DEBTOR/CREDITOR ISSUES WITH BASIC INCOME GUARANTEES

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With his pledge to give every American $1,000 per month, 2020 Democratic presidential candidate Andrew Yang catapulted the idea of a universal basic income into the national conversation. The United States' response to the COVID-19 pandemic, which includes direct cash payments to Americans, makes plain that basic income is technically feasible and politically tenable. However, looking at the design of direct cash payments proposals through the lens of debtor-creditor law reveals that many basic income guarantee proposals could leave Americans worse off, unless recipients are protected from debt collectors and bankruptcy issues are accounted for. This Article also has important implications for any program of direct cash payments to Americans, including additional COVID-19 pandemic relief checks.

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*Associate Professor of Law, Howard University School of Law. This Article took me an unusually long time to complete, and so I have many people to thank for their help. For their comments, ideas, and suggestions, I owe a debt to Christopher G. Bradley, Miranda Perry Fleischer, Pamela Foohey, Daniel Hemel, Benjamin M. Leff, and Christopher K. Odinet. I also received very helpful feedback from attendees at the following conferences: Georgia State University School of Law's Organizing, Deploying & Regulating Capital in the U.S.; Law & Society; and SEALs. I learned a lot about basic income research and experiments at the New Directions in Basic Income Workshop at the University of Michigan. Research assistance was provided by Eri Aguilar, Victoria Capatosto, Anthony Cherry, Diesha Cole, Elizabeth Gabaud, Alexander Scott McGee, Brooke Radford, and Emony Robertson. As always, this Article would not have been possible without the support and encouragement of my wife, Morgan Hall, and my agreeable children, Ellyn and Henry. Research support was provided by Howard University School of Law.

INTRODUCTION

COVID-19 has caused massive economic dislocation across both the United States and the world.[1] With millions of people out of work, governments across the world have tried a variety of measures to ensure people's basic needs remain met. These measures include direct cash payments to individuals.[2] As a result, many Americans have received direct cash payments from the government several times. Additional direct cash payments may be forthcoming.[3]

Many people, including then-Senator (now Vice President) Kamala Harris, have proposed making regular cash payments for the duration of the pandemic.[4] These payments bring to mind basic income guarantee ("BIG") proposals.[5] Most recently, Andrew Yang brought the idea of a basic income into the national conversation when he sought the nomination to be the Democratic presidential candidate.[6] But the idea has a very long history.[7]

At one point, there was even a robust coalition of Democrats and Republicans pushing for a basic income in the United States. The Family Assistance Plan (the "FAP") was introduced by President Richard Nixon and passed the House by a wide margin. While it was defeated in the Senate, some credit that defeat to the FAP being

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1 *See* Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Debt Collection Pandemic*, 11 CAL. L. REV. ONLINE 222, 224 (2020) [hereinafter Foohey et al., *Debt Collection*] (detailing some of the economic dislocation caused by COVID-19 and arguing, "[t]he coronavirus pandemic is set to metastasize into a debt collection pandemic").

2 As part of the CARES Act, many Americans received $1,200 "Economic Impact Payments" for each eligible adult, and $500 for each eligible child. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 2201, 134 Stat. 281, 335 (2020) (codified at 26 U.S.C.A § 6428(a) (West 2020)). A second round of direct cash payments of $600 per eligible adult and child was authorized in late December 2020. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 272 (codified at 26 U.S.C.A. § 6428A). As of March 2021, many Americans received a third cash payment of $1,400 per eligible adult. *See* American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9601 (codified at 26 U.S.C.A. § 6428B).

3 Lorie Konish, *These Senators Are Calling for Continued Financial Relief Through the Economic Recovery for American Families*, CNBC (Mar. 2, 2021, 11:44PM), https://www.cnbc.com/2021/03/02/senators-call-for-recurring-stimulus-checks-unemployment-extensions.html.

4 *See* Jacob Pramuk, *Kamala Harris, Bernie Sanders and Ed Markey Want to Give Americans $2,000 a Month During Coronavirus Crisis*, CNBC (May 8, 2020, 11:56 AM), https://www.cnbc.com/2020/05/08/coronavirus-kamala-harris-bernie-sanders-propose-2000-monthly-payments.html.

5 *See infra* Section I.A. BIGs are very similar to Universal Basic Income proposals, with the primary difference being the lack of universality in the former. *See infra* discussion accompanying notes 21–29.

6 *See* Ishaan Tharoor, *The Pandemic Strengthens the Case for Universal Basic Income*, WASH. POST (Apr. 10, 2020, 12:00 AM), https://www.washingtonpost.com/world/2020/04/09/pandemic-strengthens-case-universal-basic-income/ (describing how a universal basic income proposal was a key part of Andrew Yang's 2020 presidential campaign); *see also The Freedom Dividend, Defined*, YANG2020 [hereinafter YANG2020], https://2020.yang2020.com/what-is-freedom-dividend-faq/ (last visited Apr. 5, 2021).

7 *See infra* Section I.A. (outlining the history and basics of a basic income).

insufficiently bold.[8] Many basic income scholars note the unusualness of a policy that brings both sides of the political aisle together.[9]

Although BIGs have a surprising coalition of supporters, an important set of issues has gone largely undiscussed, and these issues expose just how fragile any political coalition to pass a BIG in the United States may be. These issues lie at the intersection of public assistance and debtor-creditor laws, and involve design questions, such as whether BIG benefits may be garnished by creditors, whether they may be assigned by beneficiaries, and whether these answers should change if a recipient enters bankruptcy.[10] Many of the programs that make up America's social safety net—including the Supplemental Nutrition Assistance Program ("SNAP") (which provides food stamps), Temporary Assistance to Needy Families ("TANF") (which replaced welfare), and Section 8 housing vouchers—are not available to a recipient's creditors, either by way of assignment or garnishment.[11] That is, if a SNAP beneficiary injures another person in a car crash, or breaches their contract with a creditor, any judgment against the SNAP beneficiary will not be able to reach their

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8 *See* Michael Tanner, *The Pros and Cons of a Guaranteed National Income*, CATO INST. (May 12, 2015), https://object.cato.org/sites/cato.org/files/pubs/pdf/pa773.pdf (describing, briefly, the FAP and why it failed to become law); *see also* Yannick Vanderborght & Philippe Van Parijs, *History of Basic Income*, BASIC INCOME EARTH NETWORK, http://basicincome.org/basic-income/history/ (last visited Mar. 29, 2021) (describing the FAP and its purpose); *Welfare Reform: Disappointment for the Administration*, 26 CQ ALMANAC 1030, 1032 (1970), https://library.cqpress.com/cqalmanac/document.php?id=cqal70-1292329&type=hitlist&num=0 ("President Nixon's major welfare reform proposal—the Family Assistance Plan—died in the Senate in 1970 after it was caught in controversy between liberals and conservatives on the Senate Finance Committee.").

9 *See* Robert Samuels, *Proposal to send checks to Americans reignites the calls for universal income*, WASH. POST (Mar. 20, 2020, 3:14 PM), https://www.washingtonpost.com/politics/proposal-to-send-checks-to-americans-reignites-calls-for-universal-income/2020/03/20/887822e2-6ab7-11ea-8012-fdc44a41cb4f_story.html (explaining the unusual bipartisan support for this policy); *see also* Caitlin Dewey, *Momentum for Basic Income Builds as Pandemic Drags On*, PEW CHARITABLE TRS. (Sept. 17, 2020), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/17/momentum-for-basic-income-builds-as-pandemic-drags-on (describing the Mayors for Guaranteed Income Coalition, which consists of over 25 mayors from across the country and has financial support from figures like Twitter CEO Jack Dorsey).

10 A few authors have at least touched on debtor-creditor issues in the context of BIGs. *See* Bruce Ackerman & Anne Alstott, *Why Stakeholding?*, 32 POL. & SOC'Y 41, 46–47 (2004) [hereinafter Ackerman & Alstott, *Why Stakeholding?*] (describing the insulation of basic income from creditors as a "distasteful spectacle"); *see also* Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 62 (2020) [hereinafter Fleischer & Hemel, *Architecture*]; FRANCESCA BASTAGLI, JESSICA HAGEN-ZANKER, LUKE HARMAN, VALENTINA BARCA, GEORGINA STURGE & TANJA SCHMIDT WITH LUCA PELLERANO, OVERSEAS DEV. INST., CASH TRANSFERS: WHAT DOES THE EVIDENCE SAY? 149–66 (2016) (detailing the impact cash transfers have on savings, investment, and production). *Cf.* Pamela Foohey, Dalié Jiménez & Chris Odinet, *Time Is Running Out to Protect Americans' Relief Payments from Debt Collectors*, HARV. L. REV. BLOG (Apr. 7, 2020) [hereinafter Foohey et al., *Time*], https://blog.harvardlawreview.org/time-is-running-out-to-protect-americans-relief-payments-from-debt-collectors/ ("[N]othing in the CARES Act directly protects the relief payments from being garnished by private debt collectors.").

11 *Cf. Protecting Social Security and other Federal Benefits in Bank Accounts from Garnishments by Debt Collectors*, NAT'L CONSUMER L. CTR. (Nov. 2013), https://www.nclc.org/images/pdf/older_consumers/consumer_concerns/cc_protecting_fed_benefits.pdf (explaining what types of state and federal benefits are exempt from garnishment). For rhetorical simplicity, this Article will not generally distinguish between attachment and garnishment and will generally refer to both simply as garnishment.

SNAP benefits.[12] Similar protections are embedded in many other public assistance benefit programs.[13]

By contrast, benefits paid in cash (rather than in-kind) are generally not protected from the reach of creditors.[14] For example, Earned Income Tax Credit ("EITC") benefits are generally available to creditors.[15] Moreover, even if benefits cannot be intercepted by creditors, once benefits are converted into cash, they often lose any protected status they may have enjoyed.[16] So, while many BIG proponents propose to pay for a BIG by eliminating many (or all) of the programs that currently make up America's social safety net,[17] this could leave the poorest and most vulnerable in our society worse off, unless the protections currently offered to public assistance recipients are grafted onto a BIG.

This Article contributes to the basic income literature by offering insights from debtor-creditor law, including consumer finance, debt collection, and bankruptcy, that are relevant to how a BIG ought to be designed. In turn, these under-appreciated design issues expose the fragility of any potential political coalition to enact a BIG in America. These issues are relevant to any potential BIG that might be enacted and to any future pandemic relief. The remainder of this Article proceeds as follows. Part I provides the basics on basic income. It addresses questions such as what is a basic income and what are the goals of a basic income. It also discusses some active (and past) experiments with basic income guarantees. In Part II, this Article discusses the features of the public assistance programs many have suggested eliminating to fund a BIG, including SNAP, Social Security, and the EITC. Finally, Part III discusses the intersection of public assistance programs and debtor-creditor law to highlight issues that will arise if the non-assignability and anti-garnishment protections contained in many public assistance programs are not grafted onto a BIG. These

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12 *See infra* discussion accompanying notes 143–49.

13 *See, e.g.*, 42 U.S.C. § 407 (2018) (exempting Social Security benefits from garnishment); 38 U.S.C. § 5301 (exempting veterans' benefits); 45 U.S.C. § 231m(a) (exempting railroad retirement benefits); 20 C.F.R. § 416.533 (1993) (exempting supplemental security income benefits). For example, "section 282(2) of NY's Debtor and Creditor Law exempts a debtor-tenant's interest in a rent-stabilized lease." Santiago-Monteverde v. Pereira (*In re* Santiago-Monteverde), 22 N.E.3d 1012, 1013, 24 N.Y.3d 283, 287 (2014) ("When the rent-stabilization regulatory scheme is considered against the backdrop of the crucial role that it plays in the lives of New York residents, and the purpose and effect of the program, it is evident that a tenant's rights under a rent-stabilized lease are a local public assistance benefit [and are, therefore, protected from creditors.]").

14 In bankruptcy, however, debtors can exempt a limited amount of cash. *See* 11 U.S.C.A. § 522(d)(5) (West 2019) (allowing a debtor to exempt at least $1,325). Individual states may choose to opt into the federal exemptions, provide their own, or allow debtors to choose between the federal and state exemptions. *See* 11 U.S.C. § 522(b)(1).

15 *See* Jillian Berman, *The 'Morally Suspect' Way the Government Collects Student Loans During Tax Season*, MARKETWATCH (Mar. 31, 2018, 4:07 PM), https://www.marketwatch.com/story/the-morally-suspect-way-the-government-collects-student-loans-2018-03-15 ("The National Consumer Law Center (NCLC) released a report chronicling the experiences of borrowers who had their EITC seized to pay back a student loan.").

16 Exempt assets become non-exempt once they are "withheld from income, paid to federal or state taxing authorities, and subsequently paid to the Debtors in the form of a tax refund." *In re* Crutch, 565 B.R. 36, 39, 42 (Bankr. E.D.N.Y. 2017).

17 *See infra* discussion accompanying notes 112–16.

issues include eliminating an income floor for the most vulnerable Americans and increasing debt collection activities, which may trigger a greater need for consumer bankruptcy protection. Part III also considers whether a basic income should be available to creditors in the form of voluntary benefit assignments and the involuntary garnishment of BIG benefits. It concludes the former should be allowed, while the latter should not.

I. BASIC INCOME GUARANTEE PROPOSALS

A. The Basics of a Basic Income

Basic income proposals are quite old, and the popularity of the idea has waxed and waned over the centuries.[18] There is no consensus on what qualifies as a BIG, and it often seems a basic income promises to be all things to all people.[19] There appears to be widespread agreement that any sort of basic income, whether a BIG, a universal basic income ("UBI"), or a negative income tax, must be at least partially paid in cash.[20] One reasonable definition of a UBI is that it is unconditional,[21] long-term, distributed to everyone in a set region, not means-tested, and sufficient to cover a person's minimum living expenses.[22]

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[18] *See* Vanderborght & Van Parijs, *supra* note 8 (describing Johannes Ludovicus Vives, who wrote about the idea in the early 1500s, as "the true father of the idea of a guaranteed minimum income."); Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 26 WASH. & LEE J. C.R. & SOC. JUST. 85, 92 (2019) ("A universal basic income ('UBI') is an old idea that has recently seen increased attention and popularity around the world.").

[19] *See* Vicente Navarro, *Why The Universal Basic Income Is Not The Best Public Intervention To Reduce Poverty or Income Inequality*, SOC. EUR. (May 24, 2016), https://www.socialeurope.eu/why-the-universal-basic-income-is-not-the-best-public-intervention-to-reduce-poverty-or-income-inequality ("There is no uniform interpretation of Universal Basic Income. . . ."); *see also* CHARLES MURRAY, IN OUR HANDS: A PLAN TO REPLACE THE WELFARE STATE 9 (2006) (writing that "[t]he devil was in the details" of a basic income); Leff, *supra* note 18, at 87 ("[T]he broad appeal of UBI can be attributed to the fact that different thinkers envision different UBIs that solve different problems.").

[20] *See, e.g.*, Ari Glogower & Clint Wallace, *Shades of Basic Income* 1 (Ohio State Pub. L., Working Paper No. 443, 2017), https://ssrn.com/abstract=3122146 ("[A] basic income transfers *money* to beneficiaries and not *in-kind* goods or services."); Daniel Hemel, *The Case Against a Universal Basic Income That Isn't*, MEDIUM (July 10, 2016), https://medium.com/whatever-source-derived/the-case-against-a-universal-basic-income-that-isnt-b95cc84e3b24 ("The case for a UBI rests on two premises: (1) low-income individuals (and not just the 'deserving poor') are entitled to some level of state support; (2) at least some of that support should come in cash rather than in kind."); Leff, *supra* note 18, at 103 ("In addition to being regular, a UBI is provided in cash, not 'in kind.'").

