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 Writ of Certiorari to the

Court of Appeals for the Thirteenth Circuit

BRIEF FOR PETITIONER

TEAM NO. 17

JANUARY 18, 2024

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

I. 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.

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

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STATEMENT OF JURISDICTION

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

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals decision is available at No. 22-0359 and is reprinted at Record 3. The bankruptcy court decided in favor of Eugene Clegg, the debtor in this case. On direct appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Eugene Clegg.

RELEVANT STATUTORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code. The following sections are also restated in full in the Appendix.

The relevant portions of 11 U.S.C. § 348(f) state:

> (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;
>
> (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.

The relevant portions of 11 U.S.C. 541(a) state:

> (a) The commencement of a case . . . creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> > (1) [A]ll 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.

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October Term, 2023

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v.

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On Appeal from the
Court of Appeals for the Thirteenth Circuit

BRIEF FOR PETITIONER

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

STATEMENT OF THE FACTS

This case implicates the principal task of the bankruptcy code: providing fair, efficient resolutions between honest, unfortunate debtors and their out-of-pocket creditors. The Respondent, citing irrelevant Congressional reports, seeks to persuade this court to trample on

that objective. He asks this court to stretch a straightforward provision beyond its text, thereby permitting significant injustice to creditors nationwide.

I. FACTUAL HISTORY

A) The Debtor, Eugene Clegg, and The Final Cut, LLC.

In 2016, the debtor, Cpl. Eugene Clegg (ret.) ("Debtor") owned a 100% interest in The Final Cut, LLC ("Final Cut"), having previously been transferred that interest by his mother, Emily "Pink" Clegg ("Pink"). R. at 5. Final Cut owned and operated a longstanding single-screen theater ("the theater") in Moot and had no liabilities before 2016, generating a yearly profit since the Debtor took ownership in 2011. *Id*. During this period, the Debtor's modest salary at Final Cut was his sole income. *Id*.

B) Eclipse Credit Union, and the Loan

Eclipse Credit Union (“Eclipse”) is a community-based financial institution specializing in consumer vehicle and home loans, only recently expanding to commercial loans. *Id*. In 2016, Final Cut borrowed $850,000 (the "Loan") from Eclipse to renovate its single theater. *Id*. In exchange, Final Cut granted Eclipse priority liens on all its property, which Eclipse subsequently perfected. *Id*. As additional security for the Loan, the Debtor executed an unconditional and unsecured personal guaranty with Eclipse of an unlimited amount. *Id*.

C) The Renovation

The Debtor minimized the labor costs of renovating the theater via his physical labor and drawing on local veterans who graciously volunteered their time. *Id*. Moved by this generosity, the Debtor had Final Cut donate the remainder of the Loan, roughly $75,000, to the local Veterans of Foreign Wars (“VFW”) post in early 2017. *Id*. Renovations complete, Final Cut enjoyed steady

patronage from Moot's citizenry for the following three years, wherein it was steadily profitable. *Id*.

D) The Covid-19 Pandemic and the Debtor's Unsecured $50,000 Loan from Pink

In March 2020, Moot's governor issued a stay-at-home order due to the ongoing Covid-19 epidemic. R. at 6. Consequently, the theater was closed for nearly a year. *Id*. Seeking to mitigate the financial strain this wrought on Final Cut, the Debtor took an unsecured $50,000 loan from Pink. *Id*.

The theater's reopening in February of 2021 failed to enjoy the same steady business it had thrived on before the pandemic. *Id*. This atrophied attendance saw Final Cut bleeding cash; to mollify this problem, the Debtor chose to forgo his salary. *Id*.

E) The Debtor's Chapter 13 Bankruptcy

Without income, the Debtor incurred significant credit card debt and fell behind on his home mortgage. *Id*. When Debtor failed to pay this mortgage for several months, the mortgage's servicer, Another Brick in the Wall Financial Corporation ("Servicer"), began foreclosure proceedings. *Id*.

The Debtor filed for chapter 13 bankruptcy on December 8, 2021 (the "Petition Date"), opting to pay his creditors out of the future earnings of Final Cut rather than lose his home in liquidation. R. at 6-7. The Debtor's chapter 13 plan stated that he would retain zero equity in his house as his $320,000 secured debt to the Servicer and a $30,000 homestead exemption the Debtor had taken subsumed the home's $350,000 value. *Id*. Further, this plan outlined an unsecured debt to Eclipse for an unspecified amount. R. at 6. Finally, it disclosed $20,000 in payments the Debtor had made to Pink within the last year. R. at 7.

At the creditor's meeting, Eclipse discovered the Debtor's donation to the VFW and immediately initiated a suit to deem their unsecured debt non-dischargeable. *Id*. Eclipse further objected to the debtor's plan as not being proposed in good faith; however, after negotiations, Eclipse agreed to withdraw its objection in exchange for a claim worth $150,000. R. at 8. Of this claim, $25,000 was deemed non-dischargeable, even in the event of a conversion. *Id*.

Further, the trustee objected to the Debtor's chapter 13 plan, citing the payments to Pink as rendering the plan unable to meet § 1325(a)(4)'s requirement that all creditors receive as much as they would in chapter 7 liquidation. *Id.* To remedy this, the plan was modified to increase aggregate payments to creditors by $20,000 over the commitment period. *Id*. Additionally, a stipulation was added wherein the chapter 13 trustee agreed to neither avoid nor recover the payments made to Pink before the petition date. R. at 8.

With these changes, the bankruptcy court confirmed the Debtor's plan, and expressly provided that all property of the estate vested in the Debtor. *Id*. Additionally, the bankruptcy court approved the earlier settlement between the Debtor and Eclipse. *Id*.

The Debtor made timely payments on this plan for eight months. *Id*. However, after falling ill, the Debtor could not continue working at the theater. *Id*. Without the Debtor's free labor, the weight of the ongoing pandemic proved too much; Final Cut closed the theater, and Eclipse commenced foreclosure proceedings against Final Cut shortly after that. *Id*. Deprived of any future income from Final Cut, the Debtor converted his case to chapter 7. *Id*.

F) The Debtor's Chapter 7 Bankruptcy

The chapter 13 trustee stated in her final report that she had distributed $10,000 to the Servicer under the plan, and that all funds held in reserve for Eclipse had been returned to the debtor. R. at 8-9.

