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.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

JANUARY 18, 2024

TEAM NUMBER 47
COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

I. Whether any post-petition, pre-conversion increase in equity in a debtor's property inures to the benefit of the debtor or to the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 pursuant to 11 U.S.C. §§ 348 and 541.

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

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JURISDICTION STATEMENT

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

STATEMENT OF THE CASE

Cpl. Eugene Clegg (ret.) (the "Debtor") is a veteran and small business owner in the state of Moot. R. at 5. In 2012, Debtor became the sole owner of The Final Cut, LLC ("Final Cut"). R. at 5. Final Cut was an entity that operated a historic movie theater in the City of Moot. Final Cut operated at a profit for years, and Debtor's sole source of income was his salary from Final Cut. R. at 5.

In 2016, Debtor acquired an $850,000 loan (the "Loan") from a community-based lender just entering the commercial loan market, Eclipse Credit Union ("Eclipse"). R. at 5. In order to secure this loan, Eclipse was granted first priority liens on Final Cut's real and personal property as well as an unconditional, unsecured, and unlimited personal guaranty from the Debtor. R. at 5.

In March 2020, Final Cut became inoperable due to the COVID-19 pandemic. R. at 6. Without income from Final Cut, Debtor turned to his mother, Pink, and borrowed $50,000 on an unsecured basis. R. at 6. Despite reopening in February 2021, Final Cut remained unprofitable, and Debtor incurred additional personal debt. R. at 6. In the months that followed reopening Final Cut, Debtor rapidly fell behind on payments to Eclipse and his home mortgage servicer; thus, the home mortgage servicer commenced foreclosure proceedings. R. at 6

On December 8, 2021, Debtor filed bankruptcy under chapter 13 of the Bankruptcy Code in attempt to create a plan that would allow him to retain his home.[1] R. at 6. Debtor stated his home value was $350,000 based on an appraisal obtained immediately preceding the filing. R. at 6. Debtor acknowledged both the amount owed to his home mortgage servicer, in the amount of $320,000, and an unspecified amount owed to Eclipse. R. at 6. Notably, Debtor also disclosed $20,000 in repayments to Pink that occurred in the year prior to the petition date. R. at 7. Noting

[1] Specific sections of the Bankruptcy Code are identified herein as "section _____." The Bankruptcy Code generally is referred to herein as "the Code."

that a chapter 13 plan requires each creditor to receive an amount no less than their share of a hypothetical chapter 7 liquidation, the chapter 13 trustee acknowledged that the $20,000 repayment to Pink could be recovered and distributed to the other creditors through a preference cause of action. R. at 7. After amending the plan with consent from all parties, the chapter 13 trustee memorialized a stipulation that she would not seek to avoid and recover the payments to Pink. R. at 8.

After contracting long-COVID and shuttering Final Cut's theater, Debtor elected to convert his chapter 13 case to a chapter 7 case and did so in good faith. R. at 8. Vera Lynn Floyd (the "Trustee") was appointed as Trustee and tasked with administering the Debtor's chapter 7 estate. R. at 9. After an updated appraisal of the home, Trustee became aware that the value of the home increased to $450,000. R. at 9. Noting that the estate was bereft of any assets beyond the home and the alleged preference action against Pink, Trustee accepted an offer from Eclipse to transfer ownership of the home and the alleged preference action in the aggregate amount of $470,000. R. at 9. Although the sale maximized the value of the estate, the Debtor challenged the motion to sell (the "Sale Motion") the home and the preference claim. R. at 10.

The bankruptcy court denied the Sale Motion and ruled in favor of the debtor finding: (1) any post-petition, pre-conversion increase in equity to the home inures to the benefit of the debtor, and (2) the Trustee's statutory ability to recover preference actions under sections 547 and 550 of the Code cannot be sold to third parties. R. at 10. Trustee appealed the bankruptcy court's ruling to the United States Court of Appeals for the Thirteenth Circuit (the "Thirteenth Circuit"). R. at 10. The Thirteenth Circuit subsequently affirmed the bankruptcy court's ruling. R. at 24.

SUMMARY OF THE ARGUMENT

This case squarely concerns the effective administration of bankruptcy estates. On its face, Respondent's position pushes forth a focus on equitable approaches to estate management and

liquidation. However, a thorough analysis of the Respondent's position reveals the cascading impact it will have on effective administration of estates. At its core, the Respondent is asking the court to entirely reformulate the calculus behind chapter 7 estate administration simply because a debtor attempted, and failed, to effectively carry out a chapter 13 plan.

The first issue before the court concerns the ownership of post-petition, pre-conversion increases in estate property equity. Pursuant to the plain language of the Code, any increase in property equity that occurs from the period of petition date and the time of conversion inures to the sole benefit of the estate. It would be a folly to allow debtors who convert from chapter 13 to chapter 7 to receive the benefits of the "fresh start" allowed by chapter 7 without also facing the consequences that accompany that "fresh start."

The inquiry first begins by looking to the plain language of sections 348 and 541, which unambiguously support the notion that the post-petition, pre-conversion equity increase inures to the benefit of the estate. The "property of the estate" explicitly includes all legal *and* equitable interests of the debtor and the property. The equitable interest in the property must attach to the estate property because the equitable interest cannot be evaluated without the property itself. Respondent's position leads to the absurd outcome of assessing equitable interests of property as entirely separate from the property from which the equity is derived. Finally, effective adjudication and administration of bankruptcy estates demands a solution which can be easily and equally applied to all cases. Respondent's position would allow debtors converting from chapter 13 to unjustly skirt the consequences that a typical chapter 7 debtor would experience. Therefore, the Thirteenth Circuit incorrectly concluded that post-petition, pre-conversion increases in equity in the Debtor's property inures to the Debtor's benefit.

The second issue looks to sections 547 and 550 to determine whether a chapter 7 trustee may sell, as property of the bankruptcy estate, the ability to avoid and recover transfers. Again, the Court does not need to venture far from the plain language of these statutes. The analysis reveals that Congress balanced competing interests through intentional use of restrictive terminology. The "property of the estate" is intended to be interpreted broadly in order to maximize the value of the estate. Courts have consistently considered the "property of the estate" to include causes of action. Congress intentionally included and excluded exclusive language from the Code, and, notably, Congress did not use restrictive language when describing the ability to bring avoidance actions. Thus, the ability to bring a cause of action is property of the estate which may be allocated to third parties in order to maximize value. Respondent's argument asks the court to find ambiguity where there is none and relies on cases that only tangentially address the issue at bar. Thus, the Thirteenth Circuit improperly concluded that a chapter 7 trustee cannot sell the ability to avoid and recover transfers as property of the estate.

Therefore, Petitioner respectfully asks this court to reverse and remand the Thirteenth Circuit.

ARGUMENT

I. Any post-petition, pre-conversion equity appreciation in a debtor's property belongs exclusively to the chapter 7 Bankruptcy Estate.

