13 bankruptcy.

On December 8, 2021, the Debtor filed a petition for chapter 13 bankruptcy. R. at 6. The Debtor's filings disclosed a non-contingent, liquidated, secured debt to the Servicer in the amount of $320,000 for his home mortgage. R. at 6. The filings also disclosed a contingent, unliquidated, unsecured debt to Eclipse, guaranteed by the Debtor, which Eclipse later specified to be $850,000. R. at 6. The Debtor also identified his home's value as $350,000 and claimed the maximum available homestead exemption. R. at 6–7. Finally, the Debtor disclosed that he had made $20,000 in payments to Pink within a year of the petition date. R. at 7.

The Debtor then filed a chapter 13 plan in accordance with 11 U.S.C. §§ 1321 and 1322, which specified in part that the Debtor would make payments to creditors over the course of three years. R. at 7. The plan also noted that due to the Debtor's indebtedness and the homestead exemption, the Debtor retained no equity in his home as of the petition date. R. at 7.
During the creditors' meeting prior to confirmation of the Debtor's chapter 13 plan, Eclipse first learned of the Debtor's $75,000 donation of the loan proceeds to the VFW. R. at 7. Eclipse then commenced an adversary proceeding against the Debtor, seeking to have the outstanding debt related to the loan deemed non-dischargeable. R. at 7. The chapter 13 trustee also objected to the plan on the grounds that the Debtor had not accounted for the $20,000 preferential transfer he had made to Pink. R. at 7. The Debtor, the chapter 13 trustee, and Eclipse eventually reached a settlement resolving each party's objections, and the bankruptcy court approved the plan as modified by the settlement. R. at 8. The Debtor made payments under the plan for eight months.

R. 8. However, because of the pandemic, the theater continued to suffer financially and eventually permanently closed. R. at 8.

III. The Debtor converts the case to chapter 7.

In October 2022, Eclipse initiated foreclosure proceedings against Final Cut. R. at 8. Without income from Final Cut, and unable to make further payments under the chapter 13 plan, the Debtor converted his case to a chapter 7 liquidation. R. at 8. The Debtor's conversion schedules and other documents listed his home as worth $350,000 as of the chapter 13 petition date. R. at 9. They also disclosed the preferential transfer to Pink. R. at 9.

Vera Lynn Floyd was appointed as chapter 7 trustee for the estate. R. at 9. She initially determined that the estate lacked assets. R. at 9. However, during a meeting of the creditors, the Debtor mentioned that home values in his neighborhood were increasing. R. at 9. The Trustee then commissioned an appraisal of the Debtor's home, which confirmed that its value had increased $100,000 since the chapter 13 petition date. R. at 9.

In an exercise of her statutory duty to "collect and reduce to money the property of the estate" for the benefit of its creditors, 11 U.S.C. § 704(a)(1), the Trustee marketed the home for sale. R. at 9. Eclipse made an offer to purchase both the home and the preference claim for the $20,000 preferential transfer to Pink for a total of $470,000. R. at 9. The Trustee determined that the offer sufficiently maximized the assets of the estate for the benefit of its creditors, and filed a motion to sell the home and the preference claim to Eclipse. R. at 9.

IV. The Debtor objects to the sale motion.

The Debtor objected to the motion to sell both the home and the estate's preference claim, arguing that the Trustee lacked authority to sell these assets because neither the increased

value of the home nor the preference claim was property of the estate. R. at 10. The bankruptcy court ruled in favor of the Debtor and denied the sale motion. R. at 10.

The Trustee timely appealed the order of the bankruptcy court. R. at 3. On appeal, the Thirteenth Circuit affirmed the bankruptcy court, holding that any post-petition, pre-conversion increase in home equity inures to the benefit of a debtor and that preference claims are not property of the bankruptcy estate. R. at 4. This Court then granted the Trustee's timely petition for a writ of certiorari. R. at 2.

STANDARD OF REVIEW

The issues on appeal in this case are questions of law regarding interpretation of the Bankruptcy Code. This Court reviews questions of law *de novo*. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erred in affirming the bankruptcy court's denial of the sale motion. When a debtor converts their case to chapter 7, § 704(a)(1) assigns a trustee to sell the property of the estate for the benefit of the estate's creditors. Section 541(a) of the Code sets out a broad definition of "property of the estate" available for sale by the trustee. Under the Code, the Trustee may exercise her statutory duty to the estate's creditors by selling both the Debtor's house after it appreciated in value and the avoidance claim for the preferential transfer to Pink.

I. The increase in home equity is property of the estate.

First, an increase in home equity is property of the estate and therefore inures to the benefit of the estate. When a debtor's property appreciates in value between a chapter 13 petition and the conversion of the case to chapter 7, that increase in equity is an inseparable part of the original property interest. The debtor does not acquire a new property interest. This construction is faithful to the plain meaning of § 348(f)(1)(A)'s text, which specifies that property of the estate upon conversion is the debtor's property as of the original petition date.

Moreover, reading § 348(f)(1) in the context of other provisions of the Code confirms that an increase in equity is part of the property of the estate. Specifically, § 541(a) defines "property of the estate" to include "all legal or equitable interests," as well as any "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." Appreciation falls under both parts of the definition. This reading is supported by the fact that although § 541(b) outlines clear exceptions to property of the estate, an increase in equity is not among those exceptions. Additionally, Congress could have limited the estate to the *value* of that property as of the petition date—and in fact, they specifically refer to the value of an estate's assets elsewhere in the Code—yet, they declined to do so here. Finally, the lower court incorrectly decided that

including appreciation in the property of the estate would conflict with the other provisions in the Code.

