

# Pathways to Financial Security: A New Legal Avenue for Survivors of Coerced Debt in California

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*A new form of domestic violence has emerged out of the modern proliferation of consumer lending: coerced debt. Although abusers use a wide range of tactics to coerce debt—from identity theft to forcing or tricking partners to sign loan documents—coerced debt invariably damages survivors’ credit scores. Damaged credit scores create barriers to financial stability for which existing remedies provide little relief. This Note examines California Family Code Section 6342.5, a recently enacted statute that allows survivors to request an order stating they are not responsible for debts coerced by their abuser. Survivors can then use such an order in conjunction with state identity theft laws to protect themselves from creditors. This Note argues that, while implementation of this statute signals lawmakers are making efforts to provide relief to victims of coerced debt, Family Code Section 6342.5 may ultimately prove ineffectual in the face of modern credit-granting and debt collection practices and California’s identity theft laws. Ultimately, coerced debt puts into stark relief the growing consequences of our increasingly automated and depersonalized credit system for survivors of domestic violence. California legislators must pass further legislation that recognizes the role of the credit system itself in facilitating coerced debt.*

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## INTRODUCTION

When survivors of domestic violence experience damaged credit, they face added financial burdens that restrict their ability to meet other needs, making starting a new life away from an abuser extremely difficult.<sup>1</sup> While low credit is often a byproduct of abuse, abusers have recently begun to utilize credit scores themselves to control their partners.<sup>2</sup> A new form of domestic violence has emerged out of the proliferation of consumer lending: coerced debt, a type of economic abuse that takes the form of “nonconsensual, credit-related transactions [made] in a violent relationship.”<sup>3</sup> A recent study found that 52 percent of its participants in abusive relationships reported experiencing some kind of coerced debt.<sup>4</sup> Coerced debt can take a number of forms, including taking credit cards out in victims’ names without their knowledge, coercing victims into signing loan documents, and otherwise tricking victims into relinquishing their rights to property.<sup>5</sup> Invariably, when these debts go unpaid, survivors’ credit is damaged.<sup>6</sup> Given that traditional lenders are no longer the exclusive users of credit reports, survivors with damaged credit can face challenges in obtaining jobs, housing, and basic utilities.<sup>7</sup> Even if the survivor is aware of the debt, it

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1. See Adrienne E. Adams, Angela K. Littwin & McKenzie Javorka, *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, 1335 (2020) [hereinafter Adams, *Frequency, Nature, and Effects of Coerced Debt*].

2. See Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 951 (2012) [hereinafter Littwin, *Coerced Debt*].

3. *Id.* at 954.

4. Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1, at 1330.

5. Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PENN. L. REV. 363, 365 (2013) [hereinafter Littwin, *Escaping Battered Credit*].

6. Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1, at 1326.

7. *Id.*

may be so large that bankruptcy is the only feasible option.<sup>8</sup> Despite its prevalence and severe consequences, little regulation exists for coerced debt, making recourse difficult to come by.<sup>9</sup>

Existing remedies provide little relief for survivors of coerced debt. At the federal level, neither the Violence Against Women Act<sup>10</sup> nor the Fair Credit Reporting Act<sup>11</sup> provides victims with a legal avenue to obtain a substantive form of relief. Despite research suggesting that economic abuse and coerced debt are widespread and pose nearly insurmountable challenges for survivors, federal legislators have made little effort to address either issue.<sup>12</sup> At the state level, coerced debt exists in a gap between two systems of law: family law and debtor-creditor law.<sup>13</sup> While the “family law system does not have the authority to adjudicate the rights of creditors along with claims resulting from abusive relationships . . . the consumer credit system has few mechanisms for acknowledging that domestic violence exists.”<sup>14</sup> Few states have taken steps to rectify the legal deficiencies that prevent survivors from regaining financial stability.<sup>15</sup> However, California may be one of the first states to provide survivors of coerced debt with a path to meaningful relief. In the past few years, California legislators have introduced several bills aimed at providing victims of coerced debt with further recourse, including A.B. 2517.<sup>16</sup> A.B. 2517, recently codified

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8. *Id.* at 1326–27.

9. FreeFrom, a non-profit organization dedicated to promoting survivor economic power, scores states based on their survivor financial security policies. Their criteria include whether economic abuse is defined in state laws and whether states offer safe banking and coerced and fraudulent debt protections. FreeFrom’s National Survivor Financial Security Policy Map and Scorecard currently scores zero states as “model” states, two states as “financial security friendly,” eleven states as “taking steps,” seventeen states as “some accountability,” and twenty-one states as “little accountability.” *The National Survivor Financial Security Policy Map and Scorecard*, FREEFROM, <https://mapandscorecard.freefrom.org/> [<https://perma.cc/DVX7-CFU7>] [hereinafter FREEFROM, *Policy Map and Scorecard*]. California is one of the two financial security friendly states (along with Iowa). *Id.* Notably, only one state, Maine, is documented as having a supportive policy on coerced and fraudulent debt. *Id.* However, it is unclear whether the federal Fair Credit Reporting Act preempts Maine’s law, which prohibits credit reporting agencies from including debts that are the product of economic abuse in a consumer’s credit report. ME. REV. STAT. ANN. tit. 10, § 1310-H (2013). *See infra* Part IV.B.1.

10. *See* VIOLENCE AGAINST WOMEN ACT OF 1994 (VAWA 1994), Pub. L. No. 103–322, 108 Stat. 1902–55 (codified as amendments in scattered sections of 8, 16, 28, and 42 U.S.C. (2012 & Supp. V 2018)); *infra* Part III.C.

11. *See* 15 U.S.C. §§ 1681–1681x.

12. *See* Adrienne E. Adams, Cris M. Sullivan, Deborah Bybee & Megan R. Greeson, *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 564 (2008) [hereinafter Adams, *Development of the SEA*]; Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1, at 1330.

13. *See* Littwin, *Coerced Debt*, *supra* note 2, at 958–59.

14. *Id.*

15. *See supra* note 9 and accompanying text.

16. *See* A.B. 2517, 2019–2020 Reg. Sess. (Cal. 2021) (chaptered 2020 Cal. Stat. 245). Other bills include A.B. 430, codified as amendments to Sections 1788.18, 1788.61, 1798.92, and 1798.93 of the Civil Code and Section 530.8 of the Penal Code, which requires creditors, debt collectors, and debt

as California Family Code Section 6342.5, allows a survivor of domestic violence seeking a restraining order to request that a judge order that they are not responsible for debts coerced by the abuser or obtained by the abuser in both parties' names without the survivor's knowledge.<sup>17</sup>

This Note argues that, while the implementation of Family Code Section 6342.5 demonstrates that California is taking meaningful steps to expand the landscape of remedies available to survivors of coerced debt, further legislation is needed. This statute may prove ineffectual in the face of modern credit-granting and debt collection practices and California's own identity theft laws. Specifically, Section 6342.5 fails to capture the structural dimensions of coerced debt, which are increasingly complex, economic, and pervasive in our neoliberal context, and thus continues to place the onus of detecting coerced debt and navigating the complex consumer credit system on survivors and their advocates. Ultimately, coerced debt puts into stark relief the implications for survivors of the gendered and increasingly automated nature of the consumer credit system. Further legislative action, at both the state and federal level, is necessary to adequately address these inequities.

This Note proceeds in four parts. Part I explores the context of coerced debt: how the rise of financialization intersected with coercive control to create the perfect storm for coerced debt. Part II surveys existing remedies available to victims of coerced debt and examines how, while current law addresses aspects of coerced debt, it fails to recognize all harms resulting from coerced debt or account for all types of coerced debt.<sup>18</sup> Part III turns to California's new coerced debt statute, Family Code Section 6342.5, and examines how, while it ostensibly provides survivors with proof to pursue civil law claims and protect themselves against third-party debt collectors, it fails to empower judges to bind creditors, leaving survivors vulnerable. Part IV argues that California legislators must

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buyers to accept a Federal Trade Commission identity report as sufficient documentation that a debt was the result of identity theft; S.B. 373, which would have allowed domestic violence survivors to demonstrate that debt they carry was incurred as a result of economic abuse and thus prohibit debt collectors from collecting on that debt and credit reporting agencies from including it on victims' credit reports; S.B. 975, codified as Title 1.81.35 of the Civil Code, which prohibits and creates civil liability for coerced debt and creates two avenues for survivors to cancel their coerced debt; and A.B. 1841, which would have required the California Department of Financial Protection and Innovation to develop a voluntary training program on economic abuse for bank employees. *See* A.B. 430, 2021–2022 Reg. Sess. (Cal. 2021) (chaptered 2021 Cal. Stat. 265); S.B. 373, 2021–2022 Reg. Sess. (Cal. 2021); S.B. 975, 2021–2022 Reg. Sess. (Cal. 2022) (chaptered 2022 Cal. Stat. 989); A.B. 1841, 2021–2022 Reg. Sess. (Cal. 2022); *see infra* Part II.B, Part IV.B.

17. *See* CAL. FAM. CODE § 6342.5(b).

18. *See, e.g.,* FREEFROM, *Policy Map and Scorecard*, *supra* note 9. There is only one other article that addresses or analyzes state legislation as it applies to coerced debt. *See generally* Megan 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 (2019) (evaluating remedies available to victims of coerced debt in New York and arguing for a multi-level federal-state solution that would, like the new California law, empower judges to issue orders of protection that survivors could then use to repair their credit).

supplement Family Code Section 6342.5 with further legislation. Expanding upon existing proposals in the literature, this Note proposes legislation that recognizes the role of the credit system in facilitating coerced debt by limiting the ability of creditors to report or collect on coerced debt and by shifting the onus of detecting coerced debt onto creditors.

## I.

### DEFINING COERCED DEBT

Research on coerced debt is in its early stages. Though Angela Littwin's work in 2012 to identify and document the existence of coerced debt remains the primary authority on the topic, accounts of the rise of neoliberalism help to elucidate the sociopolitical context of coerced debt and thus its key structural features—namely, the ways in which coerced debt is a product of our contemporary financial and legal systems.<sup>19</sup> In other words, to understand the effects of coerced debt, we must look beyond the ways it manifests in particular relationships and instead at what Elizabeth Schneider calls the “generality” of coerced debt: the ways coerced debt is linked to modern economic inequality and gender subordination.<sup>20</sup>

This Section explores the context, underlying dynamics, forms, and consequences of coerced debt. First, it examines how the neoliberal rise of financialization intersected with coercive control to provide the predicating conditions for coerced debt. Neoliberalism—broadly understood as a political rationality that inserts the market into every sphere of life—inaugurated a shift from productive to financial capital that necessitated debt and transformed lending processes, thereby creating the tools for a new form of financial abuse.<sup>21</sup> Second, it turns to empirical evidence of coerced debt, including of its prevalence and common methods. Lastly, this Section explores the impact of coerced debt on survivors, including how it damages their financial stability and thus their ability to leave their partners.

#### A. *Context and Dynamics of Coerced Debt*

Coerced debt is a strictly modern phenomenon. Though debt itself is not new, the rise of neoliberalism in the 1970s instigated the proliferation of consumer lending and, when combined with coercive control in a relationship,

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19. See generally Littwin, *Coerced Debt*, *supra* note 2.

20. See Elizabeth Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 527 (1992).

21. See WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM'S STEALTH REVOLUTION 1, 31 (2015) (“neoliberal rationality disseminates the *model of the market* to all domains and activities . . . and configures human beings exhaustively as market actors, always, only and everywhere as *homo oeconomicus*”) [hereinafter BROWN, UNDOING THE DEMOS].

created the perfect storm for coerced debt.<sup>22</sup> More broadly, neoliberalism instigated three departures from its predecessor that are key to understanding coerced debt. First, it transformed the relationship between *market and individual*, as the market ceased to be a product of individuals pursuing their own interests and unintentionally generating collective benefit.<sup>23</sup> Instead, it became the primary project to which individuals are bound and “with which their existence . . . must align if they are to thrive.”<sup>24</sup> Second, it reshaped the relationship between *state and economy*, as state legitimacy is now predicated upon and tied to economic growth, in part manifested through the rollback of the welfare state.<sup>25</sup> Third, it initiated the *rise of financialization*, the shift from productive to financial capital that was accompanied by the destruction of organized labor and consequent precaritization of the labor market.<sup>26</sup> Where the transformation of the relationships between market and state and between market and individual shape the broader circumstances that make the effects of coerced debt so devastating,<sup>27</sup> financialization created the specific tools of coerced debt.

Financialization<sup>28</sup>—the pronounced increase in the volume, velocity, and complexity of financial flows and the shift of capital from production to

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22. See Tayyab Mahmud, *Debt and Discipline: Neoliberal Political Economy and the Working Classes*, 101 KENTUCKY L.J. 1, 12 (2012) [hereinafter Mahmud, *Debt and Discipline*]; Costas Lapavitsas, *The Financialization of Capitalism: 'Profiting without Producing'*, 17 CITY 792, 793–94, 798–802 (2013) (discussing the rise of financialization) [hereinafter Lapavitsas, *Financialization of Capitalism*]; DAVID M. KOTZ, *Financialization and Neoliberalism* in RELATIONS OF GLOBAL POWER: NEOLIBERAL ORDER AND DISORDER (Gary Teeple & Stephen McBride eds., 2010) 1, 6 (discussing banks' prioritization of pursuit of profits during the neoliberal era) [hereinafter KOTZ, *Financialization and Neoliberalism*]; MALCOLM SAWYER, FINANCIALIZATION: ECONOMIC AND SOCIAL IMPACTS 2–4 (2022) [hereinafter SAWYER, FINANCIALIZATION]. Beginning in the early 1970s, Keynesian economics and the greater liberal order fell by the wayside as the neoliberal rationality emerged and quickly gained ascendancy. Where the Keynesian model linked productivity growth with wage growth, resulting in a macroeconomic policy designed to promote full employment and an “activist [welfare] state [that functioned as a] countervailing power to the market,” neoliberal economics broke the fundamental Keynesian compromise between capital and labor and unleashed the market. Mahmud, *Debt and Discipline*, at 10–12. See also Lapavitsas, *Financialization of Capitalism*, at 793–94; Lois R. Lupica, *The Consumer Debt Crisis and the Reinforcement of Class Position*, 40 LOY. U. CHI. L. J. 557, 578 (2009) (noting that “[i]t was not until the 1970s that regulatory, technological, and competitive forces aligned, forever altering the fundamental structure of the consumer credit industry”) [hereinafter Lupica, *Consumer Debt Crisis*].

23. See BROWN, UNDOING THE DEMOS, *supra* note 21, at 84.

24. See *id.*

25. See *id.* at 28, 63–64; Mahmud, *Debt and Discipline*, *supra* note 22, at 11, 32–33.

26. See BROWN, UNDOING THE DEMOS, *supra* note 21, at 70–72; Mahmud, *Debt and Discipline*, *supra* note 22, at 22–26, 35–36; KOTZ, *Financialization and Neoliberalism*, *supra* note 22, at 3 (describing the neoliberal shift from cooperation between capital and labor towards capital dominating labor).

27. See *infra* Part I.C. and Part IV.A.

28. Like its intellectual predecessor “neoliberalism,” scholars have viewed “financialization” as a “loose and shifting signifier” that is often awkwardly defined. See, e.g., Costas Lapavitsas, *Theorizing Financialization*, 25 WORK, EMP. AND SOC'Y 611, 611–14, 615–17 (2011) (reviewing Marxist literature theorizing financialization); SAWYER, FINANCIALIZATION, *supra* note 22, at 13–32 (noting that contemporary use of the term “financialization” encapsulates a number of concepts).

speculation—“increased both the reach and the depth of the credit economy whereby debt became the primary catalyst for aggregate demand,” thus fueling liquidity.<sup>29</sup> In the new neoliberal state, debt was “no longer a private choice but a structural imperative.”<sup>30</sup> This was in part because, in its search for liquidity, the financial sector invented new, high-risk financial instruments like the subprime mortgage and pushed lending into more marginal markets in order to reach borrowers who had traditionally been denied credit.<sup>31</sup> Critically, banks created new processes to facilitate lending that transformed it into a “speed driven and information based” process.<sup>32</sup> Specifically, the processes for granting credit became increasingly automated and depersonalized: where in the past, banks “require[d] face-to-face meetings in order to authorize personal lines of credit,” lenders now increasingly relied on personal information and low-level

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29. See Mahmud, *Debt and Discipline*, *supra* note 22, at 23; KOTZ, *Financialization and Neoliberalism*, *supra* note 22, at 5, 9; SAWYER, *FINANCIALIZATION*, *supra* note 22, at 13–14. Containment of finance capital, one of the key tenets of Keynesian macroeconomic policy, helped to grow wages and inflation. Mahmud, *Debt and Discipline*, *supra* note 22, at 11–12. As a result, by the early 1970s, wealth-owning classes, “[f]aced with declining rates of profit and shrinking shares of wealth,” sought to “reverse the setbacks to their wealth and privilege” by fueling liquidity. *Id.* at 12–13. The new neoliberal state ultimately generated this liquidity by using a variety of tactics to increase demand for consumer debt, including high interest rates which suppressed wages and consequently drained savings even as consumption boomed, attacks on the power of organized labor, and a rollback of the welfare state. See *id.* at 29–33. These tactics—and the dramatically growing wealth gap, increasingly severe social stratification, and sharp class divides that they fomented and reinforced—took the form of policies supporting an “illusion of classlessness” that masked the “hegemonic forces” at play. Lupica, *Consumer Debt Crisis*, *supra* note 22, at 575.

30. See Mahmud, *Debt and Discipline*, *supra* note 22, at 5; Lupica, *Consumer Debt Crisis*, *supra* note 22, at 583 (observing that “high debt levels have been incurred at a time where household savings levels are at an all-time low, leaving many without a safety net in the event of an unexpected expense or interruption in income. Enormous pressure has been brought to bear on consumers to buy instead of save, and to borrow, rather than wait”).

31. See Mahmud, *Debt and Discipline*, *supra* note 22, at 29–35; Tom Brown & Lacey Plache, *Paying with Plastic: Maybe Not So Crazy*, 73 U. CHI. L. REV. 63, 72–74 (2006) (charting the historical “democratization” of debt as banks began to first commercialize consumer lending and then, after realizing the immense profits to be gained from this market, increased the supply and lowered the cost of credit); CHRISTOPHER PAYNE, *The American Sub-Prime Homeowner Consumer in THE CONSUMER, CREDIT AND NEOLIBERALISM: GOVERNING THE MODERN ECONOMY* (2011) 150, 160–66 (examining the economic policy formulation and practice of neoliberalism in Britain and the United States from the 1990s through to the financial crisis and economic housing downturn that began in 2007–2008); KATHLEEN C. ENGEL & PATRICIA A. MCCOY, *THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS* 21–25 (2011) (describing how banks engaged in predatory lending to target and profit off of consumers who were historically denied loans) [hereinafter ENGEL & MCCOY, *THE SUBPRIME VIRUS*].

