No. 23-

IN THE

Supreme Court of the United States

JOHN FELIX CASTLEMAN, SR. AND
KIMBERLY KAY CASTLEMAN,

Petitioners,

v.

DENNIS LEE BURMAN, CHAPTER 7 TRUSTEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, when a debtor in good faith converts a bankruptcy case to Chapter 7 after confirmation of a Chapter 13 plan, the post-petition, pre-conversion increase in value of the debtor's homestead belongs to the debtor (as the Tenth Circuit held in *Rodriguez v. Barrera (In re Barrera)*, 22 F. 4th 1217 (10th Cir. 2022) or the Chapter 7 estate, and is therefore available for distribution to creditors (as the Ninth Circuit held below).

RELATED PROCEEDINGS

In re Castleman, 19-12233-MLB, U.S. Bankruptcy Court for the Western District of Washington. Judgment entered June 4, 2021.

In re Castleman, 2:21-cv-00829-JHC, U. S. District Court for the Western District of Washington. Judgment entered July 1, 2022.

Castleman v. Burman (In re Castleman), 22-35604, U. S. Court of Appeals for the Ninth Circuit. Judgment entered July 28, 2023.

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PETITION FOR WRIT OF CERTIORARI

Hathaway Holland Law Firm, PLLC respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. A, infra, pp. 1a-26a), is reported at 75 F. 4th 1052. The opinion of the district court (App. B, infra, pp. 27a-35a) is available at 2:21-cv-00829-JHC (W.D. Wash. Jul. 1, 2022). The opinion of the bankruptcy court (App. C, infra, pp. 36a-50a) is reported at 631 B.R. 914.

JURISDICTION

The Ninth Circuit denied Petitioner's appeal on July 28, 2023, and denied en banc review on September 6, 2023 (App. D, infra, pp. 51a-52a). This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

At issue in this case is the application of 11 U.S.C. § 348(f) which provides, in pertinent part, as follows:

> (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; [...]
>
> (2) If the debtor converts a case under chapter 13 of this title to a case under another Chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 348(f)(1)(A) and (f)(2).

STATEMENT OF THE CASE

This case concerns an expressly acknowledged and now entrenched circuit conflict over the interpretation of 11 U.S.C. § 348(f).

Chapter 13 of the Bankruptcy Code allows debtors to repay their creditors by turning a portion of their monthly income over to a Chapter 13 trustee for distribution to those creditors. At any time, however, a debtor may convert a Chapter 13 bankruptcy case to one under Chapter 7. Congress has provided that "[e]xcept" where the conversion is made in bad faith, the resulting Chapter 7 estate is limited to the debtor's property "as of the date" the original Chapter 13 petition was filed. 11 U.S.C. § 348(f).

In the Tenth Circuit, when a debtor in good faith converts to Chapter 7, the increase in the value of the debtor's homestead that accrued during the pendency

of the Chapter 13 belongs to the debtor. *Rodriguez v. Barrera (In re Barrera)*, 22 F. 4th 1217, 1223 (10th Cir. 2022).

In the Ninth Circuit, when a debtor in good faith converts to Chapter 7, the increase in the value of the debtor's homestead that accrued during the pendency of the Chapter 13 belongs to the Chapter 7 estate, available for distribution to creditors. *Castleman v. Burman (In re Castleman)*, 75 F. 4th 1052 (9th Cir. July 28, 2023).

The Ninth Circuit's holding below renders superfluous Section 348(f)(2), creates a circuit split, overlooks pronouncements on the relevant issue by the Ninth Circuit BAP (and other courts in the circuit), creates a serious disincentive for debtors to utilize Chapter 13 to repay something to creditors, effectively punishes the Castlemans for filing under Chapter 13 with the forced sale of their home, and is not the best reading of the Bankruptcy Code.

Most of the bankruptcy courts throughout the country that have analyzed the question presented held that the increased value inures to the debtor.[1] A minority have held

1. *In re Barrera,* 620 B.R. 645 (Bankr. D. Colo. 2020), aff'd, No. BAP CO-20-003, 2020 WL 5869458 (B.A.P. 10th Cir. 2020) *("Barrera I")*, *In re Lynch*, 363 B.R. 101 (B.A.P. 9th Cir. 2007), *In re Cofer*, 625 B.R. 194 (Bankr. D. Idaho 2021), *In re Barrera*, 620 B.R. 645, (Bankr. D. Colo. 2020), *In re Golden*, 528 B.R. 803 (Bankr. D. Colo. 2015), *In re Hodges*, 518 B.R. 445 (Bankr. E.D. Tenn. 2014), *In re Burt*, 01-43254-JJR-7, 5 (Bankr. N.D. Ala. 2009), *In re Niles*, 342 B.R. 72, 76 (Bankr. D. Ariz. 2006), *In re Boyum*, No. 05-1044-AA, 2005 WL 2175879 (D. Or. 2005), *In re Woodland*, 325 B.R. 583 (Bankr. W.D. Tenn. 2005), *In re Jackson*, 317 B.R. 511 (Bankr. N.D. Ill. 2004), *In re Nichols*, 319 B.R. 854 (Bankr. S.D. Ohio 2004), *In*

the increase inures to the Chapter 7 estate.[2]

A. Factual Background

Debtors John and Kimberly Castleman filed a Chapter 13 bankruptcy, listing as an asset their home valued at $500,000, with a mortgage balance of $375,077 and a homestead exemption of $124,923. After they performed under a confirmed plan for 20 months, a job loss and the onset of Parkinson's Disease prevented the couple from making their plan payments and they converted the case to a Chapter 7. In the interim, the value of their home had increased by $200,000 based on appreciation. App. A, infra, pp. 3a-4a; App. B, infra, p. 28a; App. C, infra, pp. 37a-38a.

The Chapter 7 trustee filed a motion to sell the homestead to recover this new excess equity for the creditors arguing the 2005 amendment to Section 348(f)(1)(B) made appreciation in the value of the home during the pendency of their Chapter 13 property of the Chapter 7

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re Slack, 290 B.R. 282 (Bankr. D.N.J. 2003), *In re Wegner*, 243 B.R. 731 (Bankr. D. Neb. 2000), *In re Page*, 250 B.R. 465 (Bankr. D.N.H. 2000), *In re Fobber*, 256 B.R. 268, 277-78 (Bankr. E.D. Tenn. 2000), *In re Pearson*, 214 B.R. 156, 164 (Bankr. N.D. Ohio 1997).

2. *Goetz v. Weber (In re Goetz)*, No. 22-6009 (B.A.P. 8th Cir. 2023), *Potter v. Drewes* (*In re Potter*), 228 B.R. 422 (B.A.P. 8th Cir. 1999), *In re Goins*, 539 B.R. 510 (Bankr. E.D. Va. 2015), *In re Goetz*, 647 B.R. 412 (Bankr. W.D. Mo. 2022), and *In re Peter*, 309 B.R. 792 (Bankr. D. Or. 2004). The reasoning of *Peter* was rejected by the District Court of Oregon in *In re Boyum*, No. 05-1044-AA, 2005 WL 2175879 (D. Or. 2005) (post-petition, pre-conversion, increases in equity caused by paydown of secured debt and property appreciation are property of the debtor, not the Chapter 7 estate).

bankruptcy estate upon conversion. (App. B, infra, p. 30a, fn. 1) The Castlemans objected, arguing the appreciation belonged to them. The bankruptcy court ruled in favor of the Chapter 7 trustee, concluding the equity belonged to the estate, allowing the sale to proceed (App. C, infra, pp. 36a-50a). The district court affirmed (App. B, infra, pp. 27a-35a). The Castlemans appealed to the Ninth Circuit which affirmed (App. A, infra, pp. 1a-26a).

B. Lower Courts' Rationale[3]

The bankruptcy court ruled in favor of the Chapter 7 trustee, adopting the reasoning of the minority view expressed in a Virginia bankruptcy court decision, *In re Goins*, 539 B.R. 510 (Bankr. E.D. Va. 2015), *In re Peter*, 309 B.R. 792, 795 (Bankr. D. Or. 2004),[4] and three Ninth Circuit non-conversion Chapter 7 cases[5] which held that post-petition, pre-conversion appreciation is not treated as a separate asset from pre-petition property and inures to the bankruptcy estate, not the debtor. App. C, infra, pp. 36a-50a.

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3. The Ninth Circuit cases cited by the courts below were filed as Chapter 7. They were not Chapter 13 conversions. See *Wilson v. Rigby*, 909 F.3d 306, 312 (9th Cir. 2018); *In re Hyman*, 967 F.2d 1316, 1321 (9th Cir. 1992); *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991).

4. The reasoning of *Peter* was rejected by the District Court of Oregon in *In re Boyum*, No. 05-1044-AA, 2005 WL 2175879 (D. Or. Sept. 6, 2005). The district court in *Boyum* reversed the bankruptcy court, finding post-petition, pre-conversion, increases in equity caused by paydown of secured debt and property appreciation are property of the debtor, not the Chapter 7 estate. *Id.*

5. *Wilson v. Rigby*, 909 F. 3d 312 (9th Cir. 2018); *Hyman v. Plotkin (In re Hyman)*, 967 F. 2d 1316, 1321 (9th Cir. 1992); and *Schwaber v. Reed (In re Reed)*, 940 F. 2d 1317, 1323 (9th Cir. 1991).

The district court affirmed the bankruptcy court's decision. Citing *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015), the district court acknowledged that Section 348(f)(1)(A) unambiguously provides that property acquired after the initial Chapter 13 petition but before conversion to Chapter 7 inures to the debtor. Nevertheless, the district court ruled that Section 348(f) did not address whether the increase in equity in the Castlemans home qualified as a separate, after-acquired property interest because it was inseparable from the asset itself under the reasoning of *Wilson v. Rigby*, which had considered it to be "[p]roceeds, product, offspring, rents, or profits" of the Castlemans' homestead under Section 541(a)(6). App. B, infra, pp. 27a-35a.

The Ninth Circuit panel majority held that the plain language of Section 348(f)(1)(A), coupled with the Ninth Circuit's previous interpretation of 11 U.S.C. § 541(a), compelled the conclusion that any appreciation in the Castlemans' home belonged to the Chapter 7 estate upon conversion. The panel looked to the definition of "property of the estate" in Section 541(a), which addresses the contents of the bankruptcy estate upon filing under either Chapter 7 or Chapter 13, and the court's prior opinions holding that the broad scope of Section 541(a) means that post-petition appreciation inures to the bankruptcy estate, not the debtor (App. A, infra, pp. 1a-26a).

REASONS FOR GRANTING THE PETITION

This Court should grant this petition for the following reasons:

I. The Ninth Circuit and Tenth Circuit are split into two camps on the application of Section 348(f).

II. Bankruptcy courts across the nation are deeply divided on the application of Section 348(f).

III. Section 348(f)(1) was enacted by Congress in 1994 to settle the issue presented here.

IV. Leading commentators opine that post-petition pre-conversion appreciation belongs to the debtor upon good faith conversion under Section 348(f).

V. The Ninth Circuit's reliance on Chapter 7 cases to define property of the estate in a case converted from Chapter 13 is flawed.

VI. The uniform interpretation of Section 348(f) is a fundamental national issue that is squarely presented in this case.

I. The Ninth and Tenth Circuits are Split on Estate Property in a Converted Case.

A. Tenth Circuit.

In the Tenth Circuit, post-petition, pre-conversion appreciation in value of a debtor's homestead belongs to the debtor upon good faith conversion of a confirmed Chapter 13. *Barrera*, 22 F. 4th at 1223.

In *Barrera* the debtors confirmed their Chapter 13 plan and later sold their home. They then converted to a Chapter 7. When the Chapter 7 trustee attempted to claim the proceeds from the sale as property of the estate, relying on the language in Section 541(a)(6), the Tenth Circuit observed that "only proceeds 'of or from property

of the estate' become property of the bankruptcy estate" under that section. Since the property revested upon confirmation, the proceeds belonged to the debtors, not the estate. *Id.* at 1223.

