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 UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETIIONER

JANUARY 18, 2024

TEAM NUMBER 27

COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

1. Whether a 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 §§ 348 and 541.

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

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OPINIONS BELOW

The Bankruptcy Court for the District of Moot, the United States District Court for the District of Moot, and the United States Court of Appeals for the Thirteenth Circuit all decided in favor of the Respondent on both issues. The Thirteenth Circuit's decision is available at No. 23-0115 and reprinted in the Record at 3.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

RELEVANT STATUTORY PROVISIONS

The relevant portions of 11 U.S.C. § 348 provide:

(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 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 . . .
(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 portion of 11 U.S.C. § 363 provides:

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

The relevant portion of 11 U.S.C. § 522 provides:

(b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection.

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the daft of the filing the petition to the place in which the debtor's domicile has been located . . .

The relevant portions of 11 U.S.C. § 541 provide:

(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.

(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.

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

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

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

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

(3) made while the debtor was insolvent;

(4) made—

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

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

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

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

(B) the transfer had not been made; and

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

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

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

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

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

The relevant portion of 11 U.S.C. § 1306 provides:

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11 or 12 of this title, whichever occurs first.

The relevant portion of 11 U.S.C. § 1327 provides:

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

STATEMENT OF THE CASE

I. Factual History.

Following his retirement from the United States Army, Cpl. Eugene Clegg (the "Debtor") had a 100% membership interest in the The Final Cut, LLC ("Final Cut") transferred to him by his mother, Emily "Pink" Clegg ("Pink"). R. at 5. Final Cut is an entity that, at the time of the transfer, owned and operated a historic, single-screen movie theater in the City of Moot. *Id.* At that time, Final Cut had no liabilities and was consistently generating a net profit. *Id.* Due to his status as a retiree, the Debtor's sole source of income was the salary he received from his interest in Final Cut. *Id.*

In 2016, the Debtor, seeking to renovate the theater, caused Final Cut to borrow $850,000 (hereinafter referred to as the "Loan") from Eclipse Credit Union ("Eclipse"). *Id.* Under the terms of the Loan, the Debtor granted Eclipse first priority liens (which were properly perfected) on Final Cut's real and personal property, and as additional security for repayment, the Debtor executed an unlimited, unconditional, unsecured personal guaranty. *Id.*

With help from local veterans who volunteered their time, the Debtor took on much of the renovation work using the funds of the Loan. *Id.* Due to the volunteers, he was able to cut typical labor costs, leaving excess funds from the Loan at the end of the renovation project: a sum of approximately $75,000. *Id.* In early 2017, rather than put these excess funds towards the repayment of the Loan, the debtor, unbeknownst to Eclipse, caused final Cut to donate the remaining funds to the Veterans of Foreign Wars (the "VFW"). *Id.*

Final Cut was profitable for three years following the renovation. *Id.* at 6. However, because of the COVID-19 Pandemic, the theater was unable to operate for roughly a year. *Id.* With no income, the debtor borrowed $50,000 from his mother, Pink, on an unsecured basis on

September 8, 2020. *Id.* The theater eventually reopened in February 2021, but attendance failed to rebound to pre-pandemic levels. *Id.* The Debtor chose to forego his salary to try to assist in Final Cut's cash flow problems, and as a result took on significant credit card debt and fell behind on his home mortgage with Another Brick in the Wall Financial Corporation (the "Servicer"). *Id.* After failing to make his mortgage payments for multiple months, the Servicer commenced foreclosure proceedings. *Id.*

A. Chapter 13 Proceedings.

To prevent the foreclosure proceedings and keep his home, the Debtor sought relief under Chapter 13 of the Bankruptcy Code on December 8, 2021 (the "Petition Date").[1] R. at 6. On his required Schedule A/B, the Debtor listed the value of his home at $350,000 based on an appraisal conducted days before the Petition Date. *Id.* Schedule D listed a non-contingent, liquidated, and undisputed secured debt to the Servicer in the amount of $320,000. *Id.* Schedules E/F and H both included a contingent and unliquidated unsecured debt in an unknown amount owed to Eclipse. *Id.* On Schedule C, the Debtor claimed a state law homestead exemption in the amount of $30,000, the maximum amount allowed in the State of Moot. *Id.* Finally, the Debtor listed on his Statement of Financial Affairs that he had made payments to Pink within one year prior to the petition date in the aggregate amount of $20,000. *Id.* at 7.

In his Chapter 13 plan, the Debtor proposed to make payments to creditors over a three-year period. *Id.* The Debtor proposed to cure his prepetition mortgage arrears and make continuous monthly payments to Eclipse through the Trustee. *Id.* Additionally, the plan stated that, given the secured indebtedness and the homestead exemption, the Debtor maintained no equity in his home

[1] This brief identifies section of the Bankruptcy Code, set forth in 11 U.S.C. §§ 101 et seq., as "section ___." It refers to the Bankruptcy Code as "the Code."

as of the Petition Date. *Id.* The Debtor proposed to fund the plan solely through future earnings from Final Cut. *Id.*

At the meeting of the creditors, Eclipse learned of the Debtor's donation to the VFW and properly commenced an adversary proceeding seeking to have the Debtor's debt related to the Loan declared non-dischargeable under 523(a)(2)(A). *Id.* Prior to confirmation, the Chapter 13 Trustee objected to the Debtor's plan as failing to satisfy section 1325(a)(4), contending that, in this type of liquidation, the alleged preferential transfers to Pink would be recovered and distributed to creditors. *Id.* Accordingly, the Debtor amended the plan to increase aggregate payments to creditors by $20,000 over the applicable time period. *Id.* This settlement was memorialized in a stipulation, wherein the Chapter 13 Trustee agreed to not seek to avoid and recover payments made to Pink prior to the Petition Date. *Id.* at 8.