32. Littwin, *Coerced Debt*, *supra* note 2, at 986; Lupica, *Consumer Debt Crisis*, *supra* note 28, at 560, 562–63 (describing how high levels of consumer debt became necessary to sustaining the growth of financial markets, thus encouraging retail lenders to alter their lending practices and identifying these practices as a significant contributing factor to the problem of consumer over-indebtedness). See, e.g., Kelly M. Miley, *Electronic Banking*, 15 ANN. REV. BANKING L. 1, 2–5 (1996) (describing how banks entered into agreements with software vendors or acquired financial software companies to develop online banking products); Adam J. Levitin, *Private Disordering? Payment Card Fraud Liability Rules*, 5 BROOK. J. CORP. FIN. & COMP. L. 1, 18 (2010) (overviewing the limited requirements card networks impose on merchants to verify identity and prevent fraud).

employees to screen out identity thieves.<sup>33</sup> In short, as debt has become a feature of economic life, credit has become easier to access with greater consequences if debt accumulates. And as lending increasingly relies on personal information—often just at the fingertips of intimate partners—it has never been easier for abusers to exert financial control over their partners by using survivors’ credit.<sup>34</sup>

Though all forms of domestic violence may involve financial challenges for survivors, coercive control “is the situation in which coerced debt can flourish.”<sup>35</sup> Evan Stark, who authored the definitive text on coercive control, defines it as “a course of calculated, malevolent conduct deployed . . . to dominate . . . by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control.”<sup>36</sup> An abuser deploys this conduct to create conditions for the survivor in which even questioning the abuser’s behavior is dangerous.<sup>37</sup> Though the specific tactics utilized in a coercive control relationship may vary, economic abuse—“behaviors that control a [survivor’s] ability to acquire, use, and maintain economic resources, thus threatening [their] economic security and potential for self-sufficiency”—is incredibly common.<sup>38</sup>

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33. Littwin, *Coerced Debt*, *supra* note 2, at 986. *See, e.g.*, ENGEL & MCCOY, *THE SUBPRIME VIRUS*, *supra* note 31, at 16–17, 27 (explaining how technological advances permitted lenders to analyze vast amounts of consumer data and develop factors to determine risk that could be applied to individual borrowers, and how retail lenders began to accept applications for home loans over the phone and online).

34. Littwin, *Coerced Debt*, *supra* note 2, at 953 (“As consumer lending has permeated American life, violent partners have begun using debt as a means of exercising abusive control, making the consumer credit system an unknowing party to domestic violence.”).

35. *Id.* at 973. Domestic violence generally involves “physical violence, sexual violence, stalking and psychological aggression (including coercive tactics) by a current or former intimate partner.” Matthew J. Breiding, Kathleen C. Basile, Sharon G. Smith, Michele C. Black & Reshma Mahendra, *Intimate Partner Violence Surveillance*, CTRS. FOR DISEASE CONTROL & PREVENTION at 11 (2015), <https://www.cdc.gov/violenceprevention/pdf/ipv/intimatepartnerviolence.pdf> [<https://perma.cc/ZAA8-U5ZA>]. Broadly speaking, researchers understand there to be two primary forms of domestic violence: violence that is intermittent and ongoing violence that is about control. *See* Michael P. Johnson, *Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women*, 57 J. MARRIAGE & FAM. 283, 284–85 (1995) [hereinafter Johnson, *Patriarchal Terrorism and Common Couple Violence*]; SUSAN SCHECHTER & ANN JONES, *WHEN LOVE GOES WRONG* 29 (1992). The former, often termed “situational violence” or “common couple violence,” involves a “dynamic . . . in which conflict occasionally gets ‘out of hand,’ leading usually to ‘minor’ forms of violence, and more rarely escalating into serious, sometimes even life-threatening, forms of violence.” Johnson, *Patriarchal Terrorism and Common Couple Violence*, *supra* note 35, at 285.

36. EVAN STARK, *COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE* 5 (2007) [hereinafter STARK, *COERCIVE CONTROL*].

37. *See* Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1, at 1325; STARK, *COERCIVE CONTROL*, *supra* note 36, at 5.

38. *See* Adams, *Development of the SEA*, *supra* note 12, at 564–67, 571. *See also* Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1; Judy Postmus, Sara-Beth Plummer, Sarah McMahon, N. Shaanta Murshid & Mi Sung Kim, *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411 (2012).



Financial control, a subset of economic abuse, in turn describes the control abusers gain over household finances and is the antecedent to coerced debt. Abusers can achieve control over a victim's financial life by requiring them to turn over their income, denying them access to shared bank accounts, and putting them on an allowance.<sup>39</sup> Additionally, the abuser may create "forced financial naivete"<sup>40</sup> by depriving the survivor of financial information, with severe results.<sup>41</sup> For example, a survivor may not know their abuser's occupation or income.<sup>42</sup> This ability to limit survivors' knowledge and access to information about their finances enables abusers to carry out long-term financial fraud and coercion and thus forms the "foundation" of coerced debt.<sup>43</sup> In sum, while the rise of financialization created the tools of coerced debt—specifically, the structural imperative of debt and a transformed lending process—coercive control is the context in which abusers can utilize fraud and coercion to generate debt in their partners' names.<sup>44</sup>

### B. Defining and Measuring Coerced Debt

Coerced debt—"all nonconsensual, credit-related transactions that occur in a violent relationship, not just matters that depend on the express application of force"—takes a number of forms.<sup>45</sup> In her 2012 study, Angela Littwin found that abusers' methods of appropriating their partner's credit can be divided into three categories: fraud, force, and misinformation and other means.<sup>46</sup> Coerced debt through fraud—which includes identity theft, forgery, and impersonation—is easily achieved given lenders' exponentially more common use of personal information to identify their consumers.<sup>47</sup> Specifically, while lenders require personal information in an attempt to limit identity theft, it is only useful to screen out strangers, not relatives or cohabitants.<sup>48</sup> So, as Littwin notes, "it is not surprising that the first tool at an abuser's disposal is knowledge of the types of information that lenders use to verify consumers' identities."<sup>49</sup> Abusers may use

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39. Littwin, *Coerced Debt*, *supra* note 2, at 982.

40. *Id.*

41. Littwin, *Escaping Battered Credit*, *supra* note 5, at 374.

42. *Id.* Littwin also argues that "[s]eizing financial control in a relationship is a basic way that abusive men have reassumed the mantle of coverture. By excluding their partners from the most basic aspects of financial life, they accomplish in fact what the doctrine of coverture used to achieve by law." Littwin, *Coerced Debt*, *supra* note 2, at 982.

43. Littwin, *Escaping Battered Credit*, *supra* note 5, at 374–75.

44. Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1, at 1325.

45. Littwin, *Coerced Debt*, *supra* note 2, at 954, 969–72. Littwin interviewed fifty-five lawyers and other advocates who represented or otherwise directly worked with survivors of domestic violence, including social workers, psychologists, financial-education counselors, nonprofit executives, and general lay advocates. *Id.* at 969–70. Due to the resources required to provide adequate safety planning, and other procedural safeguards, Littwin did not interview domestic violence victims directly. *Id.* at 969.

46. *Id.* at 986–91.

47. *Id.* at 986.

48. *Id.* at 987.

49. *Id.*

their partner's information to obtain a credit card or open an account in their partner's name online by filling out credit card offers that arrive for their partner in the mail, or even by speaking with a representative over the phone.<sup>50</sup> Coerced debt through force includes threats of physical violence or other severe consequences, including withholding basic necessities or threatening children or weaponizing immigration status.<sup>51</sup> Abusers may force victims to sign financial documents against their will or coerce victims to use their own credit cards to purchase things for them.<sup>52</sup> Lastly, coerced debt through misinformation and other means includes tricking victims into signing documents without giving them an opportunity to read their contents and "tak[ing] an initial grant of permission and borrow[ing] beyond the allowed scope."<sup>53</sup> Abusers invariably employ more than one of these methods.<sup>54</sup> The amount of debt abusers accrue can vary widely: one survivor reported \$7,000 in utility debt; another reported \$1 million in debt as a result of her husband triple mortgaging their home; and another reported \$180,000 in credit card debt.<sup>55</sup>

Preliminary studies indicate that coerced debt is a pervasive form of abuse. Only two empirical studies to date have explicitly focused on coerced debt, though several others have surfaced evidence of its existence or its elements.<sup>56</sup> For example, in a 2008 study—the first to include questions about coerced debt—Michigan State University researchers created a comprehensive scale to measure economic abuse, which they termed the Scale of Economic Abuse (SEA).<sup>57</sup> They then interviewed 103 women receiving services from a domestic

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50. *Id.* at 988.

51. *Id.* at 989.

52. *Id.* at 989–90.

53. *Id.* at 990 ("Often, the victim would consent to his using her credit card at one point, but then be unaware that he was continuing to borrow on it").

54. *Id.* at 989. For example, "[i]n some situations, coercion could be combined with fraud. One lawyer described a scheme in which the abuser would apply for a credit card in the victim's name over the phone and then would put the victim on the line at the end of the call, with the instruction to 'let them know it's okay.'" *Id.*

55. *Id.* at 991, 993, 1003.

56. See, e.g., Mary P. Brewster, *Power and Control Dynamics in Prestalking and Stalking Situations*, 18 J. FAM. VIOLENCE 207 (2003); PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUST. & CTRS. FOR DISEASE CTRL & PREVENTION, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000), <https://www.ojp.gov/pdffiles1/nij/181867.pdf> [<https://perma.cc/QS4E-GUKM>] (analyzing, in part, the 2007 Consumer Bankruptcy Project); Cynthia K. Sanders, *Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study*, 21 VIOLENCE AGAINST WOMEN 3 (2015).

57. Adams, *Development of the SEA*, *supra* note 12, at 569. Items for the Scale of Economic Abuse (SEA) were derived from many sources, including domestic violence literature, advocates, and survivors, creating "120 items that describe behaviors that control a woman's ability to acquire, use, and maintain economic resources." *Id.* The SEA has since been revised twice. In 2016, researchers at Rutgers University reviewed the SEA to test its consistency and attempt to simplify the instrument. See Judy L. Postmus, Sara-Beth Plummer & Amanda M. Stylianou, *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22 VIOLENCE AGAINST WOMEN 692, 694–95 (2016). In 2020, Michigan State University researchers updated the SEA again. See Adrienne E. Adams, Megan

abuse victim service agency to test the reliability and validity of the scale.<sup>58</sup> In her 2012 article, Littwin analyzed this study for coerced debt.<sup>59</sup> She identified eleven questions from the survey that affect whether a survivor is able to pay off debt or have access to a credit card.<sup>60</sup> For instance, 68 percent of participants reported their abuser forced them to give him money or let him use their checkbook, ATM card, or credit card; 59 percent reported their abuser built up debt under their name by doing things like using their credit card or running up the phone bill.<sup>61</sup> From those results, Littwin found that the study suggested a high rate of credit-related financial abuse.<sup>62</sup> In her own qualitative study, Littwin found that fifty-one of fifty-five advocates interviewed discussed at least one form of coerced debt and only one stated that it did not regularly arise in her practice.<sup>63</sup>

Littwin, Adams, and McKenzie Javorka built on Littwin's qualitative study in their 2020 study.<sup>64</sup> Littwin and her colleagues developed survey questions related to coerced debt that advocates at the National Domestic Violence Hotline (NDVH) asked a sample of domestic violence survivors seeking help.<sup>65</sup> They

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R. Greeson, Angela K. Littwin & McKenzie Javorka, *The Revised Scale of Economic Abuse (SEA2): Development and Initial Psychometric Testing of an Updated Measure of Economic Abuse in Intimate Relationships*, 10 PSYCH. OF VIOLENCE 268, 268 (2020).

58. Adams, *Development of the SEA*, *supra* note 12, at 569–71. “[Participants] rated the frequency with which their partners had employed each of the economic abuse tactics according to a 5-point scale, ranging from 1 (*never*) to 5 (*quite often*).” *Id.* at 569.

59. Littwin, *Coerced Debt*, *supra* note 2, at 960–62.

60. *Id.* at 960.

61. *Id.* at 961. Additionally, 84 percent of participants reported that their abuser decided when and how they could use their cash, bank accounts, or credit cards; 57 percent reported that their abuser kept them from building credit by doing things like putting their property in only his name, not letting them get a credit card of their own, or keeping them from having their own bank account; 54 percent reported their abuser demanded that the lease or mortgage be in his name only; 53 percent reported their abuser used their checkbook, ATM card, and/or credit card without their permission and/or knowledge; 52 percent reported their abuser kept them from using their own credit cards; 51 percent reported their abuser damaged their credit by doing things like putting property in their name and then refusing to pay the bill or prevented them from paying the bill; 48 percent reported their abuser kept them from having access to their bank account(s); 42 percent reported their abuser kept them from getting a credit card of their own; and 39 percent reported their abuser built up debt under their name by doing things like putting a car, apartment/house, or credit cards in their name. *Id.*

62. *Id.* at 960.

63. *Id.* at 972.

64. See generally Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1.

65. *Id.* at 1327–29. The study used a convenience sample of 1,823 female callers to the NDVH over an eight-week period in the summer of 2014. *Id.* at 1327. Advocates asked participants six questions intended to assess coerced debt and its effects among hotline callers, including control over financial information, credit damage, and financial dependence. Specifically, advocates asked three questions related to coerced debt, two of which were asked to assess for a coercive transaction; one question about how callers discovered a fraudulent transaction; one question about whether a caller's partner restricted their access to financial information; one question about whether a caller suffered credit damage due to the actions of a partner; and one question about whether a caller stayed in a relationship with a controlling partners because they were financially dependent upon them. *Id.* at 1328–29. “[W]omen were asked to report coerced debt, control over financial information, abuse-related credit damage, and financial

found that 52 percent of participants reported having partners who generated debt in their name via a coercive or fraudulent transaction.<sup>66</sup> However, the actual figure may be far higher, as not all participants in the study may know of an abuser's fraud.<sup>67</sup> Additionally, 71 percent of respondents stated that their partner had kept information about finances from them in the past, and 46 percent stated that an abusive partner had damaged their credit.<sup>68</sup> Importantly, Littwin and her colleagues found that an abuser's control over financial information was predictive of coerced debt and, in turn, coerced debt significantly increased the likelihood of credit damage.<sup>69</sup>

Lastly, while the predicate conditions of coerced debt—particularly the proliferation of debt and the transformation of lending practices—are not unique to this form of abuse, coerced debt is distinct from other forms of financial abuse primarily due to the gender subordination that pervades both neoliberalism and coercive control.<sup>70</sup> Coercive control is “an ongoing and gender-specific pattern” and “a gender strategy.”<sup>71</sup> This is not necessarily to say that women are more frequently subjected to coercive control than men.<sup>72</sup> Rather, coercive control is

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dependence experience in any intimate relationships. It may be that these phenomena occurred within separate intimate relationships.” *Id.* at 1336.

66. *Id.* at 1330–31. 43 percent of participants reported a coercive transaction and 22 percent reported a fraudulent transaction. *Id.*

67. *Id.* at 1334.

68. *Id.* at 1331.

69. *Id.* at 1331–33 (finding that women with partners who hid financial information from them were 3.6 times more likely to have coerced debt and that women with coerced debt were 6 times more likely to suffer credit damage).

70. For example, they are also conditions ripe for elder and familial financial abuse. *See infra* notes 129–131 and accompanying text. *See also* Christine Kim, *Credit Cards: Weapons for Domestic Violence*, 22 DUKE J. GENDER, L. & POL'Y 281, 304–07 (2015) [hereinafter Kim, *Credit Cards*] (identifying arguments for and against extending mandatory elder abuse reporting requirements to coerced debt).

71. STARK, COERCIVE CONTROL, *supra* note 36, at 99, 230 (2007); *see also* SCHECHTER & JONES, *supra* note 35, at 50 (arguing that “[abusiv[e] men] behave this way” because they are allowed to “by the culture around [them]”). Stark’s reframing of domestic violence as coercive control shifts the paradigm from incident-focused to a more comprehensive view that captures, for instance, dignitary and structural dimensions of intimate partner violence that previous accounts neglected; “[c]oercive control is a political definition, highlighting the gender subordination that causes, organizes, and renders meaningful specific acts of violence and abuse. Thus, violence against women is not only a personal crisis for individual women but also a political crisis that the law has a deeper responsibility to remedy.” *See* Cheryl Hanna, *The Paradox of Progress: Translating Evan Stark’s Coercive Control into Legal Doctrine for Abused Women*, 15 VIOLENCE AGAINST WOMEN 1458, 1459 (2009).

72. As Littwin argues, while national surveys of domestic violence have produced radically different results as to whether domestic violence broadly speaking is gendered, studies generally support the conclusion that coercive control affects women, more frequently and more severely, than men. Littwin, *Coerced Debt*, *supra* note 2, at 978–80. *See, e.g.*, Matthew J. Breiding, Sharon G. Smith, Kathleen C. Basile, Mikel L. Walters, Jieru Chen & Melissa T. Merrick, CTRS. FOR DISEASE CNTRL. & PREVENTION, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States*, at 10 (2011) (finding that men and women are equally likely to be subjected to coercive control); Michele C. Black, Kathleen C. Basile, Matthew J. Breiding, Sharon G. Smith, Mikel L. Walters, Melissa T. Merrick,

often successful in large part due to its employment of structural restraints. Those restraints, in turn, exploit hegemonic gendered power asymmetries that institutional structures, such as the societal distribution of care work, maintain and reproduce.<sup>73</sup> For instance, in heterosexual relationships, “[r]egulatory strategies are . . . commonly confused with the imbalance in decision making typical of heterosexual relationships or are masked by the fact that the supposed victim earns more money than her partner, pays the bills, hires outside help, or makes crucial decisions about household purchases[.]”<sup>74</sup> Thus “the infrastructure of control” in these relationships is to some degree a replicate of the greater infrastructure of gender discrimination.<sup>75</sup> In our neoliberal context, the gender subordination underlying coercive control has been intensified and transformed through responsabilization, such that we are construed as only and everywhere individuals, wholly responsible for our well-being, stability, and redress, and ours alone.<sup>76</sup> As such, many of the consequences survivors of coerced debt face are amplified precisely because the causes of coerced debt derive from inequities woven into the very systems survivors rely on in their attempts to regain financial stability.

### C. *Effects of Coerced Debt on Survivors*

All forms of economic abuse can impact survivors’ economic, physical, and mental health.<sup>77</sup> During an abusive relationship, the economic dependence that is a common product of economic abuse often creates an obstacle for survivors who attempt to leave their partners.<sup>78</sup> Economic abuse can continue to

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Jieru Chen & Mark R. Stevens, CTRS. FOR DISEASE CTRL. & PREVENTION, *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, at 46–47 (2011) (finding that, while men and women are equally likely to be subjected to coercive control, the specific tactics employed against men and women vary and women are more likely to experience more severe forms of coercive control).

