No. 23-0115

IN THE

Supreme Court of the United States

IN RE EUGENE CLEGG, DEBTOR,

VERA LYNN FLOYD, CHAPTER 7 TRUSTEE, PETITIONER

V.

EUGENE CLEGG, RESPONDENT.

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

BRIEF FOR PETITIONER

TEAM NUMBER 49
COUNSEL FOR PETITIONER

JANUARY 18, 2024

QUESTIONS PRESENTED

I. Whether any postpetition, preconversion increase in equity in a debtor's property inures to the benefit of 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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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals decision is available at No. 22-0359 and reprinted at Record 2. The Bankruptcy Court decided in favor of Eugene Clegg, Respondent. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Eugene Clegg, Respondent.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

11 U.S. Code § 541

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S. Code § 348

(f)

(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

11 U.S. Code § 363

(b)

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

> (A) such sale or such lease is consistent with such policy; or
>
> (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—
>
>> (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
>>
>> (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

STATEMENT OF THE CASE

In 2012 Eugene Clegg (the "Debtor") acquired from his mother, Pink, full ownership of The Final Cut, LLC ("Final Cut"), which operated a historic movie theater in the City of Moot. R. at 5. Initially, Final Cut was a debt-free and profitable enterprise, providing the Debtor with a steady income. R. at 5.

In 2016, the Debtor decided to borrow $850,000 from Eclipse Credit Union ("Eclipse") to renovate the theater. R. at 5. Eclipse bargained to secure the loan with first priority liens on Final Cut's real and personal property, and the Debtor further provided an unconditional, unsecured personal guarantee in an unlimited amount. R. at 5.

The theater renovation, significantly aided by the voluntary labor of local veterans, was completed under budget, leaving around $75,000 of the loan unused. R. at 5. Without Eclipse's knowledge, the Debtor directed Final Cut to donate this remaining amount to the Veterans of Foreign Wars ("VFW") in early 2017. R. at 5. Despite this donation, Final Cut remained solvent and capable of satisfying its debts. R. at 5-6.

However, in March 2020, the COVID-19 pandemic led to a state-mandated shutdown, severely impacting the theater's operations for nearly a year. R. at 5. The resultant financial strain compelled the Debtor to borrow $50,000 from his mother, Pink. R. at 5. Despite reopening in February 2021, the business struggled and the Debtor incurred significant credit card debt and fell behind on his home mortgage payments. R. at 5. The mortgage servicer (the "Servicer") commenced foreclosure proceedings. R. at 5.

Seeking relief, the Debtor filed for Chapter 13 bankruptcy on December 8, 2021. R. at 5. The filing included a valuation of his home at $350,000, a mortgage debt of $320,000, and a contingent, unliquidated unsecured debt to Eclipse. R. at 5. The Debtor properly claimed a state law homestead exemption of $30,000, the maximum allowed in the State of Moot, and disclosed

$20,000 in payments to his mother, Pink, within one year prior to the petition date. R. at 6-7.

The Debtor's Chapter 13 plan proposed to cure mortgage arrears and make ongoing payments through the trustee, with funding anticipated from the Debtor's earnings. R. at 7. During the creditors' meeting, Eclipse learned of the donation to the VFW and promptly filed an adversary proceeding to declare the related debt non-dischargeable. R. at 7.

The plan faced objections from the Chapter 13 trustee. R. at 7. The trustee contended that the plan failed to meet the "best interest of the creditors" test, requiring each creditor to receive no less than it would have under a Chapter 7 liquidation plan. R. at 7. The trustee argued that under such a plan, the Debtor's alleged preferential transfers to his mother would be recovered and distributed to creditors. R. at 7. The Debtor and the trustee reached a settlement to increase payments by $20,000 over the commitment period, and the trustee agreed to not avoid and recover the preferential transfer to Pink. R. at 7-8. Eclipse also objected to the plan and, after intense negotiations, agreed to withdraw its objection in exchange for an estimated claim of $150,000, of which $25,000 was non-dischargeable in the event of a conversion. R. at 8.

Despite initial adherence, the Debtor's inability to sustain payments when Final Cut closed permanently in October 2022 led to the voluntary conversion of the case to Chapter 7, as per 11 U.S.C. §§ 348, 1307. R. at 8. This conversion was not contested for lack of good faith. R. at 8. The Chapter 7 trustee indicated in her final report that she had distributed $10,000 to the Servicer under the Chapter 13 plan. R. at 8-9. Upon conversion, Floyd (the "Trustee") was appointed as the Chapter 7 Trustee. R. at 9. The conversion schedules ascribed, as of the Petition Date, a value to the Debtor's home of $350,000 and again disclosed the preferential transfers to Pink. R. at 9. Eclipse, following foreclosure proceedings against Final Cut, claimed a deficiency of approximately $200,000 against the Debtor. R. at 9. The Debtor expressed his intention to reaffirm the mortgage debt with the Servicer and remain in the home. R. at 9.

The initial assessment of the estate found it largely asset-deficient. R. at 9. However, the Debtor's subsequent revelations of increased neighborhood home values, indicative of a national trend post-pandemic, led the Trustee to commission a new appraisal. R. at 9. This appraisal revealed that the non-exempt equity in the Debtor's home had increased by $100,000 since the Petition Date. R. at 9.

Upon discovering the significant postpetition, preconversion increase in the Debtor's non-exempt equity, the Trustee, acting on the fiduciary duty to maximize returns for creditors, initiated plans to sell the home. R. at 9. Eclipse offered a settlement of $470,000 for the home and the preference claim against Pink. R. at 9. The Trustee deemed Eclipse' offer beneficial for maximizing asset value for creditors, leading to the Trustee's motion for sale under section 363(b). R. at 9.

The Debtor objected to the sale, arguing that the postpetition, preconversion increase in home equity should benefit him, not the estate. R. at 10. Furthermore, he contended that the Trustee's statutory powers to avoid and recover transfers were non-transferable. R. at 10. The bankruptcy court favored the Debtor, denying the Trustee's Sale Motion. R. at 10. The Trustee timely appealed, and the Thirteenth Circuit Court affirmed the Bankruptcy Court's decision. R. at 10.

<u>STANDARD OF REVIEW</u>

The standard of review for issues of statutory interpretation is *de novo*. *See Fed. Hous. Fin. Agency for Fed. Nat'l Mortg. Ass'n v. Nomura Holding Am., Inc.*, 873 F.3d 85, 138 n.54 (2d Cir. 2017).

<u>SUMMARY OF THE ARGUMENT</u>

I. The Thirteenth Circuit is mistaken in its holding that postpetition, preconversion appreciation belongs to the debtor. This position stems from a misreading of the comprehensive statutory scheme and a misapplication of the legislative history. Section 541 defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). In a case converted from Chapter 13 to Chapter 7, section 348 provides that the new estate consists 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." The postpetition, preconversion increase in equity resulting from market value appreciation of the Debtor's home is a legal interest in the property that was under the Debtor's possession on the petition date. Upon conversion, section 348 thus stipulates that the appreciation becomes property of the Chapter 7 estate. Further, the legislative history on which the Thirteenth Circuit is irrelevant to the case at hand. The hypothetical is about a home's increase in equity due to the debtor paying down the mortgage with postpetition wages, which would violate the Chapter 13 bargain. In this case, the increase in equity is due to market value appreciation. This Court should hold that postpetition, preconversion increase in equity inures to the benefit of the estate as the statute provides.

Further, this conclusion best aligns with the goal of protecting the right to a fresh start of the honest but unfortunate debtor, while ensuring fair distribution among creditors. To rule otherwise would be to place undue burden on the thousands of unfortunate debtors who—with their cars as their most valued asset—would have to compensate the estate for the car's depreciation in the event of conversion. This result would contradict the core principle of offering relief and a fresh start to debtors. Conversely, by ensuring that postpetition, preconversion appreciation in equity belongs to the estate, the Court will uphold the integrity and equitable core of the bankruptcy system.

