Navigating *Bartenwerfer* and Finding a Path of Protection: Helping Those with Coerced Debt Find Relief in Bankruptcy

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[*] This article is dedicated to my grandmother, Shirley Fisher Kline, who ensured I knew a woman's most valuable assets are her education and financial freedom. Thank you to my parents, Craig and Carol White, who support me fiercely, unconditionally, and lovingly, and have taught me, through my father's career as an attorney and my mother's career in nonprofit work, the importance of advocacy and leading with compassion: two themes I hope readers feel throughout this article. Additional thanks to all those at the Bankruptcy Court for the Western District of Texas who so kindly took a first-year law student under their wing, piquing my interest in a legal field that ultimately laid the foundation for this article. Special thanks to my sister, Katie, and friends, Gianna, Meli, and Vanesa, for their cheerleading as I wrote my first draft. Lastly, thank you to the staff writers and Editorial Board of The Journal of Gender, Race & Justice for their hard work preparing this article for publication. As you can see, it takes a village, and I'm blessed to have mine.

I. INTRODUCTION

Abuse and debt are often silently, but intimately connected. In fact, it is estimated that financial, or economic, abuse occurs in 94 to 99% of relationships impacted by domestic violence, also known as intimate partner violence.[1] However, even on its own, "the harms of economic abuse are as serious as physical forms of domestic violence."[2] Financial abuse is a broad term, encompassing any behavior that controls "'a person's ability to acquire, use, and maintain economic resources, thus threatening their economic security.'"[3] Experts have categorized two types of economic abuse: restriction and exploitation.[4] Acts of economic restriction, such as controlling spending, interfering with income production, or withholding financial information, typically limit a person's economic resources.[5] Economic exploitation, on the other hand, occurs when someone uses a partner's resources "for one's own advantage" in an improper way, such as creating debt in a partner's name.[6] The latter is the category of financial abuse in which experts have placed coerced debt. Coerced debt, created through fraud, coercion, and or manipulation, is financial exploitation that manifests itself through consumer credit.[7]

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[1] Marissa Jeffery & Ann Baddour, *Abuse by Credit: The Problem of Coerced Debt in Texas*, TEX. APPLESEED, https://report.texasappleseed.org/abuse-by-credit-the-problem-of-coerced-debt-in-texas [https://perma.cc/V23T-WNZC]; *Financial Abuse Fact Sheet*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, https://nnedv.org/resources-library/financial-abuse-fact-sheet [https://perma.cc/AY9L-6TAA].

[2] Megan E. Adams, *Assuring Financial Stability for Survivors of Domestic Violence: A Judicial Remedy for Coerced Debt in New York's Family Courts*, 84 BROOK. L. REV. 1387, 1395 (2019) (referencing the Supreme Court's acknowledgement of the severity of economic abuse).

[3] Adrienne Adams & Angela Littwin, *Understanding Coerced Debt*, CTR. FOR SURVIVOR AGENCY & JUST. 3, https://csaj.org/wp-content/uploads/2022/10/CSAJ-CCD_Part-2_Understanding-Coerced-Debt.pdf [https://perma.cc/DJL2-JFLY] (quoting Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 564 (2008)).

[4] *Id.*

[5] *Id.*

[6] *Id.* at 4.

[7] *See* Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L.

A. Furiously Frequent: Financial Abuse Happens More Than You Might Think

In recent decades, the frequency of consumer lending has not only increased but become a staple in the United States economy. Last year the Federal Reserve Bank reported Americans hold a record amount of credit card debt, approximately $988 billion.[8] Breaking this statistic down to a more digestible figure, it is estimated that the average American carries roughly $5,733 in credit card debt, with some carrying much more.[9] As lending has become more frequent in American commerce, so has coerced debt: consequentially creating serious public policy concerns related to intimate partner violence and fraud.[10] For instance, victims of coerced debt are more likely stay in dangerous relationships. A 2012 survey published by the Mary Kay Ash Foundation found three out of four domestic violence victims stayed with their abusive partner longer due to economic reasons.[11] Furthermore, of the 85% of victims who returned to their partners, a "significant number cited an inability to address their finances" as a reason for continuing the relationship.[12] Another survey, conducted by the Institute For Women's Policy Research ("IWPR"), further substantiates this reality. In its research, IWPR found that 73% of respondents claimed they "stayed with

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REV. 951, 954 (2012) (listing ways coerced debt is created); *see also Financial Abuse*, PA. COAL. AGAINST DOMESTIC VIOLENCE, https://www.pcadv.org/financial-abuse/ [https://perma.cc/LP9H-JTCK] (offering a general overview as to how financial abuse manifests and data on how it impacts domestic abuse survivors); *see also Facts about Domestic Violence and Economic Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, https://assets.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf [https://perma.cc/5DKU-CR7Z] (providing examples of economic abuse and resources for victims).

[8] Cheyenne DeVon, *Americans Owe Nearly $1 Trillion in Credit Card Debt—Here's the Breakdown by Age*, CNBC (June 9, 2023, 8:30 AM), https://www.cnbc.com/2023/06/09/how-much-credit-card-debt-americans-hold-by-age.html [https://perma.cc/D2BW-GHQ6].

[9] *Id.*

[10] *See generally* SURVIVING ECON. ABUSE, STATISTICS ON FINANCIAL AND ECONOMIC ABUSE, https://survivingeconomicabuse.org/wp-content/uploads/2020/11/Statistics-on-economic-abuse_March-2020.pdf [https://perma.cc/PXV6-ZEYS] (demonstrating the global presence of financial abuse).

[11] NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 1, at 2 (reporting on a 2012 survey that interviewed those in domestic violence shelters).

[12] *Id.*; *see also About Financial Abuse*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, https://nnedv.org/content/about-financial-abuse/#:~:text=Research%20indicates%20that%20financial%20abuse,returning%20to%20an%20abusive%20partner [https://perma.cc/C3F5-E65R] (illustrating how financial abuse is one of the main reasons why domestic abuse victims cannot not leave the relationship).

an abusive partner longer than they wanted or returned to them for economic reasons."[13]

The IWPR survey offers alarming, but much needed data on the consequences of financial abuse when it comes to debt. This survey gathered responses from 164 domestic abuse survivors throughout 11 states and the District of Columbia.[14] The responses received by IWPR further illustrate the "long-lasting health, educational, and economic consequences" of intimate partner violence.[15] IWPR estimates that the direct lifetime costs of intimate partner violence are approximately $103,767 for women and $23,414 for men.[16] This figure was calculated by considering consequences of domestic violence such as health problems and medical expenses, lost productivity, and criminal justice costs.[17] For instance, the survey found that 83% of their respondents reported their abusive partners "disrupted their ability to work," and of those who reported a disruption, 70% said they were unable to have a job either when they "wanted or needed one" and that 53% "lost a job because of the abuse."[18] All of these disruptions factor into the direct lifetime costs of intimate partner violence, but its consequences do not stop there. IWPR also reported that three out of four respondents said their abusers "took money from them against their will" by seizing their paychecks, savings, or income received from public benefits.[19] In regard to coerced debt, the responses received in the IWPR survey are startling. IWPR reported that 59% of its respondents indicated an abusive partner had "harmed their credit score" whether by leaving bills unpaid, taking out credit, defaulting on loans, and/or maintaining high credit card balances.[20] Of those 59%, 66% indicated they could not get a loan as a result of their partner's behavior, 63% said the

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[13] CYNTHIA HESS & ALONA DEL ROSARIO, DREAMS DEFERRED: A SURVEY ON THE IMPACT OF INTIMATE PARTNER VIOLENCE ON SURVIVORS' EDUCATION, CAREERS, AND ECONOMIC SECURITY, 8 (2018), https://iwpr.org/wp-content/uploads/2020/09/C475_IWPR-Report-Dreams-Deferred.pdf [https://perma.cc/J6KQ-BGHJ].

[14] *Id.* at 8.

[15] *Id.*

[16] *Id.* at 45.

[17] *Id.* at 8.

[18] *Id.* at 9.

[19] *See* HESS & ROSARIO, *supra* note 13, at 9 (listing forms of financial abuse respondents suffered); *see also* Sarah Brady, *Coerced Debt: An Insidious Type of Financial Abuse*, FORBES (Oct. 18, 2022, 1:02 PM), https://www.forbes.com/advisor/personal-finance/coerced-debt-financial-abuse [https://perma.cc/SJT2-X8W6] (sharing the story of one woman whose ex-husband took our money from her savings, defaulted on loans, and left her with roughly $100,000 of debt).

[20] HESS & ROSARIO, *supra* note 13, at 9.

damage prevented them from obtaining housing, and 21% said it prevented them from employment opportunities.[21]

The above-mentioned surveys contextualize financial abuse and demonstrate how it has quickly become a leading factor forcing domestic violence victims to stay in dangerous relationships rather than seek help.[22] This is often because coerced debt negatively impacts a victim's ability to be financially independent by directly interfering "with victims' attempts to establish self-sufficiency."[23] When dealing with coerced debt, victims are more prone to have difficulty obtaining housing, finding a job, and securing loans because of damaged credit scores.[24] These resources are some of the most vital for domestic abuse survivors to build an independent life.

