No. 23-0115

IN THE

Supreme Court of the United States

OCTOBER TERM, 2023

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

V.

EUGENE CLEGG, RESPONDENT.

Brief for Petitioner

Team Number 33
Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether the post-petition appreciation in property of the chapter 13 bankruptcy estate belongs to the chapter 7 estate upon conversion.

II. Whether an avoidance cause of action, like any other cause of action, is included among the "legal or equitable interests" that become property of the bankruptcy estate upon filing a bankruptcy petition.

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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

Eclipse Credit Union ("Eclipse") is a community-based, not-for-profit financial institution that focuses on serving its members and the community in the City of Moot throughout every stage of their life, from buying their first car to building their dream home. R. at 5. Consistent with that mission, Eclipse started to offer its services to local businesses. *Id.* Eugene Clegg ("Debtor") is a resident of the City of Moot and, in 2016, he approached Eclipse to obtain financing to renovate the historic, single-screen movie theater that he owned and operated through his business, The Final Cut, LLC ("Final Cut"). *Id.* The Debtor caused Final Cut to take out a secured loan from Eclipse for $850,000 (the "Loan"), granting Eclipse a first priority lien on Final Cut's assets. *Id.* The Debtor also executed an unconditional, unsecured guarantee as security for repayment of the Loan. *Id.* With this Loan, Debtor was able to successfully renovate the movie theater with over $75,000 remaining after the project was complete. *Id.*

Following the renovations, Final Cut reopened to the public and remained profitable until March 2020. R. at 5-6. However, like many other businesses in the City of Moot, Final Cut had to close its doors as a result of the COVID-19 pandemic and did not operate for nearly a year. R. at 6. During this time, Debtor did not earn any income from Final Cut or any other source of employment. *Id.* Although Final Cut was able to reopen in February 2021, it continued to operate at a loss and was unable to turn a profit even after Debtor opted to forego a salary. *Id.* Without any source of income, the Debtor began to incur significant amounts of unsecured debt, borrowing $50,000 from his mother, Emily Clegg Pink ("Pink") in September 2020 and incurring significant credit card debt. *Id.* Additionally, the Debtor fell behind on his mortgage and stopped making payments to his servicer, Another Brick in the Wall Financial Corporation ("Servicer") in spring 2021. *Id.* Debtor did, however, continue to make payments to Pink in the aggregate amount of $20,000. R. at 7.

Facing mounting pressure from creditors and following the initiation of foreclosure proceedings by his Servicer, on December 8, 2021, the Debtor filed for chapter 13 bankruptcy. R. at 6. At that time, the Debtor reported that the value of his home was $350,000 and disclosed the payments made to Pink totaling $20,000. *Id.* The schedules filed by the Debtor reflect that he owed a secured debt in the amount of $320,000 to the Servicer and an unsecured debt in an unknown amount to Eclipse based on his personal guarantee of the Loan. *Id.* The Debtor also claimed a state law homestead exemption in the amount of $30,000, which is the maximum amount allowed under Moot state law. R. at 6-7.

The Debtor filed a chapter 13 plan which proposed to make payments to creditors over a three-year period. R. at 7. The plan reflected that, given the secured indebtedness and homestead exemption, the Debtor had no equity in the home on the Petition Date. *Id.* Despite nearly two years of insolvency, the Debtor proposed to fund his plan solely through future earnings he derived from Final Cut. *Id.* Eclipse, concerned with Debtor's ability or willingness to pay, objected to the Debtor's plan. R. at 8. Given the Debtor's misuse of funds from the Loan, R. at 5 & 7**,** and the pre-petition transfers to Pink, Eclipse raised concerns that the plan was not proposed in good faith. R. at 8. However, this objection was ultimately resolved after a portion of Eclipse's estimated claim was deemed non-dischargeable. *Id.* The chapter 13 trustee also filed an objection to the plan based on its failure to account for the pre-petition transfers to Pink. R. at 7. Because these transfers would be recoverable in a liquidation, the Debtor's plan provided creditors with less than they would otherwise receive in liquidation. R. at 7. However, the trustee and Debtor reached a settlement where the Debtor agreed to increase the aggregate payment to creditors by $20,000 and the trustee agreed not to pursue the preference action against Pink. R. at 7-8. The chapter 13 plan was confirmed by the bankruptcy court on February 12, 2022. R. at 8.

Despite Debtor's confidence in Final Cut's future profitability, the theater was unable to generate profits and ultimately closed in October 2022. R. at 8. To avoid dismissal and the resumption of collection efforts, the Debtor converted his case to chapter 7. *Id.* At the time of conversion, $10,000 had been distribution to the Servicer. R. at 8-9. Although Eclipse was able to recover a portion of the amount due from Final Cut's real property, the Debtor still owed Eclipse approximately $200,000 for his personal guarantee of the Loan. R. at 9.

Upon conversion, a chapter 7 trustee ("Trustee") was appointed to administer the Debtor's chapter 7 estate. R. at 9. Although the Trustee initially concluded that the estate was bereft of assets, the Trustee was informed by the Debtor that the market value of his home had increased since it was last appraised. *Id.* An appraisal commissioned by the Trustee confirmed that the home's value had significantly increased with the Debtor's non-exempt equity totaling $100,000. *Id.* Seeing no other assets for the Trustee to collect upon, the Trustee began marketing the home for sale. *Id*. Shortly thereafter, Eclipse offered to purchase both the home and the preference action for their full value, totaling $470,000. *Id.*

Confident that this offer maximized the value of estate property, the Trustee filed a motion to sell the home and cause of action to Eclipse. *Id.* However, the Debtor objected, arguing that: (1) any appreciation in the value of his home post-petition and pre-conversion inured to his benefit, and (2) the preference action was not property of the estate that could be sold. R. at 10. The bankruptcy court ruled in favor of the Debtor on both objections and denied the sale. *Id.* The Trustee filed a timely appeal to both rulings. *Id.*

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Thirteenth Circuit because post-petition, pre-conversion appreciation in the value of estate property and actions to recover preference payments both belong to the bankruptcy estate. By excluding valuable property from cash-strapped chapter

7 estates, the Thirteenth Circuit made it more difficult for bankruptcy trustees to maximize the value of the estate and for creditors to recover on the debts they are owed. Consistent with the plain text, the weight of caselaw, and the policies and practices underlying the Code, this Court should hold that post-petition, pre-conversion increases in value and actions to recover preferential payments constitute property of the estate that the trustee may sell.

The Thirteenth Circuit first erred in holding that post-petition, pre-conversion increases in equity inure to the debtor. Section 541(a) incorporates a debtor's entire interest in the bankruptcy estate, and that interest becomes part of the chapter 7 estate upon conversion pursuant to section 348. Additionally, the Thirteenth Circuit's reliance on vestiture and public policy arguments are unavailing. The Bankruptcy Code aims to maximize creditor distributions, and consistent with that principle, this Court should allow creditors to recover a portion of what they are owed rather than permitting debtors to leave with a discharge and a profit.

The Thirteenth Circuit erred again when it excluded the debtor's interest in an avoidance action from the bankruptcy estate. The unambiguous text of section 541(a)(1) includes avoidance actions as property of the estate. The Thirteenth Circuit's exclusion of avoidance actions not only departs from the plain text, but from the weight of caselaw and established practice in courts across the country. This Court should therefore reject the Thirteenth Circuit's efforts to circumvent the text and hold that avoidance actions are property of the estate that a trustee may sell in order to maximize value for the benefit of creditors.

ARGUMENT

I. The Bankruptcy Code unambiguously provides that post-petition, pre-conversion appreciation in the equity of the debtor belongs to the chapter 7 bankruptcy estate.

The plain text of sections 541(a) and 348(f) inform this Court that the post-petition, pre-conversion increase in equity is property of the chapter 7 bankruptcy estate.