Vera Lynn Floyd ("Petitioner" or "Floyd") was appointed as trustee to administer the Debtor's chapter 7 estate. R. at 9. As of the petition date, the Debtor's documents again ascribed a value of $350,000 to his home and disclosed his transfer(s) to Pink. *Id*. Further, these documents stated Debtor owed Eclipse approximately $200,000, the difference between the proceeds of Final Cut's foreclosure and the amount the Debtor had guaranteed. *Id*. In his statement of intention, the Debtor indicated his intent to reaffirm his mortgage debt and remain in his home. *Id*.

Upon learning from the Debtor at the chapter 7 § 341 creditor's meeting that neighboring houses were selling for a premium, the Petitioner commissioned an appraisal of the Debtor's home. *Id*. This appraisal revealed a $100,000 increase in non-exempt equity since the petition date. *Id*. Consistent with their obligation to maximize the estate's liquidated value as trustee, the Petitioner initiated efforts to market the home. *Id*.

Eclipse offered to purchase both the Debtor's home and the estate's preference claim against Pink for a grand total of $470,000. *Id*. Petitioner, content that this offer would maximize the estate's value, filed a motion to sell both the home and the preference claim to Eclipse under § 363(b). *Id*. The debtor promptly objected to this motion for two reasons. R. at 10. First, he argued that any post-petition, pre-conversion increase in the equity of his home should inure to his benefit; thus, if there is no equity available to the estate as of the Petition Date, the Petitioner cannot sell his home *Id*. Second, he maintained that the Petitioner's statutory powers as trustee to avoid and recover transfers under §§ 547, 550 cannot be sold. *Id*.

II. PROCEDURAL HISTORY

The Bankruptcy Court upheld the Debtor's objections and denied the Petitioner's motion. *Id*. The Petitioner appealed this ruling to the United States Court of Appeals for the 13th Circuit, who proceeded to review the case *de novo*. *Id*.

The circuit court first looked at 348(f)(2), which specifies that the estate's property is determined at conversion in cases of bad faith. R. at 13. The court reasoned this "bad faith" wording indicated that Congress intended the estate's determination to occur on the petition date, as it would under 348(f)(1)(A) had the conversion happened in good faith. *Id*. Ultimately, this reasoning led the court to agree with the Debtor's contention that the increase in home equity belonged to him. R at 17.

Next, the circuit court considered whether the Petitioner's trustee powers to avoid pre-bankruptcy transfers under § 547 could be sold. R. at 18. Looking first to the Supreme Court's prior interpretation of "Trustee" in § 506(c), the circuit court held that only the trustee can exercise their power of avoidance. R. at 19. Therefore, the circuit court reasoned that the Petitioner could not have sold these powers to Eclipse. R. at 19-20. Further, the circuit court reasoned that Congress had intentionally avoided including a cross reference to § 547 in § 541(a), which prevents the Trustee's preferential transfer power from becoming part of the estate. R. at 20-21. Finally, the circuit court rejected the proposition that § 547's trustee powers would vest in the estate, as applying this interpretation to other sections would have absurd consequences. R. at 21.

Ultimately, the 13th Circuit Court would affirm the bankruptcy court below 2-1. R. at 24. Judge Barret's dissent argued that his colleagues had overlooked Congress's choice to specifically exclude certain things from the bankruptcy estate in § 541(a)(6) and home equity was not part of this list. R. at 28-29. Judge Barret argued further that his colleagues overlooked the Supreme Court's prior rulings defining "all legal or equitable interests of the debtor in property," and the Trustee's powers of avoidance as causes of action which, according to further Supreme Court precedent, may be sold. R. at 31. The Petitioner, Vera Lynn Wood in her capacity as trustee of the chapter 7 estate, now appeals to the United States Supreme Court on the same grounds.

SUMMARY OF THE ARGUMENT

The role of the trustee in bankruptcy proceedings is to maximize the value of the estate and the distribution to the creditors as a whole. Running perfectly parallel to this ideal is the trustee's duty to be neutral arbiter who will distribute the funds equally to similarly situated creditors. The Code was thus enacted with various provisions circumscribing the precise contours of the trustee's unique role in the middle of a highly complex proceeding. At the heart of this role is the definition of estate property; whatever constitutes the debtor's estate becomes the responsibility of the trustee to administer in accordance with the Code. Thus, this dispute concerns an issue of great import to the bankruptcy process.

The Respondent seeks to undermine the Petitioner's ability to satisfy its role in two ways: first, the Respondent argues that accumulated postpetition, pre-conversion equity in a home does not inure to the benefit of the debtor's estate upon case conversion and thereby become available to the creditors; and second, he argues that the common practice trustees selling the right to pursue chapter 5 preference actions to creditors runs afoul of the Code's definition of estate property.

With respect to home equity, the Code's clear language defeats the Respondent's contentions. Section 348(f) unambiguously details that any property that existed at the time of commencement that also remains in the possession of the debtor at the time of conversion is estate property. Courts have consistently held that tangible real estate properties are inseparable from their intangible equity. Furthermore, the legislative history strongly supports Congress's intent to consider home equity as inseparable from a home. While Congress had crafted a hypothetical considering the two concepts separately, it is missing from the final text, and thus it should be assumed to be rejected in the common practice of legislative compromise.

With respect to the sale of preference actions, the Respondent's arguments similarly fail. Countless courts have interpreted various subsections of § 541(a) to contain the right to pursue §§ 547, 550 claims. The most commonly invoked location for preference actions is subsection (1). Since all legal or equitable interests the debtor has in property prior to commencement become part of the estate, many courts have held that the contingent, future legal interest in a chapter 5 preference action is estate property. In the alternative, subsection (7) captures all interests in property acquired after the commencement of a case, thus serving as a catch-all for anything not caught by subsection (1). Additionally, the Supreme Court has previously stated with the force of law that § 550 claims are estate property within subsection (3). The foregoing possibilities highlight the reality that Congress clearly evinced an intent to expand the scope of estate property when enacting the Bankruptcy Code. Therefore, a court should not frustrate their intent and upend common practice in bankruptcy proceedings by engaging in lexical hair-splitting.

