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## Assuring Financial Stability for Survivors of Domestic Violence: A Judicial Remedy for Coerced Debt in New York's Family Courts

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# Assuring Financial Stability for Survivors of Domestic Violence

## A JUDICIAL REMEDY FOR COERCED DEBT IN NEW YORK'S FAMILY COURTS

### INTRODUCTION

*When Emma first met Andrew, she was a successful real estate agent who was financially independent and about to buy her first apartment. At first, Andrew supported her success. Shortly into their marriage, the dynamics of their relationship changed drastically. Andrew took complete control over Emma's life. He limited her time with family and friends, restricted access to her computer and phone, and fully managed the couple's finances. He alone had access to her bank accounts, giving her a small, set portion of her own paycheck each week for spending. He depleted the savings she had accrued. Emma tried to leave the relationship no less than five times before she was able to exit for good. Later, she learned that Andrew had spent tens of thousands of dollars on her credit cards and had taken out several loans in her name, saddling her with substantial debt that she alone was responsible for.<sup>1</sup>*

Central to a law's effectiveness is the relief it provides. For survivors of domestic violence,<sup>2</sup> like Emma,<sup>3</sup> who have suffered from non-physical abuse, there exists a critical gap between a

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<sup>1</sup> These facts are based on real events; however, names have been changed for anonymity. Fiona McCormack, *How Did a Confident, Successful Woman Become a Poverty-Stricken Recluse?*, GUARDIAN (Aug. 7, 2018, 10:34 PM), <https://www.theguardian.com/commentisfree/2018/aug/08/how-did-a-confident-successful-woman-become-a-poverty-stricken-recluse> [<https://perma.cc/2NFU-HPJR>].

<sup>2</sup> For the purposes of this note, the terminology "survivors of domestic violence" is used to describe persons of all gender identities and sexual orientations who have been victims of domestic violence during their lives. The term "survivors" is used interchangeably with "victims." Survivors are referred to using "they" pronouns. Although women constitute the vast majority of domestic violence survivors, not all survivors identify as female. MICHELE C. BLACK ET AL., NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NAT'L INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2 (2011), [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_executive\\_summary-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_executive_summary-a.pdf) [<https://perma.cc/K93X-P3MA>].

<sup>3</sup> See McCormack, *supra* note 1.

court's finding of wrongdoing and the available remedies.<sup>4</sup> This is especially true in the context of economic abuse,<sup>5</sup> and specifically in situations involving coerced debt.<sup>6</sup> Perpetrators of domestic violence exert power and control over their partners using a variety of tactics, including physical or sexual violence, emotional abuse, and economic abuse.<sup>7</sup> In abusive relationships involving coerced debt, an abuser utilizes credit as a means to control, harm, or in other ways, limit their partner.<sup>8</sup>

According to the Centers for Disease Control and Prevention, more than one in three women and one in four men experience some form of domestic violence in their lifetime.<sup>9</sup> Studies suggest economic abuse plays a role in as many as ninety-nine percent of these relationships.<sup>10</sup> Despite its prevalence,

<sup>4</sup> See *infra* Part II.

<sup>5</sup> The National Coalition Against Domestic Violence defines economic abuse as “maintaining control over financial resources, withholding access to money, or attempting to prevent a victim or survivor from working and/or attending school in an effort to create financial dependence as a means of control.” *Quick Guide: Economic and Financial Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE BLOG (Apr. 12, 2017), <https://ncadv.org/blog/posts/quick-guide-economic-and-financial-abuse> [<https://perma.cc/D6CB-ERYJ>].

<sup>6</sup> Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 954 (2012) [hereinafter Littwin, *Coerced Debt*].

<sup>7</sup> Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1116 (2009) [hereinafter Johnson, *Redefining Harm*]. “Power and control” is commonly used terminology to describe the nature of domestic violence and is often depicted as a wheel in which one act of abuse leads to another. See, e.g., Nada J. Yorke, *Avoiding Collusion with Batterers Through Recognition of Covert Behavior for Better Outcomes in Family Court*, 28 J. AM. ACAD. MATRIM. LAW. 563, 570 (2016) (“[C]alling a partner a profane name, itself, may have no real impact in terms of fear or controlling the partner’s behavior; but when such an event in the past has usually been followed by a physical attack, the mere name-calling behavior escalates the incident to become abusive in nature . . . .”); see also Debra Pogrud Stark & Jessica Choplin, *Seeing the Wrecking Ball in Motion: Ex Parte Protection Orders and the Realities of Domestic Violence*, 32 WIS. J. L. GENDER & SOC’Y 13, 24–25 (2017).

<sup>8</sup> Abusive partners engage in a range of debt coercion tactics that often include using a partner’s name to take out loans or other forms of credit without that partner’s consent or knowledge. Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 375 (2013) [hereinafter Littwin, *Escaping Battered Credit*]; see also Susan Johnson Taylor, *5 Financial Challenges Facing Survivors of Domestic Abuse*, U.S. NEWS & WORLD REP. (Oct. 26, 2016, 10:24 AM), <https://money.usnews.com/money/personal-finance/articles/2016-10-26/5-financial-challenges-facing-survivors-of-domestic-abuse> [<https://perma.cc/386J-33ZU>].

<sup>9</sup> BLACK ET AL., *supra* note 2, at 2. This note uses the term “intimate partner violence” synonymously with “domestic violence.”

<sup>10</sup> Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, VIOLENCE AGAINST WOMEN 563, 580 (2008) (“[A]n astounding 99% of [women surveyed] were subjected to some form of economic abuse at some point during their relationships.”); see also Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 419 (2012) (“Of the 120 individuals who participated in the study, 94.2% experienced some form of economic abuse in their current relationship or, if no longer with the abusive partner, within the last year of the relationship.”).

economic abuse is a largely hidden epidemic unrecognized by more than three quarters of the American population.<sup>11</sup>

Economic abuse can be experienced in many forms.<sup>12</sup> Abusive partners may withhold funds and other assets, deny or restrict access to bank accounts and statements, prevent a partner from working or receiving an education, or use a partner's name, social security number, or other personal identifying information to open bank accounts or lines of credit without their knowledge.<sup>13</sup> Professor Angela Littwin first coined the term "coerced debt" and defined it as "all non-consensual, credit-related transactions that occur in a violent relationship."<sup>14</sup> The impacts of coerced debt, namely a damaged credit score, can be far-reaching and create a number of devastating challenges for survivors as they attempt to exit abusive relationships and find both physical safety and long-term stability.<sup>15</sup>

Credit scores have become an essential aspect of modern life—not just in terms of an individual's financial identity but also their ability to access utilities, housing, and often employment opportunities.<sup>16</sup> Thus, coerced debt can have wide-ranging and destructive consequences for survivors.<sup>17</sup> Damaged credit makes it even more difficult for a survivor to exit an abusive relationship and access the immediate resources they will need to initially survive, such as housing.<sup>18</sup> Indeed, in a 2018 survey of domestic violence survivors, nearly forty percent of respondents reported damaged credit as a barrier to leaving their abusive relationship.<sup>19</sup> Even if a survivor is able to exit the relationship, their ability to gain lasting independence and stability is complicated because poor credit affects

<sup>11</sup> See Allstate Found., *How Money Traps Victims of Domestic Violence*, ATLANTIC SPONSOR CONTENT (Mar. 2018), <https://www.theatlantic.com/sponsored/allstate/how-mon-ey-traps-victims-of-domestic-violence/750/> [https://perma.cc/8EEC-TQLA].

<sup>12</sup> Bourree Lam, *The Economic Scars of Domestic Abuse*, ATLANTIC (Mar. 13, 2015), <https://www.theatlantic.com/business/archive/2015/03/the-economic-scars-of-domestic-abuse/387637> [https://perma.cc/G49D-6QJQ].

<sup>13</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 374–75.

<sup>14</sup> Littwin, *Coerced Debt*, *supra* note 6, at 954.

<sup>15</sup> See Littwin, *Escaping Battered Credit*, *supra* note 8, at 371.

<sup>16</sup> See, e.g., Michelle Chen, *Why Should Your Credit History Cost You A Job?*, NATION (Sept. 27, 2017), <https://www.thenation.com/article/why-should-your-credit-history-cost-you-a-job/> [https://perma.cc/N9E8-GNB5].

<sup>17</sup> CAMBA LEGAL SERV., FORDHAM L. SCH. FEERICK CTR. FOR SOC. JUST., & LEGAL AID SOC'Y, DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS FOR DOMESTIC VIOLENCE SURVIVORS 1 (2018), [https://static1.squarespace.com/static/59578aade110eba6434f4b72/t/5bbcb455b208fcd6b5279309/1539093591815/denied\\_economic\\_abuse\\_perpetuates\\_homelessness\\_domestic\\_violence\\_survivors.pdf](https://static1.squarespace.com/static/59578aade110eba6434f4b72/t/5bbcb455b208fcd6b5279309/1539093591815/denied_economic_abuse_perpetuates_homelessness_domestic_violence_survivors.pdf) [https://perma.cc/6JA6-U3Z6] [hereinafter DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS].

<sup>18</sup> *Id.*

<sup>19</sup> CYNTHIA HESS & ALONA DEL ROSARIO, INST. FOR WOMEN'S POL'Y RES., DREAMS DEFERRED: A SURVEY ON THE IMPACT OF INTIMATE PARTNER VIOLENCE ON SURVIVORS' EDUCATION, CAREERS, AND ECONOMIC SECURITY 33 (2018), [https://wpr.org/wp-content/uploads/2018/10/C474\\_IWPR-Report-Dreams-Deferred.pdf](https://wpr.org/wp-content/uploads/2018/10/C474_IWPR-Report-Dreams-Deferred.pdf) [https://perma.cc/3T7W-KF3L].

a person's ability to access essential credit lines, banking services, and can subject victims to predatory debt collection practices.<sup>20</sup>

Society's lack of awareness surrounding economic abuse is reflected in the U.S. legal system.<sup>21</sup> There exists no single legal avenue through either the federal or state level in which survivors of economic abuse, let alone survivors of coerced debt, may fully access relief for the harm they have endured.<sup>22</sup> Family courts, the legal bodies that states have entrusted with domestic violence proceedings, have yet to fully recognize economic abuse within their jurisdictions, nor has the criminal legal system allowed certain financial crimes to apply to intimate partner settings.<sup>23</sup> Further, the Violence Against Women Act, the federal statute designed to improve national and community-based responses to domestic violence, has yet to address economic abuse as its own form of domestic violence.<sup>24</sup> Absent a legal remedy, victims of coerced debt are often unable to leave abusive relationships for lack of financial resources or, if they are able to leave, have substantial difficulty repairing their financial standing to access essential resources needed to ensure their safety.<sup>25</sup>

To counter the overwhelming consequences of coerced debt and ensure survivors have the legal support needed to not only stop the abuse from continuing but also access relief for what has already occurred, this note proposes a multi-level federal-state solution that both empowers New York's family courts to adjudicate these offenses and calls for amending the various federal laws that act as barriers to state-based relief.<sup>26</sup> New York is one of many states that has already broadened its laws around domestic violence to include economic abuse and thus serves as a useful example for other states of how, despite this recognition, judicial relief is still lacking and further action must be taken.<sup>27</sup>

To address this shortcoming, the New York legislature should amend its Family Court Act to (1) allow victims to obtain orders of protection that properly account for economic abuse; and

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<sup>20</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 3–5.

<sup>21</sup> See *infra* Section II.C. Conversely, the lack of legal relief available to survivors might in itself account for society's lack of awareness around economic abuse. Annamarya Scaccia, *New Pennsylvania Bill Is Just One Step Toward Helping Survivors of Economic Abuse*, REWIRE.NEWS (July 27, 2016 5:50 PM), <https://rewire.news/article/2016/07/27/new-pennsylvania-bill-just-one-step-helping-survivors-economic-abuse/> [<https://perma.cc/JV97-RNG8>].

<sup>22</sup> See discussion *infra* Part II.

<sup>23</sup> See discussion *infra* Section II.C.

<sup>24</sup> See discussion *infra* Section IV.B.

<sup>25</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 2.

<sup>26</sup> See *infra* Part IV.

<sup>27</sup> See *infra* Part III.

