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Bankruptcy—Financial Responsibility Laws—Effect of Discharge of Automobile Judgment Upon Driver's License Suspensions—Perez v. Campbell, 402 U.S. 637 (1971)

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BANKRUPTCY—FINANCIAL RESPONSIBILITY LAWS—EFFECT OF DISCHARGE OF AUTOMOBILE JUDGMENT UPON DRIVER'S LICENSE SUSPENSIONS—*Perez v. Campbell*, 402 U.S. 637 (1971).

Adolfo Perez, driving a car registered in his name, was involved in an automobile collision in Arizona. Mr. Perez was not carrying automobile liability insurance at the time of the accident. The minor who was driving the second car and her parents sued Mr. and Mrs. Perez[1] in an Arizona state court for personal injuries and property damage. Judgment was entered against them.

Mr. and Mrs. Perez filed petitions in bankruptcy and were discharged from all their provable debts, including the judgment arising from Mr. Perez's driving mishap.[2] During the pendency of the bankruptcy proceedings, their driver's licenses and automobile registration were suspended pursuant to the provisions of the Arizona Motor Vehicle Safety Responsibility Act for failure to satisfy the judgment within sixty days after its entry.[3] The suspensions continued after the Perezes received their discharges in bankruptcy, in accordance with

1. Although Mrs. Perez was in no way involved in the collision, the Perez automobile was community property under Arizona law. Mrs. Perez was a proper nominal defendant in the tort suit, but she was not a necessary party there. Both Mr. and Mrs. Perez admitted liability. Perez v. Campbell, 402 U.S. 637, 669 (1971).

2. Bankruptcy Act § 17, 11 U.S.C. § 35 (1970). *See* Lewis v. Roberts, 267 U.S. 467 (1925) (a judgment for tort is provable in bankruptcy).

3. ARIZ. REV. STAT. ANN. tit. 28, ch. 7 (1956). Section 28-116(A) requires the clerk of the court in which judgment is entered to forward a certified copy of the judgment to the superintendent if the judgment is not satisfied within sixty days after its entry. Section 28-1162(A) provides:

> The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and § 28-1165.

Under section 28-1163(A), the suspension is to continue until the judgment is satisfied and the judgment debtor gives proof of financial responsibility. Section 28-1164 states the requirements for satisfaction of a judgment. Sections 28-1167 to -1178 state the requirements for forms of proof. But if the judgment creditor consents in writing and the judgment debtors furnish proof of financial responsibility, the superintendent, in his discretion, may restore the debtors' licenses and registration "for six months from the date of the consent and thereafter until the consent is revoked in writing. . . ." ARIZ. REV. STAT. ANN. § 28-1162(B) (1956). If the judgment debtors get a court order allowing them to pay the judgment in installments and give proof of financial responsibility, the debtors' licenses and registration would be restored until the creditor notifies the superintendent of any default in payment. *Id.* § 28-1165.

Section 28-1163(B) provides:

> A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article.

section 28-1163(B) of the Arizona Act which provides that a discharge in bankruptcy shall not relieve judgment debtors of these penalties.[4]

The Perezes then filed a complaint seeking declaratory and injunctive relief, arguing that section 28-1163(B) was in conflict with the Bankruptcy Act[5] and thus violated the supremacy clause of the United States Constitution.[6] The district court dismissed the complaint for failure to state a claim upon which relief could be granted and the Court of Appeals for the Ninth Circuit affirmed.[7] On writ of certiorari the United States Supreme Court reversed. *Held:* the challenged provision conflicts with the Bankruptcy Act and is unconstitutional under the supremacy clause. *Perez v. Campbell,* 402 U.S. 637 (1971).