Starting on the date the Debtor filed for bankruptcy, his home became property of the estate under section 541(a). The debtor's entire interest in his property is what becomes property of the estate. Accordingly, this interest is not fixed to a specific dollar amount, rather it is the ownership right in the property. Upon converting his case to chapter 7, his home remained property of the bankruptcy estate under section 348(f).

The Thirteenth Circuit's extra-textual arguments fail to circumvent the plain text. The legislative history of section 348(f) does not lead to a reinterpretation of its plain text, the vesting provision of section 1327 is inapplicable upon conversion, and while the debtor surely wishes to keep the additional equity in his home, holding that the increase in equity of the home belongs to the chapter 7 estate does not create a disincentive to file under chapter 13.

A. Section 541(a)(1) incorporates the debtor's entire interest in their home into the bankruptcy estate, and an increase in value of that interest is not separate property.

Appreciation of an asset is not a separate, after-acquired property interest and is property of the chapter 7 bankruptcy estate upon conversion under section 541(a). *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015). When "the statue's language is plain," analysis of the Bankruptcy Code begins and ends with the "language of the statute itself." *Puerto Rico v. Franklin California Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989)). If the language is unambiguous, then it controls. *Id*.

Section 541(a) unambiguously incorporates appreciation into the chapter 7 bankruptcy estate. The broad definition of section 541(a) "captures the debtor's entire ownership interest in each asset that exists on the petition date without fixing the estate's interest to the precise characteristics the asset has on that date." *In re Goetz*, 647 B.R. 412, 416 (Bankr. W.D. Mo. 2022), aff'd, 651 B.R. 292 (B.A.P. 8th Cir. 2023). Additionally, section 541(a)(1) states that, upon filing for bankruptcy, "all legal or equitable interests of the debtor in property as of the commencement of the case" become part of the bankruptcy estate. 11 U.S.C. § 541(a)(1). The estate includes all "[p]roceeds, 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." 11 U.S.C. § 541(a)(6). Since property of the estate includes proceeds, a plain text reading suggests that the proceeds received for the sale of the property also becomes property of the estate. *In re Paolella*, 85 B.R. 974, 977 (Bankr. E.D. Pa. 1988). The debtor's interest in their property became part of the estate upon commencement of the case and because any post-petition increases in equity are the proceeds of that property, they too are included as property of the bankruptcy estate. *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1055 (9th Cir. 2023).

The precedent established by the Ninth Circuit in the case *Castleman v. Burman* is most harmonious with the plain text meaning of section 541(a). *See In re Castleman*, 75 F.4th at 1055("[T]he plain language of § 348(f)(1)(A), coupled with this circuit's previous interpretation of § 541(a), compel the conclusion that any appreciation in the property value and corresponding increase in equity belongs to the estate upon conversion."). The Thirteenth Circuit rejects *Castleman* because it relies, in part, on *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018), where conversion was not at issue. R. at 14. However, there is no textual basis for section 541(a) to have a different meaning upon conversion from chapter 13 to chapter 7 compared to cases originally filed under chapter 7. *In re Castleman*, 75 F.4th at 1056. As such, the Ninth Circuit's reliance on *Rigby* is not misplaced and should be affirmed by this Court.

Additionally, section 522 does not alter the plain-text interpretation of section 541(a). The Thirteenth Circuit further argued that section 522 indicates that post-petition, pre-conversion appreciation inures to the debtor. R. at 13-14. Making a mountain out of a molehill, the court below stated this would create an absurdity by creating differing values for the homestead exemption and property of the estate upon conversion. R. at 14. Section 522 fixes the petition date as the point of reference for valuing the debtor's exemptions in property. 11 U.S.C. § 522. However, section 522 does not establish that the fair market value of the home is fixed as of the date of commencement of a case. *Gebhart v. Gaughan (In re Gebhart)*, 621 F.3d 1206, 1211 (9th Cir. 2010); *Wilson*, 909 F.3d at 308. In the context of exemptions, "all the relevant events occur on the date of sale." *Hyman v. Plotkin* (*In re Hyman*), 967 F.2d 1316, 1321 (9th Cir. 1992). A debtor's right to use an exemption comes into effect only when the trustee seeks to sell the debtor's residence, and the value of a property can rise or fall during the period of commencement and the time of sale. *Id*. In some cases, there will inevitably be a price differential between the value of property as of the date of commencement and the date of sale by the Trustee. Yet, changes in market conditions do not mean that the price differential is absurd. Moreover, changes in market conditions can impact the value received from the sale of property. Sales of property rarely, if ever, coincide with the formation of a bankruptcy estate, thus the value of an asset may change over the course of a bankruptcy proceeding. *In re Paolella*, 85 B.R. at 977. As a result, section 541(a)(6) "mandates [] the estate receive the value of the property at the time of the sale. . . [which] may include appreciation or be enhanced by other circumstances creating equity which occur." *Id*. (quoting *In re Clark*, 711 F.2d 21, 23 (3d Cir.1983)). The value of the debtor's home is merely what the trustee can acquire from the debtor's property interest, with all proceeds belonging to the bankruptcy estate. Therefore, post-petition, pre-conversion appreciation belongs to the chapter 7 estate as well. *E.g.*, *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991); *Coslow v. Reisz*, 811 F. App'x 980, 983 (6th Cir. 2020); *In re Castleman*, 75 F.4th at 1056. A change in the value of an asset is inevitable, especially over the course of a multi-year chapter 13 plan and this Court should hold that a plain reading of section

541(a) incorporates post-petition, pre-conversion increases in equity into the chapter 7 bankruptcy estate.

Furthermore, by adopting the ruling of the Thirteenth Circuit, this Court could create a serious dilemma for debtors. For example, if the debtor's home depreciated instead, is the debtor then liable to the trustee for that decrease? Under the Thirteenth Circuit's line of reasoning, the answer may be yes, if the debtor is obligated to pay the value of their property at the time of filing the chapter 13 petition to the trustee. If Debtor's home had depreciated by $100,000 instead, he would be punished for trying to maintain his assests while seeking a fresh start. The Thirteenth Circuit's overreliance on section 522(a)(2)'s "snapshot" rule would leave the debtor on the hook for the change in value. *See* 11 U.S.C. § 522(a)(2); *see also In re Hyman*, 967 F.2d at 1321 ("Were we to accept the Hymans' argument that they're entitled to post-filing appreciation, we would also have to hold that a debtor is subject to post-filing *de*preciation. . . ." This result is unacceptable, and this court should allow creditors to bear the risk associated with valuation changes, whether the value increases or decreases. *See*, *e.g.*, *In re Lang*, 437 B.R. 70, 73 (Bankr. W.D.N.Y. 2010).

B. The legislative history of section 348(f) does not bar post-petition, pre-conversion increases in equity from the chapter 7 estate.

Debtor's home became property of the chapter 7 bankruptcy estate upon conversion pursuant to section 348. The plain text of this section incorporates the debtor's home because it was property of the estate as of the commencement of this case and remained property of the estate as of the date of conversion. Additionally, incorporating the debtor's home into the chapter 7 does not treat the debtor as if he filed in bad faith like section 348(f)(2) prescribes. Instead, section 348(f)(2) incorporates interests of the debtor incurred after the commencement of the case as property of the estate to punish a debtor who files in bad faith. Debtor's interest predated the bankruptcy filing and is not analogous to the scenario contemplated by section 348(f)(2).

The legislative history of section 348(f) does not alter this interpretation of the section. The legislative history contemplates a hypothetical that is distinct from this case, and that hypothetical was not incorporated into the text itself.