B. Ninth Circuit.

In the Ninth Circuit post-petition, pre-conversion appreciation in value of a debtor's homestead belongs to the Chapter 7 bankruptcy estate upon good faith conversion of a confirmed Chapter 13. App. A, infra, p. 2a.

The Ninth Circuit below held that the plain language of Section 348(f)(1)(A), coupled with the Ninth Circuit's previous interpretation of 11 U.S.C. § 541(a), compelled the conclusion that any appreciation in the property value and corresponding increase in equity belonged to the estate upon conversion. The panel majority looked to the definition of "property of the estate" in Section 541(a), which addresses the contents of the bankruptcy estate upon filing under either Chapter 7 or Chapter 13, and the court's prior opinions holding that the broad scope of Section 541(a) means that post-petition appreciation inures to the bankruptcy estate, not the debtor. App. A, infra, pp. 1a-26a.

As the lengthy dissent points out, the "holding that postpetition, pre-conversion increases in equity belong to the estate . . . creates a circuit split . . . effectively punishes the Castlemans for filing under Chapter 13 with the forced sale of their home . . . [and] is not the best reading of the Bankruptcy Code or our precedents . . .." App. A, infra, p. 13a. "While the text of the Bankruptcy Code as a whole establishes that post-petition, pre-conversion appreciation

belongs to the Castlemans, the majority's reading of § 348(f)(1)(A) is also inconsistent with the statute's structure, object, policies, and legislative history." App. A, infra, pp. 21a-22a.

II. Courts Across the Nation are Deeply Divided on Estate Property in a Converted Case.

The interpretation of Section 348(f) has deeply divided courts across the country. Most of the bankruptcy courts that have analyzed the question presented favor the increased value inuring to the debtor. A minority have held the increase inures to the Chapter 7 estate. See fn. 2.

In *In re Barrera*, 620 B.R. 645 (Bankr. D. Colo. 2020), aff'd, No. BAP CO-20-003, 2020 WL 5869458 (B.A.P 10th Cir. 2020) ("*Barrera I*"), the United States Bankruptcy Court for the District of Colorado concluded that appreciation inures to the debtor upon conversion based on the legislative history of Section 348. *Id.* at 649-53 (citing e.g., *In re Niles*, 342 B.R. 72, 76 (Bankr. D. Ariz. 2006).

Finding the meaning of property in Section 348(f)(1)(A) was ambiguous, Barrera I turned to the legislative history of Section 348(f). *Barrera I* reasoned that the legislative history, which demonstrates "Congress' concern that the Chapter 7 trustee was getting the post-petition increase in equity in the debtor's home," supports a conclusion that "property" in Section 348(f)(1)(A) means "property as it existed on the petition date, with all its attributes, including the amount of equity that existed on that date." *Id.* at 653. The court found no distinction between equity increases due to the debtor's paydown of liens or that due to changes in the market because "the

legislative history points toward Congress' intent to leave a debtor who attempts a repayment plan no worse off than he would have been had he filed a Chapter 7 case at the outset." *Id.*

Barrera I cited commentary by Keith M. Lundin and William H. Brown in support of its interpretation and dismissed public policy concerns that such an interpretation would lead to a windfall to debtors reasoning a Chapter 7 debtor would usually seek abandonment of the property if the debtor believed the case will remain open for a significant period to avoid the possibility that the trustee can reap the benefits of an increase in equity. In addition, the court reasoned that where the case will be administered quickly, the trustee is unlikely to benefit from significant increases in equity. *Id.*

In *Kendall v. Lynch (In re Lynch)*, 363 B.R. 101 (9th Cir. BAP 2007) the Ninth Circuit BAP recognized that equity not only created by payments to secured claims but also property appreciation after the Chapter 13 petition should be excluded as estate property in a case converted to Chapter 7. *Lynch*, 363 B.R. at 107. The BAP reasoned that allowing the debtor to retain equity created during the Chapter 13 case is not only reflected in the legislative purpose of Section 348(f) but is also buttressed by Section 348(f)(2) which directs the bankruptcy court to look to the date of conversion when a Chapter 13 is converted in bad faith. "Excluding equity resulting from debtors' payments on loans secured by their residence and property appreciation subsequent to their Chapter 13 filing in a case converted to Chapter 7 serves the congressional purpose of encouraging Chapter 13 reorganizations over Chapter 7 liquidations, as reflected in the legislative history." *Id.*

In *In re Cofer*, 625 B.R. 194 (Bankr. D. Idaho 2021), the debtor owned a home valued at $100,250 which she claimed as exempt on the petition date. After confirmation the debtor fell behind on her plan payments and exercised her right to convert to Chapter 7. After conversion the Chapter 7 trustee sought to limit her homestead exemption to the value of the home on the petition date, and that any appreciation in the value of the Property is property of the Chapter 7 bankruptcy estate and to sell the Home for the benefit of the estate. Debtor objected, arguing the vesting provision in the plan and under Section 1327(b) prevented the home from becoming property of the Chapter 7 estate under Section 348(f)(1)(A).[6]

The court, finding the reasoning of *Barrera I* and *Lynch* more persuasive than *Goins* because it better reflects the legislative intent of Section 348(f), ruled that post-petition appreciation upon conversion belonged to the debtor. *Id.*

In *In re Golden*, 528 B.R. 803 (Bankr. D. Colo. 2015), the debtor's home appreciated during the Chapter 13 case and was sold prior to conversion to Chapter 7. The court

6. The revesting provision of section 1327(b) has caused bankruptcy courts in the Ninth Circuit to hold that the increased equity belongs to the debtors, among them the Ninth Circuit BAP. In *Black v. Leavitt (In re Black)*, 609 B.R. 518 (B.A.P. 9th Cir. 2019) the court analyzed the interplay between §§ 1306(a) and 1327(b) in the context of property appreciating in value post-confirmation. The BAP held that when the bankruptcy court confirmed the debtor's plan, the property vested in him. It was no longer property of the estate, so the appreciation in the property's value did not belong to the estate. This gives full effect to the chapter 13 bargain a debtor makes when trading his future income for his assets. *Black* at 529. See also, *In re Niles*, 342 B.R. 72, 75 (Bankr. D. Ariz. 2006).

found Debtor is entitled to any post-confirmation, pre-conversion appreciation in value of the property claimed as exempt. The court followed the reasoning of *In re Niles*, 342 B.R. 72 (Bankr.D.Ariz.2006) (although the proceeds from the post-confirmation, pre-conversion sale exceeded the statutory maximum of the homestead exemption, such proceeds belonged to the debtor because confirmation revested estate property in the debtor), *In re Slack*, 290 B.R. 282 (Bankr. D.N.J. 2003) (post-confirmation, pre-conversion appreciation in value was not property of the estate in the Chapter 7 case because, in the converted case, property was valued as of the date of the filing of the petition pursuant to 11 U.S.C. § 348(f)(1), and *In re Wegner*, 243 B.R. 731 (Bankr.D.Neb.2000) (same). *Golden*, 528 B.R. at 810.

In *In re Hodges*, 518 B.R. 445 (Bankr. E.D. Tenn. 2014), equity built up in the debtors' residence because of payments made to their mortgagee during the Chapter 13 case. The court first noted that "although Section 348(f)(1)(B) was amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), because the issue in this case is controlled by Section 348(f)(1)(A), which was not amended by BAPCPA, the court may rely on cases construing Section 348(f)(1)(A) before BAPCPA came into effect." *Id.* at 448.

In *Hodges*, several cases are cited including *In re Nichols*, 319 B.R. 854, 857 (Bankr. S.D. Ohio 2004), *In re Lynch*, 363 B.R. 101, 107 (B.A.P. 9th Cir. 2007), *In re Salvador*, No. 2:05-CV-1107-GEB, 2006 WL 3300770, at *4 (E.D. Cal. Nov. 14, 2006), *In re Woodland*, 325 B.R. 583, 586 (Bankr. W.D. Tenn. 2005), and *In re Boyum*, No. 05-1044-AA, 2005 WL 2175879, at *2 (D. Or. Sept. 6, 2005)

– all which stand for the proposition that post-petition pre-conversion increases in equity caused by both pay-down of secured debt and property appreciation are property of the debtor, not the Chapter 7 estate. Cases postdating the 2005 BAPCPA amendment to Section 348(f)(1)(B) also reach the same conclusion, contrary to the Trustee's argument. *Hodges*, 518 B.R. at 449

The court in *Hodges* further noted that post-BAPCPA Section 348(f)(1)(B) "addresses the rights of a secured creditor in the context of valuation of specific property at the end of the Chapter 13 bankruptcy." *Hodges*, 518 B.R. at 450.

The court held that the issue was "squarely answered by § 348(f)(1)(A) and the case law interpreting it," and therefore, the debtors were entitled to the post-petition equity created by the mortgage payments made in the Chapter 13 case. *Id.*

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) amended Section 348(f)(1)(B) and (C) but it did not amend Section 348(f)(1)(A). Consequently, the congressional intent evident in the 1994 House Report is still applicable and courts may rely on cases construing § 348(f)(1)(A) before BAPCPA came into effect. *Hodges*, 518 B.R. at 448.

In *In re Burt*, Case No. 01-43254-JJR-7, 5 (Bankr. N.D. Ala. 2009), the Debtors owned real property valued at $62,700 with a mortgage of $45,000, leaving $17,700 equity at the time of filing. The Debtors later converted to Chapter 7. During the pendency of their Chapter 13 they had made payments on their mortgage which

reduced it to $20,034.20 at the time of conversion. Due to the payments and appreciation the Debtors equity had increased to $42,665.80. The Chapter 7 trustee claimed the equity that increased during the Chapter 13 (from mortgage payments, appreciation, or otherwise) inured to the benefit of the Chapter 7 estate.

The court stated "[t]here is a consensus among courts that equity attributed to appreciation in a property's value may not be claimed by the trustee in a converted case" citing *In re Wegner*, 243 B.R. 731, 734-35 (Bankr. D. Neb. 2000), *In re Niles*, 342 B.R. 72, 76 (Bankr. D. Ariz. 2006), and *In re Page*, 250 B.R. 465, 465 (Bankr. D.N.H. 2000).

In *In re Niles*, 342 B.R. 72 (Bankr. D. Ariz. 2006) the debtor's home appreciated and it was sold before the case was converted to Chapter 7. The trustee argued that the proceeds were property of the Chapter 7 estate. The *Niles* court found that the appreciation in the debtor's home was the post-petition property of the debtor. The court stated: While admittedly an increase in value to real property is not the same as after-acquired property as that term is traditionally defined under bankruptcy law, it is similar in nature and justifies the same result. Denying the debtor the increase in value upon conversion would similarly act as a disincentive to filing Chapter 13 in the first instance. For these reasons, the court concludes that the funds more than the exemption amount received because of the post-confirmation, pre-conversion sale of Debtor's home are not subject to turnover to the Trustee. *Niles*, 342 B.R. at 76.

In *In re Boyum*, No. 05-1044-AA, 2005 WL 2175879 (D. Or. 2005) the court held post-petition, pre-conversion, increases in equity caused by paydown of secured debt and

property appreciation are property of the debtor, not the Chapter 7 estate. *Id.*

In re Woodland, 325 B.R. 583 (Bankr. W.D. Tenn. 2005). "The legislative history [of the 1994 amendments to § 348(f)] states that Congress intended to `clarify' the fractured case law, in favor of the view that consumer debtors should not be penalized at conversion for attempting and failing in a Chapter 13 case." Hon. Keith M. Lundin, CHAPTER 13 BANKRUPTCY, 3D EDITION § 316.1, at 316-1 (2000 & Supp.2004) *586 (quoting 140 Cong. Rec. H10, 752). While some courts have continued to deny a debtor the full benefits of payments made on secured claims in the Chapter 13 phase, for example by finding that payments amounted to appreciation in value that should benefit the Chapter 7 estate, see *In re Wegner*, 243 B.R. 731 (Bankr. D. Neb. 2000), this Court finds such a result to be contrary to the statute and the congressional intent. *Id.*

In *In re Nichols*, 319 B.R. 854 (Bankr. S.D. Ohio 2004), the court explained that Congress was concerned that transferring the benefits made by a debtor by diligently making payments under a Chapter 13 plan to the unsecured creditors if the case converted to one under Chapter 7 "would create a serious disincentive to Chapter 13 filings because debtors would fear that property attained after filing, including equity created by payment of secured debts, could be lost if the case were converted. Congress did not intend that a Chapter 13 debtor should lose the benefit of any equity accrued in an asset because of said debtor's compliance with the Chapter 13 plan payments. The legislative history also states that equity created during the Chapter 13 case is not property of the

estate." *Nichols* at 856 (quoting Collier on Bankruptcy ¶ 348.07[1] (15th ed. rev'd 2004)).