Chapter 13 bankruptcy allows a debtor to propose a plan to pay their debts, typically from their "future earnings or other future income," over a three to five-year period with confirmation by the court. *See Harris v. Vieglanhan,* 575 U.S. 510, 514 (2015) (citing 11 U.S.C.§§1306(b), 1322(a)(1), 1327(b)). A chapter 13 estate consists of "the debtor's property at the time of his bankruptcy petition, and any wages and property acquired after filing." *Id.* (citing 11 U.S.C.§ 1306(a). Chapter 13 bankruptcy serves as an alternative to chapter 7 bankruptcy, which shields a

debtor's post-petition earnings and acquisitions at the cost of liquidating the debtor's assets. *Id*. Upon filing a chapter 7 petition, the debtor's non-exempt assets are transferred to a bankruptcy estate for liquidation, and proceeds are distributed to the debtor's creditors by the chapter 7 trustee. *Id*. (citing 11 U.S.C.§§ 704(a)(1), 726). Unlike a chapter 13 estate, a chapter 7 estate does not include wages and assets earned or acquired by the debtor after filing for bankruptcy. *Id*. (citing 11 U.S.C.§§ 541(a)(1), 1306(a)).

However, it is common for chapter 13 plans to fail. Thus, a debtor may convert a chapter 13 case to a chapter 7 case "at any time," *Id*. (quoting 11 U.S.C.§ 1307(a)), through filing notice with the bankruptcy court, without commencing a new case, and without "effect[ing] a change in the date of the filing of the petition." *Id*. at 514–15 (quoting 11 U.S.C.§ 348(a)). Upon conversion, the chapter 7 trustee replaces the chapter 13 trustee. 11 U.S.C.§ 348(e). Before Congress passed the Bankruptcy Reform Act of 1994, courts lacked consensus on allocating the debtor's undistributed post-petition earnings upon conversion from chapter 13 to chapter 7. *Harris*, 575 U.S. at 516. Such earnings (1) reverted to the debtor, (2) were distributed according to the Chapter 13 plan, or (3) became a part of the chapter 7 estate. *Id*. at 517. In 1994, Congress added section 348(f) to the Bankruptcy Code to clarify that property acquired by a debtor in a chapter 13 bankruptcy does not become a part of the chapter 7 estate upon conversion unless the debtor converted in bad faith. *Id*. (citing 11 U.S.C.§§ 348(f)(1)(A), 348(f)(2)). In *Harris v. Veglahn*, the Supreme Court held that post-petition wages held by a chapter 13 trustee must be returned to the debtor upon conversion to chapter 7. *Id.* at 18.

While the Supreme Court has clarified the distribution of post-petition wages held by a chapter 13 trustee at the time of conversion to chapter 7, courts are divided on whether post-petition, pre-conversion changes in equity to the debtor's property between the petition date and

the date of conversion inures to the benefit of the debtor or bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 under 11 U.S.C. §§ 348, 541. *See In re Castleman*, 631 B.R. 914, 916 (Bankr. W.D. Wash. 2021) (describing the split in authority on the issue at hand). Courts applying the plain language of sections 348 and 541 have held that appreciation of a debtor's asset accrued from the time of ownership at the filing of chapter 13 to the conversion to chapter 7 bankruptcy inures to the chapter 7 estate. *See Castleman v. Burman (In re Castleman)*, 75 F. 4th 1052, 1058 (9th Cir. 2023), *In re Goins*, 539 B.R. 510, 515–16 (Bankr. E.D. Va. 2015), *In re Goetz*, 647 B.R. 412, 416–17 (Bankr. W.D. Mo. 2022), *aff'd*, 651 B.R. 292 (B.A.P. 8th Cir. 2023), *In re Hayes*, No. 15-20727-MER, 2019 Bankr. LEXIS 4203, at *22, (Bankr. D. Colo. March 28, 2019), *In re Peter*, 309 B.R. 792, 794–95 (Bankr. D. Or. 2004). In contrast, some courts in interpreting sections 348(f) and 541 have improperly limited bankruptcy estates following conversion through holding that that benefit inures to the debtor absent bad faith. *In re Barrera* (*Barrera I*), 620 B.R. 645, 649–54 (Bankr. D. Colo. 2020), *aff'd, Barrera II*, No. BAP CO-20-003, 2020 Bankr. LEXIS 2756 (B.A.P. 10th Cir. Oct. 2, 2020), *In re Cofer*, 625 B.R. 194, 202 (Bankr. D. Idaho 2021), *In re Hodges*, 518 B.R. 445, 451 (E.D. Tenn. 2014). Notably, there are variations amongst these decisions considering the treatment of equity acquired through the debtor's payments of secured debt compared to increases in market appreciation. *See In re Goins*, 539 B.R. at 516 (noting that equity due to market appreciation and debt reduction might be treated differently).

This Court should hold that post-petition, pre-conversion changes in equity to the debtor's property between the petition date and the date of conversion inures to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 pursuant to the plain language of 11 U.S.C. §§ 348, 541. The Thirteenth Circuit has misconstrued "property of the estate" by limiting its value to the filing of petition without a legitimate statutory basis, neglecting the persuasive

precedent established by its sister circuits. R. at 17. For these reasons, Petitioner asks this Court to reject the holding of the Thirteenth Circuit

A. The plain language of sections 348 and 541 unambiguously ensure that post-petition, pre-conversion appreciation of estate property inures to the benefit of the estate.

The statutory interpretation that post-petition, pre-conversion changes in equity to the debtor's property between the petition date and the date of conversion inures to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 properly aligns with sections 348 and 541 of the Code. The plain meaning of sections 348 and 541 define "property of the estate" broadly to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The plain language interpretation is supported by application of the canons of statutory construction to sections 348 and 541 of the Code and by the legislative history.

1. The plain language of Sections 348 and 541 unequivocally demonstrate the estate's ownership of post-petition, pre-conversion equity appreciation.

This being an issue of statutory interpretation, the Court must begin with the analysis of plain language. *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). The plain language "or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). Thus, in analyzing the plain meaning of sections 348 and 541, courts have acknowledged "[a]s the Supreme Court stated in *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988), '[s]tatutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.'" *In re Castleman*, NO. 2:21-cv-00829-JHC2022, U.S. Dist. LEXIS 116941, *4 (W.D. Wash. Jul. 1, 2022) *aff'd*, 75 F. 4th 1052 (9th Cir. 2023). Where

statutory language is unambiguous, the statute "must be enforced according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009).

Looking first to plain language, section 348(f)(1)(A) states that "property of the estate" following conversion from chapter 13 to another chapter "shall consist 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." 11 U.S.C. § 348(f)(1)(A). Admittedly, section 348(f)(1)(A) does not specify whether the property of the estate at the time of filing refers to property "with all its attributes, including equity interests." *In re Castleman*, 2022 U.S. Dist. LEXIS 116941, at *4. However, 11 U.S.C. § 541(a)(1) states that the property of the estate in chapter 7 includes "all legal or equitable interests of the debtor in property as of the commencement of the case, wherever located and by whomever held" with specific exceptions. 11 U.S.C. § 541(a)(1). In construing the meaning of "property of the estate" broadly to include post-petition appreciation, the Ninth Circuit has recognized that within the context of the Code "property of the estate" includes an increase in equity. *In re Castleman*, 2022 U.S. Dist. LEXIS 116941 at *6–7. The Eighth Circuit has ruled similarly. *See In re Goetz*, 647 B.R. at 417 (citing *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999)). Furthermore, section 541(a)(6) states that the estate includes "[p]roceeds, product, offspring, rents, or profits of or from property of the estate," which includes changes in value such as increased equity. *In re Castleman*, 2022 U.S. Dist. LEXIS 116941. at *7 (citing 11 U.S.C. § 541(a)(6)). Additional courts have found this interpretation persuasive and held that equity is inseparable from itemized property, thus the Code includes equity in a converted estate. *In re Goetz*, 647 B.R. at 416.