1. The text of section 348(f) is not ambiguous.

The Thirteenth Circuit erred in relying on the legislative history of section 348(f) to determine that post-petition, pre-conversion increases in equity are not part of the chapter 7 bankruptcy estate. If a statute's language is unambiguous, this Court should not look to the legislative history for guidance. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). Section 348(f)(1)(A) states that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion." 11 U.S.C. § 348(f)(1)(A). Section 348(f)(2) states "[i]f the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion." 11 U.S.C. § 348(f)(2). Pursuant to section 348(f)(1)(A), the debtor's home is undoubtedly property of the bankruptcy estate because it was property of the debtor upon the filing of the chapter 13 petition and was property of the debtor as of the date of the conversion to chapter 7. *See In re Lang*, 437 B.R. at 72. Therefore, the conditions of § 348(f)(1)(A) have been satisfied to incorporate the debtor's property into the converted chapter 7 estate. The logic of § 348(f)(1)(A) is unambiguous, and as such, the plain text should control. *Puerto Rico*, 579 U.S. at 125.

The Thirteenth Circuit attempts to create ambiguity within section 348(f)(1)(A) by arguing that section 348(f)(1)(A) must be read in context of its legislative history and sections 522 and

348(f)(2). R. at 13. However, when turning to section 348(f)(2) this Court should find no such ambiguity. The Thirteenth Circuit stated that section 348(f)(2) functions as a punishment to a debtor who files in bad faith. *Id*. Yet, incorporating the post-petition, pre-conversion equity into the bankruptcy estate does not punish the Debtor as if he were a debtor in bad faith. The Debtor's interest in his home existed prior to filing for chapter 13 and would be subject to the chapter 7 estate regardless of any hypothetical bad faith filing because of section 348(f)(1)(A). For this provision to function as a punishment, Debtor's property interest would have to have been acquired after filing for chapter 13, and then the court would have had to incorporate it into the chapter 7 estate, a completely different scenario. Therefore, this case does not create tension between sections 348(f)(1)(A) and 348(f)(2). Instead of functioning as a punishment to the debtor, creditors would bear the risk of any potential appreciation or depreciation of an asset between a bankruptcy filing and the asset's sale. In sum, the Debtor is asking this Court to hold that any appreciation in his assets prior to conversion subjects him to the same punishment as a bad faith debtor, and this Court should reject that argument.

2. Considering the legislative history of section 348(f) does not lead to a different interpterion of this statute.

Even if this Court is persuaded that section 348(f) is ambiguous, considering the legislative history will not lead to a different result. Section 348(f)(2) and its legislative history clarify that property acquired after the filing of the chapter 13 petition is not part of the converted chapter 7 estate. *Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 299 (B.A.P. 8th Cir. 2023); H.R. REP. NO. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366; *see also In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). The legislative history of the1994 amendments to section 348(f)(2) states:

> This amendment would clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7. The problem arises because in chapter 13. . . any property acquired after the petition becomes property of the estate, at least until confirmation of a

> plan. Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it property of the estate do not apply to chapter 7. Other courts have held that the property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.

H.R. REP. NO. 103-835, at 57. Congress stated that this amendment was meant to "overrule[] the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) and adopt[] the reasoning of *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985)." *Id.* However, when examining the issue before the Seventh Circuit in *Matter of Lybrook* this Court will find a different scenario. The question before the court in *Lybrook* was whether property inherited by the debtor after filing for chapter 13 became part of the chapter 7 bankruptcy estate after conversion. 951 F.2d at 136. This property was previously owned by the debtor's father and the debtor did not have an interest in the property until his father's death, which occurred after filing for chapter 13. *Id.*

The 1994 amendments properly clarify that after-acquired property is not part of the chapter 7 bankruptcy estate upon conversion. However, this is distinct from the issue before this Court. The Debtor is asking this Court to expand the holding of *In re Bobroff* beyond what was contemplated by Congress in the 1994 legislative amendments and rule that an interest he possessed before filing the bankruptcy petition is partially outside the estate because the value increased. Congress intended for property wholly obtained after filing a bankruptcy petition to be outside of the reach of the bankruptcy court, consistent with section 522. *See* 11 U.S.C. § 522(a). Yet, Debtor's interest existed prior to filing for bankruptcy, which differentiates this case from the circuit split Congress sought to address.

Moreover, this Court can effectuate Congress's intent to adopt the logic of *In re Bobroff* while holding that post-petition, pre-conversion appreciation is part of the chapter 7 estate. The Third Circuit in *Bobroff* held that tort claims that accrued after the debtor had filed for chapter 13 were not part of the chapter 7 bankruptcy estate upon conversion. 766 F.2d at 803. The court clarified that accrual was necessary for the debtor to have a property interest in the tort claims, and the tort claims did not accrue until after the debtor filed for chapter 13. *Id*. The court highlighted that forcing debtors to give up property during the course of a chapter 13 plan would serve as a disincentive to file for chapter 13 *ab initio*. *Id.* By ruling that the appreciation of the Debtor's home is not a distinct interest from his property right, this Court can respect Congress's decision to overrule *Matter of Lybrook* and adopt the reasoning of *In re Bobroff*. The Debtor owned his home at the time of filing for bankruptcy, and no separate, legal interest in the property was acquired post-petition. R. at 6. Therefore, the Debtor's property interest does not resemble the debtor's tort claims in *Bobroff*, and this Court can rule in favor of the petition in a manner consistent with the legislative history.

Additionally, the Thirteenth Circuit heavily relied on a hypothetical mentioned in the legislative history for the 1994 amendments that states:

> These later courts have noted that to hold otherwise would create a serious disincentive to chapter 13 filings. 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 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.

H.R. REP. NO. 103-835, at 57. Although the legislative history contains this hypothetical, it is not reflected in section 348(f). Any language specifying that debtors are entitled to retain equity that is acquired as a result of payments through a chapter 13 plan is absent. *In re Goetz*, 651 B.R. at 299. This omission does not mean that Congress acted inadvertently. *Id.* Moreover, "courts must presume that a legislature says in a statute what it means and means in a statute what it says. . . ." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). The Thirteenth Circuit's decision reads this hypothetical into the statute. This Court has held that "an enlargement [of a statute]. . . so that what was omitted, presumably by inadvertence, may be included within its scope. . . transcends the judicial function." *Iselin v. United States*, 270 U.S. 245, 251 (1926). This Court cannot "add to the terms of [the statute] what Congress left out. . . ." *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1187 (11th Cir. 1997). If Congress determines that the plain language of the statute is not what it intended, then it is the job of Congress alone to correct it. *Conroy v. Aniskoff*, 507 U.S. 511, 528 (1993) (Scalia, J., concurring).

Furthermore, the hypothetical described in the legislative history is not analogous to this case before this Court. The hypothetical describes a situation where a debtor's chapter 13 payments create additional equity in the estate. H.R. REP. NO. 103-835, at 57. However, Debtor's additional equity primarily stems from appreciation as a result of market circumstances. R. at 9. Congress's intent appears to focus on the debtor engaging in payments over the course of the chapter 13 plan that would then be lost to the chapter 7 estate upon conversion. Debtor's additional equity did not arise from his chapter 13 payments, thus under different conditions than those contemplated by Congress. Therefore, while hypothetical was not incorporated in the amendment to section 348(f), it also discusses a different situation than the one before the Court in this appeal.

C. The vesting of the property in the debtor does not prevent the appreciation from inuring to the estate.

Although property is vested in the debtor upon the confirmation of a chapter 13 plan, this does not preclude the post-petition, pre-conversion appreciation from inuring to the converted chapter 7 bankruptcy estate. Section 1327 states "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." 11 U.S.C. § 1327(b). Although the property was vested in the debtor, pursuant to section 1327(b), that property became part of the chapter 7 estate upon conversion. Provisions pertaining to chapter 13 only apply to that chapter and are no longer applicable when the case is converted to chapter 7. 11 U.S.C. § 103(j); *Harris v. Viegelahn*, 575 U.S. 510, 520 (2015) ("When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway."). Even if this Court were to find section 1327(b) applicable, this provision should be read in the context of section 348(f)(1). According to canons of construction, the specific governs the general, and the more specific provision, in this case section 348(f)(1), would govern the more general provision, section 1327(b). *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-85 (1992).