(2) enable judges to issue certificates that reflect the abuse that has occurred which survivors may then use to repair their credit.<sup>28</sup> These state-level reforms must be complimented at the federal level by amending both the Fair Credit Reporting Act and the Violence Against Women Act so that survivors of economic abuse may work with credit reporting agencies (CRAs) to fix their credit score.<sup>29</sup>

Part I of this note explains the significant role that economic abuse, and specifically coerced debt, plays within the overarching domestic violence crisis and the impacts that such abuse can have on a survivor's ability to exit an abusive relationship and gain independence. Part II illustrates the ineffectiveness of existing remedies for victims of coerced debt, from the federal statutes designed to criminalize and provide relief for identity theft, to various tort remedies and newly adopted relief avenues within family court. Part III evaluates the options a victim of coerced debt has within New York State, including filing an identity theft report or seeking an order of protection against their abuser. Part IV proposes a multi-level federal-state solution to not only empower New York's family courts to adjudicate and certify economic abuse but also remove federal barriers to ensure victims of coerced debt may correct their credit reports and work towards financial stability.

## I. BACKGROUND: EXPANDING THE UNDERSTANDING OF DOMESTIC VIOLENCE

### A. *Measuring the Domestic Violence Crisis and the Federal Legislative Response*

Domestic violence is a pervasive crime that affects an astonishing portion of the United States' population.<sup>30</sup> During a

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<sup>28</sup> See *infra* Section IV.A.

<sup>29</sup> See *infra* Section IV.B; Fair Credit Reporting Act, Pub. L. No. 91-507, 84 Stat. 1114–36 (1970) (codified as amended at 12 U.S.C. §§ 1830–1831, 15 U.S.C. §§ 1681 et seq. (2012 & Supp. V 2018)). CRAs, also known as credit reporting companies, maintain credit-related data that is used to calculate an individual's credit score. The three nationwide CRAs most familiar to consumers are Experian, TransUnion, and Equifax. Jonah Kaplan, *Know Your Data: Our Latest List of Consumer Reporting Companies*, CONSUMER FIN. PROT. BUREAU (Jan. 31, 2019), <https://www.consumerfinance.gov/about-us/blog/know-your-data-our-latest-list-consumer-reporting-companies/> [<https://perma.cc/Y6YR-WWA2>].

<sup>30</sup> BLACK ET AL., *supra* note 2, at 6. The collateral consequences of domestic violence are also significant. It is estimated that victims of domestic violence lose a total of eight million work days each year and the combined economic costs to the national economy are as high as seven billion dollars. Lam, *supra* note 12; see also Marcy L. Karin, *Changing Federal Statutory Proposals to Address Domestic Violence at Work: Creating A Societal Response by Making Businesses A Part of the Solution*, 74 BROOK. L. REV. 377, 381–82 (2009) (“Acts of domestic violence often occur while a victim is at work because work is the one place where perpetrators know they will be able to find their victims. . . . [A] recent [report] found that approximately 31% of female employees that died at work did so from ‘interpersonal assaults.’”).

single year, more than ten million men and women are physically abused by an intimate partner.<sup>31</sup> As a comparison, between 2001 and 2012, forty-five percent more women were killed by an intimate partner than U.S. soldiers were killed in Afghanistan.<sup>32</sup> In the state of New York, seventy-eight intimate partner homicides were reported in 2016—a twenty-two percent increase from the previous year.<sup>33</sup> This is a crisis that disproportionately impacts women of color and those who identify as lesbian or bisexual.<sup>34</sup> Forty-five percent of black women have been physically or sexually abused by intimate partners, compared to thirty-seven percent of white women and the victimization rate of lesbian and bisexual women is nearly double that of women who identify as heterosexual.<sup>35</sup>

Congress first recognized the gravity of the domestic violence crisis in 1994 with the bipartisan passage of the Violence Against Women Act (VAWA).<sup>36</sup> Following increased national attention to the domestic violence epidemic throughout the 1970s and 1980s, Congress passed VAWA as a call to action to courts across the country to treat domestic violence as a serious, criminal offense.<sup>37</sup> Through a series of grants and directives, VAWA also provided crucial support to state and local domestic violence

<sup>31</sup> *National Statistics*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/statistics> [<https://perma.cc/ST6L-QRZK>].

<sup>32</sup> Susan R. Paisner, *Five Myths About Domestic Violence*, WASH. POST (Feb. 23, 2017), [https://www.washingtonpost.com/outlook/five-myths/five-myths-about-domestic-violence/2018/02/23/78969748-1819-11e8-b681-2d4d462a1921\\_story.html?utm\\_term=.212e34783e18](https://www.washingtonpost.com/outlook/five-myths/five-myths-about-domestic-violence/2018/02/23/78969748-1819-11e8-b681-2d4d462a1921_story.html?utm_term=.212e34783e18) [<https://perma.cc/8UGV-B3ZB>].

<sup>33</sup> *New York State Domestic Violence Dashboard 2016*, OFF. FOR THE PREVENTION OF DOMESTIC VIOLENCE 1 (Oct. 2017), <http://www.opdv.ny.gov/statistics/nydata/2016/2016-dv-dashboard.pdf> [<https://perma.cc/KNX5-DPK7>].

<sup>34</sup> *2018 National Crime Victims' Rights Week Resource Guide: Crime and Victimization Fact Sheet*, U.S. DEP'T OF JUST. OFF. FOR VICTIMS OF CRIME 2 (2018), [https://ovc.ncjrs.gov/ncvrw2018/info\\_flyers/fact\\_sheets/2018NCVRW\\_IPV\\_508\\_QC.pdf](https://ovc.ncjrs.gov/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_IPV_508_QC.pdf) [<https://perma.cc/QX2W-AHZW>] [hereinafter *2018 Crime Victims' Resource Guide*].

<sup>35</sup> *See id.*; *see also* MIKEL L. WALTERS ET AL., NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTR. FOR DISEASE CONTROL AND PREVENTION, NAT'L INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION 18 (2013), [https://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_SOfindings.pdf](https://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOfindings.pdf) [<https://perma.cc/KZM4-LURM>] (“Four in 10 lesbian women (43.8%), 6 in 10 bisexual women (61.1%), and 1 in 3 heterosexual women (35.0%) reported experiencing rape, physical violence, and/or stalking within the context of an intimate partner relationship at least once during their lifetime.”).

<sup>36</sup> Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 102–322, § 108 Stat. 1796, 1902–55 (codified as amended in scattered sections of 8, 16, 28, and 42 U.S.C. (2012 & Supp. V 2018)), *invalidated in part by* *United States v. Morrison*, 529 U.S. 598 (2000); *see also* George B. Stevenson, *Federal Antiviolence and Abuse Legislation: Toward Elimination of Disparate Justice for Women and Children*, 33 WILLAMETTE L. REV. 848, 851–55 (1997) (reviewing federal domestic violence legislation); *The History of the Violence Against Women Act*, U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, [http://www.ncdsv.org/images/OVW\\_HistoryVAWA.pdf](http://www.ncdsv.org/images/OVW_HistoryVAWA.pdf) [<https://perma.cc/P26J-CBJ2>].

<sup>37</sup> Emma Sarappo, *What's Next for the Violence Against Women Act?*, PAC. STANDARD (Oct. 16, 2018), <https://psmag.com/news/whats-next-for-the-violence-against-women-act> [<https://perma.cc/736R-G2SF>].

services agencies and created a number of programs within the Department of Justice (DOJ) to better combat, measure, and prevent domestic violence.<sup>38</sup> In 2018, the Act authorized more than \$460 million in grants, which were distributed nationwide to survivor services.<sup>39</sup> The bill has since been reauthorized three times and many credit the legislation for the significant, albeit far from resolved, decrease in domestic violence since 1994.<sup>40</sup>

Studies suggest the rate of domestic violence has decreased even further in recent years.<sup>41</sup> Contemporary social movements, such as the #MeToo movement, are credited with raising awareness around gender violence and providing support for survivors who have yet to report their abuse to law enforcement authorities.<sup>42</sup> In 2018, the National Domestic Violence Hotline reported a thirty percent increase of those seeking support as compared to the previous year.<sup>43</sup> These statistics, while significant, fail to tell the whole story as incidents of domestic violence are widely underreported.<sup>44</sup> The DOJ estimates that nearly half of all domestic violence incidents go unreported.<sup>45</sup> This is attributed to a variety of factors, including a survivor's desire to protect their abuser, a fear of retribution, or because the survivor feels police and other authorities will not take their allegations seriously.<sup>46</sup>

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<sup>38</sup> April Paredes et al., *Annual Review Article: Domestic Violence*, 19 GEO. J. GENDER & L. 266, 268–72 (2018) (explaining the breadth of services created under the initial Violence Against Women Act).

<sup>39</sup> Elizabeth Chuck, 'Women's Lives in Danger': Government Shutdown Holds Up Funds for Sexual Violence Survivors, NBC NEWS (Jan. 3, 2019, 6:29 PM EST), <https://www.nbcnews.com/news/us-news/women-s-lives-danger-government-shutdown-holds-funds-sexual-violence-n954326> [https://perma.cc/9J8N-4XV4].

<sup>40</sup> Congress reauthorized VAWA in 2000, 2005 and 2013, each reauthorization expanded upon the protections offered to survivors of domestic violence. Violence Against Women Act 2000 (VAWA 2000), Pub. L. No. 106-386, 114 Stat. 1491–1548 (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006); Violence Against Women Reauthorization Act 2013, Pub. L. No. 113–14, 127 Stat. 54 (2013); Sarappo, *supra* note 37 (“[F]rom 1999 to 2001, serious intimate partner violence against women dropped [fifty-nine] percent.”).

<sup>41</sup> Whitney Eulich, *In U.S., Big Strides in Reducing Domestic Violence*, CHRISTIAN SCI. MONITOR (Feb. 13, 2013), <https://www.csmonitor.com/USA/Society/2013/0213/In-US-big-strides-in-reducing-domestic-violence> [https://perma.cc/6WAN-HEQA].

<sup>42</sup> Sarah Mervosh, *Domestic Violence Awareness Hasn't Caught Up With #MeToo. Here's Why.*, N.Y. TIMES (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/us/domestic-violence-hotline-me-too.html> [https://perma.cc/MNY3-VJCE].

<sup>43</sup> *Id.*

<sup>44</sup> Press Release, Bureau of Just. Stat., Police Responded to Nearly Two-Thirds of Reported Nonfatal Domestic Violence Victimization in 10 Minutes or Less (May 2, 2017, 10:00AM), <https://www.bjs.gov/content/pub/press/prdv0615pr.cfm> [https://perma.cc/G3TM-5E6P] (showing that only about fifty-six percent of nonfatal domestic violence incidents were reported to law enforcement from 2006-2015).

<sup>45</sup> BRIAN A. REAVES, BUREAU OF JUST. STAT., NCJ250231, POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006-2015, at 1 (2017), [https://www.bjs.gov/content/pub/pdf/prdv0615\\_sum.pdf](https://www.bjs.gov/content/pub/pdf/prdv0615_sum.pdf) [https://perma.cc/92NY-FU5K].

<sup>46</sup> ACLU ET AL., *Responses from the Field: Sexual Assault, Domestic Violence and Policing: Highlights from the Full Report*, (2015), <https://www.aclu.org/report/highlights->

Thus, while the statistics demonstrate the pervasiveness of domestic violence, there likely exists an even deeper, more destructive and unchecked phenomenon.<sup>47</sup>

Domestic violence is nuanced and complex, occurring in many forms often at once, including physical and sexual violence as well as psychological, emotional, and economic abuse, to name a few.<sup>48</sup> As our understanding of domestic violence deepens, so too has the formal recognition within our legal systems.<sup>49</sup> Nevertheless, the recognition of economic abuse as a form of domestic violence has yet to make its way into many states' laws, let alone federal domestic violence statutes.<sup>50</sup> Indeed, VAWA, the paradigmatic federal law that addresses domestic violence, does not yet recognize economic abuse.<sup>51</sup> This lack of recognition has damaging effects for victims of economic abuse.<sup>52</sup> Without relief options, victims are often left with no option but to stay in their economically abusive relationships or suffer the financial consequences on their own.<sup>53</sup> For those survivors that are able to leave, the financial harm they have suffered creates further barriers to stability, both in the short and long term.<sup>54</sup>

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responses-field [<https://perma.cc/5DVN-SLGK>]. [hereinafter *ACLU Report*] (88 percent of survivors surveyed reported that police “sometimes” or “often” either do not believe survivors or blame survivors for the abuse); see also discussion *infra* Section I.A. There are additional, internal reasons why victims of domestic violence do not report the abuse or leave the abusive relationship. These reasons include heightened adherence to social and gender role expectations and a desire to maintain the status quo. See Wendy L. Patrick, *Why Domestic Violence Victims Don't “Just Leave,”* PSYCHOL. TODAY (Apr. 7, 2018), <https://www.psychologytoday.com/us/blog/why-bad-looks-good/201804/why-domestic-violence-victims-dont-just-leave> [<https://perma.cc/4QJQ-SA5J>].