[21] *See, e.g.*, J. E. King & John Marangos, *Two Arguments for Basic Income: Thomas Paine (1737-1809) and Thomas Spence (1750-1814)*, 14 HIST. ECON. IDEAS 55, 55 (2006) ("Basic Income is . . . universal and unconditional."); Philippe Van Parijs, *Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income*, 20 PHIL. & PUB. AFFS. 101, 102 (1991) [hereinafter Van Parijs, *Surfers Should be Fed*] ("An unconditional basic income, or, as I shall usually call it, a *basic income*, is a grant paid to every citizen, irrespective of his or her occupational situation and marital status, and irrespective of his or her work performance or availability for work."). This point is not free from contention, though many agree there should be, at most, "minimal conditions for eligibility." *See, e.g.*, Glogower & Wallace, *supra* note 20, at 1.

[22] *See* IOANA MARINESCU, ROOSEVELT INST., NO STRINGS ATTACHED: THE BEHAVIORAL EFFECTS OF U.S. UNCONDITIONAL CASH TRANSFER PROGRAMS 6 (2017), http://rooseveltinstitute.org/no-strings-attached/; *see*

By contrast, a BIG might not be universal because, for example, it might be means-tested or otherwise conditioned.[23] BIG proponents have differing views on all of these issues. For example, some assert a BIG should be given to every person, regardless of age, that lives within a particular geographic boundary.[24] Others think children should be ineligible.[25] Some think there should be a work requirement, but others believe fewer conditions are better.[26] Some think it should be paid only to citizens, but others to all residents.[27] Still, others argue for limiting a BIG to the poor,[28] not only because they need the money more than the well-to-do, but also because it limits the cost of a BIG.[29]

Second, a common issue that arises with a BIG is the size of the payments. Proposals for a BIG of approximately $1,000 per month are common.[30] For a single

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also Navarro, *supra* note 19 ("The simplest definition may be that UBI is a public program in which the state . . . transfers to everyone the same amount of money. . . ."); Glogower & Wallace, *supra* note 20, at 1 (defining a BIG as an "unconditional cash transfer[] from a government to its citizens"); Leff, *supra* note 18, at 92 ("(i) A UBI has no work requirement; (ii) a UBI is not 'means tested'; (iii) a UBI is paid on an individual basis; (iv) a UBI is a cash payment made at regular intervals throughout the year; and (v) a UBI is large enough to make a significant difference in the lives of the poor.").

[23] *See, e.g.*, Glogower & Wallace, *supra* note 20, at 1 (noting "minimal conditions" tied to the grant of basic income are acceptable).

[24] *See, e.g.*, MARINESCU, *supra* note 22, at 6.

[25] *Compare* Glogower & Wallace, *supra* note 20, at 1 ("[B]asic income is generally awarded to all designated beneficiaries (usually all adult citizens of the government entity making the transfer). . . ."), *and* King & Marangos, *supra* note 21, at 55 ("Basic Income, Citizen's Income or Universal Basic Income may be defined as an income paid by a government, at a uniform level and at regular intervals, to each adult member of society."), *and* ANDY STERN WITH LEE KRAVITZ, RAISING THE FLOOR: HOW A UNIVERSAL BASIC INCOME CAN RENEW OUR ECONOMY AND REBUILD THE AMERICAN DREAM 201 (2016) (proposing UBI eligibility be restricted to "all adults between the ages of eighteen and sixty-four and for all seniors who do not receive at least $1,000 per month in Social Security payments"), *with* Leff, *supra* note 18, at 102 ("Most UBI supporters argue that the additional cost of children should be addressed by granting each child his or her own UBI (though one smaller than an adult) to reflect the marginal cost of raising a child (and to affirm the personhood of children).").

[26] *Compare* Van Parijs, *Surfers Should be Fed*, *supra* note 21, at 102 (calling for a UBI to be "paid to every citizen, irrespective of his or her occupational situation and marital status, and irrespective of his or her work performance or availability for work"), *and* King & Marangos, *supra* note 21, at 55 ("The grant is paid, and its level is fixed, irrespective of whether the person is rich or poor, lives alone or with others, is willing to work or not." (internal quotation omitted)), *with* Vanderborght & Van Parijs, *supra* note 8 (explaining Johannes Ludovicus Vives, who first floated the idea of a guaranteed minimum income in the 1500s, endorsed a work requirement), *and* CHRIS HUGHES, FAIR SHOT: RETHINKING INEQUALITY AND HOW WE EARN 95 (2018) (arguing for a minimum income for "working people"). *See also* Leff, *supra* note 18, at 90–91 (proposing a UBI-like expansion of the EITC as being potentially more politically palatable, even though Leff "believe[s] that a UBI *without* a work requirement is superior").

[27] *See* Philippe Van Parijs, *A Basic Income for All*, BOS. REV., Oct.–Nov. 2000 [hereinafter Van Parijs, *Basic Income*], https://bostonreview.net/forum/ubi-van-parijs ("Ackerman and Alstott propose that, upon reaching age 21, every citizen, rich or poor, should be awarded a lump-sum stake of $80,000."); *see also* Van Parijs, *Surfers Should be Fed*, *supra* note 21, at 102.

[28] *See, e.g.*, Navarro, *supra* note 19; *see also* HUGHES, *supra* note 26, at 95 (arguing to limit payments to families making less than $50,000 per year).

[29] *See* Navarro, *supra* note 19. *But see* Leff, *supra* note 18, at 97–98 (arguing for "a UBI that is available to all to avoid the disincentives associated with phasing it out").

[30] *See, e.g.*, STERN WITH KRAVITZ, *supra* note 25, at 201 (calling for a $1,000 per month basic income payment); Nathan Heller, *Who Really Stands to Win from Universal Basic Income?*, NEW YORKER (July 2, 2018), https://www.newyorker.com/magazine/2018/07/09/who-really-stands-to-win-from-universal-basic-

person, $1,000 per month is approximately a poverty level benefit.[31] But, there are a lot of alternative proposals as well, and $500 per month is another commonly proposed amount.[32] Some other proposals are slightly more generous, suggesting payments keyed to a percentage of the median income instead.[33] Still, others focus less on satisfying a person's basic needs and instead consider "how much is currently spent on social assistance programs."[34] Similarly, Glogower and Wallace argue for a BIG based simply on converting all existing in-kind public assistance programs into cash payments.[35] Finally, others advocate for a one-time cash payment instead of a regular (often monthly) income.[36]

B. Experiments

BIG proposals are commonly critiqued as being insufficiently thought-out or tested. For example, one commentator wrote, "[t]here are a handful of past and ongoing experiments with UBI. Unfortunately, the experiments have been flawed or are too small to effectively prove that UBI could live up to some of its proponents' claims."[37] It is true that no experiment can effectively demonstrate whether a BIG can live up to all of the hype. One area of profound uncertainty is how deeply a BIG could affect the U.S. economy and therefore, how to appropriately estimate the dynamic effects of a BIG on a range of issues, including its net cost. But there have

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income ("In the U.S., its supporters generally propose a figure somewhere around a thousand dollars a month: enough to live on—*somewhere* in America, at least—but not nearly enough to live on well.").

31 *See* STERN WITH KRAVITZ, *supra* note 25, at 201 (noting "an income floor of $12,000 per year . . . is sufficient for most Americans to maintain a minimum standard of living" based on "the 2015 Federal Guidelines for Poverty"); *see also* Leff, *supra* note 18, at 139 (noting $1,000 per month "corresponds pretty nicely to the official poverty line for a single adult"). For a criticism of how the federal poverty level is calculated, see Matthew Bruckner, Brook Gotberg, Dalié Jiménez, & Chrystin D. Ondersma, *A No-Contest Discharge For Uncollectible Student Loans*, 91 COLO. L. REV. 183, 209–10 (2020).

32 *See* Miranda Perry Fleischer & Daniel Hemel, *Atlas Nods: The Libertarian Case for a Basic Income*, 2017 WIS. L. REV. 1189, 1259 [hereinafter Fleischer & Hemel, *Libertarian*]; *see also* Almaz Zelleke, *OPINION: The Liberal Case for a Basic Income*, BASIC INCOME EARTH NETWORK (Jan. 27, 2014), http://basicincome.org/news/2014/01/opinion-the-liberal-case-for-a-basic-income/ (calling for a "universal, unconditional, individual, and untaxed" cash grant from the state to all individuals of at least $6,000 per person); *see also* HUGHES, *supra* note 26, at 95 (arguing for a $500 per month payment for certain families).

33 *See* Andrew Flowers, *What Would Happen If We Just Gave People Money?*, FIVETHIRTYEIGHT (Apr. 25, 2016), http://fivethirtyeight.com/features/universal-basic-income/ (discussing "a target [for UBI payments] between the current poverty level and as high as 60 percent of the median income").

34 *Id.*; *cf.* MURRAY, *supra* note 29, at 21 (focusing on the projected costs of the current array of public assistance programs as compared to the cost of a $10,000 per person, per year basic income).

35 Glogower & Wallace, *supra* note 20, at 14 ("For a taxpayer who receives cash welfare and in-kind benefits such as health care through Medicaid or Section 8 housing or food stamps (SNAP), the demogrant would approximate the cash value of all benefits."). In 2002 dollars, Charles Murray estimated this would amount to a cash grant "of about $6,900 for every man and woman in the United States age twenty-one or older." MURRAY, *supra* note 19, at 15.

36 *See* BRUCE ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY 4 (1999); Van Parijs, *Basic Income*, *supra* note 27 ("[E]very citizen, rich or poor, should be awarded a lump-sum stake of $80,000.").

37 Rachel Minogue, *Five Problems with Universal Basic Income*, THIRD WAY (May 24, 2018), https://www.thirdway.org/memo/five-problems-with-universal-basic-income.

been scores of BIG or BIG-like experiments that help establish some broad parameters of what a BIG would look like and what effects it would have.

This Subsection discusses three BIG or BIG-like experiments, and one BIG proposal, three of which either occurred or are ongoing in the United States.[38] First, there were a number of basic income experiments in the United States and Canada in the 1960s and 1970s.[39] Second, Alaska has run a BIG-like experiment for almost forty years, although the amount is not sufficient to meet Alaskans' "basic" needs.[40] Third, a BIG-like experiment (a child credit) in Mexico is discussed because researchers there collected some data on the intersection of credit access and basic income.[41] Finally, a deeper look at the BIG proposal in the United States that almost came to be the law—the FAP—is provided.[42]

In the 1960s and 1970s, the United States and Canada ran a series of basic income experiments to test if it was feasible to "seriously reduce or even eliminate poverty" through a guaranteed income.[43] These programs provided income support to recipients in the United States and Canada, including residents of Colorado, Indiana, Iowa, New Jersey, North Carolina, Pennsylvania, Washington, Dauphin, and Winnipeg.[44] Income support was provided at a variety of levels that were often keyed to the official poverty line.[45] At the time, the poverty line for a family of four was approximately $3,800.[46] Most notably for this Article, there did not seem to be any intent to study the relationship between BIG payments, credit access, and debt collection activities.[47]

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[38] There are many other experiments, including ongoing basic income programs among Native American tribes, which are often funded by revenue from casino operations. *See infra* note 115.

[39] *See generally* Karl Widerquist, *A Failure to Communicate: What (If Anything) Can We Learn from the Negative Income Tax Experiments?*, 34 J. SOCIO-ECONOMICS 49, 49 (2005) [hereinafter Widerquist, *Failure to Communicate*].

[40] *See infra* notes 48–54 and accompany text.

[41] *See infra* notes 59–71 and accompany text.

[42] *See infra* notes 74–83 and accompany text.

[43] Widerquist, *Failure to Communicate*, *supra* note 39, at 54.

[44] *See id.* at 53 tbl.1, 54 ("The U.S. experiments all defined the guarantee level relative to the poverty line, testing nine different guarantee levels: 0.5 (50% of the poverty level) was tested in the New Jersey and Rural Income Maintenance Experiments; 0.75 was tested in all four of the U.S. experiments; 1.0 (just enough to eliminate official poverty) was tested in all of the U.S. experiments except SIME/DIME; 1.25 was tested in only in the New Jersey Experiment, and 1.26 and 1.48 were tested only in SIME/DIME. Mincome, which defined its guarantee level in Canadian dollars rather than relative to the poverty level, tested guarantee levels of C$3800, C$4800, and C$5800 per year. These levels were near the poverty line at the time."); *see also* MURRAY, *supra* note 19, at 8–9 (discussing the negative income tax experiments in the United States during the 1970s and claiming the results were "disappointing" because of the substantial "work disincentives" and the increased rate of "[m]arital breakup").

[45] Widerquist, *Failure to Communicate*, *supra* note 39, at 54.

[46] *See id.* at 54; *see also* A GUARANTEED ANNUAL INCOME: EVIDENCE FROM A SOCIAL EXPERIMENT 6 (Philip K. Robins et al. eds., 1980); Robert G. Spiegelman & K. E. Yaeger, *The Seattle and Denver Income Maintenance Experiments: Overview*, 15 J. HUMAN RES. 463, 468 (1980).

[47] For example, Evelyn Forget, one of the researchers on the Canadian "Mincome" Experiment, personally expressed to me her wish that they had studied this issue earlier. Forget had intended to collect some relevant data with its new Ontario basic income experiment, but that proposed experiment did not proceed. Conversation with Evelyn Forget, Professor, Univ. of Manitoba, at the New Directions in Basic Income Workshop at the University of Michigan (May 20, 2018).

Since the early 1980s, Alaska has had a basic income-like program primarily funded by oil revenue.[48] The rationales for these payments are varied and overlapping, but include "anti-paternalism, welfare substitution, [and] an owner state ethic."[49] In addition, some justify the payments as an entitlement based on shared ownership of state land, which is exploited to produce oil; in turn, these payments feed into the Alaska Permanent Dividend Fund.[50] The idea of shared ownership of state resources is, in part, why these payments are labeled as a "Dividend."[51] Although the payments vary, they are typically about $1,100 per person, per *year* (children included).[52] Thus, the payments are not sufficient to support an Alaskan's basic needs; but they are unconditional, not means-tested, universal, and expected to continue for the long-term.[53] Thus, they meet almost all the criteria to be called a BIG.[54]

Unlike some of the other BIG or BIG-like programs discussed, Alaska has wrestled with whether to allow these payments to be assigned and whether to exempt them from debt collectors. Although payments were freely assignable when the program began, in 1992, "the legislature amended the statute to prohibit individuals from assigning Dividends (except to government agencies)."[55] In addition, the legislature exempted twenty percent of Dividend payments from debt collection, both

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[48] *See* Scott Goldsmith, The Alaska Permanent Fund Dividend: An Experiment in Wealth Distribution 1 (Sept. 2002) (unpublished manuscript) (on file with Basic Income Earth Network) [hereinafter Goldsmith, Experiment], https://basicincome.org/bien/pdf/2002Goldsmith.pdf ("For 20 years every Alaska citizen has received an equal share annual Dividend distribution from the Alaska Permanent Fund, capitalized by a portion of the revenues from publicly owned oil production."); *see also* Scott Goldsmith, The Alaska Permanent Fund Dividend: A Case Study in Implementation of a Basic Income Guarantee 1, 4–5 (July 2010) (unpublished manuscript) (on file with the University of Alaska Anchorage Institute of Social and Economic Research) [hereinafter Goldsmith, Case Study], http://www.iser.uaa.alaska.edu/Publications/bien_xiii_ak_pfd_lessons.pdf; Eli Kozminsky, *Children and Alaska's Permanent Fund Dividend: Reasons for Rethinking Parental Duty*, 34 ALASKA L. REV. 85, 86 (2017).

[49] Kozminsky, *supra* note 48, at 90.

[50] *See* Goldsmith, Experiment, *supra* note 48, at 19, 23.

[51] *See id.* at 23; Kozminsky, *supra* note 48, at 89.