The Court should stop its inquiry here because the text of the Code is unambiguous. Even if this Court looks further, the plain meaning interpretation best effectuates Congress' intent in enacting the Code. Although there is legislative history available, it does not speak to the precise circumstances at issue—a post-petition, pre-conversion increase in equity—and thus has limited utility. Finally, the plain meaning interpretation is consistent with the Code's purpose of granting the debtor a fresh start.

II. The preference claim is property of the estate.

The Code also permits the Trustee to sell the estate's preference claim because the claim is "property of the estate" pursuant to § 541(a). Construing the property of the estate to include preference claims is both faithful to the text of the Code and furthers the Code's purpose to maximize the value of the estate's assets for the benefit of its creditors.

The text of the Code indicates that § 547 and § 550 preference claims are causes of action and thus are property of the estate. Further, this Court has held that a debtor need not hold a possessory interest in the property before the petition date for it to be part of the estate. Prior to filing the petition, a debtor's power to avoid and recover a preferential transfer is contingent, or inchoate; upon filing for bankruptcy, that power becomes fully vested in the estate. Alternatively, preference claims are property of the estate under § 541(a)(7), which includes in the estate property acquired after the petition date.

Additionally, construing § 541(a)(1) to include preference claims as property of the estate does not render § 541(a)(3) superfluous. Section 541(a)(3) addresses the funds recovered under

a preference claim, whereas the property at issue in this case is the preference claim itself, which is part of the estate under § 541(a)(1).

Including preference claims as property of the estate also furthers the purpose of the Code, to maximize the value of the estate for the benefit of its creditors. When an estate lacks resources to litigate a preference claim, or recovery under the claim is uncertain, allowing a trustee to sell the claim guarantees funds for the estate that it might not otherwise collect.

Reading § 541(a) to include preference claims as property of the estate is also consistent with the Code's overall statutory scheme. There are several instances in chapter 11 and chapter 7 cases in which avoidance and recovery powers may be exercised by parties other than the trustee.

Moreover, the sale of preference claims to the estate's creditors helps to facilitate the liquidation of the estate's assets because creditors are incentivized to purchase preference claims against defendants with whom they have a business relationship. Creditors can then decline to prosecute those claims, thereby shielding their business partners from the avoidance action.

Because both the post-petition increase in equity in the Debtor's home and the preference claim are property of the estate, the Trustee may sell both assets to carry out her statutory duty of maximizing the value of the estate's assets for the creditors' benefit. Therefore, this Court should reverse the holding of the Thirteenth Circuit.

ARGUMENT

This Court should reverse the ruling of the Thirteenth Circuit and hold that (I) any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the estate; and (II) avoidance claims for preferential transfers are property of the bankruptcy estate which a trustee may sell.

I. A post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the estate under the Code.

The Trustee may sell the Debtor's home because under the Code, a post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the estate rather than the debtor. Although chapter 13 permits a debtor to retain their property upon confirmation of a plan to repay their debts, a debtor may exercise their right to convert the case to chapter 7. *See Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). When a case is converted, a trustee's duty is to liquidate the debtor's property that existed as of the date of the original chapter 13 petition and distribute the proceeds to creditors. *See id.* at 513. Section 348(f)(1)(A) provides that upon conversion from chapter 13 to another chapter, "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).

A post-petition, pre-conversion appreciation in equity inures to the benefit of the estate—not the debtor—as evidenced by (A) the plain text of the Code and (B) congressional intent in enacting the Code.

A. The Code's text and statutory context provide that appreciation in property value is not a separate property interest.

The text of the Code establishes that an increase in equity is not a new property interest, and thus is part of the chapter 7 estate. "The plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole." *Yates v. United States*, 574 U.S. 528, 537 (2015) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)) (cleaned up); *see also MOAC Mall Holdings LLC v. Transform Holdco LLC*, 143 S. Ct. 927, 937 (2023) (relying on the plain text and statutory context together to interpret the Code). Here, the plain text of § 348(f)(1)(A) and its statutory context unambiguously provide that appreciation inures to the benefit of the estate.

1. The plain meaning of § 348(f)(1)(A) provides that appreciation in equity inures to the benefit of the estate.

Section 348(f)(1)(A) plainly provides that the chapter 7 estate includes all property—including equity in that property—that belonged to a debtor on the original petition date. Courts must always begin with the plain text to resolve disputes over the meaning of the Code. *See United States v. Ron. Pair Enters.*, 489 U.S. 235, 241 (1989). 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" the original chapter 13 petition. 11 U.S.C. § 348(f)(1)(A). Undisputedly, the Debtor's house and the equity in that house were part of the property of the estate when he initially filed for bankruptcy. R. at 6. After filing the petition, the equity in the Debtor's existing property only appreciated—the Debtor did not acquire a new property interest. Thus, pursuant to the plain text of § 348(f)(1)(A), the house's appreciation is part of the property of the estate.

Treating appreciation in value as part of the original property interest is consistent with state common law understanding of property rights. Even where the Code applies, "Congress has generally left the determination of property rights in the assets of a [bankruptcy] estate to state law." *Butner v. United States*, 440 U.S. 48, 54 (1979). Under the state common law "bundle of sticks" metaphor for property rights, "the right to benefit from the appreciation of one's property is among the most valuable 'sticks' in the 'bundle.'" *In re Adams*, 641 B.R. 147, 152 (Bankr. W.D. Mich. 2022) (citing *United States v. Craft*, 535 U.S. 274, 278 (2002)). Here, the Trustee, as the party responsible for the property of the estate, "holds the appreciation 'stick.'" *In re Adams*, 641 B.R. at 152; R. at 9. Thus, appreciation is part of the Debtor's estate.