In *In re Jackson*, 317 B.R. 511 (Bankr. N.D. Ill. 2004), the debtor's home appreciated in value before the case was converted to Chapter 7. The court found that any appreciation in the value of the home or increase in equity during the Chapter 13 case was the property of the debtor. *Jackson*, 317 B.R. at 513, 518. The court based its decision on the legislative history which states that equity created during the Chapter 13 case is not property of the estate. *Id.* at 513. The court also stated the assurance that debtors may keep any appreciation of their property during the Chapter 13 case promotes reorganization over liquidation. *Jackson*, 317 B.R. at 516.

In *In re Page*, 250 B.R. 465 (Bankr. D. N.H. 2000), the court examined whether the appreciation in value of the debtor's home during the Chapter 13 was part of the Chapter 7 estate. The court found that the appreciation of the debtor's home during the Chapter 13 case was property which debtor acquired post-petition. The court stated Section 348(f) was added to the Bankruptcy Code in October 1994 to induce individuals to file under Chapter 13. Under this section, absent a showing of bad faith, property of the estate of a converted case consists of the property at the date of the filing, and valuations of property and allowed secured claims are binding in the converted case. In the instant case, there is no allegation of bad faith, and the Court sees no reason to distinguish between property acquired after the original petition date which is clearly not part of the Chapter 7 estate from appreciation of property during a Chapter 13 proceeding. *Id.*

In re Fobber, 256 B.R. 268, 277-78 (Bankr. E.D. Tenn. 2000)("By adopting Bobroff in its enactment of § 348(f)(1)(A), Congress intended to avoid penalizing debtors for their chapter 13 efforts by placing them in the same economic position they would have occupied if they had filed chapter 7 originally.").

In re Pearson, 214 B.R. 156, 164 (Bankr. N.D. Ohio 1997) ("The general purpose of [Section] 348(f) was to equalize the treatment a debtor would receive under a Chapter 13 case that converted to a Chapter 7 case with the treatment the debtor would receive if ... [the debtor] filed a Chapter 7 originally.").

III. Section 348(f)(1) was Enacted by Congress in 1994 to Settle the Issue Presented.

Congress amended Section 348 in 1994 to add Subsection (f)(1). The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (1994). This change was caused by a split in authority regarding what property constituted property of a Chapter 7 estate in a case converted from Chapter 13. The House Report indicates why Section 348(f)(1)(A) was enacted:

> [to] clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7.... Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it property of the estate do not apply in chapter 7. Other courts

> have held that the property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.
>
> These latter courts have noted that to hold otherwise would create a serious disincentive to chapter 13 filings. For example, a debtor who had $10,000 equity in a home at the beginning of the case, in a State with a $10,000 homestead exemption, would have to be counseled concerning the risk that after he or she paid off a $10,000 second mortgage in the chapter 13 case, creating [another] $10,000 in equity, there would be a risk that the home could be lost if the case were converted to chapter 7....If all of the debtor's property at the time of conversion is property of the chapter 7 estate, the trustee would sell the home to realize the... [increased] equity for the unsecured creditors and the debtor would lose the home.
>
> This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F. 2d 136 (7th Cir. 1991) [a case in which after-acquired property was included in the chapter 7 estate] and adopts the reasoning of *In re Bobroff*, 766 F. 2d 797 (3rd Cir. 1985) [a case which accords the increases in value of the estate to the debtors].

H.R. Rep. No. 103-835, at 57 (1994).

Admittedly, neither of the cases mentioned in the House Report dealt with an increase in equity in property that was owned by the debtors on the petition date.

However, the example given in the Report is *exactly* what could happen to the Castlemans' here.

Several lower court cases have noted the risk and disincentive to file which the Ninth Circuit's decision creates. These cases rely primarily on the language in the legislative history which demonstrates that Congress intended to prevent a penalty being imposed on good faith Chapter 13 debtors who must convert to Chapter 7 when it added Section 348(f)(1)(A). *See,* for example, *Cofer*, 625 B.R. at 199, *Hodges*, 518 B.R. at 450, *Lynch,* 363 B.R. at 107. These cases highlight the legislative purpose: to avoid discouraging debtors from filing Chapter 13s because they feared losing their homes upon conversion.

As many of the lower court opinions and the dissent below have recognized, such rulings disincentivize debtors from opting to file Chapter 13, where they must commit future disposable income to repay their creditors over a three - five-year plan, instead of just filing a Chapter 7 to discharge their debt. Nonexempt property of the estate which a Chapter 7 trustee might liquidate for the benefit of creditors is fixed on the petition date; because most Chapter 7s are concluded in four to five months, post-petition increase in the value of an exempt homestead would not be an issue. Under the majority's ruling, however, if good faith Chapter 13 debtors must convert to Chapter 7 because they are unable to continue making plan payments, they risk losing their homes to a forced sale when it has increased in value. Many prospective debtors will not take that risk, resulting in fewer Chapter 13s being filed and less money flowing to creditors.

IV. Leading Commentators Agree that Appreciation in Value Belongs to the Debtor.

Based on the opinion of leading bankruptcy commentators, the increase in the value of a debtor's homestead that accrued during the pendency of confirmed Chapter 13 is not property of the Chapter 7 bankruptcy estate. It belongs to the debtor.

A. Collier on Bankruptcy.

According to Collier on Bankruptcy: The addition of this subsection clarified that Congress had intended the result reached by cases that had not included in the post-conversion Chapter 7 estate the property acquired by the debtor during the pre-conversion Chapter 13 case. As the House Report on the amendment pointed out, the result was in accord with the statute's language, since section 1306, which makes such property of the estate in Chapter 13 cases, is inapplicable to Chapter 7 cases. The Report further explained that the Committee was concerned that the contrary rule would create a serious disincentive to Chapter 13 filings because debtors would fear that property attained after filing, including equity created by payment of secured debts, could be lost if the case were converted. The legislative history also states that equity created during the Chapter 13 case is not property of the estate. H.R. Rep. No. 835, 103d Cong., 2d Sess 57 (1994); see *In re Hodges*, 518 B.R. 445 (E.D. Tenn. 2014); *Leo v. Burt (In re Burt)*, 2009 Bankr. LEXIS 2384 (Bankr. N.D. Ala. July 31, 2009) (unpublished) (home equity should be measured as of petition date); *In re Pruneskip*, 343 B.R. 714, 716 (Bankr. M.D. Fla. 2006). 3 Collier on Bankruptcy ¶ 348.02[1], at 348-28 (Alan N. Resnick & Henry J. Sommer, 16th ed. rev. 2017).

B. Keith Lundin and William Brown.

One of the leading sources of commentary on Chapter 13 expressed its view of Section 348(f)(1)(A)'s legislative history: "it seems to have been congressional intent to take a snapshot of the estate at the filing of the original Chapter 13 petition and, based on that inventory, include in the Chapter 7 estate at conversion only the portion that remains in the possession or control of the debtor. The spirit of § 348(f)(1)(A) is best captured by a rule that property acquired by the Chapter 13 estate or by the debtor after the Chapter 13 petition does not become property of the Chapter 7 estate at a good-faith conversion. The method of acquisition after the Chapter 13 petition should not matter: post-petition property does not become property of the Chapter 7 estate at conversion, whether acquired with earnings by the debtor, by transfer to the debtor — for example, an inheritance after 180 days after the petition — or by appreciation in the value of a pre-petition asset." Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, § 316.1, at ¶ 26 (4th ed. 2004).

V. The Ninth Circuit's reliance on Chapter 7 cases to define property of the estate in a case converted from Chapter 13 is flawed.

The Ninth Circuit panel majority and the dissent agreed that "property of the estate" under Section 348(f) is a term of art which should be defined by looking at the "broader context of the [Bankruptcy Code] as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). They also agreed that the starting point is Section 541(a)(1), which in relevant part defines property of the estate as "all legal or equitable interests of the debtor in property

as of the commencement of the case." In Chapter 7, all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except [income of an individual debtor]" is also included in property of the estate. Section 541(a)(6). These sections must be analyzed to determine how they fit in the "broader context" with Section 348(f) which states in relevant part as follows:

> (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; [...]
>
> (2) If the debtor converts a case under Chapter 13 of this title to a case under another Chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 348(f)(1)(A) and (f)(2).

Notwithstanding that Section 348(f) defines property of the estate in the context of when a Chapter 13 case is converted to another chapter, the Ninth Circuit panel majority relied on rulings that hold in an originally filed

Chapter 7, an increase in value of property of the estate inures to the benefit of the estate. *Rigby*, 909 F. 3d 312; *Reed*, 940 F. 2d 1317.

The courts below applied Section 541(a)(6), which does not directly apply to Chapter 13, for their conclusion that appreciation in value of a debtor's home belonged to the estate upon conversion. The Ninth Circuit panel majority gives lip service to conducting an analysis in the broader context of the Code but it does not consider the whole of the Code and seems counter to *Harris v. Viegelahn*, 575 U.S. 510 (2015) that "property of the [Chapter 7] estate in the converted case shall consist of property of the estate, as of the date of filing of the [initial Chapter 13] petition, that remains in the possession of or is under the control of the debtor on the date of conversion." *Viegelahn*, 575 U.S. at 517.

The courts below did not acknowledge the significant policy considerations behind Section 348(f)(1) which was enacted by Congress in 1994 to settle the issue at hand in favor of the debtors. Even though a plain text analysis by the Ninth Circuit panel majority reached one result and the Tenth Circuit in *Barrera*, adopting the same analysis, reached the opposite conclusion, the majority found the statute unambiguous and declined to consult the legislative history which led to the enactment of this section. Not only does the circuit split and the myriad of other cases highlight the ambiguity which courts have found in interpreting the statute, but the majority also overlooked Ninth Circuit precedent on when to consult legislative history, *Perlman v Catapult Entm't. Inc. (In re Catapult Entm't, Inc.)*, 165 F. 3d 747 (9th Cir. 1999). The *Perlman* court determined that even lack of ambiguity

does not bar consulting such history by observing that courts will resort to legislative history, even where the plain language is unambiguous, "where the legislative history clearly indicates that Congress meant something other than what it said." *Perlman* at 753.

The Ninth Circuit ruled that Section 348(a)(1)(A) was not ambiguous and therefore it was not necessary to consult legislative history. This ruling overlooked the mandate of *Perlman* 165 F. 3d at 753. Moreover, when two circuits applied a strict textual analysis and arrived at different results, how can that not show the statute by itself is ambiguous? When a statute is ambiguous, courts are entitled to consult legislative history, which in this instance demonstrates that this section was enacted to end just such controversy.

VI. The Uniform Interpretation of Section 348(f) is a Fundamental National Issue.

Whether post-petition, pre-conversion, increase in the value of a debtor's homestead (by appreciation, paying down the mortgage, improvements made to the home, or otherwise) belongs to the debtor or the Chapter 7 estate upon good faith conversion from Chapter 13 is an issue that arises every day in bankruptcy courts across the country. There were 929,261 Chapter 13 bankruptcy cases filed for the years ending September 30, 2019-2023.[7] Petitioner cannot determine how many of these Chapter 13s were converted to Chapter 7 but can say with confidence that it is a significant percentage, likely more than 50%.

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7. 178,214 in 2023, 149,077 in 2022, 117,784 in 2021, 194,384 in 2020, and 289,802 in 2019. https://www.uscourts.gov/news/2023/10/26/bankruptcy-filings-rise-13-percent.

