judgments for violating buffer-zone and bubble-zone injunctions are nondischargeable, it would likely seem a small step to hold that judgments for violating bubble-zone statutes are also nondischargeable.

4. THE MAGNITUDE AND NATURE OF THE JUDGMENTS AT ISSUE

Proposed §523(a)(20) is not confined to compensatory damages. The statutes at issue authorize punitive damages, liquidated statutory damages, civil penalties, attorneys' fees, expert witness fees, and criminal fines. Their purpose is to deter and punish, not just—or even principally—to compensate for any harm done. In fact, awards of actual compensatory damages are quite rare. The plaintiffs' preference for liquidated damages and penalties is most important in those cases in which there is no obstruction in the ordinary meaning of the word, or only brief and marginal obstruction. In such cases, there is little or no actual damage, but there still be can substantial monetary judgments.

FACE authorizes $5,000 per violation in statutory damages, at the election of plaintiffs, either private or governmental. 18 U.S.C. §248(c)(1)(B) (2000). In actions by the United States or by any State, it authorizes a civil penalty of $10,000 per protestor for the first non-violent physical obstruction, and $15,000 per protestor for each subsequent nonviolent physical obstruction. 18 U.S.C. §§248(c)(2)(B) and 248(c)(3)(B) (2000).

The lower federal courts have held that the statutory damages are per violation, not per protestor. So if ten people combine to block a clinic entrance, a single judgment of $5,000 in statutory damages (plus costs and attorneys' fees) may be entered jointly and severely against them. *United State* v. *Gregg*, 226 F.3d 253, 257–60 (3d Cir. 2000), *cert. denied*, 523 U.S. 971 (2001).

But this ''per violation'' protection does not prevent multiple awards for multiple violations, and each alleged act of interference may be parsed as a separate violation. Moreover, civil penalties may be awarded against each protestor, and civil penalties and statutory damages may be awarded in the same case for the same violation. Thus a federal court has entered $80,200 in judgments against four members of a single family, for ten separate violations, none of them violent and none of them creating anything like an effective ''blockade'' of the clinic. *People* v. *Kraeger*, 160 F. Supp. 2d 360, 377–80 (N.D.N.Y. 2001). And of course there is no federal limit on the damage and penalty provisions that states might enact for judgments that would be nondischargeable under §523(a)(20).

5. THE EFFECT OF WITHHOLDING DISCHARGE

I am not an expert on bankruptcy law or debtor-creditor law, and I have not done extensive research on the options available to the protestor with a nondischargeable judgment beyond his capacity to pay. But the basics are clear enough to anyone with credit cards and a mortgage. If you are unable to pay, the creditors first threatens your credit rating, then your possessions; eventually, if there is enough at stake, the creditor sends the sheriff to seize your possessions. If you are unable to pay and unable to discharge the debt in bankruptcy, the threats and seizures would never end.

For the rest of his life, the protestor subject to a nondischargeable judgment would find it difficult or impossible to get credit. He could not get a mortgage; he could not get a loan for a new car. The creditor might be an abortion clinic motivated to make examples of pro-life protestors; such a creditor could make vigorous and continuing efforts to collect for as long as the protestor lived. In most states, the protestor's home could be seized, his wages could be garnished, his financial accounts could be emptied. In some states, even his furniture could be seized. All or part of everything the protestor ever earned or acquired for the rest of his life could be seized by the abortion clinic creditor, until and unless the judgment was paid in full, with interest.

A large and nondischargeable debt, beyond one's capacity to pay, especially in the hands of a hostile and motivated creditor, is a financial death sentence. That is what even peaceful pro-life protestors have to fear if proposed §523(a)(20) is added to the existing aggressive judicial interpretation of FACE and similar laws. I believe that any more optimistic interpretation of the bill is wishful thinking.

Very truly yours,

MARY ANN GLENDON,
Harvard Law Professor.

SECRETARIAT FOR PRO-LIFE ACTIVITIES,
Washington DC, November 13, 2002.