Additionally, § 348(f)(1)(A)'s language imposes no restrictions on the value of the property of the estate. When assessing the plain meaning of the text, this Court "ordinarily resist[s] reading words . . . into a statute that do not appear on its face." *Dean v. United States*, 556 U.S. 568, 572 (2009) (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997)). On its face, the only limitation that § 348(f)(1)(A) places on the property of the estate is that the property must have belonged to the debtor at the time of the original petition. *See* 11 U.S.C. § 348(f)(1)(A). In the absence of any language referencing value, construing the text to further limit the Debtor's estate to the property's value at the time of petition would impermissibly read words into the Code.

2. Statutory context confirms that appreciation in equity inures to the benefit of the estate.

Section 348(f)(1)(A)'s statutory context[2] supports that an increase in equity benefits the estate. It is a cardinal rule of statutory interpretation "that a statute is to be read as a whole, since the meaning of statutory language . . . depends on context." *See King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (internal citation omitted). Here, reading the statute as a whole confirms the plain meaning of § 348(f)(1)(A).

a. Section 541(a)'s definition of "property of the estate" provides that the estate includes an increase in equity.

Section 541(a)'s definition of "property of the estate" confirms that the estate includes post-petition appreciation in property value. Because § 348(f)(1)(A) does not define "property of the estate," this Court looks elsewhere in the Code—to § 541(a)—for the definition. *See Patterson v. Shumate*, 504 U.S. 753, 757 (1992). Courts analyzing § 541(a) look to both subsections (1) and (6) to understand "property of the estate." Section 541(a)(1) broadly defines what qualifies as property of the estate, while § 541(a)(6) further specifies that certain value flowing from the property is part of the estate. This Court can rely on §§ 541(a)(1) and (6) individually or together to include appreciation in "property of the estate."

Section 541(a)(1) defines "property of the estate" to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The estate encompasses nothing less than all property interests, legal and equitable. *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999). Thus, the language "property

[2] "Statutory context" is used hereinafter to describe other provisions of the Code which inform the interpretation of the statutory provision at issue. Statutory context does not refer to legislative history or other sources of context beyond the enacted text of the Code.

of the estate" encompasses all interests and all parts of each interest. *See id.* Further, § 541(a)(1)'s definition does not indicate that appreciation is a separate property interest excluded from the estate. Rather, equity in property is an "inseparable" part of the original property interest that exists regardless of how the equity appreciates or depreciates. *See In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015). When the Debtor learned the value of his house had appreciated by $100,000, he did not instantly acquire a new property interest. R. at 9. Instead, his home's equity was always part of the same property interest, regardless of appreciation.

Courts additionally rely on the language of § 541(a)(6), which further specifies the scope of the property of the estate. Section 541(a)(6) provides that property of the estate includes "[p]roceeds, product, offspring, rents, or profits of or from property of the estate," with an exception for "earnings from services performed" by a debtor. 11 U.S.C. § 541(a)(6). Like other "proceeds, product, [or] offspring," equity in a debtor's home is an extension of the original property interest. *See Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023). As soon as the estate is created, all future increases in equity of the debtor's property are automatically included within the estate. *See id.* As such, the appreciation in value of the Debtor's house, which occurred post-petition, is part of the "property of the estate" under §§ 541(a)(1) and (6).

b. Other provisions in the Code support the conclusion that an increase in equity is property of the estate.

First, §§ 541(b) and (c) demonstrates that appreciation is not excluded from the property of the estate. Under the statutory interpretation canon *expressio unius*, "expressing one item of [an] associated group or series excludes another left unmentioned," so long as the circumstances reasonably support the inference that the term was meant to be excluded. *See NLRB v. SW Gen., Inc.*, 580 U.S. 288, 290 (2017) (alteration in original) (quoting *Chevron U.S.A. v. Echazabel*, 526

U.S. 73, 80 (2002)). Sections 541(b) and (c)(2) describe in detail a series of exclusions from the "property of the estate," but appreciation is not among these exclusions. *See generally* 11 U.S.C. §§ 541(b), (c)(2). Under the *expressio unius* canon, any exception to property of the estate not explicitly mentioned is excluded from the list. *See Gladstone v. U.S. Bancorp*, 811 F.3d 1133 (9th Cir. 2016) (applying the *expressio unius* canon to the § 541(b) exceptions). Thus, because appreciation in value is not among the enumerated exceptions, appreciation is included in the property of the estate.

Additionally, other provisions in the Code support that in § 541(a), Congress intentionally omitted language that would limit the estate to the value at the time of the original petition. When Congress has demonstrated that it can purposefully include certain language, this Court does not "lightly assume" that Congress intended that language to apply elsewhere in the same statute where that language is absent. *See generally Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 341 (2005). Here, Congress has demonstrated elsewhere in the Code that it knows how to address valuation of estate property. *See, e.g.*, 11 U.S.C. § 542(a) (stating that property of inconsequential value is not required to be turned over to the trustee); s*ee also In re Adams*, 641 B.R. at 152. (contrasting § 541 with several provisions in which the Code specifically addresses "value" of the property). Because statutory context shows that Congress could have addressed the estate's value, Debtor's chapter 7 estate is not limited to its chapter 13 petition value. R. at 9. This Court should not assume that Congress intended for property value changes to affect the property of the estate.