[52] *See* Christopher L. Griffin, Jr., *The Alaska Permanent Fund Dividend and Membership in the State's Political Community*, 29 ALASKA L. REV. 79, 79 (2012) ("Alaskans have received on average $1,100 per year between 1982 and 2010 from the Permanent Fund Dividend (PFD)."); ALASKA DEP'T OF REVENUE, PERMANENT FUND DIVIDEND DIV., 2015 ANNUAL REPORT 37 (2015), https://perma.cc/VG5G-9QQ3 (showing Dividends totaling $39,099.41 per person over a thirty-four-year period, averaging roughly $1,149.98); *see also* Kozminsky, *supra* note 48, at 91 ("In 2015, more than one in four valid Dividend applicants was a child under the age of eighteen.").

[53] *See* Griffin, Jr., *supra* note 52, at 81 (stating "the program is almost completely universal in coverage," thus applying to almost all Alaskans).

[54] *See supra* notes 21–22 and accompanying text.

[55] Kozminsky, *supra* note 48, at 91 (citing ALASKA STAT. § 43.23.069(a)–(b) (2015)). *But see* Griffin, Jr., *supra* note 52, at 81 (claiming, wrongly in my view, "[d]ividend payments carry no strings; they are disbursed on a means-independent basis, and the state takes no stance on how residents spend the money").

inside and outside of a bankruptcy proceeding.[56] Also, the payments supplement, rather than replace, other public assistance programs.[57]

Since 1997, Mexico has provided parents with conditional cash and non-cash grants through a program called Prospera.[58] The program covers almost twenty percent of the population.[59] The program's primary purpose is poverty alleviation.[60] Payments are conditional on parents investing in their children's human capital by, for example, ensuring their children attend school,[61] obtaining preventative medical care, and attending health education seminars.[62] Additionally, benefits are only available to poor families.[63] The payments replace other public assistance programs because Prospera is intended to consolidate various public assistance programs.[64]

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[56] *See* Kozminsky, *supra* note 48, at 91 (explaining "claims against an individual's Dividend can be made directly to the Permanent Fund Dividend Division," but twenty percent of recipients' Dividends are exempt from debt collection, subject to certain exceptions).

[57] *Cf.* MARINESCU, *supra* note 22, at 20 ("[T]he dividend payments are not financed by taxes or the reduction in spending on existing programs.").

[58] *See* Tanner, *supra* note 8, at 6; *see also* Editorial, *Paying for Better Parenting*, N.Y. TIMES (Oct. 17, 2006), https://www.nytimes.com/2006/10/17/opinion/17tues4.html; *see also* Arturo Aguilar, Cristina Barnard & Giacomo De Giorgi, *Long-term Effects of PROSPERA on Welfare* 2 (World Bank Grp., Working Paper No. 9002, 2019) (noting the Prospera program is an outgrowth of prior programming with different names, including first Progresa and then Oportunidades).

[59] *See* Tanner, *supra* note 8, at 6; *see also* Paul J. Gertler, Sebastian Martinez & Marta Rubio, *Investing Cash Transfers to Raise Long-Term Living Standards*, 4 AM. ECON. J. 164, 166 (2012) (noting the program is one of the largest in the world, with approximately 5,800,000 beneficiary households receiving distributions in 2010).

[60] *See* Gertler et al., *supra* note 59, at 166 (noting the Mexican government established the program in 1997 primarily "to break the intergenerational transmission of poverty by alleviating current poverty while investing in the human capital of the next generation").

[61] Children must attend school from third to twelfth grade, must attend at least eighty-five percent of classes, and may not repeat a grade more than twice to get the full benefit of the program. *See* Jere R. Behrman, Jorge Gallardo, Susan Parker, Petra Todd & Viviana Velez-Grajales, *Are Conditional Cash Transfers Effective in Urban Areas? Evidence from Mexico*, 20 EDU. ECON. 233, 237 (2012) (noting part of the Oportunidades payments come in the form of conditional educational scholarships).

[62] *See* Gertler et al., *supra* note 59, at 166–68 ("Cash transfers from [Prospera] . . . are conditional on children attending school, family members obtaining preventative care, and attending 'pláticas' or educational talks on health related topics.").

[63] Eligibility is established through a two-step process that attempts to identify chronically poor families that would benefit from Prospera payments. *See, e.g.*, LAURA G. DÁVILA LÁRRAGA, INTER-AMERICAN DEV. BANK, HOW DOES PROSPERA WORK?: BEST PRACTICES IN THE IMPLEMENTATION OF CONDITIONAL CASH TRANSFER PROGRAMS IN LATIN AMERICA AND THE CARIBBEAN 10–15 (2016), https://publications.iadb.org/bitstream/handle/11319/7569/How-does-prospera-work.PDF?sequence=4&isAllowed=y; Gertler et al., *supra* note 59, at 167.

[64] *See* EMANUEL SKOUFIAS, INT'L FOOD POL'Y RSCH. INST. PROGRESA AND ITS IMPACTS ON THE WELFARE OF RURAL HOUSEHOLDS IN MEXICO 8 (2005) ("One additional requirement of the PROGRESA program is that households benefiting from PROGRESA are supposed to stop receiving benefits from other preexisting programs. For example, . . . households receiving PROGRESA benefits should not be receiving similar benefits from programs such as Niños de Solidaridad, Abasto Social de Leche, de Tortilla, and the National Institute of Indigenous People. . . . This requirement of the PROGRESA program represents the short-run objective of the new poverty alleviation strategy of the Mexican government to minimize duplication of benefits to poor families. A longer run objective is to absorb the variety of poverty alleviation programs within one program such as PROGRESA that represents an integrated approach to poverty alleviation.").

Prospera payments are made bimonthly and include both a fixed cash stipend and educational scholarships.[65] Payment amounts are not fixed but vary based on the size of the household and the age of the children in that household.[66] Very generally, payments are meant to boost the average monthly family budget of recipients by approximately twenty percent.[67] Recipients spend almost three-quarters of their benefits on immediate consumption needs and save the remainder.[68]

Unlike many other basic income programs, researchers have investigated Prospera's impact on credit. The evidence is mixed. One researcher found Prospera transfers had no impact on borrowing.[69] Another group of researchers, however, found participation in Prospera decreased the size of loans that families took, even though they found no overall decrease in the volume of such loans.[70]

Finally, a BIG was very nearly enacted in the United States during the Nixon administration.[71] The program's goal was simple; it was a plan to eliminate poverty.[72] Under the FAP, "a family of four with a yearly income less than $1,000 would receive a Federal minimum benefit of $1,600, or a little more than $133.34 a month."[73] In 2021 dollars, this is approximately equivalent to $865 per month, or $10,000 per year.[74] States would have been obligated to ensure families with no income received payments at least equivalent to the poverty level.[75] The FAP was also designed to incentivize work by allowing "a working head of a household [to] retain the first $720 of his earnings and 50 percent of his income above that amount and still receive welfare payments. When income reached $3,920, the Federal assistance would be

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65 *See* Behrman et al., *supra* note 61, at 237 ("The program has two main subsidy components: a health and nutrition subsidy and a schooling subsidy.").

66 If a household has children in elementary or middle school, the maximum amount per month they may receive is 1,825 pesos, but if the children are in high school, they may receive up to 2,945 pesos. Adults in the household can receive approximately 370 pesos. *See* LÁRRAGA, *supra* note 63, at 22–23.

67 SKOUFIAS, *supra* note 64, at x ("The average monthly payment (received every two months) by a beneficiary family amounts to 20 percent of the value of monthly consumption expenditures prior to the initiation of the program.").

68 *See* Gertler et al., *supra* note 59, at 165 ("[F]or each peso transferred, beneficiary households consume 74 cents directly and invest the rest.").

69 *See id.* at 180 (finding no impact on formal loans received by the recipients).

70 *See* Manuela Angelucci, Orazio Attanasio & Vincenzo Di Maro, *The Impact of* Oportunidades *on Consumption, Savings, and Transfers*, 33 FISCAL STUD. 305, 327–30 (2012) (suggesting, in 2003 and 2004, about seventeen percent of benefits were used to repay debts, but found no change in the number of loans asked for).

71 *See* Rutger Bregman, *The bizarre tale of President Nixon and his basic income bill*, DE CORRESPONDENT (May 17, 2016), https://thecorrespondent.com/4503/the-bizarre-tale-of-president-nixon-and-his-basic-income-bill/173117835-c34d6145.

72 *See* ROBERT J. LAPMAN, INST. FOR RESEARCH ON POVERTY, NIXON'S FAMILY ASSISTANCE PLAN: DISCUSSION PAPERS 18 (1969), https://www.irp.wisc.edu/publications/dps/pdfs/dp5769.pdf.

73 *See Welfare Reform: Disappointment for the Administration*, *supra* note 8, at 1032.

74 *See* CPI Inflation Calculator, OFFICIAL DATA, https://www.officialdata.org/us/inflation/1971?amount=1600 (last visited Mar. 25, 2021).

75 *See Welfare Reform: Disappointment for the Administration*, *supra* note 8, at 1033 (stating the FAP "[r]equired states to supplement the Family Assistance payment for families with no income to bring benefits up to the level they had been in the state previously under the AFDC program or to the poverty level, if that was lower").

cut off."[76] The FAP was not unconditional, as it required "adult recipients of the Family Assistance payment, including those with jobs, to register for work or job training, except for mothers of pre-school age children or the mother of a family in which the father registered."[77] It also "[p]rovided that any adult who refused to accept work or training was to lose his share of the Family Assistance benefit paid to his family."[78]

Like Mexico's Prospera but unlike the Alaskan Dividend, the FAP was intended to replace, not supplement, certain other welfare programs.[79] For example, the FAP would have entirely replaced what is now known as TANF.[80] The FAP was expected to cost the federal government approximately $4 billion but was also expected to save the states a substantial sum on their own "skyrocketing welfare costs."[81] While the FAP enjoyed support from President Nixon and easily passed the House, it "died in the Senate in 1970."[82] Liberals argued the payments were too meagre "and its work requirements too harsh, while conservatives argued that the plan was too costly."[83] As addressed in more detail below, the FAP mirrors several current BIG proposals.

There are also a host of recent pilot schemes to investigate the value of a BIG, including an ongoing one in Stockton, California (funded by the Economic Security Project)[84] and another in Finland that concluded in 2019.[85] Plenty of other jurisdictions are also considering a BIG experiment, including the Netherlands, Scotland, and Switzerland.[86] Additionally, several Native American tribes in the United States have BIGs funded by gambling revenue.[87]

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[76] *Id.* at 1032.

[77] *Id.*

[78] *Id.*; *see also* LAPMAN, *supra* note 72, at 20 (describing the "work test").

[79] *See* LAPMAN, *supra* note 72, at 22.

[80] *See Welfare Reform: Disappointment for the Administration*, *supra* note 8, at 1032 ("Family Assistance would replace the Aid to Families with Dependent Children ('AFDC') program."); *see also* GIL CROUSE, SUSAN HAUAN & ANNETTE WATERS ROGERS, U.S. DEP'T OF HEALTH AND HUM. SERVS., INDICATORS OF WELFARE DEPENDENCE: ANNUAL REPORT TO CONGRESS 2008, at I-1 (stating the TANF was formerly the AFDC program).

[81] *Id.* at 1030.

[82] *Id.*

[83] *Id.*

[84] *See* Linnea Feldman Emison, *The Promising Results of a Citywide Basic-Income Experiment*, NEW YORKER (July 15, 2020), https://www.newyorker.com/news/news-desk/the-promising-results-of-a-citywide-basic-income-experiment.

[85] *See* Eli Meixler, *Finland Will End Its Experiment with Universal Basic Income After a Two-Year Trial*, TIME (Apr. 24, 2018), http://time.com/5252049/finland-to-end-universal-basic-income/ ("This program end[ed] in January 2019 after the Finnish government rejected a request to extend it for two more years.").

[86] *See* Kate McFarland, *Current Basic Income Experiments (and those so called): An Overview*, BASIC INCOME EARTH NETWORK (May 23, 2017), http://basicincome.org/news/2017/05/basic-income-experiments-and-those-so-called-early-2017-updates/#netherlands (discussing the Netherlands); *see also* Malcolm Torry, *Report published about the Scottish Basic Income pilot project feasibility study*, BASIC INCOME EARTH NETWORK (June 11, 2020), https://basicincome.org/news/2020/06/report-published-about-the-scottish-basic-income-pilot-project-feasibility-study/ (discussing Scotland); Andre Coelho, *Switzerland: A basic income experiment is on the verge of starting in Switzerland*, BASIC INCOME EARTH NETWORK (Oct. 8, 2018), https://basicincome.org/topic/switzerland/ (discussing Switzerland).

[87] *See infra* note 115.

C. The Varied Rationales for a BIG

Many different thinkers from across the political spectrum have proposed a BIG. Among the first was Thomas Paine, who wrote in support of a basic income in the 1790s.[88] He proposed annual payments to the elderly and the young.[89] Effectively, he endorsed an intra-personal and inter-temporal redistribution to the youth and the elderly of monies they paid in taxes during their working years.[90]

As detailed in the prior Subsection, the historical justifications for BIGs have varied but are often focused on poverty alleviation. Today, there is support for a BIG from both ends of the political spectrum, but the reasons for that support vary substantially.[91] Folks on the "right" of the political spectrum often think switching to an unconditional cash transfer system could save money through administrative simplification and increase individual agency.[92] Often, these folks would like to eliminate many (or all) public assistance programs and replace them with a BIG.[93]

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[88] *See, e.g.*, King & Marangos, *supra* note 21, at 57 (explaining that "natural rights arguments played an important, but by no means exclusive, role in [Paine's] advocacy of Basic Income").

[89] King & Marangos, *supra* note 21, at 59 (proposing "the payment of £ 6 per annum to those aged 50 to 59, £ 10 per annum to those over 60, and £ 4 annually for every child under 15").

[90] *See id.* ("Everyone, including the poor, pays taxes from the day they are born, and the payments proposed for each elderly person are thus 'but little more than the legal interest on the net money he has paid.'" (citation omitted)).

[91] *See* Leff, *supra* note 18, at 87 ("UBI appeals to thinkers on the political left, the political right, and places in between. But, sometimes the broad appeal of UBI can be attributed to the fact that different thinkers envision different UBIs that solve different problems." (footnote omitted)).

[92] *See* Minogue, *supra* note 37 ("On the right, UBI is defended as a replacement for an inefficient welfare state. These conservatives argue cutting checks to everyone, instead of maintaining a bureaucratic web of means tested programs and benefits administration, would reduce government waste and leave people better off."). Even defenders of America's current public assistance programs admit the administrative costs of these programs are substantial. *See* JULIA ISAACS, U.S. DEPT. OF AGRIC. ECON. RSCH. SERV., CCR-39, THE COSTS OF BENEFIT DELIVERY IN THE FOOD STAMP PROGRAM: LESSONS FROM A CROSS-PROGRAM ANALYSIS 7–14 (2008), https://www.brookings.edu/wp-content/uploads/2016/06/03_food_stamp_isaacs.pdf; *cf.* Bruce Jaspen, *Trump's Medicaid Work Rules Hit States With Costs And Bureaucracy*, FORBES (July 22, 2018, 8:20 AM), https://www.forbes.com/sites/brucejapsen/2018/07/22/trumps-medicaid-work-rules-hit-states-with-costs-and-bureaucracy/#26a4b2566f5e ("Kentucky's Medicaid administration costs jumped more than 40% after implementing work requirements. . . ."); Glogower & Wallace, *supra* note 20, at 12–13; Leff, *supra* note 18, at 98–100 (noting distinctions in how a UBI is funded result in different degrees of administrative complexity and, presumably, cost). Administrative costs consume almost a tenth of some public assistance benefit program budgets. *See* Bob Greenstein, *Commentary: Universal Basic Income May Sound Attractive But, If It Occurred, Would Likelier Increase Poverty Than Reduce It*, CTR. ON BUDGET & POL'Y PRIORITIES (June 13, 2019), https://www.cbpp.org/research/poverty-and-opportunity/commentary-universal-basic-income-may-sound-attractive-but-if-it (arguing "administrative costs only consume 1 to 9 percent of program resources"); *see also* Flowers, *supra* note 33 ("This all requires enormous administrative oversight on the part of the government, and it requires the ability to navigate multiple agencies on the part of recipients."); Glogower & Wallace, *supra* note 20, at 12–13 ("Distributing cash requires less administrative bureaucracy than in-kind and means-tested benefits."). Even if administrative costs consume only a small percentage of the program budget (which is better than many programs), this is still more expensive than the anticipated administrative costs of a true UBI.