In almost all cases where state statutes have been challenged on the ground that they were unconstitutional under the supremacy clause, the test that the Supreme Court has applied is "whether, under the circumstances of this particular case, [the state's] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[8] The relative merit of the particular state law has generally been disregarded when that law conflicts with a valid federal enactment.[9]

Prior to *Perez,* the Court had made an exception to the usual test applied in supremacy clause cases when deciding the validity of financial responsibility laws.[10] Instead of testing these laws by their effect

4. ARIZ. REV. STAT. ANN. § 28-1163(B) (1956). *See* note 3, *supra.*

5. 11 U.S.C. § 35 (1970). It provides that "[a] discharge in bankruptcy shall release a bankrupt from all of his provable debts," with certain exceptions which are not applicable here.

6. U.S. CONST. art. VI, § 2 provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land. . . ." Petitioners also challenged the constitutionality of provisions of the Arizona Motor Vehicle Safety Responsibility Act on the grounds that they imposed involuntary servitude in violation of the thirteenth amendment, denied fourteenth amendment due process and equal protection, and operated as a bill of attainder in violation of art. I, § 10 of the Constitution. The Supreme Court did not consider these claims.

7. Perez v. Campbell, 421 F.2d 619 (9th Cir. 1970).

8. Hines v. Davidowitz, 312 U.S. 52, 67 (1941). *Accord,* Nash v. Florida Indus. Comm'n, 389 U.S. 235, 239 (1967); Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 229 (1964).

9. Free v. Bland, 369 U.S. 663, 666 (1962).

10. Kesler v. Department of Public Safety, 369 U.S. 153 (1962); Reitz v. Mealey, 314 U.S. 33 (1941). In addition, some lower federal courts and state courts have considered the constitutionality of similar provisions in financial responsibility acts. Many of these courts have upheld the provisions. *E.g., In re* Locker, 30 F. Supp. 642 (S.D.N.Y.

on the Bankruptcy Act, the Court evaluated their purpose. The Court consistently found that since the purpose of the financial responsibility acts was highway safety[11] and not just the protection of creditors, they did not conflict with the Bankruptcy Act. In *Reitz v. Mealey*,[12] the Court upheld the constitutionality of a New York statute[13] which provided for suspension of the driver's license and vehicle registration of any person if a judgment against him was not paid within fifteen days. The suspension continued for three years or until the judgment was satisfied or discharged, except by a discharge in bankruptcy. Twenty-one years later, in *Kesler v. Department of Public Safety*,[14] the validity of the Utah Motor Vehicle Safety Responsibility Act[15] was challenged. Again, the Court sustained the state law. The majority reasoned that the Utah Act was "not an Act for the Relief of Mulcted Creditors," and that "the bearing of the statute on the purposes served by bankrupcty legislation [was] essentially tangential."[16]

There were dissenting opinions in both *Reitz*[17] and *Kesler*.[18] Several members of the *Reitz* and *Kesler* Courts believed that the financial responsibility provisions were unconstitutional because of their conflict with the Bankruptcy Act.[19] They saw the state schemes to be "a powerful weapon for the collection of a debt from which [the] bankrupt has been released by federal law" and thus a denial of "the federal immunity given by section 17 of the Bankrupcty Act—an ef-

1939); Munz v. Harnett, 6 F. Supp. 158 (S.D.N.Y. 1933); Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951) (dictum); De Vries v. Alger, 329 Mich. 68, 44 N.W.2d 872 (1950); Smith v. Hayes, 133 N.E.2d 443 (Ohio C.P. 1955). *Contra,* Miller v. Anckaitis, 436 F.2d 115 (3d Cir. 1970) (held that as applied to debtors who have judgments against them based on remote vicarious tort liability, such a provision conflicts with section 17 of the Bankruptcy Act); Ellis v. Rudy, 171 Md. 280, 189 A. 281, 283 (1937) (construed the state financial responsibility law, concerning revocation of license and registration for failure to satisfy judgments, as not applying to judgment debtors who had been discharged in bankruptcy, because otherwise an "irreconcilable conflict would arise between the federal and the state enactments"); *In re* Perkins, 3 F. Supp. 697 (N.D.N.Y. 1933).

