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Revolutionizing Redistribution: Tax Credits and the American Rescue Plan

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ABSTRACT. The American Rescue Plan Act (ARPA) dramatically alters the federal government's approach to redistribution in 2021. Among its boldest reforms are its temporary expansions of the Child Tax Credit and the Earned Income Tax Credit. For the first time, ARPA authorizes meaningful cash support for nonworking families and childless workers, two groups that have been historically disadvantaged by social safety-net programs. This Essay considers ARPA's effects on low-income American taxpayers, spotlighting in particular how the reforms will protect millions of households from being pushed into poverty or further into poverty as a result of paying taxes—a phenomenon called "fiscal impoverishment." Policy makers must make ARPA's reforms permanent in order to ensure that low-income taxpayers remain protected past 2021. As they work to do so, policy makers should be mindful of gaps in the tax credits that will undermine the reforms' positive effects. This Essay identifies several such gaps and argues that Congress should legislate more dramatic inclusion for households with and without children.

INTRODUCTION

On March 11, 2021, one year into the COVID-19 pandemic, Congress enacted the American Rescue Plan Act (ARPA) to provide ongoing relief to American households, businesses, and state and local governments.[1] The $1.9 trillion emergency-legislation package both extended existing support programs, like unemployment insurance, and authorized much-needed new support, such as

1. American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (enacted).

funding for state and local governments.[2] More than merely increasing support, however, ARPA also dramatically alters the federal government's approach to redistribution in 2021. Among the law's progressive reforms, perhaps the boldest are its temporary expansions of the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC).

For decades, these refundable tax credits have comprised the federal government's largest cash-transfer programs for American families, providing valuable support to those in need. Yet prior to ARPA, the CTC and EITC were limited in important ways. First, claimants were required to work in order to receive benefits under either program. Second, the EITC severely disadvantaged childless workers, paying a credit so small that it failed to fully offset federal taxes. These features reflected America's decades-long preference for prioritizing support to working families with children, a group sometimes called the "deserving poor."[3] Those who fall outside of this group—that is, nonworking households and childless households—have traditionally received far less support from U.S. safety-net programs. This pattern partly reflects the public's and policy makers' concerns over work disincentives and perceived welfare dependency among recipient households.[4] By supporting workers, policy makers avoid creating work disincentives,[5] or so the thinking goes. The necessary corollary, however, is the exclusion of nonworkers despite their particular vulnerability.[6]

Now, with ARPA's short-term expansions, Congress has authorized meaningful cash support for nonworking families as well as childless workers. The law does so in part by altering the CTC so that nonworking families can receive the credit in 2021.[7] ARPA also significantly increases the maximum EITC

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2. Thomas Kaplan, *What's in the Stimulus Bill? A Guide to Where the $1.9 Trillion Is Going*, N.Y. TIMES (Mar. 30, 2021), https://www.nytimes.com/2021/03/07/us/politics/whats-in-the-stimulus-bill.html [https://perma.cc/ZMB5-ZERR].

3. *E.g.*, MICHAEL B. KATZ, THE UNDESERVING POOR: AMERICA'S ENDURING CONFRONTATION WITH POVERTY 3 (2013).

4. *Id*. at 194-202 (detailing the rise of "workfare"); DANIEL BÉLAND & ALEX WADDAN, THE POLITICS OF POLICY CHANGE: WELFARE, MEDICARE, AND SOCIAL SECURITY REFORM IN THE UNITED STATES 47-49 (2012) (describing the concern over welfare dependency during the Clinton era).

5. *E.g.*, BÉLAND & WADDAN, *supra* note 4, at 49 (describing President Clinton's presidential-campaign messaging, which sought to "reward people who work hard" and reflected a liberal concession of the "need to move more welfare recipients into work").

6. *See* Austin Nichols & Zachary J. McDade, *Long-Term Unemployment and Poverty Produce a Vicious Cycle*, URB. INST.: URB. WIRE (Sept. 17, 2013), https://www.urban.org/urban-wire/long-term-unemployment-and-poverty-produce-vicious-cycle [https://perma.cc/FBL4-8H4N] (describing the link between poverty and unemployment).

7. American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 9611 (enacted).

amount for childless workers in 2021, from about $540 to just over $1,500.[8] Absent congressional action, both reforms will expire at the end of 2021.[9] Although only temporary, these reforms herald a notable shift in policy makers' willingness to redistribute income to nonworking families and childless workers.

In addition to describing ARPA's reforms to the CTC and EITC, this Essay offers two novel contributions to the discourse surrounding these tax provisions. First, it considers ARPA's effects on poor American taxpayers, spotlighting in particular how the reforms will protect millions of low-income households from a phenomenon called "fiscal impoverishment"[10] – that is, being pushed into poverty or further into poverty as a result of paying taxes. Policy makers must make these reforms permanent in order to ensure that low-income taxpayers remain protected in the future. Congressional Democrats and Biden Administration officials are working toward this goal.[11] As they do so, they should be mindful of gaps in the credits that will undermine the reforms' positive effects. The Essay's second contribution is to identify several such gaps and suggest how lawmakers might address them.

The Essay proceeds as follows. In Part I, I define fiscal impoverishment and explain why it merits concern. Fiscal impoverishment violates human dignity and undermines the federal government's avowed goal of reducing poverty, as well as its foundational duty to not harm its residents. In Part II, I explain how ARPA's reforms will reduce fiscal impoverishment while in effect in 2021. I start by describing cash-support programs prior to ARPA, then briefly explain how ARPA has temporarily expanded the EITC and CTC to provide meaningful support to nonworking families and childless workers. These expansions will protect millions of households from being pushed into poverty or further into

8. *Earned Income and Earned Income Tax Credit (EITC) Tables*, INTERNAL REVENUE SERV. (Sept. 13, 2021), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables [https://perma.cc/K23X-33UD]; INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUB. NO. 596, EARNED INCOME CREDIT (EIC) 32-33 (2021), https://www.irs.gov/pub/irs-pdf/p596.pdf [https://perma.cc/6CZ9-6ZAU].