3. The court below erroneously concluded that certain provisions in the Code contradict the plain meaning of § 348(f)(1)(A).

No provision in the Code conflicts with the plain meaning interpretation of § 348(f)(1)(A). First, § 348(f)(2) is consistent with the text of § 348(f)(1). Section 348(f)(2)

provides that if a debtor converts a case in bad faith, the property of the estate consists of property as of the date of *conversion*.[3] *See* 11 U.S.C. § 348(f)(2). Reading § 348(f)(1) to include a post-petition appreciation in equity in the estate does not render the bad faith exception superfluous because the two provisions are distinct. Section 348(f)(1) freezes the property of the estate to include only property held at time of the original petition, while § 348(f)(2) punishes the bad faith debtor by including in the estate any new property acquired post-petition. Although § 348(f)(1) froze the Debtor's estate to include only property as of the original petition, because the Debtor did not acquire a new property interest, the § 348(f)(2) bad faith provision has no influence on the home's $100,000 appreciation. R. at 9. The bad faith provision "simply does not apply" when a debtor did not acquire a new property interest. *See Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 299 (B.A.P. 8th Cir. 2023).

Second, § 522(a)'s "snapshot rule" is consistent with § 348(f)(1)(A) and, contrary to the lower court's opinion, need not apply to § 348(f)(1)(A) to avoid "non-sensical" valuations of property. R. at 14. The snapshot rule freezes the property value as of the date of filing the petition for purposes of a debtor's exemptions. *See* 11 U.S.C. § 522(a). Therefore, § 522(a) addresses property value specifically for exemption purposes and has no bearing on how that property is valued to create the estate. Moreover, § 348(f)(1)(B) clearly states that any valuation of property for a chapter 13 case does not apply once a case is converted to chapter 7. *See* 11 U.S.C. § 348(f)(1)(B); *see also In re Adams*, 641 B.R. at 152 (clarifying that the value of the exemption determined as of the petition date does not govern the value of the estate's interest in that property). Here, although § 522(a) applies to the Debtor's property value for purposes of his

[3] The parties do not contest that Debtor converted in good faith. R. at 8.

homestead exemption, the provision does not apply now that the Debtor's case is in chapter 7. R. at 6, 8.

Finally, as the dissent below notes, § 1327(b) does not affect the meaning of § 348(f)(1)(A). Section 1327 provides that confirmation of a chapter 13 plan "vests all of the property of the estate in the debtor." 11 U.S.C. § 1327(b). The Tenth Circuit in *Rodriguez v. Barrera* held that under § 1327(b), only the proceeds of the estate generated before confirmation of the plan become property of the estate, which therefore excludes any proceeds after confirmation and before conversion to chapter 7. *See Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1223 (10th Cir. 2022). However, contrary to this interpretation, § 1327(b) does not apply once a debtor converts their case to chapter 7. Section 348(f)(1)(A) makes no reference to § 1327(b), nor does it specify that value of the property of the estate is dependent on the valuation upon confirmation of the chapter 13 plan. *See In re Castleman*, 75 F.4th 1052, 1058 (9th Cir. 2023) (holding that Congress would have made clear in § 348(f)(1)(A) its intention to incorporate § 1327(b) and to exclude equity increases between confirmation of the plan and conversion of the case). Because specific provisions govern over general ones, § 348(f)(1)(A), as the provision specific to converted cases, governs the Debtor's case over the more general § 1327(b). S*ee Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384–85 (1992). Additionally, because § 1327(b) applies only to the chapter 13 estate, the provision no longer governs in the Debtor's converted chapter 7 case. *See Harris v. Viegelahm*, 575 U.S. 510, 520 (2015). Because no provision in the Code contravenes the plain meaning interpretation of § 348(f)(1)(A), appreciation in the Debtor's house is property of the estate.

B. Congressional intent is consistent with the plain meaning of the Code.

The text of the Code includes appreciation in value as property of the estate. For courts interpreting the Code, its plain meaning is "conclusive," except in "rare cases [in which] the

literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (alteration in original). Here, even if this Court looks to legislative history, such history does not reveal enough about Congress' intent to overcome the plain meaning of § 348(f)(1)(A). Further, the purpose of the Code is consistent with the plain meaning of the text.

1. Legislative history does not require a reading of § 348(f)(1)(A) that is contrary to its plain meaning.

Legislative history cannot overcome the plain meaning of the text. "[L]egislative history is not the law." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018). Once a statute is enacted, this Court does not "inquire into what the legislature meant; [it] ask[s] only what the statute means." *Id.* (quoting *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 397 (1951) (Jackson, J., concurring)). Further, the fact that statutory text does not address a certain consideration from the legislative history does not indicate that the omission was "inadvertent." *See In re Goetz*, 651 B.R. 292, 299 (B.A.P. 8th Cir. 2023). Rather, statutes are the result of compromise, and no individual snippet of legislative history can be expected to represent the sum of Congress's debate. *See id*. Invoking legislative history here is unnecessary because this Court finds no need to refer to the Code's legislative history where, as here, the text is clear. *See Toibb v. Radloff*, 501 U.S. 157, 162 (1991). As established, § 348(f)(1)(A), in conjunction with § 541(a) and other provisions, provides that property of the estate includes the equity in that property. *See supra* Part I.A.