When someone attempts to leave a relationship where intimate partner violence is present, they often need and want some form of financial rehabilitation.[25] One available avenue is bankruptcy. This option is not merely a hypothetical path, but routinely used, substantiating the connection between abuse and debt.[26] The 2007 Consumer Bankruptcy Project reported that "17.8% of the 258 married and cohabitating female participants experienced intimate partner abuse in the year they filed for bankruptcy."[27] This statistic demonstrates debtors are experiencing intimate partner violence. Furthermore, as earlier studies have shown, it is reasonable to deduce that where there is intimate partner violence, there is likely financial abuse, more specifically coerced debt. Thus, although intimate partner

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[21] *Id.*

[22] *See generally* Littwin, *supra* note 7 (reporting interview responses on the financial challenges of leaving an abusive relationship); *see also* Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 377 (2013) [hereinafter *Escaping Battered Credit*] (explaining that a bad credit score is a main reason people stay in abusive relationships impacted by coerced debt); *see also* Adrienne E. Adams et al., *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, 26 VIOLENCE AGAINST WOMEN 1324, 1324 (2020) (providing data to the frequency of financial abuse in the United States).

[23] *Escaping Battered Credit*, *supra* note 22, at 376.

[24] *See* Littwin, *supra* note 7, at 955 (explaining the effects of the increase in nontraditional use of credit reports in the United States); *see also Escaping Battered Credit*, *supra* note 22 (reporting that more than a dozen of the interviewees described negative credit scores "prevented their clients from obtaining housing, employment, and basic utilities").

[25] *See* HESS & ROSARIO, *supra* note 13, at 13 (reporting respondents indicated economic support such as "credit repair services and debt remediation, cash assistance, and financial counseling" are vital resources that can make the difference between staying with and leaving an abusive partner).

[26] *See* Adams et al., *supra* note 22, at 1326 (analyzing the percentages of female debtors in bankruptcy who also experienced intimate partner abuse).

[27] *Id.*

violence, coerced debt, and bankruptcy may appear as isolated public policy and legal issues, the available research and scholarship on all three of these topics call attention to the ways in which coerced debt is weaponized against victims of intimate partner violence seeking financial rehabilitation. The aftermath of these issues coming into conflict with one another are severe, dangerous, and potentially life shattering. Consequently, coerced debt demands an effective, efficient, and equitable legal solution that will ease the minds of some of society's most vulnerable and unfortunate.

B. Connecting the Dots Between Financial Abuse and Debt

Despite its prevalence in intimate partner relationships, financial abuse is often overlooked and ignored in consumer debt discussions. The lack of awareness surrounding economic abuse in American culture is "reflected in the U.S. legal system."[28] Within the last year, the Supreme Court held a debtor, regardless of their own culpability, can be liable for their partner's fraud and unable to discharge their debt in bankruptcy.[29] While it is too early to see the effects of the Supreme Court's decision, it has the potential to cause dangerous consequences for those in abusive intimate partner relationships impacted by debt. Thus, this article aims to discuss how the recent Supreme Court decision in *Bartenwerfer v. Buckley*[30] goes against the fundamental principle of the Fresh Start Doctrine in bankruptcy, explore the public policy concerns the Supreme Court's opinion raises when thought of in relation to coerced debt, and lastly, propose an effective legislative solution that would better protect victims of coerced debt from being held liable for debts incurred without their knowledge.

In Section Two, this article will explore financial abuse and the ways in which debt and abuse are connected. Specifically, this Section will analyze how coerced debt manifests, data on the prevalence of coerced debt in intimate partner relationships, and how coerced debt is handled in bankruptcy filings. In Section Three, this article will explain the basics of the United States bankruptcy courts, its origins, and key concepts in American bankruptcy law. Section Four will consist of an analysis on the recent Supreme Court decision in *Bartenwerfer v. Buckley*, while Section Five will discuss why state efforts to tackle coerced debt have fallen short. Section Six will propose a federal solution to better protect those with coerced debt who are seeking discharge in bankruptcy.

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[28] *See* Adams, *supra* note 2, at 1390 (explaining that currently "[t]here exists no single legal avenue through either the federal or state level in which survivors of economic abuse, let alone survivors of coerced debt, may fully access relief for the harm they have endured").

[29] *See* Bartenwerfer v. Buckley, 598 U.S. 69, 83 (2023) (holding an innocent partner can be liable for the fraud of another and unable to discharge that debt in bankruptcy).

[30] *See generally id.* .

II. CONTEXTUALIZING COERCED DEBT: EXAMPLES AND EXPLANATIONS

Coerced debt is a "uniquely pernicious" form of financial abuse because of its existence in a credit scoring system that is "ripe for manipulation" and ability to manifest itself in various forms.[31] For example, coerced debt can happen when someone takes out credit cards in their partners' names without their knowledge, forces a partner to obtain loans for them, or tricks their partner into signing quitclaim deeds for the family home.[32] Another example of coerced debt that has grown in prevalence become more prevalent in recent years is student loans.[33] Despite the various ways in which coerced debt manifests, there seems to be a common and concerning characteristic among each of its forms. In most instances of coerced debt, victims "do not discover the debt until they attempt to leave an abusive relationship," and by then "much of the debt is delinquent or in danger of becoming so."[34] Furthermore, coerced debt and financial abuse also occur without direct financial coercion, meaning that fraud in abusive relationships evades detection through other abusive tactics, such as controlling the victim's access to financial records, stealing the victim's mail, or monitoring the victim's telephone calls.[35] As previously mentioned, financial abuse has severe and long-lasting consequences, especially when it comes to credit scores. These consequences can be devastating for domestic violence survivors, as they make starting over more challenging or financially impossible.[36] As discussed in the introduction, qualitative and quantitative studies focused on the impact and frequency of financial abuse support the claim that coerced debt imposes severe limitations on domestic abuse survivors when they seek to start anew and begin a life of financial independence.[37] This reality is the link that connects intimate partner violence

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[31] Adams, *supra* note 2, at 1399.

[32] Littwin, *supra* note 7, at 951.

[33] *See* Kylie Cheung, *Congress Passes Bill to Free Domestic Violence Survivors from Their Abusers' Student Debt*, JEZEBEL (Sept. 21, 2022, 8:00 PM), https://jezebel.com/congress-passes-bill-to-free-domestic-violence-survivor-1849560334 [https://perma.cc/P2TY-HFV7] (providing examples of contemporary forms of coerced debt).

[34] *Escaping Battered Credit*, *supra* note 22, at 366.

[35] *Id.* at 375.

[36] *Id.* at 367.

[37] *See* Adams et al., *supra* note 22, at 1335 (providing data on the frequency of non-consensual credit-related transactions taking place in intimate partner relationships in the United States); *see also* Littwin, *supra* note 7, at 1000 (describing some short and long term effects financial abuse through coerced debt has on those trying to start a newly independent life away from their abuser); *see also* HESS & ROSARIO, *supra* note 13, at 28 (sharing interview responses from shelter residents that indicate how financial abuse impacted their ability to leave an abusive relationship and/or start an independent life).

and financial abuse to bankruptcy, as it is one of the potential avenues of financial rehabilitation and recovery available to those dealing with coerced debt.

III. AMERICAN BANKRUPTCY: A BRIEF HISTORY ON ITS ORIGINS, PURPOSE, AND KEY CONCEPTS

"Capitalism without bankruptcy is like Christianity without hell."[38] That is to say, although bankruptcy has a bad reputation, it is an integral part of the system in which it lives: capitalism.[39] As businesses expanded in the United States and the country grew into a commercial nation, federal bankruptcy legislation became somewhat "inevitable."[40] From a historical perspective, it is fair to say the American economy could not and would not be what it is without bankruptcy.[41] The system has acted as an engine for economic growth by offering debtors relief so that they could focus on rebuilding their financial stability.[42] It has also acted as a protector and safety net during times of national financial crisis.[43] In the United States, federal courts have exclusive jurisdiction over bankruptcy law. As federal law, the Bankruptcy Code is controlled by Congress.[44] Therefore, any changes that would be made to the Bankruptcy Code first need to be drafted, voted on, passed, and confirmed by Congress, making it challenging to accomplish in our combative political climate.[45]

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[38] *See generally* Forbes, *Thoughts on the Business of Life*, https://www.forbes.com/quotes/3057 [https://perma.cc/5EQS-VEUG] (quoting Frank Borman).

[39] *See* Dan Cunningham, *Explaining the Purpose of Bankruptcy*, ONE DAY IN JULY (May 8, 2020), https://www.onedayinjuly.com/explaining-the-purpose-of-bankruptcy#:~:text=%22Capitalism%20without%20bankruptcy%2C%22%20former,function%20in%20a%20capitalist%20system [https://perma.cc/6KUS-JVA9] (describing the role bankruptcy plays in the United States).

[40] *See* David A. Skeel Jr., *The Genius of the 1898 Bankruptcy Act*, 15 BANKR. DEV. J., 321, 325 (1999) (considering different theories for the longevity of bankruptcy legislation in the United States).

[41] Jay Fleischman, *Without Bankruptcy, America Wouldn't Exist. Here's Why*, MONEYWISE LAW (Dec. 7, 2022), https://www.moneywiselaw.com/bankruptcy-necessary-america/ [https://perma.cc/BT42-GKJA] (explaining how bankruptcy offered economic growth and protection to the United States economy during historical moments of financial turmoil).

[42] *Id.*

[43] *Id.* (explaining how bankruptcy laws were rewritten "in response to the savings and loan crisis of the 1980s" to help prevent "the situation from spiraling out of control and potentially damaging the broader economy").

[44] *See* U.S. CONST. art. I, § 8, cl. 4 (granting Congress the power to create legislation to bankruptcy).

