Testimony of

Ms. Maria Vullo

February 10, 2005

STATEMENT OF MARIA T. VULLO

I appear today to urge this Committee to amend the U.S. Bankruptcy Code to prevent extremists from abusing the bankruptcy process to avoid paying judgments obtained under the Freedom of Access to Clinic Entrances Act (FACE). I am lead counsel for the plaintiffs in Planned Parenthood of the Columbia/Willamette, Inc., et al. v. American Coalition of Life Activists, et al., No. 95-1671-JO (D. Or.), a case in which a Portland, Oregon jury, on February 2, 1999, awarded $109 million under FACE against the defendants for their illegal threats against the plaintiffs' lives. The en banc Ninth Circuit affirmed the judgment, and the U.S. Supreme Court denied defendants' petition for a writ of certiorari, on remand the district court reaffirmed the punitive damages award.

Despite extensive litigation and our court victories, the defendants have resisted every lawful attempt at judgment collection and have misused the Bankruptcy Code well beyond Congressional intent. An amendment is necessary to prevent further abuse of our court system.

By way of background, at a one-month trial, the jury and the judge found that three separate items constituted illegal threats under the FACE statute. Defendants' threats consisted of "wanted" style posters that followed a pattern of similar posters targeting three physicians -- Drs. David Gunn, George Patterson and John Bayard Britton -- who were murdered following the distribution of the "wanted" posters naming them. These "wanted" poster threats are specifically addressed in the legislative history of the FACE statute.

The organization through which the defendants issued their illegal threats, was called the American Coalition of Life Activists (ACLA), an organization that required its leaders to be "judgment proof." Following the 1994 enactment of FACE, in January 1995, ACLA released the first threat involved in the Oregon case, which was called the "Deadly Dozen List." The Deadly Dozen List issued by ACLA contained the names and home addresses of thirteen physicians from around the nation -- three of whom were plaintiffs in the Oregon suit. Immediately after the issuance of this threat, the FBI and the United States Marshal's Service contacted the physicians on the List, informing them that they should consider this a serious threat to their lives, advising them to take security measures, and offering them 24-hour federal marshal protection.

At an event later that year in August 1995 held in St. Louis, Missouri, the defendants issued their second direct threat, again under the ACLA name. This "wanted" style poster targeted another of our physician clients and included his photograph and other personal identifying information. Again, the doctor named on this "wanted" poster was contacted by law enforcement and undertook significant precautions to ensure his and his family's personal safety.

The third threat involved in the Oregon case was called the "Nuremberg Files." Amidst images of dripping blood, the "Nuremberg Files" website contained the names and addresses of doctors and other health care workers around the country who provide reproductive health services, some including their children's names. Doctors who are still working appeared in plain text; those who have been wounded were "greyed out"; and those who have been murdered -- including Barnett Slepian who was murdered in front of his family in October 1998 -- had a line crossing out their names. After learning of this website, the FBI again contacted the named physicians and advised them accordingly.

After the verdict, the federal district judge, the Hon. Robert E. Jones, issued an injunction to prevent further threats against the plaintiffs and the judge included findings of fact to support that injunction. Among other findings, the trial judge found as follows:

I conclude from my independent review of the evidence produced at trial that plaintiffs have proven by clear and convincing evidence that each defendant, acting independently and as a co-conspirator, prepared, published and disseminated the "Deadly Dozen" Poster, the Poster of Dr. Robert Crist and the "Nuremberg Files" with specific intent and malice in a blatant and illegal communication of true threats to kill, assault or do bodily harm to each of the plaintiffs with the specific intent to interfere with or intimidate the plaintiffs from engaging in legal medical practices and procedures.

41 F. Supp. 2d at 1154.

As the jury and judge learned during the course of the trial, my clients no longer enjoy the basic freedoms that most of us take for granted. Although they are medical professionals who live and work in relatively safe communities around the country, they have been forced to live as if under constant threat of imminent attack: they have purchased

and regularly wear bullet-proof vests; they have installed extensive security systems including bullet-proof glass and reinforced steel in their homes and offices; they have warned their children's teachers of the threats by defendants; they have developed emergency plans should they come under attack, including instructing a young child to hide in the bathtub should he hear gunshots; they vary their routes to and from work to protect themselves from assailants; they have installed window coverings to thwart snipers; they have purchased and wear disguises to avoid being recognized; and they are ever-vigilant in public. They are not secure in their homes or in their offices. They do not sit by windows in restaurants. And they even refrain from hugging their children in front of open windows.

The passage of FACE has had a significant positive impact on the lives and safety of reproductive health care workers. We need this statute - and its continued enforcement - to save lives. But the statute cannot be fully enforceable if those who are found liable for violating the law are able to evade their obligations simply by filing for bankruptcy and avoiding the consequences of their illegal actions. After years of litigation - including up to the Supreme Court - defendants in the Nuremberg Files case have tried to nullify years of court proceedings by the mere filing of a Chapter 7 bankruptcy petition. This is an abuse of process.