To ensure that trustees can perform their duties under the Code with clarity and precision and that creditors will obtain their fair share of the estate, this Court should reject the Respondent's interpretations of § 348(f) and § 541(a) and reverse the holding of the Thirteenth Circuit.

ARGUMENTS

I. STANDARD OF REVIEW

This appeal concerns only issues of statutory interpretation, not factual disputes. Thus, a pure question of law is at issue. Appellate courts review pure questions of law *de novo*. *Highmark, Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

II. ANY POST-PETITION, PRE-CONVERSION INCREASE IN EQUITY IN A DEBTOR'S PROPERTY BENEFITS THE BANKRUPTCY ESTATE UPON CONVERSION FROM CHAPTER 13 TO CHAPTER 7

The purpose of the Bankruptcy Code is 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)). Debtors can seek relief under Chapter 13 (reorganization) or Chapter 7 (liquidation) bankruptcy. *Harris v. Viegelahn*, 575 U.S. 510, 513-14 (2015). Under Chapter 13, the debtor can retain the property and the court will confirm the debtor's plan to repay the debts over the span of 3-5 years. *Id.* It can be mutually beneficial to both the debtor and creditor. *Id.* However, most debtors fail to complete the repayment plan and must convert to a Chapter 7 case. *Id.* The case conversion does not "[affect] a change in the date of the filing of the petition." 11 U.S.C. § 348(a). The property encompassed by the Chapter 7 estate is defined in § 348(f), which states:

> (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;
> >
> > [. . .]

> (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. § 348(f)(1)(A), (2).

Section 541(a)(1) defines "property of the estate" as "all [the] 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 also includes all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." 11 U.S.C. § 541(a)(6). Any post-petition, pre-conversion increase in equity benefits the bankruptcy estate because the appreciation is inseparable from the property of the estate, the plain meaning of the statute is clear, and this interpretation is not displaced by the statute's legislative history.

A) Post-petition, Pre-conversion Appreciation is Inseparable from the Property of the Estate

The majority opinion below ruled that post-petition, pre-conversion appreciation does not constitute the property of the estate. However, this interpretation is misaligned with existing case law and reasoning because the change in equity is necessarily connected to the property of the estate.

In *Castleman v. Burman (In re Castleman)*, the Ninth Circuit Court of Appeals ruled that the post-petition, pre-conversion appreciation in the debtor's home value belonged to the bankruptcy estate upon the conversion from Chapter 13 to Chapter 7. 75 F.4th 1052, 1058 (9th Cir. 2023). With similar facts to the Debtor's situation, this conclusion was compelled in part by the plain language of § 348(f)(1)(A). *Id.* In addition, the *Castleman* court relied on a broad reading of section 541(a)(6) and precedent to determine that "proceeds, product, offspring, rents, or profits" includes the home's appreciation. *Id.* at 1056. As such, the home's appreciation is not separate, after-acquired property, but rather, inseparable from the property of the estate under Section 541(a). *Id.* at 1057. The same would be true if the property had depreciated in value. *Id.* at 1058. *See also*

In re Adams, 641 B.R. 147, 151-52 (Bankr. W.D. Mich. 2022) (citation omitted) ("The court regards the value of any property as an attribute or incident of the property, not a separate right or interest in the property."); *see also Goetz v. Weber (In re Goetz),* 651 B.R. 292, 298 (B.A.P. 8th Cir. 2023) (quoting *Potter v. Drewes (In re Potter),* 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999) ("Nothing in Section 541 suggests that the estate's interest is anything less than the entire asset, including any changes in its value which might occur after the date of filing.")).

In line with *Castleman* and others, the post-petition, pre-conversion appreciation of the Debtor's home is inseparable from the property of the estate. The language of Section 541(a)(6) ("proceeds, product, offspring, rents, or profits of or from property of the estate") is broad enough to encompass the change in equity. The appreciation is derived from the fluctuating values of the Debtor's home, which under Section 541(a)(1), is part of the bankruptcy estate and still under the control or possession of the Debtor. Without the home, there would be no appreciation or depreciation in values. Therefore, the post-petition, pre-conversion appreciation is necessarily connected to the property of the estate and should work to the benefit of the bankruptcy estate.

The majority opinion below relied on *Rockwell v. Hull (In re Rockwell)* to provide support for the "snapshot rule" of Section 522, and, by extension, Section 348(f)(1). 968 F.3d 12, 18 (1st Cir. 2020). Under this rule, the Thirteenth Circuit argued that the Debtor's financial situation is frozen at a point in time and post-petition equity is not part of the bankruptcy estate. However, that reliance was misplaced. *Rockwell* deals primarily with the Debtor's use of a homestead exemption and never comments on how to evaluate post-petition equity. *Id.* at 16. The court below was correct in mentioning the "snapshot rule," but declines to clarify that *Rockwell* (and other cited cases within) only apply the snapshot rule to exemptions. Lastly, the Thirteenth Circuit did not provide any case law to support applying the snapshot rule to other assets, namely, post-petition equity.

In conclusion, the majority opinion's reliance on the snapshot rule was misplaced and should not be applied to the appreciation or depreciation of the home, which is necessarily connected to the property of the estate. As such, any post-petition, pre-conversion equity benefits the bankruptcy estate and not the Debtor.

B) The Plain Language of the Statute Reads Any Increase in Equity of the Debtor's Home to be Property of the Estate

Both the majority and dissent below agreed that Section 348(f)(1)(A), on its face, allows for the property of the estate in the Debtor's case to consist of the property of the estate as of the petition date. As shown above, the Trustee correctly finds this to include the post-petition, pre-conversion appreciation because that is inseparable from the property of the estate. However, the Thirteenth Circuit held that the Trustee's interpretation is incomplete and referred to various other statutes and sources to create a different interpretation.

Castleman provides an instructive guide to interpreting the Bankruptcy Code. To begin, the judge should "determine whether the language [of a statute] has a plain and unambiguous meaning." 75 F.4th at 1055 (quoting *Hawkins v. Franchise Tax Bd. of Cal.*, 769 F.3d 662, 666 (9th Cir. 2014)). If the plain meaning is clear, then that interpretation controls. *Id.* (quoting *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016)). This is where the inquiry ends when the language is clear. *Puerto Rico*, 579 U.S. at 125. This approach to statutory interpretation aligns with the Court's recent trend in deciding bankruptcy cases using the plain meaning canon. *See* Daniel J. Bussel, *Textualism's Failures: A Study of Overruled Bankruptcy Cases*, 53 VAND. L. REV. 887, 900 (2000) ("[t]he Supreme Court has chosen to make the Bankruptcy Code a kind of proving ground for textualist interpretation, regularly adopting textualist interpretations to settle the law on contested questions arising under the Bankruptcy Code.").