Resolution of the question presented has deeply divided the courts nationwide and is of fundamental importance to every bankruptcy practitioner in the country. Uniformity in the interpretation of Section 348(f) is particularly important considering the U.S. Constitution's grant to Congress of authority to establish "uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 28, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-35604

IN THE MATTER OF: JOHN FELIX CASTLEMAN, SR.; KIMBERLY KAY CASTLEMAN,

Debtors,

JOHN FELIX CASTLEMAN, SR.; KIMBERLY KAY CASTLEMAN,

Appellants,

v.

DENNIS LEE BURMAN, CHAPTER 7 TRUSTEE,

Appellee.

Appeal from the United States District Court for the Western District of Washington. D.C. No. 2:21-cv-00829-JHC. John H. Chun, District Judge, Presiding.

May 9, 2023, Argued and Submitted,
Seattle, Washington
July 28, 2023, Filed

Appendix A

SUMMARY*

Bankruptcy

Affirming the district court's order, which affirmed the bankruptcy court's order, the panel held that post-petition, pre-conversion increases in the equity of an asset belong to the bankruptcy estate, rather than to debtors who, in good faith, convert their Chapter 13 reorganization petition into a Chapter 7 liquidation. When debtors filed for bankruptcy, they listed their home among their assets. When they later converted to Chapter 7, the home had risen in value. Debtors argued that the home's increased equity belonged to them and not the bankruptcy estate under 11 U.S.C. § 348(f)(1)(A), which provides that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion."

On de novo review, the panel held that the plain language of § 348(f)(1)(A), coupled with the Ninth Circuit's previous interpretation of 11 U.S.C. § 541(a), compelled the conclusion that any appreciation in the property value and corresponding increase in equity belonged to the estate upon conversion. The panel looked to the definition of "property of the estate" in § 541(a), which addresses the contents of the bankruptcy estate upon filing under either Chapter 7 or Chapter 13, and the court's prior

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

opinions holding that the broad scope of § 541(a) means that post-petition appreciation inures to the bankruptcy estate, not the debtor.

Dissenting, Judge Tallman wrote that the Bankruptcy Code as a whole established that post-petition, pre-conversion appreciation belonged to the debtors. He wrote that the majority's reading of § 348(f)(1)(A) created a circuit split and was inconsistent with the statute's structure, object, policies, and legislative history.

Before: Michael Daly Hawkins, Richard C. Tallman, and Sandra S. Ikuta, Circuit Judges. Opinion by Judge Hawkins; Dissent by Judge Tallman.

OPINION

HAWKINS, Circuit Judge:

We must decide whether post-petition, pre-conversion increases in the equity of an asset—i.e., the difference between a home's value and how much is owed on the mortgage, whether a result of market appreciation, payment of secured debt, improvements or otherwise—belong to the bankruptcy estate or to debtors who, in good faith, convert their Chapter 13 reorganization petition into a Chapter 7 liquidation.

Debtors John Felix Castleman, Sr. and Kimberly Kay Castleman (the "Castlemans") filed for Chapter 13 bankruptcy. They listed their home among their assets with a value of $500,000, a mortgage with an outstanding

balance of $375,077, and a homestead exemption of $124,923. The bankruptcy court confirmed a Chapter 13 plan, but after roughly twenty months, which included a temporary job loss and deferral of mortgage payments due to the pandemic, Mr. Castleman contracted Parkinson's Disease, and the couple could no longer make their required payments. The Castlemans exercised their right to convert to Chapter 7. In the interim, their home had risen in value an estimated $200,000.[1] Dennis Burman, the Chapter 7 trustee ("Trustee"), filed a motion to sell the Castlemans' home to recover the value for creditors. The Castlemans objected and argued that the home's increased equity belongs to them and not the bankruptcy estate under 11 U.S.C. § 348(f)(1)(A).[2]

Although courts are heavily divided on this question,[3] we conclude on de novo review, *Simpson v. Burkart (In*

1. In this case, it appears the increase in equity was attributable primarily, if not exclusively, to market appreciation. Due to the deferral of mortgage payments during the pandemic, the Castlemans actually owed more at the time of filing for conversion ($390,763) than they did at the time of their initial filing.

2. Unless otherwise noted, all statutory references are to the Bankruptcy Code, 11 U.S.C. § 101 et seq.

3. *Compare 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), *In re Peter*, 309 B.R. 792, 794-95 (Bankr. D. Or. 2004), and *Potter v. Drewes* (*In re Potter*), 228 B.R. 422, 424 (B.A.P. 8th Cir. 1999), *with In re Barrera*, 22 F.4th 1217 (10th Cir. 2022), *In re Cofer*, 625 B.R. 194, 202 (Bankr. D. Idaho 2021), *In re Hodges*, 518 B.R. 445, 451 (E.D. Tenn. 2014), and *In re Niles*, 342 B.R. 72, 75 (Bankr. D. Ariz. 2006).

re Simpson), 557 F.3d 1010, 1014 (9th Cir. 2009), that the plain language of § 348(f)(1)(A), coupled with this circuit's previous interpretation of § 541(a), compel the conclusion that any appreciation in the property value and corresponding increase in equity belongs to the estate upon conversion. We therefore affirm the decisions of the bankruptcy and district courts.

The purpose of the Bankruptcy Code is to grant a "fresh start to the honest but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007) (internal quotation marks and citation omitted). Individual debtors may petition for bankruptcy under Chapter 7 (liquidation) or Chapter 13 (reorganization). *Harris v. Viegelahn*, 575 U.S. 510, 513-14, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (2015). Chapter 13 "allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three-to-five-year period." *Id.* at 514 (citing §§ 1306(b), 1322, 1327(b)). Chapter 13 can benefit the debtor and creditors: the former keeps his assets, and the latter "usually collect more under a Chapter 13 plan than they would have received under a Chapter 7 liquidation." *Id.*

However, most debtors fail to successfully complete a Chapter 13 repayment plan, which is why "Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 'at any time.'" *Id.* (quoting § 1307(a)). The property of this converted Chapter 7 estate is defined by § 348(f), which provides in relevant part:

> (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**;
>
> [. . .]
>
> (2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

(emphasis added). The Trustee does not assert that the Castlemans converted in bad faith, and the Castlemans retained possession of the home on the date of conversion.

In interpreting the Bankruptcy Code, "the first step . . . is to determine whether the language [of a statute] has a plain and unambiguous meaning with regard to the particular dispute." *Hawkins v. Franchise Tax Bd. of Cal.*, 769 F.3d 662, 666 (9th Cir. 2014). If the plain meaning is unambiguous, it controls. *Id.*; *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125, 136 S. Ct. 1938, 195 L. Ed. 2d 298 (2016).

Section 348(f) does not define the word "property" or the phrase "property of the estate." However, "property of the estate" is a term of art which 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.").

"Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme." *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). We therefore look to the definitions of "property of the estate" set forth in other provisions of the Code itself. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997) ("The plainness 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.").

Under § 541(a)(1), filing for bankruptcy creates an estate which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." The estate also includes all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an

individual debtor after the commencement of the case." § 541(a)(6).

In *In re Goins*, the court found the trustee was entitled to any post-petition appreciation in assets of the estate, explaining: "[T]he 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)." 539 B.R. at 516; *see also In re Goetz*, 647 B.R. at 416 (the broad definition of "property of the estate" in § 541(a) "captures the debtor's entire ownership interest in each asset that exists on the petition date without fixing the estate's interest to the precise characteristics the asset has on that date"). Other courts have held that any post-petition increase in the property's equity is the "proceeds, product, offspring, rents or profits" of the estate's original property under § 541(a)(6), and so became part of the estate when the case commenced. *See In re Potter*, 228 B.R. at 424; *In re Peter*, 309 B.R. at 794-95.

In this circuit, we have likewise concluded that the broad scope of § 541(a), and especially § 541(a)(6), means that post-petition "appreciation [i]nures to the bankruptcy estate, not the debtor." *Schwaber v. Reed* (*In re Reed*), 940 F.2d 1317, 1323 (9th Cir. 1991). We recently re-affirmed this in *Wilson v. Rigby*, noting that when a debtor files for bankruptcy, the "proceeds, product, offspring, rents, or profits" which become part of the estate under § 541(a)(6) "include[] the appreciation in value of a debtor's home." 909 F.3d 306, 309 (9th Cir. 2018). The Castlemans point out that *Wilson* was originally filed as a Chapter 7 case,

but the definition of property of the estate in § 541(a) applies equally to Chapter 13. There is no textual support for concluding that § 541(a) has a different meaning upon conversion from Chapter 13. As the district court in this case aptly summarized the significance of these prior Ninth Circuit decisions:

> It 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.

Many of the courts who have reached a different conclusion regarding post-petition changes in equity have relied on various statements or examples in the legislative history surrounding § 348(f), which was enacted to clarify whether new property acquired during the course of Chapter 13 proceedings becomes property of the converted estate (under § 348(f)(2), this occurs only if the debtor was acting in bad faith). *See, e.g., In re Cofer*, 625 B.R. at 200-02; *In re Nichols*, 319 B.R. at 856. However, because we conclude the language of § 348(f), when read in conjunction with the remainder of the Bankruptcy Code, is not ambiguous, we do not look to legislative history for

guidance. *Robinson*, 519 U.S. at 340 ("Our inquiry must cease if the statutory language is unambiguous.").[4]

Some courts have also relied on the implicit operation of § 1327(b), which provides: "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." Under this reasoning, equity increases from the time of the initial filing up until plan confirmation would inure to the estate, then from time of confirmation until conversion would vest in the debtor, and finally upon conversion, any additional post-conversion changes would benefit the estate. *See, e.g.*, *In re Barrera*, 22 F.4th at 1223-24. However, we find it difficult to believe

4. We recognize that some courts have found § 348(f) to be ambiguous. However, the existence of a division of judicial authority does not itself establish ambiguity in the text. *See, e.g.*, *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 132 S. Ct. 1350, 182 L. Ed. 2d 341 (2012) (holding provision of Longshore and Harbor Workers' Compensation Act is unambiguous despite disagreement between Fifth, Ninth and Eleventh Circuits); *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 132 S. Ct. 1702, 182 L. Ed. 2d 720 (holding term used in Torture Victim Protection Act was unambiguous despite disagreement among several circuits); *Reno v. Koray*, 515 U.S. 50, 64-65, 115 S. Ct. 2021, 132 L. Ed. 2d 46 (1995) ("A statute is not ambiguous for purposes of lenity merely because there is a division of judicial authority over its proper construction.") (internal quotation and citation omitted). As we have explained, even if § 348(f) in isolation might be ambiguous, when read in connection with the remainder of the bankruptcy statute as already interpreted by this circuit, its meaning becomes clear. *See United Sav. Ass'n of Tex.*, 484 U.S. at 371 ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.").

Congress envisioned this valuation and accounting process without making any explicit cross-reference to § 1327(b), and because in other instances where Congress wanted to exclude assets or certain interests of the debtor from the bankruptcy estate, it has done so with specificity. *See, e.g.*, § 541(a)(6) (excluding post-petition earnings by an individual in a Chapter 7 case) and § 541(b) (excluding various specific items from the estate, such as funds used to purchase a 529 education plan). If, as the dissent suggests, Congress actually intended to exclude from the revived estate any increase in equity of an estate asset that may have occurred from the time of plan confirmation to conversion, it could have amended § 348(f) further to make this result clear. As written, § 348(f) only clarified that newly-acquired, post-petition property would not become part of the converted estate if the debtor had been acting in good faith.

In sum, the plain language of § 348(f)(1) dictates that any property of the estate at the time of the original filing that is still in debtor's possession at the time of conversion once again becomes part of the bankruptcy estate, and our case law dictates that any change in the value of such an asset is also part of that estate. In this case, that property increased in value. In other cases, the value might decline, or the value of one asset in the estate might increase while other property depreciates in value. This is simply a happenstance of market conditions, which sometimes will benefit the debtor and sometimes benefit the estate.[5] The

5. Note that, for example, the debtor's homestead exemption is fixed as of the "snapshot" value on the date of the original filing. *See Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1321 (9th

district court and bankruptcy court correctly concluded that the Castlemans' home (including any post-petition, pre-conversion increase in equity) was again part of the bankruptcy estate pursuant to § 348(f)(1) and available to the Trustee for the benefit of the creditors.[6]

AFFIRMED.[7]

Cir. 1992) ("Were we to accept the Hymans' argument that they're entitled to post-filing appreciation, we would also have to hold that a debtor is subject to post-filing *de*preciation, which would give debtors in falling property markets less than the [homestead exemption] guaranteed them by state law.").

