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 RESPONDENT

Team No. 24
Counsel for Respondent

QUESTIONS PRESENTED

I. Whether any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor upon good-faith conversion of a case from Chapter 13 to Chapter 7.

II. Whether a Chapter 7 trustee may sell, as property of the bankruptcy estate, its statutory powers to avoid and recover transfers.

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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

Eugene Clegg, a decorated veteran, owned 100% membership interest in a small business, The Final Cut, LLC ("Final Cut") in the City of Moot. (R. 5.) Final Cut operated a local historic movie theater, and in 2016, it borrowed $850,000 (the "Loan") from Eclipse Credit Union ("Eclipse") which was granted first priority liens on Final Cut's real and personal property and unconditional, unsecured personal guaranty by Mr. Clegg in an unlimited amount. (*Id.*) The purpose of the Loan was to renovate the theater, and to reduce labor cost, Mr. Clegg personally did much of the renovation work with the voluntary help by other local veterans. (*Id.*) To express his gratitude, Mr. Clegg directed Final Cut to donate $75,000 to the Veterans of Foreign Wars (the "VFW") in early 2017, which was unbeknownst to Eclipse. (*Id.*)

Final Cut remained profitable until the COVID-19 pandemic when its owned theater stopped the operation for nearly a year. (R. 6.) With no income from Final Cut, Mr. Clegg borrowed $50,000 from his mother, Emily Pink Clegg, on September 8, 2020. (*Id.*) To keep Final Cut running after the pandemic, Mr. Clegg forewent his salary to Final Cut, because of which he failed to make mortgage payments for months. (*Id.*) The mortgage creditor, Another Brick in the Wall Financial Corporation (the "Servicer"), consequently commenced foreclosure proceedings. (Id.)

In response, Mr. Clegg filed the petition under Chapter 13 of the Bankruptcy Code[1] on December 8, 2021. (*Id.*) According to the Schedules and the proposed repayment plan, the value of Mr. Clegg's home was $350,000, which has never been disputed. (*Id.*) There was a non-contingent, liquidated and undisputed secured debt to Servicer in the amount of $320,000, and Mr.

[1] Specific sections of the Bankruptcy Code—set forth in 11 U.S.C. §§ 101 et seq.—are identified herein as "section ___." The Bankruptcy Code as a whole is sometimes referred to herein as "the Code."

Clegg claimed a state homestead exemption in the amount of $30,000, leaving no equity in Mr. Clegg's home for the estate. (R. 6-7.) Besides, it was disclosed that Mr. Clegg made payments to Ms. Clegg within one year before the petition in the amount of $20,000. (R. 7.)

Upon learning of Mr. Clegg's donation to the VFW, Eclipse "was livid, to say the least," and promptly commenced an adversary proceeding seeking to make Mr. Clegg's debt related to the Loan non-dischargeable and objected to the confirmation the Mr. Clegg's repayment plan. (R. 7-8.) However, after weeks of negotiation, Eclipse withdrew its objection "in exchange for an estimated claim in the amount of $150,000, of which $25,000 was deemed non-dischargeable even in the event of conversion." (R. 8.) On February 12, 2022, the bankruptcy court confirmed Mr. Clegg's plan, which expressly provided that all property of the estate vested in Mr. Clegg. (*Id.*)

In October of 2022, Final Cut's theater permanently closed, and Mr. Clegg converted the bankruptcy case to Chapter 7 in good faith as he could no longer make payments under the plan. (*Id.*) During the pendency of Chapter 13, Mr. Clegg had paid $10,000 to the Servicer. (R. 8-9.) This repayment, together with the increased market value of Mr. Clegg's home, had increased the non-exempt equity in the home by $100,000. (R. 9.) Mr. Clegg indicated his intention to reaffirm the mortgage debt that he owned to the Servicer and remain in home. (*Id.*) But "Eclipse, perhaps looking for retribution and redemption, offered purchase both the home and the alleged preference claim" against Ms. Pink with $470,000. (R. 8.) The trustee, agreeing to the purchase, filed a motion (the "Sale Motion") to sell both the home and the alleged preference claim to Eclipse, and Mr. Clegg timely filed his objection. (R. 9-10.)

The Bankruptcy Court for the District Court for the District of Moot denied the Sale Motion, holding that any post-petition, pre-conversion increase in the equity of Mr. Clegg's home should inure to his benefit when he converted the bankruptcy from Chapter 13 to Chapter 7 in good faith and that the trustee's statutory power to avoid and recover transfers under sections 547 and 550 cannot be sold as a part of the property of the estate. (R. 10.) After the trustee's timely direct appeal, the Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court's denial of the Sale Motion on the same grounds. (*Id.*)

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly held that any post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor when the debtor converts from Chapter 13 to Chapter 7 in good faith. In delineating the scope of property of the estate, Section 541(a)(1) refers to the debtor's property at the time of the petition and section 541(a)(6) refers to post-petition proceeds of or from property of the estate at the time of the petition, which clarifies that property of the estate at the time of the petition is legally distinct from post-petition of such property. And the plain language of section 348(f)(1)(A) mandates that property of the estate only includes property "as of the date of filing of the petition" when the debtor converts the case in good faith, excluding the post-petition proceeds of or from such property. It is generally agreed that post-petition increase in a debtor's property at the time of the petition is proceeds of or from property of the estate at the time of the petition. Therefore, any post-petition, pre-conversion increase in a debtor's property is not included in property of the estate upon good-faith conversion.

Even if the Court finds that property of the estate at the time of the petition is not legally distinct from proceeds of or from such property, section 348(f)(1)(B) reminds us that courts also need to determine the value of property of the estate in the converted Chapter 7 case, which, by the plain language of section 348(f)(1)(A), should be determined "as of the date of filing of the petition." And this interpretation is consistent with the Code because the "snapshot" rule is widely adopted in other sections of the Code.

Such an interpretation is supported by the comparison between section 348(f)(1) and its bad-faith exception in section 348(f)(2), which emphasizes that any interest, legal or equitable, that accrues between the petition and the conversion should belong to the good-faith debtors but not the bad-faith ones. The term "property of the estate" is intended to address both legal and equitable interests, and our interpretation would make the term "as of the date of filing of the petition" not superfluous.

Further, the legislative history confirms that Congress intended the good-faith debtors to own the post-petition, pre-conversion increase in equity in their property, including those that derive from the debtor's repayment of their mortgage or come out of good luck. The Court should give effect to the clear congressional purpose, especially considering that the statutory language does not itself bar the result.

Moreover, assuring the debtors that they will be able to keep the post-petition, pre-conversion increase in equity in their property can encourage them to file Chapter 13 instead of Chapter 7, which is the congressional policy, to repay their mortgage according to the confirmed repayment plan, and, when they have to convert their Chapter 13 cases to other Chapters, to convert in good faith. And this interpretation would not unfairly penalize the creditors for a debtor's choice to file Chapter 13 rather than Chapter 7, because it is highly likely that creditors would not benefit from post-petition increase in equity in the debtor's property in a typical Chapter 7 case anyway.