The language of Section 348(f)(1)(A) is clear. In a converted Chapter 7 case, the property of the estate consists of the property of the estate at the time of filing and the property in the debtor's possession or control. The home is still under the Debtor's possession. In addition, the statute does not have a limiting agent and makes no mention of the valuation of the property. The Thirteenth Circuit's approach to statutory interpretation presents an overreach of accepted judicial norms and Supreme Court precedent. Once a court decides that the text of the statute is clear, that interpretation is controlling and the inquiry ends.

In addition, if desired, Congress could have explicitly prohibited the increase in equity from benefiting the bankruptcy estate. In fact, Congress has laid out several exclusions from the "property of the estate." For example, "earnings from services performed by an individual debtor after the commencement of the case." 11 U.S.C. § 541(a)(6). Additional assets that are excluded from the bankruptcy estate are outlined in Section 541(b) and (c). 11 U.S.C. § 541(b)-(c). However, post-petition appreciation of the property in a converted case is not explicitly excluded from the bankruptcy estate. *Id.* When the statutes are read together, the proper interpretation is that the entire asset, including any changes in value that happen after filing, constitute the estate's interest. *Potter*, 228 B.R. at 424.

The Thirteenth Circuit's reading of Section 348(f)(1)(A) strayed far from the plain meaning of the statute. Section 348(f)(1)(A) allows for the appreciation to benefit the bankruptcy estate and the inclusion is not strictly prohibited, as other assets have been.

C) Even if Section 348 is Considered Ambiguous, the Legislative History of Section 348 Supports the Petitioner's Position

The plain meaning of the statute obviates the need to consult legislative history. However, in the event that the statute is considered ambiguous, the legislative history would still support the Petitioner's position. The majority opinion below heavily relied on a hypothetical scenario in

which the post-petition, pre-conversion interests in property are retained by the Debtor. H.R. REP. NO. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. Based on the hypothetical, creating equity in the home would establish a serious disincentive to chapter 13 filings. *Id.*

The hypothetical was not included in the final text. While the exact reason for the exclusion is not known, the exclusion itself is detrimental to the Thirteenth Circuit's argument. This line of argument is supported by *In re Goetz*, which stated:

> Congress's failure to address the example included in the legislative history does not mean this omission was inadvertent. Recognizing that statutes are often the result of compromise, we decline to accept [the debtor's] invitation to assume that Congress intended that debtors may retain post-petition pre-conversion market appreciation and equity resulting from debt payments without language articulating this intent.

651 B.R. at 299.

In addition, treating the legislative history as more insightful to statutory interpretation than the final text has its drawbacks. *American Broadcasting Cos. v. Aereo, Inc.*, 573 U. S. 431, 458 (2014) (Scalia, J., dissenting) (arguing that the Court had treated "a few isolated snippets of legislative history" as "authoritative evidence of congressional intent even though they come from a single report issued by a committee whose members make up a small fraction of one of the two Houses of Congress"); SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 386 (2012) ("Even if the members of each house wish to do so, they cannot assign responsibility for making law—or the details of law—to one of their number, or to one of their committees"). The legislative history of the text does not represent the view of the majority of the two Houses of Congress and the President, only the final text of the statute does.

Furthermore, the majority opinion below used legislative history and § 348(f)(2) to draw distinctions between good and bad faith conversions. However, that distinction was unnecessary.

Both sides agreed that the Debtor converted to a Chapter 7 bankruptcy in good faith and no bad faith is alleged between the two sides. As such, that piece of legislative history and text is inapplicable to the case at bar.

In conclusion, the legislative history is not strong enough to displace the clear text of the statute and provides support for the Petitioner's position, not the Debtor's. The majority errs by heavily relying on this source and failing to practice judicial restraint in their interpretation.

The Supreme Court dictates that the Bankruptcy Code rules have the "first and final say, even where equity might demand a different result." *Rockwell*, 968 F.3d at 19. While the outcome is difficult for the Debtor, the Bankruptcy Code is clear. The Trustee's interpretation of Section 348(f)(1) is the correct reading of the statute and this Court should overturn the judgment of the lower courts.

III. PREFERENCE ACTIONS ARE PROPERTY OF THE ESTATE WITHIN THE MEANING OF 11 U.S.C. § 541(a)

In order to achieve an equitable remedy, chapter 7 trustees are charged with the swift liquidation of the debtor's estate to maximize the returns to all creditors. 11 U.S.C. § 704(a)(1). To do this, trustees are *inter alia* empowered to sell the property of the estate with court approval. 11 U.S.C. § 363(b)(1). Additional rights conferred to the trustee include claims to avoid and recover transfers made by the debtor. 11 U.S.C. §§ 547(b); 550(a). These claims are designed to prevent the debtor from making last-minute payments to "preferred" creditors and thereby reduce the distribution to other creditors. *See Begier v. IRS*, 496 U.S. 53, 58 (1990).

The Bankruptcy Code extensively defines what the "property of the estate" is. *See* 11 U.S.C. § 541(a). The broadest category of "property of the estate" is found in subsection (1): "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). In addition, subsection (7) further expands the scope of the estate's property:

"[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7). The Supreme Court has described section 541(a)'s scope as "broad," and the legislative history corroborates this fact. *Patterson v. Shumate*, 504 U.S. 753, 757 (1992); *see* H.R. REP. NO. 95-595, at 549 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6455.