6. As noted above, in this case it appears that the increased equity was attributable to market conditions. However, the district court indicated that the debtors could file an administrative priority claim for mortgage payments they had made in accordance with the confirmation plan for the benefit of the estate pursuant to § 503(b). *See In re Peter*, 309 B.R. at 795. The resolution of any such claim is not before us at this time.

7. The motion filed by National Association of Bankruptcy Trustees for leave to file an amicus brief [Dkt. Entry No. 17] is granted. The amicus brief filed on January 9, 2023, is deemed filed.

TALLMAN, Circuit Judge, dissenting.

As counsel for the trustee aptly put it, John and Kimberly Castleman "tried to do good and tried to pay off their bills" by petitioning for bankruptcy under Chapter 13 and proposing a plan to repay their creditors.[1] But, unable to complete the repayment plan, they were forced into a Chapter 7 liquidation. We now must decide whether appreciation in the value of their home during Chapter 13 proceedings becomes part of the converted Chapter 7 bankruptcy estate—an issue which has confounded judges all over the country. In holding that post-petition, pre-conversion increases in equity belong to the estate, the court both creates a circuit split and effectively punishes the Castlemans for filing under Chapter 13 with the forced sale of their home. Because that outcome is not the best reading of the Bankruptcy Code or our precedents, I respectfully dissent.

I

A

Upon filing for bankruptcy, a debtor's assets are immediately transferred to a bankruptcy estate. 11 U.S.C. § 541(a). However, the debtor may exempt some property—such as an equitable interest in real property used as a residence—from the estate. *See* § 522(b)(3)(A), (d)(1). This exemption is commonly referred to as

1. Oral Argument at 14:07, *Castleman, Sr., v. Burman*, No. 22-35604, 2023 U.S. App. LEXIS 19470 (9th Cir. May 9, 2023), https://www.youtube.com/watch?v=_TBWjDPd10k.

the "homestead exemption." In 2019, Washington State allowed a maximum homestead exemption of $125,000. WASH. REV. CODE § 6.13.030 (2019). After creation of the estate, the bankruptcy court appoints a trustee to oversee it for the benefit of creditors and other interested parties. *See* 11 U.S.C. §§ 704, 1302. If, after accounting for encumbrances and exemptions, a particular asset is "of inconsequential value and benefit to the estate," a debtor may ask the court to "order the trustee to abandon" it. § 554(b).

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 v. Viegelahn*, 575 U.S. 510, 513, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (2015). The trustee will sell the non-exempt property of the estate and distribute the proceeds to creditors. *Id.* (citing §§ 704(a)(1), 726). But the Chapter 7 estate does not include wages earned or assets acquired by the debtor after filing for bankruptcy. *Id.* at 513-14. After liquidation, the debtor's pre-petition debts will generally be discharged. § 727(a). "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.

A Chapter 13 estate works quite differently: the debtor retains possession of all property, § 1306(b), and proposes a plan to repay creditors over a three-to-five-year period. §§ 1321-22. If the bankruptcy court confirms the plan, confirmation "vests all of the property of the estate in the

debtor" unless the plan or a court order says otherwise. § 1327(b). However, "property accumulated during the repayment period becomes part of the bankruptcy estate and is used to repay creditors." *Brown v. Barclay* (*In re Brown*), 953 F.3d 617, 620 (9th Cir. 2020). The Bankruptcy Code encourages Chapter 13 filings because they can "benefit debtors and creditors alike." *Harris*, 575 U.S. at 514. Debtors may keep assets, such as a home or car, and creditors "usually collect more under a Chapter 13 plan than they would have received under a Chapter 7 liquidation." *Id.*

When a debtor converts from Chapter 13 to Chapter 7 in good faith, the property of the converted estate is defined by § 348(f)(1)(A), which provides that the "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."[2] This statute removes a potential disincentive to Chapter 13 filings: if all assets acquired after filing of the Chapter 13 petition were available to creditors after conversion, the debtor would be "in a worse position than if the petition had been filed in Chapter 7 initially." *Brown*, 953 F.3d at 620. By limiting the converted estate to the property a debtor had at the time of the initial petition, § 348(f) "put[s] the debtor where he would have been, had he filed in Chapter 7 initially." *Id.*

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2. If a debtor converts in bad faith, § 348(f)(2) makes post-petition, pre-conversion acquisitions available to creditors. Here, all agree the Castlemans converted in good faith due to a pandemic layoff and Mr. Castleman's unfortunate medical diagnosis.

B

On June 19, 2019, when the Castlemans petitioned for bankruptcy under Chapter 13, their home was worth an estimated $500,000. They claimed a homestead exemption of $124,923, which was only $77 less than the legally allowed maximum under then-existing Washington law. The Castlemans also reported that their home was encumbered by a secured mortgage of $375,077. The bankruptcy court confirmed their Chapter 13 plan on September 25, 2019, and the Castlemans made payments under the plan for twenty months, including a mortgage payment.

On January 12, 2021, with Mr. Castleman unable to work and facing a significant loss of income, the couple moved to convert their case to Chapter 7. After conversion, the Chapter 7 trustee hired a realtor, who estimated the Castlemans' Bellingham home was worth $700,000 as of April 19, 2021. Believing the home now had value to the estate, the trustee filed a motion to sell it so that the additional equity could be distributed to creditors. The Castlemans objected, arguing that post-petition, pre-conversion increases in equity are not "property of the estate" upon conversion under § 348(f)(1)(A). This is the question that divides our panel.

II

A

The Castlemans' reading of § 348(f) is correct. In interpreting the Bankruptcy Code, we must begin with

the text. *Hawkins v. Franchise Tax Bd. of Cal.*, 769 F.3d 662, 666 (9th Cir. 2014). There is no debate that the phrase "property of the estate" in § 348(f) is a term of art in bankruptcy law or that the term should be defined by looking to the "broader context of the [Bankruptcy Code] as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997). But the court errs in how it applies those principles here. By adopting the trustee's preferred interpretation of § 348(f), the majority sacrifices the text of the bankruptcy statutes on the altar of simplicity.

The court rightly begins by looking to § 541(a), which defines the property of the bankruptcy estate upon filing under either Chapter 7 or Chapter 13. Section 541(a)(1) declares that the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." It also includes all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." § 541(a)(6). We have already held that in a Chapter 7 case, § 541(a)(6) means that "appreciation enures to the bankruptcy estate, not the debtor." *Schwaber v. Reed* (*In re Reed*), 940 F.2d 1317, 1323 (9th Cir. 1991). This is because in Chapter 7, the "proceeds, product, offspring, rents, or profits of or from property of the estate" under § 541(a)(6) "include[] the appreciation in value of a debtor's home." *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018).

The majority decides that because we have held appreciation becomes part of the estate in a Chapter 7

case, the same must be true in Chapter 13.[3] Admittedly, this is a simple resolution to an issue that has vexed bankruptcy courts across the country.[4] But simplicity cannot take precedence over the text of the Bankruptcy Code, and if we read § 348(f) in light of the Code "as a whole"—rather than just § 541(a)—*Wilson* is not dispositive. *See Robinson*, 519 U.S. at 341. The remainder of the Bankruptcy Code clarifies that in Chapter 13 cases, "property of the estate" is defined differently. § 348(f)(1)(A).

As discussed, a Chapter 7 estate is short-lived: it sweeps in all the debtor's property upon filing and is

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3. The trustee's briefing faults the Castlemans for not claiming the increase in equity as exempt. But property which does not become part of the converted estate belongs to the debtor regardless of exemptions. *See Harris*, 575 U.S. at 521.

4. *Compare In re Goins*, 539 B.R. 510, 515-16 (Bankr. E.D. Va. 2015) (holding appreciation belongs to the estate), *In re Goetz*, 647 B.R. 412, 416-17 (Bankr. W.D. Mo. 2022) (same), *aff'd*, 651 B.R. 292 (B.A.P. 8th Cir. 2023), *In re Hayes*, Case No. 15-20727-MER, 2019 Bankr. LEXIS 4203, at *22, (Bankr. D. Colo. March 28, 2019) (same), *and In re Peter*, 309 B.R. 792, 794-95 (Bankr. D. Or. 2004) (same), *with In re Barrera* (*Barrera I*), 620 B.R. 645, 649-54 (Bankr. D. Colo. 2020) (holding appreciation belongs to the debtor), *aff'd, Barrera II*, No. BAP CO-20-003, 2020 Bankr. LEXIS 2756, 2020 WL 5869458 (B.A.P. 10th Cir. Oct. 2, 2020), *In re Cofer*, 625 B.R. 194, 202 (Bankr. D. Idaho 2021) (same), *In re Hodges*, 518 B.R. 445, 451 (E.D. Tenn. 2014) (same), *In re Niles*, 342 B.R. 72, 75-76 (Bankr. D. Ariz. 2006) (same), *In re Boyum*, No. 05-1044-AA, 2005 U.S. Dist. LEXIS 20054, 2005 WL 2175879, at *2-3 (D. Or. Sept. 6, 2005) (same), *and In re Nichols*, 319 B.R. 854, 857 (Bankr. D. Ohio 2004) (same).

promptly liquidated to pay creditors. § 541(a)(1); *Brown*, 953 F.3d at 620. But in Chapter 13, the debtor retains possession of all property, § 1306(b), and proposes a plan to repay creditors over a period of years. *See* §§ 1321-22. If the bankruptcy court confirms that plan, confirmation "vests all of the property of the estate *in the debtor*" unless the plan or a court order says otherwise. § 1327(b) (emphasis added).[5] Thus, upon confirmation of a Chapter 13 plan, the debtor is once again the owner of the property. *Cal. Franchise Tax Bd. v. Jones* (*In re Jones*), 420 B.R. 506, 514-15 (B.A.P. 9th Cir. 2009), *aff'd*, 657 F.3d 921, 928 (9th Cir. 2011); *see also Berkley v. Burchard* (*In re Berkley*), 613 B.R. 547, 552-53 (B.A.P. 9th Cir. 2020).

It follows that when a Chapter 13 plan has been confirmed, appreciation accrues to the debtor. In *Black v. Leavitt* (*In re Black*), our Bankruptcy Appellate Panel (BAP) considered a case where the debtor moved to sell a rental property after the bankruptcy court had confirmed a Chapter 13 plan revesting that property in the debtor. 609 B.R. 518, 521 (B.A.P. 9th Cir. 2019). The bankruptcy court ordered the debtor to turn over the proceeds of the sale to the trustee. *Id.* at 523. On appeal, the trustee argued that the proceeds and any post-petition appreciation in the property's value were part of the estate under §§ 541(a)(6) and 1306. *Id.* at 528. The BAP rejected that argument, holding that "the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any post-petition appreciation." *Id.* at 529.

5. No such provision or order exists in this case.

The Tenth Circuit reached a similar conclusion in *Rodriguez v. Barrera* (*Barrera III*), 22 F.4th 1217 (10th Cir. 2022). There, the debtors confirmed their Chapter 13 plan, sold their home, and then converted from Chapter 13 to Chapter 7 under § 348(f)(1)(A). *Id.* at 1221-22. Observing that "only proceeds 'of or from property of the estate' become property of the bankruptcy estate" under § 541(a)(6), the Tenth Circuit concluded that section is "operative only before confirmation of the Chapter 13 plan because confirmation 'vests all of the property of the estate in the debtor.'" *Id.* at 1223 (quoting § 1327(b)). "Thus, proceeds generated from the debtor's property after confirmation do not become property of the estate as the underlying property no longer belongs to the estate."[6] *Id.*

6. The majority claims this interpretation of § 1327(b) would require a third valuation at confirmation because the trustee would be entitled to pre-confirmation appreciation. Op. at 10-11. But the Tenth Circuit did not adopt this approach, *see Barrera III*, 22 F.4th at 1223-24, and neither should we. In most Chapter 13 cases, the debtor must propose a plan within 14 days of the petition date, *see* FED. R. BANKR. P. 3015(b), and the creditors' meeting generally occurs within 50 days of the petition date, see FED. R. BANKR. P. 2003(a). A confirmation hearing must occur within 45 days of that. 11 U.S.C. § 1324(b). Thus, for most debtors, a Chapter 13 plan will either be confirmed within a few months of the initial petition, or else the case will be dismissed or converted. A property will virtually never significantly change in value in such a short period—in fact, the realtor hired in this case estimated the 2021 value of the Castlemans' home by reviewing sales of comparable homes over a period of six months. If we followed our sister circuit's approach, all post-petition appreciation would belong to the Castlemans.