The pivotal question presented in the second issue on appeal is whether the avoidance powers granted to a Chapter 7 bankruptcy trustee constitute property of the bankruptcy estate, and therefore may be sold to other parties. On this issue, the Thirteen Circuit correctly held avoidance powers are not property of the estate. The Bankruptcy Code, specifically section 541(a), creates the bankruptcy estate and outlines its components upon the filing of a bankruptcy petition. The trustee is endowed with fiduciary duties to maximize the estate's value for the creditors, which includes utilizing avoidance powers to reclaim certain pre-bankruptcy transfers.

Avoidance powers are distinct from the estate's property; they are a set of statutory tools designed to facilitate the equitable distribution of the debtor's assets among creditors, not to be traded or transferred as saleable property. Section 363(b) permits the trustee to sell "property of the estate," a term that does not encompass the statutory avoidance powers per the explicit text of the Bankruptcy Code. The deliberate omission of avoidance powers from the definition of estate property in section 541(a) underscores the intent of Congress to treat these powers differently from estate property.

Courts have traditionally distinguished avoidance powers from saleable property interests, viewing them as inalienable statutory powers integral to the trustee's fiduciary responsibilities. Although the recovery resulting from the exercise of these powers falls within the estate's property, the powers themselves do not. This interpretation aligns with the natural presumption that different statutory language intends different meanings, a principle upheld by the Supreme Court. Furthermore, the Code's framework and legislative history solidify the trustee's exclusive right to exercise avoidance powers, not to market them.

Adopting a contrary position would result in statutory inconsistencies and disrupt the bankruptcy framework that mandates the trustee's role as a fiduciary. It would also contravene the Code's objective of equitable creditor treatment by allowing the sale of avoidance powers, which could potentially transfer fiduciary duties to non-fiduciary third parties, an outcome that would conflict with the trustee's unique role and responsibilities.

Lastly, the sale of avoidance powers to a creditor with self-interested motivations, such as Eclipse in the present case, would undermine the collective benefit of the estate, which the powers are intended to serve. Such a sale would be incompatible with the principles of bankruptcy law, which aim to preserve impartiality and equity in the distribution of the debtor's assets. Therefore, the circuit split should be resolved in favor of the position that avoidance powers are not saleable estate property.

ARGUMENT

I. ANY POST-PETITION, PRE-CONVERSION INCREASE IN EQUITY IN A DEBTOR'S PROPERTY INURES TO THE BENEFIT OF THE DEBTOR UPON CONVERSION OF A CASE FROM CHAPTER 13 TO CHAPTER 7 IN GOOD FAITH.

The Court reviews legal issues, as in this case, *de novo* without any deference to the lower court's determination. *Salve Regina Coll. v. Russell*, 499 U.S. 225, 237-38 (1991). Under the standard of review, the plain language of section 348(f)(1)(A), when read in context, requires that post-petition, pre-conversion appreciation in the debtor's property belong to the debtor when the Chapter 13 case is converted in good faith, which interpretation is further supported by the legislative history and policy concern. *Crandon v. United States*, 494 U.S. 152, 158 (1990) ("In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy." (citation omitted)).

A. Section 348(f)(1)'s text compels the interpretation that post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor when the Chapter 13 case is converted in good faith.

The interpretation of the Bankruptcy Code "starts . . . with the language of the statute itself." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1759 (2018) (quotation omitted). Hence, our inquiry begins with the text of section 348(f)(1)(A), which delineates the scope of property of the estate when a Chapter 13 case is converted to other Chapters in good faith.

1. Post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor because it is post-petition proceeds, which is legally distinct from property of the estate as of the date of filing of the petition.

Section 348(f)(1)(A) provides that, "when a case under Chapter 13 of this title is converted to a case under another Chapter under this title, 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) (emphasis added). But section 348 itself does not define the term "property of the estate, as of the date of filing of the petition." 11 U.S.C. § 348. Therefore, we first turn to the definition of "property of the estate" in other provisions in the Code. *See Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 85 (2017) (noting that in interpreting a statute, courts usually presume that identical words used in different parts of the same statute carry the same meaning).

In the Code, the term "property of the estate" has different scopes in different Chapters. *See* 11 U.S.C. §§ 348, 902(1) 1115. Among the provisions, section 541 gives a general definition of "property of the estate," which provides that in general, the estate would include "all legal or equitable interests of the debtor in property as of the commencement of the case" and "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." 11 U.S.C. § 541(a)(1), (6). This clearly indicates that "property of the estate" at the time of filing of the petition is legally distinct from "proceeds . . . of or from" such property, and section 348(f)(1)(A)'s plain language only refers to the former, i.e., "property of the estate, as of the date of filing of the petition." *See In re Barrera*, 22 F.4th 1217, 1222-23 (10th Cir. 2022). Otherwise, section 541(a)(6) would be superfluous. *City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 159 (2021) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

Additionally, when modifying the definition of "property of the estate" in the respective Chapters, other provisions in the Code directly refer to "the property specified in section 541" when they intend to refer to all the property specified in section 541. *Compare* 11 U.S.C. §§ 1115(a), 1186(a), 1306(a) *with* 11 U.S.C. § 902(1). Without reference to section 541, section 348(f)(1)(A) does not refer to all the property specified in section 541, emphasizing that the estate only includes "property of the estate, as of the date of filing of the petition" but not post-petition proceeds of such property. 11 U.S.C. § 348; *see also Ziglar v. Abbasi*, 582 U.S. 120, 133 (2017) ("[I]n any inquiry respecting the likely or probable intent of Congress, the silence of Congress is relevant[.]").

Further, post-petition increase in equity in a debtor's property is proceeds under section 541(a)(6). The Code does not define "proceeds." When a statute does not define a term, courts look to the ordinary meaning of the term, which can be derived from its dictionary definition. *See Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 634 (2012) (determining the meaning of "portion" from the dictionaries in the absence of contrary statutory indication). As a noun, "proceeds" ordinarily means "the total amount brought in." *Proceeds*, MERRIAM-WEBSTER DICTIONARY ONLINE, https://www.merriam-webster.com/dictionary/proceeds; *see also*, *Proceeds*, OXFORD ENGLISH DICTIONARY ONLINE, https://www.oed.com/dictionary/proceed_n?tab=meaning_and_use#28486629 (defining the noun "proceed" as "That which proceeds, is derived, or results from something else; that which is obtained or gained by any transaction or process; an outcome; esp. the money obtained from an event, activity, or enterprise"). Congress intends the definition of "proceeds" in section 541(a)(6) to be broad. *See In re McLain*, 516 F.3d 301, 312 (5th Cir. 2008); *In re Bracewell*, 454 F.3d 1234, 1256 (11th Cir. 2006) (Pryor, J., dissenting) (citing the legislative history in concluding section 541(a)(6) has a broad scope).