<sup>47</sup> REAVES, *supra* note 45; see also Laurence Busching, *Rethinking Strategies for Prosecution of Domestic Violence in the Wake of Crawford*, 71 BROOK. L. REV. 391, 392–93 (2005) (discussing the widespread reluctance of domestic violence survivors to both report their abuse and aid in the prosecution of their abusers).

<sup>48</sup> Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, N.Y. ST. B. ASS'N J., Feb. 2011, at 40.

<sup>49</sup> See Johnson, *Redefining Harm*, *supra* note 7, at 1134–38; see *infra* Part III for a discussion of New York's recognition of economic abuse.

<sup>50</sup> In 2009, Michigan was the only state that recognized economic abuse. Johnson, *Redefining Harm*, *supra* note 7, at 1134. A sample survey of states in the Northeast demonstrate the continued lack of recognition of economic abuse within domestic violence law. See CONN. GEN. STAT. ANN. § 46b-38a(1) (West 2019); MASS. GEN. LAWS ANN. Ch. 209A, § 1 (West 2019); N.J. STAT. ANN. § 2C:25-19 (West 2019); 23 PA. STAT. AND CONS. STAT. ANN. § 6102(a) (West 2019); 15 R.I. GEN. LAWS ANN. § 15-15-1 (West 2019); VT. STAT. ANN. tit. 15, § 1101 (West 2019).

<sup>51</sup> See *infra* Section I.B.

<sup>52</sup> See *infra* Section I.B.

<sup>53</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 376–77.

<sup>54</sup> Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Violence*, 20 WM. & MARY J. WOMEN & L. 339, 357 (2014).

## B. *Economic Abuse as a Form of Domestic Violence*

Domestic violence is a pattern of power and control exerted by one intimate partner in order to isolate and restrict the other.<sup>55</sup> Domestic violence scholars identify coercion as a primary characteristic within most domestic violence relationships and the term “coercive control,” originated by Susan Schechter and expanded upon by Evan Stark, describes this dynamic.<sup>56</sup> Coercive control occurs when an abuser employs dominating behaviors in order to remove or diminish the victim’s sense of agency.<sup>57</sup> In a coercive control relationship, the abuser often relies on violence, as well as other forms of abuse, such as psychological or economic, in order to exert their control.<sup>58</sup>

Inherent within the coercive control dynamic are the makings of not just physical abuse, but other forms of abuse as well. Similar to how an abusive partner uses physical force to manipulate his or her partner, so too can financial resources be used to an abuser’s advantage.<sup>59</sup> Such tactics are commonly referred to as “economic abuse.”<sup>60</sup> Despite the lack of awareness around economic abuse, the Supreme Court has even acknowledged that the harms of economic abuse are as serious as physical forms of domestic violence.<sup>61</sup>

Economic abuse is exceptionally prevalent and impacts nearly every abusive relationship.<sup>62</sup> The dynamics of economic abuse are especially harmful for communities that are already marginalized in U.S. society.<sup>63</sup> For instance, women living in poverty represent a disproportionate number of victims of economic abuse.<sup>64</sup> Further, for survivors with children, the

<sup>55</sup> *What Is Domestic Violence?*, NATL. DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/abuse-defined/> [<https://perma.cc/5TNF-XB3B>].

<sup>56</sup> Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much*, 22 BERKELEY J. GENDER L. & JUST. 2, 8-11 (2007).

<sup>57</sup> EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, 104-06, 242 (Oxford Univ. Press, 2009).

<sup>58</sup> *Id.* at 242.

<sup>59</sup> CTR. FOR SURVIVOR AGENCY & JUST., GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS 5-6 (2017), <https://csaj.org/Guidebook> [<https://perma.cc/W4RA-HWVT>] [hereinafter *CSAJ Guidebook*].

<sup>60</sup> *Id.* at 6.

<sup>61</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 891 (1992) (“Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common.”).

<sup>62</sup> Adams et al., *supra* note 10, at 580 (“[A]n astounding 99% of [women surveyed] were subjected to some form of economic abuse at some point during their relationships.”); Postmus et al., *supra* note 10, at 419 (“Of the 120 individuals who participated in the study, 94.2% experienced some form of economic abuse in their current relationship or, if no longer with the abusive partner, within the last year of the relationship.”).

<sup>63</sup> Donna Coker, *Panel Two: Addressing Domestic Violence Through a Strategy of Economic Rights*, 24 WOMEN’S RTS. L. REP. 187, 189-90 (2003).

<sup>64</sup> CTR. FOR SURVIVOR AGENCY & JUST., TRANSFORMING THE ECONOMIC LANDSCAPE FACING SURVIVORS: ADVANCING RACIAL & ECONOMIC EQUITY, 6-11 (2018),

decision to leave an economically abusive relationship comes with its own unique challenges as survivors not only need to consider their own safety, but the security of others as well.<sup>65</sup>

While research suggests that both men and women are victimized by domestic violence and economic abuse, women comprise the vast majority of victims.<sup>66</sup> The prevalence of economic abuse undoubtedly can be traced to historical economic inequities between men and women.<sup>67</sup> Traditional gender norms, barriers to women's employment and the wage gap, as well as traditional property law, have all contributed to the dynamics of economic abuse, and such dynamics are often exploited by abusive partners.<sup>68</sup>

Recently, there have been promising signs that the national understanding of domestic violence has evolved to include economic abuse and other non-physical forms of power and control.<sup>69</sup> Whereas the last reauthorization of VAWA in 2013 included no mention of economic abuse, the House of Representatives recently proposed an expanded draft of VAWA that, among other additions to the bill, recognizes economic abuse as a form of domestic violence.<sup>70</sup> Should a proposal of this kind be adopted by Congress,<sup>71</sup> it will be the first federal statute to acknowledge the connection between domestic violence and economic abuse.

Economic abuse operates in a similar way to physical abuse in that both are methods by which the abuser may exercise control over their partner and limit their ability to survive outside of the relationship.<sup>72</sup> By eliminating a partner's agency over their own

<https://nnedv.org/mdocs-posts/transforming-the-economic-landscape-facing-survivors-advancing-racial-economic-equity/> [https://perma.cc/EV5J-XVV7]; Sara J. Shoener & Erika A. Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, DOMESTIC VIOLENCE REP., Aug./Sept. 2013, at 83, 83–84; see also Sady Doyle, *Want to Reduce Domestic Violence? Treat it Like an Economic Issue*, TALK POVERTY (Sept. 9, 2016), <https://talkpoverty.org/2016/09/19/want-reduce-domestic-violence-treat-like-economic-issue/> [https://perma.cc/W8VD-L48J].

<sup>65</sup> *CSAJ Guidebook*, *supra* note 59, at 4–7.

<sup>66</sup> *2018 Crime Victims' Resource Guide*, *supra* note 34, at 2.

<sup>67</sup> Harrington Conner, *supra* note 54, at 343.

<sup>68</sup> See Harrington Conner, *supra* note 54, at 343–56.

<sup>69</sup> Sarappo, *supra* note 37.

<sup>70</sup> Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. § 2 (2019).

<sup>71</sup> See Alexandra Hutzler, *GOP Leaders Say Democrats Achieved 'Nothing' Since Taking Over The House, But 100 Bills Await Action In The Senate*, NEWSWEEK (May 23, 2019, 10:02 AM E.T.), <https://www.newsweek.com/republicans-democrats-house-senate-100-bills-1433843> [https://perma.cc/BQL9-CJFH] (noting that VAWA has yet to reach a Senate vote as of May 20, 2019). Congress temporarily reauthorized VAWA and then again let the law expire in February 2019. Emily Cochrane, *Transgender and Gun Rights Are Sticking Points for Violence Against Women Act*, N.Y. TIMES (Mar. 13, 2019), <https://www.nytimes.com/2019/03/13/us/politics/violence-against-women-act-transgender-guns.html> [https://perma.cc/K4BQ-5K49].

<sup>72</sup> Amanda Mathisen Stylianou et al., *Measuring Abusive Behaviors: Is Economic Abuse a Unique Form of Abuse?*, 28 J. INTERPERSONAL VIOLENCE 3186, 3199–3201 (2013).

finances, an abuser gains control over many other aspects of their victim's life, further isolates them from the outside world, and thus reduces their exit options.<sup>73</sup> The abusive partner essentially creates an unbreakable connection between the relationship and their victim's very livelihood.<sup>74</sup> This dynamic of dependence is reflected in the statistics—seventy-four percent of domestic violence survivors report staying with their abuser for economic reasons.<sup>75</sup>

### C. *The Impacts of Coerced Debt on Survivors of Domestic Violence*

An “overarching theme” among studies of economic abuse is the prevalence of coerced debt abuse.<sup>76</sup> Debt coercion tactics can include accessing capital in a partner's name without their knowledge or threatening violence or harm against a partner to establish such credit, among other known methods.<sup>77</sup> In the case of one survivor's account of coerced debt, after her husband had opened several credit cards in her name without her knowledge and charged nearly \$19,000 to the accounts, she was saddled with the sole responsibility of paying off the cards as she attempted to leave the relationship.<sup>78</sup> Until she repaired the damaged credit, she was “unable to get a mortgage, buy a new car, or crawl out of the mounting debt incurred from late-payment penalty fees on the cards.”<sup>79</sup>

Research into the pervasiveness of coerced debt is far from comprehensive;<sup>80</sup> however, the research that does exist indicates that it is a significant problem that further endangers the most vulnerable of victims at times when they are in urgent need of credit to reach safety.<sup>81</sup> A 2019 national survey of callers to the

<sup>73</sup> *Id.* at 3199–3201.

<sup>74</sup> *Id.*

<sup>75</sup> MARY KAY FOUND., 2012 MARY KAY TRUTH ABOUT ABUSE SURVEY REPORT 2–3 (2012), [http://www.ncdsv.org/images/MK\\_TruthAboutAbuseSurveyReport\\_NatFindings\\_2012.pdf](http://www.ncdsv.org/images/MK_TruthAboutAbuseSurveyReport_NatFindings_2012.pdf) [<https://perma.cc/H7B6-VSJB>].

<sup>76</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 372–73.

<sup>77</sup> *Id.* at 375; *see also* Johnson Taylor, *supra* note 8.

<sup>78</sup> Ariane Lange, *She Trusted Her Husband to Handle Her Money. It Cost Her More Than She Imagined.*, BUZZFEED NEWS (Jan. 7, 2019, 11:36 AM ET), <https://www.buzzfeednews.com/article/arianelange/coerced-debt-financial-abuse-fix-credit-score> [<https://perma.cc/GU49-BPSD>].

<sup>79</sup> *Id.*

<sup>80</sup> *See* Lisa Rabasca Roepe, *The Hidden Face of Financial Abuse*, GOOD MONEY (Mar. 29, 2017), <https://money.good.is/articles/financial-abuse-costs> [<https://perma.cc/N7ZH-J28H>].