Eclipse objected to the Debtor's plan as not being proposed in good faith, but after some negotiation, they reached a resolution. *Id.* Eclipse agreed to withdraw its objection in exchange for an estimated claim in the amount of $150,000, $25,000 of which was deemed non-dischargeable in the event of conversion. *Id.* On February 12, 2022, the Bankruptcy Court confirmed the Debtor's plan. *Id.* The Bankruptcy Court entered an order approving the settlement between the Debtor and Eclipse. *Id.*

B. Chapter 7 Conversion.

The Debtor made timely payments under the terms of the plan for eight months, but in September of 2022, he became unable to work at the theater, which had continued to suffer financially. R. at 8. The theater closed in October 2022. *Id.* Shortly after, Eclipse commenced foreclosure proceedings against Final Cut. *Id.* The Debtor stopped making timely payments under the terms of the plan, and to avoid dismissal of his Chapter 13 case, he converted to Chapter 7. *Id.* The Bankruptcy Court entered a generic order converting the case. *Id.* In her final report, the Chapter 13 Trustee stated she had distributed $10,000 to the Servicer under the plan, and that she had returned funds held in reserve for Eclipse to the Debtor. *Id.* at 8-9.

Vera Lynn Floyd was appointed trustee of the Debtor's Chapter 7 estate (the "Trustee"). *Id.* at 9. The Debtor's conversion schedules and other documents stated, as of the Petition Date, a value of $350,000 to his home and again disclosed the alleged preferential transfers to Pink. *Id.* The schedules stated that the Debtor was indebted to Eclipse in the approximate amount of $200,000 after the theater's foreclosure, which Eclipse had completed post-conversion. *Id.* In his Statement of Intention, the Debtor signaled he would reaffirm the mortgage debt owed to the Servicer, and remain in his home. *Id.*

The Trustee concluded the estate was mostly bereft of assets; however, during the Chapter 7 section 341 Meeting of Creditors, the Debtor mentioned that he had noticed home values in his area were increasing, consistent with nationwide trends following the COVID-19 pandemic. *Id.* The Trustee commissioned an appraisal of the Debtor's home which confirmed that the non-exempt equity in it had increased by $100,000 since the Petition Date, a valuation that was not disputed by any party in the proceeding. *Id.* The Trustee began marketing the home, and Eclipse offered to purchase both the home and the alleged preferential claim against Pink for a total sum of $470,000. *Id.* The Trustee believed this maximized the value of the assets for the benefit of creditors of the estate, and filed a motion (the "Sale Motion") to execute the sale. *Id.*

II. Procedural History.

The Debtor has objected to the Sale Motion on two grounds. R. at 10. First, the Debtor argues that any post-petition, pre-conversion increase in the equity of his home should insure to his benefit, not to his creditors'. *Id.* Second, the Debtor contends that the Trustee's statutory ability to avoid and recover preferential transfers under sections 547 and 550 cannot be sold. *Id.*

The Bankruptcy Court ruled in favor of the Debtor on both objections and denied the Sale Motion. *Id.* The Trustee appealed the Bankruptcy Court's ruling to the United States Court of Appeals for the Thirteenth Circuit, which affirmed the decision of the Bankruptcy Court. *Id.* at 4. The Trustee then appealed the decision to the United States Supreme Court, and a Writ of Certiorari was granted.

STANDARD OF REVIEW

The questions presented are purely issues of law based upon statutory interpretation of the Bankruptcy Code. As such, the appropriate standard of review is *de novo*. *See, e.g.*, *Fox v. Hathaway (In re Chicago Mgmt. Consulting Grp.)*, 929 F.3d 804, 809 (7th Cir. 2019). Under a *de novo* standard of review, the reviewing court decides an issue as if the court were the original trial court in the matter. *See, e.g., Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

The first issue presented in this appeal is whether an appreciation in equity post-petition, but pre-conversion, inures to the benefit of the debtors or to his creditors under sections 348 and 541 of the Code. Section I of this brief applies statutory construction to both sections and other relevant portions of the Code, showing that the plain language of the Code does not permit the

Debtor to claim the new equity in the primary residence. First, this section shows that Congress did not intend to distinguish equity as a separate property interest from an interest in an item of property included in the bankruptcy estate. Section 541's definition of "property" in the Code is broad and its interaction with section 522, which defines the exemptions available to debtors, confirms that value—whether used in reference to equity or to an exemption—is a feature of an interest property, not a separate property interest. Congress, moreover, drafted section 348 to empower the Chapter 7 Trustee administering a case converted from Chapter 13 to perform a new valuation of property of the estate. Because the primary residence remains in the Debtor's possession—in contrast to the facts of two recent and conflicting cases from the Ninth and Tenth Circuits—the increased value of the home is incontrovertibly part of the bankruptcy estate in the Chapter 7 case that should inure to creditors upon liquidation. Finally, the Debtor has no authority under which he can exempt the increase in equity.

The second issue presented in this appeal is whether a chapter 7 trustee may sell, as property of the bankruptcy estate, the ability to avoid and recover transfers pursuant to sections 547 and 550. Section II of this brief analyzes the plain text of section 541(a)(1), as well as relevant case law, congressional intent, and the realities of bankruptcy practice underlying the issue of property of the estate and avoidance actions. This analysis concludes that section 541(a)(1) encompasses avoidance actions as property of the estate, because causes of action are property and the Debtor retains an interest in such cause of action upon commencement of his bankruptcy case, even if it is sold. Such a reading of section 541(a)(1) is supported by case law and congressional intent, both of which affirm that property of the estate should be interpreted broadly. Avoidance actions are also property of the estate under section 541(a)(7), because preferential transfers and avoidance actions in general are acquired by the estate after commencement of the bankruptcy case. Because Congress did not include avoidance actions in section 541(b), it did not intend to exclude such actions from the estate. Additionally, avoidance actions are not inalienable rights of the Trustee. It is well-established that creditors may pursue avoidance actions via derivative standing. The fact that avoidance actions may be realized upon by the trustee does not negate that such actions are also property of the estate. Finally, the realities of bankruptcy practice necessitate the ability of the trustee to sell avoidance actions under section 363, subject to court approval. Sales of avoidance actions sales benefit the estate indirectly; therefore, such sales are consistent with the trustee's duty to maximize value for the estate and distribute assets quickly. Debtors should not be able to escape liability for preferential transfers simply because estate resources are limited. Courts have consistently allowed such sales when it is demonstrated that they are in the best interest of creditors, thus benefiting the estate.

Thus, Petitioner asks this court to reverse the Thirteenth Circuit's decision.

ARGUMENT

I. Appreciation in post-petition, pre-conversion equity does not inure to the benefit of the debtors under sections 348 and 541 of the Code.