[45] *See generally* Lee Drutman, *Why Bipartisanship In The Senate is Dying,* FIVETHIRTHYEIGHT

A. Historical Background of Bankruptcy in the United States

Bankruptcy law has been at the forefront of American legislative concerns since even before the birth of the nation thanks to its role in English common law.[46] During the American Revolution, the Founders saw a need for uniform bankruptcy laws and made a deliberate effort to address the issue when drafting the Constitution.[47] The Founders granted Congress the power to create legislation related to bankruptcy, which it has done since the year 1800.[48] In the country's early stages, bankruptcy laws were enacted in response to economic hardships.[49] However, Congress' first attempts at bankruptcy legislation saw a cycle of being passed then quickly repealed.[50] Despite the fact that each of the bankruptcy acts passed in the nineteenth century were created in response to a specific and unique economic crisis, a common denominator existed between all of them. Each and every one recognized that there will "inevitably be winners and losers in a market economy" and acknowledged a need for relief.[51] As a result, each of the country's early bankruptcy laws "contained some allowance for the discharge of unpaid debts."[52] Initial congressional efforts finally saw success when Congress enacted the Bankruptcy Act of 1898 ending "a century of instability" by making "federal bankruptcy law a permanent fixture on the

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(Sept. 27, 2021), https://fivethirtyeight.com/features/why-bipartisanship-in-the-senate-is-dying/ [https://perma.cc/NA2Y-PMP8] (explaining how "the political environment most senators inhabit makes public bipartisanship anywhere from difficult to politically suicidal" thus making bipartisan legislation difficult to pass).

[46] *See generally Art I.S 8.C 4.2.2 Historical Background on Bankruptcy Clause*, LEGAL INFO. INST., https://www.law.cornell.edu/constitution-conan/article-1/section-8/clause-4/historical-background-on-bankruptcy-clause [https://perma.cc/M8WB-8ZW7] (detailing English common law's influence on American bankruptcy law).

[47] *See* THE FEDERALIST NO. 42 (James Madison) (explaining the need for uniform bankruptcy laws because "bankruptcy is so intimately connected with the regulation of commerce"); *see also* U.S. CONST. art. 1, § 8, cl. 4 (granting Congress the power to "[t]o establish … uniform Laws on the subject of Bankruptcies throughout the United States").

[48] U.S. CONST. art. 1, § 8, cl. 4.

[49] *See A Brief History of Bankruptcy*, BANKR. DATA, https://www.bankruptcydata.com/a-history-of-bankruptcy [https://perma.cc/PM2F-E3HY] (explaining the Bankruptcy Act of 1800 was enacted in response to land speculation); *see also A (Very) Brief History of Bankruptcy and Debt in the West*, AM. BANKR. INST., https://www.abi.org/feed-item/a-very-brief-history-of-bankruptcy-and-debt-in-the-west [https://perma.cc/W9VT-H4YK]. (illustrating how the financial panics of 1792 and 1797 prompted Congress to pass the Bankruptcy Act of 1800).

[50] *Compare* Act of Apr. 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803) (addressing land speculation issues), *and* Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843) (targeting economic struggles that were caused by the Panic of 1937), *with* Act of Mar. 2, 1867, ch. 176, 14 Stat. 517 (repealed 1878) (offering relief to address economic turmoil resulting from the Civil War).

[51] *See* AM. BANKR. INST., *supra* note 49.

[52] *See* BANKR. DATA, *supra* note 49.

legislative landscape."[53] The Act of 1898 was eventually replaced with the current Bankruptcy Code in 1978. Nevertheless, the Act of 1898 solidified the importance of relief that was found in its predecessors by "protecting the 'honest but unfortunate' debtor."[54] This goal became what is now known as the 'Fresh Start Doctrine,' a central pillar of the United States bankruptcy system that has routinely been reinforced by the Supreme Court.[55]

B. The Fresh Start Doctrine and the Role Discharge Plays in its Purpose

The United States bankruptcy system is heavily focused on rehabilitating debtors rather than emphasizing punitive measures.[56] Consequently, a fundamental characteristic of the bankruptcy system is "discharge," a doctrine that "frees the debtor's future income from the chains of previous debt."[57] Discharge has been part of American bankruptcy law since its inception, but its availability has changed over the years. In early bankruptcy law, discharge was minimal.[58] Modern bankruptcy laws, however, have made discharge much more extensive. Today, discharge typically occurs via a court order that eliminates a debtor's legal obligation to pay certain debts.[59] This helps provide debtors with a fresh start.[60] But is not a *Get Out of Jail Free* card. Discharge is "(1) not a dismissal of the case, (2) does not determine how much money, if any, the trustee will pay to creditors, and (3) does not always automatically result in the closing of a case."[61]

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[53] Skeel, *supra* note 40, at 341.

[54] *Id.* at 328.

[55] *See* Loc. Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (emphasizing how the Fresh Start Doctrine "gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt").

[56] *See* BANKR. DATA, *supra* note 49 (offering historical background to the U.S. bankruptcy system and explaining the system's emphasis on rehabilitation for debtors).

[57] Thomas H. Jackson, *Fresh Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1393 (1985).

[58] *See* BANKR. DATA, *supra* note 49 (comparing the Bankruptcy Act of 1800, which only applied to merchants, and the Bankruptcy Act of 1841, both of which only permitted minimal discharge, to the Bankruptcy Act of 1867, which extended protections to corporations).

[59] What is a Bankruptcy Discharge and What is the Difference Between Denial of Discharge and Denial of the Dischargeability of an Individual Debt?, U.S. BANKR. CT. DIST. OF OR. https://www.orb.uscourts.gov/faq/what-bankruptcy-discharge-and-what-difference between-denial-discharge-and-denial [**https://perma.cc/4NPH-S8RC].**

[60] Jackson, *supra* note 57, at 1395–98.

[61] U.S. BANKR. CT. DIST. OF OR., *supra* note 59.

C. When is Discharge Available?

Discharge is only available to certain debtors in certain circumstances.[62] Generally, non-dischargeable debts are "tax liabilities and fines, unlisted claims, alimony and child support, and those which have arisen due to acts of 'moral turpitude.'"[63] Section 523 of the Bankruptcy Code lays out exceptions to discharge, stating discharge is not available for "money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."[64] This exception reinforces the importance of transparency within the bankruptcy system while also illustrating the system is made to help those who are "honest, but unfortunate debtors."[65] Thus, when someone commits fraud, § 523(a)(2)(A) holds them accountable.

Identity theft in bankruptcy cases is a good example of how the fraud exception to discharge holds the dishonest accountable. Identity theft, the use of another's personal data involving fraud or deception usually for economic gain, "impairs the integrity of the bankruptcy system."[66] Knowing the dangers identity theft presents to bankruptcy courts, discharge is available to those who are victims of fraudulent debt. In certain filings, "pre-petition" debt, meaning debt incurred prior to filing for bankruptcy, is dischargeable.[67] In addition to discharge, the U.S. Trustee's Office and the Department of Justice have developed programs and policies that offer other remedies for victims of identity theft.[68] For instance, in appropriate cases, the U.S. Trustee

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[62] *See Discharge in Bankruptcy—Bankruptcy Basics*, USCOURTS.GOV, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics [https://perma.cc/MQ42-PC59] (listing basic principles of discharge criteria); *see also* 11 U.S.C § 727 (2011) (explaining when discharge is available).

[63] 4 WILLIAM L. NORTON, NORTON BANKR. L. & PRAC. §81:4

[64] 11 U.S.C. § 523 (a)(2)(A) (2023).

[65] *See generally* Donald L. Swanson, *How an Honest Debtor's Discharge Is Denied—A Reversion to Punishment? (Bartenwerfer v. Buckley)*, MEDIATBANKRY (Mar. 9, 2023), https://mediatbankry.com/2023/03/09/how-an-honest-debtors-discharge-is-denied-a-reversion-to-punishment-bartenwerfer-v-buckley [https://perma.cc/CAG2-PWZS] (explaining how by holding innocent parties liable for debts they did not obtain themselves, the Bartenwerfer decision reverts back to a time where punishment was used in bankruptcy rather than the Fresh Start Doctrine).

[66] Jane E. Limprecht, *Fresh Start or False Start?—Identity Theft in Bankruptcy Cases*, U.S. DEP'T OF JUST., U.S. TR. PROGRAM, 6, https://www.justice.gov/archive/ust/articles/docs/idtheftfinal.pdf [https://perma.cc/WZ2Q-AQ94].

[67] Cara O'Neill, *Which Debts Can You Discharge in Chapter 7 Bankruptcy?*, NOLO (April 11, 2024), https://www.nolo.com/legal-encyclopedia/debt-discharged-chapter-7-bankruptcy.html#:~:text=In%20short%2C%20the%20bankruptcy%20court,incur%20before%20receiving%20a%20discharge [https://perma.cc/EGG6-9RZX].

[68] Limprecht, *supra* note 66, at 6.

can dismiss a pending case where the filer used a false name or social security number, move to expunge or void a pending or closed case, and move to have the discharge revoked or have the discharge date extended until information is corrected.[69] Furthermore, The U.S. Trustee Office has begun piloting a program in nineteen districts to better detect identity theft in bankruptcy cases.[70] The participating districts require identification at preliminary proceedings, such as Section 341 meetings where creditors and the trustee can ask questions "about the debtor's financial situation," and have seen a decrease in fraudulent filings via incorrect social security numbers since implementing such measures.[71] These efforts demonstrate how the bankruptcy system already recognizes those with fraudulent debt as victims deserving of remedies that offer a fresh start without significant damage to their credit.