II. This Court should hold that the trustee's avoidance powers are sellable assets of the estate because the text of the Code defines them as such. Property of the estate under section 541 gives an expansive definition of the property of the estate, which is broad enough to contain trustee powers. 11 U.S.C. 541(a)(1). The trustee's avoidance powers are legal interests (claims) that are thus property of the estate. And, under this Court's precedent, they can be sold and executed with consent from the bankruptcy court and trustee. The Thirteenth Circuit's belief that trustee's powers are not property of the estate emerges from its misconception of the meaning of the text. That section 541 does not specifically name the trustee's powers is not a basis for concluding that they are not, because the text does not need to list them. To do so would render the text redundant, since the provision already addresses the trustee's powers in its inclusive definition of "*all* legal…interests." 11 U.S.C. 541(a)(1).

Lastly, this issue's resolution carries profound implications for the efficient administration of bankruptcy estates, the equitable treatment of creditors, and the overarching goals of bankruptcy proceedings. To hold otherwise would be to take away a valuable tool Congress granted to the trustee in fulfillment of their duty to the estate, balancing the interests of both debtors and creditors. Upholding the sellability of trustee powers as estate assets thus reinforces the trustee's essential role in the bankruptcy process and ensures that fairness and efficiency are upheld.

ARGUMENT

This Court should reverse the Thirteenth Circuit Court's decision because any postpetition, preconversion increase in equity inures to the bankruptcy estate upon conversion under the Code. This Court should also reverse the Circuit court's decision and hold that a Chapter 7 trustee may sell avoidance powers as property of the estate.

I. THE CODE DICTATES THAT POSTPETITION, PRECONVERSION APPRECIATION INURES TO THE CHAPTER 7 BANKRUPTCY ESTATE.

The Bankruptcy Code provides diverse courses overburdened debtors may pursue to gain a discharge of their financial obligations, and thereby a "fresh start." *Marrama v. Citizens Bank, 549*

U.S. 365, 367 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286 (1991)). At its core, this "fresh start" is made possible by the bankruptcy process equitably resolving a debtor's financial obligations in a way that balances the creditor's right to fair recovery. The bankruptcy process protects this equity by delineating a structured way to handle debts, either by liquidating assets to pay off creditors in Chapter 7 bankruptcy or by creating a reorganization plan under Chapter 13 bankruptcy.

This process functions by creating an estate that serves as a collective pool of the debtor's assets. This estate holds all of the debtor's interests in order to redistribute them equitably to creditors in accordance with legal priorities. Defining what constitutes "property of the estate" is therefore crucial to the overall purpose of bankruptcy because it determines the scope of assets available to satisfy creditor claims. *See 5 Collier on Bankruptcy* P 541.01 (16th 2023) ("Section 541['s definition of 'property of the estate'] is central to the purposes to be achieved by the Bankruptcy Code"). The meticulous categorization and handling of the estate's property enables the Code's intricate balancing act to ensure that the debtor's path to a fresh start does not unjustly diminish the creditors' right to fair recovery. In this way, the definition of "property of the estate" lays the critical foundation for the fair and effective functioning of the bankruptcy process.

To protect this equitable process, this Court should hold that the postpetition, preconversion increase in equity of the debtor's home belongs to the bankruptcy estate because the statutory text supports an inclusive definition of the "property of the estate"; the legislative history is silent as to appreciation in a home due to market forces, and as such cannot be used to distort the plain meaning of the statute; and the framework of the Code itself requires an inclusive definition in order to protect the rights of creditors to fair repayment while upholding its ability to grant the honest but unfortunate debtor his "fresh start."

A. The Text Of Section 348(f)(1) Includes Postpetition Appreciation In The Chapter 7 Estate.

Fidelity to the statutory text is what has driven bankruptcy decisions in this Court for decades. *See United States v. Ron Pair Enters*., 489 U.S. 235, 241 (1989) (citations omitted) ("The task of resolving the dispute…begins where all such inquiries must begin: with the language of the statute itself. [I]t is also where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms'"). Consistent with this tradition, the Court should hold that the text of section 541 dictates that the postpetition, preconversion appreciation is included in the broad definition of the property of the estate, and the property interest in a home includes any changes in the market value of that home.

1. Section 541 defines property of the estate broadly.

"Property of the estate" is a term of art that appears throughout the Bankruptcy Code. *See, e.g.*, §§ 541, 554(a), 726(a), 1306(a). *See also* Keith M. Lundin, *Lundin On Chapter 13* § 46.1 (2023) ("Property of the estate' is a phrase of art that is fundamental to almost everything that happens in Chapter 13 practice"); 4 William L. Norton III, *Norton Bankruptcy Law and Practice* § 61:1 (3d ed. 2023) ("[F]or more than two centuries 'property of the estate' has become a term of art unique to bankruptcy law"); *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023). The text of the Bankruptcy Code explicitly establishes that property of the estate means "all legal or equitable interests of the debtor in property" including "proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." 11 U.S.C. §§ 541(a)(1), 541(a)(6). An individual debtor may choose between either Chapter 7 or Chapter 13 bankruptcy, and section 541 of Chapter 5 applies throughout the Code, covering both types of bankruptcies. *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). Chapter 7 authorizes a discharge of prepetition debts following the liquidation of the debtor's assets by a bankruptcy trustee, who then distributes the proceeds to creditors. *Id.* Chapter 13 authorizes an individual with regular income to obtain a discharge after the successful completion of a payment plan approved by the bankruptcy court. *Id*. Proceedings under Chapter 13 can benefit debtors and creditors alike. *Id.* Debtors are allowed to retain their assets, most importantly their home, and creditors may collect more under a Chapter 13 plan than under a Chapter 7 liquidation due to the inclusion of the debtor's postpetition disposable income. 11 U.S.C. § 1325(b)(1).

This Court has long held that a broad definition of property of the estate is essential to the purposes of bankruptcy. *See Segal v. Rochelle*, 382 U.S. 375 (1966). In *Segal*, under the 1898 Bankruptcy Act, the Court addressed the definition and reach of the term "property," stating that "[it] 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." *Segal v. Rochelle* at 379 (1966). When Congress enacted section 541 of the Bankruptcy Act of 1978, it affirmatively adopted the Supreme Court's analysis of property that was contained in *Segal*:

> The estate is comprised of all legal or equitable interest of the debtor in property, wherever located, as of the commencement of the case. The scope of this paragraph is broad. It includes all kinds of property, including tangible or intangible property, causes of action . . . and all other forms of property currently specified in section 70a of the Bankruptcy Act. S. Rep. No. 989, 95th Cong., 2d Sess. 82, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5868; H.R. Rep. No. 595, 95th Cong., 1st Sess. 367, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6323 (footnote omitted).

Reorganization is preferred to liquidation in both business and personal bankruptcies. In the business context, "[b]y permitting reorganization, Congress anticipated that the business would continue to provide jobs, to satisfy creditors' claims, and to produce a return for its owners." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 200 (1983) (quoting H. R. Rep. No. 95-595, p. 220 (1977)). Congress presumed that the assets of the debtor would be more valuable if used in a rehabilitated business than if "sold for scrap." *Ibid*. Simply put, the whole is often greater than the sum of its parts.

In *Whiting Pools*, the Internal Revenue Service ("I.R.S.") seized tangible personal property of the debtor worth, at most, $35,000 in estimated liquidation value, while its estimated going-concern value in the debtor's hands was $162,876. *Whiting Pools* at 200. Although the I.R.S. had a valid tax lien attached to all of Whiting's property, the legislative history and statutory language of the Code mandated that the levied property be brought into the estate.[1] The majority opinion established a broad interpretation of section 541(a): "Although these statutes could be read to limit the estate to those 'interests of the debtor in property' at the time of the filing of the petition, we view them as a definition of what is included in the estate, rather than as a limitation." In other words, "the estate includes not only the debtor's interest in a thing, but the *whole* thing." David G. Carlson, *Bankruptcy's Organizing Principle*, 26 Fla. St. U. L. Rev. 549, 567 (1999) (emphasis in original). This broad interpretation of "property of the estate" in *Whiting Pools* should similarly extend to the present case.