The Code's plain language establishes that a property's appreciation in value is not a separate interest from a debtor's interest in the property itself. The first step in interpreting the Bankruptcy Code is to determine whether the text itself is susceptible to more than one reasonable interpretation. *Hawkins v. Franchise Tax Bd. Of Cal.*, 769 F.3d 662, 666 (9th Cir. 2014). If it is not, then the inquiry can end, because the unambiguous language controls interpretation. *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989). Here, the language may create unwelcome results for debtors, but it is not ambiguous.

Legislative history and policy concerns should not lead the Court to a holding that is contrary to the plain language of the Bankruptcy Code. Respondent asks the court to affirm a decision that has a flimsy statutory basis and undermines the balance between debtors and creditors that guides the bankruptcy system. This Court should instead affirm the plain language of the Code and reverse the decision of the Court of Appeals for the Thirteenth Circuit.

A. Under the plain language of the code, a property's appreciation in value is not a separate and distinct property interest from the property itself.

In any bankruptcy chapter, the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the estate." § 541(a)(1). This language is intentionally broad. The purpose of section 541 "is to aggregate to the greatest extent possible, albeit with some exceptions, every stitch of property belonging to a debtor so that it can be used to pay claims, including exemption claims." *In re Adams*, 641 B.R. 147, 151 (Bankr. W.D. Mich. 2022). The Code thus attempts to maximize the size of the estate for the benefit of creditors, but it allows debtor to alter the estate created by § 541 by exempting certain properties in the interest of his "fresh start." Gary E. Sullivan*, A Fresh Start to Bankruptcy Exemptions,* 2018 B.Y.U. L. Rev. 335, 337 (2018).

Exemptions do not exclude property from the estate, because debtors can only exempt an interest in property that is part of the estate. § 522(b)(1) ("*Notwithstanding* section 541 of this title, an individual debtor may exempt from property of the estate the property listed . . .") (emphasis added). On the Petition Date, the Debtor had few assets to include in the estate, but he included in his Schedules his primary residence, valued at $350,000. R. at 6-7. The Debtor claimed as an exemptible interest the maximum exemption allowed under in the state of Moot—$30,000—which was also the exact amount of equity he had in the home at the time. *Id.* It is not disputed that the debtor's estate on the date of the petition included his primary residence and that the Trustee did not challenge its value or the debtor's interest in the residence.

But the Debtor asks the court to hold that the equity ($100,000) his home gained is a different property interest than his interest in the home itself, which is contrary to both the language of the Code and congressional intent. R. at 9-10. Anticipating that the broad sweep of section 541(a)(1) may have been ambiguous respecting interests *appurtenant* to properties, the Code also expressly sweeps into the estate "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earning from services performed by an individual debtor after the commencement of the case." § 541(a)(1)(6). When a debtor converts from Chapter 13 to Chapter 7, "proceeds" "include the appreciation in value of a debtor's home." *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023; *accord In re Potter*, 228 B.R. 422, 424 (8th Cir. BAP 1999); *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015) ("The equity is inseparable from the real estate, which was always property of the estate under Section 541(a)."); *In re Goetz*, 647 B.R. 412, 416 (Bankr. W.D. Mo. 2022); ("[E]quity is not a distinct item of property."); *In re Adams*, 641 B.R. at 151-52.

The fact that equity is only appurtenant to a debtor's primary residence can be explained by the bedrock bankruptcy principle that state law defines the property rights swept up by the bankruptcy estate. *Butner v. United States*, 440 U.S. 48, 54 (1979). Thus, in any state, the Debtor's interest in the equity of his home would not exist but for his interest in the property itself. As the Bankruptcy Court for the Western District of Michigan persuasively explained, there is no disputing "that outside of bankruptcy [the debtor] (as the owner of the fee simple interest in the Property) would be entitled to any appreciation in its value." *In re Adams*, 641 B.R. at 152. Value is a "condition of the property," and interest in property "determine[s] how [to] allocate that value."

Id. Thus, the increase in equity as a result of appreciation between the Petition Date and the Conversion Date is appurtenant to the primary residence and is part of the estate upon conversion, and its value can be realized by the Trustee for the benefit of creditors.

B. Section 348(f)(1)(B) authorizes the Chapter 7 trustee to perform a new valuation upon conversion.

The Code allows a trustee to perform a new valuation upon conversion in order to enlarge the estate for the benefit of creditors. When a debtor converts a case from Chapter 7, the "[V]aluations of property and of allowed secured claims in the Chapter 13 case shall apply only in a case converted to chapter 11 or 12, but not in a case converted to a case under chapter 7." § 348(f)(1)(B). This statute modifies the "snapshot" rule, which ordinarily fixes the estate as of the petition date. *Rockwell v. Hull (In re Rockwell),* 968 F.3d 12, 17 (1st Cir. 2020). The text of the statute dictates that the initial valuation of the property in Chapter 13 shall apply in cases converted to Chapter 11 or 12. The plain language supports an inference that upon conversion to Chapter 7, the property may be re-valued. Although there is some tension, the principle of *expression unius* resolves this interpretive matter. The canon of *expressio unius* counsels that when Congress expressly enumerates one thing, it intends to exclude other matters. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). Because Congress expressly included Chapters 11 and 12 in its statute prohibiting re-valuation, it can be inferred that it intended to exclude conversions of Chapter 7.

The Debtor counters the plain language of this provision by pointing to section 348(f)(2) and its legislative history, which is more ambiguous than the relevant sections of the code. The subsection reads: "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 the conversion." § 348(f)(2). He argues that this subsection is in tension with section 348(f)(1)(A) and that, by singling out debtors who convert in bad faith, Congress intended to disallow exclude post-petition, pre-conversion equity from coming into the estate. Principles of statutory interpretation resolve this tension, as well. Where statutes conflict with one another, the "Court's duty [is] to interpret Congress's statutes as a harmonious whole rather than at war with one another." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619 (2018). And a more specific rule should control over more general rules. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see* Scalia & Garner, *Reading Law* 183. 384(f)(1)(A) deals specifically with what happens when debtors convert from Chapter 13 to specific individual chapters, while 384(f)(2) deals with the broader issue of bad faith, which can be relevant in any chapter. Thus, any ambiguity or tension can be resolved merely by resort to the text, without turning to legislative history.