11. Four justices on the *Perez* Court found the Arizona provision constitutional, as to Mr. Perez, on the ground of public policy. *See* note 22, *infra.*

12. 314 U.S. 33 (1941).

13. N.Y. VEHICLE AND TRAFFIC LAW § 94-b (Cahill, 1930).

14. 369 U.S. 153 (1962).

15. UTAH CODE ANN. tit. 41, ch. 12 (1953).

16. *Kesler,* 369 U.S. at 174.

17. 314 U.S. at 40 (Douglas, J., dissenting).

18. 369 U.S. at 182 (Black, J., dissenting).

19. One of the primary purposes of the Bankruptcy Act is to give the debtor "a new opportunity in life and a clear field for future effort unhampered by the pressure and discouragement of preëxisting debt." Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

fect which makes the law of [the state] rather than the law of Congress 'the Supreme Law of the Land.' "[20]

The Court in *Perez* noted that the controlling principle in supremacy clause cases is "that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause."[21] Since the Arizona provision in issue compels the judgment debtor to forego the benefit of his discharge in bankruptcy if he wants to continue to operate a motor vehicle, it frustrates the full effectiveness of the Bankruptcy Act and is therefore invalid.[22]

The Court overruled *Reitz* and *Kesler,* finding the doctrine formulated by those cases "aberrational." That doctrine enabled states to frustrate "the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration."[23] The *Perez* Court believed that to rule otherwise would permit states to nullify unwanted federal statutes simply by declaring the purpose of the state legislation to be one other than frustration.[24]

20. *Kesler,* 369 U.S. at 183.

21. *Perez,* 402 U.S. at 652.

22. *Id.* In a separate opinion written by Justice Blackmun, four members of the Court concurred in the result as to Mrs. Perez, but dissented as to Mr. Perez. The minority stated that they would adhere to the rulings in *Reitz* and *Kesler* and

> hold that the States have an appropriate and legitimate concern with highway safety; that the means Arizona has adopted with respect to one in [Mr. Perez's position, that is, the negligent driver] . . . in its attempt to assure driving competence and care on the part of its licensees, as well as to protect others, is appropriate state legislation; and that the Arizona statute, like its Utah counterpart, despite the tangential effect upon bankruptcy, does not operate in derogation of the Bankruptcy Act or conflict with it to the extent that it may rightly be said to violate the Supremacy Clause.

Id. at 664. But as to Mrs. Perez, who was not in the car at the time of the accident, the minority said that the State's action in suspending her driver's license "interferes with the paramount federal interest in her bankruptcy discharge and violates the Supremacy Clause." *Id.* at 671.

23. *Id.* at 651-52.

24. *Id.* at 652. The Court went on to state that even if the analysis of *Kesler* and *Reitz* were applied in this case, the Arizona provision would not be upheld. For the Arizona Supreme Court has ruled that the principal purpose of the Arizona Motor Vehicle Safety Responsibility Act is to protect judgment creditors. Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140 (1963). Whereas the statutes in *Reitz* and *Kesler* "had the effect of frustrating federal law but had, the [*Kesler*] Court said, no such purpose [to protect judgment creditors], the Arizona Act has both that effect and that purpose." *Perez,* 402 U.S. at 654.

The majority dismissed the minority's contention that by passing a statute for the District of Columbia, D.C. CODE § 40-464 (1967), which is similar to Arizona's section 28-1163(B), Congress must have regarded the Bankruptcy Act and the anti-discharge provision as consistent and compatible. Legislative history indicates that in passing the District of Columbia Motor Vehicle Financial Responsibility Act, "Congress gave no attention to the interaction of the anti-discharge section with the Bankruptcy Act." *Perez,* 402 U.S. at 655.