The inclusive language of section 541, as interpreted by landmark decisions like *Whiting Pools* and further bolstered by legislative history, unequivocally dictates that postpetition, preconversion appreciation in the equity of a debtor's property is an integral part of the Chapter 7 bankruptcy estate upon conversion. To rule otherwise would be to ignore the clear intent of Congress, as well as to disrupt the definition that balances the interests of debtors and creditors carefully laid by the interpretation in *Whiting Pools*. By embracing this inclusive interpretation, this Court affirms the Code's role as a cornerstone of financial restructuring and recovery, ensuring that the process remains fair, efficient, and effective. For these reasons, this Court should hold that the appreciation of a debtor's home accrued between the filing of a bankruptcy petition and the

[1] The Court determined that the levied property was "property of the estate" under § 541(a), and as a result the turnover provision of § 542(a) applied, whereby an entity in possession of "property that the trustee may use, sell, or lease under § 363" must deliver that property to the trustee. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983).

conversion of the case is part of the bankruptcy estate.

2. *The value of the home, including its appreciation, is not a distinct property interest acquired by the debtor.*

The market value appreciation in the debtor's home cannot be construed as a separate property interest. Converting a case from Chapter 13 to Chapter 7 creates a new estate consisting 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). While section 348 does not define the word "property" or the phrase "property of the estate," courts have used basic principles of statutory construction for guidance to define "property of the estate" under section 348 in line with the rest of the Code governed by the definition of section 541. *See, e.g. Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1056 (9th Cir. 2023) (quoting *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)) ("Statutory construction…is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme"). 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. *See* U.S.C. §103(i) ("Chapter 13…applies only in a case under [that] Chapter."); *Harris v. Viegelahn*, 575 U.S. 510, 520 (2015).

The Thirteenth Circuit presented the issue of postpetition, preconversion increases in equity in terms of a circuit split. R. at 27 ("Diverging interpretations have recently emerged from the courts and even among our circuit court colleagues. *See*, *e.g.*, *Castleman v. Burman (In re Castleman)*, 75 F.4th 1052, 1055 n.3, 1058 (9th Cir. 2023) (Tallman, J., dissenting) (collecting cases); *Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 302 (B.A.P. 8th Cir. 2023), appeal docketed, No. 23-2491 (8th Cir. June 23, 2023); *cf. Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1222 (10th Cir. 2022)"). On the facts, however, the *In re Barrera* court explicitly declined to address the scenario presented here, whereas *In re Castleman* is directly on point. On the law, the Ninth Circuit in *Castleman*, the Eighth Circuit in *Goetz*, as well as the Fourth Circuit Bankruptcy Court in *In re Goins* present a coherent reading of the Bankruptcy Code, whereas the Tenth Circuit in *Barrera* contradicts the Code.

The property at issue in *Barrera* was the realized proceeds from the sale of a home, not the unrealized appreciation in market value. *See Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217, 1219 (10th Cir. 2022). In *Barrera*, debtors Julio Cesar Barrera and Maria de La Luz Moro filed for Chapter 13 reorganization and listed a home valued at $396,209.62. *See id*. at 1221. Two years later, while still complying with the confirmed Chapter 13 plan, the debtors chose to sell their property for $520,000 (netting $140,251 in sale proceeds after costs). *See id*. Soon thereafter, the debtors filed a notice of voluntary conversion to Chapter 7 under 11 U.S.C. § 1307. *See id*. The Tenth Circuit highlighted the crucial distinction between the facts in *Barrera* and the case at bar: "[W]e need not decide whether appreciation in a house still owned by debtors at the time of conversion is property of the debtors or the estate. That is not the case before us. We are dealing with *proceeds* from the sale of the house, not the house itself." *See id*. at 1223 n.1 (emphasis in original).

In contrast, *Castleman* addressed a factual scenario similar to the facts presented here. Debtors John Felix Castleman, Sr. and Kimberly Kay Castleman filed for Chapter 13 reorganization, listing a home with a value of $500,000 as of the petition date. *See Castleman*, 75 F.4th at 1054. About two years later, while still in possession of the home, the Castlemans exercised their right to convert to Chapter 7. In the interim, the home had risen in value by an estimated $200,000. *Id*. The Chapter 7 Trustee filed a motion to sell the Castlemans' home to recover the value for creditors. *Id*. Based on these facts, the Ninth Circuit reached the same conclusion that this Court should reach here: postpetition, preconversion increases in the equity of an asset—whether a result of market appreciation, payment of secured debt, improvements or otherwise—belong to the bankruptcy estate. *See id.* at 1058.

Moreover, *Barrera*'s appeal to section 1327 directly contradicts section 103 of the Code as well as this Court's precedent, while *Goetz* complies. *Compare Barrera,* 22 F.4th 1217 at 1223 ("The automatic vesting provision of section 1327(b) supports our conclusion that the proceeds from the sale of the Debtors' house are not included in the Chapter 7 estate") *with Goetz v. Weber (In re Goetz)*, 651 B.R. 292, 300 (B.A.P. 8th Cir. 2023)) ("[The trustee]'s reliance on section 1327 and the confirmation order to support her claim that her residence is no longer property of the bankruptcy estate is misplaced"). *Goetz* further demonstrates that the Eighth Circuit aligns with the Ninth Circuit's approach by noting that "[n]othing in Section 541 suggests that the estate's interest is anything less than the entire asset, including any changes in its value which might occur after the date of filing." *Goetz v. Weber*, 651 B.R. at 298) (quoting *Potter v. Drewes (In re Potter)*, 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999)) (relying on section 541 to conclude that postpetition preconversion equity increases accrue to the benefit of the bankruptcy estate). *In re Goins*, a bankruptcy case in the Fourth Circuit, took the same approach when it concluded that section 541(a)(6) governs because "the equity attributable to the post-petition appreciation of the property is not separate, after-acquired property…The equity is inseparable from the real estate, which was always property of the estate under section 541(a)." *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015).

3. *A plain reading of the text does not conflict with the statutory scheme when section 522 is considered*

The Thirteenth Circuit argues that considering the "snapshot" rule of section 522 in light of this conclusion produces a conflict in the statutory scheme. R. at 13. In truth, it does not. "§ 522 establishes, with limited exceptions not applicable here, the petition date as the date upon which property interests are valued *for the purpose of a debtor's exemptions*. 11 U.S.C. § 522(a)(2)." R. at 13. (emphasis added). As Justice Thomas explained in *Schwab v. Reilly*, most of the categories in section 522 (including the "homestead exemption" at issue here) "define the 'property' a debtor may 'clai[m] as exempt' as the debtor's 'interest'—up to a specified dollar amount—in the assets described in the category, not as the assets themselves. §§ 522(d)(5)-(6); *see also* §§ 522(d)(1)-(4), (8); *Rousey v. Jacoway*, 544 U.S. 320, 325, 125 S. Ct. 1561, 161 L. Ed. 2d 563 (2005); *Owen v. Owen*, 500 U.S. 305, 310, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991)." 560 U.S. 770, 771 (2010).

In this case, the Debtor claimed a state law exemption of $30,000, which was the maximum amount in the State of Moot. R. at 6-7. Since the home was not abandoned to the Debtor, it became part of the Chapter 13 estate. On the petition date, the home was valued at $350,000, the value used for the purpose of the debtor's exemptions. R. at 7; 11 U.S.C. § 522(a)(2). The Trustee, consistent with the duty to "collect and reduce to money the property of the estate for which such trustee serves," commissioned an appraisal, resulting in a valuation of $450,000. 11.U.S.C. § 704(a). It is not "non-sensical" for the home to be valued at one amount as of the petition date for the purpose of exemptions and another amount several months later for the purpose of a sale—it is what the Code requires. R. at 14.