The legislative history is itself ambiguous and cannot be more persuasive than the language of the statute. *Epic Sys. Corp.*, 138 S. Ct. at 1631 ("Legislative history is not the law."). When Congress amended the Bankruptcy Code in 2005 by passing the Bankruptcy Abuse and Consumer Protection Act (BAPCPA), it could have excluded from the converted estate post-petition, pre-conversion appreciation in Chapter 7. If it wanted to, it could have stated that a new valuation should not occur in any conversion. But as the Ninth Circuit explained, the BAPCPA amendments to "[Section] 348(f) only clarified that newly-acquired [sic], post-petition property would not become part of the converted estate if the debtor had been acting in good faith." *Castleman*, 75 F.4th at 1058. The amendment did not have anything to say about appreciation in the value of a primary residence the debtor owned pre-petition. "Congress is deemed to acquiesce in an interpretation when Congress has enacted the legislation but not modified the relevant provision, or when Congress has not acted in response." Nina A. Mendelson, *Change, Creation, and Unpredictability in Statutory Interpretation: Interpretive Canon Use in the Roberts Court's First Decade,* 117 Mich. L. Rev. 71, 93 (2018). The fact that Congress discussed but did not implement a change in this section suggests not that Congress changed this statute; rather, the legislative history shows that Congress did *not* amend section 348 to prevent new valuations for debtors converting from Chapter 13 to Chapter 7.

There are also compelling policy reasons to allow a new valuation upon conversion to chapter 7. In Chapter 7, creditors tend to receive less than they would in Chapter 13, which is one reason Congress incentivizes debtors to file under the latter chapter. *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). A new valuation allows the Chapter 7 trustee to determine the true value of a debtor's estate before it is liquidated, so that creditors can receive as much as possible. Professor Lawrence Ponoroff points out that valuation is of less concern to Chater 13 trustees because there is no cramdown of claims over the debtor's primary residence. Lawrence Ponoroff, *Allocation of Property Appreciation: A Statutory Approach to the Judicial Dialectic*, 13 Wm. & Mary Bus. L. Rev. 721, 746-47, 750 (2022); *see* § 1322(b)(2). But the argument goes both ways: if the Court refuses to allow a new valuation, contrary to the language of the Code, the result might be that Chapter 13 trustees neglect properly valuing primary residences, creating more administrative waste and more seemingly unfair situations.

Because the Code allows the Trustee to perform a new valuation on conversion, this Court should resolve the circuit split to avoid confusing debtors who second-guess their choices and resolve the Circuit split in a manner consistent with the statutory text. If Congress dislikes the result, Congress should change the rule. When laws produce unsalutary results, "[t]he ball," as Justice Ginsberg said, "is in Congress' court." *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S.

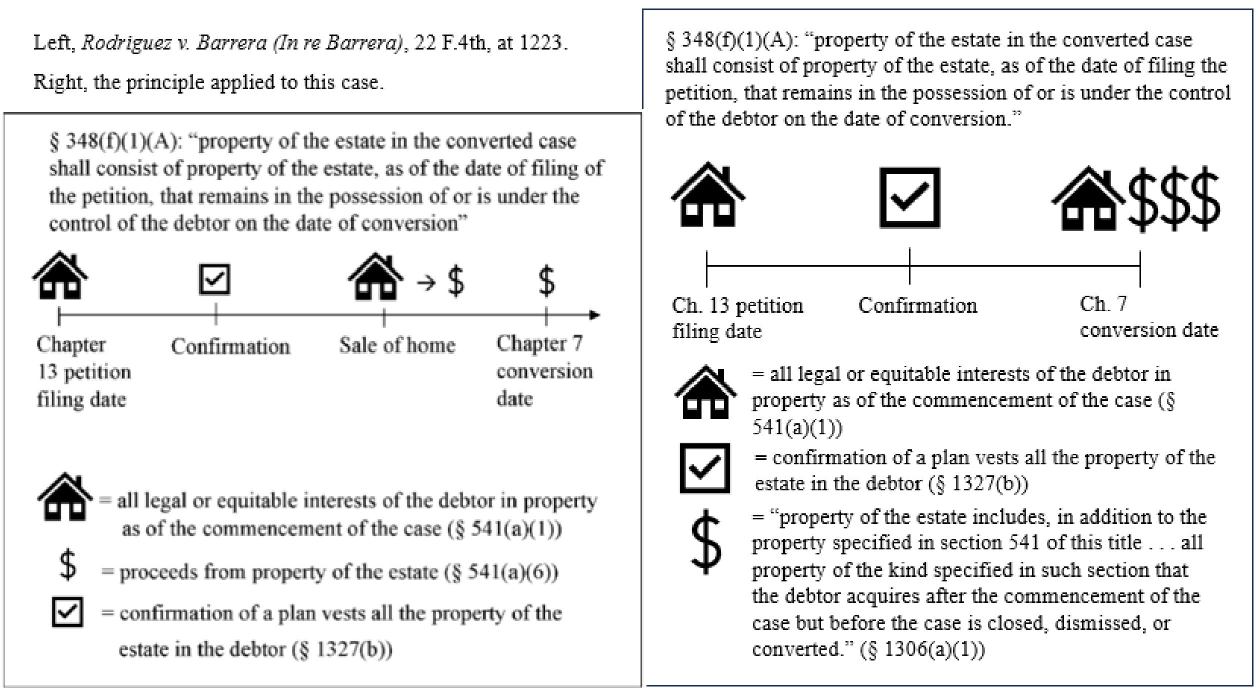
618, 661 (2007) (Ginsberg, J., dissenting). Especially when it is foreseeable that any given debtor will one day "fail" chapter 13, it is crucial that debtors can predict the outcome of their decision to dismiss or convert.

C. Section 348(f)(1)(a) requires the debtor's equity in his home to come into the estate.

Even if equity were considered a separate property interest, the Debtor has not sold the home in this case. Therefore, the Code requires that the equity come into the estate and inure to the benefit of creditors. Chapter 13 vests all estate property with the debtor. § 1327(b). Upon conversion, section 348(f)(1)(A) brings into the estate "property of the estate, as of the date of the filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion." In concert with this provision, property of the estate in a Chapter 13 case includes "all property of the kind specified in [section 541] that the debtor acquires *after the commencement of the case* but *before* the case is closed, dismissed, *or converted to a case under chapter 7*." § 1306(a)(1) (emphasis added). Thus, "[t]he Chapter 13 estate, unlike a Chapter 7 estate . . . includes both the debtor's property at the time of his bankruptcy petition, and any assets he acquires after filing." *Harris v. Viegelahn,* 575 U.S. at 510.