9. I.R.C. §§ 24(i), 32(n) (West 2021).

10. I introduce and describe fiscal impoverishment in a separate forthcoming piece. *See* Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. PA. L. REV. (forthcoming 2022), https://ssrn.com/abstract=3775246 [https://perma.cc/7F8Y-6ZDU].

11. *See, e.g.*, U.S. DEPT. OF THE TREASURY, GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL YEAR 2022 REVENUE PROPOSALS 70-72, 77-80 (2021), https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf [https://perma.cc/DN6X-BLJV]; Lorie Konish, *Millions of Families Are Receiving New Monthly Child Tax Credit Checks. Some Hope That Income Becomes Permanent*, CNBC (July 17, 2021, 10:19 AM EST), https://www.cnbc.com/2021/07/17/why-some-want-the-new-monthly-child-tax-credit-payments-made-permanent.html [https://perma.cc/YDZ8-P7TE].

poverty after paying taxes. Finally, in Part III, I propose further legal reforms to build on ARPA's short-term expansions of refundable tax credits. In addition to making these expansions permanent, I argue that Congress should legislate more dramatic inclusion for households with and without children, including undocumented children and nonworking childless adults.

I. FISCAL IMPOVERISHMENT

This Essay highlights a specific consequence of ARPA's reforms that has not been analyzed in detail elsewhere: the reforms will reduce fiscal impoverishment for millions of poor American households. Fiscal impoverishment occurs when taxpayers are pushed into poverty or further into poverty as a result of paying federal, state, and local taxes, even after accounting for certain cash and cash-like public benefits that may offset such taxes.[12] For example, prior to ARPA, a noncustodial father in California earning poverty-level wages in 2019 would have paid approximately $2,000 in federal, state, and local taxes, pushing his after-tax income well below the poverty threshold.[13]

This Part lays a foundation for the rest of the Essay by defining fiscal impoverishment and explaining its normative significance. Fiscal impoverishment violates human dignity and undermines the government's poverty-reduction goal as well as its foundational duty to not harm its residents. By reducing fiscal impoverishment, ARPA makes the U.S. tax system more humane and signals the federal government's concern for the wellbeing of low-income American households.

A. Defining Fiscal Impoverishment

A fiscal system can be progressive and poverty reducing, yet still harm a significant number of people by pushing them below—or further below—the poverty line. This phenomenon is called "fiscal impoverishment."[14]

Fiscal impoverishment occurs when a person living in or near poverty (however defined) bears a net-positive tax cost that pushes her into poverty or further into poverty.[15] A person's net tax cost includes all the taxes she incurs minus the cash and near-cash benefits she receives. Taxes might include income and payroll

12. *See* Jurow Kleiman, *supra* note 10 (manuscript at 4).

13. This example, with tax and transfer calculations, is described in greater detail in notes 19-24 and accompanying text, *infra*.

14. For a deeper explanation of fiscal impoverishment and analysis of its value as a metric of tax fairness, see Jurow Kleiman, *supra* note 10 (manuscript at 14-19).

15. *See generally id*. (defining and discussing fiscal impoverishment).

taxes, sales and excise taxes, and property taxes.[16] Taxpayers might bear some of these taxes indirectly, for instance, via lower wages or higher prices. Cash and near-cash government benefits might include refundable tax credits such as the EITC or CTC, Temporary Assistance for Needy Families (TANF) benefits, Social Security retirement and disability benefits, and vouchers for basic needs, such as Supplemental Nutrition Assistance Program (SNAP) benefits (also known as food stamps).[17] The difference between taxes and benefits is a person's net tax cost.[18] If someone living below the poverty threshold faces a net-positive tax cost, this cost pushes her further into poverty. She is fiscally impoverished. If she earns wages just above the poverty threshold and her net tax cost is high enough to push her below the threshold, she is also fiscally impoverished.

To see how this works, imagine Abe, a noncustodial father living in California and earning poverty-level wages of $12,490 in 2019 (prior to ARPA's reforms and any federal stimulus payments).[19] Although he receives a small EITC, it is not enough to offset his federal payroll taxes. In total, he bears a net federal income and payroll tax amount of $749.[20] At the state level, he receives a state EITC that offsets his income tax, resulting in a refund of $137.[21] According to estimates from the Institute for Taxation and Economic Policy (ITEP), each year Abe pays sales taxes equal to approximately 7.2% of his total income and property tax of

16. *See* KATHERINE S. NEWMAN & ROURKE L. O'BRIEN, TAXING THE POOR 87-93 (2011) (describing the various taxes that low-income households pay).

17. I describe important structural details of the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), and Temporary Assistance for Needy Families (TANF) in Section II.A, *infra*.

18. If benefits exceed taxes, the person is a net recipient under this measurement methodology. Many low-income working families with children are net recipients due to refundable tax credits. The same is true for individuals with disabilities who receive state or federal disability insurance.

19. *See* Jurow Kleiman, *supra* note 10 (manuscript at 34) (providing the same example). This amount is the federal poverty guideline for a single-person household in 2019. Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167, 1167-68 (Feb. 1, 2019).

20. Tax and EITC amounts are calculated using TAXSIM. *See TAXSIM Related Files at the NBER*, NAT'L BUREAU OF ECON. RSCH., http://users.nber.org/~taxsim [https://perma.cc/G54C-FBGR]. TAXSIM assumes that workers bear the full federal payroll-tax rate of 15.3%, which includes the employee's half and the employer's half (each of which is 7.65% of total wages). Using the full rate assumes that workers bear the employers' share indirectly through reduced wages, a point on which economists generally agree. *See* Don Fullerton & Gilbert E. Metcalf, *Tax Incidence*, *in* 4 HANDBOOK OF PUBLIC ECONOMICS 1787, 1821-22 (Alan J. Auerbach & Martin Feldstein eds., 2002). Even so, for the sake of simplicity, the calculation here uses only the employee's share. I consider this issue in more detail in note 105, *infra*.