4. The Thirteenth Circuit's criticism of Castleman is unfounded.

The Thirteenth Circuit criticizes *Castleman* on three grounds, none of which hold up to scrutiny. First, the opinion notes that *Castleman* relies upon its own circuit precedent in *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991), which predated the enactment of section 348(f)(1)(A) in its current form. R. at 14. This criticism is irrelevant because *In re Reed* involved a Chapter 7 case, whereas section 348(f)(1)(A) *only* applies to conversion cases. The Ninth Circuit clarified in *In re Reed* that "[w]e interpret [the language of section 541(a)(6)] to mean that appreciation enures to the bankruptcy estate, not the debtor. *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991) (collecting cases). The Thirteenth Circuit also notes that, just as in the case at bar, the debtor's interest in their home had not been set aside or abandoned by the Trustee. *See id*.

("Debtor's argument that appreciation enured to him would have merit if his entire interest in the residence had been set aside or abandoned to him; it was not"). Section 348 was indeed, as the Thirteenth Circuit notes, nonexistent at the time, but had it existed in its current form, it would not have had any application to the case.

Second, the Thirteenth Circuit criticizes *Castleman* for relying on *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018), where a "conversion was never at issue." R. at 14. Applying the analysis of section 541(a)(6) from a Chapter 7 case in a Chapter 13 conversion case is not problematic, because section 541 applies to any estate created under the Code. *See 5 Collier on Bankruptcy* P 541.01 (16th 2023) ("[§ 541] creates a bankruptcy estate in every title 11 case"). As *Castleman* summarized Ninth Circuit precedent,

> "[i]t is well settled that in a Chapter 7 case, all property that the debtor acquires post-petition is excluded from the estate." See, e.g., *Harris*, 575 U.S. at 514 (*citing* § 541(a)(1)). Therefore, if appreciation were a separate, after-acquired property interest, it would have to inure to the debtor. The Ninth Circuit, in finding that appreciation inures to the estate under § 541(a)(6), has necessarily found that increased equity in a pre-petition asset cannot be a separate, after-acquired property interest. This logic applies with equal force in a conversion case.

Castleman v. Burman (In re Castleman), 75 F.4th 1052, 1056-57 (9th Cir. 2023).

Indeed, though there was a vigorous dissent filed in *Wilson* over how to handle exemptions, the majority and dissenting opinions were unanimous on postpetition appreciation. *See Wilson v. Rigby,* 909 F.3d 306, 324 (Dissent, District Judge Hunt) (9th Cir. 2018) ("Certainly, the principle that postpetition appreciation inures to the estate is well-established").

Third, according to the Thirteenth Circuit, *Castleman* rests entirely on the plain meaning of section 348(f)(1)(A) without considering possible tension with sections 348(f)(2) and 522. R. at 14. This "tension" is overstated. Section 348(f)(1)(A) is not "contextualized" by section 348(f)(2). Rather, they apply to mutually exclusive factual scenarios, as demonstrated by this Court's decision in *Harris* and the case at bar. Section 348(f)(1)(A) applies only to Chapter 13 debtors who convert in good faith, while section 348(f)(1)(B) applies only to Chapter 13 debtors who convert in bad faith. In *Harris*, Justice Ginsburg explained:

> Section 348(f), all agree, makes one thing clear: A debtor's postpetition wages, including undisbursed funds in the hands of a trustee, ordinarily do not become part of the Chapter 7 estate created by conversion. Absent a bad-faith conversion, §348(f) limits a converted Chapter 7 estate to property belonging to the debtor "as of the date" the original Chapter 13 petition was filed. Postpetition wages, by definition, do not fit that bill.

Harris v. Viegelahn, 575 U.S. 510, 517 (2015).

Had the Debtor in this case converted his Chapter 13 case to Chapter 7 in bad faith, his postpetition wages held by the Chapter 13 trustee would have become property of the Chapter 7 estate under section 348(f)(1)(B). Since he converted in good faith, that property was rightfully returned to him under section 348(f)(1)(A).

B. The Legislative History Of Section 348(F)(1) Is Silent On Postpetition, Preconversion Appreciation.

The legislative history is silent as to appreciation in a home due to market forces, and as such cannot be used to distort the plain meaning of the statute. This Court has repeatedly emphasized that legislative history is invoked only when the statute is less than clear. *See*, *e.g.*, *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 510 (1986) (Rehnquist, C.J., dissenting) ("We have previously expressed our unwillingness to read into unqualified statutory language exceptions or limitations based upon legislative history unless that legislative history demonstrates with extraordinary clarity that this was indeed the intent of Congress"); *United States v. Ron Pair Enterprises*, 489 U.S. 235, 240-241 (1989) (holding that the plain meaning of a statute is conclusive except in "rare cases [where] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters"); *Holder v. Hall*, 512 U.S. 874, 933 (1994) (collecting cases); *In re Goetz* at 299. "Congress conveys its directions in the Statutes at Large, not in excerpts from the Congressional Record, much less in excerpts from the Congressional Record that do not clarify the text of any pending legislative proposal." *Begier v. IRS* 496 U.S. 53 (1990) (Scalia, J., concurring in the judgment). Though the clarity of the statutory text makes the examination of legislative history superfluous, holding that the postpetition, preconversion appreciation in the the value of the Debtor's home inures to the benefit of the estate is consistent with the legislative history. The Thirteenth Circuit's analysis of the legislative history is flawed because the example it cites is about equity growth resulting from second mortgage repayments, not the type of market value appreciation at issue here. The lower courts have also recognized this distinction by delineating between equity resulting from postpetition appreciation, which is part of the estate under section 541(a), and equity paid for out of postpetition wages. *See In re Goins*, 539 B.R. 510, 515 (Bankr. E.D. Va. 2015). At the core of this distinction is the provision that, under section 541, postpetition wages are excluded from the Chapter 13 estate. 11 U.S.C. § 541(a)(6). The legislative history illuminates Congress' concern that a debtor's postpetition wages would be effectively subsumed under the property of the estate upon conversion, thereby creating a strong disincentive for Chapter 13 filings. The example reads:

> 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 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366. In this hypothetical, a debtor who utilizes *postpetition wages* to pay off a $10,000 second mortgage during the Chapter 13 plan, generates an additional $10,000 of equity in the home. The legislative discourse centers on the risk that this newly created equity, a result of the debtor's postpetition efforts during the Chapter 13 plan, "could be lost if the case were converted to Chapter 7." *Id.* The exclusion of postpetition wages from the Chapter 13 estate under section 541(a) forms the crux of the legislative intent to shield such equity growth that is facilitated by postpetition wages from being absorbed into a converted Chapter 7 estate. This example reveals that Congress sought to protect the debtor's active contributions to the estate, ensuring that their postpetition efforts during Chapter 13 do not result in inadvertent penalization in the event of a conversion to Chapter 7. This hypothetical scenario is thus critically different from the situation at hand because the concern centers on equity growth resulting from a debtor's active repayment of debt using postpetition wages, rather than market value appreciation.

In contrast, the issue presently before this Court concerns passive market value appreciation of property that has been part of the estate since the commencement of the bankruptcy proceedings. At the beginning of the Debtor's Chapter 13 case, the value of the Debtor's home was listed as $350,000. R. at 7. Upon conversion, the Chapter 7 Trustee's new appraisal showed that the home had increased in market value, resulting in an increase in non-exempt equity of $100,000. R. at 9. Most of this $100,000 increase in non-exempt equity was solely due to passive market value appreciation, about which the legislative history is silent.