How bankruptcy courts treat cases of identity theft is a great reference point to consider when tackling the issue of coerced debt. This is because identity theft is the "primary legal claim that captures comparable harms to coerced debt."[72] Consider the Department of Justice's definition of identity theft and the ways in which coerced debt may fit within. The Department of Justice defines identity theft as "the possession and use of another person's private information, through fraud or deception, for one's own economic gain."[73] Reading that definition, one may assume coerced debt fits nicely within the description and current bankruptcy remedies for victims of identity theft should therefore be sufficient for those dealing with coerced debt. However, coerced debt and identity theft can differ when it comes to agency and the relationship between the perpetrator and the victim. For example, someone dealing with financial abuse "might have awareness of the fraudulent transactions" because they have a familial or intimate relationship but because of the abusive dynamics of that relationship the victim "lacks the ability to stop the fraud on their own."[74] This nuance is not typically present in traditional identity theft cases.

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[69] *Id.* at 7.

[70] *Id.*

[71] *Id.* at 7 (reporting on bankruptcy initiatives to tackle the issue of identity theft); *see also 341(A) Meeting Of Creditors, What Is It And Who Must Attend?*, U.S. BANKR. CT., CENT. DIST. OF CAL., https://www.cacb.uscourts.gov/faq/341a-meeting-creditors-what-it-and-who-must-attend [https://perma.cc/MQ42-PC59] (explaining the purpose of a 341(A) meeting in bankruptcy proceedings).

[72] Adams, *supra* note 2, at 1402.

[73] *Id.*

[74] *Id.* at 1405.

D. The Supreme Court's Reinforcement of Bankruptcy's Fresh Start Doctrine

Past Supreme Court opinions reinforce the importance and purpose of the Fresh Start Doctrine within the U.S. bankruptcy system.[75] As early as the nineteenth century, the Supreme Court emphasized the importance of a fresh start through bankruptcy when it explained that punishment "is right for fraud, but wrong for misfortune. It breaks the spirit of the honest debtor, destroys his credit, which is a form of capital, and dooms him, while it lasts, to helpless idleness."[76] This sentiment has been reinforced by the Court time and time again.[77]

In 1915, the Court explained that the purpose of the bankruptcy system was to "relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes."[78] In 1934, the Court further elaborated that the provisions of the Bankruptcy Act "are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act."[79] As late as 2007, the Supreme Court once again emphasized the importance of dischargeable debt for debtors when it explained that the "principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'"[80]

IV. BARTENWERFER V. BUCKLEY

In early 2023, the Supreme Court resolved split circuit court opinions regarding the fraud exception to the Bankruptcy Code in *Bartenwerfer v. Buckley*.[81] *Bartenwerfer* addressed the issue of whether the debt of an innocent

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[75] *See* Edwards v. Kearzey, 96 U.S. 595, 602 (1877) (suggesting that punishment is "right for fraud, but wrong for misfortune" when it comes to debts); *see also* Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549, 554–55 (1915) (reinforcing the purpose of dischargeable debt); *see also* Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007) (highlighting the need for rehabilitation rather than punishment for the honest but unfortunate debtor).

[76] *Edwards*, 96 U.S. at 602.

[77] *Compare* Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549, 554–55 (1915) (reinforcing the purpose of dischargeable debt), *and* Loc. Loan Co. v. Hunt, 292 U.S. 234, 244–45 (1934) (emphasizing code provisions should serve the general purpose of bankruptcy), *with* Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007) (highlighting the need for rehabilitation rather than punishment for the honest but unfortunate debtor).

[78] *Williams*, 236 U.S. at 554–55.

[79] *Loc. Loan Co.*, 292 U.S. at 245.

[80] *Marrama*, 549 U.S. at 367.

[81] *See generally* Carlo A. Coppola & Domingo R. Tan, *Innocent Spouse Unable to Discharge Debt in Bankruptcy where Funds Obtained by Fraud*, WOOD SMITH HENNING BERMAN, (2024), https://www.wshblaw.com/experience-innocent-spouse-unable-to-discharge-debt-in-bankr

partner remains after filing for bankruptcy even if the innocent partner did not have knowledge of the fraud committed by their partner.[82] There, Kate Bartenwerfer (hereinafter "Mrs. Bartenwerfer"), with her then-boyfriend and later husband, David Bartenwerfer (hereinafter "Mr. Bartenwerfer"), bought a home in San Francisco, California with the intent to remodel the property.[83] The two acted as business partners and intended to sell the home for profit.[84] Despite neither one having a contracting license or experience remodeling houses, the partners renovated the home, put it on the market, and eventually sold the property to Kieran Buckley (hereinafter "Mr. Buckley").[85] During renovations, Mr. Bartenwerfer "took charge of the project" hiring the architect, structural engineer, designer, and general contractor.[86] Furthermore, he monitored the work, reviewed invoices, and signed checks while Mrs. Bartenwerfer remained "largely uninvolved."[87] Once construction was completed and the couple prepared to sell the property, the pair completed a 'Real Estate Transfer Disclosure Statement' where they were instructed to disclose defects.[88] In the statement, Mrs. Bartenwerfer identified defects with a visual inspection but relied on Mr. Bartenwerfer's assurances that no structural defects existed.[89] Relying on Mr. Bartenwerfer's assurances, the pair did not disclose any structural defects and both Mr. and Mrs. Bartenwerfer signed the statement.[90]

After the sale, Mr. Buckley discovered several defects within the home. A leaky roof, defective windows, missing fire escape, and permit problems

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uptcy-where-funds-obtained-by-fraud [https://perma.cc/LQX8-B5FH] (discussing argument s made in the *Bartenwerfer* opinion); *see also* Bartenwerfer v. Buckley, 598 U.S. 69, 83 (2023).

[82] *Bartenwerfer*, 598 U.S. at 83.

[83] *Id.* at 72.

[84] *Id.*

[85] *See id.* (providing a brief factual background regarding the Bartenwerfer's renovation timeline and process); *see also* Leslie R. Irwin & Steven D. Mirsen, *Bartenwerfer v. Buckley*, LEGAL INFO. INST., https://www.law.cornell.edu/supct/cert/21-908 [https://perma.cc/XNP2-6MHD] (summarizing the procedural history of the Bartenwerfer case).

[86] *Bartenwerfer*, 598 U.S. at 72.

[87] *Id.*

[88] *Id.* at 72–73 (explaining Mr. Buckley's claim of nondisclosure of material facts); *see also* Irwin & Mirsen, *supra* note 85. (detailing the disclosure statements made by the Bartenwerfers prior to selling the home to Mr. Buckley).

[89] Irwin & Mirsen, *supra* note 85 (describing Mrs. Bartenwerfer's role in the completion of the Real Estate Transfer Disclosure Statement).

[90] *See Bartenwerfer*, 598 U.S. at 72 (explaining how Mr. Bartenwerfer "took charge of the project" while Mrs. Bartenwerfer remained "largely uninvolved"); *see also* Irwin & Mirsen, *supra* note 85 (recounting Mr. Bartenwerfer's failure to disclose material defects).

that had not been divulged prior to the sale.[91] Consequentially, Mr. Buckley filed suit in California state court for the nondisclosure of these defects.[92] It was ultimately revealed that Mr. Bartenwerfer knew of, but did not disclose structural defects in the home, and the jury found the Bartenwerfers jointly responsible for more than $200,000 in damages.[93] Following the judgment, the Bartenwerfers filed for Chapter 7 bankruptcy, hoping to benefit from a "'fresh start' by discharging their debts."[94] Although the couple filed jointly "they remained individual debtors for determining which of their debts could be discharged."[95]

In response to Mr. and Mrs. Bartenwerfer filing bankruptcy, Mr. Buckley filed an adversary complaint alleging the money owed on the state-court judgment fell within the fraud exception of Section 523(a)(2)(A) which bars the discharge of "'any debt . . . for money . . . to the extent obtained by . . . false pretenses, a false representation, or actual fraud.'"[96] Following a two day bench trial where both parties testified along with real-estate agents and contractors, the bankruptcy court determined neither Mr. or Mrs. Bartenwerfer could discharge their debt.[97] The court found Mr. Bartenwerfer had "knowingly concealed" the defects from Mr. Buckley and that because of Mr. Bartenwerfer's "actual knowledge of the factual misrepresentations," his fraudulent conduct could be imputed onto Mrs. Bartenwerfer because of their "legal partnership to execute the renovation and resale project."[98]

On appeal, the Ninth Circuit Bankruptcy Appellate Panel (hereinafter "BAP") reversed the judgment.[99] There, the court affirmed the fraudulent intent of Mr. Bartenwerfer but not the decision to impute it on his wife.[100] The BAP reasoned that Mrs. Bartenwerfer would be barred from discharge

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[91] *Bartenwerfer*, 598 U.S. at 72.

[92] *Id.* at 72–73.

[93] *Id.*

[94] *Id.* (quoting Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007)).

[95] *See id.* at 73 (explaining case's factual background); *see also* Irwin & Mirsen, *supra* note 85 (providing background facts and procedural history of the Supreme Court case).

[96] *Bartenwerfer*, 598 U.S. at 73; 11 U.S.C. § 523 (a)(2)(A) (2023)

[97] *Bartenwerfer*, 598 U.S. at 73.

[98] *See id.* at 73 (summarizing Bartenwerfer procedural history); *see also* Irwin & Mirsen, *supra* note 85 (providing a brief overview of the factual background, procedural history, and the Supreme Court's analysis); *see also* CAL. CORP. § 16101(9) (2012) (repealed Jan. 1, 2016) (current version at CAL. CORP. § 16101(9) (2024)) (defining partnership under California state law).

[99] *In re* Bartenwerfer, 860 F. App'x 544, 547 (9th Cir. 2021).

[100] *Id.*; *Bartenwerfer*, 598 U.S. at 73.