Where a debtor still possesses the home on conversion, under the plain language of the code any "proceeds" from sale of the property must inure to the benefit of creditors because there has been no acquisition of new property. The fact that the Debtor still possesses the home distinguishes the case from other cases that caused the circuit split at issue. R. at 9. The Ninth Circuit held that when a home is sold on the eve of conversion to Chapter 7, "[p]ost-petition appreciation is not treated as a separate asset from pre-petition property and inures to the bankruptcy estate, not the debtor." *In re Castleman,* 631 B.R. 914, 919 (Bankr. W.D. Wash. 2021).

Conversely, the Tenth Circuit, limiting its opinion to circumstances where the debtor had sold the home before converting, held the opposite. *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1223, 1226 (10th Cir. 2022) ("[T]he sale proceeds [constitute] a property interest distinct from the physical house from which they were derived."). Because it accords with the plain language of the Code, the Ninth Circuit provides the better approach. But to reverse the Thirteenth Circuit, this Court need not resolve the issue of whether the sale of a home creates a new property interest. Instead, the Court has an easier case. The Code mandates that when a home remains in a debtor's possession, the increase in equity is part of the estate because it is an aspect of the primary residence itself. Compare the visualization offered by the Tenth Circuit with a visualization that reflects the law and facts of this case:



Left, *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th, at 1223.
Right, the principle applied to this case.

Unlike the cases from the Ninth and Tenth Circuits, here the home was in the estate "as of the date of filing of the petition," and it "remains in the possession of . . . the debtor on the date of conversion." § 348(f)(1)(A). There has been no change in the nature of the property interest. Only its value has changed, and the debtor cannot claim the new equity in the home because (1) the home has not yet been sold and (2) he thus has no interest in it separate from the home itself.

Like the exemption a debtor claims under 522(b), equity is merely appurtenant to an interest in property. The debtor's exemption interest in "property" is based on his equity in property. *See*. § 522(b)(1). "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *West Virginia v. EPA*, 142 U.S. 2587, 2607 (2023) (quoting *Davis v. Michigan Dept. Of Treasury,* 489 U.S. 803, 809 (1989)). Thus, a harmonious reading of the Code requires an inference that Congress understood equity and exemptions alike as mere features of property rather than separate and distinct property interests. To treat equity differently when the debtor claims an exemption and when he claims appreciation in value would be inconsistent with the overall statutory scheme of the Code, and it would produce asymmetrical results.

To treat equity as a separate interest would also offend the rehabilitative and humane purposes of the Code. In Chapter 7, a secured creditor only has an allowable secured claim up to the value of the property. § 522(a). This claim is tied to the value of the home, and has an inverse relationship to the debtor's equity. Imagine if, in the chart above, there were negative dollar signs about the home in Chapter 7. Were this Court to hold that post-petition, pre-petition value inures to the benefit of debtors, it could also create precedent that debtors were responsible for post-petition, pre-conversion *depreciation* in value. "Nothing in the bankruptcy law compels (or even suggests) such a drastic interference with the operation of the state homestead exemption statute." *In re Hyman,* 967 F.2d 1316, 1321 (9th Cir. 1992) (abrogated on other grounds by *Schwab v. Reilly,* 560 U.S. 770 (2010)). To require debtors to make up a deficiency undermines the fresh start and is in conflict with the overall statutory scheme.

D. The Debtor cannot claim a retroactive exemption upon conversion when he exempted the property upon the Petition Date.

The Debtor's argument for keeping the appreciation in his home's value has no basis in the Code or state law. The Code does not provide a mechanism for a debtor to enlarge his exemptions upon conversion, and it expressly exempts only an interest in property up to a certain amount of value. Like equity, exemptions are interests that are appurtenant to a property, not a separate property interest. When Congress enacted the 1978 Code, it allowed debtors to choose between federal and state exemptions. § 522(b)(1). The Debtor did not choose the federal homestead exemption, but if he had, it would not provide authority for his position; its homestead and wildcard provisions allow combined wildcard and homestead exemptions up to only $29,375, it does not contemplate appreciations in value, and, while the Code does provide exemptions for certain future "right[s] to receive," new equity acquired during a case does not appear in the enumerated exemptions. §§ 522(d)(1), 522(d)(5), 522(d)(10). The Debtor instead chose a state exemption, but he points to no provision in state law that allows him to claim appreciation over time. After thirty days, the debtor's claimed exemptions are fixed. USCS Bankr R 4003. The Debtor attempted to exempt the new value in the home a year and a half after the Petition Date, well after he had a statutory right to change his exemptions.

Exemptions, like the Code itself, are creatures of statute, not equitable remedies. Across the circuits, exemptions are liberally construed in favor of debtors,[2] and this Court has established that they should be protected even when debtors misbehave, which no one alleges here. *See Law v. Siegel,* 571 U.S. 415, 423 (2014) ("[Section] 522 does not give courts discretion to grant or

[2] *See, e.g., In re Howell*, 27 N.E.3d 723 (Ind. 2015), quoting *Zumbrun,* 626 N.E.2d at 455; *Dwyer v. Cempellin*, 424 Mass. 26, 29 (1996).

withhold exemptions based on whatever considerations they deem appropriate," even where there is evidence of fraud). Exemptions allow the debtor, *by state or federal statute*, to alter the estate, but the Debtor must provide some authority for his claim. *See White v. Stump*, 266 U.S. 310, 313-314 (1924) (clarifying that exemptions apply only to "property to which there is under the state law a present right of exemption"). The Debtor does not provide any authority for a right to exempt appreciation in value of a property in which he exempts an interest, so the Court cannot create a new exemption from whole cloth.