21. NAT'L BUR. OF ECON. RSCH., *supra* note 20.

4% of total income, for a total additional tax amount of $1,399.[22] Because Abe does not care for his children in his home, he is ineligible for TANF benefits. At his income level, he is unlikely to receive SNAP benefits.[23] With a positive tax burden and insufficient offsetting transfers, Abe and millions of others like him faced fiscal impoverishment in 2019.[24] His taxes push him from the poverty threshold to significantly below it, with an after-tax income of only $10,479.

Childless workers like Abe comprise the largest group facing fiscal impoverishment, but they are not the only group of people who are taxed into poverty. Families with children might also face fiscal impoverishment under certain conditions. For instance, nonworking families living just above and below the poverty line might pay more in taxes than they receive in safety-net benefits. While nonworking families likely do not pay income taxes, they still pay state and local sales taxes, and they likely bear some portion of the property tax as well.[25] And although fiscal impoverishment takes government transfers into account, nonworking families are largely excluded from TANF and prior to ARPA were entirely excluded from refundable tax credits.[26] These work requirements are discussed in Section II.A. Low-income nonworking families are, however, likely to receive SNAP benefits and free school lunch. Whether these in-kind benefits are sufficient to offset a family's taxes depends on the family's income and other expenses.

Imagine Amy, for instance, a single mother with two children who lives in California and receives child support of $1,778 per month in 2019 (prior to ARPA and any COVID-19 related stimulus payments). This income put Amy's family

22. INST. ON TAX'N & ECON. POL'Y, WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES 40 (6th ed. 2018).

23. Abe's SNAP eligibility at his income level would ultimately depend on his specific household expenses. *SNAP Eligibility*, U.S. DEP'T OF AGRIC. (Mar. 15, 2021), https://www.fns.usda.gov/snap/recipient/eligibility [https://perma.cc/6643-99MC] (providing a calculation method for Supplemental Nutrition Assistance Program (SNAP) benefits). To access this information, click on "What are the SNAP income limits?" and on "What deductions are allowed in SNAP?".

24. *See SOI Tax Stats–Individual Income Tax Returns Complete Report, Pub. 1304*, INTERNAL REVENUE SERV. tbl.1.2 (2018), https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report [https://perma.cc/W7KG-VNW3] (All Returns: Adjusted Gross Income, Exemptions, Deductions, and Tax Items) (reporting that for 2018 there were 7.6 million single taxpayers without dependents and with incomes between $10,000 and $15,000).

25. *See* Bill Wheaton, *Can Landlords Really Pass on Higher Property Taxes to Tenants?*, MIT CTR. FOR REAL ESTATE (2018), https://mitcre.mit.edu/news/blog/can-landlords-really-pass-higher-property-taxes-tenants [https://perma.cc/WQQ8-6EP7] (citing evidence that renters bear 80-90% of their landlords' property-tax increases).

26. *See* I.R.C. §§ 24(d), 32(a) (West 2021) (basing CTC and EITC amounts on income earned in the formal labor market).

just above the poverty threshold for a family of three, which was $21,330 in 2019.[27] Although she does not owe income or payroll taxes, she will pay state and local sales taxes on many of her purchases. She will also bear some amount of property tax, either directly through home ownership or indirectly through higher rent.[28] Using the same rates as in the Abe example above, these taxes together will total about 11.2% of her income, or $2,390.[29] In order to offset this cost, Amy and her family must receive about $200 per month in offsetting transfers. Amy is unlikely to receive TANF benefits, perhaps because she does not work, or because she has already received TANF benefits for five years, or for another of the myriad disqualifying conditions.[30] While her family is likely to receive free school lunch and SNAP benefits, the total value of these benefits will depend on the household's monthly expenses.[31] If these benefits are not sufficient to offset the taxes they pay, Amy's family will face fiscal impoverishment.

By increasing support to nonworking families and childless workers, ARPA's tax reforms reduce or eliminate fiscal impoverishment in 2021 for millions of

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27. Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167, 1168 (Feb. 1, 2019).

28. Wheaton, *supra* note 25.

29. INST. ON TAX'N & ECON. POL'Y, *supra* note 22, at 40.

30. *See infra* notes 60-62 and accompanying text.

31. In 2019, Amy's family would have been unlikely to receive sufficient SNAP benefits to offset their tax costs. SNAP benefits are calculated by subtracting 30% of a household's net monthly income from a maximum monthly allotment. U.S. DEP'T OF AGRIC., *supra* note 23. Assuming Amy's household spent no more than 50% of net income on rent, their net monthly income in 2019 would have been $1,611, which reflects gross income of $1,778 minus the standard deduction of $164. *See* U.S. DEP'T OF AGRIC., SNAP–FISCAL YEAR COST-OF-LIVING ADJUSTMENTS 4 (2018), https://fns-prod.azureedge.net/sites/default/files/resource-files/COLAMemoFY19.pdf#page=2 [https://perma.cc/6W7T-CQ6T]. The maximum monthly allotment for a family of three in 2019 was $505. *Id.* at 3. Subtracting 30% of net income ($484) provides a monthly benefit of $21.

Starting October 1, 2021, the U.S. Department of Agriculture increased monthly SNAP allotments to reflect changes to food markets and the nature of family food consumption. *See* U.S. Dep't of Agric., Press Release No. 0179.21, USDA Modernizes Thrifty Food Plan, Updates SNAP Benefits (Aug. 16, 2018), https://www.usda.gov/media/press-releases/2021/08/16/usda-modernizes-thrifty-food-plan-updates-snap-benefits [https://perma.cc/W7CV-R3GH]. Increased SNAP benefits will reduce fiscal impoverishment.

To estimate the value of free school lunch, we can ascribe a value of $3.22 to each lunch, which is the schools' reimbursement rate. *FACTS: National School Lunch Program*, FOOD RSCH. & ACTION CTR. 2 (2016), https://frac.org/wp-content/uploads/cnnslp.pdf [https://perma.cc/RN2W-FQ3H]. School is in session for approximately 180 days per year. *See Table 5.14. Number of Instructional Days and Hours in the School Year, By State: 2018*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/statereform/tab5_14.asp [https://perma.cc/6FHD-MRFE]. These figures provide a value of about $580 per year or $48 per month, per child.