Applying the broad definition, post-petition increase in equity in a debtor's property is additional equity brought in by the debtor's ownership interest of the underlying property at the time of the petition and, therefore, falls into the broad scope of "proceeds." *See, e.g.*, *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018) ("[Section 541(a)(6)] includes the appreciation in value of a debtor's home."); *In re Goins*, 539 B.R. 510, 515-16 (Bankr. E.D. Va. 2015) (collecting cases holding that post-petition appreciation in property belongs to the estate under section 541(a)(6)). Therefore, when a Chapter 13 debtor converts the bankruptcy to a Chapter 7 case in good faith, post-petition, pre-conversion increase in equity in the debtor's property, as proceeds acquired after "the date of filing of the petition," belongs to the debtor, not the estate. 11 U.S.C. § 348.

The Circuits are split on this issue. Keeping in mind the mandate of the statutory language, the Tenth Circuit correctly held that property of the estate under section 348(f)(1)(A) does not include post-petition proceeds from the debtor's legal and equitable interests at the time of the petition. *In re Barrera*, 22 F.4th at 1222-23. Accordingly, the court held that the proceeds from the post-petition sale of the debtor's house belongs to the debtor, not the estate, upon good-faith conversion. *Id.* at 1223-34. Because the house in question was sold before conversion in that case, the court did not address whether post-petition, pre-conversion increase in equity in the property would be included in the converted estate when the property has not been sold before conversion. *Id.* at 1223 n.1.

However, it is generally agreed that post-petition appreciation in the value of a debtor's property is proceeds of the property regardless of whether the property is sold after petition. *See, e.g.*, *Wilson*, 909 F.3d at 309; I*n re Potter*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999). Therefore, the corollary is that post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor upon good-faith conversion, whether or not the debtor sells the house before conversion.

In re Barrera, 22 F.4th at 1062 (Pryor, J., dissenting). Otherwise, if the benefit of such post-petition, pre-conversion increase in equity in the property inures to the debtor only when the debtor sells the property before conversion, it will improperly incentivize the debtor to sell the house during the pendency of the Chapter 13 case, as no debtor can guarantee they will never become the unfortunate debtor who "fail[s] to complete a Chapter 13 plan successfully" within the 3-to-5-year repayment plan period. *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). That effect is plainly contrary to the purpose of Chapter 13, which is to "allow[] a debtor to retain his property." *Id.*

In comparison, the Ninth Circuit erred outright in holding that, according to section 541(a)(6), post-petition, pre-conversion increase in equity in a debtor's property belongs to the estate upon conversion. *In re Castleman*, 75 F.4th 1052, 1057-58 (9th Cir. 2023). The court's reasoning was established on the premise that "property in the estate" used in section 348(f)(1)(A) had the same denotation as used in section 541. *Id.* at 1056. However, when interpreting a statute, courts must construe the meaning of one term "in light of the terms surrounding it." *FCC v. AT&T Inc.*, 562 U.S. 397, 405 (2011) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004)). The Ninth Circuit isolated the term "property of the estate" from the term "as of the date of filing of the petition," erroneously finding that the estate would include proceeds that accrued after "the date of filing of the petition." 11 U.S.C. § 348(f)(1)(A); *In re Castleman*, 75 F.4th at 1056.

Besides, even assuming that "property in the estate" used in section 348(f)(1)(A) is totally the same as in section 541, it will not include all proceeds but only those proceeds that are "of or from property of the estate." 11 U.S.C. § 541(a)(6). However, in Chapter 13, the court's confirmation of the repayment plan "vests all of the property of the estate in the debtor," essentially turning post-confirmation increase in equity in such property into proceeds of or from property of the debtor, not from property of the estate. 11 U.S.C. § 1327(b); *see also In re Barrera*, 22 F.4th at

1223; *In re Black*, 609 B.R. 518, 529 (B.A.P. 9th Cir. 2019) ("[T]he revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation."). Therefore, even by the Ninth Circuit's own logic, such post-confirmation increase in equity, as in our case, would not belong to the estate. (R. 7-8.)

2. Post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor because property of the estate should be valued as of the date of filing of the petition.

Even if the Court finds that post-petition increase in equity in a debtor's property is not a separate equity from the underlying asset despite the clear indication of section 541(a)(6), the Court should still decide the post-petition increase in equity inures to the benefit of the debtor because the "valuations of property" should be at the "as of the date of filing of the petition." 11 U.S.C. §§ 348(f)(1), (2).

Immediately following section 348(f)(1) is section 348(f)(2), which provides, in the relevant part, that, "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 . . ." 11 U.S.C. § 348 (f)(2). At the minimum, its plain language reminds us that in the converted Chapter 7 case, other than determining the scope of property of the estate, courts also have the task to determine the value of the property. *Cf. In re Barrera*, No. CO-20-003, 2020 WL 5869458, at *4 (B.A.P. 10th Cir. Oct. 2, 2020) ("[E]ven if we assume [the Bankruptcy Code evidences Congress's intent to include appreciated equity as property of the estate], we are left with the question of the date the court should use to calculate a debtor's interest in the equity."), *aff'd*, 22 F.4th 1217 (10th Cir. 2022).[2]

[2] Some courts, relying on the legislative history, have held that section 348(f)(1)(B) was enacted in 2005 merely to address the practice of "implicit valuation." *See, e.g.*, *In re Hodges*, 518 B.R. 445, 449-50 (E.D. Tenn. 2014). It is, however, irrelevant to the argument here, because we are not arguing that the date of valuations used in section 348(f)(1)(B) automatically governs section 348(f)(1)(A). Instead, here we are only citing the plain language of

The plain language of section 348(f)(1)(A) mandates that courts should calculate the value of "estate of the property, as of the date of filing of the petition." 11 U.S.C. § 348 (f)(1)(A); *see also BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1542 (2021) ("[T]his Court's task is to discern and apply the law's plain meaning as faithfully as we can[.]"). Further, identical words used in the Code are presumed to carry the same meaning. *Henson*, 582 U.S. at 85. Known as the "snapshot" rule, the term "as of the date of the filing of the petition" is used multiple times in the Code to convey the meaning that the rights of creditors and debtors are fixed as of the moment of the filing of the petition. *See, e.g.*, 11 U.S.C. §§ 101(51D)(A), 502(b), 1182(1)(A), 1308(b)(1)(A). Notably, section 522 uses the term to mean that the value of the property is fixed at the time of the petition. 11 U.S.C. § 522(a)(2). Therefore, our interpretation that the value of the property should be fixed "as of the date of filing of the petition" fits well within the Code. 11 U.S.C. § 348 (f)(1)(A); *In re Barrera*, 620 B.R. 645, 651-52 (Bankr. D. Colo. 2020), *aff'd*, No. CO-20-003, 2020 WL 5869458 (B.A.P. 10th Cir. Oct. 2, 2020), *aff'd*, 22 F.4th 1217 (10th Cir. 2022).