The argument pertaining to vestiture was critical for the Tenth Circuit's decision in *In re Barrera*, a case the Thirteenth Circuit heavily relied upon. *See Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217 (10th Cir. 2022). The Tenth Circuit heard a challenge regarding whether debtors were able to keep the proceeds from the sale of their home after filing for chapter 13, which it answered in the affirmative. *Id.* at 1226. Although on its face the Tenth Circuit's holding appears to support the conclusion of the lower court, the Tenth Circuit's holding is narrow, and Debtor's case does not fall within its scope. Specifically, the Tenth Circuit focuses on the fact that the home was sold before the case was converted to chapter 7, while the debtor was still proceeding under chapter 13, and the home was vested in the debtor. *Id.* at 1224. Unlike the debtors in *Barrera*, Debtor did not sell his home prior to converting his case to chapter 7. Instead, the chapter 7 trustee moved to sell the home after conversion. R. at 4. Therefore, the vesting argument that the Tenth Circuit relied upon in determining that debtors who sell their home while the property is vested in them during a chapter 13 proceeding, is not applicable to Debtor's case. After distinguishing *In re Barrera*, no other circuit has ruled the same way the Thirteenth has on this specific issue. The

Thirteenth Circuit is alone amongst its sister circuits in holding that post-petition, pre-conversion increases in equity under these facts, are not part of the chapter 7 estate.

D. Ruling in favor of the Petitioner would not create a disincentive for filing under chapter 13 and would support the public policy aims of the Bankruptcy Code.

The lower court argues that allowing the trustee to retain a post-petition, pre-conversion increase in equity would create a serious disincentive for filing for chapter 13. R. at 16-17. Although at first pass it may seem like the debtor has "lost the benefit of the bargain" by converting their case, the nature of the bargain should be considered first. *In re John*, 352 B.R. 895, 902 (Bankr. N.D. Fla. 2006). Debtors voluntarily elect to file under chapter 13 as an alternative to the "steep price" of filing for chapter 7. *Harris*, 575 U.S. at 513. Instead of liquidating all non-exempt assets, chapter 13 offers debtors a tremendous advantage over chapter 7, the ability to retain their property, namely their home or car, in exchange for their future disposable income. *Id.* at 514. The ability to retain their property is the primary incentive to file for chapter 13, and a potential change in market conditions is not a primary consideration for those electing to file under any chapter of the bankruptcy code. The disincentive argument presented by the Thirteenth Circuit is also dubious insofar as the debtor may not, and likely cannot, be aware of potential future changes in market conditions. Even if they were, debtors are generally under acute financial distress that requires them to file for bankruptcy, and not wait it out until market conditions improve. *See* Tahira Hira, *Causes and effects of consumer bankruptcies: a cross-cultural comparison*, JOURNAL OF CONSUMER STUDIES & HOME ECONOMICS, 229, 235-36 (1992) ("All factors identified by debtors as a cause for bankruptcy in each of the four countries may be grouped into six categories: (i) collection actions taken by creditors, (ii) inability to re-schedule debt payment, (iii) too much debt, (iv) reduction in income due to unemployment, sickness or reduced hours of work, (v) medical problems, and (vi) personal and marital problems."). Studies have found that for homeowners who file under chapter 13, 89% of those surveyed listed protecting their home as their top priority. Katie Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcome*s, 90 TEX. L. REV. 103, 116 (2011). Other primary goals listed by debtors were to: get control of their finances, save their vehicles, and stop creditor harassment. *Id*. This research demonstrates that the lower court fundamentally misinterprets why individuals file for bankruptcy in the first place. The absence of concern regarding future market prices further indicates that debtors have different, more pressing, concerns when electing to file for bankruptcy.

Further, post-petition appreciation only arises as an issue for debtors who have already attempted and failed a chapter 13 plan. Succeeding in their plan would not result in the sale of their home and filing for chapter 7 at the outset would resolve this issue. Succeeding in chapter 13 would not result in a sale of the property. On the other hand, filing for chapter 7 at the outset would presumably result in a sale before the appreciation occurred, or it would be incorporated into the estate. Additionally, chapter 13 is inherently a "court-supervised bargain" between a debtor and their creditors. *In re John*, 352 B.R. at 902; *In re Golek*, 308 B.R. 332, 338 (Bankr. N.D. Ill. 2004). Debtors exchange their future disposable income for a variety of benefits that include a "super-discharge" of debts, to retain all property of the estate, modify the rights of secured creditors, and cure and reinstate mortgages. *See In re John*, 352 B.R. at 902; 11 U.S.C. §§ 1328, 1327, 1322(b)(2), and 1322(b)(3) and (5). Each of these benefits is incurred by a debtor independent of any post-petition, pre-conversion appreciation, and these are the primary benefits debtors seek when electing to file under chapter 13. *See In re John*, 352 B.R. at 902. When debtors fail to hold up their end of the bargain it is only natural for them to lose its benefits. *See Id*. at 903.

Moreover, this is a no-asset bankruptcy. R. at 9. If the debtor is allowed to retain the post-petition, pre-conversion increase in equity then it would deprive creditors of any recovery and prevent compensation for the trustee. The Thirteenth Circuit, quoting *In re Barrera*, argues that the debtor should be "no worse off for having tried a repayment plan," yet, basic principles of fairness should enable the creditors to rightly recover a portion of what they're owed, instead of allowing the debtor to leave with a debt discharge, and a profit. *See* R. at 17. Overall, policy considerations favor allowing creditors to recover on debts they are owed, and in this case, this Court can enable them to do so.

II. Avoidance actions are property of the estate that a chapter 7 trustee may sell to maximize the value of the estate and distribution to creditors.

The Thirteenth Circuit decision to carve out an exception from section 541(a)(1)'s broad definition of "property of the estate" for avoidance actions cannot be squared with the plain text or the caselaw regarding its broad, all-encompassing scope. This result not only departs from established bankruptcy practice, but also makes it more difficult for chapter 7 trustees to maximize the value of the estate for the benefit of the debtor's creditors. Accordingly, this Court should reverse the decision below and hold that avoidance actions are among the interests in property included in the bankruptcy estate under section 541(a)(1).

Upon the commencement of a case, the legal and equitable interests of the debtor—"wherever located and by whomever held"—pass into an estate that is administered by the bankruptcy trustee. 11 U.S.C. §§ 363, 541(a). The trustee is duty-bound to conserve and maximize the value of the estate for the benefit of creditors. *CFTC v. Weintraub*, 471 U.S. 343, 352 (1985); *see also In re Taxman Clothing Co.*, 49 F.3d 310, 315 (7th Cir. 1995) ("[The trustee's] duty is to endeavor to maximize the value of the estate, which is to say the *net assets*.") (internal quotations omitted). To accomplish this, trustees are directed "to collect and reduce to money the property of the estate for which such trustee serves." 11 U.S.C. § 704(a)(1). Trustees may bring causes of action to avoid and recover certain transfers made by the debtor, including actions to avoid preferential transfers. 11 U.S.C. § 547(b). Trustees are also permitted to sell property of the estate with approval from the court. 11 U.S.C. § 363.