The Thirteenth Circuit has criticized the Ninth Circuit for its reliance upon *Schawber v. Reed* (*In re Reed*), 940 F.2d. 1317 (9th Cir. 1991), in *Castleman* that predated the enactment of

section 348. R. at 14 (citing *In re Castleman*, 75 F.4th 1052 at 1056). However, *Castleman* relies on S*chawber* for its interpretation of the broad scope of section 541 in defining "property of the estate," and the decision was reaffirmed in *Wilson v. Rigby*, 909 F3.d 306, 309 (9th Cir. 2018). *In re Castleman*, 75 F.4th at 1056 (citing *In re Reed*, 940 F.2d at 1323). While in *Wilson*, conversion was not at issue, "the definition of property of the estate in § 541(a) applies equally to Chapter 13." *In re Castleman*, 75 F.4th at 1054 (citing *Wilson*, 909 F.3d at 309 (9th Cir. 2018)). "There is no textual support for concluding that § 541(a) has a different meaning upon conversion from Chapter 13." *Id*. at 1056. It is well established by legal scholars that "property of the estate" is a term of art within the Code and the plain meaning of the phrase as used in section 348(f)(1)(a) is supported by other provisions such as section 541. *Id.* at 1056. The Supreme Court has held that "'[s]tatutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme." *Id*. at 1056 (quoting *United Sav. Ass'n of Tex.*, 484 U.S. at 371).

In analyzing whether equity is a part of the estate's property according to the plain language of sections 348 and 541, courts have considered the definition of "equity" itself. *See In re Hayes*, 2019 Bankr. LEXIS 4203, at *17, *In re Goetz*, 647 B.R. at 416. Defined by Black's Law Dictionary as "the difference between the value of the property and all encumbrances on it," the definition of "equity" demonstrates that equity can exist only "with reference to and as a characteristic of [an] underlying asset," exemplifying that appreciation in equity incurs to the estate as a part of the property under section 541(a)(1). *In re Goetz*, 647 B.R. at 416 (quoting *Equity*, Black's Law Dictionary (11th ed. 2019) (citing *In re Goins*, 539 B.R. at 516, *In re Larzelere*, 633 B.R. 677, 683 (Bankr. D.N.J. 2021)). This is supported by Supreme Court precedent distinguishing "property" from "equity." *Id*. (citing *Crane v. Comm'r*, 331 U.S. 1, 6 (1947)). "[E]quity is not a

separate item of after-acquired property that § 348(f)(1)(A) excludes from the converted estate," but is a part of the bankruptcy estate under § 541(a)(1). *Id*. at 417.

Further, following the Supreme Court's analogy likening property interests to bundles of sticks in *United States v. Craft,* 535 U.S. 274, 122 (2002), the plain language of sections 541(a)(1) and 541(a)(6) demonstrate that the right to benefit from the "appreciation stick" inures to the estate along with the property as a part of the "bundle of sticks." *In re Adams*, 641 B.R. 147, 152 (Bankr. W.D. Mich. 2022). *See In re Goetz*, 647 B.R. at 417. "The value of the real estate is a consequence of market." *In re Adams*, 641 B.R. at 152 (citing *Craft*, 535 U.S. at 122 (2002)). Thus, as the Supreme Court determined in *Craft*, "interests in the property determine how we allocate that value." *Id.* Understanding that post-petition appreciation is not a separate asset from pre-petition property demonstrates that the increase in value accompanies the estate's interest in property. Therefore, the plain language of sections 348 and 541 indicates that post-petition, pre-conversion changes in equity to the debtor's property between the petition date and the date of conversion inure to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7.

2. Applicable canons of construction reinforce Congress's intent to have any equity appreciation of the debtor's property to be held by the estate after conversion.

Beyond the plain language of sections 348 and 541, the canons of statutory interpretation support a holding that post-petition, pre-conversion changes in equity to the debtor's property between the petition date and the date of conversion inures to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7. In courts that have misconstrued "property of the estate" and limited it by value at petition, application of relevant statutory canons demonstrate that the plain language of the Code defines property of the estate following conversion

from chapter 13 to chapter 7 to include "all legal or equitable interests of the debtor in property as of the commencement of the case," including equity. 11 U.S.C. §§ 348, 541.

Property vests in the bankruptcy estate upon conversion of the debtor's case from chapter 13 to chapter 7. *See* 11 U.S.C. § 348(f). Some courts have relied on section 1327 of the Code—which stipulates that upon confirmation of the chapter 13 plan, the property of the estate vests in the debtor—in holding that post-petition, pre-conversion equity should benefit the debtor. *In re Castleman*, 75 F.4th at 1057–58 (citing I*n re Barrera*, 22 F.4th at 1223–24). These courts reason that equity accumulated from the time of filing to the time of plan conversion should inure to the estate and then vest in the debtor at confirmation of the chapter 13 plan until conversion with only post-conversion equity benefitting the estate. *In re Castleman*, 75 F.4th at 1057–58 (citing *In re Barrera*, 22 F.4th at 1223–24). The *Castleman* court found this argument unpersuasive as section 348(f) makes no reference to section 1327, and the sections of the code excluding assets from the bankruptcy estate do so specifically. *Id.* (citing 11 U.S.C. §§ 541(a)(6), 541(b) as examples of specific exclusions). Section 348(f)(1)(a) unambiguously specifies that the debtor's unexempted property becomes a part of the chapter 7 estate upon conversion, and sections of the code—such as 541(a)(6) and 541(b)—provide specific exclusions from the bankruptcy estate. *Id.* at 1057–58. It is a "commonplace of statutory construction that the specific governs the general." *Moreales v. Trans. World Airlines, Inc.*, 504 U.S. 374, 384–85 (1992). Thus, the specific provision of section 348(f) governs the composition of the bankruptcy estate following conversion from chapter 13 to chapter 7, rather than the general provision of section 1327 that does not address conversions. *See* 11 U.S.C. §§ 348, 1327.

Absent any "indication that doing so would frustrate Congress's clear intention or yield patent absurdity, . . . [the court's] obligation is to apply the statute as Congress wrote it." *Hubbard*

*v. United State*s, 514 U.S. 695, 703 (1995) (quoting *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 570 (1994) (Souter, J., dissenting)). Under the absurdity doctrine the plain language of a statute controls unless its result is "absurd or glaringly unjust." *United States v. Rodger*s, 466 U.S. 475, 484 (1984) (quoting *Sorrells v. United States*, 287 U.S. 435, 450 (1932)). The Thirteenth Circuit has asserted that application of the plain meaning of section 348(f)(1)(a) renders nonsensical results in consideration of section 522(a)(2) because both sections refer to the petition date. R. at 14. However, section 522(a)(2), which demands application of the snapshot rule, determines that the value of exemptions will be set as the day of petition, while section 348(f)(1)(a) states that property of the estate following a conversion "shall consist of the estate, as of the date of the filing of the petition" in possession of the debtor. 11 U.S.C. §§ 348(f)(1)(A), 522(a)(2). Notably, section 348(f)(1)(A) does not refer to the value of assets but rather the interests themselves. Thus, the meaning is clear that the estate's interest in property includes the appreciation of value and that valuations of estate property are addressed separately throughout the Code for various purposes. *See In re Adams*, 641 B.R. at 152 (*Comparing* 11 U.S.C. § 541 (referring to "interests") with, *e.g.*, §§ 348(f)(1)(B), 522(b)(3)(A), 506(a)(2), 542(a), 547(d), 554(b), 1225(a)(4), 1225(a)(5)(B)(ii), 1225(b)(1)(A), 1325(a)(4), 1325(a)(5)(B)(ii), 1325(b)(1), and 1129 (specifically addressing "value" for various purposes)). S*ee also In re Castleman*, 2022 U.S. Dist. LEXIS 116941, at *3 n. 1.