A trustee's preference claim meets the Code's definition of estate property in three possible places, any of which would be sufficient to rule in favor of the trustee here. First, the plain language and extensive case law of § 541(a)(1) necessitate its inclusion. Courts have consistently held that (1) the trustee's preference powers are causes of action, and (2) causes of action meet 541(a)(1)'s definition of estate property. Second, the Supreme Court has explicitly stated that a preference claim is property of the debtor's estate in § 541(a)(3) in binding precedent. Third, in the alternative, a trustee's preference power is property of the estate within § 541(a)(7), which includes any interests in property acquired after the commencement of the case. Each of these Code interpretations harmonizes with the broader goals of the Code at large; a chapter 7 trustee must not only be permitted to convert the estate into money for the benefit of all creditors equally, they must be allowed to convert all of the estate to maximize the total returns and minimize liabilities.

A) 11 U.S.C. § 541(a)(1) Has Been Consistently Interpreted to Include Trustee Preference Actions

11 U.S.C. § 541(a)(1) has been interpreted by many courts to include various debtor/trustee causes of action as property of the estate. *See, e.g.*, *Parker v. Goodman (In re Parker)*, 499 F.3d 616, 624 (6th Cir. 2007) (holding that causes of action are property of the estate as "legal and equitable interests."); *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 114 (Bankr. S.D.N.Y. 2011) (internal citations omitted) ("Property of the estate therefore includes any cause of action the debtor had on the petition date, as well as avoidance actions created on the

petition date."); *Pitman Farms v. ARKK Food Co. (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1011 (8th Cir. 2023) (holding that chapter 5 causes of action are property of the estate that the trustee can sell); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010) ("We conclude, therefore, that the fraudulent-transfer claims are property of the estate under §541(a)(1) . . . . In the alternative, the fraudulent-transfer claims became estate property under § 544(b) and—like other estate property—may be sold pursuant to § 363(b)." (citation omitted)); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007) ("It is well established that a claim for fraudulent conveyance is included within [11 U.S.C. § 541(a)(1)]" (citation omitted)); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705, 708-09 (7th Cir. 1994) ("[T]he right to recoup a fraudulent conveyance, which outside of bankruptcy may be invoked by a creditor, is property of the estate that only a trustee or debtor in possession may pursue once a bankruptcy is under way."). *See also In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 518 (Bankr. S.D. Ohio 2021) ("The Court concludes that the Oak Grove Avoidance Actions and their proceeds are property of the estate that may be sold."). This great consensus has its origin in a key Supreme Court decision.

1) The Supreme Court Has Broadly Defined the Definition of Estate Property Within 11 U.S.C. § 541(a)(1) in its Decision in United States v. Whiting Pools, Inc.

The majority opinion below concludes that avoidance actions are excluded from 541(a)(1)'s definition of estate property which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." R. at 20. This conclusion, however, ignores the Supreme Court's wording in *United States v. Whiting Pools, Inc.* indicating that these categories serve as definitions for what could be included in the estate -- not as limitations for what may or may not be part of it. 462 U.S. 198, 203 (1983). Indeed, the Supreme Court has held similarly to the dissent's opinion in that 541(a)(1) is necessarily broad and "intended to include in

the estate any property made available to the estate via other provisions of the bankruptcy code." *Id.* at 204-05. Because the Supreme Court has classified a trustee's avoidance powers as causes of action in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53-54 (1989), the dissent appropriately concluded that the Supreme Court's reasoning in *Whiting Pools* requires the inclusion of avoidance powers within the property of the estate.

The majority would contend that this is an impossibility because the debtor has never possessed the causes of action available to the Trustee. R. at 19–20. The Supreme Court again provides otherwise, stating in *Whiting Pools* that while there are explicit limits on what could constitute an estate's property, the debtor's lack of previous interest in that property is not beyond those limits. 462 U.S. at 205-06.

2) The Eighth Circuit Correctly Applied Whiting Pools *When Holding that Chapter 5 Preference Actions Are Property of the Estate Under 11 U.S.C. § 541(a)(1)*

As the dissent in the opinion below points out, *Pitman Farms* is particularly instructive. R. at 33. In that case, the Eighth Circuit held that chapter 5 actions can be sold as property of the estate. *Pitman Farms*, 78 F.4th at 1011. In so doing, they addressed several counter arguments raised by the plaintiff's counsel: (1) the preference actions are retained and exercised exclusively by the trustee or derivative creditors and never exist as an interest of debtor's estate, (2) such a reading of § 541(a)(1) would create surplusage elsewhere in the Code, and (3) such a reading of § 541(a)(1) would violate the trustee's fiduciary duty to "maximize the value of the estate." *Id.* at 1008–10. The court disposed of each in turn. *Id.*

i. Preference Actions Exist as a Non-Possessory Debtor Interest Before the Commencement of the Case

The Eighth Circuit promptly invoked *Whiting Pools* for the general rule that § 541(a) categories are to be construed very broadly, including tangible and intangible property. *Id.* at 1008. In fact, the court pointed out that *Whiting Pools* did not even require that the interest be possessory

at the commencement of proceedings. *Id.* More specifically, the Supreme Court has elsewhere stated that the term "property" has been generously construed to include novel and contingent interests that cannot be exercised until a later time. *Segal v. Rochelle*, 382 U.S. 375, 379 (1966). Thus, the Eighth Circuit was compelled to hold that chapter 5 causes of action could be the debtor's property even before the commencement of the case. *Pitman Farms*, 78 F.4th at 1009. In other words, since a debtor has a continual statutory right to file for bankruptcy, the right to avoid and recover preference transfers exists in a contingent "limbo" that activates when the debtor actually goes to the courthouse. *See id.* If so, a chapter 5 claim is a legal or equitable *future* interest that the debtor owns before the commencement of the case and thereby meets the statutory definition of estate property under § 541(a)(1).

ii. The Rule Against Surplusage Is Not an Absolute Rule

Both the plaintiff in *Pitman Farms* and the Thirteenth Circuit below cited the so-called "canon against surplusage" in an attempt to bolster their argument that § 541(a)(1) cannot include preference actions. *Id.* at 1009; R. at 22. They reason that because other subsections in § 541(a) define *proceeds* from preference actions specifically as property of the estate, to interpret subsection (1) to include the preference action itself as property of the estate would be to render these other subsections surplus, which the canon presumes was not Congress's intent. *Pitman Farms* 78 F.4th at 1009; R. at 22. This argument was quickly disposed of by the Eight Circuit in *Pitman Farms*; citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013), the court emphasized that the "canon against surplusage is not an absolute rule." *Pitman Farms*, 78 F.4th at 1009. This makes sense. It is not unreasonable to presume Congress would repeat itself in order to ensure precise compliance, especially with heavily amended statutes like the one at bar. *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992); *Id.* Thus, this canon of interpretation should

weigh minimally, if at all, when interpreting complex statutes with lengthy Congressional history like § 541(a).

