file - bankruptcy & clinic violence

NARAL *Promoting Reproductive Choices*

ENFORCING CLINIC PROTECTION LAWS TO THEIR FULLEST POTENTIAL: Amending the Bankruptcy Code to Ensure that Clinic Violence-Related Debts are Non-Dischargeable in Bankruptcy

Many Perpetrators of Clinic Violence Actively Seek to Avoid Paying Fines and Penalties.

- **Perpetrators of Clinic Violence Often Take Actions to Make Themselves Judgement-Proof.** One defendant in a recent clinic violence case admitted: "Many of us have divested ourselves of assets in order they [abortion supporters] -- they can't take them away. I will not give any money to people who kill babies for a living."

- **Randall Terry Has Filed for Bankruptcy to Avoid Payment of Over $1.6 Million in Legal Fines and Related Fees Owed as a Result of his Unlawful Activities.** Terry explained that he filed for bankruptcy because "I cannot in good conscience permit the National Organization [for] Women, Planned Parenthood and others who have profited from abortion to harass my wife and family, and possibly get money from me to continue their crusade against unborn life."

Amending the Bankruptcy Code to Ensure that Clinic Violence-Associated Debts are Non-Dischargeable is Both Consistent with the Purpose of the Code and Necessary.

- The Bankruptcy Code provides a fresh start to the "honest but unfortunate debtor." Debtors whose debts arise from clinic violence are *not* honest debtors and they should not be able to escape the financial liabilities incurred by their illegal conduct.

- Although the Bankruptcy Code contains several exceptions to dischargeability which may prevent some clinic violence-related debts from being discharged, existing exceptions may not cover all clinic violence-associated debts.

- A single individual may owe a single creditor a multitude of clinic violence-related debts -- including fines, damages, penalties, and contempt fines -- arising from a variety of illegal activities. Without a specific clinic violence-related debts carve-out, the bankruptcy proceedings could become an extremely protracted and litigious process in which each debt would have to be evaluated for dischargeability.

- The creation of a specific clinic violence-associated exemption would clearly signal Congress's intent that clinic violence debts may not be discharged while providing considerable relief for victim-creditors already pushed to the limit by continuous litigation.

Amending the Bankruptcy Code to Ensure that Clinic Violence-Related Debts are Non-Dischargeable is Vital in Ensuring the Effectiveness of the Freedom of Access to Clinic Entrances Act (FACE).

DO SOMETHING! **Call 1-877-YOU-DECIDE (1-877-968-3324) or log-on to www.naral.org.**

For a complete factsheet on Enforcing Clinic Protection Laws to Their Fullest Potential: Amending the Bankruptcy Code, please contact the NARAL information line at (202) 973-3018.

3/30/99

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NARAL ***Promoting Reproductive Choices***

MEMORANDUM

To: Interested Parties
From: Allison Herwitt, NARAL Government Relations Director
Elizabeth A. Cavendish, NARAL General Counsel and Legal Director
Re: Why Amending the Bankruptcy Code to Ensure that Clinic Violence-Related Debts are Non-Dischargeable in Bankruptcy is Necessary
Date: April 15, 1999

The Bankruptcy Code's existing exceptions to discharge may not cover all clinic violence-associated debts. Moreover, without a specific carve-out for clinic violence-related debts, the bankruptcy proceedings could become extremely protracted and litigious, as each individual debt would have to be evaluated for dischargeability. Thus although some clinic violence-related debts may qualify for non-dischargeability under 11 U.S.C.A. §§ 523(a)(6) and (a)(7) of the Bankruptcy Code -- which respectively provide that debts resulting from "willful and malicious injury" and fines and penalties payable to the government are non-dischargeable -- *a specific exception to discharge for clinic violence-related debts remains necessary.*

First, the "willful and malicious injury" exception of § 523(a)(6) of the Bankruptcy Code has been the subject of considerable and confusing litigation, and it would allow some heinous clinic-violence associated debts to be discharged. In *Kawaauchau v. Geiger*, the U.S. Supreme Court recently attempted to clarify the intent requirements of this exception. Using the common understanding of "willful" to mean "deliberate or intentional," the Court explained that in the Bankruptcy Code the word "willful" "modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. . . . Intentional torts generally require that the actor intend 'the consequences of an act,' not simply 'the act itself.'" Thus, for example, if someone bombed a clinic at night believing no one would be there, and killed someone inadvertently, damages arising from the death might not qualify under the "willful and malicious injury" exception, or such circumstances might prompt litigation concerning the felony murder doctrine in the context of the "willful and malicious injury" exception.

Second, not all state clinic protection laws track the intent requirements of the "willful and malicious injury" exception as defined by the Supreme Court. The recent Supreme Court opinion on § 523(a)(6) sets forth the intent requirement as a "*deliberate or*

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intentional injury." Colorado's clinic violence law, however, has a lower intent requirement of "*knowingly.*" Similarly, Massachusetts's clinic violence law has a *knowingly* requirement, while laws in the District of Columbia and Washington require "*willful[ly] or reckless[ly]*" action. Those guilty of clinic violence under Colorado, Massachusetts, the District of Columbia, or Washington law should not be able to have their clinic violence-associated debts discharged, nor should their victims have to re-litigate intent.

Third, some clinic violence-associated debts may arise in the context of settlement agreements, which typically do not include an admission of liability. Without such an admission, such debts would likely fail to meet the intent requirement of the "willful and malicious injury" exception, thus necessitating additional litigation.

Fourth, many debts resulting from clinic violence are civil contempt fines issued against those who continually violate court orders protecting clinics. Civil contempt fines can be imposed without a finding of willfulness. In fact, courts can levy these fines based on knowing, or even reckless or negligent, violations of court orders. Therefore, some compensatory civil contempt fines currently may be dischargeable in bankruptcy because the exception to dischargeability in 11 U.S.C.A. § 523(a)(6) provides only for non-dischargeability of debts resulting from "willful and malicious" injuries, as opposed to, for example, knowing actions. Because civil contempt fines can be imposed without a finding of willfulness, the conduct underlying these fines would have to be re-litigated in bankruptcy to determine if, in fact, they were based on "willful and malicious" injuries and are therefore non-dischargeable under § 523(a)(6). In order to avoid the time-consuming, expensive and uncertain outcome of this re-litigation, the Bankruptcy Code should be amended to ensure that all clinic violence-related debts, regardless of the perpetrators' mental state, are non-dischargeable.

Moreover, the complexity of some clinic violence cases makes a clinic violence-specific exception to discharge essential. A single case against an individual may encompass a variety of illegal acts committed over a length of time. A complaint or judgment could involve criminal and civil penalties and fines, punitive and compensatory damages, additional fines resulting from contempt charges, and attorney's fees resulting from the various stages of the case. Moreover, petitioners may face multiple claims under both state and federal law, all with differing intent requirements. Under the existing Bankruptcy Code, parceling out the individual debts and determining whether they fit within the variety of existing exceptions can be a time-consuming and litigious process. A single creditor, already overburdened by the litigation created by the debtor's repeated and flagrant violation of the law, could be forced to endure seemingly endless bankruptcy litigation, without the guarantee that such debts ultimately would be non-dischargeable. A specific statutory carve-out would make it easier to exclude such debts from discharge.

In sum, despite the protections of the Bankruptcy Code, it remains imperative that Congress close these potential loopholes, in light of the contumacious statements by perpetrators of clinic violence that they have no intent ever to pay their debts.

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In sum, despite the protections of the Bankruptcy Code, it remains imperative that Congress close these potential loopholes, in light of the contumacious statements by perpetrators of clinic violence that they have no intent ever to pay their debts.

ENFORCING CLINIC PROTECTION LAWS TO THEIR FULLEST POTENTIAL: Amending the Bankruptcy Code to Ensure that Clinic Violence-Related Debts are Non-Dischargeable in Bankruptcy

> *"I cannot in good conscience permit the National Organization [for] Women, Planned Parenthood and others who have profited from abortion to harass my wife and family, and possibly get money from me to continue their crusade against unborn life. . . . Hence, I have filed a Chapter 7 petition to discharge my debts to those who would use my money to promote the killing of the unborn."*
> -- statement by Randall Terry, regarding his recent petition for bankruptcy[1]

Through their repeated acts of violence, harassment, and terrorism, the perpetrators of clinic violence have demonstrated flagrant disregard for the law. Frequent arrests and lawsuits are commonplace for repeat perpetrators of clinic violence. Operation Rescue leader Flip Benham, for example, states that he has been jailed "[l]ess than a hundred, more than 50" times and adorns the walls of his house with photos of himself being carried away from clinics in handcuffs.[2] Meanwhile, Operation Rescue's founder Randall Terry owes over $1.6 million in legal fines, damages, and related fees resulting from numerous lawsuits stemming from his repeated unlawful anti-choice activity.[3] Perhaps even more reprehensible than such brazen disregard for the law, however, are the attempts of such individuals to avoid paying the fines and penalties assessed against them as a result of their illegal anti-choice activity. Numerous perpetrators of violence have indicated that they never intend to pay the fines and penalties assessed against them, and, at times, the actions of such individuals suggest that they have taken steps to make themselves judgment-proof. Randall Terry, meanwhile, has attempted to use bankruptcy proceedings to avoid paying judgments,[4] and anti-choice activists Robert and Bonnie Behn are arguing that clinic violence-associated debts are dischargeable in their current bankruptcy proceedings[5] -- setting dangerous precedents that others may follow.