DEAR MEMBER OF CONGRESS:

Disagreements have arisen in Congress over the conference report on the Bankruptcy Abuse Prevention and Consumer Protection Act, particularly over Section 330 on the dischargeability of debts arising from sit-ins at abortion clinics. A legal analysis of this provision by our Office of General Counsel is enclosed. Based on this analysis, we have a serious concern about the form in which the bankruptcy bill is being presented for final passage.

The bishops' conference has always strongly condemned any resort to violence in the pro-life struggle. We have never endorsed, or taken a position on, the practice of conducting sit-ins or other forms of nonviolent civil disobedience at abortion clinics. However, we have strongly opposed the Freedom of Access to Clinic Entrances Act (FACE) as a discriminatory and ideologically motivated attack on the rights of peaceful pro-life demonstrators. The current language on protesters in the bankruptcy bill closely parallels the language of FACE, and will be used to impose another layer of penalties upon protesters whose only offense was to place their bodies in the path of those who take innocent children's lives.

The discriminatory nature of this provision seems clear. It could be used to take away the savings, homes and other property of low- or middle-income peaceful protesters to pay fines and the attorneys' fees of their opponents—a form of punishment now reserved chiefly for those who are guilty of inflicting willful and malicious injury upon others. This penalty would apply even if the protesters caused no harm to person or property but only ''interfered'' with abortions.

We hope the House will reject the Rule on the Conference Report so this unfair and discriminatory provision can be removed.

Sincerely,

GAIL QUINN,
Executive Director.

OFFICE OF THE GENERAL COUNSEL,
Washington, DC, September 12, 2002.

MEMORANDUM

We have been asked for an analysis of the Schumer amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. 333.

SUMMARY

Under existing law, a pro-life demonstrator seeking bankruptcy protection may not discharge a debt for a judgment arising from injuries he or she intentionally causes. The Schumer amendment would expand the law by preventing a demonstrator from discharging a debt (a) based on lesser degrees of cupability, *i.e.*, when the debtor did not intend or cause injury to person or property, and (b) when the demonstrator, regardless of his or her state of mind, commits a second violation of a court order protecting a clinic, even if the violation was not intended to, and did not, interfere with clinical access.

An exception in the amendment for expressive conduct protected from legal prohibition by the First Amendment does not change this analysis. Obviously, with or without the exception, Congress lacks the power to prohibit by the First Amendment does not change this analysis. Obviously, with or without the exception, Congress lacks the power to prohibit conduct protected from prohibition by the First Amendment.

The amendment is not limited to violent or even crimical conduct. For reasons discussed below, it seems likely that the amendment will have a disproportinate impact on pro-life demonstrators.

ANALYSIS

Among the debts that may not be discharged in bankruptcy is any debt ''for willful and malicious injury by the debtor to another entity or to the property of another entity.'' 11 U.S.C.§523(a)(6). The word ''willful'' in section 523(a)(6) ''modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.'' *Kawaauhau* v. *Geiger*, 523 U.S. 57, 61 (1998) (original emphasis). ''[D]ebts arising from recklessly or negligently inflicted injuries do not fall within the compass of §523(a)(6).'' *Id.* at 64. Debts arising from actions that cause no injury at all are likewise outside the scope of section 523(a)(6).

Section 523(a)(6) bars the discharge of debts resulting from judgments against pro-life activists arising from deliberate or intentional injuries that they cause. *In re Treshman*, 258 B.R. 613 (Bankr. D. Md. 2001) (debt for intentional injury resulting from violation of Freedom of Access to Clinic Entrances Act was not dischargeable in bankruptcy); *In re Bray*, 256 B.R. 708 (Bankr. D. Md. 2000) (debt for intentional injury resulting from violation of FACE was not dischargeable in bankruptcy); *In re Behn*, 242 B.R. 229 (Bankr. W.D. N.Y. 1999) (debt for intentinal injury resulting from pro-life demonstrator's violation of temporary restraining order was not dischargeable in bankruptcy). There is some authority that an injury is *ipso facto* intentional when it results from violation of a court order directed specifically at the particular debtor, *Behn*, 242 B.R. at 238, but the same court left ''to another day the question of the applicability of §523(a)(6) in other fact patterns, such as if there had been no court order directed specifically at the debtor, and instead the debt arose out of a judgement for trespass or menacing.'' *Id.* at 239 n. 6. Criminal trepass statutes generally do not require injury in the sense of actual damage to property or an intent to cause such damage; unauthorized entry or remaining unlawfully on property is usually sufficient. *See* 75 Am.Jur.2d Trespass §164.