The Thirteenth Circuit has misapplied the rule against superfluities, an interpretive canon that guides interpretation to give effect to all of a statute's provisions "so that no part will be inoperative or superfluous, void or insignificant," *Hibbs v. Winn*, 542 U.S. 88, 101 (2004), when interpreting section 348(f)(1)(A) alongside section 348(f)(2). R. at 13 (citing *In* re *Harmon*, 2022 WL 20451952, at *6 (Bankr. E.D. La. June 9, 2022), *In re Barrera*, 22 F. 4th at 1220–21. Section

348(f)(2) penalizes a debtor who converts a chapter 13 case in bad faith by requiring the bankruptcy estate to consist of "property of the estate as of the day of conversion." 11 U.S.C § 348(f)(2). Courts have reasoned that including post-petition, pre-conversion interests in property renders the distinction between good and bad faith superfluous under section 348(f)(1) and section 348(f)(2). *See In re Harmon*, 2022 WL 20451952, at *6, *In re Barrera*, 22 F. 4th at 1220–21. However, the suggested plain meaning interpretation of section 348(f)(1)(A) defining post-petition equity an asset of the converted chapter 7 estate does not render section 348(f)(2) absurd because the interpretation "does not affect the converted estate's interest in new property under § 348(f)(2) . . . [nor does it affect] the punishment § 348(f)(2) imposes for bad faith conversions." *In re Goetz*, 647 B.R. at 418. Thus, application of the canons of construction supports a holding that post-petition, pre-conversion changes in equity to the debtor's property between the petition date and the date of conversion inures to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7.

3. Respondent's references to inapplicable legislative history fail to unwind and make ambiguous the plain meaning of 348(f).

There is a "strong presumption that the plain language of the statute expresses congressional intent." *Ardestani v. INS*, 502 U.S. 129, 135 (1991). However, even if the court were to look beyond the plain language of sections 348(f)(1)(A) and 541, "the legislative history . . . does not mandate a different outcome." *In re Goetz*, 2023 U.S. App. LEXIS 13486, at *8–9.

Congress enacted section 348(f) to clarify "that newly-acquired, post-petition property would not become part of the converted estate if the debtor had been acting in good faith" and did so successfully. *In re Castleman*, 75 F.4th at 1057–58. *See In re Goetz*, 2023 U.S. App. LEXIS 13486, at *8–9 (highlighting the legislators' success in enacting section 348(f)). Notably, section 348(f) does not specifically address "whether debtors are entitled to retain post-petition pre-

conversion equity resulting from market appreciation, asset improvements or repairs." *In re Goetz*, 2023 U.S. App. LEXIS 13486, at *8–9.

Some courts limiting the converted chapter 7 bankruptcy estate look to an example provided within a House Report from the Bankruptcy Reform Act of 1994, which added section 348(f) to the Bankruptcy Code. *See, e.g., In re Barrera*, 620 B.R. at 649–54, *In re Cofer*, 625 B.R. at 202. The example suggests that debtors are disincentivized from filing for a chapter 13 bankruptcy if equity that accrues in a debtor's home through the repayment of a second mortgage is a part of the bankruptcy estate upon conversion to a chapter 7 bankruptcy and eventually liquidated by the trustee. H.R. REP. NO. 103-835, at 57 (1994), *reprinted in* 1994 U.S.C.C.A.N 3340, 3366. However, the example does not address equity from any source, such as changes in the market. *In re Castleman*, 75 F.4th at 1063. As such, the omission of the example and the example itself do not demonstrate Congress intended for debtors to retain post-petition, pre-conversion *market* appreciation and equity. *In re Goetz*, 2023 U.S. App. LEXIS 13486, at *11 (emphasis added). The plain language of section 348(f) is clear and consistent with legislative intent. *Id*. (citing *In re Castleman*, 631 B.R. at 918–20; *In re John*, 352 B.R. 895, 903-04 (Bankr. N.D. Fla. 2006).

B. Ensuring that the estate retains post-petition, pre-conversion equity appreciations is consistent with the underlying purpose of the Code and is necessary for effective adjudication and administration.

Giving effect to the plain language interpretation of sections 348 and 451 best implements the purpose of the bankruptcy code while exercising judicial restraint and promoting judicial economy. Holding that post-petition, pre-conversion equity appreciation in a debtor's property belongs exclusively to the chapter 7 bankruptcy estate provides debtors a "fresh start" without judicial overreach. *See Harris v. Viegelahn*, 575 U.S. 510, 513 (2015). Furthermore, equity benefiting the bankruptcy estate upon conversion promotes judicial economy by preventing

valuation hearings upon the filing of a chapter 13 bankruptcy on the chance it might convert to chapter 7. *See* Lawrence Ponoroff, *Allocation of Property Appreciation: A Statutory Approach to the Judicial Dialect*, 13 WM. & MARY BUS. L. REV. 721, 750–51.

1. A debtor cannot simultaneously benefit from converting a Chapter 13 to a Chapter 7 bankruptcy while avoiding the consequences of a Chapter 7 claim.

Filing under chapter 7 "allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets." *Harris*, 575 U.S. at 513. "Thus, while a chapter 7 debtor must forfeit virtually all his prepetition property, he is able to make a 'fresh start' by shielding from creditors his post-petition earnings and acquisitions." *Harris*, 575 U.S. at 514. In the present case, equity built into a home through debt payment or changes in the market does not constitute post-petition earnings and acquisitions but rather is considered an attribute of the property itself under the plain language of the Code. With the fluctuation of value in the market and its recent trend of increasing property values, debtors face a greater risk of having their home sold by a chapter 7 trustee, with abandonment being less common. *In re Adams*, 641 B.R. at 156. Debtors converting from a chapter 13 to chapter 7 bankruptcy still gain the benefit of discharging their debt and living on their property during the conversion despite facing the risk of having their home sold "to reduce estate property to money." *Id*. at 153. While the debtor's home would not be sold in a chapter 13 bankruptcy, the potential sale of property is the risk debtors take when they convert to chapter 7 rather than dismissing the case. *Id*. at 154. Thus, when a debtor converts from chapter 13 to chapter 7, they must accept both the benefits and the consequences of that conversion.

Despite criticisms that a decision holding post-petition, pre-conversion equity appreciation in a debtor's property belongs exclusively to the chapter 7 bankruptcy estate discourages debtors from resorting to chapter 13, chapter 13 "presents the best avenue for debtors to retain property in bankruptcy, and the unqualified right to dismiss their chapter 13 proceedings protects them from

any adverse consequences of conversion to Chapter 7." *In re Adams*, 641 B.R. at 154–56. Furthermore, "[a]chieving a better policy outcome—if what petitioner urges is that—is a task for Congress, not the courts." *Id*. at 156 (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 120 (2000)). Thus, the plain language interpretation of sections 348 and 541 promotes a "fresh start" for debtors and should prevail over policy arguments while exercising judicial restraint.

2. Judicial and administrative efficiency is best served by enforcing the plain language as opposed to supplanting the plain language of Congress.