Lawmakers must take steps to facilitate judgment collection efforts and help prevent individuals like Randall Terry from avoiding the debts that they brought upon themselves by their blatant disrespect for the law. While there is no need to reopen the substantive terms of the Freedom of Access to Clinic Entrances Act (FACE) --

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which has made significant contributions to the effort to reduce clinic violence -- steps must be taken to ensure that clinic protection laws such as FACE are enforced to their fullest potential. Full enforcement of clinic protection laws includes making every effort possible to ensure that those individuals found guilty of violence pay the fines and penalties levied against them. Although such fines and penalties have symbolic value, their imposition is virtually meaningless if perpetrators of clinic violence can avoid paying them. Not only does such failure to pay violate court orders mandating the payment of damages, fines, and penalties -- such as paying clinics for actual damages -- but repeated non-payment hinders the deterrent effect of such laws, sending the message that perpetrators of clinic violence will not be held accountable financially for their actions.

Amending the Bankruptcy Code to ensure that any judgment issued in a court proceeding resulting from clinic violence is non-dischargeable is central to enforcing clinic protection laws to their fullest potential. By facilitating the collection of clinic violence-related judgments, such an amendment is the first step in a broader judgment enforcement strategy that might include enhanced asset-tracing mechanisms and the prevention of fraudulent asset transfers through which perpetrators of clinic violence could avoid debt payment. Moreover, such an amendment would be consistent with the Bankruptcy Code's central purpose of providing an "unencumbered new beginning to the 'honest but unfortunate debtor.'"[6] Individuals owing clinic violence-associated debts are *not* honest debtors -- they would not owe such monies were it not for their violations of the law and their harassment, threats, intimidation, and violence against abortion providers and women attempting to exercise their constitutionally protected right. *Thus, the Bankruptcy Code must be amended to ensure that clinic violence-associated debts are non-dischargeable in bankruptcy.*

I. <u>Several Statutory Schemes Offer Protection Against Clinic Violence.</u>

Fortunately, several statutory schemes exist to help stem the tide of clinic violence and provide recourse to victims. FACE provides federal protection against unlawful and violent actions used by abortion opponents. Peaceful picketing and protest unaccompanied by force, threats of force, or physical obstruction are not prohibited and are explicitly and fully protected by the law.[7] Violators of FACE are subject to the criminal penalties of imprisonment, a fine, or both. In addition, "a person involved in providing . . . or obtaining . . . services in a facility that provides reproductive health services" and who is aggrieved by the conduct violating FACE, the U.S. Attorney General, or the state Attorney General may initiate a civil action for appropriate relief, including injunctive relief, damages, attorneys' fees, and costs of the lawsuit. In cases brought by the U.S. Attorney General or state Attorneys General, the court may also assess a civil monetary penalty against the violator based upon the nature of the offense and whether the violator is a repeat offender.[8] State clinic protection laws in 12 states and the District of Columbia,[9] as well as general statutes prohibiting violence, provide additional protection. Moreover, the U.S. Supreme Court has held that claims under the Racketeer Influenced and Corrupt Organizations Act (RICO) do not require proof of an economic motive, allowing victims of clinic violence to pursue civil suits against certain anti-choice clinic blockaders.[10]

II. Existing Clinic Protection Laws Have Provided Recourse to the Victims of Clinic Violence.

Through the existing legal protections of FACE, RICO, and state clinic protection laws, the victims of clinic violence have won significant court battles against the perpetrators of clinic violence over the past several years.

FACE has been particularly important in stemming the tide of clinic violence. Since its enactment in 1994, FACE appears to have made a contribution to the effort to reduce clinic violence. First and foremost, FACE has led to successful criminal and civil cases against the perpetrators of clinic violence. According to a recent GAO report, the Department of Justice (DOJ) has been extremely successful in its cases against FACE violators. In criminal FACE cases, defendants pled or were found guilty in 15 of 17 cases. Of the remaining two cases, one resulted in pretrial diversion and the other was ongoing at the time of the report. Of the 17 civil lawsuits brought by the DOJ under FACE, 14 resulted in injunctive relief, damages, and/or penalties, and the remaining three cases were ongoing at the time of the report.[11]

Through FACE and other laws, numerous monetary judgments have been issued against anti-choice individuals and groups:

- On February 2, 1999, in *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists*, a federal jury ordered some of the creators of "The Nuremberg Files" website and "wanted" posters to pay over $107 million to Planned Parenthood, the Portland Feminist Women's Health Center, and certain physicians because of the threats contained in the materials.[12]

- In Texas, a judge certified a $10 million civil judgment against six anti-choice protestors, including Flip Benham, for their anti-choice harassment of Dr. Norman Tompkins and his wife.[13]

- A Texas jury also awarded Planned Parenthood of Houston and Southeast Texas and other abortion providers over $1.2 million in compensatory and punitive damages, to be paid by Flip Benham, Operation Rescue, and others for their anti-choice activities at clinics during the 1992 Republican convention.[14]

- In a case against 34 defendants, an Oregon jury awarded $8.2 million to the Lovejoy Surgicenter in Portland, Oregon in 1991.[15]

- Former Operation Rescue president Randall Terry alone owes over $1.6 million in fines and judgments due to his anti-choice activities.[16]

- A San Diego jury awarded a clinic and four physicians $880,000 in punitive and compensatory damages against Operation Rescue and one of its directors.[17]

- In California, a court ordered Peter Andrew Howard to pay $16,320 in restitution and sentenced him to 15 years in federal prison for driving a pickup truck into the Family Planning Associates clinic in Bakersfield, California and attempting to turn the truck into a "giant molotov cocktail."[18]

- In February 1998, the U.S. District Court in Philadelphia ruled that 27 anti-choice demonstrators violated FACE by blockading a Planned Parenthood of Southeast Pennsylvania clinic and awarded the clinic $5,000 plus over $132,000 in court costs and attorneys' fees.[19]

- In *N.O.W. v. Scheidler*, the plaintiffs sought relief from a nationwide criminal conspiracy of anti-abortion extremists whose criminal tactics were designed to close clinics that perform abortions and to prevent women from using the services of those clinics. Such tactics included the destruction of clinic property, assaults and batteries upon clinic staff and personnel, threats directed at health center personnel and patients, clinic invasions, extortion, physical blockades, trespassing, harassment, burglaries, thefts, and tortious interference with clinics' leases and other contractual relationships.[20] In April 1998, a jury found that several anti-abortion groups and individuals violated federal racketeering laws by committing 21 acts of extortion against abortion clinics, awarding two clinics almost $86,000 in damages (an amount that can be tripled) and enabling other affected clinics to seek damages as well.[21]

- In New York, Bonnie Behn owes $10,000 in civil contempt damages and over $25,000 in attorneys' fees and costs resulting from her violation of a temporary restraining order (TRO) designed to prohibit violence, harassment, and intimidation outside of certain abortion facilities. In issuing the contempt order, the judge noted that Behn had violated the TRO by repeatedly attempting to dissuade a young woman from having an abortion and offering to call her mother to tell her that she was having an abortion -- to the point where the young woman "had begun 'crying, whimpering and shaking.'" Behn had continued these actions despite the young woman's repeated requests to be left alone.[22]

III. <u>The Perpetrators of Clinic Violence Have Demonstrated Their Blatant Disregard for the Law By Actively Seeking to Avoid Paying the Fines and Penalties Assessed Against Them.</u>

Unfortunately, a court order alone does not guarantee that the plaintiffs and government will receive the money awarded to them by a court in a clinic violence case. Far too often, victims of violence win a substantial courtroom victory only to find themselves unable to collect the monetary awards. In some instances, collection is hindered by the steadfast refusal of the defendants to pay, coupled with the inherent difficulties the prevailing party has ascertaining the defendant's assets. And, unfortunately, these difficulties often are compounded by deliberate actions taken to hide assets and prevent payment.