Section 541(a)(1) sets forth what interests of the debtor in property are included within the bankruptcy estate, however this provision should be viewed "as a definition of what is included in the estate, rather than as a limitation." *United States v. Whiting Pools, Inc*, 462 U.S. 198, 203 (1983). "Property of the estate" is broadly defined to encompass all "legal or equitable interests of the debtor in property as of the commencement of the case" including interests in causes of action. 11 U.S.C. § 541(a)(1); H.R. REP. NO. 95-595, at 175, *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6136 (explaining that § 541(a)(1) "includes all interest, such as interests . . . in causes of action"). While certain powers and interests are explicitly excluded from the estate by section 541(b) and 541(c)(2), no exception is made for preference actions or any other cause of action that arises under chapter 5 of the Code.

The Eighth Circuit recently addressed whether an avoidance action was property of the estate that could be sold by a trustee in a substantially similar case. *Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006, 1009 (8th Cir. 2023)). Relying on the plain text of section 541(a), the Eighth Circuit concluded that a debtor's interest in an avoidance action was included within the bankruptcy estate. *Id.* at 1008. The Eighth Circuit resolved any doubts about the proper interpretation of section 541(a)(1) by analyzing its language in light of this Court's prior decisions regarding its scope and meaning. *Id.* at 1008-09. Additionally, the Eighth Circuit noted in its analysis that its conclusion was consistent with the decisions of other courts and with the Code's policy of maximizing the value of the estate for creditors. *Id.* at 1009.

Whereas the Eighth Circuit relied on the plain text of section 541(a) and precedent from this Court regarding its scope, the Thirteenth Circuit relied on the "absence of any cross reference to section 547 in section 541(a)" and the use of the term "trustee" in section 547(b) to create an exception to section 541(a) that does not exist on the face of the statute. *See* R. at 19. This Court should reject the Thirteenth Circuit's atextual interpretation and hold that avoidance actions constitute "property of the estate" within section 541(a) that the trustee may sell under section 363.

A. The plain text of section 541(a)(1) unambiguously encompasses avoidance actions as legal or equitable interests in property held at the commencement of the case.

The task of resolving the scope of section 541(a) begins where all such inquiries must begin: with the text of the provision itself. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). Section 541(a)(1) brings into the bankruptcy estate "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Interests in causes of action are plainly included within the estate under section 541(a)(1), and causes of action that arise under chapter 5 of the Code are no exception. *See* H.R. REP NO. 95-595, at 175 (explaining that § 541(a)(1) "includes all interest, such as interests . . . in causes of action."). Rather than parsing the meaning of section 541(a)(1), the Thirteenth Circuit looked to other provisions and extratextual sources to narrow the scope of section 541(a) and to exclude avoidance actions from the causes of action that a trustee may sell to fulfill its statutory duty to maximize the value of the estate. However, because section 541(a)(1) is plain, "the sole function of the court is to enforce it according to its terms.'" *Ron Pair Enterp.*, 489 U.S. at 241 (citing *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

1. Avoidance actions are among the "legal or equitable interests . . . in property" included within the bankruptcy estate under section 541(a)(1).

The right to avoid and recover preferential transfers is a "legal or equitable interest . . . in property" brought within the bankruptcy estate under section 541(a)(1). This provision brings within the estate every conceivable right or interest of the debtor, including those that are "future, nonpossessory, contingent, speculative, and derivative." *In re Yonikus*, 996 F.2d 866 (7th Cir.

1993); *see also Segal v. Rochelle*, 382 U.S. 375, 379 (1966) (noting that "the term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed"); *Official Comm. Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines Inc.)*, 928 F.2d 565, 573 (2d Cir. 1991) (explaining that section 541(a) was intended to "bring anything of value that the debtors have into the estate").

It is well established that causes of action are interests in property included in the bankruptcy estate under section 541(a)(1). *Bauer v. Commerce Union Bank*, 859 F.2d 438, 440–41 (6th Cir. 1988); *see also Polis v. Getaways, Inc.* (*In re Polis)*, 217 F.3d 899, 901 (7th Cir. 2000) ("§ 541(a)(1)[] has uniformly been interpreted to include causes of action."); H.R. REP. No. 95-595, at 367; S. REP. NO. 95-989, at 82 (1978), *as reprinted* in 1978 U.S.C.C.A.N. 5868, 6323 (explaining that section 541(a)(1) "includes all kinds of property, including . . . causes of action.").

It is similarly well established that avoidance actions constitute causes of action, with both the Code and courts referring to them as such. *See* 11 U.S.C. § 926(a) (providing that if a debtor in a municipal bankruptcy "refuses to pursue a cause of action under section 544, 545, 547, 548, [or] 549 . . . the court may appoint a trustee to pursue such cause of action"); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989) (describing the "right to recover a fraudulent conveyance" under section 548(a) as a "statutory cause of action"); *Kelley v. Boosalis*, 974 F.3d 884, 903 (8th Cir. 2020) (noting that a claim under section 544(b)(1) is a "federal cause of action"); *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 771 (B.A.P. 10th Cir. 1997) (holding that "[a] proceeding 'arises under' the Bankruptcy Code if it asserts a cause of action created by the Code, such as . . . avoidance actions under 11 U.S.C. §§ 544, 547, 548, or 549"). Therefore, as causes of action, an avoidance action is an interest in property that belongs to the estate under section 541(a)(1).

Nevertheless, the Thirteenth Circuit relied on the use of the term "trustee" in section 547(b) to conclude that preference actions are not salable as they can only be brought by the trustee. R. at 19. However, this reasoning fails for several reasons. First, it ignores the practice among bankruptcy courts to grant derivative standing to creditors to pursue avoidance actions on behalf of the estate when a trustee is unable or unwilling to do so. *PW Enters., Inc. v. N.D. Racing Comm'n* (*In re Racing Services Inc.)*, 540 F.3d 892, 898 (8th Cir. 2008); *see also Canadian Pac. Forest Prods. Ltd. v. J.D. Irving, Ltd. (In re Gibson Grp., Inc.*), 66 F.3d 1436, 1442 (6th Cir. 1995) (collecting cases). Second, the Thirteenth Circuit's rationale ignores the other rights and powers that are routinely found to be interests in property. For example, the Supreme Court has found that the "right to recover a postpetition transfer" constitutes "property of the estate." *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 37 (1992); *see also In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 512 (Bankr. S.D. Ohio 2021) (explaining that *Nordic Village* "provides strong authority for the view" that "the postpetition avoidance action itself . . . [is] property of the estate"). Similarly, the right to a refund is property of the estate. *Segal*, 382 U.S. at 380. Third, this interpretation is inconsistent with the exclusion of "any power that the debtor may exercise solely for the benefit of an entity other than the debtor" from the bankruptcy estate in section 541(b)(1). Congress's choice to exclude certain powers from the definition of "property of the estate" but not the power to avoid certain transfers indicates that these interests are included within the bankruptcy estate.

The Thirteenth Circuit also relied on the omission of any cross reference to section 547(b) in section 541(a) to conclude that Congress intended to exclude avoidance actions from the estate. However, the definition set forth in section 541(a)(1) is not intended to be a limitation on what interests can be included within the estate. *Whiting Pools, Inc.*, 462 U.S. 198, 203, 205 (1983).

Rather, "property of the estate" broadly encompasses every interest of the debtor unless it is "expressly excluded" by another provision of the Code. *Grassmueck v. Am. Shorthorn Ass'n,* 402 F.3d 833, 836 (8th Cir. 2005); *see also Iannacone v. Katusky (In re Katusky)*, 372 B.R. 910, 913 (Bankr. D. Minn. 2007) ("Contingent interests are interests in property within the scope of 11 U.S.C. § 541(a)(1) . . . unless otherwise excluded by another provision of the Bankruptcy Code"). Congress intended to include "[e]very conceivable interest of the debtor, future, contingent, speculative, and derivative" within the bankruptcy estate, and the absence of a specific reference to a particular property interest does not demonstrate an intent to exclude that property from the bankruptcy estate. *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008).