73. See STARK, COERCIVE CONTROL, *supra* note 36, at 5.

74. *Id.* at 230. There is significant debate among scholars as to the extent to which the broader feminist conception of domestic violence as a pattern of behaviors that relies on and (re)constructs gender inequality is applicable to LGBT relationships, in part due to the fact that there is little empirical evidence of the nature of coercive control in these relationships. See Evan Stark & Marianne Hester, *Coercive Control: Update and Review*, 25 VIOLENCE AGAINST WOMEN 81, 92–94 (2018) (exploring the different approaches scholars have taken to address this issue). However, preliminary research demonstrates that men are more likely to be perpetrators than women even in same-gender relationships. See TJADEN & THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE, *supra* note 56, at 30. As individuals who identify as LGBT, as well as women of color, are far more likely to experience abuse, understanding how abusers may make use of existing, structural power asymmetries, including those drawn along lines of race, ability, and sexual orientation, is critical to fully grasping this form of abuse for all survivors. See *id.* at 25–31.

75. See *id.*

76. More specifically, responsabilization is the process wherein individuals are construed as only and everywhere entrepreneurial and self-investing capital. See *infra* Part IV.A.

77. See Adams, *Development of the SEA*, *supra* note 12, at 568.

78. *Id.* This is especially the case for low-income survivors, for whom “leaving an abusive relationship means having to face an uncertain economic future. Specifically, low-income women with

impact survivors even after they leave an abusive relationship: many survivors who do leave abusive relationships experience poverty or become homeless.<sup>79</sup> The effects of economic abuse may be long-lasting, as studies have demonstrated a strong link between poverty and poor health.<sup>80</sup> Moreover, a survivor's inability to attain financial security apart from the abuser creates significant barriers to leaving the abusive relationship. It also increases the risk, in the event that they do leave, that they will return.<sup>81</sup> Coerced debt can propel these consequences to new heights. Beyond burdening a survivor with economic hardships, coerced debt can prevent a survivor from becoming economically independent, largely due to damage to their credit score.<sup>82</sup>

Because the nontraditional use of credit reports has risen dramatically in the past decade, credit scores are a critical factor in determining whether a survivor can attain financial independence. Where in the past, credit reports were only utilized by lenders, today, potential landlords, employers, and even utility companies use credit scores to screen out applicants. Thus, a good credit score is the "essential tool for economic survival."<sup>83</sup> Survivors often rely on credit during an abusive relationship to pay for food and other necessities, or as they are leaving the relationship to take measures to increase their safety, such as staying at a hotel or changing the locks on their home.<sup>84</sup> In their 2020 study, Adams and Littwin found that, while almost two-thirds of all participants reported staying longer in an abusive relationship because of financial concerns, coerced debt significantly predicted the likelihood of survivors' financial dependence on abusers. Those with coerced debt were over two times more likely to stay longer with their abusers than they wanted due to concerns about being able to financially support themselves or their children.<sup>85</sup> Additionally,

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abusive partners report a lack of resources needed for day-to-day survival, such as money, housing, child care, and transportation. On top of that, many do not have the job skills and the wage-earning power to support themselves and their children." *Id.*

79. *Id.*

80. *Id.*

81. Littwin, *Coerced Debt*, *supra* note 2, at 1000.

82. *Id.*

83. *Id.* Sectors that are impacted by credit history include housing, employment, car and home insurance rates, loans, utilities, and banking. *Id.*; KATIE VONDELINDE, DIANE JOHNSTON, AMY CAO, PERSIS YU, KAREN MERRILL TJAPKES, SARAH BOLLING MANCINI, JAMIE ANDREE, LAURA RUSSELL, JENNA SMITH, NIDA ABBASI, KARLO NG, LISALYN JACOBS & ERIKA SUSSMAN, CTR. FOR SURVIVOR AGENCY & JUST., *GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS*, at 21 (2017) [hereinafter, CSAJ, *GUIDEBOOK*]. *See also* Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, N.Y. TIMES, Aug. 6, 2009, at A1; Katie Porter, *More Supreme Court Action on Credit Issues*, CREDIT SLIPS (Sept. 28, 2006), [http://www.creditslips.org/creditslips/2006/09/more\\_supreme\\_co.html](http://www.creditslips.org/creditslips/2006/09/more_supreme_co.html) [<https://perma.cc/7NSY-GM6A>].

84. CSAJ, *GUIDEBOOK*, *supra* note 83, at 19, 21–22.

85. Adams, *Frequency, Nature, and Effects of Coerced Debt*, *supra* note 1, at 1333.

survivors who are unable to repay debts face harassment, abuse, and threats from debt collectors, especially when the debtor is Black.<sup>86</sup>

However, to fully grasp the gravity and depth of the consequences of coerced debt, it must be understood as a product and part of a neoliberal political economy that burdens survivors with the costs of their redress by privileging market-oriented strategies.<sup>87</sup> Beyond providing abusers with the tools of coerced debt, neoliberalism more broadly altered the relationship between market, state, and individual such that the interests of the individual and the social policy goals of the state are replaced with the project of macroeconomic growth.<sup>88</sup> Neoliberalism not only burdens individuals, rather than the state, with taking on debt to drive the economy, but it also responsabilizes individuals: we are tasked with making out and undertaking strategies of self-investment and risk-management necessary for survival while, simultaneously, collective provisioning for existence is denigrated in favor of delineating the individual as “the only relevant and wholly accountable actor.”<sup>89</sup> At the level of the state, neoliberalism instigated a radical reduction in welfare provisions as part of its greater privatization of the state, constructing a market-oriented welfare model that relies primarily on market factors, and secondarily on kinship systems, to produce minimal benefits for the fewest eligible recipients.<sup>90</sup> The already severe consequences of responsabilization in the face of increasingly elusive public structures of support are magnified for survivors, who often rely on welfare benefits to gain economic stability and flee abusive relationships.<sup>91</sup> Many existing remedies for coerced debt, which are constructed to provide survivors with relief through a private right of action, replicate these problems.

## II.

### EXISTING COERCED DEBT REMEDIES

Though existing remedies address harms survivors experience due to coerced debt, they either provide relief insufficient for survivors to reestablish

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86. Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, UTAH L. REV. 1, 47 (2020) [hereinafter Weissman, *Political Economy of Domestic Violence Laws*].

87. *Id.* at 6.

88. See BROWN, UNDOING THE DEMOS, *supra* note 21, at 63–64, 84.

89. Mahmud, *Debt and Discipline*, *supra* note 22, at 25; see BROWN, UNDOING THE DEMOS, *supra* note 21, at 28, 40, 104, 132–33; *infra* Part IV.A.

90. See Mahmud, *Debt and Discipline*, *supra* note 22, at 25 (“[I]nstead of governments taking on debt to stimulate the economy, individuals and families, including the poor, did so.”); see BROWN, UNDOING THE DEMOS, *supra* note 21, at 28, 40, 104; Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 21–22.

91. Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 19, 22 (“Studies have documented the importance of welfare benefits for domestic violence victims, many of whom have relied on public support as a temporary safety net to secure at least a bare minimum level of economic autonomy to enable them to flee abusive relationships . . . participation in the labor force is often hindered by the experiences of abuse, dependency on the market for economic sustenance in the form of wages and healthcare cannot provide sufficient opportunities for ‘economic citizenship.’”).

their financial security or are foreclosed to survivors altogether. This is in part because coerced debt is complex and defies traditional conceptions of financial crimes as offenses exclusively perpetrated by strangers. Forms of recourse for these crimes, which have seen little progressive reform in the past two decades, are ill-equipped to offer even the conventional victim of identity theft—let alone a survivor of coerced debt—true relief. Additionally, coerced debt, which an abuser may have incurred with the survivor's partial consent, often does not fit within narrow definitions of financial fraud. Therefore, apart from divorce and civil protection orders, many avenues are in practice unavailable to survivors because they are aimed at victims of crimes perpetrated by strangers. Further, existing remedies risk endangering or retraumatizing survivors. To devise remedies that adequately address coerced debt, advocates must grasp how existing laws further the privatization of the consequences of coercive control while simultaneously obscuring the structural inequality that often facilitates this form of abuse.<sup>92</sup> Until radical reform occurs at this level, remedies will not only remain inadequate, but will continue to prioritize solutions that facilitate appreciation of capital at the expense of individual survivors.

#### A. Credit Repair

Prior to pursuing legal action, there are a number of steps victims of coerced debt can take if their abusive partner incurred debt in their name. The credit repair process is primarily established by two pieces of federal legislation: the Fair Credit Reporting Act (FCRA),<sup>93</sup> which provides the framework for the credit reporting system, and the Fair Debt Collection Practices Act (FDCPA), which creates ethical guidelines that prohibit abusive, deceptive, and unfair debt collection practices.<sup>94</sup> Relevant to coerced debt, the FCRA governs what information parties may furnish about consumers to credit reporting agencies (CRAs).<sup>95</sup> If a consumer provides a CRA with documentation that certain information was the result of identity theft, the CRA is required to block the fraudulent debt from the consumer's credit report and notify the furnisher.<sup>96</sup> It is important to note that, under the Fair and Accurate Credit Transactions Act (FACTA),<sup>97</sup> a 2003 amendment to the FCRA, consumers must provide a police

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92. Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 9.

93. 15 U.S.C. §§ 1681–1681x.

94. 15 U.S.C. §§ 1692–1692p. *See* FED. RESERVE, FAIR DEBT COLLECTION PRACTICES ACT CONSUMER COMPLIANCE HANDBOOK (2006), *available at* <https://www.federalreserve.gov/boarddocs/supmanual/cch/fairdebt.pdf> [<https://perma.cc/ZCU8-C7V5>].

95. *See* FED. TRADE COMM'N, 40 YEARS OF EXPERIENCE WITH THE FAIR CREDIT REPORTING ACT, at 1 (2011), *available at* <https://www.ftc.gov/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations> [<https://perma.cc/82HS-BAFN>].

96. 15 U.S.C. § 1681c-2(a).

97. Pub. L. No. 108-159, 117 Stat. 1952 (codified in scattered sections of Title 15 and 20 of United States Code).



report as part of the documentation they submit to CRAs.<sup>98</sup> Once the consumer has disputed some or all of the amount due, then, under the FDCPA, debt collectors must cease attempts to collect payment.<sup>99</sup> California’s versions of these statutes—the Consumer Credit Reporting Agencies Act<sup>100</sup> and the Rosenthal Fair Debt Collection Practices Act<sup>101</sup>—provide for similar procedures.<sup>102</sup>

In addition to disputing inaccurate information with CRAs, consumers can freeze their credit and place a fraud alert on their file.<sup>103</sup> Victims of identity theft may benefit from taking additional steps, such as submitting an affidavit to the creditor and adding a personal statement to their credit report.<sup>104</sup> Survivors of economic abuse can take similar steps.<sup>105</sup> However, while government agencies and domestic violence advocacy groups recommend these measures to victims of financial fraud by strangers and survivors of coerced debt alike, these actions often fail to provide even the most conventional victim of identity theft with timely relief, and can be costly.<sup>106</sup> Advocates have found that these suggested steps are, in practice, highly ineffective for survivors of coerced debt, who often suffer more complex, more extensive, and more types of fraud.<sup>107</sup> Even where survivors have the support of an advocate, expunging coerced debt from their

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98. 15 U.S.C. § 1681c-2(a)(4). FACTA also created the Red Flags Rule, which “requires many businesses and organizations to implement a written identity theft prevention program designed to detect the ‘red flags’ of identity theft in their day-to-day operations, take steps to prevent the crime, and mitigate its damage.” 16 C.F.R. § 681.1 (amending 15 U.S.C. § 1681m(e)). *See also* FED. TRADE COMM’N, *Fighting Identity Theft with the Red Flags Rule: A How-To Guide For Business* (2013), <https://www.ftc.gov/tips-advice/business-center/guidance/fighting-identity-theft-red-flags-rule-how-guide-business> [<https://perma.cc/F9SQ-H4G8>].

99. *See* 15 U.S.C. § 1692(g).

100. CAL. CIV. CODE §§ 1785.10–1785.19.5.

101. *Id.* §§ 1788–1788.33.

102. *See infra* Part IV.B.1.

103. *See Identity Theft Victim Checklist*, STATE OF CAL. DEP’T OF JUST. <https://oag.ca.gov/idtheft/facts/victim-checklist> [<https://perma.cc/9KHX-KH5Y>].

104. *See id.*; *see also Know Your Rights: California Identity Theft Victims’ Rights*, CAL. DEP’T OF JUST. (2013) [https://oag.ca.gov/sites/all/files/agweb/pdfs/idtheft/know\\_your\\_rights\\_id\\_theft.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/idtheft/know_your_rights_id_theft.pdf) [<http://perma.cc/87TC-EY29>].

105. CSAJ, *GUIDEBOOK*, *supra* note 83, at 26–32, 69–74.

106. SYNOVATE, *FEDERAL TRADE COMM’N: IDENTITY THEFT SURVEY REPORT*, at 6, 26 (2013) <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-identity-theft-program/synovaterreport.pdf> [<https://perma.cc/L6TP-UWN3>] (finding that though the average identity theft victim spends between 30 and 60 hours and over \$1,300 resolving new accounts and other frauds, it may take some victims months to resolve the problems).

107. *See* Littwin, *Coerced Debt*, *supra* note 2, at 1003–04. “[I]nterviewees stressed the long period of time that must elapse before negative credit events ‘fall off’ a credit report. One lawyer stated that she had seen the process take ten to fifteen years. Another advocate contended that the problem is compounded by the fact that negative information frequently stays on credit reports for longer than the system is supposed to allow.” *Id.* at 1004. “[T]he process itself is time consuming. One financial counselor said that the year-long program at which she works is not long enough to clean up a survivor’s credit report.” *Id.* at 1003–04. “One lawyer summarized that the process is ‘so difficult,’ even for experienced attorneys, . . . that survivors attempting to contact the credit agencies on their own would face significant barriers.” *Id.* at 1004.

credit report is a “near impossible” endeavor that entails highly individualized techniques.<sup>108</sup>

Credit repair through conventional, pre-litigation means is often out of reach for victims of coerced debt, in large part because the consumer credit system generally fails to acknowledge that domestic violence exists.<sup>109</sup> As of 2015, none of the top twenty issuers of credit cards had a written policy or protocols to respond to issues of domestic violence.<sup>110</sup> Moreover, companies’ responses to coerced debt by fraud and by force were inconsistent, both internally and across companies. Some companies viewed coerced debt as identity theft or fraud, while others stated that a client could not dispute the account or charges and would likely be held responsible.<sup>111</sup> Companies also differed as to whether a client must file a police report to challenge the account.<sup>112</sup>

Even where the credit system does provide survivors an opportunity to provide information about the abuse, creditors are unsympathetic. For example, while survivors can add a 100-word consumer statement to their credit file that will be included in all credit reports, it does not affect the survivor’s credit score and can be easily ignored by lenders.<sup>113</sup> Taking a different tack, one financial education counselor tried calling or writing credit bureaus with her clients and arguing that certain information was incorrect and should be changed.<sup>114</sup> Yet she found that even when the survivor would disclose the coerced nature of the debt, credit agencies usually did not find it relevant.<sup>115</sup> Other advocates instead directly approached service providers to explain that the survivor’s credit score was a poor indicator of their credit risk or job candidacy, a time-consuming and complex process.<sup>116</sup>

Additionally, the credit repair process can often pose added obstacles for survivors of domestic violence. For one, the process can endanger survivors as resolving financial fraud can inadvertently alert an abusive partner to the survivor’s location.<sup>117</sup> Similarly, once a consumer contacts a CRA to report an error, the CRA then contacts the original creditor, which gives the creditor the

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108. *Id.* at 1003.

109. *Id.* at 959.

110. Kim, *Credit Cards*, *supra* note 70, at 293–94.

111. *Id.* at 296–301.

112. *Id.* at 296–301.

113. CSAJ, *GUIDEBOOK*, *supra* note 83, at 28.

114. Littwin, *Coerced Debt*, *supra* note 2, at 1004.

115. *Id.*

116. *Id.*

117. CSAJ, *GUIDEBOOK*, *supra* note 83, at 70. For instance, “[t]he first step in the credit advocacy process is frequently ordering a credit report; however, this simple step may lead to severe safety problems for survivors in hiding from their abusive partners. Credit reports contain current personal information, and when a consumer orders a credit report, that inquiry, including the location of where the inquiry comes from, shows up on the credit report. While it is illegal for an individual to pull another person’s credit report without their permission, abusive partners and ex-partners frequently ignore this law. If an abusive partner has a survivor’s personal information and social security number, they are often able to pull the survivor’s credit report illegally.” *Id.* at 26.

survivor's current contact information and allows it to restart collections.<sup>118</sup> Collection tactics, which are already frequently abusive and coercive, may be particularly traumatizing for survivors, for whom the debt functions as a reminder of their abuse.<sup>119</sup>

Furthermore, rebuilding credit may cause survivors financial or safety concerns. For example, a survivor who prioritizes paying bills on time may not be able to afford basic necessities, and a survivor who uses a co-signer may inadvertently give that person power over them in a negative way.<sup>120</sup> While potential workarounds exist, without an advocate it is unlikely a survivor would know these options exist. The process of rebuilding credit may also retraumatize or revictimize survivors, as survivors may associate ostensibly benign information with traumatic memories or events.<sup>121</sup> Lastly, survivors may not be willing to engage in certain aspects of the process, such as criminally prosecuting their abuser or filing a police report. In some sense, it is no surprise that a process devised by corporations—that operate with virtually no oversight or accountability—to repair a record that affords them immense control over the day-to-day lives of consumers is ineffective.<sup>122</sup> Where appreciation, rather than generation, of capital is the governing economic principle, lower credit scores mean higher interest rates and thus liquidity. In other words, the current credit repair process is fuel for the market just as much as debt itself is.<sup>123</sup>

### B. Criminal Prosecution of Identity Theft

Though identity theft represents only one form of coerced debt, it is the primary existing legal claim that captures the harms of coerced debt. Identity theft, which includes fraudulent loan and credit card applications, withdrawals from bank accounts, and use of online accounts, is criminalized under both federal and state law.<sup>124</sup> At the federal level, the Identity Theft and Assumption

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118. Littwin, *Coerced Debt*, *supra* note 2, at 1004.

119. Tactics include repeated late-night and profanity-filled phone calls, impersonating an attorney or law enforcement or government official, harassment at work, threats of arrest and physical violence, and telling debtors that they should not respond to a lawsuit. See CONSUMER FINANCIAL PROTECTION BUREAU, ANNUAL REPORT 2022: FAIR DEBT COLLECTION PRACTICES ACT 16–17 (2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_fdcpa\\_annual-report-congress\\_04-2022.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_04-2022.pdf) [<https://perma.cc/M7Y4-4XJJ>]; Matthew Bremner, *The Fair Debt Collection Practices Act: The Need for Reform in the Age of Financial Chaos*, 76 BROOK. L. REV. 1553, 1553–54 (describing common tactics based on the 2010 Federal Trade Commission annual review of consumer complaints under the FDCPA and news coverage). See also *supra* note 86 and accompanying text.

120. CSAJ, GUIDEBOOK, *supra* note 83, at 35.

121. *Id.* at 21.