A. Both Abortion Clinics and the Government Have Had Difficulties Collecting Judgments.

- In 1994, the administrator of the Portland, Oregon clinic awarded the $8.2 million reported that her clinic had collected merely about $20,000, stating, "What we've gotten so far doesn't even begin to cover our attorney fees. . . . We're getting little dribbles."[23] As of 1998, she had collected a total of only about $25,000.[24]

- Federal prosecutors have had similar problems. As of June 1994, for example, the U.S. Attorney had collected a mere $2,343.57 of the over $500,000 in contempt fines ordered in a New York case stemming from clinic blockades in 1988.[25]

B. Perpetrators of Clinic Violence Have Stated that They Do Not Intend to Pay.

- After being ordered to pay the $10,000 for her violation of a TRO, Bonnie Behn stated: "How could I ever give a penny to the people who are doing this atrocity to children? . . . I would be sending a donation to Womenservices for baby killing."[26]

- Commenting on the numerous monetary awards assessed against Operation Rescue -- including the *N.O.W. v. Scheidler* award and over $11 million in awards in Texas -- Flip Benham stated "I just tell them to take a number and get in line. . . . We have never paid a penny to anyone."[27]

- Immediately after a verdict was issued ordering the defendants in "The Nuremberg Files" case, *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists*, to pay over $107 million to Planned Parenthood, the Portland Feminist Women's Health Center, and a group of doctors, several of the defendants stated that they would never pay the judgment, with one of the defendants stating, "I could not in good conscience give money to an industry that thrives on killing children. . . . That would be like asking Martin Luther King to pay money to the Ku Klux Klan."[28]

C. Perpetrators of Clinic Violence Often Take Actions to Make Themselves Judgment-Proof.

- Sources report that the defendants in "The Nuremberg Files" case prepared for the possible verdict against them by disposing of assets such as houses and bank accounts or transferring such assets to others in order to become judgment-proof. Defendant Roy McMillan even admitted during an interview that: "Many of us have divested ourselves of assets in order they [abortion supporters] -- they can't take them away. I will not give any money to people who kill babies for a living."[29]

- Given that many of the defendants in *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists* are national anti-abortion leaders, this asset-hiding tactic may be part of a well-designed strategy to prevent payment, particularly when spouses or relatives seem to have more assets than the defendants. For example, defendant Andrew Burnett, an Operation Rescue founder and Executive Director of Advocates for Life Ministries who earlier this decade was ordered to pay $500,000 for his repeated blockades at Lovejoy Surgicenter in Portland, responded to the verdict by saying, "I can't picture [how] they're going to collect that much money. I don't have any assets and my income is minimum wage . . . I'm a very poor person." His wife, meanwhile, owns the printing company that publishes *Life Advocate* magazine.[30]

- The asset-hiding problem is not limited to the website case. In three other major clinic violence cases in Portland, Houston, and Chicago, juries have ordered monetary damages but many of the defendants "either refused to pay or asserted that they have transferred all their assets to others and thus have no way to pay."[31]

- The anti-choice movement actually advocates that members should make themselves judgment-proof:

    - Philip Lawler's 1992 book entitled, *Operation Rescue: A Challenge to the Nation's Conscience* notes: "The battle of wits has produced a trove of wisdom within the Rescue Movement. Rescue newsletters and OR [Operation Rescue] veterans can offer advice on a host of arcane subjects. Lawyers connected with the movement can help Rescuers avoid damaging lawsuits, becoming 'judgment-proof' by yielding control of their financial resources."[32]

D. Randall Terry Has Filed for Bankruptcy to Avoid Payment -- Setting A Dangerous Precedent.

- Randall Terry currently owes over $1.6 million in legal fines and related fees as a result of his unlawful activities. NOW, Planned Parenthood, the National Abortion Federation (NAF), and reproductive health care providers repeatedly have attempted to get Terry to pay these fines. On November 5, 1998 -- the day Terry was due to respond to court papers seeking asset and income information in relation to these lawsuits -- Terry filed a Chapter 7 personal bankruptcy petition.[33] The filing of Terry's petition effectively stayed the collection proceedings of NOW, NAF, Planned Parenthood, and the providers.[34] More importantly, the bankruptcy filing reflected Terry's self-admitted unwillingness to pay clinic violence-associated fines and an attempt to have the debts discharged. In a written statement provided the day after he filed for bankruptcy, Terry explained that he filed for bankruptcy because "I cannot in good conscience permit the National Organization [for] Women, Planned Parenthood and others who have profited from abortion to harass my wife and family, and possibly get money from me to continue their crusade against unborn life."[35]

E. Anti-Choice Activists Robert and Bonnie Behn Claim that Debts Arising from Clinic Violence are Dischargeable in Bankruptcy.

- On March 10, 1999, Reverend Robert Behn and Bonnie Behn filed for Bankruptcy in the U.S. Bankruptcy Court for the Western District of New York. Due to her violation of a temporary restraining order, Bonnie Behn owes $35,260 to Buffalo GYN Womenservices -- the abortion clinic of slain abortion provider Barnett Slepian. The Behns' attorney, Denis A. Kitchen, Jr., is attempting to argue that these debts resulting from clinic violence *are* dischargeable in bankruptcy -- setting the stage for litigation over the issue in Bankruptcy Court. Interestingly, Reverend Behn is the local organizer for "Operation Save America" -- an eight-day event in the Buffalo/Rochester area in April 1999 to protest abortion, pornography, school violence, and teen sex. When asked if he would personally be involved in efforts to shut down or blockade an abortion clinic, Behn stated: "There's a possibility if I felt that's what God wanted me to do, but at this point, He hasn't asked me to do that . . . But I would prayerfully support anyone who felt led to do that."[36]

F. For Some, Efforts to Avoid Paying Judgments are Coupled with an Intention to Continue to Perpetrate Violence.

Unfortunately, the defendants' refusal to pay judgments is often coupled with repeated illegal behavior or an intention to continue to harass and threaten abortion providers and their patients. In "The Nuremberg Files" case, for example, the "[d]efendants emphasized the verdict would not alter their tactics, and said the huge jury verdict would have nothing more than symbolic impact because they have transferred their assets to make themselves 'judgment-proof.'"[37] Such sentiments demonstrate a disturbing trend.

IV. Amending the Bankruptcy Code to Ensure that Clinic Violence-Associated Debts are Non-Dischargeable is Both Consistent with the Spirit of the Code and Necessary.

When an individual files for Chapter 7 bankruptcy, all other legal actions involving such individual are stayed, and, ultimately, the assets of the debtor are liquidated and distributed to the debtor's creditors. After the liquidation, the debtor's remaining liabilities are discharged and he or she is left with a "clean-slate." Bankruptcy proceedings therefore are an important means of helping *honest* individuals deal with insurmountable debts. As the U.S. Supreme Court explained:

> a central purpose of the Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy "a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." . . . But . . . the Act limits the opportunity for a completely unencumbered new beginning to the "honest but unfortunate debtor."[38]

Discharge is not an absolute guarantee. Under the Bankruptcy Code, dishonest and fraudulent conduct during a bankruptcy case is not tolerated, and may result, upon successful objection, in the denial of the discharge of debts.[39] In addition, the Bankruptcy Code carves out 18 exceptions that bar the discharge of a specific debt while the rest of the debts are discharged.[40] Some of these exceptions are: (1) taxes; (2) debts incurred by fraud/falsehood; (3) unscheduled debts; (4) embezzlement, larceny, and fraud; (5) alimony and spousal or child maintenance and support; (6) willful and malicious injury; (7) fines and penalties payable to a governmental entity; (8) student loans; and (9) debts for death or personal injury resulting from driving while intoxicated.[41] Together, these exceptions reflect a legislative intent to ensure that debtors cannot use bankruptcy to escape debts created by illegal and improper conduct. They also reflect a recognition that some debts are so fundamentally important -- like providing support for one's children -- that they cannot be discharged. Moreover, the creation of a specific exception for debts incurred while driving while intoxicated demonstrates that prevailing public policies dictate that certain debts not be forgiven.

Within this context, the creation of a non-discharge provision specific to clinic-violence associated debts would be consistent with the other exceptions to discharge and their underlying purpose. *Debtors whose debts arise from their own clinic violence are not honest debtors and they should not be able to escape the financial liabilities incurred by their illegal conduct.* Take, for example, § 523(a)(9)'s discharge exception for debts incurred from another type of illegal activity: driving while intoxicated. The legislative purpose behind the exception was threefold: "(1) to deter drunk driving; (2) to ensure that those who caused injury by driving drunk did not escape civil liability through the bankruptcy laws; and (3) to protect the victims of drunk driving."[42] As explained by Senator Danforth in connection with the underlying legislation for this exception:

> Today there exists an unconscionable loophole in the bankruptcy statute which makes it possible for drunk drivers who have injured, killed, or caused property damage to others to escape civil liability for their actions by having their judgment debt discharged in Federal bankruptcy court. This loophole affords opportunities for scandalous abuse of judicial processes.