The Schumer amendment can be divided into three parts. It prevents the discharge in bankrupty of any debt from a judgment, order, consence order, decree, or settlement agreement arising from—

(1) The debtors violation of any Federal or State resulting from intentional actions of the debtor that by force, threat of force, or physical obstruction, does any of the following—

Intentionally injures any person;

Intentionally intimidates any person;

Intentionally interferes with any person;

Attempts to injure, intimidate, or interfere with any person for any of the following reasons—

Because that person is or has been obtaining or providing lawful goods or services;

To intimidate that person from obtaining or providing lawful goods or services; or

To intimidate any other person or class of persons from obtaining or providing lawful goods or services.

(2) the debtor's violation of any Federal or State statute resulting from intentional actions of the debtor that—

Intentionally damage or destroy the property of a facility because it provides lawful goods or services, or

Attempts to damage or destroy the property of a facility because it provides lawful goods or services.

(3) a violation of a court order protecting access to a facility or person that provides lawful goods or services, or that protects the provision of such goods or services, if—

The violation is intentional or knowing, or

The violation occurs after a court has found that the debtor previously violated such a court order, or any other court order protecting access to the facility or person.

The Schumer amendment does not require an intentional injury. Parts 1 and 2, dealing with violation of federal or state law, require only an intentional act. The phrase ''intentionally injure, intimidate, or interfere with'' does not require intentional injury because the word ''or'' is used. Part 3 requires only an intentional or knowing violation of a court order, or a second violation of a court order, intended or not. The amendment would therefore expand existing law by stripping pro-life demonstrators of bankruptcy protection for injuries they did not intend, or only attempted but did not cause. Indeed, the amendment does not even require any injury in the sense of actual damage to person or property. It would remove bankruptcy protection in cases where there is neither damage to person or property nor any intent or attempt to cause such damage.

The amendment is not limited to violent crime. Physical obstruction or violation of a court order is sufficient to trigger the amendment. No crime is necessary, only violation of some federal or state statute (not necessarily a criminal statute) or court order.

It seems likely that the amendment will have a disproportionate impact on pro-life demonstrators and be invoked most frequently against them. Though broader in its current form, the amendment is based on FACE and substantially tracks it. For the most part, other federal crimes are not implicated. The amendment uses the phrase ''physical obstruction,'' for example, which appears nowhere in the federal criminal code except in FACE. Words like ''intimidate'' appear elsewhere in the code, but usually not in reference to the receipt or provision of goods or services. Most federal crimes do not carry a civil remedy; FACE does. Thus, the Schumer amendment is carefully designed to impact demonstrators. There may be other instances in which the amendment would be theoretically applicable (e.g., environmental protestors who disrupt logging operations), but abortion seems the most common instance in which the targets of protest regularly allege interference with their business and often seek large judgments against their adversaries.

The amendment seems unfair not only because it has the practical effect of singling out demonstrators, but because those demonstrators, like others, are presently subject to the nondischargeability of debts for intentional injuries. Present exceptions to dischargeability for particular crimes generally involve intentional financial wrongdoing or conduct in which the debtor created a grave and unjustifiable risk to human life. Had Congress intended to remove bankruptcy protection for debt from some broader category of injury or conduct, it is unclear why that penalty should assume a form, as this amendment does, that in practical terms will be used only or primarily to deprive demonstrators, not others, of bankruptcy protection—unless, of course, the intent were to punish or chill speech, which is constitutionally impermissible.