U.S. taxpayers like Abe and Amy.[32] However, there is another significant group of fiscally impoverished taxpayers that receive little relief from ARPA's reforms. These are families that are excluded from refundable tax credits for reasons aside from employment status. There are multiple reasons a working family might be excluded from the CTC and EITC. Some will fail to satisfy the tax credits' relationship requirements. For instance, children being raised or informally fostered by nonqualified relatives or family friends cannot receive the EITC or the CTC.[33] Other families will run afoul of residency requirements; claimants must live with a qualified child for at least six months of the year in order to receive the CTC or child-linked EITC.[34] Yet others will fail to meet immigration-status requirements. For the CTC, a covered child must have a Social Security number;[35] for the EITC, all family members must have Social Security numbers.[36] All of these families will pay federal income and payroll taxes in addition to state and local taxes, but will not receive offsetting support from the EITC or CTC. As a result, unless they receive significant transfers through other safety-net programs, they very likely face fiscal impoverishment.

State and local taxes bear much of the responsibility for fiscal impoverishment. On the whole, state and local taxes are more regressive than federal taxes. The degree of fiscal impoverishment therefore differs greatly from state to state, reflecting the federal nature of our tax and transfer system.[37] Importantly, these calculations are done at the level of individual households, ignoring any legal separation between federal and state governments. Because fiscal impoverishment takes account of human deprivation, the individual or household must be the focal point rather than the governmental unit. A person can be impoverished if their state tax burden exceeds federal benefits, and vice versa. Conversely, a person can be protected from impoverishment where federal transfers are large enough to offset state taxes. In fact, ARPA's expansions do exactly that for many households, as explained below.

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32. Jurow Kleiman, *supra* note 10 (manuscript at 45) (estimating, based on U.S. Treasury and Census data, that "[h]ouseholds at risk of impoverishment [in the United States] may number in the low double-digit millions"); *see also infra* Section II.D (outlining the reduction or elimination of fiscal impoverishment as a result of ARPA's temporary tax provisions).

33. *See* I.R.C. § 152(c)(2) (2018) (stating that eligible relatives are parents, grandparents, siblings, and aunts and uncles).

34. *See id.* § 152(c)(1)(B) (requiring that taxpayers live with a qualifying child for at least six months of the year).

35. I.R.C. § 24(h)(7) (West 2021).

36. *Id.* § 32(m).

37. *See, e.g.*, Ezra Rosser, *Introduction*, *in* HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 1, 5-7 (Ezra Rosser ed., 2019) (detailing the devolution of welfare spending to the states via block grants and administrative flexibility).

While this Essay cannot accommodate detailed discussion of fiscal impoverishment's conceptual complexities, a few points are worth mentioning here. Fiscal impoverishment does not include the value of every public good available to people living in poverty. The point of fiscal impoverishment as a metric is to capture the worsened deprivation that those in poverty experience when they bear significant tax costs. To offset this harm, a public benefit must directly ameliorate material deprivation, for instance, by providing cash, food, or housing. Although someone living in poverty derives benefits from roads, military protection, parks, and other government spending, she is still considered poor and remains severely deprived even after considering her use of these public goods. For this reason, fiscal-impoverishment analysis maintains a narrow focus on cash transfers and safety-net benefits that bear on basic needs.

The use of a poverty threshold also raises thorny issues related to measuring and defining poverty. I do not take a position on the best way to define or measure poverty, which is a topic that requires far more space than this Essay allows.[38] Where necessary, I use the U.S. Department of Health and Human Services (HHS) Poverty Guidelines.[39] I do so for simplicity and because these guidelines inform the administration of federal safety-net programs, which are the focus of this discussion.

Some readers may also take issue with the idea that some specific amount of income marks the boundary between an acceptable life and unacceptable one. Rather, they might argue, a person's wellbeing declines gradually as she or he slides toward poverty. I acknowledge the unavoidable truth of this notion. I assume, however, that for every person there is some resource level below which her deprivation becomes too severe for society to accept. A poverty threshold estimates where this level falls for most people. Although the resulting figure is necessarily inexact, a workable threshold is better than one too complex to use, and certainly better than none at all.

B. Why Does Fiscal Impoverishment Matter?

When the government causes fiscal impoverishment, it violates human dignity and undermines its avowed goal of reducing poverty, as well as its fundamental duty to not harm its citizens and residents. Importantly, these problems

38. *See* JOHN ICELAND, POVERTY IN AMERICA: A HANDBOOK 22-38 (2013) (discussing different methods of poverty measurement).

39. *See* Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732 (Feb. 1, 2021).

arise from the fact that the state is the agent of harm, in contrast with a harm arising solely from a person's own choices or another person's actions.[40]

Starting with dignitary concerns, although there is no constitutional right to dignity, concern for human dignity scaffolds much legal and constitutional interpretation.[41] Given the centrality of human dignity in defining the scope of constitutional rights in the United States, the government should not knowingly and repeatedly violate human dignity. Establishing the nature of fiscal impoverishment's dignitary harm is a relatively simple matter.[42] People in poverty live shorter lives,[43] each day of which is significantly more likely to be disturbed by exclusion,[44] sadness,[45] and chronic illness.[46] These inequities are not narrowing over time.[47] Imposing or exacerbating poverty thus harms human dignity by

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40. *See* Adam Omar Hosein, *Doing, Allowing, and the State*, 33 L. & PHIL. 235, 253-63 (2014) (arguing that states should be subject to the "doing/allowing distinction").

41. *See* AHARON BARAK, HUMAN DIGNITY: IN THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT 13 (Daniel Kayros trans., 2015) (describing human dignity as an implied value in the U.S. Constitution); *id.* at 103-13 (exploring human dignity as a constitutional value).

42. *See* Peter Schaber, *Absolute Poverty: Human Dignity, Self-Respect, and Dependency*, *in* HUMILIATION, DEGRADATION, DEHUMANIZATION 151, 152-53 (Paulus Kaufmann, Hannes Kuch, Christian Neuhäuser & Elaine Webster eds., 2011) (arguing that absolute poverty violates human dignity because people in poverty are dependent on others).