3. Comparison between section 348(f)(1) and section 348(f)(2) supports the interpretation that interests which accrue after the petition and before the conversion belong to the debtor.

Courts should read the meaning of the statutory text in the context. *See, e.g.*, *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) (noting that the court has a duty to construe statutes, not isolated provisions, and must read the words Congress enacted in their context and with a view to their place in the overall statutory scheme). Following section 348(f)(1), Congress added an exception of conversion in bad faith in section 348(f)(2), which provides that, "If the

section 348(f)(1)(B) to prove that the date of valuations of a property can be a separate question from whether the property belongs to the estate, in the context of a converted Chapter 7 case, and that the language of section 348(f)(1)(B) does not forbid using the date of the petition as the timepoint for valuations.

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)(2) (emphasis added).

Instead of unadulteratedly catching a debtor's all property to repay the debt, the Code "strikes a balance between the interests of insolvent debtors and their creditors." *Bartenwerfer v. Buckley*, 598 U.S. 69, 72 (2023). By putting section 348(f)(1) and section 348(f)(2) together, Congress highlights that, in good-faith conversion, all post-petition, post-conversion property and equities should belong to the debtor, in order to encourage good-faith debtors and penalize bad-faith ones. *See Harris*, 575 U.S. at 517; *In re Michael*, 699 F.3d 305, 313-14 (3d Cir. 2012); *In re Barrera*, 22 F.4th at 1220-21. It is undisputed that Mr.Clegg converted the case in good faith in our case, and, therefore, the post-petition, pre-conversion increase in equity in Mr.Clegg's property should inure to the benefit of Mr.Clegg. (R. 8.)

Some courts, noting the comparison of the two adjacent provisions, have held that only newly-acquired, post-petition property, instead of newly-acquired equity, would belong to the debtor upon good-faith conversion. *See In re Goetz*, 651 B.R. 292, 299 (B.A.P. 8th Cir. 2023). However, this interpretation should have failed for two reasons. First, there is no justification as to why the statute only addresses newly-acquired property but not newly-acquired equity. *See, e.g.*, *In re Robinson*, 472 B.R. 854, 857 (Bankr. M.D. Fla. 2012) (holding that accumulated equity acquired after the petition and before the conversion belongs to the debtor upon conversion); *In re Hodges*, 518 B.R. 445, 451 (E.D. Tenn. 2014) (same); *In re Woodland*, 325 B.R. 583, 586 (Bankr. W.D. Tenn. 2005) (same). The term "property of the estate" is intended to address all interests in property, legal and equitable. 11 U.S.C. § 541(a). And section 348(f) commands that the court, when deciding whether a debtor would be entitled to some interests upon good-faith conversion, should focus on the time when the interests accrue – the language itself mentions no differentiation between property and equity. 11 U.S.C. § 348(f); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2381 (2020) (noting it is a fundamental principle that courts cannot add terms not found in the statute). Besides, the court-added dichotomy of property and equity is immaterial to proceeds because "proceeds are, strictly speaking, after-acquired property." *In re Barrera*, 22 F.4th at 1223.

Second, this interpretation would make superfluous the term "as of the date of filing of the petition." Conversion does not changes the date of filing. 11 U.S.C. § 348(a); *Harris*, 575 U.S. at 515. And the general rule is that the estate includes the debtor's interests only "as of the commencement of the case." 11 U.S.C. § 541(a)(1). In other words, even absent the term "as of the date of filing of the petition" in section 348(f)(1), the debtor's newly-acquired, post-petition property would not become part of the converted Chapter 7 estate anyway. *See, e.g.*, *In re Bracewell*, 454 F.3d at 1237 ("[Under section 541(a)(1),] the property of the debtor's estate is property the debtor had when the bankruptcy case commences, not property he acquires thereafter."). Therefore, interpreting the term "as of the date of filing of the petition" in section 348(f)(1)(A) to exclude from property of the estate in the converted Chapter 7 case not only newly-acquired property but also proceeds that would have been included under section 541(a)(6) is more consistent with the statutory scheme. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 222 (2008) (noting that the court's construction of statute "must, to the extent possible, ensure that the statutory scheme is coherent and consistent").

B. Section 348(f)'s legislative history supports the interpretation that post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor upon good-faith conversion.

The plain language of section 348(f)(1)(A) in context compels the conclusion that post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor upon good-faith conversion, and the legislative history further supports the interpretation. *See Tidewater Oil Co. v. United States*, 409 U.S. 151, 157 (1972) ("[W]hile the clear meaning of statutory language is not to be ignored . . . it is essential that we place the words of a statute in their proper context by resort to the legislative history." (citing *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1943)).

There used to be a circuit split on whether property acquired after the petition would belong to the debtor when the debtor converted the Chapter 13 case to other Chapters. *Compare In re Bobroff*, 766 F.2d 797, 802-04 (3d Cir. 1985) (holding that post-petition cause of action was not property of the estate upon conversion from Chapter 13 to Chapter 7) *with In re Lybrook*, 951 F.2d 136, 137-39 (7th Cir. 1991) (holding that property inherited after the petition belonged to the estate upon conversion from Chapter 13 to Chapter 7 in order to "discourage strategic, opportunistic behavior that hurts creditors without advancing any legitimate interest of debtors").

To resolve the split, Congress enacted section 348(f)(1)(A) to "overrule[] the holding in cases such as *Matter of Lybrook* and adopt[] the reasoning of *In re Bobroff*." H.R. Rep. No. 103-835, at 57 (1994) (citation omitted), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. To exemplify the "serious disincentive to file Chapter 13 filings" it sought to eliminate with § 348(f), the House of Representatives' Committee on the Judiciary report on the Bankruptcy Reform Act of 1994 (the "House Report") provided,

> "For example, a debtor who had $10,000 equity in a home at the beginning of the case, in a State with a $10,000 homestead exemption, would have to be counseled concerning the risk that after he or she paid off a $10,000 second mortgage in the Chapter 13 case, creating $10,000 in equity, there would be a risk that the home could be lost if the case were

> converted to Chapter 7 (which can occur involuntarily). If all of the debtor's property at the time of conversion is property of the Chapter 7 estate, the trustee would sell the home, to realize the $10,000 in equity for the unsecured creditors and the debtor would lose the home."

Id. The House Report clearly illustrates that in enacting section 348(f)(1)(A), Congress intended the good-faith debtor to keep the property acquired after the petition, which included not only newly-acquired assets but also post-petition increase in equity in the pre-petition property. *Id.*; *see also In re Nichols*, 319 B.R. 854, 856 (Bankr. S.D. Ohio 2004). Accordingly, post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor upon good-faith conversion. *Johnson v. United States*, 529 U.S. 694, 710 n. 10 (2000) ("Our obligation is to give effect to congressional purpose so long as the congressional language does not itself bar that result." (citation omitted)).