The distinction in the nature of the equity's origin is essential—the hypothetical in the legislative history is about a debtor's active repayment of debt using postpetition wages, whereas this case is about passive market appreciation. Some may point to the fact that, because the Chapter 13 trustee had paid down $10,000 of the mortgage preconversion using the Debtor's postpetition wages, $10,000 of the $100,000 increase in non-exempt equity should be excluded from the estate based on the hypothetical. Since part of the $10,000 payment would have been interest, the portion of the increase in equity resulting from the Debtor's postpetition efforts is less than ten percent of the total $100,000. To exclude the entire amount would produce a result that is at odds with the statutory language by forcefully "[reading] into unqualified statutory language exceptions or limitations based upon legislative history." *Midlantic Nat'l Bank* at 510 (Reinquist, C.J., dissenting). Harking back to the canons of statutory construction that this Court has long followed, where the statutory language is clear, there is no need to examine legislative history. But even if legislative history is consulted, it does not support excluding equity increase mainly resulting not from the Debtor's postpetition efforts but from passive market value increase from appreciation.

C. The Inclusion Of Appreciation In The Estate Furthers The Equitable Purpose Of The Code.

Chapter 13 presents a bargain to debtors in search of a fresh start. *City of Chi. v. Fulton*, 141 S. Ct. 585 (2021); *McDonald v. Burgie (In re Burgie)*, 239 B.R. 406 (B.A.P. 9th Cir. 1999). It allows a debtor to keep all property acquired before filing for bankruptcy, such as income, assets, bank savings, and real estate. *See In re Burgie* at 410. However, in return for retaining these assets, the debtor must allocate all disposable income earned after filing towards repaying creditors as part of a Chapter 13 repayment plan that can last three to five years. Once the debtor successfully completes all required payments under this plan, their eligible debts are forgiven, and they maintain ownership of all their pre-filing assets. Notably, "[p]ostpetition disposable income does not include prepetition property or its proceeds. …This is the Chapter 13 debtor's bargain." *Id.* at 410. If appreciation in a home were postpetition disposable income, it would rightfully belong to the debtor. However, "[a] debtor's prepetition homestead is a capital asset, not postpetition income." *Id*.

The Chapter 13 bargain results in the estate benefiting from appreciation in prepetition assets, and debtors benefitting from downside protection in the event of depreciation. *In re Lang*, 437 B.R. 70 (Bankr. W.D.N.Y. 2010). In *Lang*, the debtor owned a 1999 Ford Explorer with a value of $9,650 on the date of filing her Chapter 13 petition. *Id.* at 72. The trustee argued that the bankruptcy estate included the car's non-exempt value as of the date of bankruptcy filing, so that the estate should continue to include this value as of the date of conversion. *Id*. On the date of conversion, however, the debtor owned only a depreciated vehicle with substantially reduced value. *Id*. The court held that under the clear language of section 348(f)(1)(A), the Chapter 7 Trustee may treat an asset as property of the estate if two conditions are met: "First, it must have been property of the estate as of the date of filing. Second, it must remain in the debtor's possession or control on the date of conversion." *Id*. Under those terms, only the depreciated vehicle was available for administration, and the debtor was not responsible for payment of any shortfall. Applying this same logic to the case at bar, the Debtor's home was property of the estate as of the date of filing and still in the Debtor's possession on the date of conversion, and is similarly available for administration. Therefore, just as the debtor in *Lang* did not have to account for the depreciation, the Debtor in this case is not entitled to any surplus.

In *City of Chicago v. Fulton*, this Court re-affirmed the fundamental holding of *Whiting Pools* in a unanimous decision: "Section 541 "is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code." *City of Chi. v. Fulton*, at 589 (Citing *United States v. Whiting Pools* at 205 (1983)). This broad interpretation of property of the estate resulted in a determination that creditors are not required to turn over impounded vehicles, a disappointing result for thousands of Chapter 13 debtors. In her concurring opinion, Justice Sotomayor noted that "[the debtor]'s situation is far too common." *Id*. at 593 (citing Ramos, Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt, WBEZ News (Jan. 7, 2019) (online source archived at www.supremecourt.gov). The City of Chicago refusing to turn over possession of debtors' vehicles did not support their "fresh start" as envisaged under *Marrama*, but it did comport with the Chapter 13 bargain. Justice Sotomayor's response was not to read into the statute something that was not there, but rather highlight that Congress determines the contours of Chapter 13. *Id*. at 595 ("Ultimately…any gap left by the Court's ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges").

Therefore, just as debtors such as those in *Lang* are protected from having to repay depreciated value, fairness dictates that debtors such as those in this case do not benefit from accrued appreciation.

II. THE TRUSTEE CAN SELL ITS POWERS AS PROPERTY OF THE ESTATE TO FURTHER THE INTERESTS OF THE BANKRUPTCY ESTATE.

Whether a trustee can sell Chapter 5 claims as part of the bankruptcy estate's assets is not just a technical query, but one that strikes at the very heart of the bankruptcy system's objectives and theories. At the core of this issue is the principle of maximizing the estate's value for the benefit of creditors as well as the debtors. Recognizing Chapter 5 claims as sellable assets empowers trustees to enhance the estate's financial resources, which is pivotal in scenarios where the estate lacks adequate resources to engage in costly and time-consuming litigation. In doing so, the estate can realize immediate and potentially higher value from these claims, which would allow debtors to complete the bankruptcy process more quickly and gain their fresh start sooner. This recognition aligns with the fundamental bankruptcy tenet of equitable asset distribution by enhancing the estate's value, promoting efficient case resolutions, and supports reorganization efforts.

For this reason, it is imperative to the central purpose of bankruptcy that this Court holds Chapter 5 claims to be sellable assets of the estate because the text clearly defines the trustee's powers as property of the estate, section 363(b)(1) unambiguously grants the trustee the power to sell avoidance powers as property of the estate, the powers of the trustee can be executed by the purchaser under the consent of the trustee after the sale, and this result better matches the spirit and purpose of the Bankruptcy regime.

A. The Code Includes Trustee Powers In Property Of The Estate.

Embracing the historical ethos of stare decisis upholding the plain language of statutory provisions, this Court should hold that the statutory language decisively defines trustee's powers as belonging to the estate, trustee powers arising at case commencement are undoubtedly part of the estate, the Code as a whole is in harmony with trustee powers being deemed estate property, and this Court's precedents affirm trustee's actions as estate property.

1. Trustee powers are "legal interests."

Property of the estate is to be read broadly, and the plain meaning of the text supports the conclusion that trustee powers are a part of it. When 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 Enterprises, Inc.*, 489 U.S. 235, 241 (1989). Property of the estate includes "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 outer bounds of the property of the estate are expansive to the point of being "all embracing." *See* H.R. REP. NO. 95-595, at 549 (1977). A legal interest is "A legal share in something; all or part of a legal or equitable claim to or right in property right, title, and interest. Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity." INTEREST, *Black's Law Dictionary* (11th ed. 2019). Such interests belong to the property of the estate. *See, e.g., Parker v. Goodman (In re Parker)*, 499 F.3d 616, 624 (6th Cir. 2007) ("As "legal and equitable interests," causes of action that belong to the debtor constitute property of the estate under § 541(a)(1)."); *In re Simply Essentials, LLC*, 78 F.4th 1006, 1011 (8th Cir. 2023) ("The Court concludes the causes of action proposed for sale here are property of the estate."); *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 37 (1992) ("the right to recover a postpetition transfer under 550 is clearly a 'claim' (defined in 101(4)(A)) and is 'property of the estate' (defined in 541(a)(3))").

The plain meaning of the statutory text dictates that all powers held by the Trustee should be considered part of the property of the estate under 11 U.S.C. § 541 (a)(1) regardless of whether preference actions and other trustee powers are conceptualized as claims or as "property." This textualist interpretation is consistent with the text of the code, as well as determinations made previously by this Court and numerous circuit courts.

2. "As of the commencement of the case" includes powers of the trustee that come into existence at the time of filing.