<sup>81</sup> Littwin, *Coerced Debt*, *supra* note 6, at 952–54. In a 2018 study conducted by the Institute for Women's Policy Research, fifty-nine percent of domestic violence survivors surveyed had reported some form of credit abuse. HESS & DEL ROSARIO, *supra* note 19, at 9. The respondents in this study cited many ways in which coerced debt negatively impacted their life, including inability to access additional credit, housing, education and utilities. *Id.* at 9, 27. Advocates and lawyers surveyed also reported that

National Domestic Violence Hotline found that fifty-two percent of participants had endured coerced debt.<sup>82</sup> In another study, more than a quarter of clients that visited victims' services organizations sought assistance repairing their credit due to economic abuse in a relationship.<sup>83</sup> Additionally, sixteen percent of identity theft victims, a crime that manifests similarly to coerced debt, have suffered from domestic violence.<sup>84</sup> Twenty-four percent of identity theft victims identify the thief as a family member, friend, partner, or ex-partner.<sup>85</sup> In a 2018 survey of New York City domestic violence service providers, economic abuse was found to be especially prevalent within the City's population in which "[o]ver one in three survivors receiving legal services relating to domestic violence also [reported] a consumer debt legal issue."<sup>86</sup>

Similar to domestic violence generally, these statistics do not capture the extent of the economic abuse or coerced debt problems.<sup>87</sup> In a study exploring why survivors do not report or seek assistance with economic abuse, respondents most commonly cited "[e]mbarrassment and fear of immigration-related repercussions."<sup>88</sup> Those who do report the abuse attribute the relief they achieved far more to social service organizations than police, government agency services, or credit bureaus.<sup>89</sup>

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coerced debt was a prevalent problem within domestic violence relationships. *Id.* at 27–28 (“Fifty-one of the [fifty-five] individuals interviewed spoke about some form of coerced debt that their clients have faced . . .”).

<sup>82</sup> 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*, VIOLENCE AGAINST WOMEN 1, 7 (2019). More than a third of the survey's respondents who had endured coerced debt abuse feared their partner would physically retaliate if they declined to access capital for that partner. *Id.*

<sup>83</sup> OFF. OF MANHATTAN BOROUGH PRESIDENT ET AL., ECONOMIC ABUSE: THE UNTOLD COST OF DOMESTIC VIOLENCE 4–5 (2012) [hereinafter ECONOMIC ABUSE: THE UNTOLD COST]. Service providers in New York City typically offer a range of financial counseling services to victims of economic abuse. These include assistance with pulling and reviewing credit reports, counseling related to credit reporting and repair, and working with both creditors and debt collectors to address debts. DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 18.

<sup>84</sup> The Identity Theft Center produces an annual survey of the harms associated with identity theft victimization. In the 2004 edition of this report, the organization last considered the association between domestic violence and identity theft. Of the sixteen percent of victims who identified as victims of both identity theft and domestic violence, “more than half of them felt that the identity theft perpetrated against them was used as a way to continue this abuse and/or harassment.” IDENTITY THEFT RESOURCE CTR. IDENTITY THEFT: THE AFTERMATH 2004, at 3 (2004), [https://www.idtheftcenter.org/images/surveys\\_studies/Aftermath2004.pdf](https://www.idtheftcenter.org/images/surveys_studies/Aftermath2004.pdf) [<https://perma.cc/H3DR-2JME>].

<sup>85</sup> Stylianou et al., *supra* note 72, at 3196 (In a survey of 457 domestic violence survivors, nearly forty percent said their abuser had built up debt under their name).

<sup>86</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 2.

<sup>87</sup> ECONOMIC ABUSE: THE UNTOLD COST, *supra* note 83, at 2–3, 10.

<sup>88</sup> *Id.* at 2, 10.

<sup>89</sup> *Id.* at 9.

Coerced debt is a uniquely pernicious form of economic abuse because not only is it relatively easy to abuse an intimate partner's credit, but the credit scoring system is ripe for manipulation.<sup>90</sup> The digitizing of banking products and other technological advancements provide increasing opportunities for abusers to access, track, and utilize a partner's credit cards, personal identifying information, and other assets.<sup>91</sup> In a familial or intimate setting, abusive partners have even less trouble accessing and abusing their partners' information.<sup>92</sup> Further, for victims, identifying that credit abuse has even occurred can be especially difficult given the broader issues within the U.S. credit scoring system.<sup>93</sup> To start, data suggests a majority of the population in the United States neglects to check their credit reports on a regular basis, if at all.<sup>94</sup> For those that do check their credit score regularly, the odds that the report contains errors, unrelated to identity theft or economic abuse, is high.<sup>95</sup> Due to a number of systemic flaws within the credit reporting system, including the exorbitant costs that CRAs shoulder to repair inaccurate data and the sheer amount of consumer data exchanged between creditors and reporting agencies,<sup>96</sup> the Federal Trade

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<sup>90</sup> See Luke Herrine, *Credit Reporting's Vicious Cycles*, 40 N.Y.U. REV. L. & SOC. CHANGE 305, 315, 320–31 (2016). See Jonathan Weinberg, “*Know Everything That Can Be Known About Everybody*”: *The Birth of the Credit Report*, 63 VILL. L. REV. 431, 442–48 (2018), for a discussion of the development of the U.S. credit scoring and reporting systems; see also Sara Sternberg Greene, *The Bootstrap Trap*, 67 DUKE L.J. 233, 259–60 (2017) (summarizing the mechanics of credit reporting).

<sup>91</sup> Noah Petersen, *The Face of Financial Abuse*, PULITZER CTR., (Mar. 13, 2018), <https://pulitzercenter.org/reporting/face-financial-abuse> [<https://perma.cc/GV4C-W3HT>].

<sup>92</sup> *Id.*

<sup>93</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 12–13 (describing the credit scoring system's mass inaccuracies and reflection of broader inequalities along income and race lines).

<sup>94</sup> According to a 2018 study conducted by the Consumer Federation of America, “more people were checking their credit reports—36 percent, up from 29 percent in 2014.” Ann Carrns, *Consumer Group Sees a Rise in People Checking Credit Scores*, N.Y. TIMES (June 22, 2018), <https://www.nytimes.com/2018/06/22/your-money/checking-credit-scores.html> [<https://perma.cc/WLJ7-BH28>].

<sup>95</sup> FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 310 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 i (2012), <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf> [<https://perma.cc/7K64-4H5A>] [hereinafter *FTC Report to Congress*]; see also Aaron Klein, *The Real Problem with Credit Reports Is the Astounding Number of Errors*, CNBC (Sept. 27, 2017, 4:05 PM ET), <https://www.cnbc.com/2017/09/27/the-real-problem-with-credit-reports-is-the-astounding-number-of-errors-equifax-commentary.html> [<https://perma.cc/V8VT-JB3G>].

<sup>96</sup> Klein, *supra* note 95. The Consumer Financial Protection Bureau (CFPB) estimates that the three main credit reporting companies in the United States retain credit information files on over two hundred million Americans. “Each year, approximately [three] billion credit reports are issued and more than [thirty-six] billion updates are made to consumer credit files.” Richard Cordray, Dir., CFPB, Prepared Remarks by Richard Cordray on Credit Reporting (July 16, 2012), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-on-credit-reporting/> [<https://perma.cc/33S8-L4ES>].

Commission (FTC) estimates that over a quarter of credit reports contain at least one error.<sup>97</sup>

Despite the widespread flaws within the credit reporting system, an individual's credit score not only impacts their immediate daily life but also their long-term financial future.<sup>98</sup> Non-lending entities that the average person ordinarily interacts with are becoming increasingly reliant on credit-screening.<sup>99</sup> From utility and cell phone companies to landlords and even some employers, credit-screening has become an inevitable part of daily life.<sup>100</sup> A damaged credit score thus has far-reaching negative consequences and can adversely impact loan approvals, interest rates on credit, insurance rates, access to utilities, and even employment and housing opportunities.<sup>101</sup>

For survivors of domestic violence, this score is especially important when exiting an abusive relationship. Research suggests that low-income communities, in particular, rely on credit to weather emergencies.<sup>102</sup> If denied access to household funds during the relationship or if a survivor is escaping without first withdrawing their own funds, they will need to rely on credit in the

<sup>97</sup> *FTC Report to Congress*, *supra* note 95, at iv–vi. A survey of New York service providers indicates that survivors of domestic violence in New York experience incorrect and fraudulent information on their credit reports at a rate even higher than the general public. DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 13.

<sup>98</sup> Jaime Catmull, *Hidden Ways Your Credit Score Can Impact Your Daily Life*, FORBES (Oct. 16, 2018, 3:36 PM), <https://www.forbes.com/sites/jaimecatmull/2018/10/26/hidden-ways-your-credit-score-can-impact-your-daily-life/#731279cd304a> [<https://perma.cc/DS4J-623A>].

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* Studies show that credit-screening in extra lending contexts is on the rise, raising significant concerns for survivors of coerced debt with damaged credit. See Pooja Shethji, Note, *Credit Checks Under Title VII: Learning from the Criminal Background Check Context*, 91 N.Y.U.L. REV. 989, 990–92 (2016).

<sup>101</sup> Catmull, *supra* note 98. A 2018 survey of domestic violence survivors highlights the various ways in which credit damaged by an abusive partner had negatively impacted survivors' lives:

[Sixty-six] percent said it prevented them from getting a loan, [sixty-three] percent said it prevented them from getting housing, and [twenty-one] percent said it prevented them from getting a job. In addition, [twenty-one] percent said that having their credit score harmed had another impact on their life, such as keeping them from returning to school or setting up utilities in their name.

HESS & DEL ROSARIO, *supra* note 19, at 9. Additionally, damaged credit often causes survivors to enter the “institutionalized informal economy” of predatory payday lending and pawn shops to secure needed capital as they transition to safety. DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 12.

<sup>102</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 12. Low-income populations in the United States especially look to forms of credit to overcome emergency situations. The reasons for this reliance include the “stigma-free” nature of using credit, the ease at which one can immediately access funds through credit, and a general reluctance to utilize one's social networks during an emergency. Sternberg Greene, *supra* note 90, at 262–63.

short-term in order to meet their immediate basic needs, not to mention future needs, such as employment and permanent housing.<sup>103</sup> With housing, for example, survivors are typically limited in the length of time they may stay in a domestic violence shelter and thus will need to secure a more permanent housing solution shortly after leaving the abusive relationship.<sup>104</sup> Given these limitations, it is not surprising that “[d]omestic violence is the leading cause of homelessness in [the United States].”<sup>105</sup> Without access to credit, survivors are too often denied access to housing options and left with the difficult choice between returning to their abusive relationship, finding family or friends that can provide shelter, or becoming homeless.<sup>106</sup>

While economic abuse, and specifically coerced debt, is rampant, the existing legal remedies for such harm fail to provide adequate relief. As the next Part demonstrates, various areas of the law address harms factually similar to coerced debt and yet do not fully account for the special dynamics of an abusive relationship that created the coerced debt. Without a legal solution that is uniquely formed to address the needs of a domestic violence survivor, victims are severely limited in their ability to exit an abusive situation and begin to rebuild their lives.

## II. EXISTING FEDERAL AND STATE LEGAL REMEDIES FOR COERCED DEBT ARE INSUFFICIENT

Coerced debt is a harm that, outside of the domestic violence context, has various existing legal remedies. Understanding the current landscape in which coerced debt-like claims are brought is essential for understanding why these avenues fail to address the specific harms within an intimate partner context, as well as why a new and uniquely tailored solution for domestic violence victims is critical to ensure their safety.

In addition to certain legal remedies, there are several practical steps that an individual can take if they suspect their abusive partner incurred debt in their name or committed

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<sup>103</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 12. Poor credit not only bars survivors from accessing basic needs but also often leads to future, retraumatizing challenges such as litigation and creditor harassment. Creola Johnson, *Creditors’ Use of Consumer Debt Criminalization Practices and Their Financial Abuse of Women*, 34 COLUM. J. GENDER & L. 5, 13–15 (2016).

<sup>104</sup> Ashley Lowe & Sarah R. Prout, *Domestic Violence Awareness: Economic Justice in Domestic Violence Litigation*, 90 MICH. B. J. 32, 33 (2011).

<sup>105</sup> *Id.*

<sup>106</sup> *See id.*

economic abuse more broadly.<sup>107</sup> These include obtaining a copy of one's credit report to begin identifying the fraudulent charges that have occurred, avoiding using the instruments, such as credit or debit cards, that are believed to be compromised, and securing all financial records in a safe location.<sup>108</sup> Such steps help a survivor identify the harm that has already occurred and begin to plan for the future; however, both the federal government and states must take more meaningful legal actions so the survivor may repair the financial harm that has been done.<sup>109</sup>

### A. *Criminal Prosecution of Identity Theft*

The primary legal claim that captures comparable harms to coerced debt is identity theft. The DOJ defines identity theft as the possession and use of another person's private information, through fraud or deception, for one's own economic gain.<sup>110</sup> This can include actions such as false applications for credit, fraudulent withdrawals of funds, or using another's credit card or personal identification information.<sup>111</sup> In the course of the relationship, abusive partners likely have or have had access to their partner's financial information, making victims specifically vulnerable to identity theft from their partner.<sup>112</sup> Statistics demonstrate that this form of identity fraud, sometimes referred to as "familiar fraud," is on the rise and can be costlier to resolve than other forms of identity theft.<sup>113</sup>

On the federal level, Congress first passed the Fair Credit Reporting Act (FCRA) in 1970 to both regulate the credit reporting

<sup>107</sup> *Facts About Domestic Violence and Economic Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE (2015), [https://www.speakcdn.com/assets/2497/domestic\\_violence\\_and\\_economic\\_abuse\\_ncadv.pdf](https://www.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf) [<https://perma.cc/HE5Q-SBFF>].