Even if this Court turns to legislative history, the legislative history here is not helpful to interpret § 348(f)(1)(A) because it fails to explicitly address the question of post-petition appreciation in value. Where the legislative history does not address the specific issue, courts should not attempt to "divine messages from congressional commentary directed to different

questions altogether." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. at 1631. Here, the legislative history indicates that Congress amended § 348(f)(1) to clarify that any *additional* property acquired post-petition is not included in the chapter 7 estate upon conversion. H.R. Rep. No. 103–835, at 57 (1994). Appreciation is not an additional property interest, but part of the property of the estate. *See supra* Part I.A.

The lower court mistakenly relies on additional legislative history that has little bearing on the facts of this case. This history suggests that when a chapter 13 debtor creates equity in their home by paying off part of their mortgage, then converts to chapter 7, that the new equity is unavailable to the trustee. H.R. Rep. No. 103–835, at 57 (1994). This hypothetical scenario, in which a debtor himself is responsible for creating equity, is distinct from the issue before the Court. Here, market circumstances, as opposed to the Debtor's actions, increased the equity in the home. R. at 9. Thus, this Court should not rely on this legislative history to detract from the plain meaning of the text.

2. The purpose of the Code reinforces the plain meaning of § 348(f)(1)(A).

Construing § 348(f)(1)(A) to provide that changes in equity inure to the benefit of the estate best supports the Code's purpose to "grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286–87 (1991)). Here, the home value appreciated post-conversion. R. at 9. Yet, under the lower court's reading of § 348(f)(1)(A), if the value of property has *depreciated* post-conversion, the Debtor would have been responsible for providing the difference to the Trustee. *See In re Castleman*, 75 F.4th 1052, 1058 (9th Cir. 2023). Such a reading steals an honest debtor's opportunity to make a fresh start. Therefore, finding that a post-petition, pre-conversion appreciation in equity is part of the property of the estate best

effectuates congressional intent for the Code and is consistent with the plain meaning of § 348(f)(1)(A).

II. Preference claims are saleable property of the estate.

The Code authorizes the Trustee to sell the estate's preference claim to Eclipse because such preference claims are "property of the estate" pursuant to § 541(a). In furtherance of their statutory duty to liquidate the assets of the estate "as expeditiously as is compatible with the best interests of [the] parties," 11 U.S.C. § 704(a)(1), a trustee is empowered to sell the property of the estate with court approval. 11 U.S.C. § 363(b)(1). The Code also empowers a trustee to avoid certain "preferential transfers," whereby a debtor transfers funds to a creditor resulting in a greater recovery than that creditor would otherwise receive under a chapter 7 liquidation.[4] 11 U.S.C. § 547. Section 550 then empowers the trustee to bring an action against the transferee to recover the funds from the avoided transaction. 11 U.S.C. § 550. Together, the § 547 avoidance power and § 550 recovery power grant the estate a "preference claim," which a trustee is empowered to litigate for the estate's benefit. *See* 11 U.S.C. §§ 547, 550.

This Court should permit the Trustee to sell the estate's preference claim to Eclipse because it is "property of the estate" pursuant to § 541(a). Such a construction is consistent with both (A) the text of the Code and (B) the Code's overarching purpose and statutory scheme.

A. Preference claims are property of the estate under § 541(a).

Section 541(a) includes preference claims as property of the estate. This Court has held that § 541(a) is a broad definitional section, rather than a limitation on what constitutes property

[4] Chapter 5 also discusses additional types of transfers voidable by a trustee, including fraudulent transfers and post-petition transfers, which are not at issue in this case. *See* 11 U.S.C. §§ 548, 549. A trustee may avoid preferential transfers made by the debtor up to ninety days prior to the petition date, or in the case of relatives of the debtor, such as Pink, up to one year prior to the petition date. *See* 11 U.S.C. §§ 101(31), 547.

of the estate. *See United States v. Whiting Pools Inc.*, 462 U.S. 198, 203–05 (1983). Under this Court's broad reading, most circuit courts have relied upon § 541(a)(1) while some have used § 541(a)(7) to conclude that preference claims are property of the estate.[5] Including preference claims within property of the estate under §§ 541(a)(1) or (a)(7) creates no surplusage in light of § 541(a)(3). Furthermore, preference claims are distinct from other chapter 5 avoidance claims which are based in state law because preference claims are solely a creation of the Code.

1. Preference claims are causes of action that constitute property of the estate under the broad scope of § 541(a)(1).

The Trustee may sell the estate's preference claim to Eclipse because the claim is a cause of action, and causes of actions fall squarely within § 541(a)(1)'s definition of "property of the estate." "Property of the estate" includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Courts have acknowledged that § 541(a)(1)'s broad scope includes "intangible property," such as "causes of action owned by the debtor as of the filing of the case." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 287 (9th Cir. B.A.P. 2005); *see also In re Simply Essentials, LLC*, 78 F.4th 1006, 1008 (8th Cir. 2023).

[5] All circuit courts to address whether chapter 5 causes of action are property of the estate have concluded in the affirmative. *See Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 259 (5th Cir. 2010); *Pitman Farms v. ARKK Food Co. (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1011 (8th Cir. 2023); *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020). However, the court below erroneously reads the Third Circuit's decision in *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237 (3d Cir. 2000) to reach the opposite conclusion. The Third Circuit decision has no bearing on the preference claim at issue in this case because the state law fraudulent transfer claims in *In re Cybergenics Corp*. are distinct from the preference claim at issue here. *See infra* Part II.A.4.