"only if she knew or had reason to know of David's fraud."[101] The court concluded that Mrs. Bartenwerfer "lacked the requisite knowledge" of her partner's fraud and therefore could discharge her liability to Mr. Buckley.[102] Foreseeably, Mr. Buckley once again challenged the Bartenwerfer's efforts to obtain discharge by appealing this decision to the Ninth Circuit.[103] The Ninth Circuit invoked the Supreme Court's decision in *Strang v. Bradner*,[104] holding "a debtor who is liable for her partner's fraud cannot discharge that debt in bankruptcy, regardless of her own culpability" and thus reversed the decision of the BAP.[105] The Ninth Circuit recognized that a "marital relationship by itself is insufficient to impute the fraud of one spouse to the other"—but given the nature of the renovation project, the court found that a "business or agency relationship existed between the Bartenwerfers" and the fraud of Mr. Bartenwerfer could be imputed to his wife.[106] In California, the controlling jurisdiction in the case, a partnership is "an association of two or more persons to carry on as coowners a business for profit."[107] Prior to the Supreme Court affirming the existence of a partnership, the Ninth Circuit explained its findings. A partnership or agency relationship existed between Mr. and Mrs. Bartenwerfer because they co-owned the house, Mrs. Bartenwerfer signed the sales contract, and she "stood to benefit" from the completion and sale of the project.[108] Before reaching the Supreme Court, the Ninth Circuit noted that simply because Mrs. Bartenwerfer had little participation in the project does not negate the existence of a partnership.[109] That being said, the Ninth Circuit acknowledged that imputing Mr. Bartenwerfer's fraudulent intent to his wife on the basis of agency alone was done in error because there was insufficient evidence to establish that Mrs. Bartenwerfer "knew or had reason to know" of her husband's fraudulent omissions.[110] Nevertheless, the partnership was sufficient to impute the liability.

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[101] *Bartenwerfer*, 598 U.S. at 73.

[102] *Id.*

[103] *Id.* at 74.

[104] Strang v. Bradner, 114 U.S. 555 (1885).

[105] *Bartenwerfer,* 598 U.S. at 74 (citing Strang v. Brander, 114 U.S. 555 (1885), imputing the fraud of one to members of his firm and denying the ability to discharge).

[106] *In re* Bartenwerfer, No. AP 13-03185, 2017 WL 6553392, at *9 (BAP 9th Cir. Dec. 22, 2017).

[107] CAL. CORP. CODE § 16101(9) (2013).

[108] *In re* Bartenwerfer, 2017 WL 6553392 at *10.

[109] *Id.*

[110] *Id.*

In February of 2023, the Supreme Court affirmed the Ninth Circuit's ruling.[111] Presented with the question of whether Section 523 "turns on the state of mind of the debtor . . . or the state of the claim," the Court came to a unanimous decision.[112] The Court held "innocent people are sometimes held liable for fraud they did not personally commit, and, if they declare bankruptcy, § 523(a)(2)(A) bars discharge of that debt."[113] The Supreme Court's reasoning rested on the plain language of the Bankruptcy Code and comparing the subsections of Section 523.[114] The justices, focused on a textual interpretation, explained how "written in the passive voice, [Section] 523(a)(2)(A) turns on how the money was obtained, not who committed the fraud to obtain it."[115] Put another way, this sub-section of the Bankruptcy Code "refers to a debt 'obtained by' fraud without specifying an actor."[116]

To reach a decision, the Court looked to precedent when analyzing the language of the code and determined that if Congress had intended the subsection to mean something different, then Congress would have written it so as to reflect those sentiments.[117] When considering precedent, the Court focused on various cases but began with *Strang v. Bradner* as it was invoked by the Ninth Circuit in its conclusion that Mrs. Bartenwerfer could not discharge the debt.[118] *Strang v. Bradner* is a case from 1885 where one business partner lied to merchants to secure promissory notes for the benefit of his partnership with two other gentlemen.[119] The fraud was imputed to all because "[e]ach partner was the agent and representative of the firm with

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[111] Bartenwerfer v. Buckley, 598 U.S. 69, 83 (2023).

[112] *See* Ronald Mann, *A Bungled House Sale, a Bankrupt Couple, and a Statutory Puzzle Involving Debts Incurred Through Fraud*, SCOTUSBLOG (Dec. 3, 2022, 8:42 PM), https://www.scotusblog.com/2022/12/a-bungled-house-sale-a-bankrupt-couple-and-a-statutory-puzzle-involving-debts-incurred-through-fraud [https://perma.cc/Z7W5-7VM5] (introducing the legal questions presented in *Bartenwerfer*).

[113] *Bartenwerfer*, 598 U.S. at 83.

[114] *Compare* 11 U.S.C. § 523(a)(2)(A), *with* 11 U.S.C. § 523(a)(2)(B) (differing from the former, the latter governs statements respecting a debtor's financial condition and requires that false statement be made by the debtor with intent to deceive).

[115] *Bartenwerfer*, 598 U.S. at 72.

[116] Jonah Wacholder & Daniel A. Lowenthal, *Supreme Court Holds That Fraud Exception to Debt Discharge Can Include Fraud by Someone Other Than the Debtor*, PATTERNSON BELKNAP BANKR. UPDATE, (Mar. 29, 2023), https://www.pbwt.com/bankruptcy-update-blog/supreme-court-holds-that-fraud-exception-to-debt-discharge-can-include-fraud-by-someone-other-than-the-debtor [https://perma.cc/S29R-VDBB].

[117] *Bartenwerfer*, 598 U.S. at 76 (referencing precedent to argue that the relevant legal context has "long maintained that fraud liability is *not* limited to the wrongdoer").

[118] *See id.* at 74–83 (citing to precedent where principals have been held liable for the frauds of their agents and where individuals have been held liable for the fraud of partners).

[119] Strang v. Bradner, 114 U.S. 555, 557–58 (1885).

reference to all business within the scope of the partnership."[120] After this decision, the two business partners who did not themselves commit the fraud attempted to discharge their debts in bankruptcy, but the Supreme Court held the debts were non-dischargeable.[121] The Court reasoned that despite not being guilty of wrong themselves, the two gentlemen "received and appropriated the fruits of the fraudulent conduct of their associate in business."[122] In the *Bartenwerfer* opinion, the Supreme Court recognized how *Strang* set the precedent that "fraud of one partner . . . is the fraud of all" which has routinely been reinforced in similar cases over the last 140 years.[123]

After looking at precedent, the Supreme Court detailed why Mrs. Bartenwerfer's argument that the statute is "most naturally read to bar the discharge of debts for money obtained by *the debtor's* fraud" was unconvincing.[124] On this point, the Supreme Court considered the Congressional intent behind the language of Section 523. Analyzing the Section's passive voice, the Supreme Court declared it "pulls the actor off the stage," and labeled Congress' grammatical choice as taking an "agnostic[]" approach.[125] That is to say, the identity of the actor is unimportant to Section 523 and to Congress. Later on in the opinion, the Supreme Court doubled down on this point, explaining that "[u]nderstanding §523(a)(2)(A) to reflect passive voice's usual 'agnosticism' is thus consistent with the age-old rule that individual debtors can be liable for fraudulent schemes they did not devise."[126] Lastly, in what the Court called the "linchpin" of the grammatical argument is "Congress's post-*Strang* legislation."[127] The Court calls attention to how "in the late 19th century, the discharge exception for fraud read as follows: '[N]o debt created by the fraud or *embezzlement* of the bankrupt . . . shall be discharged under this act.'"[128] Taking this original language and comparing it to the changes made after the *Strang* decision, the Court emphasized how when "Congress enacts statutes, it is aware of . . . relevant precedents" and thus is intentionally conscious of the

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[120] *Id.* at 561.

[121] *Id.*

[122] *Id.*

[123] *Bartenwerfer*, 598 U.S. at 80; *see also Strang*, 114 U.S. at 561 (holding the fraud of one can be imputed to all the members of his firm).

[124] Bartenwerfer, 598 U.S. at 75.

[125] *Id.* at 75–76.

[126] *Id.* at 76.

[127] *Id.* at 80.

[128] *See id.* at 79 (referencing the Act of Mar. 2, 1867, § 33, 14 Stat. 533).

language used.[129] The Court saw Congress' deleting "of the bankrupt" from the discharge exception for fraud, the predecessor to § 523(a)(2)(A), thirteen years after the *Strang* decision as demonstrative of why Mrs. Bartenwerfer's grammatical argument falls short.[130]

Despite declaring that precedent and Congress' response to it "eliminates any possible doubt" as to the Court's textual analysis, the Justices still considered the public policy concerns surrounding imputed liability for fraud, as evidenced by the Court's contemplation of the following hypothetical presented by Justice Sotomayor during oral arguments.[131]

> I obtain a loan fraudulently. Later, I sell that debt to my friend, Justice Thomas, who has no idea about the fraud. Justice Thomas . . . files for bankruptcy. He wants to discharge the debt. Can he?' The point of the hypothetical was that Thomas is completely innocent of and uninvolved with the fraud, much more remote from it than Bartenwerfer.[132]

Although the attorney representing the creditor trying to protect its claim against the Bartenwerfers "stuck to his position that the simplest thing for the court to do is to apply the statute as written, even if it left Thomas liable for the debt," Justice Amy Coney Barrett still raised the public policy concern of such an intense consequence.[133] Nonetheless, the justices found *Strang*, where the "discharge exception turns on the fraudulent basis for the claim rather than the conduct of the individual debtor," and *Field v. Mans*, which focused on Congress's intentionality when drafting legislation, most persuasive.[134]

Finally, the Court addressed Mrs. Bartenwerfer's invocation of the fresh start policy of modern bankruptcy law as a defense. Claiming that precluding discharge from faultless debtors would be "inconsistent" with the Fresh Start

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[129] *Id.* at 80.