When debtors avail themselves of the bankruptcy system, they also consent to its rules. Debtors choosing between Chapters and 13 face a dilemma: keep their property but promise their future earnings, § 1306(a), or turnover their property and keep their future earnings, §§ 541(a), 541(a)(6) (exempting a debtor's future earnings, among other things, from the estate). But once a debtor chooses Chapter 13, there are many opportunities for debtors to control their fates. *See* §§ 1303 (endowing debtors-in-possession with the rights and powers a trustee would have in Chapter 7); 1322(b) (empowering debtors in possession to designate classes of claims and modify the rights of secured creditors); 1329 (allowing debtors to modify plans post-confirmation). Notably, it allows debtors to dismiss or convert their cases at any time, and it paternalistically prevents debtors from waiving this right, preserving their flexibility even in the face of asymmetric negotiations with creditors. *See* §1307(a). It is not bad faith for debtors to avail themselves of laws that allow them to preserve a maximum amount of property. *See* § 1325(a). Here, before the Petition Date, the Debtor had all of these choices before him, and he chose Chapter 13. R. at 6. He likewise chose to convert his case to Chapter 7, rather than dismiss it. R. at 8. The court cannot go back in time and adjust either the Debtor's decisions or the statutes that govern his case.

Policy arguments cannot beat the plain language of the Code. The Thirteenth Circuit protested that "the Debtor likely would have been able to keep his home had he simply decided to file for relief under chapter 7 in the first place." R. at 17. However, this is not true. The Debtor had every opportunity to maximize his bankruptcy outcome, beginning with the Petition Date and continuing up to confirmation. The Debtor could only have kept his home under Chapter 7 if he had waited to initiate his Chapter 7 case until the property appreciated in value over a year later, at which point in time Eclipse would have completed foreclosure proceedings. It is an unfortunate reality in bankruptcy as in life that the "happenstance of market conditions . . . sometimes will benefit the debtor and sometimes benefit the estate." *Castleman*, 75 F.4th at 1058. Even if the Thirteenth Circuit's assertion were accurate, it is not the role of the Court to undertake a rearview-mirror analysis of the debtor's strategic choices and make corrections.

The statute's plain language allows the Trustee to perform a new valuation for the benefit of creditors. To avoid this problem, Congress could have altered section 348(f) during its B.A.P.C.P.A. reforms. State and federal legislatures could also avoid this result by passing more generous exemption states. Legislative history (and inertia) cannot justify rewriting a statute, especially when policy arguments go both ways. It is true that the results are unfortunate for some debtors, and Congress, if it desires, may pass new legislation to strengthen the policy of the fresh start. *See* Ponoroff, *Allocation of Appreciation* at 756. But the Court cannot be the author of that legislation.

II. Avoidance actions are property of the bankruptcy estate under section 541 and are, therefore, salable pursuant to section 363.

In holding that avoidance actions are not property of the estate and are not salable, the Thirteenth Circuit denies vital recovery for the bankruptcy estate and frustrates the central role of the Trustee to distribute proceeds of the estate to creditors quickly.

Holding otherwise, as the Thirteenth Circuit did, wastes precious estate resources, renders it difficult for the Trustee to conduct their Code-prescribed duties, and denies vital recovery for creditors in opposition to the plain text of the Bankruptcy Code, case law, and the realities of bankruptcy practice. Petitioner asks this Court to reverse the Thirteenth Circuit's holding otherwise and adopt the better interpretation of section 541(a), establishing avoidance actions as property of the estate.

A. Avoidance actions are property of the estate under the plain language of section 541(a)(1), as supported by case law and congressional intent.

The Thirteenth Circuit erred in concluding that the preference action sold to Eclipse falls outside the scope of section 541(a)(1). The Thirteenth Circuit brushed over the first, crucial step of statutory construction: the text of the statute itself. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) ("[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms."). Instead of beginning with the analysis of the text of section 541(a), as it should have, the Thirteenth Circuit ruminated on sections 506(c), 547, and 550 and speculating on congressional intent regarding the absence of a cross-reference to section 547.

Section 541 creates an estate including certain types of property. § 541(a). As stated above, property of the estate under section 541(a)(1) includes "all legal or equitable interests of the debtor in property as of the commencement of the case . . . wherever located and by whomever held." §

541(a)(1); *see also United States v. Whiting Pools*, 462 U.S. 198, 203 (1983). Consequently, to satisfy the plain language of 541(a)(1) preference actions must be (1) "property," and; (2) the Debtor must have a legal or equitable interest in the property.

1. Avoidance actions are property.

Avoidance actions are included in the estate. Specifically, preference actions are a type of avoidance action that is expressly included in the Code. § 926(a).

The Code, in section 926, characterizes avoidance powers as causes of action, stating, "[i]f the debtor refuses to pursue a *cause of action* under section 544, 545, 547 (the section at issue here), 548, 549(a), or 550 . . ." § 926(a) (emphasis added). Indeed, "property" under section 541(a)(1) is broad, *Patterson v. Shumate*, 504 U.S. 753, 757 (1992) (emphasis added) and "all-encompassing." *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 114 (Bankr. S.D.N.Y. 2011), *aff'd*, 474 B.R. 76 (S.D.N.Y. 2012); *see also* H.R. REP. NO. 95-595, at 549 (1977) (describing the property of the estate as "all embracing"); *United States v. Whiting Pools*, 462 U.S. at 203 (holding that property of the estate under 541(a) operates as all-inclusive and broad, not as a limitation on what is included in the estate).

The Supreme Court has also established that causes of action are interests in property included in the estate. *See Moratzka v. Morris* (*In re Senior Cottages of Am., LLC*), 482 F.3d 997, 1001 (8th Cir. 2007) ("Causes of action are interests in property [under section 541(a)(1)] and are therefore included in the estate. . ."). Specifically, the Supreme Court has determined that avoidance powers are causes of action. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53-54 (1989) (characterizing the right to recover a fraudulent transfer as a "statutory cause of action.").

Although salable, avoidance actions are property of the estate under section 541(a)(1). Both the Code and the Supreme Court have established that avoidance actions are causes of actions included in the broad definition of the estate. The Debtor has an interest in the preference action. Therefore, the Thirteenth Circuit erred in concluding that the preference action sold to Pink was not property of the estate.

2. The Debtor retains an interest in the cause of action, regardless of possession.

Although the preference occurred before commencement of the bankruptcy proceedings, the Debtor retains a possessory interest in the cause of action.

The Supreme Court has held that section 541(a)(1) includes in the bankruptcy estate any property made available to the estate by other provisions of the Bankruptcy Code. *United States v. Whiting Pools, Inc.*, 462 U.S. at 205-206 ("In effect, § 542(a) grants to the estate a possessory interest in certain property of the debtor that was not held by the debtor at the commencement of reorganization proceedings." (citing H.R. Rep. No. 95–595, at 367 (1977)). Further, "[t]he Bankruptcy Code provides secured creditors various rights, including the right to adequate protection, and these rights replace the protection afforded by possession." *Id.* at 205, 207, 209 (holding that property of the debtor that was seized by a creditor prior to the commencement of the bankruptcy case constitutes property of the debtor).