<sup>108</sup> *Id.*

<sup>109</sup> *See infra* Part III.

<sup>110</sup> *See Identity Theft—CRIMINAL-FRAUD*, U.S. DEP'T. OF JUSTICE (Feb. 7, 2017), <https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud> [<https://perma.cc/A2JV-VDHS>].

<sup>111</sup> *Id.*

<sup>112</sup> *See* Paula Pierce, NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, OFF. FOR VICTIMS OF CRIME: TRAINING & TECHNICAL CTR., *IDENTITY THEFT 4* (2012), [http://ncdsv.org/images/OVCTTAC\\_IdentityTheftResourcePaper\\_2012.pdf](http://ncdsv.org/images/OVCTTAC_IdentityTheftResourcePaper_2012.pdf) [<https://perma.cc/M7QV-9YS7>].

<sup>113</sup> Kelli B. Grant, *Identity Theft Victims: The Culprit May Be Closer Than You Think*, NBC NEWS (July 21, 2015, 2:08 PM), <https://www.nbcnews.com/better/money/identity-theft-victims-culprit-may-be-closer-you-think-n395951> [<https://perma.cc/2NND-7T9P>] (reporting that a familiar fraud victim spends an average of \$561 to resolve the problem, compared with \$79 for other identity theft issues); *see also* Robert Siciliano, *Family Identity Theft Is Ugly*, HUFFINGTON POST (Dec. 6, 2017), [https://www.huffingtonpost.com/robert-siciliano/family-identity-theft-is-\\_b\\_5735748.html](https://www.huffingtonpost.com/robert-siciliano/family-identity-theft-is-_b_5735748.html) [<https://perma.cc/TYL6-V42G>] (estimating that one-third of all identity theft crimes nationally are committed by a victim's family member).

industry and provide credit repair relief to victims.<sup>114</sup> Congress codified identity theft as a crime with the Identity Theft and Assumption Deterrence Act of 1998.<sup>115</sup> This law criminalizes certain acts of identity theft which “carry substantial penalties,” some “as high as [thirty] years’ imprisonment.”<sup>116</sup> In 2003, Congress amended FCRA with the Fair and Accurate Credit Transactions Act (FACTA) which aims to counter some of the structural flaws that have developed within the growing credit reporting industry.<sup>117</sup> FACTA’s key provisions include the allowance of annual free credit reports to consumers, standardized rules concerning how credit scores are calculated and limitations as to which entities may access consumer credit reports.<sup>118</sup>

Of key import to victims of coerced debt, FACTA includes regulations designed to make it easier for victims of identity theft to correct inaccurate information on credit reports, freeze insecure accounts, and prevent further fraudulent activity.<sup>119</sup> The law includes a screening process for claims of identity theft that aims to make it easier for victims to correct their credit history.<sup>120</sup> FACTA elevates local law enforcement authorities as the gatekeepers for identity theft claims by requiring claimants to first file a police report detailing the alleged identity theft that they can then take to CRAs to correct fraudulent charges.<sup>121</sup>

While FACTA has helped to remedy some of the flaws of the automated credit reporting system, placing the reporting power with police has proven wholly ineffective when it comes to identity theft within an abusive intimate partner context.<sup>122</sup> In New York, for

<sup>114</sup> Fair Credit Reporting Act (FCRA), Pub. L. No. 91-507, 84 Stat. 1114–36 (1970) (codified as amended at 12 U.S.C. §§ 1830–1831, 15 U.S.C. §§ 1681–1681x (2012 & Supp. V 2018)); *see, e.g.*, Noam Weiss, Note, *Combating Inaccuracies in Criminal Background Checks by Giving Meaning to the Fair Credit Reporting Act*, 78 BROOK. L. REV. 271, 273–75 (2012) (describing the FCRA’s initial aim to “regulate the production and use of consumer reports.”). Prior to the criminalization of identity theft, FCRA provided a private right of action for victims. *See* FCRA 84 Stat. 1134, §§ 616–17.

<sup>115</sup> Identity Theft and Assumption Deterrence Act of 1998, Pub. L. No. 105–318, 112 Stat. 3007 (1998) (codified as amended at 18 U.S.C. § 1028 (2012 & Supp. V 2018)).

<sup>116</sup> *Identity Theft—CRIMINAL-FRAUD*, *supra* note 110.

<sup>117</sup> Fair and Accurate Credit Transactions Act of 2003 (FACTA), Pub. L. No. 108-159, 117 Stat. 1952 (2003) (codified as amended in scattered sections of 15, 16 20 U.S.C.); *see also* *FTC Report to Congress*, *supra* note 95.

<sup>118</sup> FACTA §§ 211–212, 312.

<sup>119</sup> FACTA §§ 112, 152; *see also* *Identity Theft and Financial Fraud*, DEP’T OF JUST. OFF. FOR VICTIMS OF CRIME, (Oct. 2010), [https://www.ovc.gov/pubs/ID\\_theft/idtheftlaws.html](https://www.ovc.gov/pubs/ID_theft/idtheftlaws.html) [<https://perma.cc/XE3G-LU25>].

<sup>120</sup> FACTA § 114.

<sup>121</sup> FACTA § 111.

<sup>122</sup> *Id.*; *see also* Littwin, *Escaping Battered Credit*, *supra* note 8, at 392–93. The Department of Justice estimates that only seven percent of identity theft victims report the crime to local police. ERIKA HARRELL, BUREAU OF JUST. STAT., NCJ251147, VICTIMS OF IDENTITY THEFT, 2016, at 1 (2019), <https://www.bjs.gov/content/pub/pdf/vit16.pdf> [<https://perma.cc/8NDS-F8JR>].

example, police are required to generate a police report for victims of identity theft,<sup>123</sup> and yet this mandate is rarely followed in the case of domestic violence.<sup>124</sup> As some victims have anecdotally reported, police have either dismissed allegations of familial identity theft as mere “domestic disputes” or failed to file a report because an abuser’s use of their personal information was not a crime in of itself.<sup>125</sup> A study of New York domestic violence survivors found that approximately eighty percent of those surveyed “who [had been] victims of identity theft were unable to file police reports to document that crime.”<sup>126</sup>

Law enforcement agencies have a long and fraught history with domestic violence response and prevention, which might help to explain why police reports in this context are so difficult to obtain.<sup>127</sup> Only within the last half century has the judicial system recognized domestic violence as a crime.<sup>128</sup> Prior to the 1870s, states treated “wife-beating” as a necessary byproduct of antiquated laws that held husbands responsible for their wives’

<sup>123</sup> New York state law requires that:

An individual . . . who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, may make a complaint to the local law enforcement agency of the county in which any part of the offense took place regardless of whether the defendant was actually present in such county, or in the county in which the person who suffered financial loss resided at the time of the commission of the offense, or in the county where the person whose personal identification information was used in the commission of the offense resided at the time of the commission of the offense as provided in paragraph (l) of subdivision four of section 20.40 of the criminal procedure law. Said local law enforcement agency shall take a police report of the matter and provide the complainant with a copy of such report free of charge.

N.Y. EXEC. LAW § 646 (McKinney’s 2019).

<sup>124</sup> Letter from Ambika Panday, Asst. Dir. of Pol’y & Advocacy, to Joseph Lentol and Helene Weinstein, N.Y. Assemb. Standing Comm. on Codes & Judiciary (Dec. 5, 2012), <https://thefinancialclinic.org/wp-content/uploads/2013/05/Oral-Testimony-on-Financial-Abuse-as-Form-of-Domestic-Violence-12.5.pdf> [<https://perma.cc/9KH4-CLFR>]. Requiring police reports to document domestic violence offenses is particularly problematic in New York where such reports aren’t considered de facto admissible in family courts. *People v. Modica*, 724 N.Y.S.2d 825, 829 (N.Y. Crim. Ct. 2001) (holding that domestic incident reports are admissible so long as they meet certain requirements); *see also* *People v. D’Andrea*, No. 2010RI003273, 2012 WL 1660675 at \*2 (N.Y. Crim. Ct. Feb. 17, 2012); *People v. Ellis*, No. 2010KN067495, 2011 WL 1466883, at \*3 (N.Y. Crim. Ct. Apr. 4, 2011) (“The standard for determining whether the factual allegations in a domestic incident report are sufficient to convert an accusatory instrument into an information is laid out in *People v. Modica* . . .”). Without the ensured admissibility of police reports in family court, there is even more need to remove police from the gatekeeper role in identity theft cases.

<sup>125</sup> Panday, *supra* note 124, at 6.

<sup>126</sup> *Id.* at 2.

<sup>127</sup> Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1661–66 (2004).

<sup>128</sup> *Id.* at 1666.

actions.<sup>129</sup> Such abuse was justified as a husband’s “right of chastisement.”<sup>130</sup> In response to women’s advocacy campaigns in the 1970s, courts began to make the shift from mere tolerance of domestic violence to criminalization.<sup>131</sup>

This complicated history, combined with the special nature of familiar identity fraud, demonstrates why victims often decline to report coerced debt.<sup>132</sup> Often, police who are already predisposed to dismiss domestic violence claims are even more likely to assume victims are lying when it comes to financial matters.<sup>133</sup> Further, coerced debt and identity theft can differ in that a survivor might have awareness of the fraudulent transactions but still lacks the ability to stop the fraud on their own because of the abusive dynamic of the relationship.<sup>134</sup>

Thus, the problem with empowering police with the identity theft reporting authority is two-fold. First, reports suggest that police often refuse to provide police reports that account for identity theft in a domestic setting but also,<sup>135</sup> as previously discussed, most domestic violence survivors never take the step of calling the police to begin with.<sup>136</sup> Second, a majority of survivors fear police or criminal intervention, which further diminishes the effectiveness of any process which places

<sup>129</sup> *Id.* at 1661; see also Reva B. Siegel, “The Rule of Love”: Wife Beating as Prerogative and Privacy, 105 YALE L.J. 2117, 2129–31 (1996) (outlining the initial movements against the right of chastisement and the eventual legal victories throughout the 1870s).

<sup>130</sup> Sack, *supra* note 127, at 1661; see also, e.g., Rachel B. Polan, Note, *The Context of Violence: The Lautenberg Amendment & Interpretive Issues in the Gun Control Act*, 83 BROOK. L. REV. 1441, 1445–46 (2018) (discussing the legal history of domestic violence criminalization and the Supreme Court’s landmark rulings recognizing the significance of domestic violence); Siegel, *supra* note 129, at 2129–31.

<sup>131</sup> Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J. L. & GENDER 53, 61–63 (2017). See Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L. Q. 353, 358–59 (2008) (describing the trend towards criminalization of domestic violence and its criticism).

<sup>132</sup> Panday, *supra* note 124, at 6.

<sup>133</sup> Lange, *supra* note 78.

<sup>134</sup> Littwin, *Coerced Debt*, *supra* note 6, at 955. See generally Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112, 112–13 (2016) (advocating for the addition of “coercive control” within the legal definition of domestic violence to capture situations in which a survivor is aware of ongoing harm but unable to prevent such harm from continuing because of the coercive nature of the relationship).

<sup>135</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 17; Lange, *supra* note 78.

<sup>136</sup> See Press Release, Bureau of Just. Stat., *supra* note 44. Beyond domestic violence survivors, there appears to be a larger problem of underreporting amongst all victims of identity theft. The Federal Trade Commission reports that only twenty-seven percent of identity theft victims reported to law enforcement in 2016. FED. TRADE COMM’N, CONSUMER SENTINEL NETWORK DATA BOOK FOR JANUARY–DECEMBER 2016, at 3 (Mar. 2017), [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn\\_cy-2016\\_data\\_book.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf) [<https://perma.cc/93UL-NEC2>].

police at the center of the reporting mechanism.<sup>137</sup> If the current federal statutes designed to combat identity theft fail to address the needs of domestic violence survivors, then Congress must amend these laws to ensure survivors have the documentation needed to begin to repair their credit and gain financial stability.