Further examining Judicial restraint, "where . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). Thus, the plain language alone of sections 348 and 541 resolves the issue before the Court. *See In re Castleman*, 75 F. 4th at 1058, *In re Goins*, 539 B.R. at 515–16. This Court should exercise judicial restraint in enforcing sections 348 and 541 according to their terms and hold that post-petition, pre-conversion equity appreciation in a debtor's property belongs exclusively to the Chapter 7 bankruptcy estate.

The plain language interpretation of section 348 and section 451 further promotes judicial economy. Preventing the bankruptcy estate from reaching post-petition, pre-conversion equity threatens to necessitate potentially needless valuation hearings in chapter 13 cases based on the possibility that the debtor might later convert to chapter 7. *See* Lawrence Ponoroff, *Allocation of Property Appreciation: A Statutory Approach to the Judicial Dialect*, 13 WM. & MARY BUS. L. REV. 721, 755–56. In a chapter 13 case, the trustee, secured claimants, or even unsecured creditors do not have reason to question the accuracy of valuations until the case converts from chapter 13 to chapter 7. *Id*. at 750. For example, upon filing for chapter 13, the debtors in *Castleman* valued

their residence at $500,000 with a debt secured by their residence with an outstanding balance of $375,077 and elected the applicable homestead exemption, amounting to $124,923. *Id.* In what scholars have considered "suspicious circumstances," the homestead exemption claimed was seventy-seven dollars less than the applicable maximum homestead that could be claimed. *Id*. at 726 fn. 16. (citing *In re* Castleman, 631 B.R. at 914–15). Upon later converting to chapter 7, the property was valued at over $700,000, demonstrating that attributing post-petition, pre-conversion equity threatens to result in an influx of valuation hearings upon a debtor's filing for chapter 13 bankruptcy. *Id*. at 75051 (citing *In re* Castleman, 631 B.R. at 916). Thus, this Court should hold that post-petition, pre-conversion changes in equity to the debtor's property between the petition date and the date of conversion inures to the benefit of the bankruptcy estate upon conversion of a case from chapter 13 to chapter 7 to prevent needless valuation hearings.

II. A Chapter 7 Trustee holds the ability to sell avoidance actions as property of the estate under Sections 547 and 550.

In reevaluating the Thirteenth Circuit's interpretation of Bankruptcy Code sections 547, 550, and 541(a), it is crucial to emphasize the importance of including avoidance actions as property of the estate. This interpretation, firmly anchored in the statute's plain language, aligns with the judicial philosophy that "a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149, 117 L. Ed. 2d 391 (1992). The Eighth and Ninth Circuits offer interpretations that align with the statute's plain language and congressional intent by holding that avoidance actions are property of the estate which may be sold by the trustee. *Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006 (8th Cir. 2023); *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020). Logically, it is of utmost importance to only highlight authority that analyzes the issue of the case at bar: what constitutes property of the estate, rather than assets of the debtor. The

inclusion of avoidance actions as property of the estate furthers every goal that Bankruptcy law sets out to achieve.

Respondent spuriously demands this Court to disregard fundamental Bankruptcy policy and exclude avoidance actions from the property of the estate, thus destroying the trustee's ability to sell such actions under any circumstances. R. at 10. This demand goes beyond any relevant precedent and completely ignores the foundational purpose of Bankruptcy law. For the foregoing reasons, Petitioner respectfully asks this Court to reverse the Thirteenth Circuit and simply hold that avoidance actions are considered property of the estate that the trustee may sell.

A. The intent of Congress to grant a Trustee the authority to sell avoidance actions is evidenced through a thorough proper interpretation of Sections 541, 547, and 550.

The Thirteenth Circuit misinterprets sections 541(a), 547, and 550 of the Code, overemphasizes the canon of surplusage, and neglects Congress's intent for these sections. Instead, the plain meanings of sections 541(a)(1), 541(a)(7), 547 and 550 resolve this case's issue. Section 541(a)(1) includes as property of the estate "all legal or equitable interests of the debtor in property as of the commencement of the case" while section 541(a)(7) includes "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. §§ 541(a)(1), 541(a)(7). Section 547 authorizes the Trustee to obtain avoidance actions to recover certain properties, while section 550 governs the recovery process. 11 U.S.C. §§ 547(b), 550. Analyzing these sections' plain language shows that avoidance actions are clearly estate property and not rights exclusive to the Trustee. Furthermore, using relevant canons of construction and assessing the Legislative history bolster the broad inclusion of property in the estate. H.R. REP. NO. 595, 95th Cong., 1st Sess. 367, reprinted in 1978 U.S.C.C.A.N. 5963, 6323.

1. The plain language of Sections 541, 547, and 550 unequivocally demonstrate the trustee's ability to sell avoidance actions as property of the estate.

The "first step in interpreting a statute is to determine whether the language . . . has a plain and unambiguous meaning," and the "inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 846, 136 L. Ed. 2d 808 (1997) (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240, 109 S.Ct. 1026, 1030, 103 L.Ed.2d 290 (1989)). Ambiguity of statutory language hinges on the "reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, at 341.

First, section 541(a)(1) provides "all legal or equitable interests of the debtor in property as of the commencement of the case" is included as property of the estate. 11 U.S.C. 541(a)(1). When examining section 541(a)(1), courts interpret "property of the estate" as being expansive. 11 U.S.C. § 541(a)(1); *In re Nicole Energy Servs., Inc.*, 385 B.R. 201, 230 & n.25 (Bankr. S.D. Ohio 2008). The plain meaning becomes clear when this specific statute is analyzed in two portions.

The foundational base of the first portion is that avoidance actions, as causes of action, fall squarely within the interpretation of "all legal or equitable interests of the debtor in property" as plainly stated in section 541(a)(1). 11 U.S.C. § 541(a)(1). Courts consistently interpret the first portion of § 541(a)(1) to encompass causes of action. This interpretation is firmly grounded in the plain language of the section 541(a)(1) as displayed in *Bauer v. Com. Union Bank*, 859 F.2d 438, 440–41 (6th Cir. 1988) which explicitly states, "[t]he Bankruptcy Code itself provides that the bankruptcy estate comprises 'all legal or equitable interests of the debtor in property as of the commencement of the case,' 11 U.S.C. § 541(a)(1), and it is well established that the 'interests of the debtor in property' include 'causes of action.'" (quoting *Gochenour v. Cleveland Terminals Bldg. Co.*, 118 F.2d 89, 93 (6th Cir. 1941)). *See also In re Croft*, 737 F.3d 372, 375 (5th Cir. 2013).

Further, it is a well-settled principle that avoidance actions constitute causes 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"). This principle is expressly recognized by the Bankruptcy Code itself in section 926 which refers to the avoidance powers, relevantly section 547, as causes of action. 11 U.S.C. § 926. Multiple courts have recognized that this principle specifically applies to preferential transfers. *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 510 (Bankr. S.D. Ohio 2021); *see also In re Simply Essentials, LLC*, 640 B.R. 922, 927 (Bankr. N.D. Iowa 2022), aff'd, 78 F.4th 1006 (8th Cir. 2023) (noting that *In re Murray Metallurical Coal Holdings, LLC's* analysis and holding of the relevant case law and statutory language interpreting avoidance actions to be causes of action).