iii. The Trustee's Fiduciary Duty Is Served, Not Violated, by Inclusion of Chapter 5 Claims Within Estate Property

The *Pitman Farms* plaintiff, undaunted by the clear meaning and extensive case law of § 541(a)(1) and unaided by its preferred canon of statutory interpretation, turned to a final policy argument: a trustee cannot sell its preference powers to a creditor because such powers were intentionally given to the trustee alone as a neutral fiduciary of the debtor's estate. *Pitman Farms*, 78 F.4th at 1010. Adopting this line of logic, the Thirteenth Circuit below cautioned that an interpretation allowing the sale of preference actions to creditors would "compromise[] the integrity of the bankruptcy system by allowing creditors like Eclipse to pursue personal vendettas using powers intended to be utilized by a neutral trustee." R. at 23–24. These fears are unfounded for two reasons.

First, as the Thirteenth Circuit acknowledged *prior on the same page of its opinion*, creditors are clearly authorized by Congress to assert derivative standing to pursue avoidance actions. R. at 23; *see e.g.*, 11 U.S.C. § 503(b)(3)(B), (b)(4). Thus, how can the court claim that a derivative action by a creditor against a preferred transferee creditor to avoid the transfer is permissible under the trustee's fiduciary duty but not the outright sale of the claim to the same creditor to pursue against the same preferred creditor? Such a distinction is absurd and should not be read into the Bankruptcy Code.

Second, as Eighth Circuit and the dissent below articulate, an interpretation of estate property that includes preference claims actually *helps* the trustee meet their fiduciary duties. *Pitman Farms*, 78 F.4th at 1010; R. at 35. The fiduciary duty assigned to chapter 7 trustees is defined in § 704(a), and it has been summarily interpreted to mean that they must "maximize the

value of the estate" or "maximize the distribution to the creditors" of the estate. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985); *IRS v. Luongo (In re Luongo)*, 259 F.3d 323, 340 n.16 (5th Cir. 2001). True, this duty entails actual pursuit of preference claims by the trustee in order to "maximize the value of the estate." However, the duty also must include the minimization of administrative expenses coming *out* of the estate. *See* R. at 35.

While the Thirteenth Circuit encouraged creditors to simply assert derivative preference claims under § 503(b)(3)(B) and (b)(4), the *Pitman Farms* court and Judge Barrett below highlighted the administrative reality that the trustee can lack the necessary funds *in the estate* to pursue such claims. R. at 23; *Pitman Farms*, 78 F.4th at 1010; R. at 35. Thus, if a creditor wants to assert a derivative preference action and be reimbursed for litigation costs later under a § 503(b)(3)(B) administrative expense claim, other creditors still lose out on their claims. But if a trustee could sell the preference action to an individual creditor, the returns for all are maximized: the individual creditor obtains a valuable, bargained-for cause of action, other creditors reap the increased value of the debtor's estate in the proceeds of the sale, and the trustee fully satisfies their obligations under the Code.

3) The Thirteenth Circuit's Critique of Pitman Farms *Cannot Undermine its Relevance*

i. A Disposal of Funds Does Not Implicate the Underlying Statutory Interest in the Right to Pursue the Funds

In an attempt to discredit the rationale of the Eighth Circuit, the majority opinion below identifies three "inherent flaws" in *Pitman Farms*. R. at 20. First, the court argues that because the Debtor in the present case disposed of the funds transferred to Pink, he no longer has any interest in them under § 541(a)(1). *Id.* To support this proposition, the Thirteenth Circuit cites *Begier v. IRS*, 496 U.S. 53, 58–59 (1990) and *100 Lindbergh Boulevard Corp. v. Gurnett Rock, Inc. (In re 100 Lindbergh Boulevard Corp.)*, 128 B.R. 53, 56-59 (Bankr. E.D.N.Y.). However, the *Begier*

Court only held that § 541(a)(d) limited the property of the estate by excluding equitable interests in property that the debtor only had an *exclusively legal* claim to at the commencement of the case; at issue in *Begier* was an equitable claim for estate property held in a trust. *Begier*, 496 U.S. at 59. Here, equitable interests are not at issue, but rather a purely legal interest statutorily created by the Bankruptcy Code. *100 Lindbergh* on the other hand also identified an equitable interest in *specific* funds disposed of by the debtor. *100 Lindbergh*, 128 B.R. at 56. The Thirteenth Circuit also cited the Code's definition of "transfer," but within that definition is a distinction between disposing of (i) property *or* (ii) an interest in property. 11 U.S.C. § 101(54). Thus, Congress clearly understood the difference between disposing of tangible property and the disposing of the interest in the property itself.

ii. *Pitman Farms* Did Not Intimate that Debtors Retain an Interest in the Transferred Funds Themselves

Second, the court states, without citation, that *Pitman Farms* suggested that the funds transferred to a preferred creditor remain estate property rather than the preference action interest. R. at 20. However, *Pitman Farms* categorically does not support such a proposition, and the Thirteenth Circuit's inability to cite any specific line in the case suggesting as such is telling. As mentioned previously in Subsection A.2, *supra*, the Eighth Circuit took great pains to explain how the right to pursue a preference action was at issue.

iii. The Reasoning of *Pitman Farms* Does Not Implicate the 11 U.S.C. § 542(a) Turnover Provision

Third, the court reasoned that if the Debtor did retain an interest in the funds transferred to Pink, a preference action is entirely redundant since he can simply compel turnover under § 542(a). However, this again entirely misunderstands the holding of the Eighth Circuit and the position of the trustee in the present case. There is no asserted interest in the *specific funds* transferred to a preferred creditor at the time of case commencement, but rather the Eighth Circuit described a

contingent interest in the right to pursue the preference action itself. *Pitman Farms*, 78 F.4th at 1009. In fact, § 542(a) and the Thirteenth Circuit's citation to *Whiting Pools* undermined this logic; both authorities specifically require that property subject to turnover be in "possession, custody, or control" of a non-debtor entity at the commencement of the case. R. at 20; 11 U.S.C. § 542(a); *Whiting Pools*, 462 U.S. at 207. In *Pitman Farms* and the present controversy, no third party has claimed "possession, custody, or control" of the chapter 5 preference actions; rather, the trustees have acted in a manner entirely consistent with total control over the preference actions from day one. *See Pitman Farms*, 78 F.4th at 1007–08; R. at 9, 30. Thus, § 542(a) was not implicated in either *Pitman Farms* or the present case.