By comparing the supremacy clause test developed in *Hines v. Davidowitz* and other cases,[25] the doctrine of *Reitz* and *Kesler* does appear "aberrational." The decision in *Perez* is consistent with the approach taken by the Court in other instances of federal-state conflict.[26] The *Perez* majority said that "analysis discloses no reason why the States should have broader power to nullify federal law" in the fields of bankruptcy or highway safety than in other fields.[27] Forty-four other states, including Washington, have statutes similar to Arizona's.[28]

25. *See* note 8 and accompanying text, *supra*.

26. The *Perez* decision is somewhat analogous to Local Loan Co. v. Hunt, 292 U.S. 234 (1934). In *Local Loan* the Court held that an assignment of future-earned wages to secure a loan is not a lien which survives a discharge in bankruptcy. The decision rejected the Illinois rule that an assignment of future wages constitutes an enforceable lien, because the Illinois rule was "destructive of the purpose and spirit of the bankruptcy act." *Id.* at 245.

There does not seem to be any other case in which the Supreme Court has upheld state laws which arguably conflict with the discharge provisions of the Bankruptcy Act. Fines for violating the law are not dischargeable in bankruptcy because they are not provable under the Bankruptcy Act. 1A W. COLLIER, BANKRUPTCY ¶ 17.05, at 1587 (14th ed. 1971). Neither are "liabilities for willful and malicious injuries to the person or property of another" dischargeable in bankruptcy. Bankruptcy Act § 17a(8), 11 U.S.C. § 35a(8) (1970). A debtor's promise to pay a provable debt, made after the filing of his petition in bankruptcy, is enforceable. Zavelo v. Reeves, 227 U.S. 625 (1913). This situation also can be distinguished from *Perez* in that where the debtor promises to pay the debt, he is voluntarily relinquishing the "federal immunity" given by the Bankruptcy Act, whereas in the financial responsibility act situation, the state denies the debtor the "federal immunity" given by the Bankruptcy Act.

But some state courts have upheld state laws which arguably frustrate the effect of a discharge in bankruptcy. *See, e.g.*, Hope v. License Bd., 228 Cal. App. 2d 414, 39 Cal. Rptr. 514 (1964). The *Hope* court upheld a state statute which provided that adjudication and acts of bankruptcy constitute cause for disciplinary action (including license revocation) against contractors, relying on the "purpose analysis" of *Kesler. See Kesler,* 369 U.S. at 153; Tracy v. License Bd., 63 Cal. 2d 598, 407 P.2d 865, 47 Cal. Rptr. 561 (1965). *Tracy* upheld the Registrar of Contractors' decision to suspend the bankrupt contractor's license until he gets a release of certain claims, even though those claims were discharged in bankruptcy. *See also* Carter v. Sutton, 147 Ga. 496, 94 S.E. 760 (1917) (held that a discharge in bankruptcy does not destroy a landlord's right to evict the debtor for nonpayment of rent); State v. Bontz, 192 Kan. 158, 386 P.2d 201 (1963) (held that a discharge in bankruptcy does not abate a worthless check prosecution under a statute allowing abatement if, among other things, the defendant pays the amount of the check into court; stating that this case is analogous to *Kesler);* Evans v. Staalle, 88 Minn. 253, 92 N.W. 951 (1903) (held that land equitably charged with the payment of a judgment debt is not released by the debt's discharge in bankruptcy); Leach v. Armstrong, 236 Mo. App. 382, 156 S.W.2d 959 (1941) (held that a discharged debt is chargeable to diminish an heir's share in the equitable accounting of an estate); McClendon v. Kenin, 235 Ore. 588, 385 P.2d 615 (1963) (held that a labor union bylaw which suspends membership for failure to pay or make satisfactory arrangements to pay a debt owed to another member, does not subvert the Bankruptcy Act; relying on *Reitz* and *Kesler).*

27. 402 U.S. at 652.