The foundational base of the second portion is that avoidance actions exist "as of the commencement of the case" because (1) avoidance actions do not accrue only upon the petition date, and (2) the plain language of "commencement" is not limited to the time prior to filing. 11 U.S.C. 541(a)(1). The Thirteenth Circuit misinterprets "property as of the commencement of the case" to exclude avoidance actions because such actions allegedly arise upon filing of the case must be dismissed for two reasons. R. at 20.

Regarding the first reason, the Eighth Circuit recently recognized that if "property is created in a third period of time, a time that is equivalent to the moment the bankruptcy proceeding commences, . . . [it] 'would frustrate the bankruptcy policy of a broad inclusion of property in the estate[.]'" *In re Simply Essentials, LLC*, 78 F.4th 1006, 1009 (8th Cir. 2023) (quoting *Whetzal v. Alderson*, 32 F.3d 1302, 1304 (8th Cir. 1994)). This is reinforced by the Supreme Court case of *United States v. Whiting Pools, Inc.*, where the Court noted that property of the estate does not

require the debtor to have a possessory interest in such property; instead, the debtor may hold an inchoate or contingent interest in the property. 462 U.S. 198, 203, 205 (1983); *see also Segal v. Rochelle*, 382 U.S. 375, 379, 86 S.Ct. 511, 15 L.Ed.2d 428 (1966); *In re Simply Essentials,* at 1009 (holding avoidance actions as property of the estate under section 541(a)(1) because the debtor has an inchoate interest in such actions prior to the commencement). Moreover, other courts recognize that "prepetition transfers, such as actions to avoid preferential transfers," exist upon "commencement of the case." *In re Murray Metallurgical Coal Holdings*, at 510.

Next, even if avoidance actions only materialize upon the bankruptcy filing, the plain language of "commencement" is unambiguously defined as "the date on which the debtor filed his bankruptcy petition." *In re Northington*, 876 F.3d 1302, 1309 (11th Cir. 2017) (citing 5 Collier on Bankruptcy ¶ 541.02 (16th ed. 2017)). Moreover, *In re Swift* interpreted "commencement" to mean the petition date. 129 F.3d 792, 795 (5th Cir. 1997) (noting "[t]he case is commenced, and the estate is created, when the bankruptcy petitioner is filed") (citing Collier on Bankruptcy ¶ 541.02 (15th ed. rev.2005)). Lastly, the phrase, "as of," equates to the meaning of "on," not prior. Merriam-Webster, *As of*, MERRIAM-WEBSTER.COM DICTIONARY, (Jan. 12, 2024), https://www.merriam-webster.com/dictionary/as%20of#:~:text=%3A%20on%2C%20at%2C%20from,have%20which%20kind%20of%20tumor.

Thus, if traditional logic still stands today, the plain meaning of section 541(a)(1) leads to an undeniable conclusion: the Bankruptcy Court erroneously rejected the motion to sell the avoidance actions, and the Thirteenth Circuit erroneously affirmed that sale. R. at 10. Applying the foregoing reasons to the case at bar, the debtor had an inchoate interest in the avoidance action, a cause of action, that the trustee brought for recovery of the preferential payment the debtor made to his mother, Emily Pink Clegg, one year prior to the petition date. R. at 7, 9. Lastly, even if the

avoidance action arose only upon the petition date, the plain language of the term "commencement" equates to the petition date, ensuring the inclusion of the avoidance action within the estate managed by the trustee.

Second, assuming the avoidance actions do not exist prior to the commencement date nor emerge upon filing, as negated by the *In re Simply Essentials* case regarding the third period of time argument, then it logically follows that these actions must materialize after the commencement date. Meaning, section 541(a)(7) governs. Section 541(a)(7) provides "[a]ny interest in property that the estate *acquires after* the commencement of the case" as property of the estate. 11 U.S.C. § 541(a)(7) (emphasis added). The Thirteenth Circuit's holding is incorrect because the plain language of section 541(a)(7) demonstrates (1) "[a]ny interest in property" includes rights and powers to the trustee, (2) the correct ordinary meaning of "acquired," and (3) avoidance actions do not solely arise upon commencement of the case. R. at 21. The above analysis resolves the third reason. *In re Simply Essentials, LLC*, at 1009 (noting that avoidance actions cannot come into existence upon the commencement of the case).

The Code grants "rights and powers" to the trustee; however, if the Thirteenth Circuit simply reverse engineered that phrase, it would come to the conclusion that "[a]ny interest in property" is included in those "rights and powers". R. at 21. For example, the Code allows the trustee to obtain the right and power to bring an avoidance action against preferential payments. 11 U.S.C. § 547. As discussed previously, an avoidance action is considered a cause of action by various courts. *In re Midgard Corp.*, at 771 (recognizing § 547, among other avoidance actions, as a cause of action). Predictably, a cause of action has been consistently recognized as a legal and equitable interest in property. *Bauer*, at 440–41. Lastly, a lay understanding of these terms leads to

the predicable and sensible conclusion that a legal and equitable interest in property falls within the definition of "[a]ny interest in property." 11 U.S.C. 541(a)(7).

The Thirteenth Circuit also unnecessarily complicated its analysis by referencing a case unrelated to Bankruptcy to define the term "acquired," without remotely explaining the term's ordinary meaning. R. at 21. The Thirteenth Circuit, using an undefined interpretation of "acquired," asserted that avoidance powers are statutorily created, not acquired, implying the avoidance powers do not fall under § 541(a)(7). *Id*. Contrary to this view, a simple search in Black's Law Dictionary defines "acquire" as "[t]o gain possession or control of; to get or obtain." *Acquire*, Black's Law Dictionary (11th ed. 2019). To bolster this point, the term "obtain" means in relevant part "[t]o be established by law." *Obtain*, Black's Law Dictionary (11th ed. 2019).

Thus, assuming that avoidance actions arise post-commencement, the plain language of § 541(a)(7) includes such avoidance actions as property of the estate. Such actions fall within the plain language of the phrase "[a]ny interest in property" because it is a "legal and equitable interest in property." 11 U.S.C. § 541(a)(7) & (a)(1). This means that the chapter 7 trustee acquired avoidance powers to recover the preferential payments the debtor made to his mother because it *obtained* the power and *controlled* whether to pursue or sell the avoidance action. *Acquire* and *Obtain*, Black's Law Dictionary (11th ed. 2019) (emphasis added); R. at 4; 11 U.S.C. 547(b) ("the trustee may").

Third, the Thirteenth Circuit appears to have overlooked a fundamental rule of statutory interpretation: "'[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act,' we generally take the choice to be deliberate." *Badgerow v. Walters*, 596 U.S. 1, 11, 142 S. Ct. 1310, 1318, 212 L. Ed. 2d 355 (2022) (quoting *Collins v. Yellen*, 594 U.S. ----, ----, 141 S.Ct. 1761, 1782, 210 L.Ed.2d 432 (2021)). The Thirteenth Circuit relied

on *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6-7 (2000) in holding the trustee has the exclusive right to bring avoidance actions. R. at 19. The *Hartford* case focused on the plain meaning of the phrase, "the trustee may," in section 506(c) and held that *ONLY* the trustee may bring avoidance actions. *Hartford*, at 6-7. (emphasis added). The reasoning was grounded by the sole mention of the trustee, without reference to other parties, implying only the trustee is authorized to take such actions. *Id*.