This Court has historically characterized avoidance claims as "causes of action." *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53–54 (1989) (describing a trustee's power to recover fraudulent transfers under 11 U.S.C. § 548(a)(2) as a "statutory cause of action"). The Code also describes preference claims as causes of action. *See* 11 U.S.C. § 926(a) (stating that the court "may appoint a trustee to pursue such *cause of action*" in reference to sections including §§ 547 and 550) (emphasis added).

Preference claims are causes of action and as such are property of the estate. The Eighth Circuit adopted this reasoning in *Simply Essentials*, noting that avoidance claims are causes of action, and holding that, under the broad scope of § 541(a), causes of action are property of the estate. 78 F.4th at 1008. Similarly, in the context of a § 550 recovery of a post-petition transfer, this Court has concluded that a chapter 5 cause of action is property of the estate. *See United States v. Nordic Vill., Inc.*, 503 U.S. 30, 37 (1992). Here, the Trustee attempted to sell the estate's preference claim. R. at 9. Because this claim is a cause of action, and causes of action are property of the estate under § 541(a)(1), this Court should permit the Trustee to sell the estate's preference claim to Eclipse.

Further, the Debtor did not need to hold a possessory interest in the preference claim before the case began for the preference claim to be included as property of the estate under § 541(a)(1). This Court has found no requirements in the Code that "[a] debtor hold a possessory interest in the property at the commencement of the reorganization proceedings." *Whiting Pools, Inc.*, 462 U.S. at 206. The Eighth Circuit in *Simply Essentials* applied this Court's logic from *Whiting Pools* to preference claims, holding that "property of the estate includes inchoate or contingent interests held by the debtor prior to the filing of bankruptcy." 78 F.4th at 1009. Here, before filing for bankruptcy, the Debtor had a not-yet-fully-realized right to avoid the pre-

petition transfer made to Pink pursuant to § 547. R. at 7. This right was contingent upon the Debtor later filing for bankruptcy and creating an estate for whose benefit the transfer may be avoided. R. at 6. When the Debtor filed his bankruptcy petition, his "inchoate or contingent interest" in the preference claim became fully vested in the bankruptcy estate. R. at 6. Because the Debtor had an interest in the preference claim prior to the petition date, the preference claim constitutes property of the estate under § 541(a)(1).

2. The broad scope of § 541(a)(7) also includes preference claims as property of the estate.

Preference claims also constitute property of the estate acquired post-petition under § 541(a)(7). Pursuant to this subsection, "property of the estate" consists of "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7). Some circuit courts have suggested that the estate acquires avoidance claims under this subsection after filing the petition rather than before commencement of the case. *See In re Simply Essentials, LLC,* 78 F.4th at 1009 (referring to § 547 preference claims as § 541(a)(7) property); *Matter of Wilson,* 694 F.2d 236, 238 (11th Cir. 1982) (referring to § 548 fraudulent transfer claims as same). By contrast, the court below found that preference claims arise at a third period of time—the moment the bankruptcy proceeding commences—and thus excluded the claim from the property of the estate. R. at 21. Excluding preference claims in this way "frustrate[s] the bankruptcy policy of a broad inclusion of property in the estate." *In re Simply Essentials, LLC,* 78 F.4th at 1009 (citation omitted). Because preference claims are property of the estate under § 541(a)(7), the Trustee may sell the estate's preference claim to Eclipse.

3. Construing § 541(a)(1) to include preference claims as property of the estate does not render § 541(a)(3) superfluous.

Interpreting § 541(a)(1) to include avoidance claims as property of the estate does not render § 541(a)(3) superfluous because the sections address different types of property. Section 541(a)(3) addresses recovery, providing that property of the estate includes "[a]ny interest in property that the trustee recovers under section[s including] 550." 11 U.S.C. § 541(a)(3). Some courts have erroneously rejected § 541(a)(1) as a basis for including preference claims as property of the estate, reasoning that doing so would make § 541(a)(3) superfluous. *See, e.g.*, *Rajala v. Gardner*, 709 F.3d 1031, 1038 (10th Cir. 2013). However, the Trustee's proposed construction of § 541(a)(1) does not render § 541(a)(3) superfluous because the two sections address different forms of property. Section § 541(a)(1) makes the preference claim itself property of the estate; by contrast, § 541(a)(3) makes the funds recovered from a preference claim property of the estate. *See In re Murray Metallurgical Coal Holdings LLC*, 623 B.R. 444, 509 (Bankr. S.D. Ohio 2021). For this reason, construing preference claims to constitute property of the estate would not render § 541(a)(3) superfluous.

Even if the Court were to find overlap between these sections such that language appears superfluous or redundant, "[t]he canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). Redundancies are likely to occur when a "statute was edited over time to add specificity." *See In re Simply Essentials, LLC*, 78 F.4th at 1009–10. Moreover, any redundancy is only a natural consequence "given the drafting history and complex nature of the Bankruptcy Code." *Id.* at 1010. Section 541(a) includes seven subsections, all of which address the types of property included in the estate. 11 U.S.C. §§ 541(a)(1)–(7). Section 541(a)(1) only adds specificity by covering the preference claim itself. A possibility of surplusage does not alter the conclusion that preference claims are property of the

estate under § 541(a)(1). Because preference claims constitute property of the estate, the Trustee may sell the estate's preference claim to Eclipse.