[130] *Bartenwerfer*, 598 U.S. at 80.

[131] *Id.* at 79.

[132] Ronald Mann, *Justices Debate Bankruptcy Treatment of Debts Incurred by Fraud*, SCOTUSBLOG (Dec. 7, 2022, 11:57 PM), https://www.scotusblog.com/2022/12/justices-debate-bankruptcy-treatment-of-debts-incurred-by-fraud [https://perma.cc/X43A-WME6].

[133] *Id.;* Transcript of Record at 46, Bartenwerfer v. Buckley, 598 U.S. 69, 83 (2023) (No. 21–908).

[134] S*ee* Mann, *supra* note 112 (summarizing both parties arguments before the Court and the responses of the justices); *see also* Field v. Mans, 516 U.S. 59, 67–70 (1995) (emphasizing how Congress' intentionality when writing legislation should be considered in the Court's analysis).

Doctrine, Mrs. Bartenwerfer argues "§ 523(a)(2)(A) cannot apply to her."[135] Acknowledging that her argument "earns credit for color but not much else," the Court reminds us that the Bankruptcy Code is not "focused on the unadulterated pursuit of the debtor's interest" because if a fresh start was "all that mattered, § 523 would not exist."[136]

Before concluding, the Court seemed to recognize how this decision may cause worry for victims of fraud but dedicated an unimpressive six sentences to the issue. The Court's quick pass over of a valid and important critique about imputed liability made their efforts to address it unconvincing. The Court claimed victims of fraud are "likely to have defenses to liability" but then only provided two examples of specific situations where discharge *may* be available.[137] The two examples offered were 1) "if a surety or guarantor is duped into assuming secondary liability, then his obligation is typically voidable" and 2) "if a purchaser unwittingly contracts for fraudulently obtained property, he may be able to rescind the agreement."[138] Not only are these examples unconvincing because they are available only to particular agreements, but also because the Court made a point to say they *might* be successful.[139] Was this the Court's attempt at providing comfort? The Court seems to think listing two sub-par examples is sufficient to support its claim of the "variety of antecedent defenses" available to fraud victims in bankruptcy proceeding.[140] It is not. Lastly, but most importantly, the inclusion of these example as an effort to ease concerns is unsatisfactory because the Court ultimately accepts that sometimes "innocent people are . . . held liable for fraud they did not personally commit, and if they declare bankruptcy, § 523(a)(2)(A) bars discharge of that debt."[141] Victims of coerced debt are likely not going to be those who fall within the two examples given by the Court in its opinion. They are not going to have contracted for fraudulently obtained property or be a surety who was duped into assuming secondary liability. Instead, they will be vulnerable people trying to escape abuse and start anew. They will also likely find themselves as the innocent people whom the Court simply concedes will get the short end of the stick. They will be the ones liable for the debts of their abuser and for fraud they did not personally commit.

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135 *Bartenwerfer*, 598 U.S. at 81.

136 *Id.*

137 *Id.* at 82.

138 *Id.*

139 *See id.* (listing two examples of possible defenses to liability).

140 *Id.* at 83.

141 Bartenwerfer, 598 U.S. at 83.

The Court's conclusion in *Bartenwerfer* raises two concerns. First, it relies on precedent that is nearly 140 years old, despite the drastic change in commerce in the United States over the nineteenth, twentieth, and twenty-first century. Second, the Supreme Court fails to prioritize the Fresh Start Doctrine in its decision. On the first point, the Court fails to acknowledge that the precedent used is outdated and does not reflect our current economic reality. At the time *Strang v. Bradner* was heard by the Supreme Court, American fraud and lending practices were less complex due to being on a smaller scale.[142] Given the ways in which fraud, debt, and lending practices have drastically changed over the last 140 years, is the precedent set in *Strang v. Bradner* still the best option for handling fraud and imputed liability? Was it foreseeable to the Supreme Court back in 1885 that we would become a nation that runs on credit? Likely not. If the Court had incorporated elements of a realistic interpretation to their analysis it would have recognized the need to set new precedent that better addresses the demands of contemporary bankruptcy filings. All in all, the rise of consumer credit and the changes to the Bankruptcy Code since the nineteenth century mean that it is time for new precedent when it comes to vicarious liability within bankruptcy.

Second, the Supreme Court's decision in *Bartenwerfer v. Buckley* goes against a foundational premise of non-dischargeable debt.[143] Mrs. Bartenwerfer's argument that barring her discharge goes against the Fresh Start Doctrine earns more than simply "color."[144] The Supreme Court is correct in saying that "the Code, like all statutes, balances multiple, often competing interests"—however, using this statement as the premise to its claim that "if a fresh start were all that mattered, § 523 would not exist" is a leap made without sufficient and persuasive explanation.[145] The Court's dismissal of the importance of the Fresh Start Doctrine contradicts past opinions not even twenty years old.[146] Discharge exists because the United States bankruptcy system is built on the idea of rehabilitation and giving

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[142] *See generally* Rowena Olegario, *The History of Credit in America*, THE OXFORD ENCYCLOPEDIA OF AM. HIST. (May 23, 2019) https://oxfordre.com/americanhistory/display/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-625 [https://perma.cc/5EXW-WW7K] (explaining how 18th and 19th century "smaller business ventures depended on mercantile (trade) credit" because banks often did not extend loans to the needs of farmers, artisans, and smaller sized store keepers).

[143] Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007) (quoting Grogan v. Garner, 498 U.S. 279, 286, 287 (1991)) (explaining the "principal purpose of the Bankruptcy Code is to grant a 'fresh start'").

[144] *Bartenwerfer*, 598 U.S. at 81.

[145] *Id.*

[146] *See Marrama*, 549 U.S. at 367 (writing that "the principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor'").

honest people the chance to start again.[147] Similarly, the exception to discharge exists to hold the dishonest accountable.[148] The existence of § 523 does not negate the Fresh Start Doctrine or minimize its role as a central pillar of U.S. bankruptcy law. On the contrary, the Fresh Start Doctrine is intended for the honest debtor while the exception exists to ensure those who are undeserving of such rehabilitation do not receive its benefits.[149] The two work in tandem.

V. WHAT'S NEXT? CURRENT EFFORTS TO TACKLE COERCED DEBT

In response to the *Bartenwerfer* decision, attorneys working in consumer law have pointed out the ruling's potential slippery slope.[150] The Supreme Court considered general concepts of partnership law as a possible defense for a victim of fraud. However, its decision in *Bartenwerfer* fails to solidify how those suffering from coerced debt will be protected from such a broad reaching ruling.[151]

A. Public Policy Concerns After Bartenwerfer

The Court considered the public policy concerns that may arise from a strict interpretation of § 523(a)(2)(A).[152] However, the justices failed to fully explore how relevant precedent would affect those in relationships permeated with coercive control where "fraud also plays a role in coerced debt."[153] As noted above, the fraud of Mr. Bartenwerfer was imputed to his wife because she signed documents pertaining to the sale of the home.[154] Under this line of reasoning, who is to say that a partnership or agency relationship will not be found in cases where one partner signed a loan application or contract because their abuser threatened or instructed them to

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[147] *See id.* (highlighting the need for rehabilitation for the "honest but unfortunate debtor").

[148] *See* Edwards v. Kearzey, 96 U.S. 595, 602 (1877) (suggesting that punishment is "right for fraud" when dealing with debts).

[149] *See* Marrama, 549 U.S. at 374 (explaining how those who commit fraudulent acts are not members "of the class of 'honest but unfortunate debtor[s]' that the bankruptcy laws were enacted to protect").

[150] John Rao, *New Supreme Court Ruling: When is a Bankruptcy Debtor on the Hook for Partner's Fraud?*, NAT'L CONSUMER LAW CTR. (Mar. 2, 2023), https://library.nclc.org/article/new-supreme-court-ruling-when-bankruptcy-debtor-hook-partners-fraud [https://perma.cc/VZ6X-GU4S].

[151] *Id.*

[152] *See* Transcript of Oral Argument at 46, Bartenwerfer v. Buckley 598 U.S. 69 (2023) (No. 21-908) (presenting the attorney representing the creditor with a public policy concern).

[153] *Escaping Battered Credit*, *supra* note 22, at 375.

[154] *See Bartenwerfer*, 598 U.S. at 72 (explaining Mrs. Bartenwerfer signed the defect disclosure statement following her husband's assurances).

do so without permitting them to read the documents beforehand?[155] Would a person in the above scenario be liable for the fraud of their partner? Under the *Bartenwerfer* decision, possibly. This is antithetical to the foundational principles of bankruptcy—helping the honest but unfortunate debtor.[156] The Court's decision not only rejects the idea of a truly innocent bystander, but it also heightens the "risks to debtors posed by partnerships and other business relationships that may create imputed liability."[157] This is cause for concern, despite legal commentary that *Bartenwerfer* "will make no big waves in bankruptcy jurisprudence or elsewhere."[158] It may seem like this case will have little impact on bankruptcy law, but as debt, abuse, and fraud become more entangled, the *Bartenwerfer* decision has very real and dangerous potential to create chaos for victims of coerced debt seeking discharge in bankruptcy.

B. State Solutions Falling Short

Given the uncertainty the *Bartenwerfer* decision presents victims of coerced debt, it is worth considering effective and sustainable legal remedies. Some states, like North Carolina, Texas, and New York have either found or proposed equitable and sustainable solutions for victims of coerced debt going through the bankruptcy process.[159] In North Carolina, a proposed bill would create an out-of-court process for domestic abuse survivors who are

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[155] *Escaping Battered Credit*, *supra* note 22, at 375.