### B. Tort Relief

Tort law also grants victims of coerced debt, and economic abuse more widely, a host of potentially appropriate remedies.<sup>138</sup> Such tort claims include tortious interference with contractual relations if the abuser controlled or manipulated the victim's access to money, negligent misrepresentation, and intentional infliction of emotional distress, among others.<sup>139</sup> In the evolution of domestic violence law, tort law has often been considered a potential avenue for legal relief.<sup>140</sup> State legislatures have increasingly passed specific statutes creating tort claims for domestic violence harms.<sup>141</sup>

Successful tort claims would certainly allow domestic violence victims to benefit from monetary damages;<sup>142</sup> however, the doctrine behind many of these torts is simply incompatible with the domestic violence or even familial relationship context.<sup>143</sup> This is especially true for domestic violence and economic abuse that occurred during a marriage because bringing tort claims might complicate a victim's ability to file for divorce and exit the relationship.<sup>144</sup> Survivors of economic abuse would significantly benefit from a re-evaluation of existing tort remedies to permit

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<sup>137</sup> In one survey, a majority of survivors cited a fear of collateral consequences, such as the triggering of a child protective services investigation, as a reason for not reporting. *ACLU Report*, *supra* note 46, at 5, 7.

<sup>138</sup> Camille Carey, *Domestic Violence Torts: Righting a Civil Wrong*, 62 U. KAN. L. REV. 695, 703 (2014).

<sup>139</sup> A handful of intentional tort claims may also be appropriate for victims of economic abuse, including invasion of privacy, harassment, conversion, and trespass to chattels. If a state has recognized economic abuse as a form of domestic violence, victims may also be able to access relief under state law tort claims for gender-based violence. *Id.* at 702–03.

<sup>140</sup> Andrea B. Carroll, *Family Law and Female Empowerment*, 24 UCLA WOMEN'S L.J. 1, 11 (2017).

<sup>141</sup> *Id.* at 11–14. For example, the Colorado legislature recently increased the statute of limitations for domestic violence tort actions. COLO. REV. STAT. ANN. § 13-80-103.6 (West 2018). The New York legislature has also recently proposed extending the statute of limitation for civil domestic violence actions to two years. Assemb. B. 1516, 214th Sess. (N.Y. 2017).

<sup>142</sup> Johnson, *Redefining Harm*, *supra* note 7, at 1158–59.

<sup>143</sup> See, e.g., Tiffany Oliver, Note, *Intentional Infliction of Emotional Distress Between Spouses: New Mexico's Excessively High Threshold for Outrageous Conduct*, 33 N.M. L. REV. 381 (2003). A lack of third-party liability insurance coverage and strict statutes of limitations also make tort law incompatible with domestic violence injuries. Jennifer Wiggins, *Domestic Violence Torts*, 75 S. CAL. L. REV. 121, 135–37, 139–40 (2001).

<sup>144</sup> Wiggins, *supra* note 143, at 135–37, 140–41.

monetary damages in non-physical abuse cases against abusers.<sup>145</sup> Even if financial awards were possible, civil suits present a number of other challenges for survivors.<sup>146</sup> The cost of civil litigation is out of reach for the large majority of survivors, and the prospect of lengthy litigation in which survivors must repeatedly see their abuser likely deters many from taking advantage of new tort remedies.<sup>147</sup> Tort law, as it is currently known, is thus an insufficient avenue to account for the unique economic injuries that survivors of all forms of financial abuse endure.

### C. *Family Courts and Orders of Protection*

If both criminal and tort approaches are insufficient to remedy the harms of coerced debt for domestic violence victims, what options then exist? Despite growing awareness around domestic violence broadly,<sup>148</sup> two-thirds of all jurisdictions have yet to formally recognize or provide a remedy for coercive control and economic abuse.<sup>149</sup> This note proposes a solution that would only function in a state which has already recognized economic abuse within its domestic violence laws, such as New York. Domestic violence is exceptionally prevalent in the state,<sup>150</sup> thus this proposal aims to address the substantial need for exploration into the adequacy of relief available for survivors.

Orders of protection, also known as civil protection orders (CPOs) or restraining orders depending on the jurisdiction, are the primary form of relief available to domestic violence survivors.<sup>151</sup> To obtain an order of protection, a victim must file a petition in their jurisdiction's family court detailing the abuse that has occurred and what type of relief they need.<sup>152</sup> These orders are forms of injunctive relief that work to end the abuse through

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<sup>145</sup> Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145, 200 (2015) [hereinafter Johnson, *Changing Course*]. Additionally, existing tort claims are unlikely to truly compensate victims for the economic hardships they have experienced at their abuser's hands. For instance, no tort is designed to account for a victim's injury if their partner has restricted their ability to access education, training, or employment. Carey, *supra* note 138, at 755–56.

<sup>146</sup> Additional reasons why victims of domestic violence decline to bring tort suits include a fear of the social stigma involved with reporting abuse, the reality of continued interactions with one's abuser, and a fear of retaliation. Wiggins, *supra* note 143, at 142–43.

<sup>147</sup> See Carey, *supra* note 138, at 732–35; see also Carroll, *supra* note 140, at 19. Utilizing tort claims to address domestic violence is further complicated when the parties have commingled their assets, as is common among both married and non-married partners. For instance, if the parties jointly own a home and that is their only asset, a court is unlikely to be able to use this asset towards a damages award. Wiggins, *supra* note 143, at 138–39.

<sup>148</sup> See Mervosh, *supra* note 42.

<sup>149</sup> Johnson, *Changing Course*, *supra* note 145, at 159.

<sup>150</sup> *NY Domestic Violence Dashboard 2016*, *supra* note 33, at 1, 3.

<sup>151</sup> Johnson, *Redefining Harm*, *supra* note 7, at 1111.

<sup>152</sup> See *id.* at 1130.

various terms, such as requiring the abuser to stay away from the survivor, refrain from entering the family's home, have no contact with the victim, forfeit firearms, or attend domestic violence counseling.<sup>153</sup> Survivors are then typically granted a temporary order of protection that provides relief until a hearing occurs in which a final order of protection, of a limited duration that varies and is up to the judge's discretion, is granted.<sup>154</sup>

State legislatures determine which acts are defined as abuse and qualify for an order of protection.<sup>155</sup> There is a wide discrepancy as to whether or not states have recognized economic abuse as eligible offenses.<sup>156</sup> For far too many of the states that have made this recognition, no corresponding change has been made in the relief options available to victims that would specifically help end the economic abuse.<sup>157</sup> For victims of coerced debt, the gap between a finding of domestic violence and the relief that is available is especially detrimental because without specific terms ending the debt coercion, an abusive partner is free to continue damaging the victim's credit, thus worsening their ability to reach safety.<sup>158</sup> The typical terms of an order of protection described above certainly help to stop other forms of abuse from continuing but do not provide the support necessary to overcome and rebuild from economic abuse.<sup>159</sup>

Acknowledging the unique role that family courts play within the domestic violence context, Angela Littwin first proposed a method for adjudicating coerced debt that utilized these courts as a means for identifying past debt that had been coerced and providing relief for such harm.<sup>160</sup> Given the discussed limitations of orders of protection in most states, Littwin identified the divorce process as a more suitable home for resolving coerced debt.<sup>161</sup> Specifically, Littwin's proposal charges family courts with adjudicating economic abuse between partners seeking a divorce during the property distribution process.<sup>162</sup> As

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<sup>153</sup> Johnson, *Changing Course*, *supra* note 145, at 159, 163.

<sup>154</sup> Johnson, *Redefining Harm*, *supra* note 7, at 1130.

<sup>155</sup> Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women*, 21 HOFSTRA L. REV. 801, 810–11 (1993).

<sup>156</sup> Johnson, *Redefining Harm*, *supra* note 7, at 1134.

<sup>157</sup> Johnson, *Redefining Harm*, *supra* note 7, at 1134–38. For example, New Jersey amended their laws to recognize criminal coercion as an offense within a family court's domestic violence jurisdiction, which reasonably could include economic coercion; however, the legislature added no corresponding relief to the court's options of relief within an order of protection. N.J. STAT. ANN. § 2C:25-19 (2016); N.J. STAT. ANN. §§ 2C:25-29 (2017).

<sup>158</sup> Christine Kim, *Credit Cards: Weapons for Domestic Violence*, 22 DUKE J. GENDER L. & POL'Y 281, 285–88, 291 (2015).

<sup>159</sup> Petersen, *supra* note 91.

<sup>160</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 394.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

Littwin concedes, this solution would not provide relief for survivors of coerced debt who are either unmarried or do not have the resources to file for a contested divorce in which property distribution takes place.<sup>163</sup> For many low-income survivors who suffered abuse at the hands of their marital partners, their only option is to file for a less expensive no-fault divorce, also known as an uncontested divorce, a process that generally does not allow for judicially ordered property distribution.<sup>164</sup>

This note deviates from Professor Littwin's proposal so as to better address the needs of both unmarried victims of economic abuse as well as those who file for an uncontested divorce, and thus forego property distribution. Rather than house the adjudication of economic abuse within the divorce context, as Professor Littwin suggests, this note proposes that family courts conduct fact-finding into the abuse after a survivor has filed for an order of protection.<sup>165</sup> The quandary outlined in this section is sufficiently exemplified in New York's treatment of domestic violence, as discussed in the preceding section; however, this is a solution that other similarly situated states should execute to alleviate the destruction of economic abuse for victims across the country.

### III. NEW YORK'S FRAMEWORK FOR ADJUDICATING ECONOMIC ABUSE

New York serves as a quintessential example of the predicament most states have found themselves in regarding coerced debt—the state's legislature has recognized economic abuse as a discrete form of domestic violence, yet it lacks adequate relief within the standard domestic violence proceeding. While the legislature amended the state's Family Court Act to recognize economic abuse as a domestic violence offense, steps were not taken to adequately provide relief for such abuse.<sup>166</sup> Thus, victims are often left alleging the economic offense yet receiving an order of protection that does not adequately protect against these harms.<sup>167</sup>

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<sup>163</sup> *See id.* at 399.

<sup>164</sup> *Id.*

<sup>165</sup> *See infra* Section IV.A.

<sup>166</sup> *See generally* N.Y. FAM. CT. ACT § 812 (McKinney 2018).

<sup>167</sup> Legal advocates in New York City have intimated that a lack of dedicated funding for training related to economic abuse might explain why survivors have not been alleging economic offenses in their petitions for orders of protection. These advocates have encouraged parties to include these offenses when requesting an order of protection and have called for increased training for both judges and court personnel on the existing financial offenses. DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 23.

Evidence suggests that coerced debt, in particular, has become a significant problem in New York.<sup>168</sup> Prior to the legislature's acknowledgment of economic abuse as a form of domestic violence in 2013, the Financial Clinic, a New York-based organization that provides financial counseling to domestic violence survivors, reported coerced debt as "[t]he most common form of financial abuse" among New York victims.<sup>169</sup> In 2013, the state's legislature made a significant step towards remedying this problem by amending its Family Court Act to recognize several economic abuse offenses, including identity theft, larceny, and coercion.<sup>170</sup> Since this amendment, New York courts have recognized the important public policy interests in supporting the economic independence of survivors.<sup>171</sup> Although such recognition marks substantial progress for survivors, the legislature did little to expand the relief available and account for the unique ongoing harm that typically comes with economic abuse.<sup>172</sup>

Through the 2013 amendment, New York made only one substantive change to the relief scheme available through orders of protection: the legislature expanded the potential terms a judge could include on a survivor's order of protection by adding a requirement that abusive partners must turn over various instruments that were used to abuse.<sup>173</sup> This turnover requirement includes means such as social security cards, credit cards, and passports.<sup>174</sup> While returning these devices certainly provides a degree of relief to victims whose abusive partners had used these physical items to abuse or coerce, the turnover requirement does not account for the digital and electronic realities of economic abuse

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<sup>168</sup> Panday, *supra* note 124, at 3.

<sup>169</sup> *Id.*

<sup>170</sup> 2013 N.Y. Sess. Laws 526 (McKinney) (codified as amended at N.Y. FAM. CT. ACT § 812 (McKinney 2018)) (expanding family court jurisdiction over "identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree . . .").