43. *See* Raj Chetty, Michael Stepner, Sarah Abraham, Shelby Lin, Benjamin Scuderi, Nicholas Turner, Augustin Bergeron & David Cutler, *The Association Between Income and Life Expectancy in the United States, 2001-2014*, 16 J. AM. MED. ASS'N 1750, 1753 (2016) (reporting that the richest 1% can expect to outlive the poorest 1% by 14.6 years for men and 10.1 years for women).

44. For instance, low-income individuals may be excluded from full participation in the political process. *Cf.* James R. Repetti, *Democracy and Opportunity: A New Paradigm in Tax Equity*, 61 VAND. L. REV. 1129, 1130-31 (2008) (arguing that equity analysis should include "equality of opportunity to participate in the political process").

45. *See* CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUM. SERVS., DHHS PUBL'N NO. 2014-1588, SUMMARY HEALTH STATISTICS FOR U.S. ADULTS: NATIONAL HEALTH INTERVIEW SURVEY, 2012, at 49 tbl.14 (2014), https://www.cdc.gov/nchs/data/series/sr_10/sr10_260.pdf [https://perma.cc/4HEG-3B8U].

46. ROBERT WOOD JOHNSON FOUND., OVERCOMING OBSTACLES TO HEALTH 17 fig.3a (2008), http://www.commissiononhealth.org/PDF/ObstaclesToHealth-Report.pdf [https://perma.cc/4K3K-DL26] (reporting that 30.9% of individuals below the federal poverty line report being in poor or fair health, compared to 6.6% of individuals making over 400% of the federal poverty line).

47. *Id.* at 30 fig.10 (showing the percentage of adults with activity limitations due to chronic illness by income group, plotted from 1998-2005); Chetty et al., *supra* note 43, at 1750 ("Between 2001 and 2014, life expectancy increased by 2.34 years for men and 2.91 years for women in the top 5% of the income distribution, but by only 0.32 years for men and 0.04 years for women in the bottom 5% . . . .").

damaging a person's social, emotional, and physical wellbeing.[48] The government should not be the agent of such harms.

Moreover, fiscal impoverishment contravenes poverty-reduction goals. Evidence of the federal government's poverty-reduction goal is evident in the establishment of the HHS Poverty Guidelines,[49] as well as the various public-benefit programs that seek to combat poverty.[50] Indeed, Congress originally enacted the EITC in large part to offset federal tax costs for low-income taxpayers.[51] If a government seeks to elevate households above a predetermined level of wellbeing, surely it should not push some below that level. Thus, recognizing fiscal impoverishment reveals the government's hypocrisy and violation of its own internal goals.

Fiscal impoverishment also violates a more fundamental governmental duty to not harm citizens and residents. The government's duty to not harm might arise from an affirmative duty to promote "the good" for its residents or to protect its citizens from harm.[52] An obligation to protect means that the government cannot cause harm itself unless the harm is justified by a greater good achieved, or by a graver harm forestalled. For instance, the state may imprison a violent offender to prevent the person from harming others, or it may shut down businesses to prevent the spread of a dangerous disease and thereby protect the public's safety and health.[53] Although tax policies are not typically subject to such a restrictive calculus,[54] where tax levies push some into severe deprivation, we should ask whether the tax revenue raised justifies the harm of impoverishment.

48. *See* BARAK, *supra* note 41, at 125 (quoting various sources that define dignity to be concerned with a person's physical, psychological, and spiritual "integrity" or "wholeness").

49. Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732 (Feb. 1, 2021).

50. *See Programs that Use the Poverty Guidelines as a Part of Eligibility Determination*, U.S. DEP'T OF HEALTH & HUM. SERVS., https://www.hhs.gov/answers/hhs-administrative/what-programs-use-the-poverty-guidelines/index.html [https://perma.cc/HZV8-HDBQ].

51. *See* Thomas L. Hungerford & Rebecca Thiess, *The Earned Income Credit and the Child Tax Credit: History, Purpose, Goals, and Effectiveness*, ECON. POL'Y INST. 1-2 (2013), http://www.epi.org/files/2013/The-Earned-Income-Tax-Credit.pdf [https://perma.cc/8WMK-5R3P].

52. *See* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); ARISTOTLE, *Politics*, *in* THE BASIC WORKS OF ARISTOTLE 1127, 1127 (Richard McKeon ed., Random House, Inc. 2001) (c. 350 B.C.E.) ("[T]he state or political community, which is the highest [community] of all, and which embraces all the rest, aims at . . . the highest good.").

53. *E.g.*, Michael Levenson, *Local and State Officials Unlock Sweeping Powers to Fight Coronavirus*, N.Y. TIMES (Mar. 14, 2020), https://www.nytimes.com/2020/03/14/us/national-state-emergency.html [https://perma.cc/3EKY-RLZ6] (describing subnational governments' powers during the COVID-19 public-health crisis).

54. *See* McCulloch v. Maryland, 17 U.S. 316, 428 (1819) ("The only security against the abuse of [taxation], is found in the structure of the government itself . . . .").

Where $100 or $1,000 directly limits a low-income family's ability to buy food or medicine, it is difficult to imagine an answer in the affirmative.

II. HOW ARPA ALTERS TAX CREDITS AND REDUCES FISCAL IMPOVERISHMENT

As this Part explains, households likely to face fiscal impoverishment—in particular, childless workers and nonworking families—have historically received little or no support from cash-transfer programs like the EITC and CTC. For the duration of 2021, ARPA changes these refundable tax credits to provide meaningful support to both nonworking families and childless workers. In doing so, ARPA will dramatically reduce fiscal impoverishment in 2021, although gaps will still remain. Notably, absent congressional action, these reforms expire at the start of 2022.

A. Pre-ARPA Cash-Support Programs

Since the welfare reform of the 1990s, the federal government has provided the vast bulk of cash support to low-income households via refundable tax credits—namely, the EITC and the refundable portion of the CTC.[55] TANF provides additional cash support to qualifying families via block grants to states.[56] All three programs prioritize working families, providing far less support to nonworking families and childless adults.