28. ALA. CODE tit. 36, § 74(55) (Supp. 1969); ALASKA STAT. § 28.20.350 (1962); ARK. STAT. ANN. § 75-1457 (1957); CAL. VEHICLE CODE § 16372 (West 1971); COLO. REV. STAT. ANN. § 13-7-5(2) (1963); CONN. GEN. STAT. ANN. § 14-131 (1970);

Applying the principle of *Perez* to these states' legislation, the anti-discharge provisions will be struck down.[29] The remainder of this note will discuss the purposes of financial responsibility laws and will propose alternative measures which will fill the void *Perez* creates.

Both accident prevention and compensation of traffic victims have been cited as justifications for financial responsibility acts.[30] It may be argued that financial responsibility laws are safety measures for two reasons: first, they encourage persons to drive more carefully because of the fear of losing their driver's licenses for failure to satisfy judgments against them and, second, they take some dangerous drivers off the highways. Yet today, nearly all claims that financial responsibility acts are safety measures have been abandoned.[31] The Third Circuit Court of Appeals recently referred to such a claim as a "fiction;" "any driver

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DEL. CODE ANN. tit. 21, § 2943 (1953); HAWAII REV. STAT. § 287-17 (1968); IDAHO CODE ANN. § 49-1514 (1967); ILL. ANN. STAT. ch. 95½, § 7-310 (Smith-Hurd 1971); IOWA CODE ANN. § 321A.14(2) (1966); KAN. STAT. ANN. § 8-744(b) (1964); KY. REV. STAT. ANN. § 187.420 (1969); LA. REV. STAT. ANN. § 32:893 (1963); ME. REV. STAT. ANN. tit. 29, § 783(6) (1965) (10 years); MD. ANN. CODE art. 66½, § 7-315 (1970); MICH. STAT. ANN. § 9.2213(b) (1968), MICH. COMP. LAWS ANN. § 257.513(b); MINN. STAT. ANN. § 170.33 subd. 5 (Supp. 1971); MISS. CODE ANN. § 8285-14(b) (1956); MO. ANN. STAT. § 303.110 (1963); MONT. REV. CODES ANN. § 53-431 (1961); NEB. REV. STAT. § 60-519 (1968); NEV. REV. STAT. § 485.303(2) (1969); N.H. REV. STAT. ANN. § 268:9 (1966); N.J. STAT. ANN. § 39:6-35 (Supp. 1970); N.M. STAT. ANN. § 64-24-78 (1960); N.Y. VEH. & TRAF. LAW § 337(c) (McKinney Supp. 1970); N.C. GEN. STAT. § 20-279.14 (Supp. 1971); N.D. CENT. CODE § 39-16.1-04(5) (Supp. 1971); OHIO REV. CODE ANN. § 4509.43 (Page Supp. 1970); OKLA. STAT. ANN. tit. 47, § 7-315 (1962); PA. STAT. ANN. tit. 75, § 1414 (1971); R. I. GEN. LAWS ANN. § 31-32-15 (1968); S.C. CODE ANN. § 46-741 (1962); S.D. COMPILED LAWS ANN. § 32-35-58 (1967); TENN. CODE ANN. § 59-1236 (1968); TEX. REV. CIV. STAT. ANN. art. 6701h, § 14(b) (1969); UTAH CODE ANN. § 41-12-15 (1953); VT. STAT. ANN. tit. 23, § 802(b) (1967); VA. CODE ANN. § 46.1-444(a)(4) (Supp. 1971) (15 years); WASH. REV. CODE § 46.29.380 (1967); W. VA. CODE ANN. § 17D-4-6(b) (1966); WIS. STAT. ANN. § 344.26(2) (1958); WYO. STAT. ANN. § 31-299 (1967). *See also* FLA. STAT. ANN. § 324.131 (1968) and FLA. ATT'Y GEN. BIEN. REP. 311 (1961); GA. CODE ANN. § 92A-605(e)(3) (Supp. 1970); IND. ANN. STAT. § 47-1049 (1965), and 1936 OP. IND. ATT'Y GEN. 272; MASS. GEN. LAWS ANN. ch. 90, § 22A (Supp. 1970); ORE. REV. STAT. § 486.251(2) (1969).