Although the increased equity in the example in the House Report derived from the debtor's repayment of mortgage, it is legally indistinct from increased equity due to changed market value, for the purpose of section 348(f)(1)(A). Congress's explicit overruling of *In re Lybrook*, which noted that allowing the debtor to keep the inherited property would not advance any legitimate interest of debtors, unambiguously illustrated that new equity acquired out of good fortunes should belong to the debtor as well. 951 F.2d at 137; *see also In re Barrera*, 620 B.R. at 653 ("§ 348(f)(1)(A)'s legislative history [suggested that the] method of acquisition after the Chapter 13 petition should not matter[.]" (quotation omitted)).

Some courts have held that the legislative history shed no light on the issue here because "Section 348(f) does not specify that debtors are entitled to retain equity resulting from payments during the Chapter 13 case—the scenario referenced in the House Report." *In re Goetz*, 651 B.R. at 299. However, the reasoning presumed the conclusion it needed to prove, essentially arguing that the legislative history failed to support the proposition that section 348(f)(1)(A) addressed increased equity because section 348(f)(1)(A) did not address increased equity. As argued above, section 348(f)(1)(A) did not specify the case of increase equity because the term "property of the estate" was intended to address all interests in property, including the equitable interests. 11 U.S.C. § 541(a)(1).

C. Policy consideration further confirms that, to encourage Chapter 13 filings and repayment, post-petition, pre-conversion increase in equity in a debtor's property belongs to the debtor upon good-faith conversion.

As the House Report clarifies, the fundamental purpose of section 348(f) is to eliminate the "serious disincentive to file Chapter 13 filings." H.R. Rep. No. 103-835, at 57. And the policy rationale of encouraging debtors "to attempt to repay their debts through a reorganization plan rather than liquidate . . . now has become settled law." *In re Michael*, 699 F.3d at 315-16 (collecting cases); *see also Harris*, 575 U.S. at 514. Allowing the good-faith debtors to own the post-petition, pre-conversion increase in equity when they have to convert the Chapter 13 case to other Chapters would better encourage debtors to file Chapter 13. *In re Jackson*, 317 B.R. 511, 516 (Bankr. N.D. Ill. 2004) ("[I]t is the assurance that debtors may keep any appreciation of their property during the Chapter 13 case that promotes reorganization over liquidation.").

Furthermore, Chapter 13 requires that debtors must repay their debts "over a three- to five-year period." *Harris*, 575 U.S. at 514. If the Court holds that post-petition increase in equity always belongs to the estate upon conversion, the increased equity created by debtors' honest repayment of mortgage would no longer belong to them once they unfortunately become unable to continue the repayment plan. *See, e.g.*, *In re Castleman*, 75 F.4th at 1058; *In re Goetz*, 651 B.R. at 302. And such conversions happen all the time in Chapter 13 cases. *Harris*, 575 U.S. at 514. Therefore, to better perform the function of Chapter 13 and encourage debtors' repayment, debtors need to be assured that they will be entitled to such post-petition, pre-conversion increase in equity upon good-faith conversion.

Additionally, under the interpretation, creditors will not be penalized for the debtor's choice to initially file Chapter 13 instead of Chapter 7, because creditors would not benefit from such post-petition increase in equity in most Chapter 7 cases, if not all, anyway. *In re Barrera*, 620 B.R. at 654. ("[I]n a typical Chapter 7 case, the trustee will not have the opportunity to realize significant postpetition increases in home equity due to either prompt closure of the case or the debtor's filing of a timely motion to abandon.").

II. The Trustee cannot sell the statutory power to avoid and recover transfers as property of the bankruptcy estate.

The second issue on appeal concerns whether the rights and powers granted by Congress to a Chapter 7 bankruptcy trustees to avoid and recover transfers are saleable property of the bankruptcy estate. As explained earlier, one immediate consequence of a bankruptcy petition is the creation of a bankruptcy estate, defined and bounded by section 541(a) of the Bankruptcy Code. *See City of Chicago v. Fulton*, 592 U.S. at 156. An automatic stay is also imposed to protect the estate from dismemberment by individual creditors pursuing their own interests to the detriment of the others. *See id*; 11 U.S.C. § 362(a). The trustee is charged with the duty to maximize the value of the bankruptcy estate for the benefit of the debtor's creditors. *See In re Rigden,* 795 F.2d 727, 730 (9th Cir. 1986) ("The trustee . . . has a fiduciary obligation to conserve the assets of the estate and to maximize distribution to creditors."); *see also* 11 U.S.C. §§ 704(a)(1), 726.

To fulfill its duty of maximizing the value of the estate, the trustee is specifically assigned the so-called "avoidance powers," outlined in section 544 - 553 of the Code, and to bring claims and recover certain pre-bankruptcy transfers made by a debtor. *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019) (citations omitted). These powers serve a fundamental component of the trustee's role in ensuring equitable distribution among creditor. Selling these powers would not only contradict plain language of the Code and its statutory framework but also undermine the trustee's fiduciary responsibilities.

Section 363(b) provides for the sale of “property of the estate,” 11 U.S.C. § 363(b), and that a trustee “may sell only assets that are property of the estate.” *In re Moore*, 608 F.3d 253, 258 (5th Cir. 2010); *see also In re Stein*, 281 B.R. 845, 848 (Bankr. S.D.N.Y. 2002) (“Since the trustee can only sell property of the estate ... the threshold question is whether [assets to be sold] are property of the estate.”). Because of the plain language of section 541(a), when read in context with other parts of the statutes, and policy rationales, avoidance powers of the trustee do not constitute property of the estate under section 541(a), and therefore may not be sold or transferred to other parties under section 363(b).

A. Plain language of section 541(a) does not include avoidance powers of the trustee.

As the starting point, Section 541(a) provides that the “estate is comprised of all the following property, wherever located and by whomever held” and enumerates seven paragraphs establishing what constitutes property of the debtor’s bankruptcy estate. 11 U.S.C. § 541(a). To qualify under any paragraph of section 541(a), avoidance actions must constitute “property” or an “interest in property.” *Id*. The Supreme Court has emphasized that when interpreting statutes, courts should not read into the text something that is not there, especially in a detailed statutory scheme like the Bankruptcy Code. *See Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-843 (1984). By not listing avoidance powers in section 541(a), Congress clearly intended these powers to be distinct from estate property.[3]

[3] For the purpose of this brief, our discussion will be limited only to why specifically paragraph (1) and (7) do not include avoidance power, because even those courts who held that property of the estate included avoidance power

1. The rights and powers of a trustee to bring an avoidance claim are not property of the estate because, as statutory powers, they are not "property" or "property interests."

Congress's choice to "use[] certain language in one part" of the Code and "different language in another" creates an assumption that "different meanings were intended" by the contrasting terms. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (citation omitted). Under Chapter 5 of the Code, Congress distinctly outlined the scope of the bankruptcy estate, including the debtor's "property" and "property interests," as well as outlining the trustee's "rights and powers" to avoid and recover pre-bankruptcy transfers. *See, e.g.*, 11 U.S.C. §§ 541(a), 544(a). By establishing this distinction, Congress made it clear that the debtor's "property" and "property interest" must be separate from "rights and powers" of the trustee. *See U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980) (stating that when "[t]he language of the statute is clear . . . we have historically assumed that Congress intended what it enacted"). Instead, by only including "property" and "property interest" in property of the estate, Congress intentionally excluded avoidance powers from property of the estate.