Any property that comes into existence at the time of the filing is property of the estate, contrary to the opinion of the Thirteenth Circuit. Section 541(a)(1) includes in the property of the estate legal interests that existed "as of the commencement of the case." 11 U.S.C. §541(a)(1). The powers of the trustee also attach "as of the commencement of the case." *See* 11 U.S.C. § 544 (a)."As of" means "As things stood on (a date)," and thus refers not to interests that existed before the filing of the petition, but interests that existed the moment the petition was filed. *See As of*, Oxford English Dictionary, Revised 2011. Additionally, "the commencement of the case" is synonymous with the filing of the bankruptcy petition, not the actions that happened before the bankruptcy petition. *See Matter of Zedda*, 103 F.3d 1195, 1201 (5th Cir. 1997).

The canon against surplusage dictates that "commencement of the case" does not mean "before the case." To interpret otherwise, as the Thirteenth Circuit did, produces irreconcilable conflicts within the Code. That the other powers of the trustee begin "as of the commencement of the case" makes it impossible for "as of the commencement of the case" to refer solely to interests that existed before the filing of the petition, since this would mean trustee powers arise *before* the petition. Additionally, in other portions of the code, Congress took pains to make clear when they were referring to property or powers that came into existence prior to filing of the petition. For example, 11 U.S.C. § 946, is careful to explicitly define the status of securities acquired before the date of filing. Had congress intended to limit section 541 (a)(1) beyond the meaning of the plain meaning of the words, they would have included language indicating their intention to limit. Because the powers of the trustee come into existence at the time of filing, the powers of the trustee are property of the estate).

3. No other provisions of the code conflict with trustee powers being considered property of the estate

The plain text of section 541 (a)(1) indicates that powers held by the trustee are property of the estate, and no other provisions of the code indicate otherwise. The Thirteenth Circuit notes the fact that the code does not include cross references in section 541(a)(1) to the other powers of the trustee. R. at 19. They conclude that congress did not intend for those powers to be included in the property of the estate. The fact that congress did not cross reference every power of the trustee which may fall under section 541 (a)(1) does not indicate that they intended to preclude those powers from the property of the estate.

The Omitted-Case Canon states that nothing is to be added to what the text of the case omits or does not reasonably imply. *See Russello v. United States,* 464 U.S. 16, 23 (1983)("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (collecting cases); Antonin Scalia & Bryan A. Garner, *Reading Law*, 93 (2012). Section 541 (b) includes a comprehensive list of items not included in the property of the estate, and these items serve as exceptions to section 541 (a). Congress, in their deliberations of the code, clearly saw it as necessary to include some restrictions on what is included in the property of the estate, otherwise they would not have included section 541 (b). Had congress intended to restrict section 541 (a)(1) to not include powers of the trustee, they would most likely have included this restriction in the text of section 541 (b) rather than leaving the restriction to be assumed from a lack of cross references. In this way, by making the cross-referencing argument, the Thirteenth Circuit unduly added restrictions to section 541 (a) that are not included in the text of the bankruptcy code.

Furthermore reading section 541 (a)(1) to include trustee powers does not does not violate the canon against surplusage. 11 U.S.C. § 541(a)(3) refers to property that has actually been recovered in the process of one of the powers listed in the section 541(a)(3). The property must have been actually recovered by the trustee through one of their powers to become property of the estate through section 541(a)(3). *In re Springfield Furniture, Inc*., 145 B.R. 520, 529 (Bankr. E.D. Va. 1992). section 541 (a)(1) on the other hand refers to property and interests which exist at the time of filing. 11 U.S.C. § 541 (a)(1); *see Matter of Zedda*, 103 F.3d 1195, 1201 (5th Cir. 1997); *see also In re Reed*, 940 F.2d 1317 (9th Cir. 1991) (" interest is determined upon filing the bankruptcy petition and becomes part of the estate at that time").

The facts of *Springfield Furniture* demonstrate a situation where an interest that did not exist at the time of filing, may come into existence upon recovery. 145 B.R. 520. In this case, the Trustee wished to acquire a pension fund created by and funded by the debtor, but owned by a legally distinct trust. Through their section 542 powers requiring an entity holding property that a trustee may use, sell or lease under 11 U.S.C. § 363 to deliver such property to the Trustee, they demanded the property. *Id* at 528. Because the property had remained in the legal possession of the trust, it was not part of the property of the estate under section 541 (a)(1). Had it been successfully transferred, it would have been property under section 541 (a)(3). *Id*. In the present case, if the house itself is transferred to the property of the estate, it would come in through section 541 (a)(3) whereas the power to unwind the preference itself is property through section 541 (a)(1).

Other sections of the code cross-referenced in section 541 (a)(3), such as section 329(b) regarding the recovery of excess legal fees, are not logically relevant to section 541 (a)(1),. These fees stem from the administration of the estate, and could theoretically be both incurred and recovered post petition, making section 541 (a)(1) useless in this situation. Fundamentally, this temporal distinction renders section 541 (a)(1) and section 541 (a)(3) different provisions, regardless of whether section 541 (a)(1) is read to include trustee powers as sellable claims. Even if section 541 (a)(1) and section 541 (a)(3) represent similar ideas in the code, a violation of the canon against surplusage is not an absolute rule. *In re Simply Essentials*, LLC, 78 F.4th 1006, 1009 (8th Cir. 2023)

4. The Supreme Court has held the same.

In *Nordic Village*, the Supreme Court conclusively held that avoidance actions, another of the powers of the trustee, are claims and are property of the estate. *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 37 (1992). Specifically, the court stated that "the right to recover a postpetition transfer under 11 U.S.C. § 550 is clearly a "claim" (defined in § 101(4)(A)) and is property of the estate." *Id.* The Court of Appeals dismissed this statement, interpreting it as dicta, rather than essential to the holding of the case. In determining whether something t is dicta, "realization that the system of precedent itself depends on what is dicta should give us pause before we make too much of the distinction." Fredrick Schauer, *Thinking like a lawyer: a new introduction to legal reasoning*, 57 (2012). The holding of the case "(1) [is] actually decided, (2) [is] based upon the facts of the case, and (3) lead[s] to the judgment.Michael Abramowicz, *Defining Dicta*, 57 Stan. L. Rev. 953, 113 (2005).

In *Nordic Village*, the Court was centered around a claim of government immunity in a proceeding to recover an unauthorized post petition transfer to the U.S. government in the course of a ch. 7 bankruptcy. 503 U.S. 30, 31-32. The operative language of section 101(4)(A) is "A governmental unit is deemed to have waived sovereign immunity with respect to any claim against such governmental unit that is property of the estate [...]." As a threshold matter, this case could not have proceeded if section 550 powers were not property of the estate and would not have met the pleading requirement to begin the case. *See id* at 37; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) (Abrogating *Conley v. Gibson*, 355 U.S. 41, 78 (1957), Conely being the pleading standard at the time of this case). The case was decided, not on the grounds that the underlying claim was deficient, but rather that the bankruptcy courts were not permitted to authorize payment from the United States, and the bankruptcy code did not explicitly allow this payment. The fact that this case met pleading standard and could not without the Court's evaluation of the Trustee's power is a compelling reason to believe that the statements are not dicta. Furthermore, the statement stems from the facts of the case in that it refers to the factual status of the procedural history. *Nordic Vill.* 503 U.S. 30, 37. Even if they are dicta, the Supreme Court's interpretation of the trustee's powers is a valuable insight into the contours of the law.

B. Sec 363(B)(1) Grants The Trustee The Power To Sell Avoidance Powers.

In bankruptcy cases, the trustee has an inimitable duty to "collect and reduce to money the property of the estate for which such trustee serves." 11 U.S.C. § 704(a)(1). Facilitating this duty, section 363 of the Code expressly authorizes the trustee "to use, sell, or lease … property of the estate." 11 U.S.C. § 363(b)(1). Statutory text is unequivocal that the trustee may sell the preference action as property of the estate to "reduce [it] to money," so further judicial inquiry is unnecessary. See *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there."). This Court should reject the Thirteenth Circuit Court's argument that there is a"well-settled principle" that the trustee cannot sell avoidance powers because it is no longer a well-settled principle in light of recent case law and the revised Bankruptcy Code. This Court should also read section 1123 as persuasive precedent for allowing such transactions.