[93] *See, e.g.*, Tanner, *supra* note 8, at 9 ("Shifting our welfare system away from the overlapping web of programs providing predominantly in-kind assistance to a simpler guaranteed income that provides cash aid

For example, one commentator wrote, "[a] guaranteed national income would eliminate much of the federal leviathan and potentially reduce the harmful side effects of traditional welfare."[94] Another summed up the rationale thusly: "Rather than concern itself with managing myriad social welfare and unemployment insurance programs, the government would instead regularly cut a no-strings-attached check to each citizen. No conditions. No questions."[95] Many other conservative or libertarian thinkers have also endorsed forms of a BIG, including Milton Friedman, F.A. Hayek, Robert Nozick, and Charles Murray.[96]

Individual autonomy is an important justification for many BIG proponents, regardless of their political alignment.[97] The premise is that individuals are often best suited to decide how they should spend their money.[98] It is both costly and an infringement on a person's dignity to oversee the choices people make.[99] For example, Chris Hughes notes the invasiveness of some welfare programs, which obligate women to "answer questions about their sexual behavior ('When did you last menstruate?'), open their closets to inspection ('Whose pants are those?'), and permit their children to be interrogated ('Do any men visit your mother?')" in order to receive welfare benefits.[100]

On the "left," support for a BIG appears to derive from a BIG's ability to "raise nearly 50 million Americans out of poverty overnight."[101] But BIG proponents often also express concern about inequality and, more recently, potential unemployment caused by automation.[102] Andrew Yang is probably the most high-profile of BIG's recent proponents, and he has focused his case predominantly on the issue of

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directly to recipients would significantly decrease the level of government involvement in people's lives, while doing more to preserve the dignity and agency of low-income people.").

[94] *Id.* at 4.

[95] Flowers, *supra* note 33.

[96] *See* Tanner, *supra* note 8, at 2 (discussing "free market and libertarian economists" who support a basic income).

[97] This is also a reason to favor a BIG over a federal jobs guarantee. *See* HUGHES, *supra* note 26, at 109 ("The arguments for a federal job guarantee require faith in government's ability to connect people to jobs they want and need. . . . It falls squarely in the tradition of government telling poor and middle-class people what to do with their lives, dictating what counts as a real job and what doesn't.").

[98] *See* Leff, *supra* note 18, at 103 ("A UBI is provided in cash under the assumption that people are generally the best equipped to determine their own needs, and therefore should be trusted with cash.").

[99] *See id.* ("Some argue that recognizing recipients' capacities to make their own choices has dignitary value whether or not they maximize their benefits."); *see also supra* note 92 (discussing the administrative costs of means tested benefits).

[100] HUGHES, *supra* note 26, at 106 (discussing an early version of the AFDC program); *see also 10 Things You Can't Buy With Food Stamps*, HUFFPOST (Feb. 2, 2016), https://www.huffingtonpost.com/sue-kerr/10-things-you-cant-buy-with-food-stamps_b_5079780.html (discussing items that cannot be purchased with food stamps).

[101] Tanner, *supra* note 8, at 4.

[102] *See generally* ANDREW YANG, THE WAR ON NORMAL PEOPLE (2018) [hereinafter YANG, THE WAR ON NORMAL PEOPLE]; *see also* Tanner, *supra* note 8, at 4; Minogue, *supra* note 37 ("On the left, UBI is championed as a solution to deep poverty and an alternative to low-wage, undesirable labor for some workers. Proponents fear large-scale worker displacement due to technological change. They argue a basic income would enable more people to become entrepreneurs, pursue artistic endeavors, find more rewarding jobs for the long-term, or simply work less if they choose.").

automation.[103] Before Yang, however, BIGs have had a number of prominent proponents, including Martin Luther King, Jr. and liberal economists like James Tobin and John Kenneth Galbraith.[104] James Tobin was among the first economists of the modern era to provide a fleshed out BIG proposal, which was intended to complement the existing public assistance programs and to push them in a more efficient and work-friendly direction.[105]

As a tool for alleviating poverty, a BIG may serve as part of the social safety net, providing "a minimum floor of financial support."[106] A BIG could allow people to seek their highest value employment, and, in particular, it may free women from feeling the need to partner with men for economic security.[107] This may be particularly important if the predictions of some futurists come true and the development of artificially intelligent systems and robots causes widespread unemployment.[108] This latter concern seems to be one of the motivating forces behind the basic income experiment funded by Silicon Valley start-up incubator, Y Combinator, and the Chris Hughes-funded Economic Security Project.[109]

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[103] *See generally* YANG, THE WAR ON NORMAL PEOPLE, *supra* note 102.

[104] *See also* Tanner, *supra* note 8, at 2 ("It should not be surprising that many advocates of the welfare state have called for government to guarantee a minimum income for every citizen.").

[105] *See* James Tobin, Joseph A. Pechman & Peter M. Mieszkowski, *Is a Negative Income Tax Practical?*, 77 YALE L.J. 1, 2–3 (1967) (proposing an income guarantee to reform public assistance). Since then, many others have also offered BIG proposals, including Chris Hughes, Charles Murray, and Andy Stern. *See* HUGHES, *supra* note 26, at 5, 93 (arguing for "[a]n income floor of $500 per month for every working adult whose family makes less than $50,000," adjusted for the cost of living in particular areas); *see also* MURRAY, *supra* note 19, at 9–10 (calling for a UBI of $10,000 per year "for everyone age twenty-one and older"); STERN WITH KRAVITZ, *supra* note 25, at 212 (calling for a $1,000 per month basic income payment).

[106] Glogower & Wallace, *supra* note 20, at 16–17; *see also* STERN WITH KRAVITZ, *supra* note 25, at 207 (describing UBI as being supported by "people who believe we need a safety net for everyone"); HUGHES, *supra* note 26, at 92.

[107] *See* Van Parijs, *Surfers Should be Fed*, *supra* note 21, at 102–03 ("The arguments [for a BIG] have been . . . that a basic income would help poor people out of the unemployment trap, that its introduction would redistribute income quite massively from men to women, that it would improve the quality of the worst jobs, that it would support farmers' incomes without distorting agricultural prices, and that it would enhance the flexibility of the labor market."); *cf.* HUGHES, *supra* note 26, at 114 (stating a basic income "enables someone to quit a job with an abusive manager").

[108] *See* JAMES MANYIKA, SUSAN LUND, MICHAEL CHUI, JACQUES BUGHIN, JONATHAN WOETZEL, PAUL BATRA, RYAN KO & SAURABH, MCKINSEY GLOB. INST., JOBS LOST, JOBS GAINED: WORKFORCE TRANSITIONS IN A TIME OF AUTOMATION 15 (2017), https://www.mckinsey.com/~/media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/What%20the%20future%20of%20work%20will%20mean%20for%20jobs%20skills%20and%20wages/MGI-Jobs-Lost-Jobs-Gained-Executive-summary-December-6-2017.pdf (assessing the effects of automation on net employment and predicting a medium-term increase in unemployment); *see also* Hemel, *supra* note 20 ("Some people support a UBI because they think that artificial intelligence will lead to widespread unemployment."); Glogower & Wallace, *supra* note 20, at 3; YANG, THE WAR ON NORMAL PEOPLE, *supra* note 102, at 172–73.

[109] *See* Andrew Sanchez, *United States: After Delay, Y Combinator Research Presses on with Basic Income Study*, BASIC INCOME EARTH NETWORK (Sept. 19, 2018), https://basicincome.org/news/2018/09/united-states-after-delay-y-combinator-research-presses-on-with-basic-income-study/#:~:text=Y%20Combinator%20(YC)%20Research%20will,for%20three%20or%20five%20years (indicating the Y Combinator "will assess the effects of unconditional cash transfers on a variety of factors including time use, objective and subjective well-being, and financial health"); *see also* HUGHES, *supra* note

Other BIG supporters have advanced alternative justifications that do not always map onto the "left/right" political divide.[110] For example, Fleischer and Hemel suggest a basic income may be an effective "mechanism for absolutizing private property rights."[111] In other words, minimum basic benefits must be provided to people so that they are not justified in violating the property rights of others (that is, stealing).[112] Still others have adopted a more efficiency-minded rationale, often focused on reducing the size of government.[113] For example, Glogower and Wallace argue for eliminating our current tax and transfer system in favor of a BIG to decrease costs and preserve (or increase) individual choice, thus providing an "[e]fficient redistribution" rationale.[114]

II. PAYING FOR A BASIC INCOME AND RELATED CONCERNS

A. Paying for a BIG

There has never been a nationwide, full-fledged universal BIG.[115] As a result, it is hard to accurately estimate the cost of such a program because the dynamic effects

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26, at 103 (noting many BIG advocates "see a guaranteed income as a way to prepare for a world without work, or at least a time when there will be a lot less of it").

110 For a good primer on various basic income proposals, including the underlying rationale for those proposals, see Vanderborght & Van Parijs, *supra* note 8. *See also The Basic Income Earth Network's Definition of Basic Income Since the GA 2016*, BASIC INCOME EARTH NETWORK (2016), https://basicincome.org/wp-content/uploads/2020/07/Basic-Income-definition-longer-explanation-1.pdf (noting the variety of justifications that have been invoked over time, including "liberty and equality, efficiency and community, common ownership of the Earth and equal sharing in the benefits of technical progress, the flexibility of the labour market and the dignity of the poor, the fight against inhumane working conditions, against the desertification of the countryside and against interregional inequalities, the viability of cooperatives and the promotion of adult education, autonomy from bosses, husbands and bureaucrats").

111 Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1254.

112 *See id.* ("Private property rights are nonabsolute as against an individual who is incapable of earning a subsistence-level income in the market and who must trespass on the private property of others in order to provide basic necessities for his minor child."). This rationale also seems to underlie some of Silicon Valley's support for BIG experiments. *See* Clay Dillow & Brooks Rainwater, *Why Free Money for Everyone Is Silicon Valley's Next Big Idea*, FORTUNE (June 29, 2017, 6:30 AM), http://fortune.com/2017/06/29/universal-basic-income-free-money-silicon-valley ("The tech elite's burgeoning concern could be described as part moral obligation, part enlightened self-interest. Many of them share the view that technologies that have generated huge amounts of concentrated wealth will soon be responsible for devastating labor market upheavals.").

113 *See, e.g.*, Tanner, *supra* note 8, at 26–27 (noting the efficiencies that would come from consolidating various anti-poverty programs); STERN WITH KRAVITZ, *supra* note 25, at 207 (suggesting "people who believe in smaller government" are a group that supports basic income proposals); *see also* MURRAY, *supra* note 19, at 1 (lamenting government inefficiencies).

114 Glogower & Wallace, *supra* note 20, at 3.

115 An exception might be the distribution of gaming revenue by Native American tribes to their tribal members. *See, e.g.*, Kara Geina, Have the Requirements and Intent of The Indian Gaming Regulations Act Been Fulfilled in Minnesota? 13 (Dec. 15, 2009) (M.P.P. thesis, University of Minnesota) (on file with Hubert H. Humphrey Inst. of Pub. Affs., University of Minnesota), http://hdl.handle.net/11299/55731 ("Some reservations are able to add per-capita payments to their budget distribution to help address the welfare needs of their tribal members."); Mark Neath, *American Indian Gaming Enterprises and Tribal Membership: Race,*

are hard to anticipate.[116] On a gross cost basis, a BIG of $10,000 per year for each current American resident would cost more than $3 trillion each year.[117] The expert consensus of the cost of a nationwide BIG often centers on a figure of about this amount.[118] That number would only increase as America grows more populous, either through birth or immigration. Three trillion dollars is equal to approximately three-quarters of the entire annual (pre-COVID) federal budget and is almost ninety percent of the annual federal tax revenue.[119]

Unsurprisingly, therefore, a common point of contention is whether a BIG is financially feasible. Various scholars and commentators, particularly those on the "right," have called for replacing the current welfare state to pay for a BIG.[120] Others have contended this would be unnecessary because gross cost estimates are wildly misleading.[121] They have provided much more modest estimates of a BIG's net cost, but those proposals require several debatable assumptions to be made.[122]

Exclusivity, and a Perilous Future, 2 U. CHI. L. SCH. ROUNDTABLE 689, 692 (1995) (discussing the distribution of gaming revenue within tribes).

[116] For example, most agree some people would work fewer hours, which would increase the cost of some BIG proposals by, among other things, decreasing tax revenue. Others have argued a BIG would stimulate entrepreneurship, which could increase tax revenue. *See, e.g.*, Bart Nooteboom, *Basic Income as a Basis for Small Business*, *in* BASIC INCOME: AN ANTHOLOGY OF CONTEMPORARY RESEARCH 213–14, 216 (Karl Widerquist et al., eds. 2013).; *cf.* Daniel Tencer, *A Canadian Basic Income Could Cost Much Less Than The $43-Billion Estimate. Here's How*, HUFFPOST (Aug. 1, 2018, 2:15 PM), https://www.huffingtonpost.ca/2018/04/19/basic-income-cost-canada_a_23415260/ (discussing some of the dynamic effects of a BIG); Dylan Matthews, *Study: a universal basic income would grow the economy*, VOX (Aug. 30, 2017, 7:10 AM), https://www.vox.com/policy-and-politics/2017/8/30/16220134/universal-basic-income-roosevelt-institute-economic-growth (discussing some of the assumptions made when modeling BIGs).

[117] *See* Dillow & Rainwater, *supra* note 112 ("[N]ew costs could be measured in trillions for any program that could earn the label 'universal.'"); *see also* Greenstein, *supra* note 92, at 1 ("There are over 300 million Americans today. Suppose UBI provided everyone with $10,000 a year. That would cost more than $3 trillion a year—and $30 trillion to $40 trillion over ten years.").

[118] *See* STERN WITH KRAVITZ, *supra* note 25, at 205 ("The consensus of the experts [is] that a national UBI would cost the federal government between $2 and $3 trillion, depending on the size of the grant and the number of Americans covered."); Minogue, *supra* note 37 (discussing Andy Stern's BIG proposal, and calling the high-end of his estimate—$2.5 trillion—"realistic").

[119] *See Budget*, CONGRESSIONAL BUDGET OFF., https://www.cbo.gov/topics/budget (last visited June 1, 2021) (projecting $3.5 trillion in revenue for 2021, as of February 11, 2021).

[120] *See id.*; *see also* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1260–61 (calculating various social programs that might be eliminated to pay for a $10,000 per person BIG and noting "the libertarian case for a UBI assumes that it will replace existing welfare programs"); Will Ensor, Anderson Frailey, Matt Jensen & Amy Xu, *A Budget-Neutral Universal Basic Income* (Am. Enter. Inst., Working Paper No. 2017-03, 2017), http://www.aei.org/publication/a-budget-neutral-universal-basic-income/; MURRAY, *supra* note 19, at app. A 130–33.

[121] *See* Karl Widerquist, *The Cost of Basic Income: Back-of-the-Envelope Calculations*, BASIC INCOME STUD. (2017) [hereinafter Widerquist, *Cost of Basic Income*] ("Because UBI is a universal program, people commonly make the mistake of calculating its cost as the amount given to each individual times the size of the population. Call that the "gross cost" of UBI, but it's a gross exaggeration of the real cost of UBI." (footnote omitted)).