It follows that an avoidance action is property of the estate under the plain language of section 541(a)(1). Pursuant to the plain text of 541(a)(1), as supported by case law and legislative history, avoidance actions are property of the estate, regardless of possession, because it is property and the Debtor has legal or equitable interest acquired as of the commencement of the case. Had the Thirteenth Circuit started its analysis of section 541(a) with the text itself, its inquiry would have started and ended there. Consequently, pursuant to section 704(a)(1),[3] the trustee is charged with reducing such cause of action to money and is authorized to sell it, subject to court approval under section 363(b)(1).

B. The Code also establishes that avoidance actions are property of the estate under section 541(a)(7).

Although avoidance actions clearly satisfy the plain language of 541(a)(1), such causes of action may also be brought into the bankruptcy estate under the plain language of section 541(a)(7).

Section 541(a)(7) incorporates into the estate "[a]ny interest in property that the estate acquires *after* commencement of the case." § 541(a)(7); *see, e.g.*, *Pitman Farms v. ARKK Food Co.* (*In re Simply Essentials, LLC*), 78 F.4th 1006, 1009 (8th Cir. 2023) (emphasis added). "Property of the estate therefore includes any cause of action the debtor [already] had on the petition date, as well as *avoidance actions created on the petition date*." *Madoff*, 460 B.R. at 114 (internal citations omitted) (emphasis added).

As established above, preference actions are interests in property. Preference actions are available to the estate after commencement of a bankruptcy case when, as here, the Trustee has discovered such a recoverable payment. Thus, under the plain language of section 541(a)(7), such actions are property of the estate. This interpretation is supported by case law, which has included avoidance actions created on the petition date in the bankruptcy estate. Therefore, the Thirteenth Circuit erred in excluding avoidance actions in the estate under section 541(a)(7).

[3] "The Trustee shall–collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704(a)(1).

C. If Congress intended to exclude causes of action from the estate, it would have done so expressly in section 541(b).

The Thirteenth Circuit's justification for finding that avoidance actions are excluded from the estate—because Congress did not expressly list causes of actions in 541(a)—is not compelling. The bankruptcy estate is intended to be broad and all-encompassing. Further, Congress explicitly created an exclusion subsection: 541(b). § 541(b). Had Congress intended for avoidance actions to be excluded from the estate, then it would have done so expressly in section 541(b) pursuant to the canon of construction *expressio unis*.

Section 541(b) excludes from the estate eleven categories of property. § 541(b). Because Congress expressly intended these categories be excluded and given the otherwise "all-encompassing" definition of property under section 541, the better reading of section 541 as a whole is that Congress would have expressly listed avoidance actions in this section had it intended to exclude them from the estate. *See* Mendelson, *Change, Creation, and Unpredictability*, at 117-18 (citing *Descamps v. United States*, 570 U.S. 254, 267-68 (2013) ("If Congress had wanted to increase a sentence based on the facts of a prior offense, it presumably would have said so; other statutes, in other contexts, speak in just that way.").

Preference actions, the type of property relevant to this appeal, nor the broader category of avoidance actions, are listed anywhere in section 541(b). Therefore, Congress' silence in the text of 541(a) is dispositive. The inclusion of one category of property should not be read to exclude other categories of property when the Supreme Court has determined that the estate should be interpreted broadly. The fact that avoidance actions are not listed in section 541(a) supports, rather than undermines, the inference that it intended for avoidance actions to be in the Trustee's arsenal.

D. The realities of bankruptcy practice necessitate the sale of preference actions.

Holding that avoidance actions are not salable will frustrate bankruptcy practice. The sale of preference actions is consistent with a trustee's duty to maximize the value of the estate so that proceeds may be distributed to all creditors. § 704(a). Avoidance actions are salable, explaining that denying such sales will frustrate creditors' recovery and allow Debtors to escape preference claims simply because the trustee may not afford to pursue them. *In re Simply Essentials*, 640 B.R. at 930. Allowing sales of causes of action will facilitate recovery for creditors where there might not otherwise be enough funds in the bankruptcy estate to pursue litigation.

1. Avoidance actions are not inalienable rights of the trustee.

Avoidance actions do not belong exclusively to the trustee. It is already well established in case law that creditors may have standing to pursue avoidance actions through derivative standing. Trustees often do not pursue avoidance actions to preserve limited estate resources in order to maximize recovery for creditors, pursuant to their central role as fiduciary.

It is commonplace for Trustees to pursue avoidance actions for the benefit of the estate through derivative standing. *See In re Racing Servs., Inc.*, 540 F.3d 892, 898 (8th Cir. 2008) (citing *Smart World Techs., LLC v. Juno Online Servs., Inc.* (*In re Smart World Techs., LLC*), 423 F.3d 166, 176 (2d Cir. 2005)); *Unsecured Creditors Comm. of Debtor STN Enters., Inc. v. Noyes* (*In re STN Enters.*), 779 F.2d 901 (2d Cir. 1985)); *Official Comm. of Unsecured Creditors v. Chinery* (*In re Cybergenics Corp.*), 330 F.3d 548, 553 (3d Cir. 2003) (*en banc*); *Fogel v. Zell*, 221 F.3d 955, 965 (7th Cir. 2000); *Avalanche Mar., Ltd. v. Parekh* (*In re Parmetex, Inc.*), 199 F.3d 1029, 1031 (9th Cir. 1999); *Canadian Pac. Forest Prods. Ltd. v. J.D. Irving, Ltd.* (*In re Gibson Group, Inc.*), 66 F.3d 1436, 1440–41 (6th Cir. 1995); *La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 247–48 (5th Cir. 1988)).

Creditors may pursue avoidance actions via derivative standing when they show that a Chapter 7 trustee, as here, is "unable or unwilling" to do so. *In re Racing Servs., Inc.*, 540 F.3d at 898. Where, as here, the trustee consents to the derivative suit by a creditor, a creditor may obtain standing to pursue the avoidance action if:

> (1) the [creditor] has the consent of the debtor in possession or trustee, and (2) the [bankruptcy] court finds that suit by the [creditor] is (a) in the best interest of the bankruptcy estate, and (b) is necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings.

