PART ONE: ANALYTICAL ESSAY

Question 5: Assess the policy and civil rights implications of treating coerced debt the same as voluntary debt in bankruptcy. Does the current regime perpetuate inequalities? Propose meaningful statutory or rule-based reforms.

My father rebuilt our house with his own hands after Hurricane Sandy took it. He never treated a broken system as a reason to stop; he built anyway. I have carried that lesson into how I think about the Bankruptcy Code: a system built around one assumption, that debt is debt, however it was incurred, works well for the world it was designed for and quietly fails everyone that model never anticipated. Coerced debt is one of those failures. This essay argues that treating coerced debt as functionally indistinguishable from ordinary consumer debt is not a neutral default. It is a policy choice that reproduces intimate partner abuse inside a federal system supposedly designed to provide a fresh start. The current regime perpetuates inequality, especially for women and low-income survivors, and the solution requires statutory and rule-based reform: defining coerced debt, excluding it from means-test and Chapter 13 repayment calculations, protecting survivor privacy, and connecting bankruptcy discharge to credit-reporting relief.

I. What Coerced Debt Is

Coerced debt is debt incurred through abuse rather than meaningful consent. Angela Littwin's foundational work defines the problem in consumer-credit terms: abusers may use credit cards, loans, leases, or other accounts to leave survivors legally responsible for obligations the survivors did not freely choose. Angela K. Littwin, Coerced Debt: The Role of Consumer Credit in Domestic Violence, 100 Cal. L. Rev. 951 (2012). Coerced debt usually appears in two forms. First, an abuser may force a survivor to open an account, cosign a loan, take out a credit card, or sign a lease through threats, violence, intimidation, or the accumulated pressure of coercive control. Second, an abuser may use the survivor's identity without her knowledge, relying on access to mail, passwords, Social Security numbers, or household documents that intimacy makes easy to exploit.

Neither version fits comfortably into the Bankruptcy Code. Fraudulent use resembles identity theft, but identity-theft law often imagines a stranger, not a partner who lives in the same home and can access documents without breaking in. Coerced-use accounts are even harder because the survivor's signature may be real. On paper, the debt looks voluntary. In reality, the signature may reflect survival, not consent. That gap between formal obligation and lived coercion is where bankruptcy law currently fails.

II. The Code's Neutrality Is a Policy Choice

The Bankruptcy Code generally asks whether a debt exists, not whether the debtor had meaningful freedom when it was incurred. That approach reflects normal commercial life: credit markets need signatures, account records, and predictable rules. But domestic violence changes the meaning of those records. A signature that would normally prove assent may instead prove the success of intimidation. A joint account that would normally show shared household choice may instead show financial surveillance. Section 523(a) lists debts excepted from discharge, including debts obtained by fraud, domestic support obligations, certain divorce-related debts, and other policy-favored obligations. 11 U.S.C. § 523(a)(2), (5), (15). But those exceptions are mostly designed to protect creditors, spouses, children, or public interests from debtor misconduct or specially protected obligations. None creates an affirmative category for debts imposed on a debtor through abuse.

That silence matters. Section 707(b), the means-test provision, can push above-median debtors away from Chapter 7 by treating consumer obligations as part of the abuse analysis. 11 U.S.C. § 707(b). Section 1325(b) requires Chapter 13 debtors to devote projected disposable income to plan payments when the trustee or an unsecured creditor objects. 11 U.S.C. § 1325(b). Section 521 requires debtors to file schedules and financial information, and Federal Rule of Bankruptcy Procedure 1007 implements those disclosure duties. 11 U.S.C. § 521(a)(1); Fed. R. Bankr. P. 1007. These provisions may be administratively sensible for ordinary debt, but coerced debt breaks their premise. The Code treats the survivor as the economic author of debt she may have signed only because refusing was dangerous.

Bright-line rules have value. Bankruptcy could not function if every case required a full trial on the emotional history of every purchase. But refusing to distinguish coerced debt from voluntary debt is not true neutrality. It is a substantive judgment that coercion does not matter unless it fits an existing doctrinal box. For survivors, that judgment can determine whether bankruptcy offers freedom or merely reorganizes the abuser's control into a federal repayment plan.