[122] Karl Widerquist, a basic income researcher, estimates a net cost of "$539 billion per year: about one-sixth its often-mentioned but not-very-meaningful gross cost of about $3.415 trillion." *Id.* (providing a static estimate "of the net cost of a UBI set at about the official poverty line: $12,000 per adult and $6,000 per child with a 50% 'marginal tax rate'"); *see also* Jessica Wiederspan, Elizabeth Rhodes & H. Luke Shaefer, *Expanding*

Even if a BIG were financially feasible, some contend a BIG would effectively redistribute income upwards, at least from the status quo.[123] In other words, if we dismantled the current social safety net and gave everyone an equal payment, we would move from a somewhat progressive tax and transfer system to an egalitarian one[124]—but that means moving money from those at the bottom to those at the top.[125] Others disagree. They argue that with an appropriate tax system "[t]he 'universality' of a universal basic income [becomes] little more than an accounting trick (and perhaps a branding strategy)."[126] Basically, you can tax away the grant for higher-income earners.[127]

B. Some Key Features of the Programs that a BIG Could Replace

To pay for a BIG that could cost upwards of $3 trillion, some proponents argue various public assistance programs should be eliminated.[128] Although proposals vary,

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the Discourse on Antipoverty Policy: Reconsidering a Negative Income Tax, 19 J. POVERTY 218, 229–30 (2015) (estimating a negative income tax set at the US poverty line and with a fifty percent phaseout rate, would cost $219 billion a year); Matthews, *supra* note 116; *cf.* Tencer, *supra* note 116 (reporting on the cost estimate by the Parliamentary Budget Office for a Canadian BIG, which came in at $43 billion per year).

[123] *See* Greenstein, *supra* note 92, at 2–3 (claiming the replacement of the welfare state with UBI would "increase poverty and inequality rather than reduce them").

[124] *See id.* at 2 ("If you take the dollars targeted on the people in the bottom fifth or two-fifths of the population and convert them to universal payments to people all the way up the income scale, you're redistributing income *upward*.").

[125] *See id.* at 2–3; *see also* Hemel, *supra* note 20 ("[R]eplacing our current antipoverty programs with UBI would in any realistic design make the distribution of income worse, not better." (alteration in original)); Ensor et al., *supra* note 120 (noting their proposal would decrease the benefits available to BIG recipients with the least income).

[126] Hemel, *supra* note 20.

[127] *See id.* ("Every individual with more than $37,650 in taxable income is unaffected by the policy change; every individual with taxable income less than $37,650 receives more through the UBI than she pays in income taxes."); *see also* Widerquist, *Cost of Basic Income*, *supra* note 121 (proposing a BIG with a fifty percent phase-out); Wiederspan et al., *supra* note 122.

[128] *See* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1260–61 (proposing to eliminate more than "ninety-five federal programs . . . costing a total of $799 billion annually" including Medicaid, Children's Health Insurance Program, Supplemental Security Income, unemployment, various tax benefits (excluding employer contributions for healthcare, state and local tax credits, home mortgage interest), and more); *see also* Flowers, *supra* note 33; Mike Konczal, *The Pragmatic Libertarian Case for a Basic Income Doesn't Add Up*, ROOSEVELT INST. (Aug. 8, 2014) [hereinafter Konczal, *Pragmatic Libertarian*], https://web.archive.org/web/20200809051941/https://rooseveltinstitute.org/pragmatic-libertarian-case-basic-income-doesnt-add/ (noting "only 7 programs are what we properly think of as welfare, or cash payments for the poor," but some go beyond eliminating these programs and argue for eliminating "Social Security, Medicare, unemployment insurance, and social insurance" programs). Still others would also eliminate tax expenditures for the mortgage interest deduction, charitable giving, and the personal exemption. *See* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1260–61 (arguing for the elimination of most of these programs too); *see also* Ensor et al., *supra* note 120 (eliminating almost every sort of transfer payments and tax benefits, including Medicaid, personal exemptions, and more). Some proposals are funded exclusively by tax increases, such as the addition of a value-added tax ("VAT") or a tax on data. *See, e.g.*, YANG, THE WAR ON NORMAL PEOPLE, *supra* note 102, at 170; *see also* STERN WITH KRAVITZ, *supra* note 25, at 212–13 (suggesting a VAT of five to ten percent be added, arguing this would raise "between $650 billion and $1.3 trillion in revenues"); *see also* HUGHES, *supra* note 26, at 93 (suggesting his basic income proposal ought to be paid for by an income tax on Americans making more than $250,000 a year).

some programs that are commonly mentioned include TANF (more commonly known as welfare), Medicare, Medicaid, Children's Health Insurance Program ("CHIP"), SNAP, Women Infants and Children ("WIC"), Section 8, the EITC, and Social Security Disability Insurance. But these programs are not monolithic. For example, some offer non-transferable benefits delivered only in-kind, whereas others offer unrestricted cash benefits.[129] This Subsection reviews some of the most salient features of these programs so, in Part III, we can consider whether replacing them with a BIG would be good policy.

Some public assistance programs that could be replaced by a BIG provide in-kind benefits. For example, Medicare Part A covers some of the cost of "inpatient hospital stays, care in a skilled nursing facility, hospice care, and some home health care."[130] Medicare recipients pay only a portion of the cost of the services they receive; the remainder is paid directly by the federal government to the service provider.[131] In other words, the Centers for Medicare & Medicaid Services ("CMS")—the federal agency that administers Medicare—does not provide a direct cash transfer to Medicare recipients.[132] Medicaid and CHIP are similar in that payments are made directly to providers rather than to program beneficiaries.[133]

Other programs, such as SNAP, WIC, and TANF, provide restricted use benefits. SNAP "benefits may be used only to purchase foods, and only certain foods at that. Recipients may not purchase 'food that will be eaten in the store' or 'hot foods' with their benefits, nor may they purchase vitamins."[134] And the "[r]ules for Women Infants and Children (WIC) benefits are even more restrictive."[135] Similarly, TANF carries numerous restrictions, such as being unusable in "liquor stores, gaming or gambling establishments, and adult entertainment venues."[136] TANF is administered through state governments, and states are free to impose their own additional restrictions.[137] Many have "impose[d] additional restrictions on using benefits for tobacco, tattoos, and body piercing."[138]

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[129] *See* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1234–39, 1244–45.

[130] *What's Medicare?*, MEDICARE.GOV, https://www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare (last visited Apr. 5, 2021).

[131] *See id.*

[132] *See generally* CMS.GOV, https://www.cms.gov/ (last visited Mar. 28, 2021).

[133] *See* Leff, *supra* note 18, at 117.

[134] Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1244–45; *cf.* Leff, *supra* note 18, at 103 ("Some welfare programs, like Supplemental Nutrition Assistance Program (food stamps), are provided 'in kind,' out of a concern that cash may be misused by its recipients or engender fraud.").

[135] Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1244; *see also WIC Frequently Asked Questions*, U.S. DEP'T AGRIC., https://www.fns.usda.gov/wic/frequently-asked-questions (last visited Mar. 28, 2021) (stating WIC benefits may only be used "to purchase specific foods each month that are designed to supplement their diets with specific nutrients that benefit WIC's target population. . . . WIC foods include infant cereal, iron-fortified adult cereal, vitamin C-rich fruit or vegetable juice, eggs, milk, cheese, peanut butter, dried and canned beans/peas, and canned fish.").

[136] Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1245.

[137] *See id.*

[138] *Id.*

These benefits usually also come with transfer restrictions. In-kind benefits are usually the most restrictive.[139] Generally, they are not transferable to other people under any circumstances, thus preventing even voluntary transfers.[140] For example, a Medicare recipient cannot use his benefits to pay for a doctor visit for an adult child.[141] Medicare is far from the only public assistance program that contains anti-assignment limitations for program beneficiaries. Among others, Section 8 housing choice vouchers are also non-transferable.[142] Some restricted-use benefit programs, such as SNAP, also prohibit voluntary transfers.[143] Thus, someone wishing to convert SNAP benefits to cash must essentially launder (illegally) those benefits by converting them to a commodity, such as cases of soda, to circumvent this restriction.[144] Similarly, Social Security and Social Security Disability benefits are both expressly non-assignable.[145]

Other programs preclude involuntary transfers such as garnishment, but permit voluntary transfers. For example, courts have held TANF recipients can consent to the attachment of their benefits so long as they "retain[] an unwaivable right to

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[139] *See id.* at 1234 ("In-kind transfers . . . imply a lack of trust in recipients to make decisions about what would best further their pursuit of their goals, as well as implying value judgments about what recipients 'should' and 'should not' spend money on. In contrast, cash transfers allow individuals to decide for themselves what would be best for them.").

[140] *See id.* at 1235–36 (discussing the limited effectiveness of some transfer restrictions).

[141] *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Businesses and Families*, CMS.GOV, https://www.cms.gov/CCIIO/Resources/Files/adult_child_faq#:~:text=Q6%3A%20Does%20Medicare%20cover%20adult,not%20provide%20coverage%20for%20dependents (last visited Apr. 5, 2021) ("Medicare does not provide coverage for dependents. Dependents must be individually eligible in order to have Medicare coverage.").

[142] *See* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1244–45 ("Housing assistance is provided in the restricted form of Section 8 vouchers or in-kind through public housing."); *see also* 24 C.F.R. § 982.551(h)(7) (2006) (obligating the family not to assign its lease or transfer its rental under the Section 8 housing choice voucher program).

[143] *See* 7 U.S.C. §§ 2015, 2024 (2018) (disqualifying and penalizing any recipient who transfers their benefits to another).

[144] *See* Kevin D. Williamson, *The White Ghetto*, NAT'L REV. (Dec. 16, 2013, 6:30 AM), https://www.nationalreview.com/2014/01/white-ghetto-kevin-d-williamson/ (discussing how SNAP benefits are converted to cash using cases of soda); *see also* Chris Parenteau, Corley Peel & Steve Patrick, *198 Ensnared in Jacksonville Food Stamp Fraud Totaling $3.7M*, NEWS 4 JAX (Mar. 16, 2018, 3:14 PM), https://www.news4jax.com/news/local/jacksonville/jacksonville-busts-organized-fraud-ring.

[145] *See* 42 U.S.C. § 407(a) (2018) ("The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."); *id.* § 1383(d)(1); 11 U.S.C. § 522(d) (exempting social security, unemployment, local public assistance, veterans' benefits, disability insurance, and alimony and other similar support); *see also In re* Howell, 138 B.R. 484, 488 (W.D. Pa. 1992) ("42 U.S.C. §§ 407 and 1382(d) . . . expressly preclude the assignment of benefits payable under subchapters II (disability benefits) and XVI (supplemental security income (SSI) benefits) of the Social Security Act from the operation 'of any bankruptcy law.'"); Hildebrand III v. Soc. Sec. Admin. (*In re* Buren), 725 F.2d 1080, 1085 (6th Cir. 1984); *In re* Roach, 94 B.R. 440, 441 (W.D. Mich. 1988). *But see* United States v. Devall, 704 F.2d 1513, 1514–15 (11th Cir. 1983) (holding Social Security payments are subject to income deduction orders of a bankruptcy court under section 1325(c), notwithstanding the anti-assignment provision of the Social Security Act).

terminate the attachment."[146] Similarly, other benefits that are paid in cash, such as unemployment compensation, can generally be voluntarily transferred to creditors.[147] But, those monies are generally exempt from being involuntarily seized by creditors.[148] Social Security income is an exception to the trend that allows voluntary transfers but restricts involuntary ones, because its benefits are not assignable but may be involuntarily garnished to repay student loans.[149]

While most public assistance programs contain some transfer restrictions, one of the largest programs—the EITC—provides benefits that are freely transferable and garnishable. Each year, the EITC delivers "$65 billion in cash to low-income families"[150] in the form of a refundable tax credit, with "the credit first being used to decrease any income tax due, and then if any of the credit remains, providing it to the

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[146] *In re* Howell, 138 B.R. at 488; *see also Devall*, 704 F.2d at 1515 ("The Social Security Act's anti-assignment provision purports to prohibit the assignment of social security benefits, with very limited exceptions, while the Bankruptcy Code purports to authorize direct income deductions from the Social Security Administration. Upon review, we conclude that the provision of the later-enacted Bankruptcy Reform Act must prevail over the more general anti-assignment provision of the Social Security Act."); *cf.* Mort Ranta v. Gorman, 721 F.3d 241, 254 (4th Cir. 2013) ("We therefore hold, in agreement with the Sixth Circuit, that 'a debtor with zero or negative projected disposable income may propose a confirmable plan by making available income that falls outside of the definition of disposable income—such as . . . benefits under the Social Security Act—to make payments under the plan.'" (quoting Baud v. Carroll, 634 F.3d 327, 352 n.19 (6th Cir. 2011)) (alteration in original)).

[147] *See, e.g.*, Michigan Emp. Sec. Comm'n v. Jenkins, 64 B.R. 195, 199 (W.D. Mich. 1986) (holding unemployment compensation benefits that have not been exempted are property of the estate and may be transferred to the bankruptcy trustee acting on behalf of the creditors).

[148] This is true under both state and federal law. *See, e.g.*, 735 ILL. COMP. STAT. 5/12-1001(g) (West 2019) (exempting a "debtor's right to receive: (1) a social security benefit, unemployment compensation, or public assistance benefit; (2) a veteran's benefit; (3) a disability, illness, or unemployment benefit; and (4) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor"); 26 U.S.C. § 6334(a)(4) (exempting unemployment benefits from levy by the IRS); *id.* § 6334(a)(7) (exempting workers' compensation benefits from levy by the IRS); *id.* § 6334(a)(11) (exempting certain public assistance payments from levy by the IRS, including social security and means-tested state or local government public assistance programs); 11 U.S.C. § 522(d)(10) (exempting "[t]he debtor's right to receive—(A) a social security benefit, unemployment compensation, or a local public assistance benefit; (B) a veterans' benefit; (C) a disability, illness, or unemployment benefit; (D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor"); *see also* William Wolfson, *Protect Your Social Security, Public Assistance and Old Age Pensions from Creditors*, WILLIAM S. WOLFSON ESQ., LLC (Apr. 21, 2020), http://www.williamwolfsonlaw.com/uncategorized/protect-your-social-security-public-assistance-old-age-pensions-from-creditors/ ("Even after it has been paid to a debtor, money obtained from social security, unemployment compensation or any local public assistance benefit such as the aid to dependent children program, or workers compensation benefits, is exempt from the claims of creditors. It is also exempt from execution, levy, attachment, garnishment or other legal process, including the operation of any bankruptcy or insolvency law.").

[149] *See* 31 U.S.C. § 3716(c)(3)(A)(i)(I) (allowing Social Security benefits, among others, to be administratively offset); *see also* Rebecca Safier, *Can Student Loan Debt Eat Up Your Social Security Benefits?*, STUDENT LOAN HERO (Jan. 25, 2021), https://studentloanhero.com/featured/social-security-payments-for-student-loans/; *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-866T, OLDER AMERICANS: INABILITY TO REPAY STUDENT LOANS MAY AFFECT FINANCIAL SECURITY OF A SMALL PERCENTAGE OF RETIREES 1 (2014), https://www.gao.gov/assets/670/665709.pdf ("[A] portion of the borrower's Social Security disability, retirement, or survivor benefits can be claimed to pay off the loan.").

[150] Leff, *supra* note 18, at 104.

applicant."[151] In other words, "[t]he EITC—like a UBI and unlike an in-kind benefits program such as SNAP or Medicaid—is an unconditional cash transfer."[152] Thus, EITC benefits are unlike many of the other public assistance programs discussed above because they are unrestricted.[153] The federal government regularly withholds EITC payments from people who have defaulted on their student loan debts, among others.[154] Already more than one million people a year who receive EITC payments have their tax returns offset by the IRS.[155]

This Article has reviewed some details about these programs because they could potentially be eliminated to make a BIG politically and economically feasible. But, providing recipients with a cash grant in lieu of these benefits is not clearly preferable in every instance. Some of these programs are insurance products, which work best when they operate on a large-scale because of the ability to spread risk.[156] Thus, a program like Medicare or Medicaid may be more efficient than direct cash payments for the individual purchase of similar goods because individual purchases lack scale. As such, replacing certain in-kind benefit programs with direct cash payments is

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151 *Id.*

152 *Id.* at 118.