Absent ARPA's temporary reforms, in order to receive the EITC and CTC, a taxpayer must report taxable wages or self-employment income.[57] The CTC has achieved this requirement by imposing an earnings threshold: taxpayers with incomes of $2,500 or less have been ineligible for the credit.[58] In addition, absent ARPA's changes, both credits increase as income increases (i.e., they "phase in"), up to a certain income level.[59] These features have ensured that only working taxpayers receive cash support through the United States's largest safety-net programs.

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55. *See Spending on the EITC, Child Tax Credit, and AFDC/TANF, 1975–2016*, TAX POL'Y CTR., https://www.taxpolicycenter.org/statistics/spending-eitc-child-tax-credit-and-afdctanf-1975-2016 [https://perma.cc/PX73-KKQ9] (showing federal spending on cash-transfer programs from 1975-2016).

56. *Policy Basics: Temporary Assistance for Needy Families*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (2021), https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf [https://perma.cc/G39F-7RDF].

57. I.R.C. §§ 32(a)(1), 24(d)(1) (2018).

58. *Id.* § 24(d)(1)(b)(i), (h)(6).

59. *Id.* §§ 32(b)(1), 24(d).

Although individual state governments administer TANF programs at the state level, some form of work requirement has been a prerequisite of the federal law since the welfare reform of the 1990s.[60] In nearly all states, a family becomes ineligible for benefits if one parent fails to work some minimum number of hours per week.[61] Due to these work requirements and other eligibility rules—such as a five-year federal cap on benefits—most families in poverty do not receive TANF benefits.[62]

These restrictions have contributed to a dramatic increase in families living in deep poverty over the past two decades.[63] When parents lose work, as many did during the COVID-19 pandemic and the Great Recession,[64] it can mean a double loss of income: they lose wages as well as government support.[65] Moreover, recent research finds that these restrictions are not equitably distributed by race, hitting Black families especially hard.[66]

In addition to work requirements limiting assistance to some families, state and federal safety-net programs provide very little support to able-bodied childless adults. As their names imply, both TANF and the CTC are categorically restricted to families with children.[67] Although the EITC does include childless workers, prior to ARPA, the childless credit amount has been so small that it does not fully offset recipients' federal payroll taxes.[68] Additionally, prior to ARPA, childless workers under the age of twenty-five and over the age of sixty-

60. CTR. ON BUDGET & POL'Y PRIORITIES, *supra* note 56, at 5.

61. *Id.*

62. *Id.* at 6 (providing that "in 2019, only 23 families received TANF for every 100 families in poverty").

63. *See* KATHRYN J. EDIN & H. LUKE SHAEFER, $2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA, at xv-xviii (2015) (finding an increase in families living on less than two dollars per person, per day since the 1990s, and suggesting that the increase is connected to changes in safety-net program design that prioritized work incentives).

64. *See* Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great Recession*, PEW RSCH. CTR. (June 11, 2020), https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession [https://perma.cc/E3EF-8JNQ].

65. For some taxpayers, loss of work might make them newly eligible for safety-net benefits. For instance, if a worker's income was previously too high to qualify them for the Earned Income Tax Credit (EITC), loss of income could now render them eligible.

66. Jacob Goldin & Katherine Michelmore, *Who Benefits from the Child Tax Credit?* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27940, 2020), https://www.nber.org/papers/w27940 [https://perma.cc/G78U-H2EA].

67. *See Temporary Assistance for Needy Families*, BENEFITS.GOV, https://www.benefits.gov/benefit/613 [https://perma.cc/9XCN-AX4N]; I.R.C. § 24(a) (West 2021).

68. Ariel Jurow Kleiman, *Low-End Regressivity*, 72 TAX L. REV. 1, 22-23 (2018).

four have been categorically ineligible.[69] Other safety-net programs, perhaps the largest of which are SNAP and Medicaid, are often similarly limited for childless adults.[70]

B. ARPA's Changes to Cash-Support Programs

For the first time, ARPA authorizes a meaningful cash transfer for nonworking families and childless workers. Absent congressional action, these expansions will expire at the start of 2022.[71]

ARPA authorizes this cash support for nonworking families and childless workers by temporarily altering refundable tax credits in two key ways. The first, most notable change is the expansion of the CTC to include families without earned income. ARPA accomplishes this reform by removing the credit's earnings threshold.[72] For tax year 2021, a family can receive full CTC benefits even with zero earnings. ARPA also authorizes the Internal Revenue Service (IRS) to distribute these benefits monthly during 2021, rather than waiting until taxpayers file a tax return in 2022.[73] Additionally, Congress increased the amount of the tax credit in 2021 from $2,000 to $3,000 per child (or $3,600 for children under age six).[74] This amount begins to phase out at incomes of $150,000 for joint filers (or $112,500 for taxpayers with head-of-household filing status).[75] Congress also increased the credit's age limit to include seventeen-year-olds, rather than stopping at sixteen-year-olds.[76]

ARPA's second notable tax reform is a temporary increase in the EITC for childless workers. The pre-ARPA maximum credit amount for childless workers was about $540 in 2020,[77] an amount that failed to fully cover federal payroll

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69. I.R.C. § 32(c)(1)(A) (West 2021).

70. *E.g.*, 42 U.S.C. § 608(a)(1) (2018); Food and Nutrition Act of 2008, 7 U.S.C. § 2015(d) (2018). Note that Medicaid is an exception to this pattern in the thirty-eight states that expanded Medicaid eligibility pursuant to Affordable Care Act rules. *See* Rachel Garfield, Kendal Orgera & Anthony Damico, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, KAISER FAMILY FOUND. (2021), https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid [https://perma.cc/6CWS-FWEG].

71. I.R.C. §§ 24(i), 32(n) (West 2021).

72. *Id.* § 24(i)(1).

73. *Id.* § 7527A.

74. *Id.* § 24(i)(3).

75. *Id.* § 24(i)(4).

76. *Id.* § 24(i)(2)(A).