29. The Washington Department of Motor Vehicles
considers that under the Perez decision a final discharge in bankruptcy will operate a complete bar to the imposition of the terms of the Financial Responsibility Law as they apply to driving privilege or drivers license suspensions for failure to satisfy a judgment within thirty days from the date that it is entered.
Letter from Edward H. Clancy, Manager of Division of Financial Responsibility, State of Washington Department of Motor Vehicles, October 5, 1971, on file with the *Washington Law Review*.

30. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 102-03 (1965).

31. *Id.* at 107. *Contra*, 1 NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS AND ORDINANCES, TRAFFIC LAWS ANNUAL 1964, 245 (1964).

knows that" financial responsibility laws bear no "meaningful relationship to his driving habits or the protection of life and limb."[32] The Third Circuit is correct in stating that financial responsibility acts do not affect one's driving habits; but it seems that financial responsibility acts do protect "life and limb" to the extent that some dangerous drivers are taken off the highways, that is, to the extent that dangerous drivers who do not satisfy judgments against them lose their driver's licenses and do not continue to drive. *Perez* will adversely affect highway safety to the extent that it will help put some dangerous drivers back on the highways sooner than if they were required to pay the discharged judgments before regaining their driver's licenses.

There is at least one alternative measure open to the states to compensate for any adverse effects which *Perez* will have on highway safety "without running roughshod over immunities that the United States. . . has chosen to give its citizens."[33] That alternative is the suspension of the driver's licenses of those who negligently cause automobile accidents, regardless of financial responsibility. This alternative would be more effective as a safety measure than the present anti-discharge provisions in two ways. First, under present financial responsibility laws, whatever amount of highway safety is achieved is at the expense of impecunious drivers. Drivers who negligently cause automobile collisions and pay judgments against them are not necessarily taken off the highways. If one believes the safety "fiction" that financial responsibility laws encourage persons to drive more carefully because of the fear of losing their driver's licenses for failure to satisfy judgments against them, this alternative would be more effective than present law because it would deter all drivers, rather than just drivers who are unable to pay judgments against them, from negligent or reckless driving. Second, such a measure would keep more dangerous drivers off the highways after they have once caused accidents, since drivers of every level of financial resources would be affected by it.

The other purpose of financial responsibility laws, providing financial protection to accident victims, is a serious problem for the nation. Traffic accidents, injuries, and deaths have reached staggering proportions. In 1969 there were 15,500,000 motor vehicle accidents;[34] 4,-

32. Miller v. Anckaitis, 436 F.2d 115, 118 (3d Cir. 1970).
33. *Kesler*, 369 U.S. at 184 (Black, J., dissenting).
34. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1970).

700,000 persons were injured in those accidents;[35] 2,000,000 persons received disabling injuries;[36] and 56,400 persons died as a result of those accidents.[37] The total cost of the accidents was $12.2 billion.[38] Yet sixty-one percent of the total compensable loss to seriously injured persons and dependents of deceased persons is not compensated.[39] *Perez* will have some adverse effect on the financial protection provided to automobile accident victims under financial responsibility laws.[40] Without the pressure which the loss of his license puts on the judgment debtor to pay his discharged debt, it is to be expected that fewer discharged debtors will pay those discharged debts.[41]

35. BUREAU OF THE CENSUS, UNITED STATES DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 552 (1970).

36. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 3 (1970).

37. *Id.*

38. *Id.* at 5.

39. UNITED STATES DEP'T OF TRANSPORTATION, MOTOR VEHICLE CRASH LOSSES AND THEIR COMPENSATION IN THE UNITED STATES 10 (1971) (percentage uncompensated in 1967).

