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. 18 U.S.C. §248(b)(1) (2000).

4. THE MAGNITUDE AND NATURE OF THE JUDGMENTS AT ISSUE

Proposed §523(a)(6) is not confined to compensatory damages. The statutes at issue authorize for both civil and criminal injunctions, liquidated statutory damages, civil penalties, attorneys’ fees, expert witness fees, and criminal fines. Their purpose is to deter and punish, not just—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 especially important in the 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 can be 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 equal to twice the amount of any non-violent physical obstruction, and $15,000 per plaintiff for each subsequent non-violent physical obstruction. 18 U.S.C. §§248(c)(1)(B) (2000).

The lower federal courts have held that the statutory damages are per violation, not per perpetrator. 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 severally against them. United State v. Gregg, 220 F.3d 263, 270 (3d Cir. 2000), cert. denied, 521 U.S. 971 (2001).

But this “per violation” protection does not prevent multiple awards for multiple violations, and each alleged act of obstruction in a single case may be prosecuted as a separate violation. Moreover, civil penalties may be awarded against each perpetrator, 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 separate violations of the same clause. In re Treshman, 242 B.R. at 238, but the 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 judgment for trespass or menacing.” Id. at 239 n. 6. Criminal trespass statutes generally do not require injury in the form 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 bankruptcy of any debt from a judgment, order, consenue order, decree, or settlement agreement arising from—

(a) the discharge of a debtor that by force, threat of force, or physical obstruction, does any of the following:

(1) Intentionally injures any person;

(2) Intentionally intimidates any person;

(b) and 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 the protester.

An exception in the amendment for expressive conduct protected from legal prohibition by the First Amendment does not change this analysis. Obviously, we have strongly opposed the Freedom of Access to Clinic Entrances Act, H.R. 333."

Sincerely,

GAIL QUINN, Executive Director,
OFFICE OF THE GENERAL COUNSEL,

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 arising from injur- ies he or she intentionally causes. The Schumer amendment would expand the law by preventing a demonstrator from discharging a debt owed as a result of nonviolent civil disobedience at abortion clinics. The current language on protesters in the bankruptcy bill closely parallels the language of FACE, and will be used to impose additional layers of penalties upon protesters whose only offense was to place their bodies in the path of those who took innocent children’s lives.

The discriminatory nature of this provision seems clear. It could be used to take away the property and earnings of low- or middle-income peaceful protesters to pay fines and the attorneys’ fees of their opponents—a form of punishment now reserved for the highest degree 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,

DEAR MEMBER OF CONGRESS:

Disagreements have arisen in Congress over the conference report on the Bankruptcy Abuse Prevention and Consumer Protection Act, which amends Section 523(a)(6) 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 endorsed 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, nor take the policy, the practice of conducting sit-ins or other forms of nonviolent civil disobedience at abortion clinics. However, we have strong opposed the Freedom of Access to Clinic Entrances Act (FACE) as a discriminatory provision in Section 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 judgment for trespass or menacing.” Id. at 239 n. 6. Criminal trespass statutes generally do not require injury in the form 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.

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