153 *See In re* Fraire, No. 96-1241-JTM, 1997 WL 45465, at *3 (D. Kan. Jan. 2, 1997); YAEL SHAVIT & PERSIS YU, NAT'L CONSUMER L. CNTR., STOP TAKING THE EARNED INCOME TAX CREDIT FROM STRUGGLING STUDENT LOAN BORROWERS 7 (2016), https://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/ib-stop-taking-earned-income-tax.pdf (noting Congress can and should exempt the EITC from its administrative offset program because seizing EITC benefits "frustrate[s] the program's goals"); *cf. In re* Crutch, 565 B.R. 36, 38–39 (Bankr. E.D.N.Y. 2017) (explaining that exempt assets become non-exempt once they are "withheld from income, paid to federal or state taxing authorities, and subsequently paid to the Debtors in the form of a tax refund").

154 *See* SHAVIT & YU, *supra* note 152, at 6; *cf.* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-45, SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF 17 & n.30 (2016), https://www.gao.gov/assets/690/681722.pdf (reporting "[t]he vast majority of offsets for Education debt— nearly $2.1 billion, or about 91 percent—were from federal tax refunds[,]" although it is not clear how many of these taxpayers receive EITC benefits).

155 *See* I.R.S., NATIONAL TAXPAYER ADVOCATE'S 2009 ANNUAL REPORT TO CONGRESS 367 & n.16 (2009), https://www.irs.gov/pub/irs-utl/2_09_tas_arc_vol_1_lr.pdf ("IRS data shows that over 1.3 million TY 2008 returns claiming the EITC were subject to refund offset procedures.").

156 *See* KRIS BERTELSEN, FED. RESERVE BANK OF ST. LOUIS, INSURANCE: MANAGING RISK AND BALANCING RESPONSIBILITY 2 (2017), https://files.stlouisfed.org/files/htdocs/publications/page1-econ/2017-02-01/insurance-managing-risk-and-balancing-responsibility-with-affordability_SE.pdf ("Because many people pay into a fund and individual losses are paid from the larger pool of money, no single loss is as devastating to an individual or the group. This spreading of risk provides protection at a smaller cost to each individual or family than covering the full cost of losses with their own savings."); *see also* Konczal, *Pragmatic Libertarian*, *supra* note 128 ("[S]ocial insurance, like all insurance, is able to get a lot of bang for the buck by having everyone contribute but only take out when necessary, for example they are too old to work.").

likely to be less valuable for many people.[157] Nevertheless, some BIG proposals would eliminate these programs and substitute cash payments instead.[158]

Similarly (and more at the heart of this Article), if many other public assistance programs were eliminated in favor of a BIG, beneficiaries of those programs could be harmed because such programs prevent beneficiaries from losing their benefits though an improvident assignment of benefits or through involuntary seizure by creditors, including the government.[159] In other words, they provide a minimal standard of living, and beneficiaries generally cannot be involuntarily brought beneath that floor. While this may be good (it could enhance dignity or encourage risk-taking) or bad (it could decrease access to traditional credit or sap individual autonomy), surely it is not the case that merely transforming transfer-restricted benefits into unrestricted cash benefits is an even swap.

III. DESIGN IMPLICATIONS FOR A BIG

"[W]hat sounds good in theory tends to break down when one looks at questions of implementation."[160]

The non-transferable, non-assignable, and non-garnishable nature of many common public assistance programs appears to represent a series of intentional design choices to protect the most vulnerable recipients.[161] As a result, it is worth considering whether an unrestricted cash grant would leave beneficiaries at least as well-off as the in-kind or restricted-use benefits current public assistance benefit programs commonly provide.[162] Subsection B provides an overview of the pros and cons of allowing creditors to involuntarily seize BIG payments or allowing creditors to voluntarily assign those payments. Finally, Subsection C discusses the optimal design of a BIG. But first, however, Subsection A provides a brief literature review of the limited scholarship in this area.

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157 Mike Konczal, *Guest Post: Max Sawicky on the Liberal Case Against a Universal Basic Income*, ROOSEVELT INST. (Dec. 17, 2013) [hereinafter Konczal, *Guest Post*], https://web.archive.org/web/20171120052705/http://rooseveltinstitute.org/guest-post-max-sawicky-liberal-case-against-universal-basic-income. *But see* Ensor et al., *supra* note 120 (arguing Medicaid is a very inefficient program that encourages overconsumption of medical services).

158 *See, e.g.*, MURRAY, *supra* note 19, at app. A (arguing for the elimination of most public assistance programs, including Social Security, Medicare, Medicaid, unemployment insurance, food stamps, school lunch programs, and housing subsidies).

159 *See* Konczal, *Guest Post*, *supra* note 157 (noting "the implicit critique of the existing system underlying UBI advocacy is not well-founded" because the existing system, although flawed, protects those in need).

160 Michael D. Tanner, *A Guaranteed Minimum Income Is Not a Welfare Reform Silver Bullet*, CATO INST. (Oct. 27, 2015), https://www.cato.org/publications/commentary/guaranteed-minimum-income-not-welfare-reform-silver-bullet.

161 *See supra* Section II.B.

162 *See* Glogower & Wallace, *supra* note 20, at 14 ("For a taxpayer who receives cash welfare and in-kind benefits such as healthcare through Medicaid or Section 8 housing or food stamps (SNAP), the demogrant would approximate the cash value of all benefits.").

A. Problems at the Intersection of Poverty Law and Debtor-Creditor Law

Unless a BIG contains transfer restrictions similar to those contained in our current public assistance programs, some BIG recipients may suffer if BIG payments are funded by eliminating some, or all, of our current public assistance benefit programs. While this is not true if a BIG purely supplements currently existing public assistance benefits, a supplemental BIG would not be politically attractive to many.[163] Until the COVID-19 pandemic, the chance of enacting a BIG in the near future seemed remote, but Andrew Yang's candidacy and pandemic relief efforts, which included direct cash payments, have made a permanent BIG seem more viable than it has in decades.[164] Thus, to protect vulnerable public assistance beneficiaries, we need to carefully consider the design of a BIG as well as any future pandemic relief payments.[165]

Very few scholars or policymakers have considered the practical questions surrounding debt collection and other aspects of debtor-creditor law when designing a BIG.[166] Most research into BIGs has centered on questions such as whether a BIG decreases incentives to work, increases divorce rates, or improves the lives of children.[167] There has been some research into whether BIG programs decrease financial hardship by, for example, reducing the use of payday lenders or similar fringe banking products.[168] However, these have been second-order questions rather than core inquiries.

There are two notable exceptions. First, Bruce Ackerman and Anne Alstott briefly address some of these debtor-creditor issues in their article on a BIG-like

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[163] Some proposals are a hybrid, displacing only certain public assistance programs in favor of a BIG. *See, e.g.*, YANG2020, *supra* note 6 ("We currently spend between $500 and $600 billion a year on welfare programs, food stamps, disability and the like. This reduces the cost of the Freedom Dividend because people already receiving benefits would have a choice between keeping their current benefits and the $1,000, and would not receive both.").

[164] However, some have cautioned a constitutional amendment may be required to enact a BIG. *See* MURRAY, *supra* note 19, at 10–11.

[165] *See* Foohey et al., *Debt Collection*, *supra* note 1, at 229 ("If robust efforts to help people deal with currently unmanageable debts are not enacted soon, Congress risks setting America on a collision course with a debt collection pandemic.").

[166] *But see* Fleischer & Hemel, *Architecture*, *supra* note 10, at 688–90 (discussing assignability of basic income payments). Nor have they considered pandemic relief, for that matter. There are notable exceptions, however. *See* Foohey et al., *Debt Collection*, *supra* note 1, at 224; *see also* E-mail from Amara Legal Ctr. et al., to Hon. Phil Mendelson et al. (Apr. 3, 2020), https://static1.squarespace.com/static/57056a9e0442629a7a43ca60/t/5e88e2e768e1057e9c10776d/1586029287520/Signon+Letter.pdf (calling on the D.C. government to protect CARES Act payments from being seized by creditors, and to enact debt collection and eviction moratoria during the COVID-19 pandemic).

[167] *See, e.g.*, Alicia H. Munnell, *Lessons From the Income Maintenance Experiments: An Overview*, *in* LESSONS FROM THE INCOME MAINTENANCE EXPERIMENTS 3–9 (Alicia H. Munnell ed., 1986) (describing the effects basic income experiments had on labor supply, family stability, and consumption patterns, among others); Zachary Quintero, *An Overview of Universal Basic Income: Discussion on the Benefits of a Single System Welfare Standard* 7–10 (2014), https://digitalcommons.butler.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1114&context=urc (focusing on incentives related to work, health, and crime).

[168] *See, e.g.*, Angelucci et al., *supra* note 70, at 330.

proposal.[169] They propose insulating basic income grants from attachment but "only to prevent advance borrowing before ages twenty-one to twenty-four."[170] After that age, Ackerman and Alstott contend "every citizen must take responsibility for his or her actions—and debts."[171] Otherwise, Ackerman and Alstott continue, "basic income runs the risk of underwriting adult irresponsibility: how to justify letting the forty-year-old default on her credit card debts while keeping her basic income intact?"[172]

Second, Miranda Perry Fleischer and Daniel Hemel take on the issue in a recent article, calling assignability a "largely overlooked but critically important implementation issue" and an issue that "will be central to UBI design."[173] They note the tension about assignability often boils down to concerns people could squander the money that might otherwise be put to productive use by, for example, "start[ing] a business or pay[ing] college tuition."[174] They offer a tentative suggestion: adults should be allowed to assign their benefits for a short time in exchange for a loan.[175]

Except for these limited engagements, there has been virtually no attention paid to design questions centering on debtor-creditor law.[176] For example, should BIG

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[169] *See* Ackerman & Alstott, *Why Stakeholding?*, *supra* note 10, at 46–47. Furthermore, Professors Foohey, Jiménez, and Odinet address debt collection issues related to pandemic relief payments in a recent article. Though not expressly about BIGs, the $1,200 Economic Impact Payments are sufficiently similar that their article is worth reading. *See* Foohey et al., *Debt Collection*, *supra* note 1, at 229 ("Unless the government intervenes soon, communities of color will be double-hit with COVID-19 and debt collection.").

[170] Ackerman & Alstott, *Why Stakeholding?*, *supra* note 10, at 47.

[171] *Id.*

[172] *Id.* (emphasis omitted).

[173] Fleischer & Hemel, *Architecture*, *supra* note 10, at 688–90.

[174] *Id.* at 688 ("On the one hand, welfarists might be concerned about individuals taking out large loans early in life and then squandering their lump sums on unsuccessful investments or imprudent personal purchases. On the other hand, assignability—and the loans that it would facilitate—could expand credit access for millions of Americans. . . ."); *see also* Tanner, *supra* note 8, at 9 ("[R]ecent research has shown that beneficiaries do not mismanage cash aid when it is given to them directly. . . . Indeed, recipients tend to manage their cash well, including saving."); Marianne McCune, *A Surprisingly Uncontroversial Program That Gives Money To Poor People*, NAT'L PUB. RADIO (Mar. 15, 2013, 5:00 AM), https://www.npr.org/sections/money/2013/03/15/174358638/a-surprisingly-uncontroversial-program-that-gives-money-to-poor-people (discussing how one woman spends her EITC benefits, including on a trip to Disney World, and suggesting her spending was well-considered).

[175] *See* Fleischer & Hemel, *Architecture*, *supra* note 10, at 690 ("We do not have a fully satisfactory answer to the assignability question, but we offer a tentative suggestion: a rule that allows adults over the age of eighteen to assign benefits for a limited period (for example, twelve months) in exchange for a loan.").

[176] Most studies have not closely examined how a basic income intersects with credit availability and borrowing. *But see* SEWA BHARAT, MADHYA PRADESH UNCONDITIONAL CASH TRANSFER PROJECT EXECUTIVE SUMMARY 16, http://sewabharat.org/wp-content/uploads/2015/07/Executive-summary.pdf (last visited Mar. 28, 2021) (studying basic income recipients' borrowing practices and finding they are less likely to depend on moneylenders, but more likely to borrow from relatives when compared with the control group). The evidence is mixed from the studies that have considered this issue. Some households did not increase their credit usage, while others did "increase their access to credit." *See* BASTAGLI ET AL., *supra* note 10, at 23, 150–51, 248. *But see* SEWA BHARAT, A LITTLE MORE, HOW MUCH IT IS…: PILOTING BASIC INCOME TRANSFERS IN MADHYA PRADESH, INDIA 48 (2014) [hereinafter SEWA BHARAT, A LITTLE MORE], http://sewabharat.org/wp-content/uploads/2015/07/Report-on-Unconditional-Cash-Transfer-Pilot-Project-in-Madhya-Pradesh.pdf ("The statistics . . . show that there were no major differences in borrowing habits between basic income and control households in most respects.").

payments be assignable to creditors,[177] including a bankruptcy trustee? Should a BIG be garnishable? The answers to these questions would both affect the lived experiences of BIG recipients and affect the political viability of a BIG. Thus, they deserve serious consideration, which the remainder of Part III provides.

To fill this gap in the basic income literature, the remainder of Part III discusses issues related to the assignment and garnishment of BIG payments. It sets forth arguments both in favor of and against permitting the assignment and garnishment of BIG payments, whether into or outside of bankruptcy. It then sketches out some possible solutions. However, it does not definitively resolve the issues because resolution depends on the purpose of a BIG, which is far from settled.

B. BIG Debtor-Creditor Issues

The optimal solution for debtor-creditor-related BIG issues depends, in large part, on the purpose of a BIG.[178] Unfortunately, conversations about basic income often occur at a high level of generality, such that it can often seem as if a BIG can be all things to all people.[179] It is deeply unclear if BIG proponents can agree on the purpose of a BIG.[180] As noted above, some common justifications for a BIG include to: enhance individual autonomy; alleviate poverty; reduce income inequality; and increase entrepreneurship.[181] But, whether BIG income should be assignable, for instance, primarily depends on which justification animates that BIG proposal.[182] For example, if the goal is to enhance autonomy, BIG income should be freely assignable. By contrast, BIG income might be made non-assignable if the goal is to alleviate poverty and ensure everyone has enough money to buy the food, clothing, and shelter they need to survive.

1. Assignment and garnishment

The (in)ability to assign or garnish BIG income payments may be important for access to mainstream credit and may have important ramifications for consumers that fail to repay their debts.[183] For example, a BIG recipient might need a lump sum of

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[177] *See* Fleischer & Hemel, *Architecture*, *supra* note 10, at 688–90 (discussing assignability of basic income payments).

[178] *See generally id.* at 638–65 (discussing UBI issues through the lenses of welfarism, resource egalitarianism, and libertarianism).

[179] *See* Leff, *supra* note 18, at 87; MURRAY, *supra* note 19, at 9. Even book-length treatments of the topic often devote only a single chapter to the details of a BIG proposal. *See, e.g.*, HUGHES, *supra* note 26, ch. 5, at 91–96.

[180] *See generally* Fleischer & Hemel, *Architecture*, *supra* note 10, at 638–65 (discussing competing justifications for a UBI).

[181] *See supra* Section I.C.

[182] *See* Fleischer & Hemel, *Architecture*, *supra* note 10, at 688–89 (explaining different perspectives on the question of assignability).