122. STRIKE DEBT, THE DEBT RESISTORS' OPERATIONS MANUAL 1, 4 (2012).

123. See STEFANO HARNEY & FRED MOTEN, *Debt and Credit*, THE UNDERCOMMONS: FUGITIVE PLANNING & BLACK STUDY 61, 66 (2013); Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 50–54 (critiquing corporate-sponsored financial literacy programs).

124. U.S. DEP'T OF JUST., *Identity Theft*, <https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud> [<https://perma.cc/V5MT-TMYM>].

Deterrence Act<sup>125</sup> criminalizes “knowingly transfer[ring] or us[ing], without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.”<sup>126</sup> All forms of identity theft are criminalized under California law.<sup>127</sup> Despite this, identity theft remains a prevalent concern.<sup>128</sup> Moreover, studies suggest that identity theft by perpetrators known to the victim—also called “familiar fraud,” which includes familial identity theft—is on the rise.<sup>129</sup> Compared to victims of identity theft by strangers, victims of identity theft by a known perpetrator face more severe consequences as they are more likely to be repeatedly victimized due to their proximity to the perpetrator and experience a significant loss of trust.<sup>130</sup> Additionally, victims may be less willing to report their loved ones to the police, and law enforcement may be less receptive to claims that their identity was stolen by someone they know.<sup>131</sup> Victims of identity theft can exercise their rights under the aforementioned statutes by documenting the crime, by filing a complaint with the FTC and preparing an FTC Identity Theft Affidavit, or by filing a police report.<sup>132</sup>

However, these statutes leave victims of coerced debt without meaningful recourse, for several reasons. First, like victims of familial fraud, survivors can have difficulty acquiring a police report as local law enforcement officers often

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125. See Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028.

126. 18 U.S.C. § 1028(a)(7).

127. See CAL. DOJ, *Identity Theft*, *supra* note 111. See also CAL. PENAL CODE § 530.5; CAL. CIV. CODE Title 1.81.3, §§ 1798.92–1798.97.

128. In 2018, the U.S. Department of Justice reported that an estimated 23 million Americans were victims of identity theft, totaling in losses of over \$15 billion. ERIKA HARRELL, U.S. DEPT. OF JUST., VICTIMS OF IDENTITY THEFT, 2018 (2021) at 1 <https://bjs.ojp.gov/library/publications/victims-identity-theft-2018> [<https://perma.cc/6K3N-BLBV>].

129. See Sarah Skidmore Sell, *Financial Fraud More Fraught When Perpetrator Is Known*, AP NEWS (Dec. 4, 2019) <https://apnews.com/article/28d93ce1272f9f82a383e61a13fc4f0e> [<https://perma.cc/FVC7-FZW2>] (“The National Crime Victimization Survey by the Bureau of Justice Statistics from 2016 found that just 6 percent of all victims of identity theft knew something about the offender. But another more recent report . . . which surveyed 5,000 adults, found that the number of victims who knew the offender in cases of identity theft spiked to 15 percent in 2018 from 7 percent in 2017.”).

130. See Axton Betz-Hamilton, *Understanding the Experiences of Familiar Identity Theft Victims When a Parent is the Perpetrator: A Pilot Study*, 11 J. FINANCIAL THERAPY 90, 103–04 (2020) (finding that study participants experienced fear, anxiety, and trust issues); John C. Navarro & George E. Higgins, *Familial Identity Theft*, 42 AM. J. CRIM. JUST. 218, 225–27 (2016) (noting that family members are particularly vulnerable to theft by other family members as access to personal information can lead to repeat victimization).

131. Navarro & Higgins, *supra* note 130, at 225–26 (noting that law enforcement is “ambivalent” to reports of such theft).

132. See FED. TRADE COMM’N, GUIDE FOR ASSISTING IDENTITY THEFT VICTIMS 11–13 (2013), <https://sedm.org/forms/09-Procs/pdf-0119-guide-assisting-id-theft-victims.pdf> [<https://perma.cc/6K3N-BLBV>].

do not believe them, especially when the survivor is a person of color or poor.<sup>133</sup> As a result, obtaining documentation that the debt resulted from fraud is essential. However, the documentation police rely on in determining whether to file a report, such as the FTC Identity Theft Affidavit, does not adequately describe coerced debt, particularly where the survivor was party to the borrowing in their name.<sup>134</sup> Second, even where survivors are able to acquire a police report, identity theft cases are rarely prosecuted; when they are, identity theft statutes are a poor fit for coerced debt.<sup>135</sup> While identity theft is one type of coerced debt, this offense does not capture all kinds of coerced debt—especially those involving the survivor’s partial consent. Third, survivors may be reluctant to file a police report against their abusive partner. Survivors may feel unsafe contacting police due to their previous interactions with law enforcement.<sup>136</sup> Additionally, some survivors may be reluctant to file a police report against an abusive partner out of concern for how it will affect their relationship with their partner or out of fear that they or their abuser will face discrimination by police.<sup>137</sup>

The evidentiary problems survivors face with regards to filing a police report or pursuing criminal prosecution also affect survivors’ ability to repair their credit through private or civil measures. This is particularly salient at the federal level, where FACTA deputizes local law enforcement as the gatekeepers of FCRA protections: if survivors are unable or unwilling to file a police report, they are also unable to request that fraudulent debt be blocked under the

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133. See Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. STATE U. L. REV. 1, 7 (2009) [hereinafter Goodmark, *Autonomy Feminism*] (describing how some advocates and survivors supported mandatory arrest laws as a way to force authorities, who “were inclined to ignore [acts of domestic violence] as beyond the province of the state, regardless of the injury inflicted on the victim or her pleas for assistance,” to take survivors and the abuse they experienced seriously); TK LOGAN & ROB (ROBERTA) VALENTE, NAT’L DOMESTIC VIOLENCE HOTLINE, WHO WILL HELP ME? DOMESTIC VIOLENCE SURVIVORS SPEAK OUT ABOUT LAW ENFORCEMENT RESPONSES, 4, 6–8 (2015) <http://www.thehotline.org/wp-content/uploads/sites/3/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf> [<https://perma.cc/Z7HF-AVPY>] [hereinafter NDVH, *Law Enforcement Responses*] (reporting that survivors feared calling the police again because law enforcement in the past did not take their abuse seriously and had discriminated against them based on race, gender, ability, income, or immigration status, among other things).

134. Littwin, *Coerced Debt*, *supra* note 2, at 1005.

135. See ALEXANDRA RICKS & YASEMIN IRVIN-ERICKSON, CTR. FOR VICTIM RESEARCH, IDENTITY THEFT AND FRAUD 5 (n.d.).

136. CSAJ, GUIDEBOOK, *supra* note 83, at 30; See NDVH, *Law Enforcement Responses*, *supra* note 133 at 8 (reporting that survivors feared contacting police because of concerns about arrest or threats of arrest).

137. See NDVH, *Law Enforcement Responses*, *supra* note 133, at 4 (reporting that survivors feared contacting law enforcement due to fear of police brutality directed at their partner or themselves, or due to fear that calling the police would have negative consequences for the abuser, among other things).

FCRA.<sup>138</sup> As civil law predicates protections on a victim's adherence to the credit repair process, a victim's inability to obtain a police report can affect their credibility in civil court as well. Moreover, while civil law may provide alternatives, litigation is often a significant burden for survivors.

### C. Civil Law Remedies

As domestic violence law scholars note, civil law remedies are an underutilized form of recourse for survivors.<sup>139</sup> Survivors of coerced debt may pursue claims in contract, tort, and property law for fraud, tortious interference with contractual relations, or conversion.<sup>140</sup> Additionally, states have begun to create tort claims specifically for domestic violence.<sup>141</sup> For example, California has established both a civil action for gender-motivated violence and a specific domestic violence tort.<sup>142</sup> Where survivors can successfully bring a claim, civil law remedies may prove highly effective. For example, as Camille Carey argues, “[t]hrough tort suits, victims can achieve financial compensation for harms, assume a position of control over legal claims addressing the abuse, experience both power and agency in an otherwise subordinating relationship, and seek deterrence of an abuser’s abusive conduct.”<sup>143</sup> However, survivors may not be able to obtain relief through civil law claims for two primary reasons. First, in addition to safety concerns, the resources required to bring a claim may be prohibitive for some survivors, especially since the possibility for recovery is often quite low. Second, judges are often unwilling to view tort doctrine as applicable to the domestic violence context.<sup>144</sup>

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138. See FACTA § 111; 15 U.S.C. § 1681c-2(a)(4). Recent California legislation seeks to remove this barrier to relief. A.B. 430, introduced by Representative Tim Grayson and chaptered in 2021, amends the Civil and Penal Codes to require creditors, debt collectors, and debt buyers to accept a FTC identity report as sufficient documentation that a debt was the result of identity theft (specifically, California Civil Code Sections 1788.18, 1788.61, 1798.92, and 1798.93 and Penal Code Section 530.8.).

139. See Camille Carey, *Domestic Violence Torts: Righting a Civil Wrong*, 62 U. KAN. L. REV. 695, 695 (2014).

140. See CAL. CIV. CODE § 1572 (fraud); *Fam. Home Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 825 (9th Cir. 2008) (describing tortious interference with contractual relations).

141. See Carey, *supra* note 139, at 709.

142. *Id.* at 715–18. “The California domestic violence tort claim, known as the ‘tort of domestic violence,’ provides civil relief specifically tailored to domestic violence as opposed to the broader category of gender violence. California Civil Code Section 1708.6 provides that a person is liable for the tort of domestic violence if ‘(1) [t]he infliction of injury upon the plaintiff result[s] from abuse,’ and ‘(2) [t]he abuse was committed by . . . a person having a relationship with the plaintiff as defined’ by the statutes . . . Under the California statute, a domestic violence tort plaintiff may recover ‘general damages, special damages, and punitive damages[,] . . . equitable relief, an injunction, costs, and any other relief that the court deems proper, including reasonable attorney’s fees’ . . . The California courts have supported domestic violence tort claims, and the California legislature has created a special statute of limitations for domestic violence plaintiffs.” *Id.* at 716–17.

143. *Id.* at 696.

144. See Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OREGON L. REV. 945, 974–80 (2004) (arguing that

Financial fraud remedies are also likely out of reach for many survivors due to evidentiary challenges. California law provides victims of identity theft with a right of action against creditors and debt collectors to enjoin them from attempting to collect on or report debt that is the result of theft.<sup>145</sup> If a creditor or debt collector brings suit against a victim of identity theft to collect on a debt or account, the victim may bring a claim or cross-complaint against the creditor or debt collector to establish that they are a victim of identity theft.<sup>146</sup> If the victim can establish by a preponderance of the evidence that they are a victim of identity theft, then they are entitled to a judgment that provides, among other things, declaratory and injunctive relief and a civil penalty.<sup>147</sup>

While this form of recourse may ostensibly provide survivors with a means to alleviate themselves of the coerced debt, survivors likely will have difficulty proving that the debt was the result of coercion or fraud. In determining whether a plaintiff is a victim of identity theft, juries typically rely on declarations and testimony from the victim as well as documentation of the theft. California Civil Code Section 1798.92 defines a “victim of identity theft” as an individual who “has submitted a Federal Trade Commission identity theft report [or, in] the alternative . . . a police report.” In other words, requiring adherence to the credit repair process or filing of a police report creates a unique barrier to civil relief for victims of coerced debt.<sup>148</sup> As a consequence, these processes are much harder for victims of coerced debt to successfully navigate and obtain relief.

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the dearth of tort cases brought by domestic violence survivors is in part due to courts’ consistent reluctance to interfere in marriages, even those involving family violence, and noting cases where judges have held that tort claims are not suited for the domestic violence context). *See also* NEW YORK CITY ADMIN. CODE § 10-1102 (“Senate hearings, various task forces and the United States Department of Justice have concluded that victims of gender-motivated violence frequently face a climate of condescension, indifference and hostility in the court system and have documented the legal system’s hostility towards sexual assault and domestic violence claims”). Family law judges, who hear these issues most frequently, are often themselves unfamiliar with common aspects of domestic violence and hostile to survivors’ claims. *See* Julie M. Kafka, Kathryn E. Moracco, Clare Barrington & Afsaneh L. Mortazavi, *Judging Domestic Violence From the Bench: A Narrative Analysis of Judicial Anecdotes About Domestic Violence Protective Order Cases*, 29 QUALITATIVE HEALTH RSCH. 1132, 1140–41 (2019) (finding that judges often use gendered stereotypes to distinguish between “true” and “frivolous” domestic violence cases when deciding whether to grant a DVRO); Cara J. Person., Kathryn E. Moracco, Christine Agnew-Brune & James Michael Bowling, “*I Don’t Know That I’ve Ever Felt Like I Got the Full Story*”: *A Qualitative Study of Courtroom Interactions Between Judges and Litigants in Domestic Violence Protective Order Cases*, 24 VIOLENCE AGAINST WOMEN 1474, 1489 (2018) (finding that many judges were unfamiliar with the common effects of trauma of domestic violence and thus made decisions based on misleading information); Deborah Epstein and Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 405–438 (examining how judges may discount claims or testimony of survivors of domestic violence due to their own lack of knowledge about domestic violence or due to stereotypes of domestic violence survivors).

145. CAL. CIV. CODE § 1798.93.

146. *Id.*

147. *Id.*

148. *See* Part II.A.

#### D. Family Court and Orders of Protection

Family courts provide survivors with two main modes of relief for coerced debt: divorce, through the division of property and assets, and orders of protection. As divorce is limited to survivors who are married to their abuser, I focus here on orders of protection to better capture the forms of recourse available to all survivors. For many survivors, domestic violence restraining orders (DVROs), sometimes referred to as “civil protection orders” (CPOs) depending on the jurisdiction, provide a more accessible, attainable, and effective remedy than criminal prosecution of their abuser.<sup>149</sup> Though the specific protections vary by jurisdiction, DVROs primarily aim to shield the survivor from abuse through injunctive relief, including prohibiting contact between the abuser and survivor, requiring the abuser to relinquish firearms, and ordering the abuser to physically stay away from the survivor. DVROs may also provide the survivor with tailored ancillary relief, such as child custody and housing.<sup>150</sup> Survivors can obtain a DVRO by filing a petition in family court describing the abuse and the type of relief sought.<sup>151</sup> Courts will then issue a temporary order of protection that lasts until a hearing for a final order of protection can be held.<sup>152</sup> Though many jurisdictions establish a standard duration for a final order, judges are often afforded significant discretion in making this determination.<sup>153</sup>

In California, the Domestic Violence Protection Act (DVPA) provides liberal grounds for survivors to obtain a protection order, including physical violence, impersonation, harassment, coercive control, and disturbing the peace.<sup>154</sup> Moreover, when issuing a temporary protective order, judges are permitted to determine whether the survivor or abuser may temporarily control shared property and to dictate which party is responsible for paying any liens due during the period the order is in effect.<sup>155</sup> Temporary orders may last up to

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149. Dana Harrington Conner, *Financial Freedom: Women, Money and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339, 369 (2014).

150. *Id.* at 370.

151. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1130 (2009).

152. *Id.*

153. See ABA COMM’N ON DOMESTIC & SEXUAL VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (2020), [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/charts/cpo2020.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/charts/cpo2020.pdf) [<https://perma.cc/6QJ9-D2KK>]; WOMEN’S LAW.ORG, *Legal Information: Restraining Orders*, <https://www.womenslaw.org/laws/ca/restraining-orders/domestic-violence-restraining-orders/steps-getting-dvro#node-28756> [<https://perma.cc/9DBG-WYFF>].

154. CAL. FAM. CODE §§ 6200–6460. The DVPA permits a court to issue a restraining order on a showing of actual or imminent bodily injury, sexual assault, stalking, threats, impersonation, harassment, telephoning, destroying personal property, contact, coming within a specified distance of, or disturbing the peace of the other party. CAL. FAM. CODE §§ 6203, 6320. Coercive control was added as a basis for a protective order by the passage of S.B. 1141 in 2020. See S.B. 1141, 2019–2020 Reg. Sess. (Cal. 2020) (chaptered 2020 Cal. Stat. 248; codified as CAL. FAM. CODE § 6320(c)).

155. CAL. FAM. CODE § 6324.



twenty-one days; after notice and a hearing, a court may issue a final DVRO that lasts up to five years, renewable for an additional five years or permanently.<sup>156</sup> Additionally, a court may order as part of a final DVRO that the abuser pay restitution to the survivor for lost earnings and other expenses, such as medical care and temporary housing, incurred as a direct result of the abuse.<sup>157</sup>

However, that judges are able to provide relief does not mean that survivors can actually obtain it. Judges may not only fail to provide adequate economic relief, but simply applying for a DVRO may itself create financial difficulties for the survivor—protection may come with a price.<sup>158</sup> For instance, survivors may have to take time off from work to attend hearings, leading to a loss in earnings that studies demonstrate is rarely recovered.<sup>159</sup> Moreover, when it comes to forms of abuse such as coerced debt, DVROs are virtually ineffective. As Littwin notes, there is a “crucial gap between family and debtor-creditor law” through which coerced debt falls.<sup>160</sup> Though a family court may determine that debts in the survivor’s name were incurred as part of their abuse and that the abuser should be responsible for paying those debts, the survivor ultimately remains liable as the court does not have the authority to determine the rights of the creditor.<sup>161</sup> Thus, division of debt by the family court is “only a paper victory” for the survivor.<sup>162</sup>

Private and legal remedies fail to provide victims with complete relief, either because these forms of recourse only capture aspects of the harms caused by coerced debt, or because recourse itself is inaccessible to survivors. Because coerced debt falls outside of the traditional conception of identity theft as primarily perpetrated by strangers, survivors are denied the relief they need to prevent long-term damage to their credit and overall financial well-being. Existing remedies not only fail to provide survivors of coerced debt anything more than nominal relief, but also fail to address the structural dimensions of the abuse.<sup>163</sup> Advocacy strategies must aim to uncover and question the market-oriented assumptions that underpin many contemporary remedies aimed at repairing the damage caused by economic abuse; otherwise, only survivors who already possess political and economic power will benefit from these statutory schemes.<sup>164</sup>

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156. *See id.* §§ 6340, 6345(a).

157. *Id.* § 6342.

158. Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 34, 36 (“Access to family court is often the first challenge to victims of domestic violence seeking an allocation of assets and debt . . . Some, but not all judicial districts have made available *pro se* forms in divorce cases.”).

159. *Id.*

160. Littwin, *Coerced Debt*, *supra* note 2, at 956.

161. *Id.* at 956–59.

162. *Id.* at 957.

163. Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 39–40.

164. *Id.* at 9.

## III.

## CALIFORNIA'S COERCED DEBT STATUTE

In the past several years, California state legislators have introduced several bills aimed at providing relief to victims of economic abuse.<sup>165</sup> While these bills may demonstrate that state legislators' awareness of economic abuse is growing, it is unclear what material effect this new legislation will have on survivors. This Section examines one of these bills: A.B. 2517, recently codified as Family Code Section 6342.5, which expanded the scope and function of civil protective orders.<sup>166</sup> As survivors tend to choose this statutory remedy over other legal alternatives, this new law stands to be particularly consequential for survivors of economic abuse.<sup>167</sup> However, this statute may ultimately serve more to signal the importance of finding viable avenues of relief for survivors of economic abuse than to provide a sufficient remedy. This Section will describe the legislative history of Family Code Section 6342.5, the relief it purports to provide survivors, and analyze its potential effectiveness in the face of the consumer credit system and existing federal law.