Admittedly, courts have construed the trustee's powers of avoidance as causes of action, and held that causes of actions can be part of the property of the estate. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53-54 (1989) (characterizing the "right to recover a fraudulent conveyance under 11 U.S.C. § 548(a)(2)" as a "statutory cause of action"); *see also* H.R. Rep. No. 95-595, at 175-76 (1978) (definition of property of the estate "includes all interests [in property], such as ... choses in action [and] causes of action …"), *as reprinted* in 1978 U.S.C.C.A.N. 5963, 6573. And the Thirteenth Circuit's dissent further relied on *United States v. Nordic Vill., Inc.*, which, in its dicta, noted that the right to recover postpetition transfers under section 550 is a claim, which

agreed that avoidance power could not possibly fall into the other five paragraphs. *See in re Simply Essentials, LLC*, 78 F.4th 1006, 1009 (8th Cir. 2023); *In re Moore*, 608 F.3d 253, 262 (5th Cir. 2010).

constitutes property of the estate under section 541(a)(3). 503 U.S. 30, 37 (1992); *see* 11 U.S.C § 541(a)(3) (property of the estate includes "[a]ny interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title").

Nevertheless, courts have traditionally distinguished avoidance actions from other causes of actions by characterizing them as inalienable statutory powers, maintaining that such a power does not constitute estate property. *See, e.g.*, *In re Cybergenics Corp.*, 226 F.3d 237, 244-45 (3d Cir. 2000) (analogizing section 544 "to the power of a public official to carry out various responsibilities in a representative capacity... not an asset"); *In re Feringa*, 376 B.R. 614, 624 (Bankr. W.D. Mich. 2007) ("The avoiding powers are not 'property' but a statutorily created power to recover property"). Moreover, although the property or property interest recovered by the trustee under section 550 fall under the scope of property of the estate, section 541(a)(3)'s plain language clarifies that the right the used to recover assets for the estate through an avoidance action should not itself be regarded as a part of the estate's property. *See In re Xonics, Inc.*, 63 B.R. 785 (Bankr. N.D. Ill. 1986) (clarifying that "concepts of avoiding a transfer and recovering from the transferee" indicates that property of the estate only includes avoidance recoveries); *In re Redding*, 247 B.R. 474, 477 (B.A.P. 8th Cir. 2000); *In re CyberCo Holdings, Inc.*, 382 B.R. 118, 143 (Bankr. W.D. Mich. 2008) . The distinct powers and legal tools granted to trustees to manage and recover assets should not be equated to property of the bankruptcy estate itself. Congress could have easily included avoidance claims as property of the estate under section 541(a), but instead, Congress enacted an approach which separates the authority to prosecute and recover avoided transfers from the ownership of the proceeds of those claims. *See, e.g.*, 11 U.S.C. § 541(a)(3) (Any interest in property that the trustee recovers…). Paragraphs 541(a)(1)-(7) plainly do not cross-reference the trustee's avoidance and recovery powers within its ambit. *See* 11 U.S.C. §§ 541(a)(3), (4) (explicitly referencing other sections when it intends to include interests created by other sections in the property of the estate).

1. Avoidance powers are not property of the estate under Section 541(a)(1) because the debtor has no interest in the trustee's avoidance powers.

Section 541(a)(1) provides that the "estate is comprised of all legal or equitable interests *of the debtor* in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (emphasis added). The Supreme Court has generally interpreted the concept of "property of the estate" to be broad and all-encompassing. *See United States v. Whiting Pools Inc.*, 462 U.S. 198, 205 (1983). Yet the Court has confirmed the age-old principle that property of "estate cannot possess anything more than the debtor itself did outside bankruptcy." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. at 1663.

Therefore, to bring in property into the estate, the debtor must has some legal or equitable interest in such property as of the commencement of filing of bankruptcy petition. Within the property of the estate, state law then controls as to the attributes of those property interest, unless federal law otherwise creates property interest. *See Butner v. United States*, 440 U.S. 48, 55 (1979). Reading together, to bring avoidance actions within the estate property, the debtor must have some state- or federal-based interest in those types of actions.

State law fails to bring avoidance actions under property of the estate as they are created by Congress, as enumerated in various sections of the Bankruptcy Code. *See, e.g.*, 11 U.S.C. §§ 547, 548. On the other hand, the provisions themselves fail to do so as well. Throughout the Code, Congress refers to specific parties and confers specific rights to those parties to the exclusion of others. *See, e.g.*, *id.*; § 506(c) ("the *trustee* may recover . . ." (emphasis added)). Sections 547 and 548 explicitly assign avoidance powers to the trustee. This assignment of powers is unambiguous and exclusive. The Supreme Court in H*artford Underwriters Ins. Co. v. Union Planters Bank N.A.*, 530 U.S. 1, 6-7 (2000), clarified that where the statute names the parties granted the right to invoke its provisions such parties only may act, particularly where that party is the bankruptcy trustee. Therefore, the debtor lacks any state or federal based interest in avoidance action, and cannot include them as property of the estate.

This view is further supported by the Third Circuit opinion in *In re Cybergenics Corp*, where the court held that state law fraudulent transfer actions arising under section 544(b) were not saleable assets of the debtor. 226 F.3d at 245. In reaching this decision, the court reasoned that a fraudulent transfer action is "no more an asset of Cybergenics as debtor in possession than it would be a personal asset of a trustee," but rather akin to "a public official ha[ving] certain *powers* upon taking office as a *means* to carry out the functions bestowed by virtue of the office or public trust." *Id*. at 244 (emphasis added). While the same Circuit has stated "that *Cybergenics* does not hold that trustees cannot transfer causes of action," *In re Wilton Armetale, Inc.*, 968 F.3d 273, 285 (3d Cir. 2020) (citing *In re Cybergenics Corp.*, 226 F.3d at 244-45), the statutory rationale behind *Cybergenics* still holds true. Avoidance actions are powers statutorily created to be exercised on behalf of all creditors, and not a property interest of the debtor. *See In re Cybergenics Corp.*, 226 F.3d at 244-45.

The Thirteenth Circuit's dissent relied on dicta from *Whiting Pool*, which argued that "541(a)(1) is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code," *Whiting Pools*, 462 U.S. at 205, thereby including avoidance actions ("made available" by sections 544, 547, and 548 of the Code) as saleable estate property. However, this view not only conflates the trustee's statutory powers with assets of the estate, but also incorrectly referred to avoidance actions.