2. The debtor's interest in an avoidance action exists "as of the commencement of the case" within the meaning of section 541(a)(1).

Having concluded that the debtor's interest in an avoidance action constitutes property of the estate, the only remaining question under section 541(a)(1) is whether that interest existed at the commencement of the case. The plain language of section 541(a)(1) includes in the estate causes of action that exist "as of the commencement of the case," including causes of action that accrue pre-petition as well as those that accrue as a result of the bankruptcy filing. *Winick & Rich, P.C. v. Strada Design Assocs. (In re Strada Design Assocs.*) 326 B.R. 229, 235 (Bankr. S.D.N.Y. 2005) (citing *Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. v. Alverez (In re Alvarez)*, 224 F.3d 1273, 1278 (11th Cir. 2000), *cert. denied*, 531 U.S. 1146 (2001)). Because avoidance actions accrue on the filing of a petition for bankruptcy, they are plainly included within the estate under section 541(a)(1). *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 114 (Bankr. S.D.N.Y. 2011) (explaining that section 541(a)(1) "includes any cause of action the debtor had on the petition date as well as avoidance actions created on the petition date") (internal citations omitted).

Without explanation, the Thirteenth Circuit concluded that the phrase "as of the commencement of the case" limited section 541(a)(1) to only claims held by the debtor prior to bankruptcy. R. at 20. However, this conclusion is not supported by the plain text of the provision. Section 541(a)(1) plainly encompasses interests held "as of" or at the time of filing and is not limited to pre-petition interests. *Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. v. Alvarez (In re Alvarez)*, 224 F.3d 1273, 1278 (11th Cir. 2000) ("The plain language of § 541(a)(1) includes in the estate interests of the debtor "as of" filing, not interests of the debtor "before" or "prior to" filing."). Had Congress intended to limit the scope of section 541(a)(1) to interests existing prior to bankruptcy, it could have easily done so by using "before" rather than "as of." *See In re Dow*, 132 B.R. 853, 860 (Bankr. S.D. Ohio 1991) (noting the significance of the word "as of" and holding that a cause of action for malpractice that accrued upon the filing of the petition was property of the estate). Instead, Congress adopted broad language intended to encompass all interests that the debtor held on the petition date and not merely those held pre-petition.

A comparison to other provisions in the Code confirm that section 541(a)(1) is not limited to interests that arise or accrue pre-petition. When Congress intended to refer exclusively to pre-petition interests in the Code, it did so explicitly. *See* 11 U.S.C. § 365(g) (treating a rejected damage claim as if it arose "immediately before the date of the filing of the petition); 11 U.S.C. § 348(d) (treating a claim that arises pre-conversion as if it arose "immediately before the date of the filing of the petition"). Moreover, Congress used "as of the commencement of the case" in other provisions of the Code to describe rights that arise simultaneous with the commencement of the case. Specifically, section 544—one of the avoidance provisions—provides that the trustee "as of the commencement of the case . . . may avoid any transfer of property" that is voidable by a creditor under state law. 11 U.S.C. § 544(a). By providing that the trustee's power to avoid transfers under section 544 arose "as of the commencement of the case," Congress made clear that this interest, from a temporal perspective, was included within the scope of section 541(a)(1). By referring to the debtor's interests "as of the commencement of the case" instead of "immediately before the date of the filing of the petition," Congress made clear that it intended to include interests that accrue upon filing as property of the estate under section 541(a)(1).

Even if section 541(a)(1) was interpreted to only encompass pre-petition interests, the avoidance action would still be included as property of the estate based on the debtor's inchoate or contingent interest in the action pre-bankruptcy. *In re Simply Essentials, LLC*, 78 F.4th 1006, 1009 (8th Cir. 2023) (citing *Segal v. Rochelle*, 382 U.S. 375, 379 (1966)). In *Segal v. Rochelle*, this Court held that an inchoate refund claim—which was applied for post-petition and based on pre-petition conduct—was "sufficiently rooted in the pre-bankruptcy past" and "constituted 'property' at the time of the bankruptcy petitions." 382 U.S. at 380-81. The Court explained that even though the debtors could not have claimed the refund until after the petition was filed, "postponed enjoyment does not disqualify an interest as 'property.'" *Id.* at 380. This same principle applies to avoidance actions. Avoidance actions are based on the pre-petition conduct of the debtor, as they seek to "undo" transfers made by the debtor prior to bankruptcy. *In re Simply Essentials*, 78 F.4th at 1009. Additionally, even though the right to avoid a preferential transfer arises at the time of filing, this does not mean that the debtor's inchoate or contingent interest in the avoidance claim is excluded as property under section 541(a)(1).

A debtor's interest in an avoidance action is among the interest in property that exists at the commencement of the case, and as such is plainly included as property of the estate under section 541(a)(1) that can be sold by the trustee. This Court should reject the Thirteenth Circuit's attempts to circumvent the plain text, and instead should enforce section 541(a)(1) according to its plain meaning by holding that avoidance actions are among the legal and equitable interests included within the bankruptcy estate.

3. Including avoidance actions as property of the estate under section 541(a)(1) does not create surplusage.

In an attempt to overcome the plain text, the Thirteenth Circuit looked to the canon against surplusage to support its proposed narrowing of section 541(a)(1). R. at 22. However, reliance on this canon of construction is misplaced. While canons of construction are "helpful rules of thumb," they do not grant courts the ability to depart from the unambiguous text. *Connecticut Nat'l Bank*, 503 U.S. at 253. Moreover, the "canon against surplusage is not an absolute rule," *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013), as "[r]edundancies across statutes are not unusual events in drafting." *Connecticut Nat. Bank*, 503 U.S. at 253. Such redundancies are to be expected in a statute like section 541(a) which Congress intended to be broad and all-encompassing. *In re Simply Essentials*, 78 F.4th at 1009 ("It is not unreasonable that Congress would repeat itself in order to ensure the results it intended were followed."); *see also* 11 U.S.C. § 541(a)(6) (using the synonymous terms "[p]roceeds, product, offspring, rents or profits" in its definition of property of the estate).

In any event, including avoidance actions as property of the estate under section 541(a)(1) does not create surplusage. While section 541(a)(3) includes as property of the estate "[a]ny interest in property that the trustee recovers under section . . . 550," this provision would not be rendered superfluous if avoidance actions were included under section 541(a)(1). As the Thirteenth Circuit acknowledged, section 541(a)(3) does not address the property interest in the avoidance action itself, R. at 22, and "[t]here is nothing superfluous about a statute that makes a claim property of the estate while another part of the statute makes the recovery on the claim property of the estate." *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. at 509; *see also* Brendan

Gage, *Is There a Statutory Basis for Selling Avoidance Actions?*, 22 J. BANKR. L. & PRAC. 3 Art. 1 (2013) ("Multiple subsections of 541(a) address property interests relating to avoidance and subsection (a)(1) can be read as covering yet another one of them: the avoidance action itself.")

This Court warned against reading section 541(a) "as a limitation" on what property is included in the bankruptcy estate in *Whiting Pools, Inc.*, 462 U.S. at 203, and this Court should not rely on canons of construction to limit the scope of a broad statute that plainly includes avoidance actions within its scope. *See Connecticut Nat'l Bank*, 503 U.S. at 254 ("It would be dangerous in the extreme to infer . . . that a case for which the words of an instrument expressly provide, shall be exempted from its operation.") (quotations omitted). Rather, because the text is plain, there is no need for a court to inquire beyond it. *Ron Pair Enterprises, Inc.*, 489 U.S. at 241. This Court should therefore reject the Thirteenth Circuit's attempts to circumvent the plain text and enforce section 541(a)(1) according to its terms by holding that avoidance actions are among the legal and equitable interests included within the bankruptcy estate under section 541(a)(1).