For the foregoing reasons, the Eighth Circuit's reasoning in *Pitman Farms* should be followed as a correct interpretation of the Bankruptcy Code: § 541(a)(1) is undeniably broad enough to cover chapter 5 preference actions, and a holding reiterating that the section contains them would be entirely unsurprising to an overwhelming majority of courts across the nation who have already decided as much.

B) 11 U.S.C. § 541(a)(3) Includes Trustee Preference Actions According to the Supreme Court

The Supreme Court has specifically stated both that chapter 5 preference actions are "causes of action," and that these causes of action are property of the estate. *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 37 (1992); *Granfinanciera*, 492 U.S. at 53–54 (characterizing the right to recover fraudulent transfers under § 548 as a cause of action). Justice Scalia identified § 541(a)(3) as the basis for preference recovery actions being part of the estate's property. *Nordic Vill.*, 503 U.S. at 37. The Court stated that "the right to recover a postpetition transfer under § 550 is *clearly* a 'claim' . . . and is the 'property of the estate' (defined in § 541(a)(3))" *Id.* (emphasis added). *Id.*

When faced with such patently clear support for the Petitioner's argument, the Thirteenth Circuit below was forced to "acknowledge" the Supreme Court's "loose[] intimat[ion]" that a chapter 5 claim is property of the estate in that case. R. at 22, n16. However, in an attempt to rescue the panel's majority holding, Judge Gilmour completely disregards Justice Scalia's *Nordic Village* statement as dicta and additionally implies that the entire case and all reasoning within was overruled by Congress's passage of the Bankruptcy Reform Act of 1994. *Id.* The court below cannot do this for three reasons.

1) Justice Scalia's Statement Is Not Dicta

First, the claim that the statement from *Nordic Village* is dicta is tenuous at best. To be considered non-binding dicta, the comments from the higher court must have been unnecessary to support its holding and merely stated incidentally. *Obiter Dictum*, BLACK'S LAW DICTIONARY (11th ed. 2019). Justice Scalia's statement cannot fit this definition because it was a logical necessity to make the Court's point about a second plausible reading of 11 U.S.C. § 106(c). *See Nordic Vill.*, 503 U.S. at 37. In *Nordic Village*, the Supreme Court analyzed § 106(c) to see if it provided an unequivocal textual waiver of sovereign immunity against a bankruptcy trustee's claims. *Id.* at 39. To support the Court's conclusion that the statute provided no such waiver, Justice Scalia articulated two different but plausible interpretations of the statute, demonstrating its ambiguity which would preclude its functioning as waiver of sovereign immunity. *Id.* at 37. The second interpretation provided by the Court requires defining a chapter 5 claim as property of the estate. *Id.* In other words, if this statement was removed from the opinion, Justice Scalia's alternative interpretation of § 106(c) would be invalid and thereby undercut the Court's central holding that the statute was ambiguous. *See id.* at 38–39. Therefore, this statement, although

highly conclusory itself, should nonetheless carry the force of law as it cannot be said to be "unnecessary" to the Court's ultimate holding in the case.

2) Even if Justice Scalia's Statement Is Dicta, it Should Be Considered Strongly Persuasive

However, even if the statement is considered dicta, it remains entirely impermissible for the Thirteenth Circuit to disregard it in the manner it did. While courts generally treat dicta in case law as non-binding, it would be flatly incorrect to say that a clear statement of law from the highest court of the land "amounts to no more than a casual suggestion." *United States v. Miller*, 604 F. Supp. 2d 1162, 1167 (W.D. Tenn. 2009). Almost all federal circuits have recognized that incidental statements of law from the Supreme Court carry more persuasive power than in other contexts. *See, e.g.*, *Pittsburg & Midway Coal Mining Co. v. Watchman*, 52 F.3d 1531, 1540 n.10 (10th Cir. 1995) (stating that "[f]ederal courts 'are bound by the Supreme Court's considered dicta almost as firmly as by the Court's outright holdings") (quoting *City of Timber Lake v. Cheyenne River Sioux Tribe*, 10 F.3d 554, 557 (8th Cir. 1993)); *United States v. Gaudin*, 28 F.3d 943, 956 n.2 (9th Cir. 1994) (noting that Supreme Court dicta binds federal courts when uncontradicted by later opinions); *United States v. Santana*, 6 F.3d 1, 9 (1st Cir. 1993) ("Carefully considered statements of the Supreme Court, even if technically dictum, must be accorded great weight and should be treated as authoritative when, as in this instance, badges of reliability abound."); *Nichol v. Pullman Standard, Inc.*, 889 F.2d 115, 120 n.8 (7th Cir. 1989) (advising that courts should "respect considered Supreme Court dicta"); *Donovan v. Red Star Marine Servs.*, 739 F.2d 774, 782 (2d Cir. 1984) (stating that "dicta of the nation's highest Court merits the greatest deference"). Thus, when confronted with a highly relevant opinion on the law from the Supreme Court—from which only two Justices dissented—the Thirteenth Circuit should have, at minimum, discussed

why it found Justice Scalia's interpretation unpersuasive. The absence of any such discussion significantly diminishes the weight of the court's conclusions.