[156] *See* Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549, 554–55 (1915) (explain the purpose of bankruptcy is to "relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh").

[157] *See generally* Andrew Buxbaum & Deborah Kovsky-Apap, *Supreme Court Holds Debtor Who is Liable for Fraud Cannot Discharge That Debt in Bankruptcy*, TROUTMAN PEPPER (Feb. 22, 2023), https://www.consumerfinancialserviceslawmonitor.com/2023/02/supreme-court-holds-debtor-who-is-liable-for-fraud-cannot-discharge-that-debt-in-bankruptcy [https://perma.cc/XQL2-4MTT] (commenting on why the *Bartenwerefer* decision creates a "heightened risks to debtors" in partnerships and other business relationships).

[158] *See* Mann, *supra* note 132. (reflecting on the Court's opinion in *Bartenwerfer).*

[159] *See* Caroline Hicks, *North Carolina Legislation Would Remedy Coerced Debt for Domestic Abuse Victims*, WBTV (Apr. 5, 2023), https://www.wbtv.com/2023/04/05/north-carolina-legislation-would-remedy-coerced-debt-domestic-abuse-victims [https://perma.cc/VDW2-8URF] (offering examples of state legislation aimed at addressing the public policy issues associated with coerced debt); *see also New York Poised to Become Fourth State in Nation to Give Survivors of Economic Abuse Powerful New Tool to Discharge a Coerced Debt*, URB. RES. INST., https://urinyc.org/download/new-york-poised-to-become-fourth-state-in-nation-to-give-survivors-of-economic-abuse-powerful-new-tool-to-discharge-a-coerced-debt/ [https://perma.cc/X3T5-63VY] (explaining a 2023 proposed bill protecting victims of coerced debt in the state of New York); *see also* H.B. 2697, 87th Leg., Reg. Sess. (Tex. 2019) (expanding identity theft in Texas to include coerced debt).

dealing with the aftermath of financial abuse.[160] The bill, known as the North Carolina Coerced Debt Relief Act, proposes that debt in the victim's name be "removed through the financial service institution" and allow the financial service institution "to go after the abuser to recoup the expense."[161] In 2019, Texas passed House Bill 2697 which expanded the definition of identity theft to include "debt incurred through coercion in an abusive relationship."[162] Most recently, New York proposed a bill that would create a cause of action for victims of coerced debt and the opportunity to have such debt legally discharged.[163]

VI. REVISIT AND REWRITE: PROPOSING AN EDIT TO SECTION 523(A)(2)(A)

Although current state legislative solutions are both needed and commendable, victims of coerced debt are still often left unprotected.[164] Instead of state legislation, an act of Congress would be more effective and impactful. A federal legislative change would promote consistency for judges hearing cases on coerced debt as well as the non-profits and organizations offering services to victims. Furthermore, if done on the federal level, the solution would be uniform across all fifty states, streamlining proceedings.

A federally implemented bankruptcy remedy would also increase efficiency. This is because most lenders are already subject to federal regulations due to operating on a national level.[165] Therefore, it would not only be more efficient for lenders but also more compatible to the policies already in place. For the above reasons, this article proposes rewriting the

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[160] *See generally* Hicks, *supra* note 159. (reporting on North Carolina legislative efforts to help those affected by coerced debt).

[161] *Id.*

[162] *See generally The 87th Legislative Session Wrap-Up*, TEX. WOMEN'S FOUND., https://txwf.org/the-87th-legislative-session-wrap-up [https://perma.cc/JV7Y-HRHU] (summarizing House Bill 2697 which was signed into law in 2019 and expanded Texas' definition of identity theft); *see also* H.B. 2697, 87th Leg., Reg. Sess. (Tex. 2019) (changing Texas law so that coerced debt is included in the state's understanding of identity theft).

[163] *See generally New York Poised to Become Fourth State in Nation to Give Survivors of Economic Abuse Powerful New Tool to Discharge a Coerced Debt*, *supra* note 159.

[164] *See* Brian New, *Domestic Violence Survivors Often Left Unprotected from Forced Debt Racked up by Abusers*, CBS (Jan. 17, 2023, 7:20 PM), https://www.cbsnews.com/texas/news/domestic-violence-survivors-often-left-unprotected-from-forced-debt-racked-up-by-abusers/ [https://perma.cc/6HFV-QY2H] (discussing how the 2019 legislation passed in Texas intended to help victims of coerced debt often leaves them unprotected because many debt collectors do not recognize the remedies); *see also* Adams et al., *supra* note 22, at 1338 (explaining how the difference in contract law among states makes addressing debt generated by coercive transactions difficult to remedy).

[165] Adams et al., *supra* note 22, at 1339.

discharge exception in Section 523. Rewriting this sub-section in a way that focuses on the actor rather than the act would better ensure the fraud exception is not weaponized against some of today's most vulnerable.[166] As discussed above, if Congress wants to preserve the purpose of bankruptcy, providing a fresh start for the honest but unfortunate debtor, then it should prioritize the most unfortunate of debtors: those in their position not by choice but coercion. Simply put, "survivors should not be left paying another's debts as a price for their own survival."[167] To ensure this does not happen, Congress should rewrite Section 523 to better provide relief to those with coerced debt seeking financial rehabilitation through bankruptcy. This simple yet effective proposal would address the issue of imputed liability by directly correcting the passive voice the Supreme Court focused on in *Bartenwerfer*.

A. Congress Has Two Routes: Which Should it Take and Why?

Congress has two possible avenues when it comes to editing the current language of Section 523. As noted by Justice Barrett during oral argument, subsection (a)(2)(A) of Section 523 does not focus on the debtor, but the debt.[168] This is evident in its language, as subsection (2)(A) explains that money, property, services, extensions, renewals, refinancing of credit obtained by "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition" is not dischargeable.[169] However, subsections (a)(2)(B) and (a)(2)(C) focus on the individual debtor.[170] Subsection (a)(2)(B) bars discharge for money, property, services, extensions, renewals, or refinancing of credit obtained by a statement in writing that is "materially false" in regard to the debtor's, or an insider's, financial condition on which the creditor reasonably relied and the debtor had the intent to deceive.[171] Lastly, subsection (a)(2)(C) focuses on debts owed to a single creditor that are in excess of $500 for luxury goods or services incurred by an individual debtor on or within nine days before the order for relief and cash advances aggregating more than $750 that are extensions of consumer credit.[172]

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[166] *See* Act of Mar. 2, 1867 § 33, 14 Stat. 533 (declaring that "[N]o debt created by the fraud or embezzlement *of the bankrupt* . . . shall be discharged under this act." (emphasis added)).

[167] Adams et al., *supra* note 2, at 1420.

[168] Transcript of Oral Argument, *supra* note 152, at 45.

[169] 11 U.S.C. § 523(a)(2)(A).

[170] Transcript of Oral Argument, *supra* note 152, at 45.

[171] 11 U.S.C. § 523(a)(2)(B).

[172] 11 U.S.C. § 523(a)(2)(C).

To make the exception consistent, this article proposes Congress either rewrite subsection (2)(A) while leaving subsections (2)(B) and (a)(2)(C) as they are, or rewrite subsections (a)(2)(B) and (a)(2)(C) and keep the language currently used in subsection (a)(2)(A). However, rewriting subsection (a)(2)(A) is the correct choice for a few reasons. First, this small change would better serve the Fresh Start Doctrine because it construes exceptions to discharge in favor of the debtor, as they should be.[173] Additionally, the fraud exception is there to deter individuals from engaging in fraudulent activity. Given that subsection (a)(2)(A) is the subsection that focuses on the debt rather than the individual debtor, it should be the subsection that is rewritten to better co-exist with subsections (a)(2)(B) and (a)(1)(C).[174] Lastly, subsection (a)(2)(B) has various elements and subsection (a)(1)(C) only applies to certain amounts in a specific area of goods and services. These characteristics show how the two other subsections are already well tailored to target a specific action. The same cannot be said about a broad provision like subsection (a)(2)(A). Adding active language to indicate that the false pretenses, representation, or fraud is made by the debtor will not only protect innocent parties but also better ensure the one engaging in the unlawful activity is the one barred from discharge.[175] For example, a revised subsection (a)(2)(A) could look like the following:

> **(2)** for money, property, services, or an extension, renewal, or refinancing of credit to the extent obtained by—
>
> **(A)** false pretenses, a false representation, or actual fraud, made by the debtor, other than a statement respecting the debtor's or an insider's financial condition.

By simply adding "made by the debtor," imputed liability onto innocent parties is less likely to occur.[176] This is a simple yet effective means of addressing the public policy concern regarding imputed liability that arises following the *Bartenwerfer* decision. There is a valid argument that if Congress had intended subsection (a)(2)(A) to focus on the wrongdoer, rather than the wrong, it would have rewritten the provision to reflect those sentiments: but

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[173] *See In re* Morris, 223 F.3d 548, 552 (7th Cir. 2000) (reminding how precedent instructs that "exceptions to discharge are to be constructed strictly against a creditor and liberally in favor of the debtor").

[174] *Compare* 11 U.S.C. § 523(a)(2)(B) (governing statements respecting a debtor's financial condition and requires that false statement be made by the debtor with intent to deceive); *and* 11 U.S.C. § 523(a)(2)(C) (requiring some element of culpable act by the debtor); *with* 11 U.S.C. § 523(a)(2)(A) (emphasizing that liability in found in the act rather than the actor).

[175] *See* 11 U.S.C. § 523 (a)(2)(A) (emphasizing the code's passive voice).