B. Caselaw confirms that avoidance actions are property of the estate that a chapter 7 trustee may sell.

Although the plain text of section 541(a)(1) is conclusive, decisions analyzing the scope of section 541(a) confirm that avoidance actions are property of the estate. The Eighth Circuit recently addressed the issue, and its well-reasoned analysis should be persuasive to this Court. Whereas the Eighth Circuit relied on statutory text and this Court's precedent to conclude that avoidance actions were property of the estate, *In re Simply Essentials, LLC*, 78 F.4th at 1011, the Thirteenth Circuit opted to rely upon caselaw that does not address the scope of section 541(a) in order to conclude that avoidance actions are non-transferrable powers that cannot be sold. R. at 19-21. In doing so, the Thirteenth Circuit departed from the consensus among courts across the country. *In re Simply Essentials*, 78 F.4th at 1010. This Court should reject the Thirteenth Circuit's strained reasoning and hold, consistent with the majority of courts that have addressed this issue, that avoidance actions are property of the estate that the trustee may sell to maximize value for creditors.

1. The Eighth Circuit's well-reasoned analysis of section 541(a)(1) in *In re Simply Essentials* is instructive and should be adopted by this Court.

The Eighth Circuit's analysis of a substantially similar case involving the sale of an avoidance action by a trustee is instructive, and its well-reasoned opinion should be adopted by this Court. In that case, a chapter 7 trustee that lacked the resources necessary to pursue an avoidance action sought to sell the action in a section 363 sale in order to maximize value for creditors. *In re Simply Essentials*, LLC, 78 F.4th at 1008. The creditor that was the target of the claim bid on the claim, but after losing to another creditor, objected to the sale on the basis that avoidance actions were not property of the estate that could be sold in a section 363 sale. *Id.*

In a succinct opinion by Judge Melloy, the Eighth Circuit concluded that avoidance actions were part of the estate under the plain language of section 541(a). *Id.* at 1009. In reaching this conclusion, the Eighth Circuit relied on this Court's decision in *Whiting Pools*, where this Court held that property that had been repossessed by a creditor pre-petition was subject to the turnover provision of section 542(a) and therefore included as property of the estate under section 541(a)(1). *Id*. at 1009 (citing *Whiting Pools, Inc.*, 462 U.S. at 206). In *Whiting Pools*, this Court emphasized the breadth of section 541(a)(1), noting that it included "all kinds of property. . . including causes of action" as well as "any property of the estate made available by other provisions of the Bankruptcy Code." 462 U.S. at 206, n. 9; *Id.* at 206 n.10 (including section 547(b) as one such provision). Under the logic of *Whiting Pools*, avoidance actions—as causes of action made available by another provision of the Code—are therefore included as property of the estate under section 541(a)(1). *In re Simply Essentials*, 78 F.4th at 1009.

In addition, the Eighth Circuit relied on this Court's decision in *Segal v. Rochelle*, where this Court held that an inchoate refund claim was included as property of the estate. *Id*. (citing *Segal v. Rochelle*, 382 U.S. 375, 379 (1966); *see also* H.R. REP. NO. 95-595, at 367 (explaining that § 541(a)(1) follows *Segal v. Rochelle*). The Eighth Circuit reasoned that, similar to a tax refund claim based on pre-petition losses, avoidance actions are actions based on pre-petition transfers made by the debtor. *In re Simply Essentials*, 78 F.4th at 1009. Finding that the debtor had an "inchoate interest in the avoidance actions prior to the commencement of the bankruptcy proceedings" based on his right to file for bankruptcy and the trustee's ability to bring an avoidance action, the Eighth Circuit held that "avoidance actions are property of the estate under section 541(a)(1)." *Id.*

In declining to adopt the reasoning of *Simply Essentials*, the Thirteenth Circuit argued that the debtor did not retain an interest in the funds transferred to Pink. R. at 20. However, it is not debtor's interest in the funds that give rise to the inchoate interest in the avoidance action. Rather, just as the debtor in *Segal* had an inchoate interest in a tax refund claim based on his right to file his taxes and ability to seek a refund for lost profits, so too does a debtor have an inchoate interest in an avoidance claim based on his right to file for bankruptcy and the ability of the trustee or debtor-in-possession to file an avoidance action to recover property transferred pre-petition. *In re Simply Essentials*, 78 F.4th at 1009. Far from being "strained" or "creative," the Eighth Circuit's concise analysis of the plain text of section 541(a)(1) and this Court's precedent interpreting it further bolster the conclusion that avoidance actions are property of the estate. R. at 20.

2. Many courts that have addressed this issue have similarly concluded that avoidance actions are property of the estate.

The Eighth Circuit's decision reflects the growing consensus among courts that chapter 5 avoidance actions are property of the estate that may be sold by a chapter 7 trustee. *See, e.g., Cadle*

Co. v. Mims (In re Moore), 608 F.3d 253, 262 (5th Cir. 2010) ("We conclude, therefore, that the fraudulent-transfer claims are property of the estate under § 541(a)(1) . . ."); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007) ("It is well established that a claim for fraudulent conveyance is included within [11 U.S.C. § 541(a)(1)].") (quotation omitted); *Nat'l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705, 708–09 (7th Cir. 1994) ("[T]he right to recoup a fraudulent conveyance . . . is property of the estate . . ."); *Silverman v. Birdsell*, 796 F. App'x. 935, 937 (9th Cir. 2020) (holding that a "bankruptcy trustee may sell an estate's avoidance claims"); *United States v. Sabbeth*, 262 F.3d 207, 216 (2d Cir. 2001) (noting in dicta that while preferentially transferred property may be excluded from 541(a) until it is recovered "a trustee may be able to assign—or 'distribute'—the *right* to recover property that it does not yet possess"); *see also In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. at 518 (concluding that a "actions to avoid preferential transfers . . . exist 'as of the commencement of the case'" and are therefore "property of the estate under §541(a)(1)").

The Thirteenth Circuit cited to *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 245 (3d Cir. 2000), as contrary authority. R. at 18. However, *Cybergenics Corp.* is not on point as it address whether avoidance actions are "assetts" of the debtor and not whether they are property of the estate. 226 F.3d at 246. The Third Circuit emphasized that the terms "asset" and "property of the estate" have different meanings in the Code and explained that "[i]ssues relating to property of the estate are simply not relevant to the inquiry into whether the fraudulent transfer claims . . . were assets." *Id.* Moreover, the Third Circuit has since indicated that *Cybergenics* should not be read to hold that avoidance actions are not property of the estate. *Artesanias Hacienda Real S.A de. C.V. v. North Mill Capital, LLC (In re*

Wilton Armetale, Inc.), 968 F.3d 273, 285 (3d Cir. 2020) ("*Cybergenics* does not hold that trustees cannot transfer causes of action. It leaves that question open . . .").

3. The Thirteenth Circuit's reliance on *Hartford Underwriters* is misplaced.

Rather than looking to the well-reasoned decisions from other circuits or this Court's decisions interpreting section 541(a)(1), the Thirteenth Circuit primarily relied on *Hartford Underwriters* to conclude that avoidance actions were powers granted exclusively to the trustee that could not be sold. R. at 19. However, the decision in *Hartford Underwriters* addressed only whether an insurance company could recover unpaid premiums under section 506(c), which permits a trustee to recover certain administrative expenses from property securing allowed secured claims. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 7 (2000). While the Court held that the use of the word "trustee" indicated that only the trustee could recover under administrative expenses under section 506(c), it acknowledged the "practice of some courts of allowing creditors . . . a derivative right to bring avoidance actions" when a trustee is unable or unwilling to do so, "even though the applicable Code provisions mention only the trustee," and explained that this practice "ha[d] no analogous application here, since [Hartford Underwriters] did not ask the trustee to pursue payment . . . and did not seek permission from the Bankruptcy Court to take such action in the trustee's stead." *Id*. at 13 n.5 (internal citations omitted).