As justification for the exception, Senator Danforth cited the instance of a drunk driver who, immediately after being ordered to pay $600,000 to the families of three teenagers who were killed by his drunk driving, filed for bankruptcy.[43]

A carve-out for clinic violence-related debts would perform a similar role: it would send a signal to others that debts resulting from a specific type of illegal conduct cannot be discharged in bankruptcy; it would help prevent persons found guilty of clinic-related violence from escaping liability; and it would work to protect the victims of clinic-related violence. Like drunk driving, clinic violence remains a serious problem in the United States, and lawmakers must stand firm in the position that it will not be tolerated. Although the frequency of some types of clinic violence declined after the 1994 enactment of FACE, other forms of such violence have recently increased and violence at clinics is far from being eradicated.[44] Since 1993, three doctors, two clinic employees, a clinic escort, and a security guard have been murdered.[45] Opponents of choice have directed over 2,000 reported acts of violence and over 28,000 reported acts of disruption against abortion providers since 1977, including bombings, arsons, death threats, kidnappings, and assaults.[46] Enabling the perpetrators of clinic violence to escape liability simply by filing for bankruptcy could detract from the positive impact of FACE and lessen the deterrent effect of both FACE and other clinic protection laws. Just like the drunk driver who immediately filed for bankruptcy to avoid liability, Randall Terry and other perpetrators of violence should not be able to escape liability for their illegal and deadly conduct.

A. Some Clinic Violence-Related Debts May Currently Qualify As Non-Dischargeable Debts Under Several Exceptions of the Bankruptcy Code.

There are currently several exceptions to dischargeability in the Bankruptcy Code for which some clinic violence-related debts may qualify. In particular, many debts currently may be non-dischargeable under sections 523(a)(7) and 523(a)(6) -- which respectively provide that fines and penalties payable to the government and debts resulting from "willful and malicious injury" are non-dischargeable. *A specific exception to discharge for clinic violence-related debts remains necessary, however.* First, existing exceptions may not cover all clinic violence-associated debts. Second, a single individual may owe a single creditor a multitude of clinic violence-related debts -- including fines, damages, penalties, and contempt fines -- arising from a variety of illegal activities. Without a specific clinic violence-related debts carve-out, the bankruptcy proceedings could become an extremely protracted and litigious process in which each individual debt would have to be evaluated. A single creditor, already overburdened by the litigation created by the debtor's repeated and flagrant violation of the law, could be forced to endure seemingly endless bankruptcy litigation, without the guarantee that such debts ultimately would be dischargeable. Thus, a specific statutory carve-out would make it easier to exclude such debts from discharge.

1. Non-Dischargeable Debts under § 523(a)(7) -- fines and penalties payable to the government.

Under 11 U.S.C.A. § 523(a)(7) of the Bankruptcy Code, a "fine, penalty, or forfeiture payable to and for the benefit of a governmental unit . . . [that] is not compensation for actual pecuniary loss, other than a tax penalty" is not dischargeable in bankruptcy.[47] The rationale behind excepting such debts from discharge is based "on the assumption that these debts arise from conduct which the government should, as a matter of policy, deter and punish: 'bankruptcy is not intended to be a haven for wrongdoers.'"[48]

The U.S. Supreme Court has ruled that restitution awards in criminal judgments are non-dischargeable under § 523(a)(7). The court held:

> The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment 'for the benefit of' the victim, the context in which it is imposed undermines that conclusion. . . . Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings operate 'for the benefit of' the State.[49]

Moreover, courts have ruled that civil contempt judgments designed "to vindicate the dignity and authority of the court" are non-dischargeable.[50] Some clinic protestors have been levied fines for contempt of court or for failing to obey injunctions.[51] Given these standards, some clinic violence-associated debts are therefore non-dischargeable under § 523(a)(7).

2. Non-Dischargeable Debts under § 523(a)(6) -- "willful and malicious injury."

Under 11 U.S.C.A. § 523(a)(6) of the Bankruptcy Code, debts resulting from "willful and malicious injury by the debtor to another entity or to the property of another entity" are non-dischargeable.[52] Designed to prevent debtors from avoiding liability for their egregious acts by filing for bankruptcy, this discharge exception has been invoked successfully by creditors in various types of claims. Courts have ruled that debts arising from sexual harassment,[53] conversion of property,[54] and assault and battery,[55] for example, are non-dischargeable in bankruptcy under § 523(a)(6).

Before a debt is ruled non-dischargeable under this exception, the creditor must prove that the debt results from an act that meets the definition of "willful and malicious injury." "Injury" has been consistently understood to encompass harms to property and legal rights, in addition to physical harm or damage.[56] The legislative history for this section defines "willful" as "deliberate or intentional."[57] Thus, courts have commonly understood this section to apply only to deliberate or intentional acts. The federal circuit courts, however, had split on the issue of whether the injury itself had to be "willful." The First, Sixth, and Ninth Circuits adopted a broad definition of "willful," requiring only an intentional act that resulted in injury -- that is, a "'wrongful act done intentionally, which necessarily produces harm.'"[58] The Third, Fifth, and Eleventh Circuits adopted a more narrow standard, requiring that the injury itself be deliberate and intentional -- that is, the commission of "'an intentional act the purpose of which is to cause injury or which is substantially certain to cause injury.'"[59] Under this definition, "the injury is 'willful' if the act could have been predicted by a reasonable person to almost certainly cause injury."[60] The Eighth Circuit, meanwhile, adopted the most restrictive definition, limiting the definition to intentional torts, requiring that the actor "'desires to cause [the] consequences of his act, or . . . believes that the consequences are substantially certain to result from it.'"[61]

In *Kawaauchau v. Geiger*, the U.S. Supreme Court recently clarified the standard by upholding the 8th Circuit's ruling that debts resulting from a medical malpractice claim are dischargeable in bankruptcy. Using the common understanding of "willful" to mean "deliberate or intentional," the Court explained that in the Bankruptcy Code the word "willful" "modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. . . . Intentional torts generally require that the actor intend 'the consequences of an act,' not simply 'the act itself.'"[62]

Concluding that clinic violence-associated debts are non-dischargeable under § 523(a)(6) is consistent with the Supreme Court's interpretation of "willful and malicious injury." Some clinic violence-associated debts clearly arise from deliberate or intentional injuries such as assault, arson, and bombings. Moreover, many of the monetary judgments are awarded in cases brought under FACE. This federal statute prohibits the use or threat of force or physical obstruction to intentionally injure, intimidate, or interfere with a person because he or she is or has been, or in order to intimidate that person from, obtaining or providing reproductive health services.[63] In requiring a particular intent, FACE punishes forceful or threatening acts that intentionally rather than incidentally interfere with access to reproductive health care. Thus, most debts incurred by judgments under FACE would likely meet the definition of "willful and malicious injury" set forth by the U.S. Supreme Court and should not be dischargeable in bankruptcy.[64]

B. Amending the Bankruptcy Code to Indicate Clearly that Clinic Violence-Associated Debts are Non-Dischargeable Remains Necessary.

That many clinic violence-associated debts may be non-dischargeable under existing sections of the Bankruptcy Code does not make the creation of a specific exception for clinic violence-associated debts unnecessary. As the above analysis indicates, the breadth of § 523(a)(6) has been the subject of considerable litigation and the recent Supreme Court attempt to clarify the standard may in fact result in more litigation. The creation of a specific clinic violence-associated exemption therefore would provide clarity for a specific set of circumstances while simultaneously providing considerable relief for creditors already pushed to the limit by continuous litigation. In cases such as that of Randall Terry, the creditors who would litigate the dischargeability issue for clinic violence-associated debts are the same individuals who, because of the debtor's repeated violations of the law and repeated refusals to cooperate with asset assessment, have been forced to enter into continuous litigation against the debtor.[65] In these instances, a clinic violence-specific exception to dischargeability would provide welcome relief.

In addition, the existing provisions of the Bankruptcy Code may not cover all clinic violence-associated debts. Additional problems are created by the fact that not all state clinic protection laws track the intent requirements of the "willful and malicious injury" exception as defined by the Supreme Court. The recent Supreme Court opinion on § 523(a)(6) sets forth the intent requirement as a "*deliberate or intentional injury*."[66] Colorado's clinic violence law, however, has a lower intent requirement of "*knowingly*."[67] Similarly, Massachusetts's clinic violence law has a *knowingly* requirement,[68] while laws in the District of Columbia[69] and Washington[70] require "*willfully or recklessly*" action. Those guilty of clinic violence under Colorado, Massachusetts, the District of Columbia, or Washington law should not be able to have their clinic violence-associated debts discharged, nor should their victims have to re-litigate intent. Thus, a victim of violence may successfully pursue a claim only to have to prove intent under a different standard in the bankruptcy context; there would be no collateral estoppel.