The Tenth Circuit declined to decide whether post-petition, pre-conversion appreciation would be included in the converted estate when the property has not been sold before conversion. *Id.* at 1223 n.1. But while this case does not involve a pre-conversion sale, we have already held that post-petition appreciation—like the cash proceeds from the sale in *Barrera III*—is "proceeds" of estate property under § 541(a)(6). *Wilson*, 909 F.3d at 309. Here, the underlying property is the Castlemans' home, and their Chapter 13 plan was confirmed on September 29, 2019. When that occurred, the home was no longer "property of the estate" and therefore any appreciation in its value is not "[p]roceeds . . . of or from property of the estate."[7] § 541(a)(6). I would hold, consistent with the Tenth Circuit, that post-petition, pre-conversion appreciation belongs to the Castlemans rather than the converted Chapter 7 estate. *See United States v. Anderson*, 46 F.4th 1000, 1005 (9th Cir. 2022) ("In cases requiring statutory interpretation . . . we will not create a circuit split unnecessarily.").

B

While the text of the Bankruptcy Code as a whole establishes that post-petition, pre-conversion appreciation belongs to the Castlemans, the majority's reading of

7. The court implies this approach would mean that debtors must bear the risk of depreciation as well. Op. at 11. But depreciation in a home's value would not change the amount of the debtor's homestead exemption, *see Law v. Siegel*, 571 U.S. 415, 424-25, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014), and a trustee would probably abandon any asset which depreciated such that it had no value to the estate. *See* § 554(a).

§ 348(f)(1)(A) is also inconsistent with the statute's structure, object, policies, and legislative history. *See Hawkins*, 769 F.3d at 666; *Brown*, 953 F.3d at 623.

In the early 1990s, a circuit split developed on the question of what property should be included in a Chapter 7 estate upon conversion from Chapter 13. Some courts held that "upon conversion, all post-petition earnings and acquisitions became part of the new Chapter 7 estate, thus augmenting the property available for liquidation and distribution to creditors." *Harris*, 575 U.S. at 517 (citing *Calder v. Job* (*In re Calder*), 973 F.2d 862, 865-66 (10th Cir. 1992), and *In re Lybrook*, 951 F.2d 136, 137 (7th Cir. 1992)). However, the Third Circuit had taken the opposite view in *Bobroff v. Continental Bank* (*In re Bobroff*), 766 F.2d 797, 802-03 (3d Cir. 1985), and held that a tort claim which accrued during Chapter 13 proceedings was not part of a Chapter 7 estate upon conversion and belonged to the debtor.

Congress resolved this dispute in the Bankruptcy Reform Act of 1994, which added § 348(f) to the Bankruptcy Code. *See* Pub. L. No. 103-394, § 311, 108 Stat. 4106, 4138 (1994) (prior to 2005 amendment). The House Report on the Act made it clear Congress intended to adopt the Third Circuit's view:

> This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) and adopts the reasoning of *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). However, it also gives the court discretion, in a case in which

> the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

H.R. Rep. No. 103-835, at 57 (1994), *reprinted in* 1994 U.S.C.C.A.N 3340, 3366. The report included a specific example:

> [Courts following the *Bobroff* approach] have noted that to hold otherwise would create a serious disincentive to chapter 13 filings. For example, a debtor who had $10,000 equity in a home at the beginning of the case, in a State with a $10,000 homestead exemption, would have to be counseled concerning the risk that after he or she paid off a $10,000 second mortgage in the chapter 13 case, creating $10,000 in equity, there would be a risk that the home could be lost if the case were converted to chapter 7 (which can occur involuntarily). If all of the debtor's property at the time of conversion is property of the chapter 7 estate, the trustee would sell the home, to realize the $10,000 in equity for the unsecured creditors and the debtor would lose the home.

Id. Clearly, Congress believed that home equity which accrued during Chapter 13 proceedings should not be included in the converted estate.

The example in the House Report discusses an increase in equity resulting from the paydown of a secured loan, but the court's decision today covers equity from any source and creates the same disincentive to Chapter 13 filings. When the Castlemans filed for bankruptcy, all of their home equity was exempt. Between that exemption and a secured mortgage, the home had no value to the estate. Had they filed under Chapter 7, they could have either resolved the case quickly or moved to force the trustee to abandon the property. *See* § 554(b); *Barrera I*, 620 B.R. at 655-54. Instead, the Castlemans committed themselves to a five-year Chapter 13 plan, paid creditors out of their post-petition income, and made payments on their mortgage. By the time they were forced to convert to Chapter 7, their home had appreciated in value, so the trustee sought to sell it. Allowing that sale leaves them "in a worse position than if the[ir] petition had been filed in Chapter 7 initially"—the exact situation Congress sought to prevent. *Brown*, 953 F.3d at 620.

The majority refuses to consider this history because it finds the text of the Bankruptcy Code unambiguously shows that appreciation belongs to the estate. Op. at 9. I respectfully disagree. But that assertion is all the more remarkable in light of the Tenth Circuit's decision in *Barrera III*, 22 F.4th at 1223, and the majority's recognition that courts are "heavily divided" on the proper meaning of § 348(f).[8] Op. at 5. Indeed, even counsel for the

8. Certainly a division of authority, standing alone, does not establish ambiguity. But other courts have identified powerful arguments for a different reading of § 348(f), and the creation of a circuit split in particular is to be "avoid[ed] if at all possible."

trustee seemed to believe that § 348(f) was ambiguous: when asked at oral argument, he admitted the statute is poorly drafted and agreed that "there is no way to reconcile" the text of § 348(f) with § 541(a).[9] To be sure, legislative history is often unhelpful as an aid to statutory construction. *See* Antonin Scalia & Bryan A. Garner, Reading Law 376-78 (2012). But here, it is consistent with the text of the Bankruptcy Code, directly relevant to the case at hand, and unequivocally confirms that appreciation in the value of the Castlemans' home should not become part of the converted estate.

III

Because reasonable judicial minds disagree, there is—once again—a need for Congress to clarify the operation of § 348. Though I dissent from my colleagues' reading of the statute, it is far from unfounded. Whether Congress thinks post-petition, pre-conversion appreciation of an asset in the course of Chapter 13 proceedings should or should not become part of the converted Chapter 7 estate, it should amend § 348(f) to make the answer clear. At least one scholar has already proposed amendments to § 348(f) which would resolve the dispute. *See* Lawrence Ponoroff, *Allocation of Property Appreciation: A Statutory Approach to the Judicial Dialectic*, 13 Wm. & Mary Bus. L. Rev. 721, 756-57 (2022). States may also

Anderson, 46 F.4th at 1008. We ought to employ the full panoply of statutory interpretation tools before departing from the Tenth Circuit's approach.

9. Oral Argument at 24:06-24:52.

wish to amend their homestead exemptions. *See* § 522(b)(3)(A). For example, while the change came too late to help the Castlemans, Washington State responded to our decision in *Wilson* by allowing debtors to exempt "[a]ny appreciation in the value of the debtor's exempt interest in the property during the bankruptcy case." *See* Act of May 12, 2021, Ch. 290 § 5, 2021 Wash. Sess. Laws 2306-07 (codified at WASH. REV. CODE § 6.13.070(2) (2022)).

In the absence of legislative action, it remains our duty to read § 348(f) and say what the law is. I have no doubt that in holding that post-petition, pre-conversion appreciation becomes part of the converted bankruptcy estate, my colleagues in the majority have discharged that duty to the best of their abilities. But in striving to do the same, I find the text, structure, and history of the statute compel the opposite conclusion. Because I would hold that the appreciation belongs to the Castlemans, I respectfully dissent.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE, FILED JULY 1, 2022

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASE NO. 2:21-cv-00829-JHC

IN RE:

JOHN FELIX CASTLEMAN, SR., and
KIMBERLY KAY CASTLEMAN,

Debtors.

ORDER AFFIRMING THE BANKRUPTCY COURT'S MEMORANDUM DECISION

I.

Introduction

This appeal arises from the bankruptcy court's June 4, 2021 memorandum decision and order that, upon conversion from Chapter 13 to Chapter 7, the Chapter 7 estate includes the post-petition, pre-conversion increase in equity in the Debtors' house. Dkt. #1 at 14. Having considered the briefs of the Debtors and the Trustee, the applicable law, and the file herein, the Court affirms the bankruptcy court's decision.

Appendix B

II.

Background

The parties do not dispute these facts:

On June 13, 2019, John Felix Castleman, Sr. and Kimberly Kay Castleman ("Debtors") filed for bankruptcy under Chapter 13. Dkt. # 6-1 at 2. On September 25, 2019, the bankruptcy court confirmed their Chapter 13 plan. *Id.* at 5-6. At the time of filing, the Debtors listed their house in their original schedules with a value of $500,000.00. Dkt. # 9 at 17. They claimed a homestead exemption of $124,923.00 and listed a mortgage of $375,077.00. *Id.* at 24, 28. Later, their circumstances changed such that they could no longer adhere to their Chapter 13 plan and, on February 5, 2021, they exercised their right to convert their case to Chapter 7. Dkt. # 9 at 107, 124; Dkt. # 6-1 at 9. Between the time of filing and conversion, their house appreciated about $200,000.00, and the Trustee claims that it is currently worth at least $700,000.00. Dkt. # 9 at 119. This action arose out of the Trustee's motion to sell the house (Dkt. # 9 at 117), and the Debtors' objection to the motion (*Id.* at 123).

The Debtors claim that they are entitled to the homestead exemption as well as the increase in equity over the Chapter 13 period, including equity derived from mortgage payments and appreciation. Dkt. # 8. The Trustee claims that the Debtors are entitled to only the homestead exemption, and that the Trustee may sell the residence for its present market value and use any nonexempt equity to pay creditors. Dkt. # 11.

The bankruptcy court concluded that the post-petition, pre-conversion equity in the Debtors' house belongs to the bankruptcy estate. Dkt. # 1 at 14. The Debtors appeal.

III.

Standard Of Review

This Court reviews a bankruptcy court's interpretation of the Bankruptcy Code de novo. *See Einstein/Noah Bagel Corp. v. Smith (In re BCE W., L.P.)*, 319 F.3d 1166, 1170 (9th Cir. 2003).

IV.

Analysis

A. Interpretation of 11 U.S.C. § 348(f)(1)(A)

Because this case involves a conversion from Chapter 13 to Chapter 7, the Court first looks to 11 U.S.C. § 348(f)(1)(A), which states:

> (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;[1]

The statute unambiguously provides that property acquired after the initial Chapter 13 petition but before the conversion to Chapter 7 inures to the debtor. *See, e.g., Harris v. Viegelahn*, 575 U.S. 510, 514, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (2015) (holding that post-petition, pre-conversion wages earned by the debtor are excluded from the estate). But its plain language does not address whether the increase in equity of a pre-petition asset qualifies as a separate, after-acquired property interest—as with after-acquired wages—or whether it is inseparable from the asset itself. Put another way, § 348(f)(1)(A) does not indicate whether "property of the estate, as of the date of filing of the petition" refers to property as it existed at the time of filing, with all its attributes, including equity interests.