To say that a demonstrator can avoid the problem by not violating an order or statute misses the point. The point is not to absolve unlawful conduct, but to fashion criminal and bankruptcy penalties that are proportionate to the gravity of the offense and the degree of injury and culpability—precisely what the law has traditionally done when assessing penalties. A minor or technical violation of a trespass statute resulting in no actual harm to person or property would hardly seem the sort of conduct that should trigger the severe nondischargeability penalty that this amendment would impose.

Perhaps even more significant is the risk that the amendment will chill lawful conduct. The amendment includes an exception for expressive conduct protected from legal prohibition by the First Amendment, but that does not change what the bill does or its likely chilling effect on protesters. Congress already lacks the power to prohibit conduct that is protected from prohibition by the First Amendment, and no bill can change that, yet anecdotally we hear of instances in which people decline to participate in legitimate pro-life demonstrations because of concerns about liability. Those concerns are not exaggerated give present misuse of the federal racketeering statute. People should not have to fear putting their assets at risk simply by doing what the Constitution permits. The amendment, in my view, is likely to heighten that fear and further deter legitimate and lawful protest.

MICHAEL F. MOSES,
Associate General Counsel.

Mr. FROST. Mr. Speaker, I yield 10 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I rise today in opposition to this rule. For my colleagues on both sides of the aisle who have profound concerns about this bill, I hope that you will realize that the crucial vote will be on the rule, not the bill. Because the rule is where it will have real effect.

There are many reasons to oppose this bill. This bill is opposed by almost all bankruptcy professionals, people who know anything about bankruptcy. It is opposed by organized labor, by almost every women's group, by children's advocates, by every consumer group, by civil rights organizations, and by most bankruptcy scholars. It is supported and is being pressed forward by a coalition of banks, credit card companies and other business interests who want to profit exorbitantly at the expense of families and small businesses at a time of crisis.

It is shocking that at a time when the American people are rightly outraged at the illegal and unethical machinations of many in corporate America, at a time when thousands of Americans are losing their jobs, at a time when many businesses large and small are in bankruptcy trying to stay alive and reorganize and preserve jobs, it is shocking that we would even be considering this kind of a special interest bill that will enrich lenders at the expense of families, jobs and small businesses and will force many businesses into liquidation and job destruction instead of reorganization and survival. Whatever Members may have thought of this legislation in the past, I hope they will take a very careful look at the bill we have before us today and think about what has happened since this bill was first proposed 5 years ago and since it was really debated on the floor at great length and people may have made up their minds.

We know that the lenders who have been demanding this bill, the big credit card companies and the big banks, are highly profitable. They are making big money off our constituents with high interest rates that have not come down with drops in bankruptcy or the prime rate. The prime rate is the lowest it has ever been. Have credit card interest rates come down?

My colleague from the State of Virginia says that there is a hidden tax of $400 per family because of deadbeats who do not pay. That is nonsense. What he is really saying is that the credit card companies would lower their interest rates if this bill passed. The prime rate has gone down by 8 or 9 points. Have the credit card companies lowered their interest rates? Credit card companies will never lower their interest rates because it is an oligopolistic business and they gouge from the people what they can gouge.

We know that many large banks have played a role in some of the more egregious financial scandals that have robbed workers and investors of their life's savings and their jobs. We know that this bill which serves their interests and their interests only will make it easier for these same large institutions to squeeze small debtors even more, to squeeze small businesses even more, to place outrageous and undue pressure on people to give up their right to a fresh start, and to make even larger profits at the expense of the most vulnerable.

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We know that the millionaires exemption, the unlimited homestead exemption in six States, will not be changed, will not be capped. The bill will only limit that outrageous loophole that allows one to put all of one's money into one's mansion, go bankrupt, and still have $10 million in the mansion, and this bill will limit that only if a wealthy debtor manages to get found guilty of a specific type of fraud or of a limited number of crimes or the most extreme torts resulting in serious physical injury or death. It does nothing, let me say that again, this bill does nothing about a multimillionaire who wants to shield millions of dollars in assets from creditors in a mansion, whether those creditors are small businesses or other lenders or in some cases the taxpayers. But the small debtor, him we will get.

What this bill will do is squeeze the more than 1½ million Americans who