Id. at 902 (citing *In re Commodore Int'l Ltd.*, 262 F.3d 96, 100 (2d Cir. 2001)).

Because it is well-established that creditors may pursue avoidance actions when the trustee is "unable or unwilling to do so," *id.* at 898, the Thirteenth Circuit erred in concluding that the use of the term "trustee" in sections 506(c), 547, and 550 renders avoidance causes of action as a power exclusive to the trustee.

2. Courts from multiple circuits have held that avoidance actions are claims, statutory powers, and property of the estate.

The Thirteenth Circuit creates a false equivalency in holding that chapter 5 causes of action can only be either statutory powers *or* property of the estate. Avoidance actions are statutory powers vested in the trustee *and* property of the estate; the two concepts are not mutually exclusive.

Even if the statutory text of section 541(a) were ambiguous, courts across the country have held that avoidance actions are property of the estate. *In re Simply Essentials*, 640 B.R. at 1010 (*see In re Moore*, 608 F.3d 253, 262 (5th Cir. 2010) (holding that fraudulent transfer claims are property of the estate under section 541(a)(1)); *In re Murray Metallurgical Coal Holdings*, LLC, 623 B.R. 444, 518 (Bankr. S.D. Ohio 2021) (concluding that avoidance actions as well as their proceeds are property of the estate that are salable).

Similarly, the Supreme Court has held that the "the right to recover a postpetition transfer under § 550 is clearly a "claim" (defined in § 101(4)(A))[4] *and* is "property of the estate" (defined in § 541(a)(3))."[5] *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 37 (1992) (emphasis added); *see also In re Simply Essentials*, 640 B.R. at 1008 (internal citation omitted) (reasoning that avoidance actions, including certain preferential transfers, are causes of action). Therefore, avoidance powers can be claims, powers of the trustee *or* of a creditor, *as well as* property of the estate.

3. Selling avoidance actions to creditors indirectly benefits the estate under section 550(a).

The sale of avoidance actions benefits the estate indirectly by facilitating a quick sale in exchange for forbearance. Section 550(a) does not require that an entire class of creditors benefit directly from potential preference recoveries.

Section 550(a) requires avoidance actions benefit the estate. § 550(a). The phrase "benefit of the estate" is interpreted broadly. *In re Furr's Supermarkets, Inc.*, 373 B.R. 691, 699 (B.A.P. 10th Cir. 2007). Section 550(a) is satisfied by an indirect benefit to the estate. *Mellon Bank, N.A. v. Dick Corp.*, 351 F.3d 290, 293 (7th Cir. 2003) (holding that all creditors benefit *ex ante* if avoidance actions are effectively sold to secured creditors in exchange for forbearance with the purpose of "facilitating a swift sale that was beneficial all around."). "Section 550(a) speaks of benefit to the estate—which in bankruptcy parlance denotes the set of all potentially interested

[4] § 101(5)(A) amending § 101(5)(A).

[5] As *Simply Essentials* notes, the only potentially contrary case to this conclusion is *In re Cybergenics Corp.*, 226 F.3d 237, 245 (3d Cir. 2000). However, the Third Circuit distinguished between "assets" of the debtor and "property" of the debtor, holding that avoidance actions are not assets of the debtor and did not determine whether such actions were "property" of the estate. *Id.* at 246.

parties-rather than to any particular class of creditors." *Id.*; *see also*, *In re Paige*, 685 F.3d 1160, 1192 (10th Cir. 2012) ("Benefit to the unsecured creditors need not be direct, and we interpret the requirement broadly."); *In re Sweetwater*, 884 F.2d 1323, 1326 (10th Cir. 1989) ("[T]o the extent these avoidance actions have been used to satisfy the administrative claimants, who have priority over other unsecured creditors, the estate has more funds available to pay other unsecured creditors.").

Under the broad interpretation of section 550(a), the potential sale of the preference action to Eclipse satisfies benefits the estate. Petitioner seeks to sell the preference action to facilitate a quick sale. If the preference action is sold in exchange for forbearance, the estate will indirectly benefit "all around" by preserving the trustee's resources, allowing her to focus on claims that are cost-effective.

4. Allowing creditors to purchase avoidance actions does not usurp the trustee's fiduciary role under section 704(a)(1).

Allowing creditors to pursue avoidance actions does not usurp the Trustee's central role pursuant to section 704(a) during the bankruptcy proceedings to maximize value in the estate so that proceeds may be distributed to creditors. Indeed, selling such actions can be the best way to maximize the value of the estate and is consistent with congressional intent behind such a fiduciary duty. *In re Simply Essentials, LLC*, 78 F.4th at 1010 ("When an estate cannot afford to pursue avoidance actions, the best way to maximize the value of the estate is to sell the actions.").

The driving force behind avoidance actions is that, once avoided under section 547(b), the funds from the recovered payment can be distributed *pro rata* to creditors. § 550(a). Forcing the trustee to realize a cause of action will cause harm to creditors. First, courts may protect against bad intentions of creditors by requiring courts to ensure that the suit is both in the "best interest of the bankruptcy estate" and necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings." *See, e.g.*, *In re Racing Servs.*, 540 F.3d at 902, citing [code]. Second, subject to certain limitations, subsections (b) and (c) of section 363 permit the trustee to sell property of the estate. § 363(b), (c); *United States v. Whiting Pools, Inc.*, 462 U.S. at 203. Third, the realities of bankruptcy practice necessitate this conclusion. If this Court does not allow trustees to sell chapter 5 causes of action, then a resource-strapped trustee may be unable to recover the funds, and creditors may not get the distributions to which they are entitled. If forced to realize the cause of action themself, the trustee will have to settle cheaply, to the detriment of creditors.

A trustee must be allowed to sell avoidance actions in order to distribute property of the estate quickly to creditors consistent with their fiduciary duty under section 704(a) to maximize value for creditors. The Thirteenth Circuit's fear of best intentions underlying such sales is misguided, because courts always have authority to deny section 363 sale motions to protect interests at that stage. However, that is not the issue before this Court today. Courts regularly condone such sales, and this Court should allow the sale of the avoidance action to Eclipse in this case.

CONCLUSION

For the reasons described above, this Court should find in favor of the Petitioner, the United States Trustee, and reverse the decision of the Court of Appeals for the Thirteenth Circuit.