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1. The briefing in this case—and particularly Trustee's brief—references 11 U.S.C. § 348(f)(1)(B), which concerns valuations of property and of allowed secured claims in conversion cases. But this provision does not apply because a valuation is not needed to determine whether the post-petition, pre-conversion equity in the house inures to the Debtors or to the estate. None of the cases cited by the parties rely on section 348(f)(1)(B) in addressing this issue. The provision is more appropriately applied in cases involving redemption, *see, e.g., In re Airhart*, 473 B.R. 178 (Bankr. S.D. Tex. 2012), and lien avoidance/bifurcation, see, e.g., *In re Martinez*, No. 7-10-11101 JA, 2015 Bankr. LEXIS 1990, 2015 WL 3814935, at *1 (Bankr. D.N.M. June 18, 2015). The briefing also references 11 U.S.C. § 348(f)(2), which concerns the contents of the estate when a debtor converts to Chapter 7 in bad faith. Neither party alleges, nor is there any evidence in the record to suggest, that the Debtors converted in bad faith.

Based on the subsection's silence on this issue, the Debtors assert that the statute is ambiguous.[2] They urge the Court to look to alternate sources of authority such as the legislative history, which they argue shows Congress's intent to classify increased equity in a pre-petition asset as a separate and after-acquired property interest. Dkt. # 8 at 12-13. But before looking beyond the plain language of the provision, the Court must first seek to interpret section 348(f)(1)(A) based on the full statutory context of the Bankruptcy Code. *See, e.g., Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364, 204 L. Ed. 2d 742 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself . . . Where . . . that examination yields a clear answer, judges must stop." (internal citations omitted)); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997) ("The plainness 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.").

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2. The Debtors also point to the varying ways courts have interpreted the provision in the context of post-petition, pre-conversion equity as reflective of ambiguity. *Compare In re Barrera*, 620 B.R. 645 (Bankr. D. Colo. 2020), aff'd, No. BAP CO-20-003, 2020 Bankr. LEXIS 2756, 2020 WL 5869458 (10th Cir. BAP Oct. 2, 2020) (holding that post-petition, pre-conversion equity gain inures to the debtor) and *In re Cofer*, 625 B.R. 194, 202 (Bankr. D. Idaho 2021) (same) with *In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015) (holding that post-petition, pre-conversion equity gain inures to the estate) and *In re Peter*, 309 B.R. 792, 795 (Bankr. D. Or. 2004) (same).

To gather evidence of statutory meaning, a Court may turn to the rest of the provision, *see, e.g., NLRB v. SW Gen., Inc.*, 580 U.S. 288, 137 S. Ct. 929, 938-39, 197 L. Ed. 2d 263 (2017) (considering disputed terms from statutory subsection individually and then considering them as a whole); the act as a whole, *see, e.g., FCC v. AT&T Inc.*, 562 U.S. 397, 407-08, 131 S. Ct. 1177, 179 L. Ed. 2d 132 (2011) (considering meaning of "personal privacy" given its use in a distinct but similar exemption within the same statute); or similar provisions elsewhere in the law, *see, e.g., Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941, 947, 211 L. Ed. 2d 586 (2022) (looking to how "nearby statutory provisions" use a specific word). As the Supreme Court stated in *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. . ."

B. 11 U.S.C. § 541(a)

Section 541(a) broadly defines the contents of the bankruptcy estate. It provides that property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held." 11 U.S.C. § 541(a)(1). Property of the estate also includes "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." 11 U.S.C. § 541(a)(6).

In *Wilson v. Rigby*, 909 F.3d 306, 309 (9th Cir. 2018), the Ninth Circuit interpreted these provisions together, in the Chapter 7 context, to mean that post-petition appreciation in a debtor's home inures to the estate. It found that the debtor's residence transferred to the estate upon filing of the petition under section 541(a)(1), and that any post-petition appreciation was encompassed in section 541(a)(6)'s definition of "[p]roceeds, product, offspring, rents, or profits" of the property. *Id.*[3] Although the Debtors emphasize that *Wilson* is not a conversion case, they do not argue that the terms, "proceeds," "product," "offspring," "rents," or "profits" should carry different meanings in the conversion context; nor does the Court see why they should.

The Ninth Circuit's interpretation of section 541(a) illuminates the meaning of section 348(f)(1). It 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. Thus, although section 348 (f)(1)(A) may appear ambiguous at first blush, the Court

3. The Court notes that Wilson interprets the plain meaning of the terms, "proceeds, product, offspring, rents, or profits" to include appreciation even if a sale has not yet occurred. But the Court recognizes that it is bound by the Ninth Circuit's decision.

concludes that it is unambiguous when considered in the context of the Code as a whole and under the Ninth Circuit's holding in *Wilson*.

Here, as in *Wilson*, it is undisputed that the Debtors' residence was property of the bankruptcy estate at the petition date, and that the Debtors remained in possession of the residence at the date of conversion. Further, under *Wilson*, any changes in value are classified as "[p]roceeds, product, offspring, rents, or profits" under section 541 (a)(6). Therefore, the increased equity is property of the bankruptcy estate, and the trustee may sell the residence including the appreciation to pay creditors. To the extent that the Debtors have made any mortgage payments on the property, they may file a motion for payment of administrative expenses under 11 U.S.C. § 503(b).[4]

V.

Conclusion

Given the above, the Court affirms the decision of the bankruptcy court.

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4. The Court notes that, in jurisdictions not bound by the Ninth Circuit's decision in *Wilson*, section 348(f)(1)(A) is amenable to a different interpretation. In particular, the legislative history of that provision suggests that Congress did, in fact, intend for post-petition equity in a pre-petition asset to be excluded from the bankruptcy estate. *See* H.R.Rep. No. 103-835 at 57 (1994), as reprinted in 1994 U.S.C.C.A.N. 3340, 3366. But the Court does not reach the legislative history because the Ninth Circuit's interpretation of the Bankruptcy Code as a whole clarifies the meaning of section 348(f)(1)(A).

Dated this 1st day of July, 2022.

/s/ John H. Chun
John H. Chun
United States District Judge

APPENDIX C — MEMORANDUM DECISION OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON, DATED JUNE 4, 2021

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

Case No. 19-12233-MLB

IN RE: JOHN FELIX CASTLEMAN, SR. AND KIMBERLY KAY CASTLEMAN,

Debtors.

June 4, 2021, Entered on Docket

MEMORANDUM DECISION

INTRODUCTION

The issue before me is whether the debtor or the Chapter 7 bankruptcy estate receives the benefit of appreciation in property value for the period between filing of a Chapter 13 case and conversion of that case to Chapter 7. Choosing between conflicting judicial approaches, I determine that the Chapter 7 estate receives the benefit as appreciation is not a distinct and separate asset under the Bankruptcy Code and nothing in the statute fixes the value of estate assets at the date of petition.

The Chapter 7 Trustee (hereafter the "Trustee") has filed a Motion RE: Section 348(f)(1) (hereafter the "Motion," Dkt. No. 72) seeking a determination that

property of the Chapter 7 estate includes the current market value of John and Kimberly Castleman's (hereafter collectively the "Debtors") real property and that the Trustee be authorized to market the residence of the Debtors. Debtors respond, asserting that the appreciation in value between the filing of the Chapter 13 petition and conversion to Chapter 7 is not property of the bankruptcy estate (Dkt. No. 75). The Trustee filed a reply in support of his position (Dkt. No. 78).

I heard oral argument on May 12, 2021 and took the matter under advisement. Having reviewed the relevant pleadings and having heard arguments from the parties, I conclude that the full present value of the real property, including any appreciation between the Chapter 13 petition date and date of conversion, is property of the Chapter 7 bankruptcy estate.

JURISDICTION

I have jurisdiction over the parties and the subject matter of this Motion pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O) and 1334.

FACTS

On June 13, 2019, the Debtors filed for relief under Chapter 13 of the Bankruptcy Code (Dkt. No. 1). On September 25, 2019, the Debtors' Chapter 13 plan was confirmed (Dkt. No. 32). On February 5, 2021, the Debtors' case converted to Chapter 7 (Dkt. No. 53).

Appendix C

Debtors listed real property located at 5857 Everson Goshen Road, Bellingham, WA (hereafter the "Real Property") in their original schedules with a value of $500,000.00 (Dkt. No. 10). Debtors also listed debt secured by the Real Property in the amount of $375,077.00 and claimed a homestead exemption in the amount of $124,923.00 (Dkt. No. 10). The Trustee asserts that the Real Property is currently worth at least $700,000.00.[1] *See* Declaration of Kai Rainey, Dkt. No. 72. The Trustee further asserts that any increase in value should inure to the benefit of the Chapter 7 bankruptcy estate (Dkt. No. 72).

ANALYSIS

I. Declaratory Relief

Before turning to the substantive legal arguments there is a procedural issue that should be addressed. Normally, both requests for determination of whether an asset is property of the estate and for declaratory relief require an adversary proceeding. *See* Federal Rule of Bankruptcy Procedure 7001(2) and (9). Parties, however, may waive this right. *See In re Cogliano*, 355 B.R. 792, 806 (B.A.P. 9th Cir. 2006) ("When the question of whether property is part of the estate is in controversy, Rule 7001(2) requires an adversary proceeding, *absent waiver or harmless error* . . . .") (emphasis added).

1. It is unclear whether the Trustee agrees that the date of petition value was $500,000.00 or whether the date of petition in the Real Property was greater than the exempted amount of $124,923.00.

Here, neither party requests an adversary proceeding and there is no procedural detriment to either party in addressing the legal issues as a contested matter. Moreover, at oral argument both parties agreed that the issue should be resolved through this contested matter rather than through an adversary proceeding. I will therefore adjudicate the matter in its current procedural posture.

II. Two Approaches to Interpreting § 348(f)(1)

Section 348(f)(1) provides:

> (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;
>
> (B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan . . . .

11 U.S.C. §§ 348(f)(1)(A) and (B).

Courts have adopted two major approaches when analyzing the impact of 11 U.S.C. § 348(f)(1) on changes in property value or net equity between the petition date and the date of conversion from Chapter 13 to Chapter 7. Some courts have held that any increase in net value of an asset the debtor owned at the date of petition that remains in the debtor's possession or control at conversion to Chapter 7 inures to the benefit of the debtor, absent bad faith. *See In re Barrera*, 620 B.R. 645, 652-54 (Bankr. D. Colo. 2020), *aff'd*, BAP No. CO-20-003, 2020 Bankr. LEXIS 2756, 2020 WL 5869458 (B.A.P. 10th Cir. (Colo.) Oct. 2, 2020); *In re Cofer*, 625 B.R. 194, 202 (Bankr. D. Idaho 2021); *In re Lynch*, 363 B.R. 101, 107 (B.A.P. 9th Cir. 2007); *In re Niles*, 342 B.R. 72, 76 (Bankr. D. Ariz. 2006). I will hereafter refer to this as the "*Cofer* Approach." Other courts have held that any appreciation or increase in net value inures to the Chapter 7 estate. *See In re Goins*, 539 B.R. 510, 516 (Bankr. E.D. Va. 2015); *see also In re Peter*, 309 B.R. 792, 795 (Bankr. D. Or. 2004).[2] I will hereafter refer to this as the "*Goins* Approach."

A. The *Cofer* Approach

In *Cofer*, the debtor converted her case from Chapter 13 to Chapter 7. Following conversion, the Chapter 7 trustee sought to limit the amount of the debtor's

2. One court, based on the same reasoning, has concluded that a debtor does not have to account for a decline in the value of an automobile between the date of a Chapter 13 petition and conversion to Chapter 7. *In re Lang*, 437 B.R. 70, 72-73 (Bankr. W.D.N.Y. 2010).

homestead to the value at the date of petition and argued that any post-petition appreciation in value inured to the Chapter 7 estate. In analyzing Section 348(f)(1), the court held that the statute was ambiguous and relied on the statute's legislative history to determine that the post-petition, pre-conversion appreciation in value of the Chapter 13 debtor's home inured to the benefit of the debtor. 625 B.R. at 200-02.

Similarly, in *Barrera*, the court determined that Section 348(f)(1) is ambiguous and that the statute should be interpreted in light of the legislative history of the 1994 Amendments. The court also concluded that any appreciation in value inures to the benefit of the debtor as that outcome follows the intention of Congress to encourage debtors to file under Chapter 13. 620 B.R. 652-54.