While the Thirteenth Circuit contends that only the trustee is authorized to pursue avoidance actions, R. at 19, courts of appeal have continued to allow non-trustees to pursue avoidance actions in the years notwithstanding *Hartford Underwriters*. *See, e.g.*, *In re Racing Servs., Inc.*, 540 F.3d at 898 (holding that "derivative standing is available to a creditor to pursue avoidance actions when it shows that a Chapter 7 trustee . . . is 'unable or unwilling' to do so" notwithstanding *Hartford Underwriters*); *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 580 (3d Cir. 2003) (en banc) (holding that "bankruptcy courts can authorize creditors' committees to sue derivatively to avoid fraudulent transfers for the benefit of the estate" notwithstanding *Hartford Underwriters*). It defies reason that the text of section 547(b) would permit derivative standing to creditors but not the transfer or sale of an avoidance action. Moreover, it is not unreasonable that the Code would permit trustees to sell avoidance actions while only granting the trustee the ability to recover administrative expenses against property securing a secured claim. Rather, it is consistent with the trustee's statutory duty to preserve the assets of the estate and to maximize distributions for creditors.

By relying on *Hartford Underwriters* rather than cases addressing the scope of section 541(a)(1), the Thirteenth Circuit departed from both the plain meaning of the statute and the overwhelming weight of authority interpreting its scope. This Court should adopt the reasoning of the Eighth Circuit in *In re Simply Essentials* and hold, consistent with the unambiguous text of 541(a)(1), that avoidance actions are property of the estate that can be sold.

C. The inclusion of avoidance actions within the bankruptcy estate is consistent with established bankruptcy practice, the purpose of an avoidance action, and the trustee's duty to maximize the value of the estate for the benefit of creditors.

Including avoidance actions as property of the estate that the trustee may sell in a section 363 sale is further supported by the established bankruptcy practice, the purpose of avoidance actions, and the statutory duty of the trustee to maximize the value of the estate for the benefit of the debtor's creditors. The Thirteenth Circuit's decision will not only disrupt the routine practice of bankruptcy courts and practitioners, but it will also frustrate the goals of equal distribution among creditors and of maximizing the value of distributions by preventing trustees from selling what may be, in many cases, the most valuable non-exempt asset available.

First, bankruptcy courts and practitioners routinely treat avoidance actions as property of the estate. For example, avoidance actions are often used as collateral to obtain debtor-in-possession (DIP) financing under section 364 or to use cash collateral. *See, e.g.*, *U.S. Dep't of*

Treasury v. Official Comm. of Unsecured Creditors of Motors Liquidation Co., 475 B.R. 347, 354 (S.D.N.Y. 2012) (noting that "DIP lenders would get liens on most of the avoidance actions")*; In re KLCG Prop., LLC*, No. 09-14418, 2010 WL 5093146, at *9 (Bankr. D. Del. Jan. 28, 2010) (granting the DIP lender first priority in "causes of action including actions for preferences, fraudulent conveyances, and other avoidance power claims"); *In re Outboard Marine Corp.*, 2002 WL 571661, at *3 (Bankr. N.D. Ill. Jan. 9, 2002) (providing, as adequate protection for the use of cash collateral, a lien in "all property of the chapter 7 estates" including "all avoidance actions"). Local bankruptcy rules in several jurisdictions also require debtors to highlight provisions in these orders that place liens on avoidance actions. *See* Bankr. S.D.N.Y. R. 4001-2(g)(9) (imposing limitations on interim orders approving the use of cash collateral or the obtaining of credit that grant liens on proceeds of avoidance actions, but providing no such limitation in connection with a final order). The Thirteenth Circuit's holding disrupts this routine practice among courts and practitioners, and in doing so effectively deprives the debtor of collateral that it may use to obtain necessary capital during the bankruptcy process.

Bankruptcy courts also routinely approve motions and requests seeking approval to sell avoidance actions in chapter 11 cases. *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. at 507 (collecting cases where courts have entered orders approving requests to sell avoidance actions). Consistent with this regular practice, several jurisdictions have adopted local rules that require sale motions to "highlight any provisions pursuant to which the debtor seeks to sell or otherwise limit its right to pursue avoidance claims under chapter 5 of the Bankruptcy Code." Bankr. D. Del. R. 6004-1(b)(iv)(K); *see also* S.D.N.Y Amended Guidelines for the Conduct of Asset Sales by the Court ¶ D.11. This makes practical sense, as a buyer in a business bankruptcy frequently wants "to maintain control over potential avoidance actions against vendors with whom it continued to do business." *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. at 506.

Second, allowing the trustee to sell avoidance actions provides a way for the trustee to obtain recoveries for creditors in cases where it lacks the funds necessary to litigate the avoidance action. Chapter 7 debtors by definition lack funds, and as a result trustees often lack the funds necessary to initiate and litigate adversary actions to avoid preferential transfers. To allow a creditor that receives a preference payment and faces a meritorious preference claim "to escape those claims because the Trustee cannot afford to pursue them and they cannot be sold or transferred would be an absurd result." *In re Simply Essentials, LLC*, 640 B.R. 922, 930 (Bankr. N.D. Iowa 2022), aff'd, 78 F.4th 1006 (8th Cir. 2023). Congress clearly intended for avoidance actions to be pursued and litigated, and permitting trustees to sell avoidance actions furthers the goals Congress had in mind in enacting section 547(b) by ensuring avoidance actions could be pursued even when trustees lack the funds to bring the actions themselves. However, under the Thirteenth Circuit's rule, creditors who disgorge the estate of its assets will be able to keep its unfair advantage and ill-gotten gains where the estate lacks the assets to pursue the avoidance action to recover preference payments.

Third, allowing the trustee to sell avoidance actions furthers their statutory duty to "administer estate property so as to maximize distribution to unsecured creditors." *In re Bird*, 577 B.R. 365, 375 (B.A.P. 10th Cir. 2017) (quoting *In re All Island Truck Leasing Corp.*, 546 B.R. 522, 532 (Bankr. E.D.N.Y. 2016)). In performing their duties, trustees must consider the costs associated with recovering property, and are obligated to abandon preference actions where the costs of litigating outweigh the amount that is likely to be recovered. *In re Taxman Clothing Co.*, 49 F.3d at 315 (explaining that the trustee's duty to maximize the value of the estate places the trustee "under an obligation to . . . the debtor's estate, to abandon the preference suit once it became reasonably obvious that further litigation would cost more than it was likely to bring into the estate"). While this case involves a debtor with other assets, avoidance actions often provide cash-strapped estates with a valuable asset that the trustee can sell in order to provide for distributions for creditors. Here, the price paid by Eclipse was fair and reasonable, allowing the trustee to recover the full value of claim without the risk or cost of litigating an adversary action. By providing a mechanism for the trustee to recover the value of the claim without undertaking the huge costs associated with pursuing it to judgement, permitting the sale of avoidance actions furthers the trustee's performance of their statutory duty to maximize the value of the estate and the distribution to creditors.

Avoidance actions arising under chapter 5 of the Code are more than mere statutory powers. They are interests in property that are plainly included within the bankruptcy estate under section 541(a)(1). Consistent with the plain text, caselaw, and established bankruptcy practice, this Court should reverse the ruling of the Thirteenth Circuit and hold that avoidance actions are property of the estate that may be sold by the trustee in a section 363 sale.

CONCLUSION

For the reasons listed above, this Court should reverse the decision of the Thirteenth Circuit Court of Appeals.