I have been extensively involved in litigating the very issue before this Committee in six different bankruptcy courts across the country. Following the jury's verdict in February 1999, my firm proceeded to enforce the judgment that our clients had obtained after years of litigation and a month-long trial. Following the jury's verdict, the defendants announced that they did not intend to pay any of the amount awarded by the jury. Their statements were consistent with defendants' own so-called Constitution, which specifically required the organization's leaders to be judgment proof. At page 4 of the document, under the heading "Doctrine and Character," the ACLA Constitution states that members of the organization "must . . . have their assets protected form [sic] possible civil lawsuits (judgment-proof)." The defendants intentionally sought to make themselves judgment proof precisely to avoid having to pay any part of the judgment that my clients obtained. When we found assets, they used the court system to seek to avoid their legal obligations. These are not honest debtors who find themselves in dire financial straits through acts beyond their control, and who seek to work out their debts owed to creditors. They are not the individuals that the Bankruptcy Code was enacted to protect.

For example, defendant Michael Bray -- who served years in federal prison for multiple clinic arson attacks -- was one of the six defendants to seek bankruptcy protection following the jury's verdict in the Oregon case. Bray responded to the Judge's injunction by saying, "I have no plans to submit to those kinds of unconstitutional edicts." Bray also stated that "there's no money to be had" and that he has no intention of changing his behavior although, he said, "I may have to get creative about it, though." In a newsletter written by Bray after he filed for bankruptcy, Bray also discussed the deposition for which he never appeared and noted with respect to the Court's discovery orders requiring the production of documents, "I am good with matches." On the day of his ordered deposition, Bray filed for bankruptcy -- and he abused the Bankruptcy Code by doing so. Now, after years of litigation, he is out of bankruptcy but we recently had to seek relief for his violations of court orders respecting his assets.

Despite the jury's verdict, and the District Court's explicit findings of specific intent and malice, the defendants expected to obtain a "discharge" in bankruptcy -- and thus not pay a single cent to the plaintiffs in satisfaction of the judgment. After months of trying to obtain discovery of their assets, six defendants filed for chapter 7 bankruptcy in six different bankruptcy courts.

In the now five years since the jury's verdict, my firm has committed enormous resources to enforcing the judgment, including by representing the plaintiffs in six different bankruptcy courts. In connection with these bankruptcy proceedings, the defendants took the position that the jury's verdict is fully dischargeable in bankruptcy, despite the "willful and malicious injury" exception to discharge that currently exists in the Bankruptcy Code. These filings, and the relitigation that has followed, demonstrate the utmost importance of an amendment to the U.S. Bankruptcy Code. Because an amendment that I would urge be proposed does not currently exist, the defendants were able to invoke the protection of the automatic stay of the Bankruptcy Code, and force relitigation of the "willful and malicious injury" issue in the various bankruptcy courts across the country. This has been a lengthy and expensive process, involving a separate trustee and a separate judge in each case -- each of whom has had to familiarize himself or herself with the case. Because these defendants live in different parts of the country, my law firm had to proceed against them in six different bankruptcy courts. In each case, we had to commence an adversary proceeding in bankruptcy, file motions for summary judgment setting forth the prior proceedings and legal principles, and appear in those courts for multiple hearings. My firm expended over 3,500 attorney hours in litigating these bankruptcy proceedings, in addition to the time spent by local counsel in each jurisdiction and the substantial expense of filing fees, service fees, and travel around the country.

After extensive litigation and considerable expense over a period of four plus years, we won the "willful and malicious injury" issue in the bankruptcy courts. Enactment of an amendment to the Bankruptcy Code is necessary because defendants should not have been given the opportunity to litigate the issue of their discharge in bankruptcy. There is no doubt that these defendants did not seek relief from the bankruptcy courts as part of a good faith effort to work

with plaintiffs on a payment plan. Rather, after years of litigation, defendants made it clear that they intended to seek a full "discharge" in bankruptcy and thus not pay one cent to their creditors. Without an amendment, this type of abuse will continue.

Thus, it is my considered position, based upon my personal experience litigating the current law of "willful and malicious injury," that in order to preserve law and order, the Bankruptcy Code must be amended so that the bankruptcy process is not abused any further. Whatever one's position on abortion, we all can agree that criminals should not get away with acts of violence and threats of violence. The evidence at trial was undisputed that, upon the release of defendants' threats, with the advice of law enforcement, my clients purchased bulletproof vests, installed extensive security systems at their homes and offices, and took other security precautions because of defendants' actions. The jury awarded my clients their security costs as compensatory damages, and also awarded punitive damages under FACE against each of the defendants to prevent and deter further illegal activities. Allowing these defendants to abuse the bankruptcy process to delay enforcement of this judgment totally undermines the effective enforcement of the FACE statute and the true purposes of the Bankruptcy Code. The only way to prevent this from happening again is for an amendment to the Bankruptcy Code to be enacted that unambiguously provides that FACE violations are nondischargeable in bankruptcy. Without such a clear statement, future defendants in FACE actions will continue to file for bankruptcy in order to delay any efforts to hold them responsible for their illegal actions. An amendment to the Bankruptcy Code is therefore necessary so that laws are followed and the bankruptcy process is not abused.

Thank you.