[183] *See id.* at 688 (providing an example of a UBI recipient who wants to trade their future UBI payments for a lump sum today); *see also* Foohey et al., *Debt Collection*, *supra* note 1, at 225 (discussing the high salience of debt collection issues for Americans and arguing it will only grow worse during the pandemic).

money to pay an unexpected medical bill or to start a business.[184] If BIG benefits are available to pledge as collateral to creditors (or for them to recover against in the event of non-repayment), in theory we should expect to see an increased ability to borrow, or to borrow at lower rates. In addition, households might borrow from neighbors, friends, and family (all of whom would also have greater resources available to them if they also receive BIG income), rather than from predatory lenders.[185] Finally, the existence of a BIG might decrease the need to borrow money in the first instance, as households will have more resources available without borrowing.[186] Thus, if BIG income were assignable as collateral (or even if it were just attachable or subject to garnishment), we might expect people to have improved access to credit from both traditional lenders and informal sources, and to move from fringe banking to more traditional banking products.[187] Unfortunately, allowing BIG payments to be assigned (or garnished) will result in some recipients losing their BIG,

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[184] *See* Fleischer & Hemel, *Architecture*, *supra* note 10, at 688 (suggesting unexpected medical expenses or car repairs might necessitate borrowing money today secured by future UBI payments).

[185] *See* Chrystin Ondersma, *Debt Without Relief: An Empirical Study of Undocumented Immigrants*, 68 RUT. U. L. REV. 1801, 1823 (2016) (showing most individuals prefer to ask family and friends for money to secure financing, despite the embarrassment that may come with it).

[186] In actual practice, evidence of increased borrowing is mixed. *See* BASTAGLI ET AL., *supra* note 10, at 150 ("Of the 15 studies that report any indicator for borrowing, four report significant increases in the share of households in debt or borrowing and/or on total amount of debt, three report significant reductions, one reports mixed findings and the remaining seven studies report no significant impacts."). Furthermore, two studies of the Prospera program reported recipients of a basic income were substantially more likely to take out a loan. *See id.* at 156 ("For example, in Mexico, [researchers found] a significant effect of [Prospera] (0.4 percentage points or 66.7%) on the probability of taking loans for productive purposes, while previous[ ] [research] had estimated the programme increases the probability of having loans by 16 percentage points while negatively impacting the amount of the loan application."). Similarly, studies of credit use in Kenya, Uganda, and Kazakhstan all found cash transfer programs, such as a basic income, "had a significant impact on increasing households' uptake of credit." *Id.* ("In Kenya, the HSNP transfer also had a significant impact on increasing households' uptake of credit, measured over the previous 12 months (9.7 percentage points, significant at 10%) . . . as did the SAGE programme in Uganda, where the effect was strong and significant for households receiving the Senior Citizen Grant (7.3 percentage points, significant at 10%), though no significant impact was found on the size of outstanding debt. . . . Similar findings were reported . . . for Kazakhstan's BOTA programme (10 percentage point increase in the share of households with debt from any source, significant at 10%)."). By contrast, "[s]everal other evaluations found 'negative' effects of cash transfer receipt on loan-taking behaviour, highlighting a focus on paying back loans rather than taking on new debt." *Id.*; *see also* Tanner, *supra* note 8, at 9 ("A 2010 study by the Inter-American Development Bank found that beneficiaries of the cash transfer program in Ecuador were more likely to have credit with a bank in the past two years (59 percent for beneficiaries vs. 46 percent for non-beneficiaries).").

[187] Of course, access to credit is not an unalloyed good, as greater credit access is related to a greater need for bankruptcy relief. *See, e.g.*, Matthew A. Bruckner, *Bankrupting Higher Education*, 91 AM. BANKR. L.J. 720–21, 721 n.157 (2017) [hereinafter Bruckner, *Education*] ("The connection between the availability of credit and the need for bankruptcy laws is well known." (citing Nathalie Martin, *The Role of History and Culture in Developing Bankruptcy and Insolvency Systems: The Perils of Legal Transplantation*, 28 B.C. INT'L & COMP. L. REV. 1 (2005))); *cf.* Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1104 (2019) ("[T]he access to credit debate is flawed insofar as it is premised on the idea that credit can function as social provision for low-income Americans. In other words, credit is beneficial only to the extent that a borrower can expect to have future cash flow to service the resulting debt.").

sometimes involuntarily.[188] In such cases, we need to reckon with the effects of people losing their BIG benefits, particularly if we pay for a BIG by eliminating nearly every other public assistance program. When this happens, there will be effectively no floor on income for individuals who spent their BIG improvidently.[189]

In addition, transitioning from a variety of transfer-restricted public assistance programs to a single BIG would make debt collection easier, which could cause debt collection activity to increase.[190] A recurring monthly check or electronic transfer would be easier to identify and intercept with a writ of garnishment than identifying, for example, when a person's income tax return arrives.[191] Moreover, low-income recipients could have a ready source of cash available to be seized, which they may not currently have if their current benefits are mostly in-kind or transfer-restricted. For these reasons, we ought to expect transitioning from our current set of public assistance programs to a BIG would increase successful debt collection attempts against some BIG recipients. In turn, increased debt collection activity is likely to lead to increased personal bankruptcy filings.[192]

By contrast, if BIG income was not assignable or garnishable, we would expect the poor would continue to have limited access to credit, particularly mainstream credit.[193] Simply put, people with poor credit, low incomes, and few attachable assets have a harder time borrowing money at affordable rates or from mainstream

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[188] *See* Foohey et al., *Debt Collection*, *supra* note 1, at 225 (discussing the growth in debt collection lawsuits in the United States and noting that between 1993 and 2013, approximately seventy percent "of these cases were resolved with a default judgment against the debtor").

[189] To be clear, I do not necessarily mean that a person has frittered away their BIG. It may be that beneficiaries are defrauded but are unable to obtain redress, or perhaps an investment, which seems sound, does not turn out as expected. *See, e.g.*, Matt Krupnick, *States, federal government cracking down on for-profit colleges*, CNN MONEY (Mar. 12, 2014, 7:16 AM), http://money.cnn.com/2014/03/12/pf/college/for-profit-colleges/index.html (noting more than sixty percent of state attorneys general were investigating whether various for-profit colleges were "leaving students with heavy loan debt and without marketable job skills"). *Cf.* Matthew D. Adler, *Well-Being, Inequality and Time: The Time-Slice Problem and its Policy Implications* (U. Penn. L. Sch., Research Paper No. 169, 2007) (addressing arguments made by Derek Parfit, among others, about how personal identity changes over time and considering whether we should seek to maximize a person's wellbeing over that person's expected lifetime or only over a shorter period of time).

[190] For a recent overview of the rise in debt collection and how it harms borrowers, see Foohey et al., *Debt Collection*, *supra* note 1, at 225. *See also* Chana Joffe-Walt, *This American Life: There Owes the Neighborhood*, CHI. PUB. RADIO, at Act Three (Nov. 27, 2015), https://www.thisamericanlife.org/573/status-update/act-three (highlighting how lower-income individuals often default on sub-prime loans, suffer default judgments and then have their wages garnished, which buries them deeper in debt).

[191] *Cf.* Joffe-Walt, *supra* note 190 (reporting a woman's experience with wage garnishment after she could not pay her car loan).

[192] *See* Pamela Foohey, Robert M. Lawless, Katherine M. Porter & Deborah Thorne, *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 225 (2018) [hereinafter Foohey et al., *Sweatbox*] ("In a world of escalating collection tactics, some people who previously may have sweated it out and never filed bankruptcy may now decide to file.").

[193] *See, e.g.*, Matthew A. Bruckner, *The Promise and Perils of Algorithmic Lenders' Use of Big Data*, 93 CHI. KENT L. REV. 3, 6 (2018) (discussing research into the so-called "credit invisibles" who lack access to credit from traditional lenders); *see also* Atkinson, *supra* note 187, at 1097 (questioning the received wisdom that access to "credit is important for low-income Americans, whether as a viable mechanism of smoothing consumption or as a catalyst for social mobility" (footnotes omitted)).

lenders.[194] Decreased access to affordable credit should result in decreased levels of entrepreneurship relative to a world where BIG income was assignable.[195] Decreased access to credit could also negatively affect economic mobility.[196]

Even if a BIG's transferability led to increased access to affordable, non-predatory credit, some borrowers will still default. Default is often worse than never having borrowed in the first place.[197] As a result, only by preventing the assignment or garnishment of BIG payments can you ensure a BIG creates an absolute floor on income below which no person will be allowed to legally fall.[198] One caveat is a safety net will remain if a BIG merely supplements the existing set of public assistance benefits. But, if a BIG is to displace some existing public assistance benefits, many BIG supporters are unlikely to support a BIG unless assignment and garnishment are prohibited.[199]

Unfortunately, whatever choice is made might destroy any nascent political coalition between liberals and conservatives and prevent a BIG from being enacted in the first place.[200] Conservative and libertarian BIG supporters often argue excess government intervention in people's lives saps individual agency and encourages dependence.[201] At least for payments made to adults, conservative and libertarian BIG supporters would likely argue that if a person fritters away their BIG or makes a poor

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[194] *See also* Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 UNIV. ILL. L. REV. 375, 376 (suggesting the 2005 bankruptcy reforms would allow credit card issuers to earn more revenue from borrowers before they file for bankruptcy, limiting their incentive to lend to consumers with the ability to repay).

[195] *See* Meta Brown & Matthew Mazewski, *Stepping Stone or Quicksand? The Role of Consumer Debt in the U.S. Geography of Economic Mobility*, *in* ECONOMIC MOBILITY: RESEARCH & IDEAS ON STRENGTHENING FAMILIES COMMUNITIES & THE ECONOMY 203, 206 (Alexandra Brown et al. eds., 2016), https://www.stlouisfed.org/~/media/Files/PDFs/Community-Development/EconMobilityPapers/Intro/EconMobility_Introduction_508.pdf?la=en ("A family with more access to credit is more able to take advantage of investment opportunities, including investment in a child's human capital and entrepreneurial investment."); HUGHES, *supra* note 26, at 115 (stating a basic income "can be the seed money to start a small business around the corner or on Etsy").

[196] *See* W. Bruce Wydick, *Credit Access, Human Capital, and Class Structure Mobility*, 35 J. DEV. STUD. 131, 135 (1999) (illustrating through an empirical study how credit can affect social mobility); *see also* Brown & Mazewski, *supra* note 195, at 230 (discussing the "close correlation between current credit conditions and the opportunities available to American children").

[197] *See* Atkinson, *supra* note 187, at 1160–61 (arguing in favor of grants to low-income individuals rather than access to credit because many low-income individuals will be worse off for having borrowed money to pay for current consumption).

[198] However, that would not prevent an illegal transfer, such as what sometimes happens with SNAP benefits today. *See* Williamson, *supra* note 144 (describing how some food stamp beneficiaries launder their benefits to support drug addiction).

[199] *See* STERN WITH KRAVITZ, *supra* note 25, at 207 (depicting the two main constituencies for a basic income guarantee as "people who believe we need a safety net for everyone, and people who believe in smaller government"); *see also* HUGHES, *supra* note 26, at 92 ("[A] guaranteed income would create a floor below which people could not fall, a reliable foundation for people to build on.").

[200] *See* HUGHES, *supra* note 26, at 92 (stating "[t]he last thing you want to do is drive a wedge between" the two main constituencies for a basic income).

[201] *See* MURRAY, *supra* note 19, at 2–3 (briefly discussing the alleged decay of virtues such as thrift, neighborliness, and a strong work ethic and claiming that "[t]he welfare state produces its own destruction").

investment, that person should suffer the consequences.[202] Similarly, if the purpose of a BIG is primarily to encourage investments in human capital,[203] risk-taking, or entrepreneurship;[204] to increase individual autonomy; or anything other than to provide an income floor, then BIG payments should be freely assignable, attachable, and subject to garnishment.[205] Thus, we see that questions of debtor-creditor law are intimately related to the justification for a BIG.

2. Bankruptcy

BIG design also has implications for bankruptcy. Some people are literally too poor to go bankrupt, as even indigent debtors must generally pay court fees to receive bankruptcy relief.[206] On the one hand, replacing transfer-restricted public assistance benefits with unrestricted cash grants could allow people to save up for bankruptcy

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[202] *See id.* at 3 ("To the extent that inequality of wealth is grounded in the way people freely choose to conduct their lives, I do not find it troubling."); *see also* Fleischer & Hemel, *Architecture*, *supra* note 10, at 689 (discussing resource egalitarians' likely view that "if an individual freely chooses to trade UBI payments in the future for a lump sum today, society is under no obligation to bail that individual out if she later regrets the decision").

[203] Ackermann and Alstott argued for a one-time, $80,000 grant paid at age twenty-one and suggested college-bound students should be able to draw this amount early ("up to twenty thousand per year for four years") to pay for college. ACKERMANN & ALSTOTT, *supra* note 36, at 52–53. While it might make sense to allow BIG recipients to pledge their future BIG income to pay for educational expenses on the theory that their increased earnings will pay a greater dividend than their BIG income in the future, there is substantial evidence that some colleges, particularly some for-profit colleges, prey on prospective students, offering them credentials of little value in exchange for their tuition dollars. *See* Krupnick, *supra* note 189; *see also* Matthew A. Bruckner, *The Forgotten Stewards of Higher Education Quality*, 11 U.C. IRVINE L. REV. 1, 5 (2020) (discussing harm to colleges students "when they borrow heavily to attend an institution that does not sufficiently boost their earning power to repay their educational debt"). Students who incur debt without earning a degree are worse off than students who either skip college altogether or who obtain a degree. *See* Bruckner, *Education*, *supra* note 187, at 734 n.245 ("[I]ncurring educational debt without earning a degree can lead to bankruptcy." (citation omitted)). Although some schools already defraud students, it would be particularly concerning if students were deprived of their only means of survival because they have pledged their BIG income. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/AIMD-97-48, DEBT COLLECTION: IMPROVED REPORTING NEEDED ON BILLIONS OF DOLLARS IN DELINQUENT DEBT AND AGENCY COLLECTION PERFORMANCE 23 (1997), https://www.gao.gov/assets/aimd-97-48.pdf ("[M]any student borrowers have little or no means to repay their loans because they attended poor quality proprietary schools that failed to provide them with marketable skills."); *see also* Yan Cao & Tariq Habash, *College Fraud Claims Up 29 Percent Since August 2017*, CENTURY FOUND. (June 7, 2018), https://tcf.org/content/commentary/college-fraud-claims-29-percent-since-august-2017/ (finding more than ninety-eight percent of complaints alleging a federally approved institution of higher education has defrauded or misled students were made against "for-profit colleges, many which have been under law enforcement investigations or have since shut down").

[204] There is some evidence, particularly from the developing world, that unconditional cash transfer programs result in increased entrepreneurial activity. *See The Impact of Unconditional Cash Transfers in Kenya*, INNOVATIONS FOR POVERTY ACTION, https://www.poverty-action.org/printpdf/7236 (last visited Apr. 5, 2021).

[205] *See* Fleischer & Hemel, *Architecture*, *supra* note 10, at 688–90.

[206] *See* Karen Gross with Shari Rosenberg, *In Forma Pauperis in Bankruptcy: Reflecting On and Beyond* United States v. Kras, 2 AM. BANKR. INST. L. REV. 57, 58 n.10 (1994) (citing United States v. Kras, 409 U.S. 434, 452 (1973) (Stewart, J., dissenting)); *see also* Philip Tedesco, *In Forma Pauperis in Bankruptcy*, 84 AM. BANKR. L.J. 79, 85–87 (2010) (suggesting many more people would file if the filing fee was presumptively eliminated for the poor).

more easily.[207] Thus, there could be an increase in bankruptcy filings if BIG recipients find it easier to save up for bankruptcy, which some may see as a problem.[208] But bankruptcy relief is pro-debtor and, therefore, an increased rate of bankrupting filings is not a problem.[209]

But, on the other hand, those cash grants will be more readily garnished by creditors, which will make it harder for some people to save up for bankruptcy. As a result, we could see an increased need for bankruptcy, but fewer bankruptcy cases.