[176] *Id.*

this is not a sufficient defense against revision.[177] Assuming that Congress intended Section 523(a)(2)(A) to focus on the wrong rather than the one committing it is irrelevant. Perhaps at the time it was written Congress had that intention, but that does not mean it cannot be changed if it no longer is compatible or effective with the current realities of commercial developments in the United States. Legislation is typically passed with the best of intentions; however, valid public policy concerns often arise following implementation. As Americans engage with laws and feel the effects of specific legislation, is it so hard to grasp that revisions might be necessary? No harm would come from adding four words such as "made by the debtor" to the current language of § 523(a)(2)(A). If anything, it would better ensure that the honest but unfortunate debtor is not liable for the fraud of another solely because of their association through a specific type of relationship.

VII. CONCLUSION

Abuse and debt are entangled in ways often overlooked or ignored. Because these two issues are so intimately connected and nuanced, finding sustainable solutions is no small task. Current efforts to address the intersection of these important issues are commendable but fall short due to the pervasiveness of financial abuse and the ways in which it is becoming more frequent in the United States. Considering how financial abuse is almost always present in relationships already impacted by intimate partner or domestic violence, it can no longer be ignored as an issue demanding our attention.[178] Although one might initially think intimate partner or domestic violence, coerced debt, and bankruptcy are all individual legal issues, the available data and scholarship demonstrate that they in fact interact regularly and in powerful ways with severe consequences.[179] The qualitative and quantitative surveys, legal research, and attorney interviews discussed in this article demonstrate how those affected by intimate partner violence face a terrifying barrier to financial freedom: coerced debt.[180]

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[177] Bartenwerfer v. Buckley, 598 U.S. 69, 78 (2023) ("'When Congress includes particular language in one section of a statute but omits it in another section of the same Act,' we generally take the choice to be deliberate.").

[178] *See* Jeffery & Baddour, *supra* note 1 (providing data on domestic violence victims who also suffered financial abuse); *Financial Abuse Fact Sheet*, *supra* note 1 (offering data on the frequency of financial abuse within relationships affected by domestic violence).

[179] *See* Adams et al., *supra* note 22 (providing data on the number of female debtors in bankruptcy who also experienced intimate partner abuse); *see also* Littwin, *supra* note 7, at 955 (explaining the impact poor credit can have on domestic abuse or financial abuse survivors).

[180] *See* Littwin, *supra* note 7, at 953–955 (discussing the ways in which debt and domestic violence are connected through consumer credit); *see also Escaping Battered Credit*, *supra* note 22, at 392 (explaining how "coerced debt exists at the intersection of two crimes, identity theft and domestic violence").

As a result of this financial abuse, domestic abuse survivors must find a means for financial rehabilitation if they are to successfully leave their abusive partners and begin building a life of self-sufficiency. One potential avenue is bankruptcy. For those who choose this path, it is vital that bankruptcy law will protect them. As noted by the Supreme Court, providing debtors with a fresh start is "the principal purpose of the Bankruptcy Code."[181] This sentiment has been affirmed repeatedly as the Court has historically prioritized the honest but unfortunate debtor time and time again.[182] In thinking of those who enter bankruptcy, who could be more honest but unfortunate than someone whose abusive partner took advantage of their financial freedom, making it almost impossible to start anew? Victims of coerced debt are the quintessential honest but unfortunate debtor, thus there should be no doubt that the bankruptcy system will assist them on their path towards financial freedom and stability. The *Bartenwerfer* decision makes this goal challenging to achieve. Although the ramifications of such a recent case will likely not be known for some time, the thought that there exists even the slightest possibility a victim of coerced debt will be stuck repaying the debts of their abuser should be cause for concern.

In the last twenty years, paramount financial events have shifted lending practice in the United States, normalizing debt.[183] Additionally, the United States has also seen an increase in the frequency of financial abuse and the ways in which it manifests.[184] Taking these trends into account, it is not unreasonable to predict the rise of debt will likely lead to more bankruptcy

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[181] Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007).

[182] *See* Loc. Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (emphasizing how the Fresh Start Doctrine "gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt") *see also Marrama*, 549 U.S. at 367 (reminding of the need for rehabilitation rather than punishment for honest debtors).

[183] *See generally* Brian Duignan, *Great Recession Economics [2007–2009]*, BRITANNICA (Dec. 27, 2023), https://www.britannica.com/money/topic/great-recession [https://perma.cc/4KWM-LCS8] (illustrating how the 2007-2009 financial crisis devasted the national economy as "American households lost an estimated $16 trillion in net worth"); *see also* Jakub Hlávka and Adam Rose, *COVID-19's Total Cost to the U.S. Economy Will Reach $14 Trillion by End of 2023*, USC SCHAEFFER (May 16, 2023), https://healthpolicy.usc.edu/article/covid-19s-total-cost-to-the-economy-in-us-will-reach-14-trillion-by-end-of-2023-new-research/#:~:text=From%202020%20to%202023%2C%20the,dollars%2C%20according%20to%20our%20analysis [https://perma.cc/HSC3-BBLL] (describing that "the cumulative net economic output of the United States will amount to about $103 trillion" but "without the pandemic, the total of GDP over those four years would have been $117 trillion – nearly 14% higher in inflation-adjusted 2020 dollars").

[184] *See generally Financial Abuse*, *supra* note 7 (reporting data on the frequency of financial abuse in America); *see also Financial Abuse Fact Sheet*, *supra* note 1(providing data on the personal and societal costs and effects of financial abuse).

filings.[185] In preparation for this possibility, Congress should acknowledge how the broad reading of Section 523(a)(2)(A) of the Bankruptcy Code in *Bartenwerfer* presents valid concerns for individual victims of fraud. Holding that someone who is found liable for his or her partner's fraud cannot discharge that debt in bankruptcy, regardless of his or her own culpability, will hurt people seeking financial rehabilitation through the bankruptcy system, especially victims of intimate partner violence dealing with coerced debt.[186] The Court's dismissive acknowledgement of, and unconvincing sympathy for, the "hardships" that may result from its decision are indicative that this ruling will inevitably harm innocent parties.[187] Thus, rewriting Section 523(a)(2)(A) is an attainable way to better ensure honest yet unfortunate debtors—the ones whose interest matter most in cases of fraud—are gaining the benefits of the United States' rehabilitative, rather than punitive, bankruptcy system.[188]

Finally, to reiterate, revising subsection (a)(2)(A) of Section 523 is the optimal solution for two main reasons. First, removing the statute's current passive voice and/or replacing it with more active language such as "made by the debtor" would better identify culpability. Second, it would directly address the crux of the Supreme Court's textual interpretation in *Bartenwerfer*.[189] This proposal is a simple yet impactful change that would better protect those who are unknowingly involved in fraud through their abuser.

Lastly, bankruptcy filings saw a dip during the COVID-19 pandemic, but are back on the rise.[190] Knowing that individual debt has risen in the United States along with the frequency of financial abuse, it is vital that our laws are

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[185] *See Bankruptcies Rise, But Stay Lower Than Pre-COVID*, U.S. CTS, (May 5, 2023), https://www.uscourts.gov/news/2023/05/05/bankruptcies-rise-stay-lower-pre-covid [https://perma.cc/ZU2T-2ZQS] ("According to statistics released by the Administrative Office of the U.S. Courts, total filings rose 2.0 percent, to 403,273 new cases, compared with 395,373 cases in the previous year").

[186] *See* Bartenwerfer v. Buckley, 598 U.S. 69, 83 (2023) (holding Mrs. Bartenwerfer could not discharge her debt in bankruptcy).

[187] *See id.* (conceding that "innocent people are sometimes held liable for fraud they did not personally commit").

[188] *See* Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007) (explaining that a rehabilitative remedy is preferred over punishment for the honest but unfortunate debtor in bankruptcy); *see also* Grogan v. Garner, 498 U.S. 279 (1991) (finding it unlikely "[C]ongress would have fashioned a proof standard that favored an interest in giving the perpetrators of fraud a fresh start over the interest in protecting victims of fraud").

[189] *See Bartenwerfer*, 598 U.S at 75–77 (analyzing the passive voice found in Section 523(a)(2)(A)).

[190] *See Bankruptcies Rise, But Stay Lower Than Pre-COVID*, *supra* note 186 (reporting on the increase in bankruptcy filings since the start of the COVID-19 pandemic).

equipped to handle our new reality because "[c]entral to a law's effectiveness is the relief it provides."[191] The Bankruptcy Code should be ready to adequately and equitably handle cases of coerced debt and can do so by editing the language of Section 523(a)(2)(A). People who chose to pursue bankruptcy as a means of financial recovery should not be fearful that it will only further exacerbate their financial hardships. Simply put, survivors of coerced debt through intimate partner violence should not be on the hook for their abuser's debts as a price for not only their freedom, but survival.[192] The after-effects of coerced debt can be debilitating, sometimes leaving victims with hundreds of thousands of dollars' worth of debt they had no idea existed.[193] This form of abuse has devastating consequences and affects people's lives every single day.[194] Congress has the authority to make a change and should act accordingly before the effects of the *Bartenwerfer* decision are felt too severely by those least deserving of suffering the consequences.

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[191] *See* Devon, *supra* note 8 (breaking down average credit card debt in America); *see also* Adams, *supra* note 2 (suggesting effective laws provide adequate relief).

[192] Adams, *supra* note 2, at 1420.

[193] *See* Brady, *supra* note 19 (detailing how one woman's ex-husband left her with roughly $100,000 of debt).

[194] *Escaping Battered Credit*, *supra* note 22, at 376 (describing how women who were victims of coerced debt struggled to find jobs, housing, and other necessities due to their financial situation).