In *Whiting Pools*, the Supreme Court is confronted with whether section 542(a), which allowed only for the recovery of "property of the debtor," applied to levied property by the IRS.. *Id*. at 200-01. The problem there, however, was that while Whiting Pools had equitable and legal title to the seized items, it lacked a possessory interest. *Id*. at 206 n. 14. In holding that section 541(a)(1) broadly includes property available to the estate, even without the debtor's possessory interest at the bankruptcy's commencement, the Court reasoned that the trustee's section 542(a) turnover power "[i]n effect" grants the estate "a possessory interest" in the debtor's unpossessed property while also "abrogat[ing]" the secured creditor's "possessory interest." *Id.* at 206 n.14, 207. In other words, under the powers of section 542(a), the IRS's levied property was "made available" to Whiting Pools' estate as if the estate had a possessory interest in the property that supersedes the IRS's interest.

The Court's reasoning behind *Whiting Pools* cannot be read fairly to refer to avoidance actions or their sale for two main reasons. One, unlike Whiting Pool's levied property, the trustee's powers to avoid and recover are not legal or equitable interests "of the debtor," nor does the debtor ever had possessory interest in these powers. 11 U.S.C. §541(a)(1). Rather, avoidance powers are statutory powers derived from the Code itself and granted exclusively to the trustee. *See In re Cybergenics Corp.*, 226 F.3d at 245 (avoidance actions is a "separate authority of a trustee or debtor in possession to pursue the prepetition debtor's causes of action that become property of the estate upon the filing of the bankruptcy petition"). Second, avoidance power is not "made available" by the Code. Rather, they are statutorily created by the Code. *See In re Schwartz*, 383 B.R. 119, 126 (B.A.P. 8th Cir. 2008) (clarifying that section 547 "creates[s] causes of action"). Further, the *Whiting Pools* holding accentuates that "estate succeeds to no more or greater causes of action against third parties than those held by the debtor." *Whiting Pools*, 462 U.S. at 204 n.8. Applying this principle, avoidance actions accrue when a debtor commences a case by filing a bankruptcy petition, but not before then, so a debtor could not have an interest in those actions to "succeed to" in petition date and therefore no avoidance action can be held by the estate. *see also In re Raynor*, 406 B.R. 375, 381 (B.A.P. 8th Cir. 2009); *In re CyberCo Holdings, Inc.*, 382 B.R. at 130. Thus, nothing in *Whiting Pools* can be construed to mean section 541(a)(1) includes avoidance actions.

Incorrectly reading the holding in *Whiting Pools*, the Eighth Circuit held in *In re Simply Essentials, LLC* that Chapter 5 cause of actions constitute property of the estate under section 541(a) and therefore salable by the Chapter 7 trustee. 78 F.4th 1006, 1011 (8th Cir. 2023). The holding misconstrues with the plain language of the statute by equating statutory powers of avoidance and recovery, which are inherently vested in the trustee, with the debtor's property interests. Consequently, this decision should be viewed with caution and its applicability considered limited.

2. Section 541(a)(7) does not include avoidance powers into estate property because avoidance powers are not after-acquired property.

Likewise, section 541(a)(7) does not offer support for the proposition that avoidance actions are property of the estate. Section 541(a)(7) provides that property of the estate includes "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7).

There are two reasons. First, section 541(a)(7) covers only "interests in property," which, as explained earlier, either the estate or the debtor must have interest in such property. Rather, avoidance actions are congressionally bestowed to the to the trustees, evidencing an intent to be defined differently from interest in property or otherwise saleable property. *See Sosa*, 542 U.S. at 712 n.9 (noting different, contrasting words and the omission of them are purposeful). Therefore, by its plain meaning, section 541(a)(7) does not encompass avoidance powers, as these "powers" are not "property" nor "interest in property." 11 U.S.C. § 541(a)(7).

Second, section 541(a)(7) includes in the estate property acquired "after" the commencement of the case. The word "after" in section 541(a)(7) is not ambiguous, and is commonly used as "subsequent in time or order." *After*, MERRIAM-WEBSTER DICTIONARY ONLINE, https://www.merriam-webster.com/dictionary/after. However, as indicated by section 544(a), the trustee has "as of the commencement of the case" the rights and powers of a lien creditor. Temporally, the term "as of" is used to indicate a time at which something begins or ends. *As of*, MERRIAM-WEBSTER DICTIONARY ONLINE, https://www.merriam-webster.com/dictionary/as%20 of. As such, the word "after" in section 541(a)(7) cannot be read to include property acquired "upon" commencement of the case. Section 541(a)(7)'s plain meaning does not bring avoidance actions into the estate.

B. Including avoidance powers as estate property would create inconsistencies in the Bankruptcy Code.

Reading section 541(a) to cover avoidance actions as property of the estate, as the Thirteenth Circuit's dissent advocates, would create a number of serious inconsistencies within the text of the Bankruptcy Code. *See Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. at 275. The only interpretation that reconciles each provisions and the Code is to conclude that avoidance powers are not property of the estate.

1. The canons of statutory interpretation precludes including avoidance powers as property of the estate.

In interpreting a statute, the canon against surplusage provides that courts should "lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory." Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION

OF LEGAL TEXT 69, 714 (2012); *see also Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (providing that every word in a statute should have effect). As such, the inclusion or exclusion of a word or phrase should be instructive to the courts when interpreting a particular statute.

First, the Court must conclude that avoidance powers is not property of the estate under section 541(a), as holding otherwise would render other parts of the section superfluous. As part of the same section, paragraph 541(a)(3) provides that property interest recovered through the exercise of avoidance powers as part of the estate, and paragraph 541(a)(4) includes in the estate property interests preserved for the estate's benefit under voided transfers. 11 U.S.C. §§ 541(a)(3), (4). If avoidance powers themselves were estate property, it would render paragraphs 541(a)(3)-(4) superfluous as recoveries would constitute after-acquired property under paragraph 541(a)(7). There would be no need for the specially enumerated post-avoidance recovered amounts into the estate because paragraph (a)(7) would always do the same work.

Second, allowing the sale of avoidance powers would create inconsistencies within the Code. Interpreting a provision within the context of the larger statutory scheme requires analysis of the "real-world situation" relevant to the statute. *In re Handy Andy Home Improvement Ctrs.*, 144 F.3d 1125, 1128 (7th Cir. 1998) (stating the context "consists … also of the real-world situation to which the language pertains."). For instance, including avoidance powers as property of the estate would render section 554 of the Code absurd. Subsections 554(a) and (b) provide for abandonment of property of the estate that is "burdensome" or of "inconsequential value and benefit to the estate" after notice and a hearing. *See* 11 U.S.C. §§ 554(a)-(b). If avoidance actions are property of the estate, abandonment of such action would absurdly vests avoidance actions in the debtor or other parties, meaning the debtor may pursue claims to avoid transfers that the debtor himself/herself had made in the first place. The Senate Report on section 554 has further clarified that "abandonment may be to any party with a *possessory* interest in the property abandoned." S. Rep. No. 95–989, p. 184 (1978) (emphasis added). Since neither the debtor nor the creditors has any possessory interest in avoidance actions, as neither party ever possessed them, they cannot be party to the abandoned action, and cannot exercise it anyhow.