77. INTERNAL REVENUE SERV., *supra* note 8, at 32-33.

taxes.[78] ARPA increases the childless EITC maximum benefit to just over $1,500.[79] This amount fully offsets federal taxes for many childless workers living below the poverty line.[80] In addition to increasing the credit amount, ARPA raises the income level at which the credit begins to phase out, providing the maximum credit to a larger swath of workers.[81] It also lowers the age minimum and eliminates the age maximum, making more childless workers eligible for benefits.[82] The result is a tax credit that provides meaningful wage support to a group that has been historically excluded from nearly all U.S. social-safety-net programs.

C. Likely Consequences of ARPA's Reforms

While ARPA's tax-credit expansions remain in effect—through the end of 2021—they will have significant positive consequences for households and individuals living in poverty. According to estimates from the Center for Budget and Policy Priorities, twenty-seven million additional children will be eligible to receive the full CTC.[83] Absent ARPA's reforms, these children would have received only a partial credit or no credit at all because their parents did not work or did not work enough.[84] Increased cash transfers are associated with greater school enrollment, higher reading and math test scores, improved child nutrition, better emotional wellbeing, and less drug and alcohol use, among other positive outcomes.[85] Meanwhile, an expanded childless EITC will reduce deprivation

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78. Jurow Kleiman, *supra* note 68, at 32-33 nn.122-23.

79. I.R.C. § 32(n) (West 2021); Chuck Marr, Kris Cox, Stephanie Hingtgen, Katie Windham & Arloc Sherman, *American Rescue Plan Act Includes Critical Expansions of Child Tax Credit and EITC*, CTR. FOR BUDGET & POL'Y PRIORITIES 2 (2021), https://www.cbpp.org/sites/default/files/3-12-21tax.pdf [https://perma.cc/VMA6-A92T].

80. *See infra* text accompanying notes 96-101.

81. I.R.C. § 32(n) (West 2021).

82. *Id.* § 32(n)(1).

83. MARR et al., *supra* note 79, at 2.

84. *Id.*

85. *E.g.*, *id.* at 3; *How Does the EITC Affect Poor Families?*, TAX POL'Y CENTER, http://www.taxpolicycenter.org/briefing-book/how-does-eitc-affect-poor-families [https://perma.cc/L5XB-EKT4]; Bryann DaSilva, *New Poverty Figures Show Impact of Working-Family Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES: OFF THE CHARTS (Oct. 17, 2014, 2:00 PM), https://www.cbpp.org/blog/new-poverty-figures-show-impact-of-working-family-tax-credits [https://perma.cc/GP5H-VKFC].

among vulnerable workers. The credit may also increase labor incentives by providing a larger subsidy as workers' wages increase.[86]

Setting aside the myriad benefits, ARPA's tax-credit expansions have several shortcomings. Because Congress distributed this expanded support through existing tax credits, preexisting gaps in the programs will limit the reach of ARPA's reforms. For instance, those who do not file a tax return have historically been unable to receive the CTC or the EITC.[87] To ensure broad uptake of the CTC, the IRS is developing tools to reach eligible families that do not file a tax return.[88] Reaching nonfilers is not easy.[89] Nonfilers are often among the most vulnerable members of society.[90] They may have incomes below the tax-filing threshold and suffer from unstable housing, low literacy, or other conditions that make completing a tax return difficult.[91] Moreover, certain people are intentionally

86. It is important to note that although researchers have found that the EITC increases labor-force participation, these behavioral effects tend to be limited to parents with children, especially single mothers. *See* Elaine Maag, Kevin Werner & Laura Wheaton, *Expanding the EITC for Workers Without Resident Children*, URB. INST. (May 2019), https://www.urban.org/sites/default/files/publication/100130/expanding_the_eitc_for_workers_without_resident_children_5.pdf [https://perma.cc/6BCG-4D7U] (discussing research on EITC labor-market effects). That said, some research has found modest increases in employment rates among certain childless workers receiving an increased EITC or other similar cash transfers. *Id.*

87. *How to Claim the Earned Income Tax Credit (EITC)*, INTERNAL REVENUE SERV. (2021), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/how-to-claim-the-earned-income-tax-credit-eitc [https://perma.cc/D7GH-NAVZ]; INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUB. NO. 972, CHILD TAX CREDIT AND CREDIT FOR OTHER DEPENDENTS 3 (2021), https://www.irs.gov/pub/irs-pdf/p972.pdf [https://perma.cc/3Z4Z-YA2A] (providing that a taxpayer must claim a child as a dependent on her tax return in order to claim the CTC).

88. *Child Tax Credit Non-Filer Sign-up Tool*, INTERNAL REVENUE SERV. (2021), https://www.irs.gov/credits-deductions/child-tax-credit-non-filer-sign-up-tool [https://perma.cc/EQ39-PMSG].

89. *See* David Lauter, *Biden Child Tax Credit Is Sending Billions to American Families. It's a Monumental Task*, L.A. TIMES (May 18, 2021), https://www.latimes.com/politics/story/2021-05-18/biden-wants-to-give-billions-to-american-families-monumental-task [https://perma.cc/3Z6T-RJ82].

90. *See* JIM CILKE, U.S. DEPT. OF THE TREASURY, A PROFILE OF NON-FILERS 17-18 (1998) https://home.treasury.gov/system/files/131/WP-78.pdf [https://perma.cc/B9WU-HWLH] (finding that those who have an education below the tenth-grade level, who are nonwhite, and who receive means-tested public assistance are less likely to file a tax return).

91. *See id.*; Michelle Singletary, *IRS Launches Child Tax Credit Tool for Low-Income Families. Community Groups Say It's Too Hard to Use.*, WASH. POST (June 15, 2020), https://www.washingtonpost.com/business/2021/06/15/irs-child-tax-credit-tool [https://perma.cc/4XTX-AYF7]; *Those Experiencing Homelessness Can Get Economic Impact Payments and Other Tax Benefits; Permanent Address Not Required*, INTERNAL REVENUE SERV. (Apr. 15, 2021), https://www.irs.gov/newsroom/those-experiencing-homelessness-can-get-economic-impact-payments-and-other-tax-benefits-permanent-address-not-required [https://perma.cc/T7XG-8YTE] excluded from refundable tax credits, including nonworking childless adults and children who lack a Social Security number.