Moreover, some clinic violence-associated debts may arise in the context of settlement agreements, which typically do not include an admission of liability. Without such an admission, such debts would likely fail to meet the intent requirement of the "willful and malicious injury" exception, thus necessitating additional litigation. Finally, the complexity of some clinic violence cases makes a clinic violence-specific exception to discharge necessary. A single case against an individual may encompass a variety of illegal acts committed over a length of time. A complaint or judgment could involve criminal and civil penalties and fines, punitive and compensatory damages, additional fines resulting from contempt charges, and attorney's fees resulting from the various stages of the case. Moreover, petitioners may face multiple claims under both state and federal law, all with differing intent requirements. Under the existing Bankruptcy Code, parceling out the individual debts and determining whether they fit within the variety of existing exceptions can be a time-consuming and litigious process. A single creditor, already overburdened by the litigation created by the debtor's repeated and flagrant violation of the law, could be forced to endure seemingly endless bankruptcy litigation, without the guarantee that such debts ultimately would be dischargeable. A specific statutory carve-out would make it easier to exclude such debts from discharge.

Conclusion

Individuals owing debts arising from their own clinic violence are not honest debtors. Their flagrant disregard for the law is evidenced both by their repeated anti-choice violence and their efforts to avoid paying the damages, fines, and penalties levied against them for their illegal acts. Moreover, their actions are not consistent with the purpose behind the Bankruptcy Code. As a result, the Bankruptcy Code must be amended to make debts resulting from clinic violence clearly non-dischargeable. Such an amendment would send a clear message to other perpetrators of violence that such debts are not escapable through bankruptcy proceedings. As the critical first step in a broader judgment enforcement strategy that might include enhanced asset-tracing mechanisms and the prevention of fraudulent asset transfers, amending the Bankruptcy Code to provide a specific exception to discharge for clinic violence-associated debts is central to enforcing clinic protection laws to their fullest potential.

March 30, 1999

Notes:

1. Associated Press, "Terry Files for Bankruptcy to Avoid Paying Clinics," *Buffalo News*, Nov. 8, 1998, A8.

2. Jim Henderson, "The Next Crusade: Fresh Out of Jail Where He Served Time for an Abortion Protest, Determined Minister Flip Benham is Setting His Sights on Gays, Disney World and Child Pornographers," *Houston Chronicle*, May 31, 1998, STATE section, p. 1.

3. Associated Press, "Terry Files for Bankruptcy," A8; Voluntary Petition for Bankruptcy, Randall Terry (U.S. Bankruptcy Court, Northern District of New York, No. 98-67080, filed Nov. 5, 1998).

4. Associated Press, "Terry Files for Bankruptcy," A8; Voluntary Petition for Bankruptcy, Randall Terry.

5. Gene Warner, "Opponent of Abortion, Wife File for Bankruptcy," *Buffalo News*, Mar. 22, 1999, C1.

6. *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991), *quoting Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

7. 18 U.S.C.A. § 248 (West Supp. 1998).

8. 18 U.S.C.A. § 248(b), (c) (West Supp. 1998); U.S. General Accounting Office (GAO), Report to the Ranking Minority Member, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, "Abortion Clinics: Information on the Effectiveness of the Freedom of Access to Clinic Entrances Act" (Nov. 1998), 4.

9. *Who Decides? A State-by-State Review of Abortion and Reproductive Rights*, 8th edition (Washington, D.C.: The NARAL Foundation/NARAL, 1999), xiv.

10. *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994).

11. GAO, "Abortion Clinics," 27-28.

12. *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists*, Civ. No. 95-1671-JO, verdict (D. Ore. Feb. 2, 1999); Sam Howe Verhovek, "Creators of Anti-Abortion Web Site Told to Pay Millions," *New York Times*, Feb. 3, 1999, A11. "The Nuremberg Files" website is designed to "collect evidence" against abortion providers, clinic staff, law enforcement officers, judges, and politicians for use in future trials for their "crimes against humanity." The site seeks and lists personal information such as: photos of the individuals, their families, their friends, their houses, and their cars; driving records; license plate numbers; and, names and birth dates of the individuals and their family members. A legend accompanies this list of names under a banner of body parts and simulated dripping blood. This legend indicates "Black font (working); Greyed-out Name (wounded); ~~Strikethrough~~ (fatality)." Within hours of Dr. Slepian's assassination, a line appeared through his name. Ruth Padawer, "Abortion Foe Using Internet to Wage War," *The Record* (Bergen, NJ), Aug. 2, 1998; National Abortion Federation (NAF), "NAF's Report on Anti-Abortion Violence and Related News, February 2 - February 14, 1997," (clinic support update); Neal Horsley, "Visualize Abortionists on Trial: The Nuremberg Files" <http://www.bestchoice.com/atrocity/index. html#list> (1/5/99); Neal Horsley, "Alleged Abortionists and Their Accomplices" <http://www.bestchoice.com/ atrocity/aborts.html> (1/5/99); Ellen Goodman, "Antiabortion Terrorism is No Surprise," *Boston Globe*, Oct. 29, 1998, A27. Although MindSpring, an internet service provider, closed the site shortly after the jury verdict for violating its "appropriate use" policies, an internet server in the Netherlands recently has re-opened the site. Karen Kaplan, "Technology;

Shuttered Antiabortion Site Surfaces on Dutch Server," *Los Angeles Times*, Feb. 23, 1999, C3.

13. Planned Parenthood Federation of America (PPFA), "Benham is Having a Bad Time with the Courts," *What's Up?*, vol. XIV, no. 6 (Feb. 20, 1998): 3.

14. *Operation Rescue-National v. Planned Parenthood of Houston and Southeast Texas, Inc.*, 975 S.W.2d 546 (Tx. 1998); PPFA, "Texas Supreme Court Upholds Damage Award for Clinic Protestors," *What's Up?*, vol. 2, no. 23 (July 10, 1998): 3.

15. Ashbel Green, "Court Rulings Spur Protestors, Providers to Try New Strategies," *Portland Oregonian*, Feb. 3, 1999, A10; Tamar Lewin, "Abortion Foes Elude Hefty Fines: They Use Clever Means to Avoid Millions in Court Judgments," *Star-Tribune*, June 13, 1994, 4A.

16. Associated Press, "Terry Files for Bankruptcy," A8; Voluntary Petition for Bankruptcy, Randall Terry.

17. Jennifer Coburn, "Clinic Violence on the Rise," *NOW National Times* (May/June 1995) <http://www.now.org/nnt/05-95/clinicvi.html> (1/27/99); *Dym v. White*, 1995 WL 547436 (T.D. Cal. Jury Mar. 22, 1995).

18. PPFA, "Two Clinic Arsonists Sentenced," *What's Up?*, vol. XIV, no. 5 (Feb. 13, 1998): 3; *U.S. v. Howard*, No. 1:97cr05084 (E.D. Cal. Feb. 10, 1998).

19. PPFA, "Court Finds for PP of SE Pennsylvania in Federal FACE Suit," *What's Up?*, vol. XIV, no. 6 (Feb. 20, 1998): 3; *Planned Parenthood of Southeastern Pennsylvania, Inc. v. Walton*, 1998 WL 195817 (E.D. Pa. Mar. 31, 1998).

20. Petitioners' U.S. Supreme Court Brief, *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994) (No. 92-780).

21. *National Organization for Women, Inc. v. Scheidler*, No. 86 C 7888, verdict (N.D. Ill. Apr. 20, 1998); Jon Jeter, "Jury Says Abortion Opponents Are Liable: Efforts to Close Clinics Violate Racketeering Law," *Washington Post*, Apr. 21, 1998, A1; National Women's Health Organization, "Anti-Abortion Extremist Conspiracy Cracked Today in Chicago Federal District Court," Apr. 20, 1998 (press release).

22. *Pro-Choice Network of Western New York v. Project Rescue Western New York*, 848 F. Supp. 400 (W.D.N.Y. 1994); Dan Herbeck, "Two Fined $10,000 in Clinic Protest; Abortion Foes Upset Patient, Judge Says," *Buffalo News*, Aug. 14, 1992, A1.

23. Lewin, "Abortion Foes Elude Hefty Fines," 4A.

24. Amy Corneliussen, "Abortion Foes Face Resolute Opponent Oregon: Despite Pickets and Firebombs, Lovejoy Surgicenter Has Terminated Pregnancies for More Than 25 Years," *Los Angeles Times*, Jan. 25, 1998, B3.

25. Lewin, "Abortion Foes Elude Hefty Fines," 4A.

26. Warner, "Opponent of Abortion," C1.

27. Henderson, "The Next Crusade," STATE section, p. 1.

28. *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists*, Civ. No. 95-1671-JO, verdict (D. Ore. Feb. 2, 1999); Verhovek, "Creators of Anti-Abortion Web Site Told to Pay Millions," A11.

29. Patrick McMahon, "Doctors Unlikely to Collect Jury Award: Web Site Will Stay, Creator Says," *USA Today*, Feb. 3, 1999, 3A; Verhovek, "Creators of Anti-Abortion Web Site Told to Pay Millions," A11; Interview Transcript of Roy McMillan, WAPT-TV (ABC) Channel Sixteen, Jackson, Mississippi (Feb. 5, 1999).