The Thirteenth Circuit ignored the absence of the word "only" in section 506(c). R. at 19. Just as "Congress clearly knew how to include a cross-reference to section 547," it can be reasonably said that Congress clearly knew how to include restrictive language had it intended to do so. R. at 19; see, e.g., 11 U.S.C. §§ 109(a) ("[O]nly a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title"); 707(b) (providing a case dismissal if there is substantial abuse by "the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest"). Moreover, the *Hartford's* holding is limited "to a creditor's assertion of an independent right to proceed under [§ 506(c)]." *In re Trailer Source, Inc.*, 555 F.3d 231, 244 (6th Cir. 2009).

Thus, Congress's decision not to incorporate restrictive terminology in sections 547 and 550, while doing so in other provisions of the same Act, suggests that the trustee is not the sole party authorized to bring avoidance actions. Further, the case at bar is distinguishable from *Hartford* because the focus here is on sections 541(a), 547, and 550 as displayed in the introductory material of the record. R. at 2. The Thirteenth Circuit should have reversed the Bankruptcy Court's denial of the Trustee's motion to sell the avoidance actions, and so should this court. R. at 10.

2. A harmonious reading of the relevant sections reveals Congress's intent to permit a trustee to sell avoidance actions.

Alternatively, if, and only if, this Court finds the plain language of the respective sections to be unpersuasive, then the Court may look to relevant canons of statutory construction. The Thirteenth Circuit held that if section 541(a)(1) includes avoidance powers, then § 541(a)(3) would be rendered superfluous under the canon of surplusage. R. at 22. However, the "canon against surplusage is not an absolute rule[.]" *In re Simply Essentials*, at 1009 (quoting *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013)). In fact, this specific canon "disfavor[s] an interpretation when that interpretation would render a clause, sentence, or word superfluous, void, or insignificant." *In re Shek*, 947 F.3d 770, 777 (11th Cir. 2020). The Thirteenth Circuit did just that by suggesting that including avoidance powers as property of the estate under section 541(a)(1) would either make § 541(a)(3) meaningless or duplicate its purpose. R. at 22.

Because the canon employed leads to a disfavored conclusion, the harmonious-reading canon should have been employed instead. The harmonious-reading canon is a cardinal rule of statutory construction which provides that provisions of a statute "should be interpreted in a way that renders them compatible, not contradictory." *In re Glenn*, 900 F.3d 187, 190 (5th Cir. 2018) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 180 (2012)). For example, the Thirteenth Circuit noted that section 541(a)(3) specifies that the interest in the property actually recovered becomes part of the estate, not the avoidance powers; however, allowing § 541(a)(1) to include avoidance powers would create a situation where one provision includes powers, and another includes actual property. R. at 22; 11 U.S.C. § 541(a)(1)&(3). Another example involves the Thirteenth Circuit's reading of sections 547 and 550 to mean only the trustee is authorized to bring avoidance actions. R. at 19. This reading renders the well-established principle of derivative actions contradictory with the provisions of the Code. *Hyundai*

Translead, Inc. v. Jackson Truck & Trailer Repair, Inc. (In re Trailer Source, Inc.), 555 F.3d 231, 238-45 (6th Cir. 2009).

Thus, the Thirteenth Circuit's interpretation under the canon of surplusage is entirely obfuscated by the harmonious-reading canon. The inclusion of avoidance powers under § 541(a)(1) does not necessarily undermine the significance of section 541(a)(3), instead, the two provisions may co-exist. Further, the harmonious-reading canon favors a reading of sections 547 and 550 to allow more than only the trustee to bring an avoidance action. This means that the Chapter 7 trustee in the case at bar is not prevented from selling the avoidance action to Eclipse because the trustee does not maintain an exclusive right to bring avoidance actions. R. at 9.

3. Congress intended to include causes of action, including avoidance actions, in their broad definition of the estate and has not amended the code to reflect otherwise.

Again, only if this Court finds the plain language and canons of construction unpersuasive may it consider the legislative history; however, even the legislative history is favorable to include avoidance actions within property of the estate. The scope of the estate has been described as "all-embracing." H.R. REP. NO. 95-595, at 549 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963, 6455. In fact, *In re Barowsky* recognized that Congress adopted the holding and analysis of *Segal v. Rochelle*, 382 U.S. 375 (1966) when it enacted section 541 of the 1978 Bankruptcy Act. 946 F.2d 1516, 1518–19 (10th Cir. 1991). The *Segal* case ruled that property of the estate should be broad, "including tangible or intangible property, causes of action," and more property under the Act. Moreover, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 did not make any changes to section 541(a)(1). BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, PL 109–8, April 20, 2005, 119 Stat 23. Thus, the legislative history and lack of amednements demonstrates the broad intent to include avoidance actions, as causes of actions, within the property of the estate.

B. The ability to sell avoidance actions as property of the estate is consistent with the policy purpose of the code and is necessary for effective enforcement.

The Eighth and Ninth Circuits' interpretations of what is included as property of the estate correctly aligns with the plain language and intent of 541(a). *In re Simply Essentials*, 78 F.4th 1006; *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020). *See also Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010); *Morley v. Ontos, Inc. (In re Ontos, Inc.)*, 478 F.3d 427, 431 (1st Cir. 2007). These Circuits recognize that creditors likely benefit when the trustee possesses the capability to sell avoidance actions because it lowers the estate's expenses while also offering the estate immediate recovery from the sale. This is especially important when the estate is bereft of assets. Further, the ability to sell avoidance actions is common practice in chapter 11 cases, where selling such actions has proven beneficial for the estate, creditors, and purchaser. Lastly, such sales are consistent with the trustee's duties to maximize the estate's value for creditors. Collectively, these reasons recognize the importance and the need for including avoidance actions as property of the estate.

1. The ability to sell avoidance actions provides a mechanism for restoring creditors in instances where the estate is bereft of assets.

The Eighth Circuit recently validated the plain language and intent of section 541(a) when it offered a comprehensive analysis around the inclusion of avoidance actions within the bankruptcy estate. *In re Simply Essentials*, 78 F.4th 1006. Contrary to all the similar cases from which the Thirteenth Circuit relied, this one is most aligned with the issue at bar. R. at 18. Simply Essentials operated a chicken production and processing company that encountered involuntary bankruptcy. *Id*. at 1007. The chapter 7 trustee sought to sell avoidance actions because the estate lacked funds to pursue such actions. *Id*. The trustee sold the avoidance actions to ARKK Food Co., LLC, and Pitman Farms, a creditor and owner of Simply Essentials, objected to the sale contending that the avoidance actions could not be sold as they were not property of the estate. *Id*. at 1008.

The Thirteenth Circuit erroneously focused on the funds of this case instead of the avoidance actions themselves. R. at 20. This is unfortunately a misreading of *In re Simply Essentials*. An accurate reading demonstrates that the *In re Simply Essentials* court specifically considered whether *avoidance actions*, not the funds themselves, were salable property of the estate under sections 541(a)(1) or 541(a)(7). *Id*. at 1008 (emphasis added). First, the court ruled that avoidance actions included preferential payments which are causes of action and thus included within property of the estate. *Id*. Next, the court emphasized that the scope of the estate is intended to be expansive. *Id*. It noted that its conclusion was strengthened by that principal because property of the estate could be tangible, intangible, or even causes of action. *Id*. Further, the court recognized its conclusion was solidified by the absence of a possessory interest requirement in the property upon commencement. *Id*. at 1008-09. Lastly, the court highlighted section 541(a)(7) as an alternative route to include avoidance actions a property of the estate. *Id*. at 1009.