III. Where Current Doctrine Hurts Survivors

The first doctrinal problem is § 523(a)(2). That provision excepts from discharge debts for money, property, services, or credit obtained by false pretenses, false representation, or actual fraud. 11 U.S.C. § 523(a)(2). It works backward for many survivors. If the debtor herself defrauded a creditor, the debt may be nondischargeable. But if an abuser fraudulently used the survivor's identity, or coerced her into signing, § 523(a)(2) does not by itself exclude that debt from the means test or plan-payment math. Grogan v. Garner held that creditors need prove § 523(a) dischargeability exceptions only by a preponderance of the evidence. 498 U.S. 279, 291 (1991). That standard makes sense in creditor-debtor litigation, but it shows how the statute assumes the central dispute is creditor harm caused by debtor misconduct. Coerced debt reverses the moral posture: the debtor is also a victim.

The second problem is Chapter 13. In Hamilton v. Lanning, the Supreme Court held that courts calculating projected disposable income may consider changes in income or expenses that are known or virtually certain at confirmation. 560 U.S. 505, 524 (2010). Lanning is important because it rejects pure mechanical calculation when the number misstates reality. But the case concerns income and expenses, not debt origin. A survivor can therefore be forced into a plan whose calculations treat coerced obligations as ordinary consumer choices. The plan may be mathematically accurate and morally false at the same time.

The third problem is joint and divorce-related debt. Section 1301 creates a co-debtor stay in Chapter 13, but not Chapter 7, and its protection focuses on collection against co-debtors, not on whether the survivor's plan should be calculated around coerced obligations. 11 U.S.C. § 1301. Section 523(a)(15) makes many divorce or separation debts owed to a spouse, former spouse, or child nondischargeable. 11 U.S.C. § 523(a)(15). That rule may protect family-law judgments in ordinary cases, but in abuse cases it can harden a family-court debt assignment that failed to account for coercive control. Section 363, which governs use, sale, or lease of estate property, can also affect jointly owned homes, cars, or other survival-related assets without asking whether the asset structure itself reflects abuse. 11 U.S.C. § 363. These provisions are not malicious. They are incomplete. The same is true of state protective orders and family-law remedies. A restraining order may stop contact, and an equitable-distribution statute may allow a divorce court to assign marital debts, but neither automatically changes how federal bankruptcy law counts consumer debt, calculates disposable income, or reports discharged obligations to the credit system. That mismatch leaves survivors moving between legal systems that each solve only part of the problem.

IV. Civil Rights and Practical Implications

The civil rights problem is not merely that survivors have a hard bankruptcy issue. It is also that the current regime treats economic abuse as invisible at the precise moment federal law elsewhere has begun to recognize it. It is that a formally equal rule produces unequal consequences for a group already marked by gendered violence, economic dependency, and unequal access to legal help. The Violence Against Women Act defines economic abuse as coercive, deceptive, or unreasonable control over a person's ability to acquire, use, or maintain economic resources, including access to money, credit, assets, and financial information. 34 U.S.C. § 12291(a)(13). Federal domestic-violence policy therefore recognizes economic abuse. Bankruptcy law does not yet translate that recognition into relief. The Equal Credit Opportunity Act prohibits discrimination in credit transactions, 15 U.S.C. § 1691, but it was not designed to identify coercion inside a household after the credit has already been issued. Civil rights policy and bankruptcy policy therefore point in the same direction: formal equality is inadequate when the facts reveal coercion.

That omission undermines the fresh-start principle. Local Loan Co. v. Hunt describes bankruptcy as giving the honest debtor a new opportunity in life, unhampered by the pressure and discouragement of preexisting debt. 292 U.S. 234, 244 (1934). For a survivor, coerced debt is often the pressure and discouragement itself. Abusers use debt to trap people, damage credit, block housing, threaten lawsuits, and make leaving feel financially impossible. When bankruptcy counts coerced debt exactly like voluntary debt, it may complete the abuser's project through public procedure.