2. The bankruptcy framework vests avoidance powers only in the trustee as the fiduciary.

As reasoned earlier, avoidance powers are vested and reserved as rights and powers of the trustee. *See, e.g.*, 11 U.S.C. §§ 544(a)-(b), 547(b), 548(a)(1). In *Hartford Underwriters*, the Supreme Court held that the phrase "[t]he trustee may" in Code section 506(c) gave the trustee "exclusiv[e]" authority to enact that section's powers. 530 U.S. at 6-7. A longstanding rule of statutory construction dictates that "there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning." *Id*. at 9 (citing *Atlantic Cleaners & Dyers v. U.S.*, 286 U.S. 427, 433 (1932)). By using the same phrase ("the trustee may") as it did in section 506(c), it must be accepted that Congress intended to provide the avoidance powers embodied in sections 544(a)-(b), 547(b), 548(a)(1) to the trustee "and not to others." *Id*. at 7.

With this exclusive power, Congress underscored the trustee's unique statutory role in managing the estate and designated the trustee as a "representative to the estate," tasked with fiduciary duties. *See* 11 U.S.C. § 323(a); *see also* 11 U.S.C. § 704(a). The legislative history of the Bankruptcy Code underscores the trustee's unique role in managing the estate for the benefit of all creditors. *See* S. Rep. No. 95–989, p. 82 (1978) ("The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest."); *see also Commodity Futures Trading Comm'n v. Weintraub*, 71 U.S. 343, 352 (1985) (describing the trustee's duty as requiring the trustee to "maximize the value of the estate" or maximize "distribution to the creditors of the estate"). As a fiduciary to all creditors, the trustee bears the obligation to impartially evaluate whether to pursue litigation to recover assets, and may be held responsible for improper administration of the estate. *See* § 704(a)(4) (requiring trustee to "investigate the financial affairs of the debtor"); *Surf N Sun Apts., Inc. v. Dempsey*, 253 B.R. 490, 494 (M.D. Fla. 1999) (highlighting that creditors may request removal of trustee for failure to evaluate whether to bring a fraudulent transfer action, as mandated by section 704).

Selling avoidance powers of the trustee would effectively transfer these fiduciary responsibilities to a third party, which is inconsistent with the trustee's statutory role and disrupt the purpose of avoidance powers. *See* 11 U.S.C. § 704(a) (outlining the trustee's duties); *see also In re Craig*, 651 B.R. 612, 617 (Bankr. S.D. Ala. 2023) ("Trustee duties are… entrusted only to the Trustee. [The duties] are not to be ignored, nor are they to be delegated, absent well established special circumstances" (citation omitted)); *see also In re Lally*, 612 B.R. 246, 256 (Bankr. D.N.H. 2020) ("Only tasks that require professional skill and expertise beyond the ordinary knowledge and skill of the trustee may be delegated" (citation omitted)). In contrast to the trustee, the third party purchaser does not have a fiduciary relationship with the estate, and can only be expected to prioritize its own interests over those of the collective creditors. Allowing sale of avoidance powers would be antithetical to the Code's express conferral of avoidance power on a Court-supervised trustee and to the fundamental bankruptcy principle of equitable treatment of creditors.

Statutory history also demonstrates that Congress has always and only allowed the trustee to be the party to bring avoidance actions, which had long been the court's practice as well in the pre-Code age. *See* Bankruptcy Act of 1898, ch. 541, sec 50, 30 Stat. 562 (codified as amended at 11 U.S.C. § 96 (1958)) ("[P]reference may be avoided by the trustee… Where the preference is voidable, the trustee may recover the property"); *see also United States v. Gen. Res., Ltd.*, 204 F. Supp. 872, 875 (D. Colo. 1962) (voidable preference action is not available to a defendant as the "the trustee alone has the power to avoid the preference"); *Belding-Hall Mfg. Co. v. Mercer & Ferdon Lumber Co.*, 175 F. 335, 340 (C.C.A. 6th Cir. 1909) (holding buyer could not purchase preference action because "the trustee only could maintain a suit to avoid it"); *In re Sapolin Paints, Inc.*, 11 B.R. 930, 937 (Bankr. E.D. N.Y. 1981) (citing pre-Code case law for "the well-settled principle that neither a trustee in bankruptcy, nor a debtor-in-possession, can assign, sell, or otherwise transfer the right to maintain a suit to avoid a preference").

When Congress ratified the modern Bankruptcy Code in 1978, Congress made no material changes to the statutory language, nor demonstrated any intention to depart from the court's practices that existed. *See* 11 U.S.C. §§ 547, 550; *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. at 1762 ([When Congress used the materially same language between revisions,] "it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning" (citing *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)); *Edmonds v. Compagnie Generale Transatlantique,* 443 U.S. 256, 266–267 (1979) (noting that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific). Congress must, therefore, intended to retain its established meaning and for only the trustee to bring avoidance actions.

C. Circuit split should be decided in favor of Mr. Clegg because Eclipse has ill-disposed motivations and seeks to proceed with the avoidance claim for personal gains.

It has long been held many courts that creditors may have the derivative standing to exercise the trustee's right to avoid and recover only when it is "beneficial to the entire bankruptcy estate." *See, e.g.*, *In re Prof'l Inv. Props. of Am.,* 955 F.2d 623, 626 (9th Cir. 1992) (holding that when creditor is pursuing interests common to all creditors, it may exercise trustee's avoidance powers), *cert. denied*, 506 U.S. 818 (1992); *In re Dzierzawski*, 518 B.R. 415, 423 (Bankr. E.D. Mich. 2014) (granting creditor's motion for derivative standing, as it "can possibly result only in a net financial benefit to the bankruptcy estate, or at worst, no net financial effect, positive or negative"); *In re Waterford Funding, LLC*., 2017 WL 439308 at *3 (Bankr. D. Utah 2017) (denying the assignment of an avoidance motion to a creditor because doing so would permit the creditor to "pursue that claim on his own behalf, that creditor may be allowed to recover more of the estate's assets than would otherwise rightfully be due to the creditor").

The proposed sale to Eclipse as a creditor should be outrightly rejected because of Eclipse's underlying motivations. Eclipse, being a vindictive creditor, is likely pursuing the avoidance claim primarily to advance its own agenda, rather than to benefit the bankruptcy estate as a whole. (R. 7-8.) This self-serving approach is in stark contrast to the objective and impartial role of a trustee, who is tasked with ensuring objectivity and an orderly and equitable administration of the bankruptcy estate. Therefore, selling avoidance powers to a creditor with a personal vendetta like Eclipse would not only violate bankruptcy fundamental principles, but also compromise the integrity and fairness of the bankruptcy process.

CONCLUSION

For the foregoing reasons, the Respondent asks this Court to affirm the judgment of the United States Court of Appeals for the Thirteenth Circuit.