3) The Passage of the Bankruptcy Reform Act of 1994 Did Not Undermine Justice Scalia's Statement

The Thirteenth Circuit stated in its opinion below that the passage of the Bankruptcy Reform Act of 1994 "superseded" *Nordic Village*. R. at 22, n16. This is correct. The act was passed to overrule the Supreme Court's central holding in *Nordic Village,* which was that 11 U.S.C. § 106(c) was textually ambiguous and thus did not function as a continuous waiver of sovereign immunity against trustee bankruptcy claims. *Nordic Vill.*, 503 U.S. at 39. Congress reacted by amending § 106(c) to explicitly waive sovereign immunity for bankruptcy proceedings. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, 4117. That was all it did. There is no reference to chapter 5 preference actions and property of the estate anywhere in the act. More specifically, § 550, of which Justice Scalia made the relevant statement to our present case, is mentioned only in the § 106(c) amendment section and in an unrelated amendment pertaining to non-insider transferee liability. *See* 108 Stat. 4106, 4117, 4121–22. Because of these facts, it is absurd to imply as the Thirteenth Circuit did that the passage of the Bankruptcy Reform Act of 1994 had any effect on Justice Scalia's *Nordic Village* interpretations. In fact, the passage demonstrates the opposite; namely, that § 106(c) was ambiguous and needed clearer language to accomplish Congress's policy goals.

For these reasons, the Court today should reaffirm what it held in *Nordic Village*. A chapter 5 preference action is a claim that is property of the estate.

C) 11 U.S.C. § 541(a)(7) Should be Interpreted to Include Preference Actions Because the Plain and Broad Language Therein Must Encompass Them

If this Court is unconvinced of preference actions being estate property within § 541(a)(1) or (3), subsection (7) provides the ultimate catch-all to encapsulate Congress's clear intent to cast

the broadest possible net over estate property. This provision includes "[a]ny interest in property that the estate *acquires after* the commencement of the case." 11 U.S.C. § 541(a)(7) (emphasis added). The Eighth Circuit's opinion in *Pitman Farms* is once again a key interpretive aid. Acknowledging that not all will be convinced of their description of contingent interests in preference claims existing *prior* to the commencement of the case, the court noted that even if they did not exist before the case, they certainly exist after the commencement of the case, placing them directly within the orbit of § 541(a)(7). *Pitman Farms*, 78 F.4th at 1009.

The dissent below readily agrees with the Eighth Circuit, and easily places preference actions in subsection (7) if arguments for § 541(a)(1) are unavailing. R. at 32, n23. The majority, however, briefly takes issue with this. R. at 21. The court argues both that preference powers are not "acquired" in the ordinary sense of the word, but rather are statutorily created by law, and that the preference powers arise neither before nor after the commencement, but rather directly *upon* it. *Id.* This lexical hair-splitting, however, is precisely what the Supreme Court has disfavored when interpreting the Bankruptcy Code; it will "frustrate the bankruptcy policy of a broad inclusion of property in the estate." *Whetzal v. Alderson*, 32 F.3d 1302, 1304 (8th Cir. 1994) (citing *Patterson v. Shumate*, 504 U.S. 753, 757 (1992)). Thus, this Court should reiterate its commitment to upholding this major policy in holding that § 541(a)(7) contains chapter 5 preference actions.

D) A Holding that Preference Actions Can Be Sold as Property of the Estate Is Consistent with the Practical Realities of the Process and the Underlying Goals of Congress

The Bankruptcy Code is designed to relieve the honest, but unfortunate debtor and provide them with a second chance. As the dissent aptly highlighted and as this brief alluded to in Subsection A.2.iii, *supra*, it is only by defining preference actions as estate property that trustees can consistently maximize the estate's value. R. at 34–35. To deny them this tool, would be to practically deny estates around the country the ability to properly distribute funds to same-level

creditors. After all, if the estate is so bereft of funds that it cannot litigate an action to obtain improperly pre-transferred funds, there is no mechanism to rectify the scenario. As Judge Barrett put it, that would be an "absurd result." R. at 35.

Furthermore, a holding in favor of the Debtor here would upend common practice in bankruptcy proceedings across the nation. Bankruptcy courts regularly approve sale motions that include chapter 5 causes of action. *See e.g.*, *In re Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 506–07 (Bankr. S.D. Ohio 2021); *see also* 5 Collier on Bankruptcy P 547.11 (16th 2023).

The Thirteenth Circuit attempted to justify its holding by reasoning that when Congress enacts a new, superseding statute, if the language within is not materially different, it intended the guidance and practice of the old statute to still inform the new one. R. at 21–22. The court pointed to the pre-Code Bankruptcy Act of 1898 and observed its near-identical definition of a preference action. *Compare* 11 U.S.C. §§ 547, 550 *with* Bankruptcy Act of 1898, ch. 541, sec 60, 30 Stat. 562. Then the court noted the accompanying Bankruptcy Act case law that contained the "well-settled" rule that trustees could not sell or assign their preference powers. *Id.*; *Belding-Hall Mfg. Co. v. Mercer & Ferdon Lumber Co.*, 175 F. 335, 339-340 (6th Cir. 1909); *Grass v. Osborn*, 39 F.2d 461, 461 (9th Cir. 1930). Thus, the Thirteenth Circuit reasoned, because the preference action statutes §§ 547 and 550 are materially the same in the modern code as they were in the Bankruptcy Act, this "well-settled" rule should remain in place today. R. at 22.

But this line of reasoning is flawed. It is true that materially identical statutes are assumed to share case law because of their similarity. *See Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018). But here, the Thirteenth Circuit compared apples and oranges. The relevant comparison here is the Bankruptcy Act's *definition of estate property*, not its definition of a preference action. However, this comparison significantly undermines the rationale of the court

because the Act contains no such definition. *See, e.g.*, Bankruptcy Act of 1898, ch. 541, sec 1, 30 Stat. 544–45. Therefore, when this is compared with the modern Bankruptcy Code of 1978, which has an extensive statutory scheme defining estate property in § 541(a) and (b), one can easily see the material difference between the two statutes on this topic. This also makes sense of course, if this Court and the sister circuits are taken at their word that Congress enacted the Code with a policy goal of broadening the definition of estate property. *See Whetzal v. Alderson*, 32 F.3d 1302, 1304 (8th Cir. 1994) (citing *Patterson v. Shumate*, 504 U.S. 753, 757 (1992)). As such, pre-Code case law describing a "well-settled" rule under the Bankruptcy Act should hold no weight before the Court today.

CONCLUSION

While the Petitioner does not make light of the Debtor's plight, this Court must be guided by established principles of law in the Bankruptcy Code. Reversing the erroneous decision of the Thirteenth Circuit would provide much-needed clarity and guidance in a matter of great concern for many. For the forgoing reasons, this Court should REVERSE.

APPENDIX

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. § 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.