A. *Legislative History*

A.B. 2517—introduced by Assembly Member Todd Gloria in 2020—aimed to better meet the needs of survivors of financial abuse by expanding a court's ability to divide property and debt as part of a restraining order.<sup>168</sup> Recognizing that “nearly every victim of domestic violence has ... been economically abused,” Gloria sought provide a remedy to address such a situation.<sup>169</sup> Family Code Section 6342.5 allows judges to determine whether debts were incurred through financial abuse and assign the responsibility for those debts to the restrained party.<sup>170</sup> The bill, sponsored by the California Partnership to End Domestic Violence, received the full support of the California legislature and many other non-profit organizations, including the California Low-Income Consumer Coalition.<sup>171</sup>

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165. See *supra* note 16 and accompanying text; *infra* Part IV.B.

166. See CAL. FAM. CODE § 6342.5.

167. Conner, *supra* note 149, at 369–70.

168. A.B. 2517 (2019-2020).

169. ASSEMB. COMM. ON JUDICIARY, A.B. 2517, 1, 3 (2020) [hereinafter, ASSEMB. COMM. ON JUDICIARY ANALYSIS] <https://trackbill.com/s3/bills/CA/2019/AB/2517/summaries/assembly-judiciary.pdf> [<https://perma.cc/3WP4-CL97>]; see Adams, *Development of the SEA*, *supra* note 12, at 571.

170. CAL. FAM. CODE § 6342.5(b).

171. See *Bill Votes*, CAL. LEGIS. INFO., [https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=201920200AB2517](https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201920200AB2517) [<https://perma.cc/6X3U-RGG2>]; ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 9. The Senate Judiciary Committee Analysis lists the following additional organizations as supporters: Casa de Esperanza, Community Resource Center, National Association of Social Workers (California Chapter), Peace Over Violence, Project: PeaceMakers, StrengthUnited, and Walnut Avenue Family & Women's

Only one organization, the California Land Title Association (CLTA), which represents the title insurance industry, initially opposed the bill. CLTA advocated for the bill to be amended to prevent courts from altering a third party’s right to, or interest in, property as part of a civil protection order determining the possession and control of the property of a survivor and abuser.<sup>172</sup> While the CLTA supported the underlying purpose of the bill, it expressed concern that, without such a provision, the bill would “create a new class of victim”: third parties that unknowingly engaged in transactions involving property subject to liens incurred through domestic violence.<sup>173</sup> Therefore, it argued, if every loan secured by property could potentially be invalidated due to acts outside a lender’s knowledge, “loans could become more difficult or costly to obtain, thereby negatively impacting all California consumers.”<sup>174</sup> The Assembly responded by adding a provision clarifying that “a finding that specific debts were incurred as the result of domestic violence and without the consent of a party . . . does not affect the priority of any lien or other security interest,” one of two changes to the bill.<sup>175</sup>

The second change concerned the effective date of the legislation. The law was initially poised to go into effect on July 1, 2021, but given the COVID-19 pandemic, the Judicial Council—the rule-making arm of the court system tasked with, among other things, promulgating standard court forms—requested additional time to update the forms used by *pro se* litigants.<sup>176</sup> As such, during its May 11, 2020 hearing, the Assembly Judiciary Committee delayed the effective date of the legislation to January 1, 2022.<sup>177</sup>

The California Partnership to End Domestic Violence and the California Low-Income Consumer Coalition provided comments in support of the bill. Both organizations noted that by adding space for the issuing judge to identify which debts were incurred as a result of domestic violence, the survivor would then be able to use the restraining order to gain civil debt relief under Civil Code Section

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Center. The Senate Judiciary Committee Hearing notes list the following additional organizations: A Community for Peace, Alliance Against Family Violence and Sexual Assault, Asian Women’s Shelter, Catalyst Domestic Violence Services; City and County of San Francisco, Department on the Status of Women; Community Overcoming Relationship Abuse, Disability Rights California, EndTAB, Haven Women’s Center of Stanislaus, House of Ruth, Interface Children & Family Services, Jewish Family Service of Los Angeles, Laura’s House, Majorjee Mason Center, Rainbow Services, and WEAVE. STAFF OF S. COMM. ON JUDICIARY, A.B. 2517 (2020) at 6–7.

172. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 8.

173. *Id.*

174. *Id.*

175. ASSEMB. THIRD READING OF A.B. 2517 (as amended June 8, 2020) at 3 (emphasis added).

176. *Id.* at 4.

177. A.B. 2517 (2019-2020) Bill History,

[https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201920200AB2517](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB2517)  
[<https://perma.cc/V3F6-ZSLN>].

1798.93.<sup>178</sup> The California Low-Income Consumer Coalition further observed that this scheme would permit survivors to use the restraining order to notify creditors of the identity theft.<sup>179</sup> While domestic violence and consumer protection organizations clearly have high hopes for the new statute's efficacy, practical benefits for survivors are still only speculative.

*B. Text of Family Code § 6342.5*

Family Code Section 6342.5 expands the options for relief available to survivors of financial abuse. Under California law, there are two primary modes of recourse for victims of coerced debt: DVROs through family court and suing to enjoin creditors in civil court. Survivors can obtain a DVRO that includes an order determining the temporary use of any shared property and which party is responsible for the payment of any liens due during the period the order is in effect.<sup>180</sup> Survivors may also bring a claim or cross-complaint against a creditor to establish that they are a victim of identity theft in connection with the creditor's claim.<sup>181</sup> If they can establish that they are a victim of identity theft, they are entitled to, among other things, declaratory and injunctive relief.<sup>182</sup> Importantly, if the survivor can establish by "clear and convincing evidence" that they provided the creditor with notice that their identity may have been stolen, the creditor failed to "diligently" investigate the notification, and the creditor continued to pursue its claim after it was presented with facts later held to entitle the survivor to a judgment, the creditor may be fined a civil penalty of up to \$30,000.<sup>183</sup> Family Code Section 6342.5 attempts to operationalize and render accessible both modes of recourse for victims of coerced debt.

The law as amended purports to protect victims of domestic violence from third-party creditors through three changes. First, Family Code Section 6342.5(a) clarifies that an order determining the use of property of the parties or impacting the payment of any encumbrances is effective during the period the DVRO is in effect.<sup>184</sup> This ensures that the court issuing the DVRO can also determine which party is responsible for a given debt and protect the survivor, whether for five years or permanently.<sup>185</sup>

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178. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 8–9 (“[b]y adding space for the judge [issuing a domestic violence restraining order] to [not only assign specific debts to be paid by the restrained party, but also] identify which debts were incurred as a result of [ ] domestic violence and through theft of the protected party’s identity, the survivor will be able to use the restraining order as proof for civil debt relief under Civil [Code Section] 1798.93[,] which requires a person to establish a preponderance of the evidence.”).

179. *Id.* at 9.

180. CAL. FAM. CODE § 6324. *See also id.* § 6340. *See Part II.D.*

181. *See* CAL. CIV. CODE § 1798.93. *See Part II.C.*

182. CAL. CIV. CODE § 1798.93.

183. *Id.*

184. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 6.

185. *Id.*

The heart of the bill is encompassed in the second change made to existing law. Family Code Section 6342.5(b) allows a court to include in the DVRO a finding that specific debts were “incurred as the result of domestic violence and without the consent of a party.”<sup>186</sup> It provides that “acts that may support this finding include, but are not limited to, the crimes proscribed by Section 530.5 of the Penal Code.”<sup>187</sup>

Lastly, the bill required the Judicial Council to update its *pro se* forms based on the bill’s provisions (codified as Family Code Section 6342.5(c)).<sup>188</sup> The Assembly Judiciary Committee noted that “[t]his provision is particularly important since the vast majority of victims of domestic violence (up to 90 percent or even more by Judicial Council estimates) are unrepresented and must try, the best they are able, to seek relief on their own.”<sup>189</sup>

### C. Remaining Obstacles to Relief

Family Code Section 6342.5(b)—which allows survivors to obtain a court order finding that specific debts in their name were incurred as a result of domestic violence—stands to offer survivors of coerced debt a tangible form of relief. Though Section 6342.5(b) is not explicitly geared towards coerced debt, if used together with the relief provided to victims of identity theft under Civil Code Section 1798.93, this statute should provide protection to survivors from creditors and debt collectors seeking to collect on debt unlawfully incurred in their name.<sup>190</sup> By expanding an existing remedy that has proven to be one of the most accessible legal avenues for survivors,<sup>191</sup> legislators hope to help survivors regain their economic security and independence.<sup>192</sup> Moreover, legislators have

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186. CAL. FAM. CODE § 6342.5(b).

187. *Id.*

188. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 6.

189. *Id.* While it is empirically true that many survivors are unrepresented, it is not manifest that updates to Judicial Council forms will be impactful for *pro se* survivors. See Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 27–29 (2009) (finding that, even with “survivor-friendly” procedures and forms, unrepresented survivors are significantly less likely to have their requests for protection orders granted); PEW CHARITABLE TRUSTS, HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS 1, 13–15 (2020) (finding that less than 10 percent of defendants in debt collection suits have representation and that defendants who are represented are far more likely to have their cases dismissed); JULIA BARNARD, KIRAN SIDHU, PETER SMITH & LISA STIFLER, CTR. FOR RESPONSIBLE LENDING, COURT SYSTEM OVERLOAD: THE STATE OF DEBT COLLECTION IN CALIFORNIA AFTER THE FAIR DEBT BUYER PROTECTION ACT 1, 2, 27–28 (2020) [hereinafter CRL, STATE OF DEBT COLLECTION IN CALIFORNIA] (finding that less than 2 percent of defendants in debt collection suits in California have representation, and that representation is largely determinative of outcome: 100 percent of cases are dismissed where defendants had attorneys, and 70 percent are dismissed where consumers represent themselves).

190. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 7.

191. See Conner, *supra* note 149, at 369–70. See *supra* Part II.D.

192. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 7 (“This is broad relief that should help provide protection, from third-party creditors, for victims of financial abuse whose abusers

attempted to expand an existing remedy that has already proven more accessible than other legal avenues. However, Family Code Section 6342.5 may fail to deliver on what A.B. 2517 promised, for three primary reasons.

First, it is unclear whether courts will interpret the statute to encompass a wide variety of instances of coerced debt. The law provides the courts with significant discretion to interpret and define which “debts [are] incurred as the result of domestic violence and without the consent of a party.”<sup>193</sup> The statute provides that “acts that may support this finding include, but are not limited to, the crimes proscribed by Section 530.5 of the Penal Code.”<sup>194</sup> It is currently unclear how broadly family court judges will interpret “but are not limited to,” and whether reference to the identity theft statute and the requirement that debts will be incurred “without the consent of a party” will ultimately restrict judges’ conception of financial abuse to more conventional forms of fraud. In other words, the statute provides family court judges with significant discretion to interpret and define “debts . . . incurred as the result of domestic violence and without the consent of a party.”

This expansive discretion is especially consequential considering that California has yet to define “economic abuse” under state law; without such a definition, judges may narrowly interpret the law to the detriment of survivors.<sup>195</sup> If it had passed, S.B. 373, introduced in 2020 by State Senator Dave Min, would have been the first California law to do so.<sup>196</sup> The proposed amendment would have defined economic abuse as impairing or attempting to impair an individual’s financial stability by maintaining control over their financial resources, including “unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing or defrauding money or assets, exploiting the individual’s resources for personal gain, or withholding physical resources.”<sup>197</sup> A broad definition, its language would have encompassed many kinds of coerced debt that are currently excluded by the traditional definition of identity theft codified in the Penal Code.

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have stolen their identity and established debt in their names. This will help these victims and their families regain their economic security and help keep them from reunifying with their abusers for financial support.”).

193. CAL. FAM. CODE § 6342.5(b).

194. *Id.*

195. Though advocates and legislators have sought to update and expand the definition of domestic violence under the law, it currently is still defined primarily in terms of physical injury. *Id.* § 6203 (defining domestic “abuse” as “intentionally or recklessly caus[ing] or attempt[ing] to cause bodily injury,” “sexual assault,” “plac[ing] a person in reasonable apprehension of imminent serious bodily injury to that person or to another,” and/or coercive control, “not limited to the actual infliction of physical injury or assault”).

196. S.B. 373, 2021-2022, Reg. Sess. (2021). See *infra* Part IV.B.1., S.B. 373 died in the Senate Banking and Financial Institutions Committee. S.B. 373, (2021-2022) Bill History, [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=202120220SB373](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB373) [<https://perma.cc/77FZ-3X5Y>].

197. S.B. 373, 2021-2022, Reg. Sess. (2021).

Federal legislators recently defined economic abuse for the first time in the Violence Against Women Act Reauthorization Act of 2021, which amended VAWA to define economic abuse as:

behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to: (A) restrict a person's access to money, assets, credit, or financial information; (B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or (C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.<sup>198</sup>

This expansive definition not only explicitly includes coercion and undue influence but describes economic abuse of older adults as well as of intimate partners. As such, it may help to expand judicial understanding of the nuances and various forms of this type of abuse.

Definitions of two related forms of abuse in California law may also provide judges with guidance on how to interpret “without the consent of a party.”<sup>199</sup> “Financial abuse” is defined under California Welfare and Institutions Code Section 15610.30 as “tak[ing], secret[ing], appropriat[ing], obtain[ing] or retain[ing] real or personal property . . . for a wrongful use or with intend to defraud, or both . . . [or] by undue influence.” While this definition describes abuse of older and dependent adults, as elder financial abuse is more extensively documented than coerced debt, judges may be more familiar with it and so may be able to use their knowledge to untangle the complexities of coerced debt. On the other hand, judges' familiarity with elder financial abuse may inadvertently limit their conception of coerced debt. Specifically, in some views, elder financial abuse is criminalized because older adults are particularly vulnerable due to health, limited resources, and dependency on caregivers.<sup>200</sup> Though this paternalistic view is widely accepted, judges are unlikely to hold similar views towards domestic violence survivors who, despite the bevy of paternalistic policies aimed at them, are often denied vulnerability by judges.<sup>201</sup> Additionally, “coercive control” was recently defined under Family Code Section 6320(c) to include depriving someone of basic necessities, as well as controlling their

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198. 34 U.S.C § 12291(13), H.R.1620, Section 2(1)(49), 117th Cong. (2021).

199. CAL. FAM. CODE § 6342.5(b).

200. See, e.g., Arthur Meirson, *Prosecuting Elder Abuse: Setting the Gold Standard in the Golden State*, 60 HASTINGS L.J. 431, 432, 434 (2008) (arguing that “elder adults are a uniquely vulnerable population” because of “their age, health, disability, and limited resources” and require “special[] and broad[] protect[ion]”). See *infra* Part IV.B.2.

201. See *supra* note 144 and accompanying text.

finances and economic resources.<sup>202</sup> Though coercive control is not defined solely in terms of consent, and may cover many of the kinds of coerced debt that are currently excluded by the existing definition of identity theft, judges may construe coercive control narrowly to exclude coerced debt that involved the victim's consent.<sup>203</sup> Ultimately, legislators may need to provide judges with further guidance to ensure that the law adequately meets the needs of survivors of coerced debt.

Second, and perhaps more importantly, the statute's efficacy may be limited because it cannot alter a creditor's due process rights. As the creditor is not party to the DVRO, Family Code Section 6342.5 does not bind a creditor to the family court's finding on coerced debt, and so it may still pursue a civil action against the survivor.<sup>204</sup> And where the creditor does take action to recover on the debt, the final determination of responsibility for the debt is *still* left to civil court judges, who are historically unwilling to take domestic violence into consideration.<sup>205</sup> In these cases, the statute thus only functions to add a step between when the survivor discovers the coerced debt and when they turn to the legal system for relief; the only remaining question is the extent to which survivors will have this experience.

Legislators, however, are optimistic, and have noted that the “not . . . insignificant” civil penalty attached to violations of the identity theft statute should “cause creditors to think twice about challenging a family court's findings.”<sup>206</sup> Unless the creditor has “actual evidence supporting their contention that the survivor's debt is not the result of domestic violence and identity theft,” they would “be well advised not to challenge the survivor.”<sup>207</sup> Penalties under the CCRAA and the Rosenthal Act—which range from \$100 to \$5,000 per

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202. CAL. FAM. CODE § 6320(c) (defining “coercive control” as “a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

- (1) Isolating the other party from friends, relatives, or other sources of support.
- (2) *Depriving the other party of basic necessities.*
- (3) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, *finances, economic resources*, or access to services.
- (4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.” [emphasis added]).

203. See Viji Sundaram, *Expanding View of Domestic Violence Gives Survivors New Tool, but Unsympathetic Judges Remain an Obstacle*, S.F. PUBLIC PRESS (June 29, 2022), <https://www.sfpublishpress.org/expanding-view-of-domestic-violence-gives-survivors-new-tool-but-unsympathetic-judges-remain-an-obstacle/> [https://perma.cc/V3TC-6XRH] (reporting that, despite the new coercive control law, survivors are often “at the mercy of judges' experiences and prejudices”); *supra* note 144 and accompanying text.

204. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 1. See *supra* Part II.D.

205. See *supra* note 144 and accompanying text.

206. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 7. See *supra* note 183 and accompanying text.

207. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 7.



violation—are inconsequential to collectors in comparison to the potential \$30,000 penalty available under the civil identity theft law.<sup>208</sup> Yet consumers are not guaranteed this penalty, let alone the full statutory amount, and the process to obtain it may not be accessible to many survivors, putting into question the potential of the penalty to discourage creditors from challenging the family court’s finding. Therefore, the statute can tip in one of two directions: it can deter creditors from pursuing action against a survivor of coerced debt, or it may simply serve to emphasize the gap between family law and consumer law without making a meaningful attempt to fill it.

Third, the existing definition of identity theft may continue to bar some victims of coerced debt from relief, either under Family Code Section 6342.5 or under Civil Code Section 1798.93. Though a survivor may be able to use the DVRO in a subsequent action by a creditor to collect on the debt, the creditor can dispute that finding by submitting evidence to the court.<sup>209</sup> As discussed above, the limited definition of identity theft provided under the Penal Code may narrowly circumscribe the forms of abuse judges are willing to view as grounds for a DVRO dividing debts. And when a survivor is granted a DVRO finding that their debts were coerced and uses the order in a subsequent action by a creditor to collect on the debt, the creditor can dispute that finding by submitting evidence to the court. Currently, it is unclear what weight a family court order will be given in these actions compared to creditors’ evidence. Though creditors and collectors often lack sufficient evidence to even establish proof of debt in cases against conventional debtors, they nonetheless frequently prevail on these claims.<sup>210</sup> As such, it is still prospective whether family court findings will alleviate the more complex evidentiary problems survivors encounter.<sup>211</sup>

Family Code Section 6342.5 may fill crucial gaps in existing laws to offer survivors immediate relief and ease their path through California’s identity theft litigation framework. However, it contains several ambiguities that leave other gaps open. Without further legislation, Family Code Section 6342.5 may continue to place the burden of credit repair on survivors and contribute to the inequities that make this form of abuse so consequential. While this statute alone

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208. See CAL. CIV. CODE § 1785.31(a) (providing that a consumer who suffers damages as a result of a CRA’s negligent violation may recover actual damages, including court costs, lost wages, attorney’s fees, and pain and suffering and that a consumer who suffers damages as a result of a CRA’s willful violation may recover actual damages and punitive damages between \$100 and \$5,000 per violation); *id.* §§ 1788.30(a)–(b) (providing that a debtor who suffers damages as a result of a debt collector’s violation may recover actual damages and that a debtor who suffers damages as a result of a collector’s willful and knowing violation may also recover punitive damages between \$100 and \$1,000); *id.* § 1798.93(6).