<sup>171</sup> *See, e.g.,* Castillo v. Schriro, 15 N.Y.S.3d 645, 657 (N.Y. Sup. Ct. July 17, 2015) ("In light of the important public policy considerations for protecting the economic viability of domestic violence victims, and in support of their efforts to become independent from their abusers, it is paramount that individuals who are actual or perceived victims of domestic violence be protected . . .").

<sup>172</sup> *See* DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 2.

<sup>173</sup> FAM. CT. ACT § 842. ("Any order of protection issued pursuant to this section may require the petitioner or the respondent . . . (j) 1. to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may: (A) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (B) specify the manner in which such return shall be accomplished.").

<sup>174</sup> *Id.*

in today's world.<sup>175</sup> For victims of coerced debt, in particular, recovering a physical credit card does not fix past blemishes on a credit report or help to certify that such credit coercion occurred, nor does the turnover requirement fully prevent an abuser from continuing to abuse the victim's credit.<sup>176</sup>

Statewide, the number of New Yorkers filing for an order of protection from family court is on the rise.<sup>177</sup> In 2016, the state reported "a five-year high" in the number of filings,<sup>178</sup> and yet practitioners and service providers within the state have not reported a similar rise in the number of petitioners alleging economic abuse offenses.<sup>179</sup> Because petitioners too often do not allege economic abuse in their initial petitions, there is a lack of case law that future litigants may utilize or look to.<sup>180</sup>

Given the detrimental consequences of coerced debt that victims of domestic violence are up against across the state of New York, it is time to reassess the effectiveness of the 2013 amendment and consider a new solution to ensure victims may turn to the legal system to account for the harm done and begin to rebuild their lives.

#### IV. A MULTI-LEVEL SOLUTION FOR NEW YORK'S DOMESTIC VIOLENCE SURVIVORS: ENABLING FAMILY COURTS TO ADJUDICATE ECONOMIC ABUSE AND REMOVING FEDERAL BARRIERS TO RELIEF

Family courts in New York already have the authority to issue a finding of economic abuse in a domestic violence proceeding;<sup>181</sup> however, the process through which a victim attains an order of protection provides little relief for economic offenses.<sup>182</sup> To close the gap between a family court's finding of economic abuse and the relief it can provide, New York should amend its Family Court Act, which is the basis of family court

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<sup>175</sup> For instance, abusive partners might be required to turnover a credit card that they have used to abuse their partner; however, as long as they know the account number or card number, they are still able to make fraudulent charges and further damage the survivor's credit. Kim, *supra* note 158, at 290.

<sup>176</sup> *See id.*

<sup>177</sup> *See New York State Domestic Violence Dashboard 2016, supra* note 33, at 3.

<sup>178</sup> *See id.*, at 1.

<sup>179</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 23.

<sup>180</sup> In *S.M.S. v. D.S.*, a rare case in which economic abuse is mentioned, New York's Supreme Court of Richmond County acknowledged the existence of such abuse within a couple's relationship as part of a larger pattern of domestic violence and granted the victim an order of protection. *S.M.S. v. D.S.*, 44 N.Y.S.3d 691, 693–94 (Sup. Ct. 2016).

<sup>181</sup> N.Y. FAM. CT. ACT § 1052 (McKinney 2018) (requiring New York family courts to enter orders of disposition, including the grounds of the disposition, following a hearing).

<sup>182</sup> *See supra* Part III.

jurisdiction in the state,<sup>183</sup> to allow family courts to better adjudicate economic abuse offenses and provide documentation that victims can then use to improve and repair their financial records.<sup>184</sup> For this method to effectively enable a survivor to mend their credit, federal statutes that require a victim to obtain an identity theft report through the police must also be revised.<sup>185</sup> Together, these two changes will empower victims of economic abuse to more easily and efficiently gain financial stability.

This note's proposed framework diverges from Professor Littwin's solution for coerced debt in three regards.<sup>186</sup> First, this note's proposed adjudication process for coerced debt determinations occurs within the process of filing for an order of protection, not a divorce.<sup>187</sup> Thus, this relief is available for both married and non-married survivors of abuse.<sup>188</sup> By proposing an alternative approach that is removed entirely from divorce proceedings, a family court judge would have the discretion to adjudicate economic abuse, and specifically coerced debt, after a survivor has petitioned for an order of protection. This approach serves a crucial purpose by allowing survivors the ability to take corrective action while benefiting from the legal protection that a temporary order of protection provides.<sup>189</sup> Victims often do not report their abuse for fear of retaliation from their abuser.<sup>190</sup> The proposal this note puts forward would allow a survivor to receive a temporary order of protection, thus ensuring physical safety from their abuser, while they await adjudication of the economic abuse.<sup>191</sup>

Second, this note's proposal differs from Professor Littwin's in that the following recommendations apply specifically to New

<sup>183</sup> FAM. CT. ACT § 115 (McKinney 2018).

<sup>184</sup> See *infra* Section IV.A.

<sup>185</sup> See *infra* Section IV.B.

<sup>186</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 394–97.

<sup>187</sup> Professor Littwin's proposal applies only to married couples seeking a divorce as her suggested coerced debt adjudication process occurs within the property distribution process. As Professor Littwin acknowledges, a coerced debt assessment that occurs within property distribution would exclude not only unmarried survivors of domestic violence but also married survivors who lack the funds to file for a divorce that includes property distribution. Littwin, *Escaping Battered Credit*, *supra* note 8, at 366, 399.

<sup>188</sup> See *id.*

<sup>189</sup> N.Y. FAM. CT. ACT § 828 (McKinney 2018) (enabling family courts to issue temporary orders of protection after a petitioner files for an order of protection and before the adjudication occurs).

<sup>190</sup> Camille Carey & Robert A. Solomon, *Impossible Choices: Balancing Safety and Security in Domestic Violence Representation*, 21 CLINICAL L. REV. 201, 227–28 (2014) (“Victims will often postpone leaving the abuser fearing separation assault and will only choose to separate or pursue . . . protections if it seems possible or safe to do so.” (footnotes omitted)).

<sup>191</sup> An additional strength of this proposal, as compared to Professor Littwin's, is that a temporary order of protection may be granted without the presence of a victim's abusive partner. This further frees the victim from fears of confrontation with their abuser and permits temporary relief from economic abuse much earlier. FAM. CT. ACT § 828; see also Littwin, *Escaping Battered Credit*, *supra* note 8, at 399.

York's family courts.<sup>192</sup> This note does not intimate that such solutions would work identically in other jurisdictions; however, an effort to combine economic abuse offenses within standard domestic violence proceedings is a shift that would certainly help address the harms of economic abuse for survivors in other states as well.<sup>193</sup> Finally, this note identifies FACTA and VAWA as the federal statutes most in need of change for victims of coerced debt.

A. *Authorize New York Family Courts to Grant Relief for Economic Abuse*

Family courts are the most appropriate forum for the adjudication of economic abuse in domestic violence contexts.<sup>194</sup> In 2013, the New York legislature implicitly acknowledged this fact in its adoption of economic abuse offenses within these courts' jurisdiction.<sup>195</sup> Although these courts conduct fact-finding hearings to determine the specific types of domestic violence that occurred within a relationship,<sup>196</sup> they have yet to be utilized fully as fact-finders in regard to coerced debt issues nor has the legislature equipped them with the ability to provide more specific relief options for this harm.<sup>197</sup>

Coerced debt, unlike other domestic violence offenses, requires a specialized investigation into a couple's financial decisions and actions. To access the relief that this note proposes, a survivor of domestic violence would need to first file for an order of protection, using the existing processes, on the grounds of economic abuse.<sup>198</sup> As previously discussed, New York's Family Court Act includes three economic offenses that are already available for petitioners to allege when seeking an order of

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<sup>192</sup> See *infra* Section IV.A.

<sup>193</sup> See Johnson, *Changing Course*, *supra* note 145, at 159.

<sup>194</sup> As Angela Littwin notes,

Using family courts as the certification mechanism for coerced debt produces at least three major advantages. First, court procedures avoid the identification problems that plague the resolution of identity-theft cases. Second, family courts have substantial expertise in making decisions about family finances. Third, using family courts is administratively efficient because, in many cases, they will already be deciding related issues.

Littwin, *Escaping Battered Credit*, *supra* note 8, at 394–95.

<sup>195</sup> See *supra* text accompanying note 176.

<sup>196</sup> N.Y. FAM. CT. ACT §§ 821, 832 (McKinney 2018) (“[F]act-finding hearing’ means a hearing to determine whether the allegations of a petition under section eight hundred twenty-one are supported by a fair preponderance of the evidence.”).

<sup>197</sup> See *supra* Part III.

<sup>198</sup> FAM. CT. ACT. § 821.

protection: identity theft, grand larceny, and coercion.<sup>199</sup> While coerced debt could fall within any of these three offenses, depending on the specific facts of the abusive partner's actions,<sup>200</sup> the state legislature should take steps to ensure both litigants and legal advocates have the adequate awareness and training to seek orders of protection on these grounds of economic abuse.<sup>201</sup>

After filing for an order of protection on the grounds of one of these economic offenses, the family court would then conduct a fact-finding hearing on the allegations.<sup>202</sup> There is no case law that demonstrates how these offenses are adjudicated during these hearings; however, these offenses already fall within these courts' jurisdiction and thus they should be equipped to adjudicate such matters.<sup>203</sup> Similar to how other non-physical domestic violence offenses are adjudicated, such as harassment or menacing,<sup>204</sup> the court would hear testimony from both parties and any available witnesses as to the conduct that occurred, its effect on the survivor, and whether or not the facts satisfy the statutory elements of the alleged offenses. Since none of the three economic abuse offenses recognized by New York's family courts require a victim to show a *pattern* of economic abuse, it is likely sufficient for a survivor to prove individual occurrences of coerced debt to meet these requirements.<sup>205</sup>

Without case law on these relatively new economic offenses, it remains to be seen how family courts will manage their adjudication. Such processes, however, fit squarely within the family court's existing fact-finding hearing process and could be modeled after other hearings these courts conduct that focus on

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<sup>199</sup> See FAM. CT. ACT § 812. New York's coercion in the third degree, included within the New York Family Court Act, most closely reflects the harm of economic abuse.

A person is guilty of coercion in the third degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from . . . by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will: . . . Perform any . . . act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her . . . financial condition . . . .

N.Y. PENAL LAW § 135.60 (McKinney 2018).

<sup>200</sup> FAM. CT. ACT § 812. In alleging an abusive partner committed identity theft, for example, the survivor must make a showing that the abuser "us[ed] [the survivor's] personal identifying information . . . [to] use[] credit in the name of such other person . . . or . . . [to] cause[] financial loss to such person." N.Y. PENAL LAW § 190.79 (McKinney 2018).

<sup>201</sup> See *supra* text accompanying note 181. The uniform forms promulgated by the chief administrator of New York's family courts should also be modified to reflect this note's proposed amendments to the New York Family Court Act. See FAM. CT. ACT § 814-a.

<sup>202</sup> FAM. CT. ACT § 832.

<sup>203</sup> *Id.* § 812.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

finances, such as the division of child and spousal support.<sup>206</sup> In these hearings, family courts are already tasked with assessing a family's finances, determining each partner's ability to contribute above their income, and factoring in special circumstances.<sup>207</sup> As Professor Littwin describes, "Family courts examine a family's finances in great detail, engaging in decisions that we think of as the province of bankruptcy and other financial courts."<sup>208</sup>

Thus far, this note merely encourages survivors to take advantage of the changes that have already been made to New York's family court jurisdiction. To adequately address the gap in relief that survivors of economic abuse are faced with, the New York legislature must enact two changes to New York's Family Court Act. First, Section 842, which governs the specific forms of relief that judges may include in an order of protection, must be amended so that family courts have greater latitude to tailor relief in a manner that actually ends the debt coercion.<sup>209</sup> Second, this same section of the Family Court Act must be modified to allow courts to issue additional documentation certifying the finding of economic abuse. These certificates must then be provided to survivors so that they can work with creditors and CRAs to repair their credit.