In addition, debtors are only periodically able to discharge their debts in bankruptcy.[210] Therefore, a debtor who has regained control of their BIG benefits after successfully discharging their debts in a recent bankruptcy proceeding will be unable to obtain another discharge for several years. During this period when a debtor has unrestricted benefits and nondischargeable debts, they are likely to be worse off than a beneficiary of current public assistance benefits because their BIG income may be garnished, whereas many public assistance benefits are currently unavailable for creditors to seize involuntarily from debtors.[211]

C. Sketching Some Solutions to an Optimal BIG Design

The previous Subsection highlighted both the importance of considering whether BIG payments should be transferable and some bankruptcy implications. In this Subsection, I will sketch out some possible ways of addressing these issues. However, my primary intention with this Article is merely to highlight the relevance of thinking through these issues when designing a BIG, rather than to suggest the right answer. The "right answer" depends on the goals of a BIG, which are legion.[212]

The most challenging question to take up is voluntary assignments. In the prior Subsection, I highlighted most of the reasons both for and against assignability and add only a small addendum here. As noted above, "welfare" benefits are generally not available to creditors.[213] As a result, one would expect welfare recipients could

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207 Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 392 (2010) ("[T]he primary factor that affects the date in which people actually file [a bankruptcy petition] is their ability to save up the money to pay their attorneys and filing fees.").

208 *See id*. at 292.

209 *See* Foohey et al., *Sweatbox*, *supra* note 192, at 221 ("For those people who struggle for more than two years before filing bankruptcy—the 'long strugglers'—their time in the sweatbox is particularly damaging, distinguishing them from other debtors. They lose their homes to foreclosure, sell other property, report going without food and other necessities, all while employing multiple tactics to try to make ends meet and dealing with persistent debt collection calls and lawsuits. When long strugglers finally file, they enter bankruptcy with fewer assets than other debtors and overwhelming unsecured debts.").

210 *See* 11 U.S.C. § 727(a)(8)–(9) (2018) (limiting the availability of a discharge to every six to eight years); *see also* Mann, *supra* note 194, at 395–96 (discussing the 2005 Bankruptcy Code amendments and the barriers to bankruptcy relief they imposed).

211 *See supra* note 149 and accompanying text.

212 *See* Fleischer & Hemel, *Architecture*, *supra* note 10, at 688–90 (discussing how different philosophical pillars will affect one's arguments for and against the assignability of basic income payments).

213 *See supra* note 146 and accompanying text; *see also* Aleta Sprague, *Next Generation TANF: Reconceptualizing Public Assistance as a Vehicle for Financial Inclusion*, 18 UDC/DCSL L. REV. 144, 185 (2015) ("[M]ost states currently exempt TANF benefits from garnishment. . . .").

not use chapter 13 of the Bankruptcy Code because they lack income to fund a reorganization plan.[214] Similarly, welfare recipients might find it difficult to save their home in chapter 13 without sufficient disposable income to cure any defaults that may have occurred.[215] However, some courts have allowed welfare recipients to fund their chapter 13 plans with their TANF benefits, so long as the debtor retains "an unwaivable right" to terminate a creditor's attachment of those benefits.[216] We could follow a similar approach with BIG benefits by allowing recipients to voluntarily assign them, so long as beneficiaries retain an irrevocable right to change their mind.[217]

Other BIG and BIG-like programs generally do not restrict recipients from voluntarily assigning their BIG benefits.[218] Generally, I would not restrict the voluntary assignment of BIG income, particularly if a BIG (or pandemic relief) merely supplemented existing public assistance programs or other income. This does diverge from our current approach for most existing public assistance benefit programs, which generally do restrict how and by whom those benefits may be used.[219] In theory, these restrictions are meant to ensure the benefits are not squandered and to provide a minimum floor of income.[220] But an income floor would continue to be provided by existing public assistance programs if a BIG was purely supplemental.[221] Besides, transfer restrictions are often ineffective.[222] And they are not free; there are real costs to restricting how people spend their benefits, both in terms of individual autonomy and dignity, and administrative costs.[223] For example,

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[214] There is interesting literature about whether chapter 13 bankruptcies are "bad" (relative to "good" chapter 7 cases). *Compare* Jean Braucher, Dov J. Cohen, & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 394–95 (2012) (discussing the less favorable aspects of chapter 13 and racial disparities in "chapter choice"), *with* Edward R. Morrison, Belisa Pang, & Antoine Uettwiller, *Race and Bankruptcy*: *Explaining Racial Disparities in Consumer Bankruptcy*, 63 J. L. & ECON. 269, 270 (2020) (suggesting chapter 13 bankruptcies are not "bad," but are rational responses to the advantages of car retention in chapter 13 relative to chapter 7, particularly for Black Americans). While resolving this debate is outside the scope of this Article, it is interesting to note there may be pushback on any suggestion to encourage more chapter 13 filings by, for example, allowing BIG benefits to fund chapter 13 plans.

[215] *See* Braucher et al., *supra* note 214, at 399.

[216] *See In re* Howell, 138 B.R. 484, 488 (W.D. Pa. 1992).

[217] As an added benefit, this would address the "time slice" problem by allowing a later self to amend the decisions of an earlier self. *See* Adler, *supra* note 189.

[218] *See supra* Section I.B.

[219] *See* Leff, *supra* note 18, at 93–96 (discussing attempts to limit the availability of social security and ETIC benefits to the "deserving").

[220] *See* HUGHES, *supra* note 26, at 92.

[221] If a BIG replaced existed public assistance programs, it is harder to make the case for wholly unrestricted BIG benefits.

[222] *See* Williamson, *supra* note 144 (discussing how SNAP benefits are illicitly laundered into cash).

[223] *See* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1247 ("[R]estrictions create an additional set of costs—for agencies that enforce these rules, for vendors who must comply with them, and for recipients who face the stigma associated with in-kind benefits.").

those restrictions often involve intrusive probing into people's lives and choices.[224] Given the costs and limited effectiveness of many existing restrictions, I believe they should not be grafted onto a BIG.

In contrast to my support for voluntary assignment, I generally support a blanket prohibition on the involuntary garnishment of BIG income, primarily because it is involuntary.[225] This approach largely mirrors the treatment of public assistance benefits under state debt collection laws and federal bankruptcy law. Bankruptcy law provides a blanket exemption for benefits received under various public assistance programs, including income from social security, unemployment, veterans' benefits, disability benefits, and a catch-all category of "local public assistance benefits."[226] To the extent a BIG is paid by the federal government, which is how most proposals are structured, it would not be a "*local* public assistance benefit"[227] and would probably not currently be protected under federal bankruptcy law.[228] And so, the creation of a new federal benefit program should be accompanied by a small tweak to the Bankruptcy Code to ensure all public assistance benefits are covered.

In addition, BIG benefits may already be protected under some state exemption laws.[229] Several state exemption laws are even more generous than the Bankruptcy Code, exempting all public assistance benefits, not just local public assistance benefits.[230] Thus, depending on how a BIG is paid, some state exemption laws could

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224 *See* Fleischer & Hemel, *Libertarian*, *supra* note 32, at 1244–47 (noting the arbitrariness of various restrictions on the types of items that can be purchased with benefits); *see also supra* text accompanying note 100.

225 I also support a blanket exemption for pandemic relief funds, which seems an even clearer case. Unfortunately, the CARES Act did not directly prohibit pandemic relief payments from private debt collectors. *See* Foohey et al., *Debt Collection*, *supra* note 1, at 232 (regarding pandemic relief, the authors argue "[t]he most comprehensive and ideal solution is for Congress to halt all debt collection activities on a nationwide basis for a prescribed period"). By contrast, many states did act to protect these funds.

226 11 U.S.C. § 522(d)(10) (2018).

227 *See id.* (emphasis added).

228 *See In re* Goertz, 202 B.R. 614, 618 (Bankr. W.D. Mo. 1996) (holding when a state statute only exempts local public assistance benefits, "characteriz[ing] the federal earned income credit as a 'local public assistance benefit' would substantially depart from the express language of the statute and take this court into the realm of rewriting Missouri law").

229 *See, e.g.*, MASS. GEN. LAWS ANN. ch. 235, § 34, cl. 15 (West 2011) (exempting "the full amount owing or paid to a person as public assistance" from execution by a creditor); 735 ILL. COMP. STAT. ANN. 5/12-1001(g) (West 2019) (exempting a "debtor's right to receive: (1) a . . . public assistance benefit . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor"). During the COVID-19 pandemic, some state courts reportedly have also protected pandemic relief payments. *See* Foohey et al., *Debt Collection*, *supra* note 1, at 230–35 (discussing various steps taken by states to cease debt collection activities during the pandemic, some of which are broad-based and others that are more narrowly tailored).

230 *See In re* Ray, No. 98 B 38634, 1999 WL 621524, at *2 (Bankr. N.D. Ill. June 23, 1999) (discussing the exemption of all public assistance benefits under Illinois state law); *In re* Fish, 224 B.R. 82, 83 (Bankr. S.D. Ill. 1998) (noting several courts found earned income credits are exempt as public assistance benefits); *In re* Jones, 107 B.R. 751, 751 n.1, 752 (Bankr. D. Idaho 1989) (holding the EITC is exempt as "benefits the individual is entitled to receive under federal, state, or local public assistance legislation . . . due to its nature as social welfare relief. . . ."). *Compare* Luster v. Collins (*In re* Collins), 170 F.3d 512, 513 (5th Cir. 1999) (holding the EITC is not exempt under Louisiana state law), *with In re* Brown, 186 B.R. 224, 227 (Bankr. W.D. Ky. 1995) (holding the EITC is exempt under Kentucky's definition of "public assistance").

already be interpreted to protect a BIG.[231] States with laws that do not currently protect BIG payments might also tweak their exemption laws to ensure all BIG payments are protected from the reach of creditors.[232]

However, there are two other alternative frameworks we might draw on to think about this issue. First, one can consider how Alaska has addressed this issue. As noted earlier, Alaska has a program akin to a BIG.[233] And Alaska's exemption law protects "20 percent of the annual permanent fund dividend payable to an individual . . . from levy, execution, garnishment, attachment, or any other remedy for the collection of debt."[234] Alaska's exemption is low, but it is worth noting that payments from the Permanent Dividend Fund are only approximately $1,000 per year; they are not meant to be a person's sole source of income but merely supplement other public assistance benefits.[235] Thus, Alaska's exemption might be more appropriately viewed as a floor rather than a ceiling on the appropriate exemption level for BIG payments if a BIG replaces most other public assistance programs.

Second, federal law already restricts the degree to which creditors may garnish a debtor's wages to the lower of twenty-five percent of a person's disposable earnings or the amount by which a person's weekly wages exceed thirty times the minimum wage.[236] This cap applies to various forms of compensation, including certain payments due to disability.[237] Especially to the extent a BIG replaces other public assistance benefits, this cap should—at a minimum—also be made applicable to any BIG benefits received. For the most vulnerable BIG beneficiaries, such a cap could completely exempt their BIG benefits from garnishment. Some states also protect benefits even after they have been deposited into a bank account, and BIG benefits might be similarly protected.[238] Just as "an individual should not be required to pay

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[231] For example, New York State exempts $2,500 of a judgment debtor's bank account from being used to satisfy a money judgment, if that money was deposited into the account in the forty-five-day period preceding the garnishment of that account. N.Y. C.P.L.R. § 5205(l) (McKinney 2020). These monies are only exempt if they are "reasonably identifiable as statutorily exempt payments," which includes "payments from any of the following sources: social security, including retirement, survivors' and disability benefits, supplemental security income or child support payments; veterans administration benefits; *public assistance*; workers' compensation; unemployment insurance; public or private pensions; railroad retirement; and black lung benefits." *Id.* § 5205(l)(2) (emphasis added).

[232] *See* Foohey et al., *Debt Collection*, *supra* note 1, at 236 (expressing a preference for Congressional action to "provide more consistent and uniform relief to struggling families").

[233] *See supra* text accompanying notes 48–57.

[234] ALASKA STAT. ANN. § 43.23.140 (West 2018).

[235] *See supra* notes 52, 57 and accompanying text.

[236] 15 U.S.C. § 1673(a)(1)–(2) (2018).

[237] *Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title III (CCPA)*, U.S. DEP'T OF LABOR (Oct. 2020), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs30.pdf (explaining the Consumer Credit Protection Act limits the amount of an individual's earnings that may be garnished and classifying disability payments as earnings); *see also* 15 U.S.C. § 1672(a) ("The term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pensions or retirement program.")

[238] *See, e.g.*, N.Y. C.P.L.R. § 5205(l)(1) (McKinney 2020).

taxes from funds that must be dedicated to subsistence," an individual should not give up their subsistence level income and assets.[239]

A counterargument that Professors Ackerman and Alstott's work would raise to my proposal is one of moral hazard. They write, "Basic Income runs the risk of underwriting adult irresponsibility: how to justify letting the forty-year-old default on her credit card debts while keeping her Basic Income intact?"[240] Ackerman and Alstott are correct that the moral hazard issues that already exist within our public assistance programs may grow and multiply if every American resident receives a fully protected basic income.[241] Again, the correct outcome to this quandary cannot be resolved here because it depends, in large part, on the justification for a BIG. If the justification is to ensure a minimal standard of living that one should never fall beneath—which is my own position—then this may simply be a cost of pursuing that outcome. If, by contrast, the justification is to increase autonomy, then beneficiaries must accept the consequences of their decisions.[242]

Ackerman and Alstott also highlight another concern. Even if a BIG is legally non-transferable, there could be a black market for illicit loans.[243] In other words, what stops a basic income recipient from illegally pledging his basic income as collateral for a loan to a person who is comfortable enforcing this pledge extra-legally?[244] Thus, they raise the question of whether it is really possible to prevent creditors from attaching any sort of cash grant. This concern is certainly valid, but it is one they do not fully address themselves either. Ackerman and Alstott propose paying a cash grant to citizens at age twenty-four.[245] But, even in their proposal, nothing stops minors from pledging their benefits extra-legally before that time to a structured finance loan shark.[246] Besides, parties make contracts all the time that the

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239 *See* Glogower & Wallace, *supra* note 20, at 6.

240 Ackerman & Alstott, *Why Stakeholding?*, *supra* note 10, at 47 (emphasis omitted).

241 *See id.* at 46–47.

242 *See, e.g.*, Fleischer & Hemel, *Architecture*, *supra* note 10, at 689 (noting those who believe that individuals should determine what economic trade-offs are to be made will have to deal with the consequences of their decisions if those choices end up being poor ones). Of course, once we begin discussing responsibility for credit decisions, the issue arises of why the borrower should accept primary responsibility for repaying an unrepayable debt, as opposed to the lender accepting primary responsibility for lending money to someone who could not repay that debt. *See* Matthew A. Bruckner, *Special Purpose Municipal Entities and Bankruptcy: The Case of Public Colleges*, 36 EMORY BANKR. DEV. J. 341, 372 (2020) ("For every dollar improvidently borrowed, there was a dollar improvidently lent.").

243 *See* Ackerman & Alstott, *Why Stakeholding?*, *supra* note 10, at 47 (explaining when, for example, banks refuse to grant loans, individuals can just turn to their neighborhood loan sharks who will grant them illegal loans that will be unenforceable in court, thus creating a black market for loans that otherwise could not be legally granted).

244 *See id.* (stating, while a loan shark will not "be able to go to court to enforce" the illegal loan, he will "hire thugs" to do so).

245 *See id.* at 46–47.

246 *See id.* at 47–50 (calling it "utopian" to think that problems such as loan sharks relying on illegal means of enforcing their claims can be eliminated through the implementation of stakeholding).

law refuses to enforce,[247] but that does not mean the law should enforce such contracts anyway.

CONCLUSION

This Article was intended to highlight several issues that may arise if America adopts a BIG, particularly if paying for a BIG requires shifting resources from existing public assistance benefit programs. If some, or all, of these programs are eliminated, some Americans would be worse off unless the transfer restrictions that currently apply to many public assistance programs also protect any BIG payments. Many of these same issues also arise in the context of pandemic relief efforts that take the form of direct cash payments. Our goal with any direct cash payments should be to ensure people are better off. Therefore, we must consider how such programs interact with state and federal debtor-creditor laws.

[247] *See, e.g.*, George A. Strong, *The Enforceability of Illegal Contracts*, 12 HASTINGS L.J. 347, 354–55 (1961).