30. Tom Bates, "Terrorists or Peaceful Picketers?" *Portland Oregonian*, Jan. 29, 1995, E01; "Abortion Battle: Shifting Tactics," *Portland Oregonian*, Feb. 3, 1999, A10; McMahon, "Doctors Unlikely," 3A.

31. Verhovek, "Creators of Anti-Abortion Web Site Told to Pay Millions," A11.

32. Philip Lawler, *Operation Rescue: A Challenge to the Nation's Conscience* (Huntington, IN: Our Sunday Visitor Publishing Division, 1992), 69.

33. K. Matthew Dames, "Terry Interrogated in Bankruptcy Case," *Press & Sun Bulletin*, Dec. 4, 1998, 1B, 4B; Yolanda Wu, "Randall Terry Seeks Bankruptcy," *The Body Politic*, vol. 9, no. 1 (Jan./Feb. 1999): 13 <http://www.bodypolitic.org/mag/back/art/09jfpg13.htm> (2/26/99); Voluntary Petition for Bankruptcy, Randall Terry.

34. The filing of a bankruptcy petition automatically stays the enforcement of any judgment obtained, or collection of any claim arising, before the filing of the petition. 11 U.S.C.A. § 362(a) (WEST current through P.L. 105-220).

35. Associated Press, "Terry Files for Bankruptcy to Avoid Paying Clinics," A8; K. Matthew Dames, "Terry Claims $1.7M in Debts, Lawsuit Judgments Against Him," *Press & Sun Bulletin*, Nov. 29, 1998, 3B.

36. Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines (U.S. Bankruptcy Court, Western District of New York, No. 99-11231 K, filed Mar. 10, 1999); Warner, "Opponent of Abortion," C1; Eric Goodman, "On the 19th of April . . . A Gathering of Antiabortion Activists Threatens Even More Turmoil for the City Where Barnett Slepian, M.D., Was Killed," *Self* (Apr. 1999): 111; Gene Warner, "Operation Low-Key: Abortion, Pornography, Violence and Teen Sex are the Targets of April's Spring of Life Reunion -- Probably Without the Street Confrontations," *Buffalo News*, Feb. 10, 1999, A1.

37. Kim Murphy, "Anti-Abortion Web Site Fined $107 Million; Courts: Gruesome Internet Destination Constitutes Threat to Doctors, Ruling Says. Some Say Free Speech Is Undercut.," *Los Angeles Times*, Feb. 3, 1999, A1.

38. *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991), *quoting Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

39. 11 U.S.C.A. § 727 (West 1993); Alan N. Resnick, *Bankruptcy Law Manual*, 4th Edition (Boston: Warren, Gorhman & Lamont, 1996 & West Supp. 1997), ¶ 3.01 - 3.03.

40. 11 U.S.C.A. § 523(a) (West 1993 & Supp. 1998); Resnick, *Bankruptcy Law Manual*, ¶ 3.09.

41. 11 U.S.C.A. § 523(a) (West 1993 & Supp. 1998).

42. *Stackhouse v. Hudson*, 859 F.2d 1418, 1423 (9th Cir. 1988).

43. *Stackhouse*, 859 F.2d at 1421-422 and George H. Singer, "Section 523 of the Bankruptcy Code: The Fundamentals of Nondischargeability in Consumer Bankruptcy," 71 *Am. Bank. L.J.* 325, 400 fn. 407 (1997), *both quoting* 129 Cong. Rec. S1622 (daily ed. Feb. 24, 1983).

44. GAO, "Abortion Clinics," 9; NAF, "NAF Violence & Disruption Statistics," Oct. 1998 (factsheet); Feminist Majority Foundation, "1997 Clinic Violence Survey Report: A Five Year Analysis of Anti-Abortion Violence Trends" (Jan. 15, 1998) <http://www.feminist.org/research/cvsurveys/1997/cvsurv_index97.html> (10/20/98).

45. NAF, "Violence & Disruption;" Jim Yardley and David Rohde, "Abortion Doctor in Buffalo Slain; Sniper Attack Fits Violent Pattern," *New York Times*, Oct. 25, 1998, 43.

46. NAF, "Violence & Disruption."

47. 11 U.S.C.A. § 523(a)(7) (West 1993).

48. Singer, "Section 523 of the Bankruptcy Code," 382, *quoting U.S. Dep't of Housing & Urban Dev. v. Cost Control Mktg. & Sales Management of Va., Inc.*, 64 F.3d 920, 927 (4th Cir. 1995), *cert. denied*, 517 U.S. 1187 (1996).

49. *Kelly v. Robinson*, 479 U.S. 36, 51-53 (1986); Singer, "Section 523 of the Bankruptcy Code," 382-83.

50. *See In re Allison*, 176 B.R. 60, 64 (Bankr. S.D. Fla. 1994) (citing *In re Winn*, 92 Bankr. 938 (Bankr. M.D. Fla. 1988); *In re Gedeon*, 31 Bankr. 942 (Bankr. D. Colo. 1983); *In re Marini*, 28 Bankr. 262 (Bankr. E.D.N.Y. 1983)).

51. *See, e.g., U.S. v. Scott*, 1997 U.S. Dist. LEXIS 22496 (D. Conn. Aug. 1, 1997); *U.S. v. Scott*, 1998 U.S. Dist. LEXIS 6716 (D. Conn. Mar. 16, 1998); *U.S. v. Scott*, 1998 U.S. Dist. LEXIS 10420 (D. Conn. June 25, 1998).

52. 11 U.S.C.A. § 523(a)(6) (West 1993).

53. *See In re Gee*, 173 B.R. 189 (9th Cir. BAP 1994) and *In re Sotelo*, 179 B.R. 214 (Bankr. S.D. Cal. 1995).

54. *See Chrysler Credit Corporation v. Rebhan*, 842 F.2d 1257 (11th Cir. 1988).

55. *See In re Bumann*, 147 B.R. 44 (Bankr. D.N.D. 1992); *In re Schoor*, 139 B.R. 466 (Bankr. W.D. Mo. 1992); and *In re Pokorny*, 143 B.R. 179 (Bankr. N.D. Ill. 1992).

56. Singer, "Section 523 of the Bankruptcy Code," 376.

57. Singer, "Section 523 of the Bankruptcy Code," 376-77, *citing* H.R. Rep. No. 95-595, at 365 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6320, and S. Rep. No. 95-989, at 77-79 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5865.

58. Rachel A. Hayes, "*Geiger v. Kawaauhau*: The Eighth Circuit's Interpretation of 'Willful' Under Section 523(a)(6) of the Bankruptcy Code," 66 *UMKC L. Rev.* 451, 458 (1997), *citing Printy v. Dean Witter Reynolds, Inc.*, 110 F.3d 853 (1st Cir. 1997), *Perkins v. Scharffe*, 817 F.2d 392 (6th Cir.), *cert. denied*, 484 U.S. 853 (1987), and *Impulsora del Territorio Sur, S.A. v. Cecchini*, 780 F.2d 1440 (9th Cir. 1986) (all three cases rely on the Collier on Bankruptcy treatise).

59. Hayes, "*Geiger v. Kawaauhau*," 459, *citing Corley v. Delaney*, 97 F.3d 800 (5th Cir. 1996), *Hope v. Walker*, 48 F.3d 1161 (11th Cir. 1995), and *Conte v. Gautam*, 33 F.3d 303 (3d Cir. 1994).

60. Hayes, "*Geiger v. Kawaauhau*," 459.

61. Hayes, "*Geiger v. Kawaauhau*," 459; *Geiger v. Kawaauhau*, 113 F.3d 848, 852 (8th Cir. 1997) (quoting Restatement (Second) of Torts § 8A at 15 (1965)).

62. *Kawaauhau v. Geiger*, 523 U.S. 57 (1998) (citing S. Rep. No. 95-989, p. 79 (1978); H.R. Rep. No. 95-595, p. 365 (1977) ; and Restatement (Second) of Torts § 8A, comment a, p. 15 (1964)).

63. 18 U.S.C.A. § 248 (West Supp. 1998).

64. In some instances, however, a debtor may claim that not all of the injuries incurred by FACE violations were intentional, thus arguing that § 523(a)(6)'s exception to dischargeability should not apply.

65. "Randall Terry's Bankruptcy Claim," Dec. 3, 1998 (statement of Yolanda Wu, Staff Attorney, NOW Legal Defense and Education Fund) <http://www.NOWLDEF.ORG/html/news/pr/120398r.htm> (2/28/99).

66. *Kawaauhau v. Geiger*, 523 U.S. 57 (1998).