1. It is not a well-settled principle that a trustee cannot sell avoidance powers.

While a Bankruptcy Court held in 1981 that it is a well-settled principle that a trustee cannot sell or assign avoidance powers, later cases demonstrate that in truth, it is not. *Compare United Capital Corp. v. Sapolin Paints, Inc. (In re Sapolin Paints, Inc.)*, 11 B.R. 930, 937 (Bankr. E.D.N.Y. 1981) ("[W]ell-settled principle that neither a trustee in bankruptcy, nor a debtor-in-possession, can assign, sell, or otherwise transfer the right to maintain a suit to avoid a preference") *with Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006 (8th Cir. 2023) (Holding that the trustee may sell avoidance actions to maximize the value of the estate).

The Bankruptcy Court of *In re Sapolin Paints* supported its claim of the existence of this well-settled principle by collecting cases from 1909 to 1973. *See In re Sapolin Paints*, at 937. However, more recently, the First, Fifth, Seventh, Eighth, and Ninth Circuits have all upheld the trustee's power to sell avoidance powers. *See, e.g., 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 conveyanc e is included within [section 541(a)(1)] property."); *In re TelexFree, LLC*, 941 F.3d 576, 587 (1st Cir. 2019) ("We hold that at least actions under §§ 547 and 548 can constitute property of the estate."); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 (5th Cir. 2010) (recognizing that avoidance claims under section 544 are property under section 541 and can be sold by the trustee); *Mellon Bank N.A. v. Dick Corp.*, 351 F.3d 290, 291 (7th Cir. 2003) ("We must decide whether the right to recover a preference is an asset of the estate that may be assigned or distributed to a particular class of creditors to satisfy their entitlements … our answer is 'yes.'"); *In re Simply Essentials*; *Silverman v. Birdsell*, 796 F. App'x 935, 937 (9th Cir. 2020) ("bankruptcy trustee may sell an estate's avoidance claims"); *Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.)*, 177 F.3d 774, 782 (9th Cir. 1999)) ("the bankruptcy court did not err by holding that the trustees could transfer their avoidance powers"); *In re Lahijani*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005) (Holding that avoidance claims owned by the bankruptcy estate may be sold and need not be "sold to a creditor who agrees to pursue those avoidance powers for the benefit of all creditors").

The Third Circuit Court is the only court that has suggested otherwise in what the court considers dicta. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 245 (3d Cir. 2000). In *Cybergenics*, the Third Circuit suggested state fraudulent transfer claims, which could be pursued under section 544, were not part of the estate's sold assets because they did not originally belong to the debtor. However, the Third Circuit itself recently clarified that "*Cybergenics* does not hold that trustees cannot transfer causes of action. It leaves that question open [...]." *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). In other words, *Cybergenics* did not definitively conclude that trustees are barred from transferring causes of action; rather, it left this issue unresolved. The claim that a trustee may not sell his avoidance powers has therefore become, since *Sapolin* in 1981, far from "well-settled."

2. *Even if it was a well-settled principle, it was abandoned when the code was revised*

Even if the prohibition of selling avoidance powers was a "well-settled principle," it should be reconsidered in light of the significant revisions to the Bankruptcy Code. Though the Code does not explicitly state that the trustee may sell avoidance actions, the legislative changes and subsequent judicial interpretations have effectively abandoned this outdated principle, aligning the Code with contemporary needs and practices in bankruptcy administration. The Thirteenth Circuit argues that because sections 547 and 550 of the Code, when compared to the "Bankruptcy Act of 1898, ch. 541, sec 50, 30 Stat. 562 (codified as amended at 11 U.S.C. § 96 (1958))," does not expressly abolish the now obsolete "well-settled principle," that there is no reason to allow a trustee to sell or assign avoidance actions today. However, a close comparison of the two texts reveals that the modern Code has been revised to provide more flexibility and efficiency in estate administration.

While the core concept of preferential transfers and their avoidance remains consistent between the 1898 and 1978 laws, the Code of 1978 provides a more detailed and nuanced approach to the treatment of preferential transfers, including clearer definitions and more specific criteria for avoidance and recovery. Among the innumerable differences between 11 U.S.C. § 96 (1958) and sections 547 and 550 of the Code, examples that demonstrate the modern Code's broadening of the trustee's discretion and scope of recovery include section 550(a) that allows the trustee to recover from both initial and subsequent transferees, or section 547(b) that lifts the knowledge requirement when recovering from creditors. *See* 11 U.S.C. § 96(b) (1958) ("the creditor [or his agent] receiving [the preference] has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent").

The evolution of the Bankruptcy Code from its 1898 origins to its current form reflects a deliberate shift towards greater flexibility and efficiency in estate administration. The explicit changes in sections 547 and 550, coupled with a broader interpretive context, make it clear that the once "well-settled principle" against selling avoidance actions is no longer applicable. Modern bankruptcy practice demands adaptability, and the Code empowers trustees to act in the best interests of the estate, including the potential sale or assignment of avoidance actions. This progression ensures that the bankruptcy system remains effective and relevant in addressing contemporary challenges in financial insolvency.

3. *Selling avoidance powers should be allowed in the Chapter 7 context for the same reasons it is allowed under Section 1123*

A categorical ban on selling avoidance powers in Chapter 7 would create arbitrary inconsistencies between Chapter 7 and Chapter 11, undermine the Code's purpose of maximizing value for creditors, and prevent trustees from fully executing their duties. *See* 11 U.S.C. §704(a)(1)*; In re Ditech Holding Corp.*, 606 B.R. 544, 608 (2019). Under section 1123(b)(3)(B), avoidance powers may be assigned to someone other than the debtor or trustee pursuant to a plan of reorganization. *See* 11 U.S.C. § 1123(b)(3)(B); *Citicorp Acceptance Co. v. Robison (In re Sweetwater)*, 884 F.2d 1323, 1327 (10th Cir. 1989) ("[T]he plan provision naming Robison as a representative of the estate for the purpose of enforcing these avoidance claims is consistent with § 1123(b)(3)(B)."); *In Re: P.R.T.C., Inc.* at 781 ("'[i]t is a well-settled principle that avoidance powers may be assigned to someone other than the debtor or trustee pursuant to a plan of reorganization' under 11 U.S.C. § 1123(b)(3)(B)."); *Briggs v. Kent (In re Professional Inv. Properties of Am.)*, 955 F.2d 623, 625 (9th Cir. 1992). Unlike Chapter 11, Chapter 7 of the Bankruptcy Code, does not contain explicit directives regarding the sale or assignment of avoidance powers. However, the absence of a similar provision in Chapter 7 does not imply a prohibition, but rather indicates Congress' intent to provide flexibility to trustees and maximize value for creditors. Chapter 11 adheres to the rules set forth in Chapter 5, which applies across the board to all bankruptcy proceedings and has the objective of maximizing the value of the bankruptcy estate for the benefit of creditors. Under the canon of consistent usage, "identical words used in different parts of the same statute have the same meaning unless the text or context suggests otherwise." *United States v. Pulsifer*, 39 F.4th 1018, 1020 (8th Cir. 2022). It would be inconsistent to assume that avoidance powers as described in section 1123(b)(3)(B) would have a fundamentally different status as those in Chapter 5 of the code, as they apply to other types of bankruptcy. To achieve the goals, of Chapter 7 bankruptcy trustees require flexibility in selling estate assets. *Cybergenics* at 563 ("Congress intended for creditors' committees to perform services on behalf of the estate, and that Congress consciously built a measure of flexibility into the scope of those services."). The Ninth Circuit has explicitly held that this well-settled principle that avoidance powers can be sold or assigned extends from Chapter 11 to Chapter 7 liquidation cases for these reasons. See, e.g. *In re Professional Inv. Properties of Am., Inc.*, at 170-71 (9th Cir. 1992); *In Re: P.R.T.C.*, Inc. at 782 ("Duckor has not presented, nor have we found, any reason why a Chapter 11 trustee can transfer its avoidance powers outside a reorganization plan, but a Chapter 7 trustee cannot. We therefore hold that the principles in *Professional Inv.* apply to both Chapter 7 and Chapter 11 cases.").