209. ASSEMB. COMM. ON JUDICIARY ANALYSIS, *supra* note 169, at 7.

210. See CRL, STATE OF DEBT COLLECTION IN CALIFORNIA, *supra* note 189, at 30 (finding that debt buyers continued to win cases even though many of those cases lacked the minimum evidence required by the Fair Debt Buying Practices Act and even evidence sufficient to establish proof of debt).

211. See *infra* Part IV.B.1. Legislators recently adopted S.B. 975, which attempts to alter the standard civil process for identity theft victims to better accommodate victims of coerced debt.

may not cure the position of survivors, it signals that lawmakers have taken notice of the severe effects of coerced debt. To offer survivors material relief, legislators must create further regulation that focuses on the systemic aspects of coerced debt, namely the role the consumer credit industry plays in perpetuating this form of abuse.

#### IV.

##### PATHWAYS TO PRESERVING DOMESTIC VIOLENCE SURVIVORS' FINANCIAL SECURITY

While California legislators have taken meaningful steps to provide survivors of coerced debt with relief, further legislative action is necessary to create truly effective remedies. Future policy efforts must grasp the full picture of coerced debt—namely, how coerced debt is uniquely a product of modern financialization *and* gender subordination. Yet, many proposed responses to coerced debt and economic abuse fail to adequately account for how our current sociopolitical context has altered gender subordination itself,<sup>212</sup> and thus fall shy of providing a fully responsive solution. This Section will first examine how the central account of coerced debt, put forth by Angela Littwin, does not capture this important facet of this form of abuse. Nonetheless, her account highlights that legislative action, particularly at the federal level, is imperative. Building off this account, this Section will propose that California legislators should take a dual, individual rights-regulatory approach to coerced debt. Specifically, legislators should supplement Family Code Section 6342.5 with two further pieces of legislation that would prohibit credit reporting agencies from sharing information regarding coerced debt on a victim's credit reports and would require creditors to establish domestic violence policies and report instances of coerced debt.

##### A. *The Political Economy of Coerced Debt*

Advocates can only create effective remedies for survivors of coerced debt by recognizing how this form of abuse functions within our larger political-economic framework. As discussed above, coerced debt is a product of the rise

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212. While scholars and advocacy groups such as the Center for Survivor Agency and Justice have sought to promote theories of and remedies for intimate partner violence that account for its structural dimensions, further research is needed to elucidate how sexual violence itself has been altered by neoliberalism. *See, e.g.,* Sara J. Shoener & Erika A. Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, DOMESTIC VIOLENCE REP. 83–84, 94–95 (Aug./Sep. 2013). The preliminary research has demonstrated that neoliberal sexual violence is particularly impactful and has started to build viable frameworks for responses. *See generally*, EVA PENZEYMOOG & DANIELLE C. SLAKOFF, *As Technology Evolves, So Does Domestic Violence: Modern-Day Tech Abuse and Possible Solutions*, in THE EMERALD INTERNATIONAL HANDBOOK OF TECHNOLOGY-FACILITATED VIOLENCE AND ABUSE 643–62 (Jane Bailey, Asher Flynn & Nicola Henry eds., 2021) (discussing three types of technological abuse—(1) financial abuse via banking websites and apps; (2) abuse via smart home devices; and (3) stalking via geo-location or GPS—and examining how certain types of technology may provide opportunities for meaningful intervention).

of neoliberalism and coercive control, which itself is tied to contemporary sociopolitical formations of gender subordination. However, accounts of coerced debt, including the preeminent account put forth by Angela Littwin, largely neglect to account for this *political* economy of coerced debt.

For example, Littwin argues that coerced debt is a product of financialization, particularly the proliferation of consumer credit and the transformation of the lending process.<sup>213</sup> Yet her analysis of the gender subordination involved with coerced debt, besides primarily being confined to the context of marriage, is largely limited to the gendered nature of coercive control.<sup>214</sup> Noting that granting married women financial autonomy has historically been in tension with the enduring conception of marriage as an economic partnership, Littwin argues that “[d]omestic violence . . . throws into sharpest relief the[se] unresolved tensions . . . it is the ultimate antiresponse to female financial autonomy.”<sup>215</sup> Coerced debt, then, is “one of the final frontiers of the multicentury legal project of securing women’s financial independence . . . [t]he project of dismantling coverture.”<sup>216</sup> While Littwin is correct in linking coerced debt with financial autonomy, her account fails to capture how coerced debt is a modern phenomenon, *beyond* its relationship to financialization—namely, how neoliberalism has transfigured gender subordination. The story of coerced debt may begin with coverture, but it will not end with the achievement of total financial autonomy for women, specifically as neoliberalism has deftly inverted subversive objectives into instruments of responsabilization.

Under neoliberalism, gender subordination is intensified and transformed, in part due to the rise of financialization. In this context, even as women ostensibly continue to gain economic independence, gender subordination is increasingly economized such that economic independence for women itself takes on new, antidemocratic meanings. Neoliberalism intensified the historical distribution of care work along gendered lines through the privatization and dismantling of public infrastructure.<sup>217</sup> As a result, the work and cost of supplying these otherwise public provisions “is returned to individuals, disproportionately to women.”<sup>218</sup> Thus, responsabilization in this context “uniquely penalizes women to the extent that they remain disproportionately

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213. See Littwin, *Coerced Debt*, *supra* note 2, at 986–87.

214. See *id.* at 978–81.

215. *Id.* at 955–56.

216. *Id.*

217. See BROWN, UNDOING THE DEMOS, *supra* note 21, at 105. Historically, under liberal capitalism, “[a]s provisioners of care for others in households, neighborhoods, schools, and workplaces, women disproportionately remain the invisible infrastructure for all developing, mature, and worn-out human capital—children, adults, disabled, and elderly. Generally uncoerced, yet essential, this provision and responsibility get theoretically and ideologically tucked into what are assumed as preferences issuing naturally from sexual difference, especially from women’s distinct contribution to biological reproduction. It is formulated, in short, as an effect of nature, not of power.” *Id.*

218. See *id.* at 105.

responsible for those who cannot be responsible for themselves.”<sup>219</sup> Yet, due to a critical incoherence in the logic of neoliberalism,<sup>220</sup> “[t]he persistent responsibility of women for provisioning care of every sort, in and out of the household, means that women both require the visible social infrastructure that neoliberalism aims to dismantle through privatization and are the invisible infrastructure sustaining a world of putatively self-investing human capitals.”<sup>221</sup> The freedom neoliberalism promises to each and every individual, regardless of race, gender, class, or ability, through participation in the market “is literally inverted into new forms of gender subordination as women remain chief providers of unremunerated and undersupported care work outside the market and are increasingly solo income streams for themselves and their families.”<sup>222</sup> Policy proposals that neglect to account for this shift are inevitably limited as they fail to capture the ways in which neoliberalism has tied gender subordination with current remedies and support systems.

Strategies that seek to address coerced debt primarily through private legal action often fail to grasp the depth and pervasiveness of this subordination. In these schemes, survivors are tasked with rectifying a form of abuse facilitated by structural inequities. This is not to say that efforts to improve the accessibility of relief through the courts by amending state and federal law are not necessary. These efforts are crucial to providing survivors with immediate relief as well as autonomy over their finances and may pave the path to more radical reforms. For instance, as Littwin proposes, amending the FCRA to grant family courts the power to certify that certain debts were coerced and permit survivors to then block those debts from their credit reports is a key step in ensuring an accessible and uniform form of recourse for survivors.<sup>223</sup> Rather, I seek to broaden the lens

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219. *See id.* at 105.

220. *See id.*, at 99–107; CATHERINE ROTTENBERG, *THE RISE OF NEOLIBERAL FEMINISM* 1, 16, 58 (2018). Neoliberalism is premised upon the conception of the individual as only and everywhere *homo oeconomicus*: human capital investing in itself to generate more human capital. In this view, the neoliberal individual is putatively generic: gender, race, class, or ability is of little to no import because the market does not differentiate based on gender, race, class, or ability—its only principle is that of appreciation, which is characteristic-blind because anyone can work to appreciate their capital. Yet as scholars observe, the putative genericness of the neoliberal subject obscures a set of assumptions problematic for the neoliberal agenda. For example, if each and every individual is in fact unattached and self-contained, how is reproduction and care work accomplished? Rottenberg argues that neoliberalism simply “has no lexicon that can recognize let alone value reproduction and care work,” which in turn is evidence for Brown that the neoliberal subject is in fact gendered. *Id.* at 16.

221. BROWN, *UNDOING THE DEMOS*, *supra* note 21, at 106–07.

222. *Id.* at 107.

223. Littwin, *Escaping Battered Credit*, *supra* note 5, at 369, 394, 399. Littwin proposes amending the FCRA to remove decisions about coerced debt from CRAs and empower family courts to certify that certain debts were coerced. A domestic violence survivor would submit a claim during their divorce if debt in their name was acquired without their knowledge or consent. The judge would then rule on each debt. The survivor then could submit the court document to CRAs to block the debt from their credit report. *Id.* at 369. Littwin acknowledges that her proposal does not provide relief for unmarried survivors of coerced debt or low-income survivors who are unable to file for a divorce

to suggest an approach that strengthens survivors' individual rights while capturing the structural dimensions of coerced debt. Specifically, I propose lawmakers take a two-pronged approach that would supplement the California amendment and ease the path for survivors to financial stability and would create systemic mechanisms that help to prevent coerced debt. As Debra Weissman observes, “[l]aw reform for the purpose of addressing domestic violence must avoid reprivatizing IPV and encourage public structural remedies to address private dilemmas . . . Effective remedies to gender violence and its consequences require a critical perspective of the political-economic forces that shape the behavior of perpetrators and that disempower victims.”<sup>224</sup>

### B. Further Amendments to California Law

Family Code Section 6342.5 is a foot in the door to true relief for survivors of coerced debt in California. Ambiguities in the language of the statute leave several crucial issues unresolved. Narrow definitions of fraud and identity theft and prevailing conceptions of abuse may bar survivors from relief. And creditors and collectors may not be sufficiently deterred from challenging family court findings and bringing suit against survivors. To force the door open and reckon with the deep and pervasive effects of coerced debt for survivors, California legislators should amend the law to improve the effectiveness of existing remedies and implement mechanisms that help to prevent coerced debt. As such, this Note makes two proposals: first, that legislators fortify Family Code Section 6342.5 by restricting the ability of furnishers of credit information from reporting coerced debt; and, second, that legislators address coerced debt at a structural level by implementing a mandatory training and reporting program that would help to shift the onus of detecting coerced debt onto creditors. Doing so would target the effects of coerced debt at two stages of the reporting “life cycle”: at its inception, and after it has been incurred but not yet reported.

#### 1. Restrictions on Furnishers

Legislators can efficiently curb the consequences of coerced debt for survivors by expanding regulations for furnishers of credit information, one of the first links in the chain of the credit reporting process.<sup>225</sup> Section 1785.25(a) of the California Consumer Credit Reporting Agencies Act (CCRAA)<sup>226</sup> currently provides that a furnisher shall not provide information on a transaction to a CRA if it knows or should know that “the information is *incomplete or inaccurate*.” California legislators should amend this section to expand the definition of “incomplete or inaccurate” to include coerced debt and prevent

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involving property distribution. *Id.* at 366. Additionally, this proposal is limited to debts that have already been paid off. *Id.* at 370.

224. Weissman, *Political Economy of Domestic Violence Laws*, *supra* note 86, at 67.

225. See *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010).

226. CAL. CIV. CODE §§ 1785.10–1785.19.5.

furnishers from reporting that debt to CRAs. This would limit the impact of coerced debt on a survivor's credit score and would greatly ease the burden on survivors to regain their financial stability. While the FCRA typically prohibits such state legislation, California is exempted from preemption on this topic and thus presents advocates with a unique opportunity.<sup>227</sup>

Furnishers, which include creditors and debt collectors, provide information about consumers' credit history to CRAs, which in turn compile this information in credit reports for users, such as landlords and employers. The FCRA imposes two primary obligations on furnishers under Section 1681s-2: under subsection (a), furnishers may not provide information they know or have reasonable cause to believe is inaccurate; and under subsection (b), furnishers must undertake an investigation upon receipt of a notice of dispute regarding credit information that is furnished. While Section 1681s-2(b) affords consumers a right of action, Section 1681s-2(a) restricts enforcement to federal and state government agencies.<sup>228</sup> Effectively, this means that only state attorneys general can pursue claims against furnishers for their failure to provide accurate information to credit reporting agencies.<sup>229</sup> However, as state enforcement is rare, this provision is toothless in practice.<sup>230</sup> Although consumers can pursue claims against furnishers under Section 1681s-2(b), these claims are largely unsuccessful because the statute only requires that furnishers conduct a "reasonable" investigation. Outcomes in these cases are largely dependent on furnishers' own determinations.<sup>231</sup> Moreover, states are prohibited from providing consumers with a right of action against furnishers for their failure to comply with Section 1681s-2(a) under Section 1681t of the FCRA, the statute's preemption provision.<sup>232</sup>

The FCRA generally preempts state law regulating "the collection, distribution, or use of any information on consumers . . . to the extent that those laws are inconsistent" with the federal law under Section 1681t(a) and expressly preempts certain categories of state law in Section 1681t(b). Each of the eleven categories enumerated in Section 1681t(b)(1) follows the same syntax: each subsection preempts state laws "with respect to any subject matter regulated under" a given section of the FCRA, "relating to" aspects of that section. For example, Section 1681t(b)(1)(E) preempts state laws "*with respect to any subject*

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227. 15 U.S.C. § 1681t(b)(1)(F)(ii).

228. See 15 U.S.C. § 1681s-2(c)(1), (d) (providing that civil liability for noncompliance under Sections 1681n and 1681o does not apply to Section 1681s-2(a), and that enforcement of Section 1681s-2(a) is limited to the federal and state government officials and agencies enumerated under Section 1681s).

229. NAT'L CONSUMER LAW CTR., FAIR CREDIT REPORTING 6.1.2 (10th ed. 2022).

230. *Id.*

231. See, e.g., Chiang v. Verizon New England Inc., 595 F.3d 26, 29–30 (1st Cir. 2010) (establishing a high bar for plaintiffs by holding that "a § 1681s-2(b) claim requires plaintiff to show actual inaccuracies that a furnisher's objectively reasonable investigation would have been able to discover.").

232. 15 U.S.C. § 1681t(b)(1)(F).

matter regulated under . . . section 1681c of this title, *relating to* information contained in consumer reports.” Consumer advocates and members of the consumer credit industry have long disputed whether either phrase—“with respect to” or “relating to”—describes the preempted subject matter or restricts the scope of federal preemption.

Two relevant interpretations of the FCRA preemption provision have arisen out of this controversy.<sup>233</sup> The broad reading of Section 1681t(b) understands this provision to encompass all state laws that either are “with respect to” the enumerated section or “relat[e] to” the subject matter delineated in the parenthetical clause, even if the subject matter delineated in the parenthetical clause is broader than the subject matter regulated by the enumerated section.<sup>234</sup> Under this interpretation, the FCRA establishes a regulatory ceiling for states: state credit reporting laws that offer greater protections for consumers than those provided under the FCRA are prohibited.<sup>235</sup> Proponents and courts employing this interpretation often argue that this provision assures that the FCRA establishes uniform federal standards, which in their view supports construing this provision broadly.<sup>236</sup> The narrow reading of Section 1681t(b) understands the phrases “with respect to” and “relating to” to carve out limited domains of the enumerated sections as reserved for federal enforcement.<sup>237</sup> This interpretation construes the FCRA as a regulatory floor: states are free to regulate credit reporting more extensively, so long as consumer protections do not pertain to the subject matter of an enumerated section, to the extent to that the section relates to the subject matter delineated in the parenthetical clause. As most circuits have adopted the former reading, efforts to address coerced debt at a structural level have largely hinged on amending the FCRA to explicitly exclude

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233. Literature on preemption typically identifies three categories of district court interpretation of the FCRA preemption provision: total, temporal, and statutory. For the sake of brevity, I combine these approaches into the category of “broad” interpretation and describe conflicting interpretations of FCRA Section 1681t(b) as taking one of two forms to highlight the new form of interpretation emerging from the First Circuit, which is narrower than any of the existing forms of interpretation. For a detailed account of preemption under the FCRA, see Jill A. Conrad, *Preemption Under the Fair Credit Reporting Act*, 25 ANNUAL REV. OF BANKING & FIN. L. 579, 588–600 (2006) (describing district court approaches to whether state laws relating to content regulated by §1681t(h) as total, temporal, statutory, and other); Chad M. Pinson & John B. Lawrence, *FCRA Preemption of State Law: A Guide Through Muddy Waters*, 15 J. CONSUMER & COM. L. 47, 50–52 (2012) (overviewing the various approaches and arguing that Congress intended for the FCRA to create uniform standards, and thus the total preemption approach is most appropriate); Elizabeth D. De Armond, *Preventing Preemption: Finding Space for States to Regulate Consumers’ Credit Reports*, 2016 B.Y.U. L. REV. 365, 381–95 (2016) (reviewing preemption doctrine and recent Supreme Court decisions outside of the FCRA context and identifying areas where states can innovate).

234. See Conrad, *supra* note 233, 588–600 (summarizing the range of district court views regarding the preemption of state law under the FCRA).

235. See *id.* at 588–90.

236. See, e.g., *Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019) (interpreting Section 1681t(b)(1)(E) and stating that the section “assures that the [FCRA] establishes uniform federal standards for contents of credit reports”).

237. See *id.*

coerced debt from being reported or to permit states themselves to enact more protective legislation.<sup>238</sup> However, a recent First Circuit decision signals that the narrower reading may be gaining traction.