40. But it does not seem likely that *Perez* will encourage people who would otherwise carry automobile liability insurance to forgo insurance, because under the usual financial responsibility laws, the driver of an automobile involved in an accident may have his license suspended (for a limited period of time) prior to the rendering of any judgments against him, unless he deposits security to satisfy any judgments which may be recovered against him, or has liability insurance, or comes within one of the other limited exceptions. *See, e.g.*, ARIZ. REV. STAT. ANN. § 28-1142 (Supp. 1970), WASH. REV. CODE § 46.29.060 et seq. (Supp. 1971).

41. In fiscal year 1971, the Washington Department of Motor Vehicles suspended the licenses of 1,040 persons for non-payment of judgments under WASH. REV. CODE § 46.29.330 (1970). Letter from Edward H. Clancy, Manager, Division of Financial Responsibility, Department of Motor Vehicles, State of Washington, October 19, 1971, on file with the *Washington Law Review*. Since statistics as to the number of judgment debtors who satisfy the judgments against them and regain their driver's licenses seem to be unavailable, it is impossible to determine how much of an effect *Perez* will have.

The effectiveness of the present financial responsibility acts in financially protecting traffic victims may be seriously questioned. It is estimated that between ten and fifteen percent of the drivers in financial responsibility states do not carry liability insurance. R. KEETON & J. O'CONNELL, PROTECTION FOR THE TRAFFIC VICTIM: THE KEETON-O'CONNELL PLAN AND ITS CRITICS 117 (1967). The results of a 1967 survey by the Washington Department of Motor Vehicles show that about twelve percent of Washington registered passenger cars are uninsured. WASHINGTON DEP'T OF MOTOR VEHICLES, STUDY TO DETERMINE THE PERCENTAGE OF INSURED PASSENGER VEHICLES (1968). Even if the accident victim is fortunate enough to be injured by an insured driver and is able to secure a judgment against him, financial responsibility laws "protect" the victim only for a limited amount of damages. The judgment debtor is deemed to have satisfied the judgment against him when he has paid the victim a minimum amount on the judgment. Among the various states, the minimum amount required to satisfy a judgment for bodily injury to or death of one person, ranges from $5,000 to $20,000. The majority of states have adopted the $10,000 figure. WASH. REV. CODE § 46.29.390(1)(a) (1970) provides, *inter alia*, for a minimum of $15,000 in the event "of bodily injury to or death of one person as the result of any one accident. . . ." Although the minimum amount required to satisfy the judgment may be sufficient actually to pay the judgment in the majority of cases, five, ten, or

There are constitutionally valid measures which the state legislatures and Congress can take toward financial protection of traffic victims which will fill whatever gap *Perez* leaves in financial protection and, in fact, will better protect traffic victims than the present financial responsibility laws. Two of the measures available to the states are the establishment of compulsory automobile liability insurance [42] and no-fault insurance.[43] Compulsory insurance acts give more protection to accident victims than financial responsibility laws, since fewer drivers are uninsured in compulsory insurance states.[44] A form of no-fault insurance should be adopted if it is decided that all highway victims—negligent "victims" as well as the innocent who are able to obtain judgments—should be given financial protection.[45] Compulsory liability insurance or no-fault insurance which has only a limited amount of coverage would afford better financial protection to injured

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even twenty thousand dollars will not compensate the accident victim who received a permanent serious injury. To this victim, the present financial responsibility laws are of little consequence.

The innocent victim is often not protected even to the extent of the statutory minimum. One such situation is where the victim is injured by a hit-and-run driver. Another situation is where the negligent driver carries no liability insurance and has insufficient funds to pay any judgment which may be entered against him. Various states have used devices to try to close the gap in insurance coverage. A few states have created unsatisfied judgment funds from which victims are paid when their judgments go unsatisfied. R. KEETON & J. O'CONNELL, *supra* at 116. Another device is the requirement that insurance companies offer uninsured motorist coverage to motorists who buy negligence liability insurance. *Id. See, e.g.*, WASH. REV. CODE § 48.22.030 (Supp. 1971).