Allowing trustees to sell avoidance powers enables them to fulfill their duty under section 704(a)(1) to liquidate the estate and maximize distributions to creditors. Categorically prohibiting the sale of avoidance powers would arbitrarily constrain trustees from fully leveraging estate assets and would undermine the Code's purpose. A categorical ban forces trustees to either fully litigate all avoidance actions, even when economically imprudent, or abandon potentially valuable claims, harming creditors. Through allowing these sales, buyers of avoidance powers can pursue claims the trustee lacks resources to litigate, increasing recoveries for creditors. Without this option, valid avoidance actions could be abandoned simply for lack of estate funds. For these reasons, section 1123 provides a persuasive basis to allow trustees to sell avoidance powers in Chapter 7 cases. A contrary holding would create arbitrary inconsistencies between Chapters 7 and 11, constrain trustees from fully executing their duties, and undermine the Code's purpose of maximizing value for creditors.

C. Powers Of The Trustee Can Be Executed By The Purchaser After The Sale.

Once the powers of the trustee have been sold as property of the estate, the purchaser may execute the powers in a manner that is consistent with the rules of the Bankruptcy Code. It is a well established principle that the trustee may sell their powers and those powers may be executed upon by third parties who have purchased these powers. *In re P.R.T.C., Inc.*, 177 F.3d 774 (9th Cir. 1999); *see also In re Lahijani*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005) (Abandoning the requirement that the sale actually benefits all creditors). The bankruptcy court can authorize a creditor to exercise trustee's powers to sue and to avoid transactions if (1) the creditor is pursuing interests common to all creditors, and (2) allowing the creditor to exercise those powers will benefit the remaining creditors. *See In re P.R.T.C.* at 782. . Furthermore "when determining whether an assignment to creditor of trustee's powers to sue and to avoid transactions benefits the remaining creditors, [the court] considers the assignment in light of the other options before the court." *Id* at 783.

In the present case, the creditor is interested in maximizing the return for all creditors. Selling the house, along with the preference action, allows for the proceeds to augment the property of the estate. Since the house is one of the most significant assets held by the debtor, ensuring that the value of the home is represented in one way or another is vital to building the property of the estate and maximizing what can then be distributed equitably to the creditors. Selling this preference claim represents an injection of funds into the estate, and makes available funds that could only be obtained through expensive and potentially time consuming action by the trustee. Through selling the preference action, the trustee not only facilitates the sale but also preserves the estate's resources by avoiding the legal expenses associated with pursuing the preference action. By disallowing the sale, this Court would be transferring these costs to a third party. Because this action would both pursue an interest common to all creditors and benefit all creditors it meets both elements of *In re P.R.T.C.*

While the text of the statute and numerous courts agree the trustee may sell their powers in a Chapter 7 bankruptcy, the Circuit Court claims that "*Hen House"* controls this decision, and that the power of third parties to exercise these powers should be restricted under the doctrine that only the trustee may exercise powers granted explicitly to the trustee. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, *"Hen House,"* 530 U.S. 1, 6-7 (2000). In *Hen House*, creditors took action to recover insurance premiums without coming to an agreement with the trustee nor asking the court to grant them the powers of the trustee. *Id* at 11. Instead, the creditors sought to recover under the theory that the Code's use of "may" implied that parties other than the trustee may recover using section 506 . *Id* at 4. The Supreme Court rejected this argument, saying that the power belonged to the trustee alone. *Id* at 11.

The lower court erred in applying *Hen House* to the present issue because, in that case, a third party took actions granted to the trustee on their own power rather than operating under the permission of the trustee. In other words, the *Hen House* creditors never worked through the power of the trustee. *See generally id.* As such, *Hen House* was about whether non-trustee parties can pursue actions granted to the trustee *sua sponte*. *See generally id.* In the present case, the trustee sold the power to the creditor directly for the benefit of the estate overall. Because *Hen House* is distinct from the present case, its ruling does not conflict with precedent allowing the trustee to sell their powers.

Furthermore, other doctrines within bankruptcy indicate that these powers can be executed by parties other than the trustee. The doctrine of derivative standing shows that there are other occasions where the creditor may exercise the powers of the trustee, indicating that *Hen House* does not serve as a wholesale prohibition against third parties exercising the powers of the trustee in a different context. *See e.g. Fogel v. Zell*, 221 F.3d 955, 965 (7th Cir. 2000). If the trustee "unjustifiably refuses a demand to bring an action to enforce a colorable claim of a creditor, the creditor may obtain the permission of the bankruptcy court to bring the action in place of, and in the name of, the trustee." *See id*. If the debtor is allowed to exercise the powers of the trustee with solely the permission of the court, they should be allowed to exercise these powers with the permission of the court, and the trustee.

D. The Spirit Of The Bankruptcy Regime Requires Trustee Powers To Be Property Of The Estate.

The primary reason for the bankruptcy regime is "to mitigate the effects of financial failure." 1 Collier on Bankruptcy P 1.01 (16th 2023). Key to the successful execution of this process Chapter 7 bankruptcy embraces the use of a third party trustee to better administer the plan. 11 U.S.C. § 704. Part of the role of the trustee is "marshaling all available property, reducing it to money, [and] distributing it to creditors." *Koch Ref. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1342 (7th Cir. 1987). The broad construction of claims facilitates this process. In fact the bankruptcy code is designed to interpret a claim in the broadest possible terms. *See Midland Funding, LLC v. Johnson*, 581 U.S. 224, 230 (2017). The policy concerns of the Thirteenth Circuit miss the forest for the trees. They express concern that allowing the sale of trustee powers would permit bad actors to misuse the system for personal vendettas. What they do not address is the fact that the sale of the trustee powers is in fact in the best interest of the estate overall. In reality, this capacity remains a tool of the trustee to better meet the needs of the estate. The sale of preference claims is a regular feature of ch. 11 bankruptcy, in which the administration of the estate is not in the hands of a trustee, but often in the hands of a debtor in possession. See, e.g., In re *Murray Metallurgical Coal Holdings*, LLC, 623 B.R. 444, 506-07 (Bankr. S.D. Ohio 2021). The definition of a claim is broad for a good reason, and that reason is to allow a more efficient and individualized approach to the bankruptcy process. The court should not focus on one potential side effect, but rather on an interpretation of the law which would better match the spirit and the text of the law, and that is ruling that powers of the trustee are property of the estate, and can be sold by the trustee as such.

This case is fundamentally about the unique role of the trustee in the Chapter 7 system. Congress created the role of the trustee with a unique and powerful position. Part of their primary purpose is to maximize the property of the estate, and thus the payouts to creditors. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985); *IRS v. Luongo (In re Luongo)*, 259 F.3d 323, 340 n.16 (5th Cir. 2001). Including trustee powers in the property of the estate would bring funds to the estate through their sale. This exercise of trustee power would maximize return to creditors, and minimize the risk of funds running out before they are completely distributed to the remainder of the creditors. For the reasons described above, there are compelling reasons to find that allowing trustees to sell their power is consistent with the code, and is thus a perfectly acceptable use of that power. *See generally, Supra* part II.

CONCLUSION

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals and hold that (1) post-petition, preconversion appreciation in the equity of a debtor's property belongs to the Chapter 7 bankruptcy estate upon conversion, and (2) the powers of the trustee are claims under the property of the estate, and can be sold to further the interests of the bankruptcy estate.