67. Colorado's clinic violence law, for example, states that any person who knowingly approaches within eight feet of another person without his or her consent within 100 feet of a health care facility entrance for the purpose of passing a leaflet, displaying a sign, or engaging in oral protest, education, or counseling, or who knowingly impedes another person's entry to or exit from a health care facility, commits a misdemeanor. Colo. Rev. Stat. Ann. § 18-9-122 (West Supp. 1997).

68. Mass. Gen. Laws Ann. ch. 266, § 120E (West Supp. 1998).

69. D.C. Code Ann. §§ 22-1114.1, -1114.2 (Supp. 1998).

70. Wash. Rev. Code Ann. §§ 9A.50.005 to .902 (West Supp. 1998).

NARAL *Promoting Reproductive Choices*

MEMORANDUM

To: Interested Parties
From: NARAL Legal Department
Re: Non-Dischargeable Debts Under Existing Bankruptcy Code
Date: May 3, 1999

Bankruptcy proceedings are an important means of helping *honest* individuals deal with insurmountable debts. After the liquidation of the debtor's assets in bankruptcy, the debtor's remaining liabilities are discharged and he or she is left with a "clean-slate." *Discharge, however, is not an absolute guarantee. In fact, the Bankruptcy Code, title 11 U.S.C.A. Section 523(a) carves out 18 exceptions that bar the discharge of a specific debt while the rest of the debts are discharged.*

These exceptions to dischargeability include: (1) taxes; (2) debts incurred by fraud/falsehood; (3) unscheduled debts; (4) embezzlement, larceny, or fiduciary's fraud; (5) alimony and spousal or child maintenance and support; (6) willful and malicious injury; (7) fines and penalties payable to a governmental entity; (8) student loans: (9) debts for death or personal injury resulting from driving while intoxicated; (10) debts for which the debtor waived, or was denied, discharge in a previous bankruptcy case; (11) debts arising from any act of fraud or defalcation while acting in a fiduciary capacity, committed with respect to any depository institution or insured credit union; (12) malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institution's regulatory agency to maintain the capital of an insured depository institution; (13) payment of an order of restitution issued under title 18, United States Code; (14) debts incurred to pay a non-dischargeable tax to the U.S.; (15) certain debts incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree, or other court order (other than those debts covered by subsection 5); (16) certain condominium and cooperative housing fees or assessments; (17) court fees for the filing of a case, motion, complaint, or appeal, or other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor or the debtor's status as a prisoner; and (18) debts owed under state law to a state or municipality that is in the nature of support and is enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 (et seq.)). 11 U.S.C.A. Section 523(a) (West 1993 & Supp. 1998).

National Abortion and Reproductive Rights Action League
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Phone (202) 973-3000
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10536 Culver Boulevard
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Culver City, CA 90232
Phone (310) 559-9334
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Together, these exceptions reflect a legislative intent to ensure that debtors cannot use bankruptcy to escape debts created by illegal and improper conduct. They also reflect a recognition that some debts are so fundamentally important -- like providing support for one's children -- that they cannot be discharged. Moreover, these exceptions, like the specific exception for debts incurred while driving while intoxicated, demonstrate that Congress has been willing in the past to recognize prevailing public policies dictating the non-dischargeability of certain types of debts. *Within this context, the creation of non-discharge provision specific to clinic violence-associated debts would be consistent with the other exceptions to discharge and their underlying purpose. It is appropriate to enact such a policy now, as NARAL has presented evidence of an emerging pattern on the part of those who commit clinic violence to make themselves judgement-proof and to use bankruptcy as a haven from those the debtors have victimized.* ***Debtors whose debts arise from their own clinic violence are not honest debtors and they should not be able to escape the financial liabilities incurred by their illegal conduct.***

25 YEARS
EXPANDING THE POSSIBILITIES

NEWS RELEASE

FOR IMMEDIATE RELEASE
Tuesday, April 21, 1999

Contact: Dorothy Lohmann
202/588-7619

STATEMENT OF JOAN ENTMACHER, VICE PRESIDENT, NATIONAL WOMEN'S LAW CENTER, ON THE SCHUMER-NADLER AMENDMENT TO THE BANKRUPTCY REFORM ACT OF 1999

Over the past decade, the number of illegal acts -- violence, vandalism, harassment -- committed by abortion opponents has risen dramatically. As the number of these incidents have increased, so has the number of fines and penalties assessed for the clinic-related violence. However, this overt disregard for the law includes a concerted effort to avoid paying judgments entered against them by our nation's courts.

- One such defendant – Randall Terry – has filed for Chapter 7 bankruptcy to avoid paying $1.6 million in legal fines and related fees.

- Two other defendants, Reverend Robert Behn and Bonnie Behn, have sought to avoid paying judgments against them – incurred in part because Bonnie Behn violated a temporary restraining order – by claiming that these debts resulting from clinic violence are dischargeable in bankruptcy.

- Other defendants, including the authors of the infamous "The Nuremberg Files" website, have bragged that they intend never to pay the judgments currently pending against them.

The total disregard that Randall Terry, the Behns and others hold for our legal system is unacceptable. The United States is a nation built on the premise of the rule of law. Ultimately, the actions of these defendants challenges this very concept. In this country, no one is allowed to violate the law simply because he or she disagrees with it. And, a person cannot ignore a court-imposed penalty for violating the law simply because he or she does not want to pay.

The Schumer-Nadler amendment addresses this critical issue by amending the Bankruptcy Code to make clinic violence-associated debts non-dischargeable in bankruptcy. Its enactment would bar defendants like Randall Terry from hiding behind the bankruptcy laws in order to avoid paying the judgments resulting from their illegal acts.

Simply put, this is not a vote about abortion, it is a vote about the rule of law. Our system of government cannot function if certain groups of individuals – whether you agree with

-more-

NATIONAL WOMEN'S LAW CENTER
11 Dupont Circle, NW • Suite 800 • Washington, DC 20036 • (202) 588-5180 • FAX (202) 588-5185

their political views or not – are allowed to ignore the rulings of our courts. In this nation, if your break the law, you are held accountable. None of us are above the law.

The Schumer-Nadler amendment would close a potential loophole that some seek to exploit. Passage of this amendment would send the message that we all must respect the laws of this nation.

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The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families including economic security, education, and health with special attention given to the concerns of low-income women.

NATIONAL WOMEN'S LAW CENTER

25 YEARS
EXPANDING THE POSSIBILITIES

April 19, 1999

Senator Charles Schumer
313 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Schumer,

We are writing in support of your amendment to the Bankruptcy Code that would make clinic violence-associated debts non-dischargeable in bankruptcy. As you know, over the past decade, the number of illegal acts -- violence, vandalism, harassment — committed by abortion opponents has risen dramatically. As the number of these incidents have increased, so has the number of fines and penalties assessed for the clinic-related violence. However, this overt disregard for the law includes a concerted effort to avoid paying judgments entered against them by our nation's courts.

- One such defendant – Randall Terry – has filed for Chapter 7 bankruptcy to avoid paying $1.6 million in legal fines and related fees.

- Two other defendants, Reverend Robert Behn and Bonnie Behn, have sought to avoid paying judgments against them – incurred in part because Bonnie Behn violated a temporary restraining order – by claiming that these debts resulting from clinic violence are dischargeable in bankruptcy.

- Other defendants, including the authors of the infamous "The Nuremberg Files" website, have bragged that they intend never to pay the judgments currently pending against them.

The total disregard that Randall Terry, the Behns and others hold for our legal system is unacceptable. The United States is a nation built on the premise of the rule of law. Ultimately, the actions of these defendants challenges this very concept. In this country, no one is allowed to violate the law simply because he or she disagrees with it. And, a person cannot ignore a court-imposed penalty for violating the law simply because he or she does not want to pay.

Your amendment to the Bankruptcy Code addresses this critical issue. Its enactment would bar defendants like Randall Terry from hiding behind the bankruptcy laws in order to avoid paying the judgments resulting from their illegal acts.

With the law on your side, great things are possible

11 Dupont Circle, NW • Suite 800 • Washington, DC 20036 • (202) 588-5180 • FAX (202) 588-5185

Simply put, this is not a vote about abortion, it is a vote about the rule of law. Our system of government cannot function if certain groups of individuals – whether you agree with their political views or not – are allowed to ignore the rulings of our courts. In this nation, if your break the law, you are held accountable. None of us are above the law.

We thank you for introducing the amendment that addresses this important issue. It would close a potential loophole that some seek to exploit. Passage of this amendment would send the message that we all must respect the laws of this nation.

Sincerely,

Marcia D. Greenberger
Co-President

Nancy Duff Campbell
Co-President

Planned Parenthood®
Federation of America, Inc.