4. Preference claims, as a creation of the Code, are property of the estate.

The claims at issue in this case are purely a creation of the Code, and thus are the exclusive property of the estate. In *In re Cybergenics Corp.*, a chapter 11 debtor in possession sold the entirety of the estate's assets to a third-party purchaser and then moved to dismiss the bankruptcy case. *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 239 (3d Cir. 2000). The estate's creditors opposed the dismissal, arguing that they were entitled to bring certain fraudulent transfer claims on behalf of the estate because these claims could not be sold to third parties. *Id.* The Third Circuit held that under New Jersey law, fraudulent transfer claims grant the creditor, not the debtor, the right to avoid certain transactions.[6] *Id.* at 242. Upon commencement of the case, the trustee or debtor in possession of an estate is merely empowered to bring these claims on the creditor's behalf for the benefit of the estate. *Id.* at 244. Under the Third Circuit's reading, these claims existed prior to the creation of the bankruptcy estate and are the property of the creditors, and therefore cannot be sold by a trustee or debtor in possession. *Id.*

Here, however, the preferential transfer claims at issue are distinguishable from the state law fraudulent transfer claims in *Cybergenics*. Unlike state law fraudulent transfer claims, the right to avoid preferential transfers is purely a creation of the Code. *See* 11 U.S.C. § 547; *In re Align Strategic Partners LLC,* No. 16-35702, 2019 WL 2524938 at *2 (Bankr. S.D. Tex. Mar. 5, 2019). Thus, insofar as *In re Cybergenics* dealt with state law claims which were originally

[6] While the federal Code includes fraudulent transfer claims as one of the various types of transactions which a trustee may avoid under chapter 5, the Third Circuit explained that fraudulent transfer claims have their basis in state law, unlike other chapter 5 avoidance claims. *Id.* at 242.

creditors' property, its reasoning has no bearing on the preference claims at issue in this case. Because the claim the Trustee attempted to sell here was to avoid a preferential transfer, this Court need only hold that such claims are saleable property of the estate, and need not reach the question of whether other types of avoidance claims, which have their basis in state law, are property of the estate. Preference claims are saleable property of the estate because, as a creation of the Code, they belong to the estate upon the commencement of a case.

B. The sale of preference claims furthers the purposes of the Code.

Not only does the text of the Code support the conclusion that the Trustee may sell the estate's preference claims, but such a reading furthers the value-maximizing purpose of the Code and maintains consistency with the Code's overarching scheme. Here, the Trustee sought to carry out her chapter 7 duty by selling the estate's preference claim in an attempt to "maximize[ ] the value of the assets [of the estate] for the benefit of the creditors." R. at 9. Because the sale of preference claims furthers the Code's purpose and is consistent with its overall scheme, the Trustee may sell the estate's preference claim to Eclipse.

1. The sale of preference claims benefits the creditors of the estate.

The sale of preference claims to third parties furthers the purpose of the Code because it allows a trustee to maximize an estate's assets for the benefit of all creditors. The text of a statute should be interpreted "not in a vacuum" but with regard to its purpose. *Abramski v. United States*, 573 U.S. 169, 179 (2014). In placing the management of an estate in the hands of a trustee, Congress sought to maximize the value of the estate for the benefit of its creditors. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). In furtherance of this purpose, a chapter 7 trustee has a statutory duty to "collect and reduce to money the property of the estate . . . as expeditiously as is compatible with the [parties'] best interests." 11 U.S.C. § 704(a)(1). This duty, however, does not specify the exact means by which the trustee is to

"reduce to money" the property of the estate. *Id*. Thus, the trustee has an implied measure of discretion in choosing the optimal means of liquidation to both most "expeditiously" close the estate and maximize the value of its assets. When, as in the Debtor's case, an estate lacks sufficient funds to prosecute a preference claim, the best means to reduce such a claim to money may be to sell the claim rather than litigate it. *See Ducker Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.)*, 177 F.3d 774, 783 (9th Cir. 1999). A trustee might also evaluate a preference claim and determine that the guaranteed return from the sale of a claim to a third party is preferable to the uncertainty of litigation. In either case, selling a preference claim may be the optimal means to liquidate the estate and maximize its assets for the benefit of its creditors. *Id.*

Faced with a lack of resources to litigate, the Trustee attempted to sell the preference claim to Eclipse to fulfill her statutory duty. R. at 9. Because the Trustee could not recover the preferential transfer through direct litigation, prohibiting the Trustee's sale of the preference claim precluded the estate from realizing funds it might have otherwise recovered. This result frustrates the Code's purpose of maximizing recovery for creditors. *See In re Simply Essentials, LLC*, 78 F.4th 1006, 1010 (8th Cir. 2023). This is further evidenced by the fact that § 547 lists scenarios where a trustee may *not* avoid preferential transfers and omits the scenario where the estate lacks funds to prosecute the claim. *See* 11 U.S.C. § 547(c). As such, the Trustee may sell the estate's preference claim to Eclipse in order to maximize estate's assets for the benefit of its creditors.

Additionally, the sale of preference claims benefits all creditors in interest, contrary to the lower court's holding that such sales solely benefit third-party purchasers. When a preference claim is sold, the estate benefits by receiving the purchase price, even though a third-party

purchaser may later prosecute the claim and keep any recovery. *See In re Lahijani*, 325 B.R. at 288. It is not the final recovery under the claim which benefits the estate, but the funds the purchaser pays to the estate for the claim. *See id*; *Tronox Inc. v. Anadarko Petroleum Corp. (In re Tronox Inc.)*, 464 B.R. 606, 614 (Bankr. S.D.N.Y. 2012). Because the sale price is collected for the benefit of the whole estate, the sale of the avoidance claim itself is consistent with the equitable distribution of estate assets to creditors, even though a third party may recover under the claim.