The harm continues after discharge. The Fair Credit Reporting Act allows blocking of information resulting from identity theft, and Regulation V implements identity-theft protections in consumer reporting. 15 U.S.C. § 1681c-2; 12 C.F.R. pt. 1022. But bankruptcy discharge does not automatically clean a credit report in the same way. A survivor may leave court still unable to rent, finance transportation, or rebuild credit because the public and private credit systems continue to reflect coerced obligations. The Bankruptcy Code's silence therefore interacts with housing, employment, family court, and credit reporting in ways that reproduce dependence.

V. Reforms

Congress should adopt four reforms. Each reform should be statutory or rule-based, not merely aspirational, because survivors cannot rely on ad hoc sympathy from individual judges or trustees.

First, Congress should amend 11 U.S.C. § 101 to define coerced debt. The definition should cover debt incurred through (a) fraudulent use of the debtor's identity or credit by a current or former intimate partner, family member, or household member without knowledge or consent, or (b) the debtor's own signature or account use obtained through threats, violence, intimidation, isolation, or a pattern of coercive control that vitiated meaningful consent. Naming the category matters because courts cannot apply consistent protections to a concept the Code does not recognize.

Second, Congress should amend § 707(b) to exclude coerced debt from means-test calculations once the debtor makes a prima facie showing. The debtor should be able to rely on a sworn declaration plus one form of corroboration, such as a protective order, police report, family-court finding, advocate letter, clinician letter, or other reliable evidence. The standard should be flexible because many survivors never safely report abuse, but it should not be evidence-free. A rebuttable presumption would balance survivor access with fraud prevention. It would also avoid forcing survivors into full adversary litigation simply to prove that a debt should not be treated as voluntary at the threshold stage.

Third, Congress should amend § 1325(b) to exclude payments attributable to coerced debt from projected disposable income and plan feasibility analysis. This reform follows the logic of Lanning: bankruptcy courts should not be forced to use calculations that everyone knows misstate the debtor's real financial life. It would also prevent Chapter 13 from becoming a five-year repayment vehicle for an abuser's coercion.

Fourth, Congress and the Rules Committee should add procedural protections. Rule 1007 and § 521 should be supplemented with survivor-safe filing procedures, including address confidentiality and sealed or redacted abuse documentation, building on the privacy logic already reflected in Federal Rule of Bankruptcy Procedure 9037. Fee waivers under 28 U.S.C. § 1930(f) should presumptively cover coerced-debt filers who meet the evidentiary threshold. Discharge orders finding coerced debt should trigger credit-reporting relief modeled on 15 U.S.C. § 1681c-2 and implemented through Regulation V, so the fresh start is not destroyed the first time a landlord or lender checks credit. Trustees and judges should also receive basic training on economic abuse, not to turn bankruptcy court into family court, but to help court actors recognize why a clean credit application, a joint account, or a signed lease may conceal coercion.

Critics will worry that debtors may falsely claim coercion. That concern deserves an answer, not a veto. Bankruptcy already evaluates good faith, feasibility, fraud, domestic support obligations, and dischargeability in fact-sensitive ways. A corroborated, rebuttable framework is no more unmanageable than those existing inquiries. Critics may also argue that the means test is already too complex. But the current simplicity is false. It saves administrative effort by ignoring coercion and pushing the cost onto survivors.

Conclusion

Treating coerced debt the same as voluntary debt does perpetuate inequality. The rule is facially neutral, but it rests on a fiction: that legal liability always reflects meaningful choice. For survivors of domestic violence, that fiction can turn bankruptcy from a fresh start into a continuation of abuse by other means. My father once taught me, without using these words, that systems will fail people, and you build anyway. The Bankruptcy Code was built to free honest debtors from impossible financial pasts. Congress should now rebuild the parts that fail survivors, so debt created by coercion is no longer mistaken for debt created by choice.