PPFA SUPPORTS REP. NADLER AND SEN. SCHUMER'S BANKRUPTCY AMENDMENT TO MAKE CLINIC VIOLENCE DEBTS NON-DISCHARGABLE

REMARKS BY JACQUELYN LENDSEY
VICE PRESIDENT, PUBLIC POLICY
PLANNED PARENTHOOD FEDERATION OF AMERICA

April 21, 1999

Thank you Representative Nadler and Senator Schumer for your efforts to amend the bankruptcy reform bill to make clinic violence debts nondischargeable. You both have a long history of working to protect women's health ... and Sen. Schumer, we're so happy to have you continuing your commitment to this important issue in the Senate.

Many thousands of Planned Parenthood staff and volunteers nationwide greatly appreciate your work to ensure that anti-choice domestic terrorists are held financially accountable for their violence.

As a provider of reproductive health care and education to nearly 5 million Americans and in some 900 health centers, Planned Parenthood feels the impact of the violence, harassment, and intimidation on a daily basis.

Debtors whose debts arise from clinic violence are not the "honest but unfortunate debtors" for whom the Bankruptcy Code provides a fresh start. These people are terrorists who, in 1998 alone, committed at least 8,971 acts of violence – ranging from murder to bombings to letters threatening the use of anthrax. Your amendment represents an opportunity for members of Congress to show their commitment to fighting the violence that endangers the lives of women and their health care providers.

All Americans must stand together against anti-choice terrorists with the same unity and force that we oppose the Ku Klux Klan and other hate-mongers. We must work together to ensure that women can continue to make responsible choices about their lives and health, and that doctors can work and live without fear. The choice between health care and safety is a trade-off no person should have to make.

Planned Parenthood looks forward to working with you to secure reproductive health and rights into the next century.

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For more information, contact: Sandra Jordan
Planned Parenthood Federation of America
202-973-6395

NEWS RELEASE

FOR IMMEDIATE RELEASE
April 21, 1999

CONTACT: Stephanie Mueller
or Jessica Waters at 202/667-5881

NATIONAL ABORTION FEDERATION CRITICIZES HOUSE JUDICIARY COMMITTEE DEFEAT OF NADLER AMENDMENT TO BANKRUPTCY CODE

States that Declaring Bankruptcy Makes a Mockery of Civil FACE

Washington, DC – At a press conference on Capitol Hill today, the National Abortion Federation called on the Senate to pass Senator Schumer's amendment to the bankruptcy code to ensure that anti-choice criminals who violate the Freedom of Access to Clinic Entrances (FACE) Act cannot avoid paying financial damages. "The FACE Act has resulted in a decrease of certain types of criminal activity outside of abortion clinics," said Vicki Saporta, Executive Director of the National Abortion Federation. "However, in the majority of civil FACE cases, very few financial penalties have been collected because extremists shift their assets prior to engaging in criminal activities."

Saporta continued, "Congress shouldn't be protecting criminals who avoid responsibility by hiding behind bankruptcy laws." She cited the example of Robert and Bonnie Behn, Buffalo activists who declared bankruptcy to avoid paying more than $35,000 in fines owed to Buffalo GYN Womenservices, the clinic where Dr. Slepian worked. "As we speak, anti-choice activists are protesting outside of abortion clinics in Rochester and Buffalo. One of the organizers of the event, Robert Behn, has already declared bankruptcy so that he and his wife will not have to pay the financial consequences of breaking the law. By defeating Representative Nadler's amendment today, the House is sending a message to protesters in Buffalo that they can break the law and will not have to pay the consequences."

She concluded by calling on members of Congress to support the amendment offered by Senator Schumer in the Senate. "Declaring bankruptcy makes a mockery out of the civil side of FACE and allows extremists to get away with breaking the law."

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The National Abortion Federation is the professional association of abortion providers, with member clinics throughout the U.S. and Canada. NAF is dedicated to ensuring that abortion remains safe, legal and accessible.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS • WOMEN'S HEALTH CARE PHYSICIANS
1951

April 21, 1999

The Honorable Jerold Nadler
2334 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Nadler:

On behalf of the American College of Obstetricians and Gynecologists (ACOG), an organization representing 39,000 physicians dedicated to improving women's health care, I am pleased to offer our support for your amendment that would prohibit individuals who have violated the Freedom of Access to Clinic Entrances Act (FACE) from evading the payment of court ordered penalties by filing for bankruptcy. For example, Randall Terry, leader of Operation Rescue, has filed for bankruptcy to avoid paying fines of over $1.6 million as a result of his unlawful activities. The creation of a specific clinic violence-associated exemption would signal Congress's intent that the FACE Act be fully implemented and that clinic violence debts may not be discharged through bankruptcy procedures.

ACOG thanks you for your efforts to ensure that women and providers of women's reproductive health services have truly effective legal remedies when seeking protection from those who commit violent acts against them.

Sincerely,

Ralph W. Hale MD

Ralph W. Hale, MD
Executive Vice President

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS • WOMEN'S HEALTH CARE PHYSICIANS
409 12TH STREET SW WASHINGTON DC 20024-2188
MAILING ADDRESS: PO BOX 96920 WASHINGTON DC 20090-6920

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

Ann – Call Sarah for update
Gene

65386

July 18, 2000

Mr. Gene B. Sperling
Assistant to the President
Old Executive Office Building
Washington, D.C. 20500

Dear Mr. Sperling:

The so-called clinic violence issue appears to be one of the final remaining issues holding up the overdue reform of our bankruptcy laws. Attached is a letter Sen. Hatch recently sent to Sen. Schumer regarding this issue.

In his letter to Sen. Schumer, Sen. Hatch notes that, notwithstanding the statements of some to the contrary, there has not been a single case reported or presented where the current bankruptcy laws were held to allow a perpetrator of clinic violence to seek shelter in the nation's bankruptcy courts. On the contrary, when those who have committed violence have tried to hide behind the bankruptcy laws, they have found their debts were non-dischargeable under current bankruptcy law. The letter goes on to point out that the abortion rights group NARAL recognized in a 1999 publication that "[c]oncluding that clinic violence-associated debts are non-dischargeable under section 523(a)(6) is consistent with the Supreme court's interpretation of [current bankruptcy law's] "willful and malicious injury." Therefore such true debts are non-dischargeable.

To date, Sen. Hatch has received no response to his letter. Nor has anyone adequately explained why the neutral, alternative language we have crafted is insufficient. I send this letter to you in the hope that, given the relative importance of this issue to the White House, you might be willing to explain the need for the so-called clinic violence amendment.

Sincerely,

Manus Cooney
Chief Counsel & Staff Director

Pls. make copy for Hatter & then file under "Bankruptcy - Clinic Violence"

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 13, 2000

The Honorable Charles Schumer
313 Hart Senate Office Building
Washington, DC 20510

Dear Chuck:

I am writing you regarding your clinic violence amendment to the bankruptcy reform legislation. This amendment appears to be one of the final remaining issues holding up the overdue reform our bankruptcy laws truly need to both stop the abuse of the system by those who are able to pay back a portion of their debts and to implement new consumer protections such as enhanced credit card disclosures, which you played a major role in drafting.

I respect your views and the general objective of your amendment to prevent criminals from paying their debts to society or to others by using our bankruptcy laws. Furthermore, I am committed to addressing any legitimate abuse of our bankruptcy laws. However, I am concerned that some who oppose the broadly supported proposed reforms have capitalized on the issue of abortion clinic violence and have spread some misconceptions regarding this issue. Such misconceptions, unfortunately, appear to be jeopardizing passage of the important bankruptcy reform legislation.

For example, in a document circulated by one of our colleagues, it was represented that "[t]he Schumer amendment prevents a documented abuse of the bankruptcy system . . . ." and the compromise language that is in the conference report "would continue to allow many perpetrators of clinic violence to seek shelter in the nation's bankruptcy courts."

There has not been a single case reported or presented where the current bankruptcy laws were held to allow a perpetrator of clinic violence to "seek shelter in the nation's bankruptcy courts," nor is this a "documented abuse" of the system. On the contrary, when those who have committed violence have tried to hide behind the bankruptcy laws, they have found their debts were non-dischargeable under current bankruptcy law. Given this, I do not think that the amendment you offer is necessary.

Indeed, the abortion rights group NARAL recognized in a 1999 publication that "[c]oncluding that clinic violence-associated debts are non-dischargeable under section 523(a)(6) is consistent with the Supreme court's interpretation of [current bankruptcy law's] "willful and malicious injury." Therefore such true debts are non-dischargeable.

Even given such interpretation of current law, and though the House-passed bill had no abortion-related provision, the current reform legislation goes further and incorporates compromise language that would expand current law and further make debts arising from willful and malicious *threats* also non-dischargeable. This is done in a politically neutral manner and protects debts from *all* threats of injury irrespective of the political message of the protestors. In addition, knowing that one of your biggest concerns regarding this subject is the ability of perpetrators to avoid debts arising from settlement or contempt orders, the compromise language specifically covers debts from settlement orders and violations of other orders of the court.

I appreciate your consideration of these points and would welcome any response you might have.

Sincerely,

Orrin G. Hatch
Chairman