In *Consumer Data Industry Association v. Frey*, the First Circuit held that Section 1681t(b)(1)(E) only preempts state laws regulating the specific subject matter regulated by the enumerated section, Section 1681c, rather than more broadly to laws that relate to the subject matter listed in the parenthetical clause—an interpretation far narrower than readings adopted by other circuits.<sup>239</sup> In 2019, Maine made two amendments to the Maine Fair Credit Reporting Act<sup>240</sup> that prohibit credit reporting agencies from reporting overdue medical debt<sup>241</sup> and debt resulting from economic abuse<sup>242</sup> after documentation is presented to a credit reporting agency. The Consumer Data Industry Association (CDIA), the trade association that represents CRAs, argued that these amendments were preempted by FCRA Section 1681t(b)(1)(E) and that the economic abuse debt reporting law was separately preempted by Section 1681t(b)(5)(C).<sup>243</sup>

As noted above, Section 1681t(b)(1)(E) preempts state laws “with respect to any subject matter regulated under . . . section 1681c of this title, relating to information contained in consumer reports.” The parties disputed whether the language of Section 1681t(b)(1)(E) “should be read to encompass all claims relating to information contained in consumer reports, with the phrase ‘relating to information contained in consumer reports’ effectively acting as a description of the subject matter [Section] 1681c regulates” or whether Section 1681c serves “as an itemized list of narrowly delineated subject matters, some of which relate to information contained in consumer reports,” such that a law is preempted only where it touches on one of those limited domains.<sup>244</sup> The District Court agreed with CDIA and held that Section 1681t(b)(1) enumerates eleven categories of

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238. See De Armond, *supra* note 233, at 381–95.

239. *Consumer Data Indus. Ass’n v. Frey*, 26 F.4th 1, 11 (1st Cir. 2022), *petition for cert. pending*, No. 22-471 (filed Nov. 18, 2022). See *Aldaco*, 921 F.3d at 688; *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45, 47 (2d Cir. 2011); *Premium Mortgage Corp. v. Equifax, Inc.*, 583 F.3d 103 (2d Cir. 2009); *Purcell v. Bank of Am.*, 659 F.3d 622, 625 (7th Cir. 2011); *Ross v. F.D.I.C.*, 625 F.3d 808, 813 (4th Cir. 2010); *Scott v. First S. Nat’l Bank*, 936 F.3d 509 (6th Cir. 2019).

240. ME. REV. STAT. ANN. tit. 10, §§ 1306-1310H.

241. ME. REV. STAT. ANN. tit. 10, §§ 1310-H(4)(A)-(C). The Medical Debt Reporting Act prohibits consumer reporting agencies from reporting “debt from medical expenses . . . when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported.” It also requires that a CRA, once it has received “reasonable evidence . . . that a debt from medical expenses has been settled,” it “[m]ay not report that debt” and “[s]hall remove or suppress the report of that debt.”

242. ME. REV. STAT. ANN. tit. 10, § 1310-H(2-A). The Economic Abuse Debt Reporting Act requires a credit reporting agency to reinvestigate a debt if the consumer provides documentation that the debt is the result of economic abuse. Where the CRA determines that the debt is the result of such abuse, it must remove any reference to the debt from the consumer report.

243. “No requirement or prohibition may be imposed under the laws of any State . . . with respect to the conduct required by the specific provisions of . . . § 1681c-2 [regarding the blocking of information resulting from identity theft] of this title.”

244. *Consumer Data Industry Ass’n v. Frey*, 495 F. Supp. 3d 10, 19 (D. Me. 2020).



subject matter “regulated under” other sections of the FCRA and reserved to the federal government.<sup>245</sup> Importantly, it echoed the uniformity rationale common to broad interpretations of the preemption provision: “the . . . language and structure of [Section] 1681c(a) and [Section] 1681t(b) reflect an affirmative choice by Congress to set ‘uniform federal standards’ regarding the information contained in consumer credit reports . . . By seeking to exclude additional types of information, the Maine Amendments intrude upon a subject matter that Congress has recently sought to expressly preempt from state regulation.”<sup>246</sup> The Court of Appeals reversed, finding that “Section 1681t(b)(1)(E)’s mandate expresses Congress’ intent only to preempt those claims that concern subject matter regulated under Section 1681c . . . the preemption provision necessarily reaches a subset of law narrower than those that merely relate to information contained in consumer reports.”<sup>247</sup> Neither court reached the question of whether the economic abuse debt amendment is preempted by Section 1681t(b)(5)(C).<sup>248</sup>

While the First Circuit’s holding in *CDIA* concerns regulations aimed at CRAs, its analysis is applicable to laws regulating furnishers as well due to the parallel syntax employed by each of the eleven subsections of Section 1681t(b)(1). Section 1681t(b)(1)(F) preempts state laws “with respect to any subject matter regulated under . . . section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies.” Following the First Circuit’s interpretation of Section 1681t(b)(E), Section 1681t(b)(1)(F) only preempts state laws regulating the specific subject matter of Section 1681s-2, to the extent that the section relates to the responsibilities of furnishers to CRAs. The question for courts moving forward will be whether the parenthetical clause of Section 1681t(b)(1)(F) merely reiterates Section 1681s-2 such that the scope of each clause is coextensive. Only subsections (a)(1)-(7), (9) and (b) of Section 1681s-2 expressly concern the duties of furnishers and Sections 1681s-2(c), 1681n, and 1681o, which restrict enforcement of Section 1681s-2(a), are absent from Section 1681t. Even under this narrower interpretative framework, it is likely a court would find that states are prohibited from providing consumers with a private right of action against furnishers for failure to comply with Section 1681s-2(a) given that a recent interpretative rule issued by the Consumer Financial Protection Bureau tends to

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245. *Id.*

246. *Id.* at 20.

247. *CDIA v. Frey* (2022), *supra* note 239, at 7–8.

248. *See id.* at \*10–11; *Frey*, 495 F. Supp. 3d at 21. In 2019, Texas made a similar amendment to its Fair Credit Reporting Act by enacting Texas Business & Commerce Code § 20.05(a)(5), which limits the information credit reporting agencies may include in an individual’s credit report. The *CDIA* also challenged this statute, but the district court did not rule on whether the FCRA preempts the Texas amendment. *See Consumer Data Indus. Ass. v. Texas through Paxton*, No. 1:19-CV-876-RP, 2021 WL 5066114, at \*5–6 (W.D. Tex. 2021), *appeal filed* Oct. 28, 2021.

embrace this reading.<sup>249</sup> Though many states will likely continue to be constrained in their efforts to regulate furnishers, certain states have greater freedom.

California may provide domestic violence and consumer protection advocates with an opportunity to bypass Congress. As California imposed obligations on furnishers prior to the 1996 amendments to the FCRA that concern this subject, Section 1785.25(a) of the CCRAA, which prohibits furnishers from reporting information to CRAs that they know or should know is “incomplete or inaccurate,” is excepted from federal preemption.<sup>250</sup> However, Civil Code Section 1785.25(a) does not, on its face, provide consumers a private right of action. Instead, Civil Code Sections 1785.25(g) and 1785.31 contain that language.<sup>251</sup> The plain language of the FCRA does not exclude these provisions from preemption.<sup>252</sup> As such, consumer advocates and members of the credit reporting industry have disputed whether Civil Code Section 1785.25(a) can provide consumers with a private right of action. While Ninth Circuit case law has fluctuated on the issue, current case law favors consumers.<sup>253</sup> Lawmakers should take advantage of the current state of the law and create regulations restricting furnishers from reporting coerced debt—and attempted to do just that in 2021.

In 2021, State Senator Dave Min introduced S.B. 373, which, if it had passed, would have expanded the definition of “incomplete or inaccurate” under Civil Code Section 1785.25(a) to include “[i]nformation regarding a consumer debt documented to result from economic abuse.”<sup>254</sup> Additionally, S.B. 373 would have prohibited debt collectors from collecting on debt if the survivor provides documentation to the collector that the debt, or any portion of it, is the

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249. See The Fair Credit Reporting Act’s Limited Preemption of State Laws, 87 Fed. Reg. 41042, 41042–43 (Jul. 11, 2022) (to be codified at 12 C.F.R. pt. 1022) (stating that, while “the FCRA’s express preemption provisions have a narrow and targeted scope” as “[p]reemption under section 1681t(b)(1) . . . depends on the meaning of both the ‘with respect to’ and ‘relating to’ clauses . . . [i]n some cases, the ‘relating to’ parenthetical merely reiterates the enumerated section”) (citing *Frey*, 495 F. Supp. 3d at 1, 6–8).

250. See *Lin v. Universal Card Servs. Corp.*, 238 F. Supp. 2d 1147, 1152 (N.D. Cal. 2002); 15 U.S.C. § 1681t(b)(1)(F)(i) (“[T]his paragraph shall not apply—(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or (ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996)”).

251. See CAL. CIV. CODE § 1785.25(a); *id.* § 1785.25(g) (“A person who furnishes information to a consumer credit reporting agency is liable for failure to comply with this section . . . .”); *id.* § 1785.31(a) (“Any consumer who suffers damages as a result of a violation of this title by any person may bring an action in a court of appropriate jurisdiction against that person . . . .”).

252. See 15 U.S.C. § 1681t(b)(1)(F)(i).

253. See *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 888 (2010); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1170–71 (9th Cir. 2009); *Lin*, 238 F. Supp. 2d at 1152–53.

254. S.B. 373 2021–2022, Reg. Sess. (2021). The California Partnership to End Domestic Violence and the Public Law Center sponsored S.B. 373. See Sabrina Hamm, *Proposed Legislation to Address Coerced and Fraudulent Debt in CA*, at 6 <http://publichealth.lacounty.gov/dvcouncil/minutes/2021/02/DVC%20FreeFrom%20Slides.pdf> [<https://perma.cc/RHT8-G9V5>].

result of economic abuse. Sufficient documentation would have included a DVRO issued under Family Code Section 6342.5, a police report, an FTC identity theft report, or any documentation from certain professionals, such as medical professionals, domestic violence counselors, and attorneys.<sup>255</sup> Lastly, S.B. 373 would have defined economic abuse.<sup>256</sup> However, the bill failed the Senate Banking and Financial Institutions Committee.<sup>257</sup> Consequently, Senator Min introduced S.B. 975 in 2022.<sup>258</sup>

S.B. 975, which added several sections to the Civil Code, explicitly prohibits and creates civil liability for coerced debt.<sup>259</sup> The law now defines coerced debt as “a particular debt . . . in the name of a debtor who is a victim of domestic violence . . . incurred as a result of duress, intimidation, threat of force, force, fraud, or undue influence,” where “fraud” denotes “an initial fraudulent act that is perpetrated against the debtor.”<sup>260</sup> Rather than expanding the definition of “incomplete or inaccurate” for purposes of Civil Code Section 1785.25(a), S.B. 975 creates two avenues for survivors to cancel their coerced debt.<sup>261</sup>

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255. “(A) A copy of a protective order lawfully issued pursuant to Section 6340 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 or 15657.03 of the Welfare and Institutions Code.

(B) A police report indicating the individual was a victim of domestic violence or elder abuse.

(C) A Federal Trade Commission identity theft report.

(D) Documentation from a licensed medical professional, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed health care provider, attorney, social worker, or counselor stating that the debt was incurred as a result of economic abuse.” S.B. 373 2021-2022, Reg. Sess. (2021).

256. S.B. 373 2021-2022, Reg. Sess. (2021). (defining economic abuse as “a person causing or attempting to cause an individual to have impaired financial stability by maintaining control over the individual’s financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing or defrauding money or assets, exploiting the individual’s resources for personal gain, or withholding physical resources, including food, clothing, necessary medications, or shelter”)

257. It is unclear what opposition the bill faced. While the California Chamber of Commerce opposed the bill unless it was amended because it “[h]arms businesses by allowing dismissal of valid debts [and] [n]egates existing legal remedies and court oversight,” the bill may have faced opposition on other grounds from other organizations. California Chamber of Commerce, *CalChamber Position: Banking and Finance*, 47 CALCHAMBER ALERT 8 (2021), <https://advocacy.calchamber.com/wp-content/uploads/2021/09/Alert-9-17-21.pdf> [<https://perma.cc/T3PB-CC42>].

258. S.B. 975 2021-2022, Reg. Sess. (2022). See S.B. 975 (2021-2022) (version introduced February 10, 2022), [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=202120220SB975&cversion=20210SB97599INT](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=202120220SB975&cversion=20210SB97599INT) [<https://perma.cc/X8TH-TSV6>].

259. CAL. CIV. CODE §§ 1798.97.1-6; *id.* § 1798.97.2(a) (“A person shall not cause another person to incur a coerced debt. A person who causes another person to incur a coerced debt in violation of this subdivision shall be civilly liable to the [creditor] for the amount of the debt, or portion thereof, determined by a court to be coerced debt, plus the [creditor’s] attorney’s fee and costs”).

260. *Id.* §§ 1798.97.1(d), (f).

261. While S.B. 975 initially did expand the definition of “incomplete or inaccurate” for purposes of Civil Code §1785.25(a) to include debt resulting from economic abuse, legislators abandoned this scheme in favor of the pre-litigation avenue that was eventually codified. See S.B. 975 (2021-2022) (version introduced February 10, 2022),

First, it creates a non-judicial process by which survivors can request that creditors cease collection activities and undertake a review of the relevant debt (the “pre-litigation” avenue).<sup>262</sup> This avenue subjects coerced debt to the same pre-litigation review of other consumer debt provided under the Rosenthal Act.<sup>263</sup> Under this process, a survivor can request that a collector cease collection activities and conduct a review to make a “good faith” determination about whether the debt was coerced by submitting adequate documentation and a sworn written certification to the collector that the debt was incurred as a result of force, fraud, or coercion.<sup>264</sup> Adequate documentation may include a police report, FTC identity theft report, a court order issued under Family Code Section 6342.5, or a sworn written certification from a professional.<sup>265</sup> If, after review, a collector determines the debt is coerced debt, it must notify both the CRA and the creditor.<sup>266</sup> However, if the collector determines the debt is not coerced, it may recommence collection activities, including suing the survivor for the debt, after providing the survivor with written notice of its determination.<sup>267</sup>

Second, S.B. 975 creates a cause of action through which survivors can enjoin creditors from holding a survivor liable for their coerced debt (the “litigation” avenue).<sup>268</sup> The litigation avenue modifies the process for disputing debt resulting from identity theft committed by strangers to better fit victims of coerced debt. For example, it requires courts to take steps to prevent abuse, such as by sealing courts records and redacting personally identifiable information about the debtor.<sup>269</sup> If a survivor can establish by a preponderance of the evidence that their debt is coerced debt, they are entitled to declaratory and injunctive relief from the creditor.<sup>270</sup> A judgment relieving the survivor of liability would directly shift liability for the debt from the survivor to the abuser, automatically permitting the creditor to collect against the abuser.<sup>271</sup>

Both avenues fall short in certain ways. First, though the pre-litigation avenue purports to provide survivors with a non-judicial path to relief for their coerced debts, it by and large adopts the procedure for disputing debt with a debt collector provided by the Rosenthal Act—including the low bar for review this

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[https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=202120220SB975&version=20210SB97599INT](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=202120220SB975&version=20210SB97599INT) [<https://perma.cc/XA7V-9TJF>]. Additionally, the new law more explicitly applies to dependent adult, youth, and elderly survivors of financial abuse than S.B. 373.

262. See CAL. CIV. CODE § 1798.97.2.

263. *Id.* § 1798.97.2; *cf. id.* § 1788.18.

264. *Id.* §§ 1798.97.2(b)–(d).

265. *Id.* § 1798.97.1(a).

266. *Id.* § 1798.97.2(g).

267. *Id.* § 1798.97.2(d)(4).

268. *Id.* § 1798.97.3.

269. *Id.* § 1798.97.3(c)(2); *cf. id.* § 1798.93.

270. *Id.* §§ 1798.97.3(a)(3), (b). Survivors must plead their allegations with particularity and attach to their complaint adequate documentation and a sworn written certification that the debt was incurred as a result of force, fraud, or coercion. *Id.* at § 1798.97.3(a)(3).

271. *Id.* § 1798.97.3(f).

procedure establishes for debt collectors.<sup>272</sup> Under either scheme, a debt collector must only make a “good faith” determination based on information provided by the debtor and information on file with the debt collector.<sup>273</sup> Though a collector must notify a credit reporting agency that the debt is disputed at the start of the review, the review itself is ultimately little more than a formality. Since debt collectors are not required to conduct an extensive review—or to even confirm the accuracy of their records, which often contain significant inaccuracies—these reviews are, in practice, often cursory and yield erroneous results.<sup>274</sup> To be sure, it is unclear whether debt collectors will devote more effort to these reviews when they are supplied with a DVRO finding that the particular debt is the result of coercion under Family Code Section 6342.5. But, by adopting procedures proven to guarantee no more than nominal safeguards for consumers, S.B. 975 may do little to ensure that collectors cease collecting on coerced debts, let alone protect survivors’ credit scores.

Additionally, though S.B. 975 broadly defines coerced debt, it excepts identity theft from the definition, creating parallel processes in place of a unified scheme for this type of abuse.<sup>275</sup> To constitute “fraud” under the statute, the initial fraudulent act must be carried out *against the survivor*, such as inducing a survivor to sign documents by misrepresenting the agreement.<sup>276</sup> However, if, for example, an abuser utilizes a survivor’s personal identifying information to open a credit card in their name, the survivor must utilize the processes laid out for victims of identity theft under Civil Code Section 1798.93 because the fraudulent act would have been perpetrated *against the creditor*. As a result, survivors who experience identity theft perpetrated by their partners are deprived of the protection of the secrecy provisions and, particularly as they are often unrepresented, face unnecessary complications to relief. Distinguishing between types of coerced debt in this way entirely misconceives this form of abuse: while the fraud in instances of identity theft in a coercive relationship may technically be directed at a third party, the ultimate intent is to cause harm to the survivor. Such a conception not only undercuts the facially broad definition provided by the statute, but also does little to provide guidance to judges hearing claims under the identity theft statute. Furthermore, the law still does not define economic abuse and lacks another component of S.B. 373 that would have filled an important gap in Family Code Section 6342.5.<sup>277</sup> Without a clear definition of economic abuse, civil court judges may be reluctant to hold furnishers accountable.<sup>278</sup>

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272. *Id.* § 1798.97.2; *cf. id.* § 1788.18.

273. *Id.* § 1798.97.2(d); *cf. id.* § 1788.18(d).

274. NAT’L. CONSUMER L. CTR., FAIR DEBT COLLECTION, (10th ed. 2022), 9.11.3.1–9.11.3.3; NAT’L. CONSUMER L. CTR., FAIR CREDIT REPORTING, (10th ed. 2022), 6.4.2.2, 6.4.2.8.

275. *See* CAL. CIV. CODE §§ 1798.97.1(d), (f).

276. *See id.* § 1798.97.1(f).

277. *Id.* §§ 1798.97.1-6 ; *cf.* S.B. 373 2021-2022, Reg. Sess. (2021).

278. *See supra* note 144 and accompanying text.

While S.B. 975 continues to push open the door first unlocked by Family Code Section 6342.5, the scheme proposed by S.B. 373 may prove to be the simpler and more effective strategy. The enacted statutory scheme takes a familiar, but indirect, approach that has proven challenging for even the most conventional victim of identity theft. Though some survivors may find that the new statute provides them with viable steps to prevent collection on their coerced debt, altering a problematic process to fit a complex form of fraud may ultimately not change the position or options of many survivors. Expanding the definition of “incomplete or inaccurate” for the purposes of Civil Code Section 1785.25(a) to include “[i]nformation regarding a consumer debt documented to result from economic abuse,” such as debts found to be coerced as part of a DVRO issued under Family Code Section 6345.2, would create a more direct way for survivors to limit the damage coerced debt can cause to their credit scores.