To begin to remedy the gap in relief available to survivors of economic abuse, the types of relief available in orders of protection must be expanded to account for the special nature of economic offenses. For instance, in addition to requiring the abusive partner return any of the survivor's credit cards that have been used in a fraudulent manner,<sup>210</sup> family courts must also be able to memorialize within the orders of protection a requirement that abusers are prohibited from using these lines of credit online or elsewhere. Orders must also require abusive partners to refrain from opening additional lines of credit in their partner's name. Similar to how an order of protection might already require an abusive partner to refrain from physically abusing their partner, this new term would put a stop to the economic abuse and prevent further damage to the survivor's credit history. Family court judges should also more fully utilize the victim's compensation funds that have been appropriated to family courts to help victims pay for the

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<sup>206</sup> *Id.* at §§ 411–418. Additional measures must be taken to ensure that the economic interests of survivors of domestic violence are adequately represented and supported through adjacent court proceedings, such as equitable distribution within the divorce context. Lowe & Prout, *supra* note 104, at 33.

<sup>207</sup> FAM. CT. ACT §§ 411–418.

<sup>208</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 368.

<sup>209</sup> In particular, FAM. CT. ACT § 842(j) governs the available relief options for economic abuse offenses. *See* statutory language *supra* note 173.

<sup>210</sup> FAM. CT. ACT § 842.

collateral consequences of economic abuse.<sup>211</sup> Additional steps should be taken to enable family court judges to create repayment systems that will help compensate victims for the coerced debts so that they may then repay their creditors. Such a proposal would operate in a similar fashion to child support payments.<sup>212</sup>

After a family court has issued a survivor an order of protection that adequately accounts for the economic abuse they have suffered and contains specific terms that will help prevent further harm, these courts should also provide documentation to the survivor that will ensure they can begin to repair their credit and thus access the vital resources that are often blocked by credit-screening.<sup>213</sup> Issuing dispositions of economic abuse would most appropriately occur after the family court has conducted its fact-finding hearing and determined that such abuse has occurred. These dispositions would detail the exact abuse that has occurred and operate in a similar function to police reports of identity theft. Survivors may then bring these certificates to debtors and CRAs to begin to repair their credit.<sup>214</sup> This would act as an alternative option to the police report requirement that most financial institutions and CRAs have for identity theft.<sup>215</sup>

A judicial finding of economic abuse, along with documentation of such finding, would certainly address many of the reasons why survivors often do not report economic abuse or are unable to repair their credit.<sup>216</sup> By not requiring a police report, the significant portion of domestic violence survivors who fear police intervention and thus never report the harm done to them will now have relief.<sup>217</sup> This also addresses the alarming

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<sup>211</sup> New York's Family Court Act allows judges to require an abusive partner pay for expenses related to the domestic violence. *Id.* (requiring an abusive partner to compensate for any costs associated with enforcing the order, medical expenses or other treatment). Family court judges should utilize the discretion they are afforded within the Act to use such compensation terms to help victims recover from economic abuse.

<sup>212</sup> *Id.* § 443.

<sup>213</sup> See Catmull, *supra* note 98.

<sup>214</sup> Often survivors do not discover the fraudulent or coerced debt until after the abusive relationship has ended. Sarah Dranoff, *Identity Theft: A Low-Income Issue*, AM. B. ASS'N (Dec. 15, 2014), [https://www.americanbar.org/groups/legal\\_services/publications/dialogue/volume/17/winter-2014/identity-theft—a-lowincome-issue](https://www.americanbar.org/groups/legal_services/publications/dialogue/volume/17/winter-2014/identity-theft—a-lowincome-issue) [<https://perma.cc/MTE6-UARN>]. For these survivors, family court's generous statute of limitations will ensure their claims can be brought. See *In re Ashley P.*, 819 N.Y.S.2d 103, 104–05 (App. Div. 2006) (holding that New York applies no statute of limitations to domestic violence proceedings initiated under the Family Court Act nor are family offenses barred by defenses of laches).

<sup>215</sup> See *infra* Section IV.B.

<sup>216</sup> This note's proposed solutions will only benefit survivors who are ready and willing to engage with the family court system. See *supra* note 46 and accompanying text for a discussion of the many other reasons why survivors do not report their abuse.

<sup>217</sup> *ACLU Report*, *supra* note 46, at 8.

reports showing police are often ill-equipped to provide identity theft reports when such crimes are alleged in familial contexts.<sup>218</sup>

These two amendments to New York's Family Court Act will enable the state's family courts to serve as a refuge for survivors of economic abuse and allow survivors to obtain the necessary documentation to repair their credit and thus access this essential financial lifeline during their time of need. To compliment these changes, several federal statutes must also be amended to recognize the family court's finding and allow the new family court certificates to function as official reports for the purposes of identity theft relief.

*B. Amend Federal Laws to Ensure Domestic Violence Survivors May Clear Coerced Debt and Correct Credit Reports*

To ensure that the certificates of economic abuse issued by family courts effectively allow survivors to repair their credit with both their debtors and CRAs, Congress should amend FCRA, which was amended by FACTA, and remove the requirement of a police report to verify identity theft.<sup>219</sup> Removing the requirement that survivors report coerced debt to police will help address the many reasons why victims of both identity theft and domestic violence choose not to report.<sup>220</sup> These reasons range from a fear of collateral consequences when involving law enforcement to the noted challenges in obtaining an identity theft report from police.<sup>221</sup> Additional steps must be taken within VAWA to both acknowledge the pervasiveness of economic abuse, and coerced debt specifically, and further support the recognition of certificates granted by family courts.

After a survivor has obtained a certificate of coerced debt from a family court, they then must be able to use this certificate to repair their credit score. In order for these certificates to carry the weight necessary with CRAs, three changes must be made to FCRA. The statute's definition of an "identity theft report" must be expanded to explicitly include judicial certificates.<sup>222</sup> As it is currently written, FCRA defines an identity theft report as "a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government

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<sup>218</sup> DENIED! HOW ECONOMIC ABUSE PERPETUATES HOMELESSNESS, *supra* note 17, at 17.

<sup>219</sup> See *supra* Section II.A.

<sup>220</sup> See *supra* notes 135–137 and accompanying text.

<sup>221</sup> See *supra* notes 135–137 and accompanying text.

<sup>222</sup> 15 U.S.C. § 1681a(q)(4) (2012 & Supp. V 2018).

agency deemed appropriate by the Bureau . . . .”<sup>223</sup> Without the express acceptance of judicial certificates to prove identity theft, CRAs are free to continue to require a police report in order to repair an individual’s credit report.<sup>224</sup>

Further, FCRA must be amended to limit the discretion of CRAs to rescind relief for identity theft. The statute gives CRAs expansive authority to decline identity theft relief if the CRA believes the reported fraudulent activity was based on the victim’s “material misrepresentation of fact.”<sup>225</sup> So long as a victim has reported identity theft using one of the statutorily approved forms of reporting, including the proposed judicial certificates from family court,<sup>226</sup> CRAs should not have the authority to then deny relief based on their beliefs. A judicial certificate especially alleviates any concern on behalf of the CRA that a “material misrepresentation of fact” exists given that a judge has already considered the facts and concluded that identity theft did indeed occur.

Beyond the mechanics of identity theft reporting, steps must be taken to elevate the importance of economic abuse within the larger federal efforts to combat domestic violence. VAWA, the landmark legislation designed to address domestic violence, does not currently recognize economic abuse.<sup>227</sup> In its current form, VAWA sets aside certain resources to promote the economic security for victims of violence; however, there is no recognition of economic abuse as a discrete form of domestic violence, let alone

<sup>223</sup> *Id.* By expanding the definition of an “identity theft report” to include the judicial certificates of economic abuse, victims will be able to access FACTA’s relief for identity theft. This includes “extended alerts,” which alert creditors that a consumer’s credit history reflects fraud, FACTA § 112(b) (codified as amended in 15 U.S.C. § 1681c-1), as well as “blocks” which require CRAs to block “the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft.” § 152 (codified as amended in 15 U.S.C. § 1681c-2).

<sup>224</sup> In addition to this amendment, the FTC can take steps to remove confusion around what is required to file an identity theft report. For instance, the FTC’s website encourages victims of identity theft to report the fraudulent activity by filling out an Identity Theft Report online which reports the crime directly to the FTC in place of a police report. The guidance continues on, however, to require victims who know the identity of their identity thief to still file a police report. By amending FACTA to remove the police report requirement, victims of coerced debt will no longer encounter such confusion and be able to use judicial certificates in place of a police report. Seena Gressin, *Most ID Theft Victims Don’t Need a Police Report*, FED. TRADE COMM’N: CONSUMER INFO. (Apr. 27, 2017), <https://www.consumer.ftc.gov/blog/2017/04/most-id-theft-victims-dont-need-police-report> [<https://perma.cc/F694-NT8G>].

<sup>225</sup> 15 U.S.C. § 1681c-2(c)(1)(B) (2012) (“A consumer reporting agency may decline to block, or may rescind any block, or information relating to a consumer under this section, if the consumer reporting agency reasonably determines that—the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact . . .”).

<sup>226</sup> See *supra* Section IV.A.

<sup>227</sup> Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 102–322, 108 Stat. 1796, 1902–55 (codified as amended in scattered sections of 8, 16, 28, and 42 U.S.C. (2012 & Supp. V 2018)).

services dedicated to these victims.<sup>228</sup> Congress should pass a permanent reauthorization of VAWA that recognizes the unique harms of economic abuse, and its various forms, within the domestic violence context. The House's current reauthorization proposal achieves this goal;<sup>229</sup> however, several changes must be made to the proposal in order to account for the prevalence of coerced debt abuse and ensure these victims take advantage of VAWA's promise. For instance, the resolution proposes that the Department of Health and Human Services and the Department of Labor collaborate on a report to detail the barriers to survivors' economic security access.<sup>230</sup> This study should be expanded to include an examination into the various forms of economic abuse, including coerced debt, and include a review of the challenges survivors face when trying to report economic abuse.

The inclusion of economic abuse in VAWA presents an opportunity for Congress to further acknowledge the coerced debt harm in a broader sense. Given that victims of coerced debt differ from victims of traditional identity theft in that they often know the identity of their thief, Congress should broaden the definition of identity theft within FACTA itself to capture this unique aspect of coerced debt.<sup>231</sup> Additionally, Congress should consider methods by which to incentivize or mandate that private actors, including both CRAs and traditional lending institutions, develop written policies regarding victims of coerced debt that explicitly eliminate the police report requirement.<sup>232</sup>

## CONCLUSION

As Serena Williams, an advocate on the issue of economic abuse, said, “[i]t’s an incredible way to keep women down and to keep them in this awful position where they can’t get away.”<sup>233</sup> If

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<sup>228</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, 110 (2013).

<sup>229</sup> Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Congress § 701 (11)–(13) (2019).

<sup>230</sup> *Id.* § 704.

<sup>231</sup> Littwin, *Escaping Battered Credit*, *supra* note 8, at 393 (“The second issue that blocks coerced debt victims from using the FACTA identity theft procedure is that identity theft is currently defined exclusively as a crime of fraud, not duress.”).

<sup>232</sup> Kim, *supra* note 158, at 294 (demonstrating that credit card companies often do not have a written policy for how their employees should respond to the needs of economic abuse victims). Christine Kim’s empirical research further identifies that the majority of creditor companies lack clarity when it comes to defining economic abuse and differ in regard to whether this harm should be treated as fraud or identity theft. *Id.* at 298–99; *see also* explanatory note *supra* note 231.

<sup>233</sup> Kelly Wallace, *Serena Williams: How Her Daughter Inspires Her to Speak Out Against Financial Abuse*, CNN (June 27, 2018, 9:59 AM ET) (internal quotation marks

the end goal of U.S. laws against domestic violence is to ensure the safety and stability of victims, then economic abuse must be recognized for the significant role it plays within this larger national crisis. Without being able to obtain adequate relief against such harm from courts, survivors are kept in the shadows and unable to reach safety. New York's legislature must complete the mission it began in 2013 to end economic abuse in the state by amending the state's family laws to ensure judges have the latitude needed to provide meaningful relief. Congress must also act by recognizing the realities of economic abuse reporting and ensuring survivors have alternative means of accessing relief to debt coercion. Survivors should not be left paying another's debts as a price for their own survival.

*Megan E. Adams*<sup>†</sup>

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omitted), <https://www.cnn.com/2018/06/27/health/serena-williams-financial-abuse-domestic-violence-daughter-impact/index.html> [<https://perma.cc/G4JX-ZDYM>].

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