The Ninth Circuit Bankruptcy Appellate Panel ("BAP") also concluded that the statute is ambiguous and relied on the legislative history of the 1994 Amendments in determining that any post-petition, pre-conversion appreciation inures to the debtor's benefit. *See In re Lynch*, 363 B.R. at 107. In *Lynch*, the Chapter 7 trustee appealed from an ordering compelling him to abandon the debtor's residence. *Id.* at 102. The BAP ultimately reversed the bankruptcy court as there had been no binding valuation of the real property as of the date of petition. However, the BAP also noted that the legislative history indicates that debtors should retain equity created during the Chapter 13 case. *Id.* at 107.

B. The *Goins* Approach

In *Goins*, following conversion of the debtor's case from Chapter 13 to Chapter 7, the trustee sought to sell the debtor's real property and the debtor moved to compel abandonment. The real property had increased in value between the date of petition and conversion and the debtor had made payments reducing debt secured by the property. The trustee asserted that the Chapter 7 estate was entitled to the appreciation in value but stipulated that the debtor would receive any increase in equity due to his payments on the secured debt during the Chapter 13 case. The court determined that the Chapter 7 estate was entitled to the appreciation. *Goins*, 539 at 511-15.[3]

Similarly, in *In re Peter*, the court held that even if the net value of an asset changes during the Chapter 13 case due to the debtor's payments on secured debt, the increase in equity inures to the Chapter 7 estate. In *Peter*, the debtor paid off debt secured by a vehicle prior to conversion of his Chapter 13 to Chapter 7. The court concluded that "pursuant to § 348(f)(1)(A), upon conversion, property of the Chapter 7 estate consists

3. As noted, in *Goins*, the trustee and the debtor stipulated to the debtor receiving the benefit of the post-petition, pre-conversion payment of secured debt. As discussed below, the legislative history of Section 348(f) only references pre-conversion paydown of debt, not market-based appreciation. Interestingly, in one case, *In re Wegner*, the court, without referencing legislative history, ruled that the debtor receives the benefit of market-based appreciation during the Chapter 13 but does not receive the benefit of debtor's paydown of secured debt. 243 B.R. 731, 737 (Bankr. D. Neb. 2000).

of property of the estate as of the date of filing of the petition," the vehicle was property of the estate on the date of petition, and that "[t]he statute does not limit the subsequent Chapter 7 estate to equity in property of the estate" at the petition date. 309 B.R. 793-95.

I conclude that the *Goins* Approach is the correct interpretation of Section 348(f)(1).

III. Appreciation Inures to the Bankruptcy Estate

A. Legislative History of § 348(f)(1)

> The plain meaning of legislation should be conclusive, except in the "rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 102 S. Ct. 3245, 3250, 73 L. Ed. 2d 973 (1982). In such cases, the intention of the drafters, rather than the strict language, controls. [*Id.*]

United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242-43, 109 S. Ct. 1026, 1030, 103 L. Ed. 2d 290 (1989).

> When faced with interpreting the meaning of a statute, the Court begins with the language of the statute itself. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 1030, 103 L. Ed. 2d 290 (1989). If the language is clear, the Court's inquiry ends, and the Court will enforce the statute according to

> its terms. *See Ron Pair*, 489 U.S. at 241, 109 S. Ct. at 1030 ("where ... the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'") (quoting *Caminetti v. United States*, 242 U.S. 470, 485, 37 S. Ct. 192, 194, 61 L. Ed. 442 (1917)).

In re Martinez, No. 7-10-11101 JA, 2015 Bankr. LEXIS 1990, 2015 WL 3814935, *5 (Bankr. D.N.M. June 18, 2015). *See also In re Catapult Entm't, Inc.*, 165 F.3d 747, 753 (9th Cir. 1999) (citing *Auburn v. United States*, 154 F.3d 1025, 1029 (9th Cir. 1998) (courts consider legislative history (1) where the statute is ambiguous, or (2) where it is unambiguous but "the legislative history clearly indicates that Congress meant something other than what is said.")).

11 U.S.C. § 348(f) was added to the Bankruptcy Code as part of substantial changes to the Code enacted in 1994. The House Report discussion regarding Section 348(f) is as follows:

> This amendment would clarify the Code to resolve a split in the case law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7. The problem arises because in chapter 13 (and chapter 12), any property acquired after the petition becomes property of the estate, at least until confirmation of a plan. Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it

property of the estate do not apply to chapter 7. Other courts have held that property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.

These latter courts have noted that to hold otherwise would create a serious disincentive to chapter 13 filings. For example, a debtor who had $10,000 equity in a home at the beginning of the case, in a State with a $10,000 homestead exemption, would have to be counseled concerning the risk that after he or she paid off a $10,000 second mortgage in the chapter 13 case, creating $10,000 in equity, there would be a risk that the home could be lost if the case were converted to chapter 7 (which can occur involuntarily). If all of the debtor's property at the time of conversion is property of the chapter 7 estate, the trustee would sell the home, to realize the $10,000 in equity for the unsecured creditors and the debtor would lose the home.

This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) and adopts the reasoning of *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). However, it also gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

Appendix C

H.R. Rep. No. 103-835, at 57 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3366.

The addition of Section 348(f)(1)(A), by its plain terms, accomplishes the apparent goal of eliminating a "serious disincentive to [C]hapter 13 filings." In the referenced *Lybrook* case, the court ruled that a post-Chapter 13 petition, pre-Chapter 7 conversion inheritance became property of the Chapter 7 bankruptcy estate. Conversely, in *Bobroff*, the court ruled that a post-Chapter 13 petition, pre-Chapter 7 conversion tort claim inured to the benefit of the debtor, not the Chapter 7 estate. Both of the referenced cases dealt with new assets acquired after the date of petition, not value changes to existing assets. By providing that "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion," Section 348(f)(1)(A) clearly adopts the *Bobroff* approach and rejects *Lybrook*. Thus, as referenced in the House Report, Section 348(f)(1)(A) eliminates a disincentive to Chapter 13 debtors regarding the risk of losing assets acquired between the date of petition and conversion to the Chapter 7 trustee if the Chapter 13 case is eventually converted.

Unfortunately, the House Report creates some confusion. The example it provides of the risks o conversion from Chapter 13 to Chapter 7 describes the debtor's risk of losing a homestead to sale by a Chapter 7 trustee due to equity created by payments on secured debt during the Chapter 13 case. H.R. Rep. No. 103-835, at 57. Section 348(f) provides that assets such as

a homestead held by the debtor at the date of petition become property of the Chapter 7 estate. The new Section 348(f) does not at all address the effect of conversion on paydown of secured debt during the Chapter 13 case or changes in the value of pre-petition assets. However, the provision is not ambiguous. It simply does not address the scenario referred to in the House Report. Where, as here, the statute is clear and consistent with overall legislative intent, the failure to in any manner address the example provided in the legislative history does not create ambiguity. Nor do I believe it makes the statutory language, "demonstrably at odds with the intentions of its drafters." It is therefore not appropriate to read into the statute an unstated provision regarding treatment of post-petition, pre-conversion changes in property value.[4]

B. Consistency with Ninth Circuit Treatment of Post-Petition Appreciation

In an individual Chapter 7 case new post-petition assets belong to the debtor not the bankruptcy estate. *See In re Smith*, 235 F.3d 472, 477-78 (9th Cir. 2000). Post-petition appreciation is not treated as a separate asset from pre-petition property and inures to the bankruptcy estate, not the debtor. *See Wilson v. Rigby*, 909 F.3d 306, 312 (9th Cir. 2018); *see also In re Hyman*, 967 F.2d 1316,

4. Under the *Cofer* Approach, it is unclear what language would be read into the statute to address the referenced secured debt paydown scenario. Should courts read in language creating, in essence, an exemption for either the amount of secured debt reduction during the Chapter 13 case or for *any* increase in net value that occurs prior to conversion?

1321 (9th Cir. 1992); *In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991).

As discussed in *Goins*,

> There is an irreconcilable conflict between these cases, which look to Section 541(a)(6), and the cases cited in Part A above [cases taking the "*Cofer* Approach"] . . . , which look to Section 348(f)(1)(A) for the answer. In the Court's view, the cases under Section 541(a)(6) are applicable because the equity attributable to the post-petition appreciation of the property is not separate, after-acquired property, to which we might look to Section 348(f)(1)(A). The equity is inseparable from the real estate, which was always property of the estate under Section 541(a).

Id. at 516.

In this respect the Ninth Circuit has held:

> [A] transfer of interest is subject to the debtor's exemptions under § 522(b)(1), but the reference point for such exemptions is the commencement of the bankruptcy action. Following this transfer, all "proceeds, product, offspring, rents, or profits" [i]nure to the bankruptcy estate. *Id.* § 541(a)(6). This includes the appreciation in value of a debtor's home. *E.g., Schwaber v. Reed (In re Reed)*, 940 F.2d 1317,

> 1323 (9th Cir. 1991) (interpreting 11 U.S.C. § 541(a)(6) "to mean that appreciation [i]nures to the bankruptcy estate, not the debtor").

Wilson, 909 F.3d at 309.

Here, it is undisputed that the Real Property was property of the bankruptcy estate at the petition date, the Debtors were in possession of the Real Property at the date of conversion, and pursuant to Section 348(f)(1), the Real Property is property of the Chapter 7 estate. Nothing in Section 348(f) indicates that a post-petition increase in value of such property is to be treated differently than post-petition changes in value under *In re Reed*.[5]

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5. Prior to 2005, Section 348(f)(1)(B) provided that "valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan." 11 U.S.C. § 348(f)(1)(B) (1994), *amended by* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Some courts had construed this earlier version of Section 348(f)(1)(B) regarding *valuations* as supporting the conclusion that the *value* of property for the Chapter 7 estate was fixed at the date of petition when a Chapter 13 case converted to Chapter 7. *See In re Lynch*, 363 B.R. at 106-07 (holding that "the relevant valuation date for purposes of Section 348(f)(1)(B) is the Chapter 13 filing date," and absent bad faith, appreciation inures to the debtors).

In 2005, Section 348(f)(1)(B) was amended to indicate that valuations made prior to conversion from Chapter 13 to Chapter 7 are not binding. The Trustee argues that this change indicates that the Chapter 7 estate includes any post-petition, pre-conversion appreciation in value. However, as one court correctly noted,

Appendix C

CONCLUSION

The meaning of Section 348(f)(1)(A) is clear. The failure of the provision to address the example of a risk of conversion from Chapter 13 to Chapter 7 discussed in the House Report does not create ambiguity or put the provision at odds with overall legislative intent. There is no reason to read into the statute words which are not there. I therefore conclude that the full value of the Real Property is property of the Chapter 7 estate including any post-petition appreciation. Accordingly, I grant the Trustee's Motion. The Trustee may present an order consistent with this memorandum decision.

Entered on Docket June 4, 2021

Below is a Memorandum Decision of the Court.

/s/ Marc Barreca
Marc Barreca
U.S. Bankruptcy Court Judge

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valuation does not mean *value* and the valuation provision in Section 348(f)(1)(B) was irrelevant to interpretation of Section 348(f)(1)(A) even prior to the 2005 amendment. *In re Lang*, 437 B.R. at 72-73. The 2005 amendment to Section 348(f)(1)(B) is therefore irrelevant to interpretation of Section 348(f)(1)(A).

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 6, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-35604

IN THE MATTER OF: JOHN FELIX CASTLEMAN, SR.; KIMBERLY KAY CASTLEMAN,

Debtors,

JOHN FELIX CASTLEMAN, SR.; KIMBERLY KAY CASTLEMAN,

Appellants,

v.

DENNIS LEE BURMAN, CHAPTER 7 TRUSTEE,

Appellee.

September 6, 2023, Filed

D.C. No. 2:21-cv-00829-JHC.
Western District of Washington, Seattle.

Appendix D

Before: HAWKINS, TALLMAN, and IKUTA, Circuit Judges.

ORDER

Judge Ikuta has voted to deny Appellants' petition for rehearing en banc and Judge Hawkins so recommends. Judge Tallman recommends granting the petition. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellants' petition for rehearing en banc is denied.