Even though restricting the ability of furnishers to report coerced debt will not necessarily prevent all reporting of coerced debt, nor alleviate some of the more severe barriers survivors face to credit repair, furnishers are the most feasible regulatory target given the current state of the law. CRAs may arguably function as a more effective alternative,<sup>279</sup> but both the FCRA and CCRAA closely restrict consumer and state actions against CRAs. This is reflected in courts’ attitudes towards consumer claims against CRAs. For example, even in cases where a court reads the FCRA to permit state legislation that is more protective of consumers, courts are less sympathetic to consumer actions against CRAs than against furnishers.<sup>280</sup> For this reason, the First Circuit’s view on Maine’s amendments to its Fair Credit Reporting Act is surprising—but also why this issue may reach the Supreme Court.<sup>281</sup> California serves as an ideal middle ground. The state can function as a testing ground for restrictions on furnishers that may stimulate federal legislative efforts. Additionally, states seeking a more restrained measure can observe how California’s current approach functions in practice, which, if effective, can be adopted without fear of preemption. Ultimately, relying on the very systems that in our current context often function more to burden survivors than to provide them with a viable path to financial security is insufficient—greater reform is necessary.

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279. See NAT’L. CONSUMER L. CTR., FAIR CREDIT REPORTING 6.4.2.2 (10th ed. 2022) (summarizing restrictions on furnishers with regards to furnishing false information, including information that has been found to be inaccurate by at least one CRA).

280. See, e.g., *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (2010) (“[I]t [is] our view that a consumer who disputes the legal validity of an obligation should do so directly at the furnisher level”).

281. The CDIA petitioned the Supreme Court for a writ of certiorari in November of 2022. See generally *Petition for Writ of Certiorari, Consumer Data Industry Ass. v. Frey* (Nov. 18, 2022) (No. 22-41).

## 2. *Mandatory Training and Reporting for Creditors*

In addition to easing the path to credit repair for individual survivors, California legislators should make efforts to create and implement systemic mechanisms that identify coerced debt earlier in the cycle of abuse, with the ultimate goal of preventing it altogether. Legislators should therefore incentivize creditors and lenders to reform their lending practices. Specifically, legislators should require creditors establish policies and protocols related to domestic violence and report documented and suspected cases of coerced or fraudulent debt to the California Department of Financial Protection and Innovation (DFPI).<sup>282</sup> Reporting to the DFPI would provide advocates and survivors with a broader range of options than reporting to local law enforcement. Such reporting would prioritize survivors' agency while gathering data for systemic reform. Lastly, while similar legislation has failed in California in the past, legislators can attempt to mitigate controversy by implementing these programs as pilot programs in select counties under Family Code Section 20000, rather than as a statewide mandate.

States have taken similar efforts to address elder financial abuse, beginning with Massachusetts in the 1990s.<sup>283</sup> Advocates and regulators identified banks as "the first line of defense" against financial abuse of the elderly as they are uniquely positioned to observe and report suspicious behavior, such as sudden increases in debt and banking activity inconsistent with the customer's typical habits.<sup>284</sup> Seeking to operationalize bank employees' proximity to elder financial exploitation, Massachusetts formed a partnership with the Massachusetts Banking Association to create trainings to educate bank employees on elder financial abuse and to develop a protocol for them to report abuse and cooperate with the ensuing investigation.<sup>285</sup> Though elder financial exploitation is a mandatory reportable form of abuse in Massachusetts, the state did not make bank employees mandatory reporters in an effort to incentivize financial institutions to participate in the reporting project. Additionally, it created statutory immunity from state financial privacy requirements.<sup>286</sup> As Christine

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282. Christine Kim has proposed a similar measure. See Kim, *Credit Cards*, *supra* note 70, at 306–07. While she identifies a viable foothold for coerced debt policy advocates, my suggested program differs from her proposal in that I do not propose that legislators rely on mandatory reporting to law enforcement as the main mechanism of incentivizing companies to adopt domestic violence policies.

283. See Charles Pratt, *Banks' Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California*, 40 CAL. W.L. REV. 195, 222–23 (2003); SANDRA L. HUGHES, A.B.A. COMMISSION ON LAW & AGING, CAN BANK TELLERS TELL?: LEGAL ISSUES RELATED TO BANKS REPORTING FINANCIAL ABUSE OF THE ELDERLY 30–37 (2003), [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/bank-reporting-paper-long.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/bank-reporting-paper-long.pdf) [<https://perma.cc/2T77-63DS>].

284. See HUGHES, *supra* note 283, at 8–9.

285. See Gillian Price & Craig Fox, *The Massachusetts Bank Reporting Project: An Edge Against Elder Financial Exploitation*, 8 J. ELDER ABUSE & NEGLECT 59, 63–65 (1997).

286. *Id.* at 65. For a summary of elder financial abuse reporting laws as they apply to banks in other states, see HUGHES, *supra* note 283, at 9–11.

Kim has observed, “Financial institutions’ identification, reporting, and prevention mechanisms for financial abuse have been in place for [thirty] years. Considering that policies, trainings, and institutional memory already exist for elder abuse, coerced debt implementation can follow a similar model.”<sup>287</sup>

Though many states adopted the Massachusetts model for addressing elder financial abuse, similar legislative efforts in California have faced strong opposition in the past.<sup>288</sup> The two bills California legislators introduced in 2000 and 2001, shortly after the introduction of the Massachusetts model, faced opposition from financial institutions, which argued that, “[a]lthough the state may have a compelling interest in protecting the elderly, singling out bank employees to play cops is not the answer.”<sup>289</sup> Arguments against these bills took two forms. First, financial institutions viewed these measures as creating unacceptable liability risks, as federal bank privacy laws conflicted with the state reporting requirement. This meant that, among other things, the immunity provided under the proposed state laws would not protect against a federal claim for privacy violations.<sup>290</sup> Second, banks argued that their employees were not trained or qualified to make determinations of abuse.<sup>291</sup> After both bills failed, California legislators repeatedly attempted, and failed, to pass similar measures.<sup>292</sup> Legislators finally succeeded in 2005 with the passage of the Financial Elder Abuse Reporting Act, which established employees of financial institutions as mandatory reporters of elder financial abuse.<sup>293</sup>

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287. Kim, *Credit Cards*, *supra* note 70, at 306.

288. See HUGHES, *supra* note 283, at 26–37. A.B. 2253, introduced in 2000, would have permitted an employee of a financial institution to disclose customer information to law enforcement or adult protective services if they suspected that an elder or dependent adult customer is a victim of financial abuse by considering the disclosure to be privileged communication and immunizing the employee and the financial institution from liability for violating state bank privacy laws for making a reasonable and good faith disclosure. See A.B. 2253 1999-2000 Reg. Sess. (Cal. 2000). A.B. 109, introduced the following year, would have made employees of financial institutions mandatory reporters to law enforcement of known or suspected instances of elder and dependent financial abuse, and similarly would have provided immunity from liability for violating state bank privacy laws. A.B. 109, 2001-2002 Reg. Sess. (Cal. 2001).

289. ASSEMB. COMM. ON AGING & LONG TERM CARE, A.B. 109 (2001), 3–4 (2001) [hereinafter ASSEMB. COMM. ON AGING].

290. This argument is obsolete today with respect to elder financial abuse. In 2018, Congress passed the Senior Safe Act, which created immunity for financial institutions and qualified employees from liability for violating federal bank privacy laws for reporting potential exploitation of a senior citizen to law enforcement. Economic Growth, Regulatory Relief and Consumer Protection Act of 2017, Pub. L. 115-174, § 303, 132 Stat. 1296, 1335–36 (codified as amended at 12 U.S.C. 3423).

291. ASSEMB. COMM. ON AGING, *supra* note 289, at 3–4.

292. The 2004 bills A.B. 2611 and A.B. 2474 both initially contained provisions nearly identical to provisions in S.B. 1018, which passed in 2005. However, those provisions were stripped before the bills were passed. See SEN. COMM. ON PUBLIC SAFETY, S.B. 1018 (2005), 24 (2005) (citing A.B. 2611 2003-2004 Reg. Sess. (Cal. 2004); A.B. 2474 2003-2004 Reg. Sess. (Cal. 2004)).

293. See FINANCIAL ELDER ABUSE REPORTING ACT, S.B. 1018 2005-2006 Reg. Sess. (Cal. 2006) (codified as scattered sections of the California Welfare and Institutions Code); CAL. WELF. & INST. CODE § 15630.1.



Though the banking industry may oppose similar efforts to regulate coerced debt, the landscape has changed significantly over the past two decades. Regulators and advocates have extensively tested this statutory model, evaluated its strengths and weaknesses, and developed programs suited to their communities. In turn, financial institutions have acclimated to these programs, examined liability issues and assessed their risks, and developed important industry knowledge, techniques, and protocols.<sup>294</sup> Additionally, the primary piece of federal legislation regulating consumer personal financial information privacy—the Financial Services Modernization Act—permits disclosure of information to law enforcement for the purpose of protecting against fraud and unauthorized transactions, which regulatory agencies responsible for enforcing the Act have stated includes suspected financial abuse.<sup>295</sup>

California legislators can further assuage financial institutions' concerns and mitigate controversy in two ways. First, legislators can implement such a mandate as a pilot program in select counties under Family Code Section 20000, rather than as a statewide mandate. This would provide further flexibility for regulators and the banking industry to devise a program that meets the needs of both sets of stakeholders by creating an opportunity for the industry to provide feedback at an early stage. Second, instead of requiring mandatory reporting to local law enforcement, legislators can instead require financial institutions to report anonymized information to DFPI and impose monetary penalties for institutions that routinely fail to report, rather than creating criminal liability for individual employees. This would incentivize institutions to create robust training programs for employees while simultaneously generating data that would elucidate the pervasiveness and characteristics of coerced debt. It would also enable advocates, regulators, and banks to develop more targeted systems to prevent coerced debt, such as by implementing more equitable screening practices for lending. Banks may have concerns about the accuracy of the information reported as, after all, such reports would be based only on *suspected* instances of abuse, rather than actual ones. However, similar reporting schemes have been used in other contexts and can nonetheless be useful as bank employees have the most facetime with consumers.<sup>296</sup> Additionally, this

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294. See Price & Fox, *supra* note 285, 63–65.

295. See FINANCIAL SERVICES MODERNIZATION ACT of 1999, Pub. L. 106–102, § 502 113 Stat. 1338, 1437–38 (codified as amended at 15 U.S.C. 6802); HUGHES, *supra* note 283, at 15–17.

296. For instance, the Annual Campus Security Report mandated by the Clery Act requires universities to collect and report campus crime data, which necessarily involves alleged rather than actual instances of crime. See JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS ACT of 1990, 20 U.S.C. § 1092(f). However, audits have often found that universities fail to fully comply with the Act's reporting requirements, partly due to reluctance to publish negative information. See Laura R. McNeal, *Clery Act: Road to Compliance*, 19 J. PERS. EVAL. EDUC. 105, 107 (2007) (noting that “administrators and officials are often concerned that the release of high crime statistics will have adverse effects on alumni donations and school enrollment”); Bonnie S. Fisher, Jennifer L. Hartman, Francis T. Cullen & Michael G. Turner, *Making Campuses Safer For Students:*

reporting scheme would avoid many of the critiques that have been aimed at mandatory reporting to law enforcement.

Mandatory reporting to local law enforcement has been critiqued as a paternalistic policy that supplants victim autonomy and dignity in favor of administrable state intervention. Historically, such an approach to elder abuse has been widespread due to popular conceptions that older adults are a particularly vulnerable population.<sup>297</sup> Advocates have challenged these views and have argued that policy approaches based solely on age promote ageism.<sup>298</sup> Similarly, survivors and domestic violence advocates have argued that mandatory reporting in the intimate partner violence context replicates the subjugation survivors experience in relationships involving coercive control, increases survivors' risk of abuse, discourages survivors from seeking medical assistance and other resources out of fear of retaliation by their abusive partner, embarrassment, or other negative consequences, and ultimately fails to protect survivors from further abuse.<sup>299</sup> Moreover, paternalistic approaches to intimate partner violence risk essentializing survivors: assuming that all survivors share a common set of traits and thus failing to capture the ways in which survivors may experience abuse, and life, differently due to social and political factors like identity—in short, a reductive and misleading stereotype that is a poor stand-in for the often disparate experiences of real survivors.<sup>300</sup>

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*The Clery Act as a Symbolic Legal Reform*, 32 STETSON L. REV. 61, 86–87 (2002) (arguing that inaccuracies in reporting are partly responsible for making the Act a primarily symbolic, rather than substantive, response to campus crime). Regardless, the Act appears to have positively affected campus crime policies. See generally Steven M. Janosik and Dennis E. Gregory, *The Clery Act and Its Influence on Campus Law Enforcement Practices*, 41 J. STUDENT AFFS. RSCH. & PRAC. 182 (2003) (finding that the majority of college law enforcement administrators surveyed believed the Act resulted in improved crime reporting procedures).

297. See *supra* note 200 and accompanying text.

298. See Thomas Halper, *The Double-Edged Sword: Paternalism as a Policy in the Problems of Aging*, 58 MILBANK MEM'L FUND Q. 472, 474–76 (1980) (arguing that paternalism is a poor policy fit for the elderly because the elderly are not “ordinarily immature, naïve, and ignorant”; denies the elderly the opportunity to pursue their own values; often serves as a rationalization for promoting self-interest of the government or other parties; and counters equality); D.R. Cooley, *Elder Abuse and Vulnerability: Avoiding Illicit Paternalism in Healthcare, Medical Research, and Life*, 1 ETHICS, MEDICINE & PUBLIC HEALTH 102, 105–07 (2015) (examining why older adults are considered to be “excessively” vulnerable to abuse); Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26 YALE J.L. & FEMINISM 1, 15–20 (2014) (arguing that age is often used in legislation as a highly administrable but ultimately poor proxy for other harder-to-assess characteristics, and that such policies, including certain financial abuse statutes, discount older adult's autonomy and dignity in favor of their security and safety).

299. See Thomas L. Hafemeister, *If All You Have Is A Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919, 960, 962–63 (2011) (summarizing critiques of mandatory reporting to local law enforcement as a response to domestic violence).

300. See Goodmark, *Autonomy Feminism*, *supra* note 133, at 44 (“Dominance feminism rests upon the idea that every woman is a victim or a potential victim of male subordination, acted upon rather than acting . . . Anti-essentialist feminists argue that there is no unitary women's experience . . . we must instead see women at the intersections of the various identities that construct them: race, sexual orientation, class, disability, and any other characteristic that shapes the woman. Only then can policies be responsive to the needs of all women.”).

As such, legislators should seek to implement reporting models that prioritize survivor empowerment. Requiring reporting to DFPI would promote survivor autonomy while simultaneously addressing coerced debt on a structural level. While California legislators have noted the importance of targeting coerced debt in banks and have observed the effectiveness of the Massachusetts model in addressing elder financial abuse, legislators have largely neglected the benefits of reporting.<sup>301</sup> For example, in 2022, California State Representative Grayson introduced A.B. 1841 which, if it had passed, would have required the DFPI to develop, alongside domestic violence survivors and other stakeholders, a voluntary online training program on economic abuse for officers and employees of financial institutions.<sup>302</sup> Specifically, the training program would have included instruction on: the connection between domestic violence and financial insecurity; the prevalence and impacts of economic abuse on a survivor's employment and credit history; the heightened need to protect the privacy, autonomy, and agency of survivors, including the survivor's decision to contact law enforcement; and how to identify, report, and respond to economic abuse.<sup>303</sup> The primary goal of the program would have been to raise awareness of financial abuse by intimate partners among the public and financial institutions.<sup>304</sup> For this reason, the bill would not have required participating financial institutions to be mandatory reporters of domestic violence.<sup>305</sup>

Raising awareness of coerced debt, particularly among financial institutions and their employees, will be critical to instigating structural change. Future legislative efforts should aim to establish parameters by which lawmakers and advocates can determine if such an initiative succeeds in bringing attention to and changing perceptions of this form of financial abuse. Additionally, though legislators likely refrained from including a reporting mechanism in the proposed scheme to incentivize voluntary participation, lawmakers can still reach a workable compromise. A reporting mechanism that aims principally to generate data for targeted regulation would placate the concerns of financial institutions and more directly address the inequities generated by and woven into the consumer credit system that trouble survivors' efforts to regain financial stability.

Together with Family Code Section 6342.5 and S.B. 975, regulations permitting survivors to prevent furnishers from reporting coerced debt and

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301. ASSEMB. COMM. ON BANKING AND FINANCE, A.B. 1841 (2022), 3–4 (2022) [hereinafter ASSEMB. COMM. ON BANKING] (noting parallels between coerced debt and elder financial abuse and describing existing state and federal interventions used to address elder financial abuse).

302. A.B. 1841 2021-2022, Reg. Sess. (Cal. 2022); A.B. 1841 (2021-2022) Bill History, [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=202120220AB1841](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220AB1841) [<https://perma.cc/R5B8-C46W>]. The California Partnership to End Domestic Violence, California Community Banking Network, and FreeFrom supported A.B. 1841. ASSEMB. COMM. ON BANKING, *supra* note 301, at 4.

303. ASSEMB. COMM. ON BANKING, *supra* note 301, at 1.

304. *Id.* at 2.

305. *Id.* at 1.

requiring bank employees to report suspected instances of coerced debt would be the start of creating a comprehensive scheme. Survivors would have access to more effective forms of recourse while the consumer credit industry would be held accountable for its role in facilitating this form of abuse and the devastating damage it causes survivors. As legislative and judicial understanding of coerced debt continues to develop, advocacy efforts will continue to gain momentum—and spark greater reform efforts at both the state and federal level. Though further reform is necessary to truly recognize and address the gendered dimensions of the consumer credit system and its role in facilitating and exacerbating the economic consequences of domestic violence, coerced debt offers state legislators the opportunity to begin reckoning with this greater systemic issue.

#### CONCLUSION

Survivors experience severe and lasting financial injuries as a result of damaged credit from coerced debt. The failure of existing remedies to provide survivors with comprehensive relief demonstrates, in stark terms, that our social imaginary of financial harm is highly limited, and must undergo a paradigm shift if lawmakers are to address coerced debt at its core. And more broadly, coerced debt demonstrates that though scholars have begun to elucidate the impact of the neoliberal governmentality on responses to sexual violence, further research is needed to understand the impact of neoliberalism on sexual violence itself. Ultimately, survivors of coerced debt deserve a rapid and substantial response from lawmakers. California's adoption of Family Code Section 6342.5 is a step in the path towards providing survivors with meaningful relief. But without further action, survivors will continue to face a difficult and traumatic road to stability. California lawmakers must continue their efforts to ensure that survivors can protect their credit.