42. A few states now have compulsory automobile liability insurance laws. R. KEETON & J. O'CONNELL, *supra* note 41, at 251. An argument may be made that compulsory liability insurance violates the equal protection clause, since indigent drivers may be financially unable to purchase the insurance. But recently the Supreme Court stated that the fourteenth amendment would not be violated by a statute which bars the issuance of licenses to all drivers who do not have liability insurance or do not post security. Bell v. Burson, 402 U.S. 535, 539 (1971) (dictum). The traditional equal protection test is "whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective." Turner v. Fouche, 396 U.S. 346, 362 (1970). Compulsory liability insurance acts should be upheld because the distinction between the affluent and the indigent driver rests on grounds relevant to the achievement of a valid state objective—the financial protection of accident victims.

43. In 1970 Massachusetts enacted a no-fault insurance act. MASS. GEN. LAWS ANN. ch. 90, § 34A (Supp. 1970). In 1971 the Illinois legislature passed a no-fault insurance act. ILL. ANN. STAT. ch. 73, § 1065.150 (Smith Hurd 1971). *See* Ring, *Illinois No-Fault Plan—Legalized Consumer Fraud,* TRIAL, Nov.-Dec. 1971, at 34 (criticizes the Illinois legislation).

44. It is estimated that over 99% of the drivers in Massachusetts are insured. R. KEETON & J. O'CONNELL, PROTECTION FOR THE TRAFFIC VICTIM: THE KEETON-O'CONNELL PLAN AND ITS CRITICS 117 (1967).

45. R. KEETON, COMPENSATION SYSTEMS: THE SEARCH FOR A VIABLE ALTERNATIVE TO NEGLIGENCE LAW 11-23 (1969). Keeton summarizes the various proposals for reform concerning compensation of persons injured in automobile accidents.

persons than the present financial responsibility laws, since more persons would be insured, and with no-fault insurance proof of negligence would not be required in order to recover. Thus, either of these measures would fill whatever void *Perez* creates in providing financial protection to traffic victims. Yet to protect effectively the seriously injured victim, the amount of insurance coverage must be virtually unlimited. This would be a great improvement over present financial responsibility laws.

One measure that Congress can take which will put the states in approximately the same position they were in before *Perez* is to amend the Bankruptcy Act to provide that motor vehicle tort liability is not discharged in bankruptcy.[46] An alternative measure which Congress can take is to establish national no-fault insurance, which would greatly increase the amount of financial protection to traffic victims.[47]

After *Perez*, the states can no longer deny a motorist his driver's license until he pays a motor vehicle tort judgment which has been discharged in bankruptcy. The decision will have some effect on the purposes of financial responsibility laws—safety and financial protection of traffic victims. Regardless of how great the effect will be, the decision does not leave the states helpless to provide for the safety and financial protection of their citizens. Several constitutionally valid measures are available to the state legislatures and the Congress to fulfill the purposes of financial responsibility acts. These measures should be pursued, not only to fill the void created by *Perez*, but also because they will be more effective than present financial responsibility laws in promoting safety and in providing financial protection to traffic victims.

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46. As early as 1932, then Professor William O. Douglas suggested the possibility of amending the Bankruptcy Act so that owners and operators of automobiles are not discharged from such "judgments as would be covered by, say, a standard $5,000-$10,000 liability policy." Douglas, *Some Functional Aspects of Bankruptcy*, 41 YALE L.J. 329, 343 (1932).

47. Bills relating to no-fault insurance have been introduced in Congress and hearings have been held on the subject. *See, e.g., Hearings on H. Con. Res. 241, H.R. 4994, H.R. 3968, and H.R. 3970 Before the Subcomm. on Commerce and Finance of the House Committee on Interstate and Foreign Commerce*, 92d Cong., 1st Sess. (1971). For a discussion and criticism of one of the bills which have been introduced see Spangenberg, *The Federal No-Fault Plan—Benefits for Sale*, TRIAL, Nov.-Dec. 1971, at 30.