The *In re Simply Essentials* case shows that the inclusion of avoidance actions as property of the estate prioritizes bankruptcy efficiency by allowing the trustee to sell such actions and obtain immediate recovery for the creditors where recovery might otherwise not occur. As in this case, it is beneficial to the estate and its creditors to allow the trustee to sell avoidance actions. R. at 9. Moreover, at least one other circuit recognized that the trustee is authorized to sell avoidance actions when the estate is adequately funded. *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020). The Thirteenth Circuit suggests that the Code provides alternatives for creditors to pursue, such as derivative actions, instead of allowing the trustee to sell such actions. R. at 23. These cases demonstrate that, unlike derivative suits which require time to pass before the creditors realize any value, the sale of avoidance actions guarantees the estate immediate financial benefits

where it otherwise might be delayed, or not occur at all. Brendan Gage, *Is There a Statutory Basis for Selling Avoidance Actions?*, 22 J. Bankr. L. & Prac. 3 Art. 1.

Thus, the Eighth and Ninth Circuits set the precedent that most closely aligns with the plain language and intent of what "property of the estate" entails under section 541(a). Because "Eclipse's offer maximized the value of the assets for the benefit of creditors of the estate," allowing the trustee to sell the avoidance action furthers fundamental Bankruptcy policies. R. at 9.

2. As evidenced by Chapter 11 cases, it is clear that the Code broadly encourages the sale of avoidance actions in order to maximize the value of the estate.

Additionally, motions to sell avoidance actions in the context of chapter 11 cases are commonly approved by the courts. *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 507 (Bankr. S.D. Ohio 2021) (citing for ample references *In re Alpha Entm't LLC*, No. 20-10940 (Bankr. D. Del. Aug. 7, 2020); *In re Sugarfina Inc.*, No. 19-11973 (Bankr. D. Del. Oct. 28, 2019); *In re Loot Crate, Inc.*, No. 19-11791 (Bankr. D. Del. Sept. 11, 2019); *In re Synergy Pharms. Inc.*, No. 18-14010 (Bankr. S.D.N.Y. Mar. 1, 2019); *In re Relativity Media, LLC*, No. 18-11358 (Bankr. S.D.N.Y. Aug. 21, 2018); *In re Candi Controls, Inc.*, No. 18-10679 (Bankr. D. Del. Apr. 25, 2018); *In re BPS US Holdings Inc.*, No. 16-12373 (Bankr. D. Del. Feb. 6, 2017); and *In re Noble Logistics, Inc.*, No. 14-10442 (Bankr. D. Del. May 7, 2014)).

Common sense drives the purchaser's decision to buy avoidance actions in the Chapter 11 context. A creditor might purchase the action if the target is in debt to the creditor to maintain the business relationship; the purchase may provide for a quicker recovery in some instances; the purchaser may obtain negotiating leverage if it owns an avoidance action against the target company; or the purchaser may realize this as an investment opportunity. These same reasons apply to chapter 7 cases. Further, the estate would benefit from a sale of an avoidance action as well because it would receive guaranteed payment to distribute to the remaining creditors. The

estate would also reduce administrative expenses by not having to pursue recovery through avoidance actions. Thus, the regular approvals of selling avoidance actions in the chapter 11 context, combined with the policy incentives for the purchaser and the estate, indicate that the trustee should be allowed to sell avoidance actions in the chapter 7 context as well.

3. The ability to sell is consistent with the Trustee's duties.

The trustee has a duty to "collect and reduce to money the property of the estate," which includes the avoidance actions as causes of action. 11 U.S.C. § 704(a)(1). Further it is well understood that the trustee must "maximize the value of the estate" or, better described, maximize the "distribution to creditors." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985); *IRS v. Luongo (In re Luongo)*, 259 F.3d 323, 340 n.16 (5th Cir. 2001). Indeed, the trustee does "have the first opportunity to bring avoidance actions." *In re Racing Services, Inc.*, 540 F.3d 892, 898 (8th Cir. 2008). However, *In re Simply Essentials* recognized that "[w]hether the avoidance action is brought by the trustee or by a creditor, the action is brought for the benefit of the estate and therefore belongs to the estate." 78 F.4th 1006, 1008. By allowing the trustee to sell the avoidance actions, the Court will be allowing the trustee to comply with its long-standing duties of reducing property to money. 11 U.S.C. § 704(a)(1). The Court must not forget that the trustee is selling the avoidance action, not giving it away. Thus, avoidance actions should be included as property of the estate, and the trustee should be able to sell those actions.

C. The Thirteenth Circuit and the Respondent mistakenly rely on dicta to formulate the argument that courts differ on the salable nature of causes of action.

Despite the well-formulated opinion of sister circuits, the Thirteenth Circuit mistakenly relies on *Off. Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 245 (3d Cir. 2000) as authority for the exclusion of avoidance actions within property of the estate. R. at 18. However, that reliance is misplaced. This case involved a company

that sold almost all its assets in a leveraged buyout to a third party. *In re Cybergenics Corp.* at 239. The issue centered around whether fraudulent transfer claims were considered part of the company's assets sold in the leveraged buyout. *Id.* at 241. The court held that the fraudulent transfer claims were never assets of the company, and thus, not sold in the buyout. *Id*. at 245.

The Thirteenth Circuit's reliance on *Cybergenics* is misplaced for three rather large reasons: (1) the Third Circuit recently viewed *Cybergenics* holding as dicta in the context of determining whether trustee can transfer causes of action, (2) *Cybergenics* limited its own holding by ensuring the reader it was not addressing a property of the estate issue, and (3) *Cybergenics* is a Chapter 11 case. *Artesanias Hacienda Real S.A. de C.V. v. North Mill Cap., LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 285 (3d. Cir. 2020); *Cybergenics* at 246-47. The *In re Wilton Armetale, Inc.* case stated "*Cybergenics* does not hold that trustees cannot transfer causes of action. It leaves that question open because the asset transfer at issue did not reach the creditors' claims." R. at 22; *In re Wilton Armetale* at 285. Further, *Cybergenics* notes the "['company's] assets' and 'property of the estate' have different meanings, evidenced in part by the numerous provisions in the Code that distinguish between property of the estate and property of the debtor, or refer to one but not the other." *Cybergenics* at 246. The court goes on to state "[i]ssues relating to property of the estate are simply not relevant to the inquiry" of this case. *Id*. at 246; *see also Claridge Associates, LLC v. Schepis (In re Pursuit Capital Management, LLC)*, 595 B.R. 631 (Bankr. D. Del. 2018) (noting that the Third Circuit has not decided whether avoidance actions are property of the estate, or whether the trustee may sell such actions or its ability to pursue such actions while citing *Cybergenics*); *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 505-06 (Bankr. S.D. Ohio 2021) (acknowledging all these reasons).

Thus, the Thirteenth Circuit incorrectly adopted the reasoning and holding from an unrelated, flawed case rather than relying on authority that considered this issue almost identically. Although Respondent contends that Circuits differ on the issue at bar, in reality, the only Circuits squarely addressing the issue have arrived at the conclusion that avoidance actions are salable property of the estate. *See In re Simply Essentials*, 78 F.4th 1006; *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020). For these reasons, Petitioner asks this Court to reverse the Thirteenth Circuit and hold that avoidance actions are considered property of the estate that the trustee may sell.

CONCLUSION

For the foregoing reasons, the Petitioner asks this court to reverse the judgement of the United States Court of Appeals for the Thirteenth Circuit.