2. Including preference claims as property of the estate preserves consistency in the Code.

Finding preference claims to constitute property of the estate is consistent with the Code's overall scheme, which in multiple sections authorizes parties other than the trustee to exercise avoidance powers. Section 547 must be read with a "view to . . . the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc*., 566 U.S. 93, 101 (2012) (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989)); *see also Matter of Depew*, 115 B.R. 965, 969 (Bankr. N.D. Ind. 1989) (stating that interpretation of the Code should "reflect the interplay between all of its different parts, so the Bankruptcy Code can operate as a coherent whole"). The Code outlines several instances in which entities other than a trustee may initiate preference claims.

For example, § 1123(b)(3)(B) authorizes a chapter 11 trustee to assign their avoidance powers to a third party. *See* 11 U.S.C. § 1123(b)(3)(B); *McFarland v. Leyh (In re Texas Gen. Petroleum Corp.)*, 52 F.3d 1330, 1335 (5th Cir. 1995). The Ninth Circuit has applied this assignment principle outside of chapter 11 by authorizing a chapter 7 trustee to transfer avoidance claims to the estate's largest creditor in exchange for 50 percent of any proceeds recovered. *In re P.R.T.C., Inc.*, 177 F.3d. 774, 782 (9th Cir. 1999). In so doing, the court

acknowledged that allowing the assignment of an avoidance claim in the context of a chapter 7 case was consistent with the Code's overall scheme. *Id*. at 781–82.

Additionally, including preference claims as saleable property of the estate is consistent with the widely accepted practice that creditors may obtain derivative standing to bring avoidance claims on behalf of a chapter 7 trustee. The Eighth Circuit has recognized that under the Code, creditors may obtain derivative standing to bring avoidance actions on behalf of the estate when a trustee is "unable or unwilling" to do so. *See PW Enters., Inc. v. North Dakota Racing Comm'n (In re Racing Services, Inc.)*, 540 F.3d 892, 898 (8th Cir. 2008). Granting creditors derivative standing permits them to prosecute avoidance claims and recover funds which might otherwise go uncollected. *See In re Dzierzawaski*, 518 B.R. 415, 422–23 (Bankr. E.D. Mich. 2014). As both the Eighth and Ninth Circuits have recognized, the Code authorizes the transfer of avoidance claims to third parties because such transfers further the purpose of the Code.

Here, the Trustee sought to transfer the estate's preference claim by selling it to Eclipse. R. at 9. If successful, the estate would have benefited from Eclipse's upfront sale price, although any recovery from the preference claim would go to Eclipse. Such a sale is consistent with the Code's statutory scheme, which elsewhere authorizes third parties to maintain preference claims, because the prosecution of such claims by third parties ultimately benefits the estate as a whole.

The lower court's narrow interpretation of the term "trustee" in §§ 547 and 550 wrongly excludes anyone else from exercising these avoidance and recovery powers. R. at 19. The court below reaches this conclusion by relying on *Hartford Underwriters Insurance Co. v. Union Planters Bank*, a case that analyzes an entirely different provision of the Code. 530 U.S. 1, 9 (2000) (reading "trustee may recover" in § 506(c) to exclude any other parties from recovering

under that section). Beyond analyzing a different provision of the Code, the court in *Hartford Underwriters* explicitly noted that it did not address "whether a bankruptcy court can allow other interested parties to act in the trustee's stead in pursuing recovery under § 506(c)." *Id.* at n.5. *Hartford Underwriters* does not apply to the provisions at issue here. This Court should interpret § 541(a) consistently with the overarching scheme and the value-maximizing purpose of the Code and hold that the Trustee is authorized to sell the estate's preference claim to Eclipse.

3. Purchasing preference claims gives creditors the added benefit of controlling the prosecution of claims against defendants with whom they do business.

Allowing for the purchase of preference claims by third parties, including creditors of the estate, gives creditor-purchasers the added benefit of being able to control the prosecution of preference claims against defendants with whom they may have a business relationship. This incentivizes creditors to purchase the assets of bankrupt entities, ultimately benefiting the entire estate. For example, in *In re Murray Metallurgical Coal Holdings, LLC*, a chapter 11 creditor had made an offer to purchase all the assets of the estate in a liquidation sale, including preference actions against certain parties, which it ultimately did not plan to prosecute because many of the transferees were vendors with whom it did regular business. 623 B.R. 444, 518 (Bankr. S.D. Ohio 2021). Certain other creditors objected to the sale, arguing that the preference actions may only be sold to a purchaser intending to prosecute the claims for the benefit of all the estate's creditors. *Id.* The court upheld the liquidation sale and noted that the inclusion of the avoidance claims was crucial to facilitating the sale because the creditors had a strong interest in protecting their regular business partners from the estate's preference claims. *Id.*

As the *Murray* court recognized, the opportunity for creditors to purchase, and then decline to prosecute, avoidance claims against parties with whom they do business represents a significant incentive to conclude liquidation sales of bankrupt entities. *Id.* Because such sales are

an important part of maximizing the value of estate assets for the benefit of all its creditors, the sale of preference claims furthers the purpose of the Code.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Thirteenth Circuit and hold that (I) a post-petition, pre-conversion increase in equity inures to the benefit of the estate, and (II) that the Trustee may sell preference claims as property of the estate.