Additionally, the temporary status of ARPA's reforms severely truncates the impact these expanded credits might have. If families were able to anticipate stable increased support for children each year, they could make long-term improvements to their lives, such as renting a better apartment or buying a more reliable car. A short-term boost makes such planning more difficult. Moreover, although expanding the childless EITC could increase its work-incentive effect, as noted above, a temporary increase can have only a minimal effect on the credit's work incentive, if any at all. Although a one-year expansion provides vital support to families and individuals in need, it is unlikely to significantly change recipients' behavior or allow them to invest in their long-term wellbeing.

D. ARPA and Fiscal Impoverishment

With the expansion of the CTC and childless EITC, ARPA's tax reforms will dramatically reduce fiscal impoverishment in the United States for 2021. Starting with families, the CTC expansion reduces fiscal impoverishment by providing support to nonworking families who were previously excluded from the CTC due to the earnings threshold. Although these families do not pay income or payroll taxes, they do pay state and local sales and property taxes. Those who do not receive sufficient offsetting cash or near-cash benefits are fiscally impoverished. Under ARPA, these families are eligible in 2021 to receive $3,000 per child, or $3,600 for children under six.[92] This amount will likely offset state and local tax costs for nearly all families living in or near poverty.

Recall Amy, described above, who paid $2,390 in state and local taxes in 2019 (before factoring in the offsetting value of SNAP benefits and free school lunch). Depending on her children's ages, Amy will receive between $6,000 and $7,200 in CTC benefits, more than offsetting the taxes she pays. Although state and local tax levels vary, the same will be true for the vast majority of families living below and near the poverty line. Even in Washington state, which imposes the highest sales and property taxes on low-income taxpayers,[93] Amy would bear a tax cost of $3,797,[94] well below the expanded CTC amount for a household with

(describing IRS efforts to reach individuals experiencing homelessness and others who do not normally file tax returns).

92. I.R.C. § 24(i)(3) (West 2021).

93. *See* INST. ON TAX'N & ECON. POL'Y, *supra* note 22, at 7 fig.4.

94. According to estimates from the Institution on Taxation and Economic Policy, Washington imposes a sales-tax amount of 13.3% and property-tax amount of 4.5% on low-income taxpayers. *See id.* at 126-27.

two children.[95] Importantly, this result assumes that Amy can claim both of her children as "qualifying children" under the CTC's eligibility rules. I consider this issue in greater detail below, in Part III.

ARPA's expansion of the childless EITC will also significantly reduce fiscal impoverishment for low-income childless workers. Most notably, ARPA increases the maximum childless EITC to $1,502, which does not begin to phase out until a taxpayer earns income of $11,610.[96] The expanded credit appears specifically designed to fully offset federal taxes for childless workers with the lowest incomes, marking a return to one of the EITC's original goals.[97] Congress has increased the phase-in percentage from 7.65% to 15.3%, an amount that covers both employees' and employers' portions of Federal Insurance Contribution Act (FICA) taxes.[98] There is general consensus that an employee bears both portions of the FICA tax—their half directly and their employer's half through reduced wages.[99] Thus, in order to fully offset federal taxes, the EITC phase-in rate must be at least 15.3%.[100] This increase is a significant improvement for all childless workers. For those under the age of 25[101] or over the age of 64, the difference is even starker, as they go from being categorically ineligible to being eligible.

Although it is a significant improvement, the EITC expansion will not eliminate fiscal impoverishment among low-income childless workers, for several reasons. For one, the expanded EITC only offsets full federal taxes for childless workers earning income up to $9,820. A childless worker who earns income from $1 to $9,820 will receive an EITC equal to 15.3% of their total earnings, an amount that covers total federal taxes.[102] Once their income exceeds $9,820,

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95. The same holds true even if Amy only has one child. In that case, the applicable federal poverty guideline in 2019 would drop to $16,910. *See* Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167, 1167-68 (Feb. 1, 2019). At this income level, her taxes in Washington state would equal $3,010. Although a $3,000 CTC benefit would not cover this amount, Amy's family would almost certainly receive SNAP benefits and her child would receive free school lunch as well. Amy's family would therefore likely still be protected from fiscal impoverishment, even with only one child.

96. I.R.C. § 32(n) (West 2021).

97. *See* Hungerford & Thiess, *supra* note 51, at 1-2.

98. *See* I.R.C. §§ 3101-3111 (West 2021).

99. *See* Fullerton & Metcalf, *supra* note 20, at 1821-22.

100. Note that workers do not bear the federal income tax until their income exceeds the standard deduction, which is $12,550 in 2021 for single filers without dependents. Rev. Proc. 2020-45, 2020-46 I.R.B. 1022 (noting Section 16 provides a list of every "Standard Deduction").

101. Childless taxpayers are now eligible once they attain the age of nineteen, or twenty-four for students, or eighteen for qualified foster youth and homeless youth. I.R.C. § 32(n)(1) (West 2021).

102. Workers bear the employer's half of this amount indirectly through reduced wages. Fullerton & Metcalf, *supra* note 20, at 1821-22; I.R.C. § 32(n) (West 2021).

however, their tax amount continues to increase, but their EITC benefit will not. The credit begins to phase out once their income reaches $11,610,[103] further widening the gap between the tax amount and EITC benefits. And for single filers, income in excess of $12,550 is subject to the income tax as well.[104] Many childless workers earning poverty-level wages will thus face a net-positive tax cost from federal taxes alone.[105]

Additionally, regressive state and local taxes impose further costs on top of federal taxes, worsening fiscal impoverishment for all low-income childless workers. ITEP estimates that state and local taxes on low-income taxpayers impose an average cost of 11.4% of total income.[106] However, it is worth noting that twenty-eight states and the District of Columbia provide their own EITCs that will partly offset such taxes. Twenty-five of those subnational EITCs are calculated as a percentage of the federal credit, which means that these childless credits will automatically increase in 2021 with the federal increase.[107] That said, six

103. I.R.C. § 32(n)(3) (West 2021) (providing a phaseout rate of 15.3%).

104. *See* Rev. Proc. 2020-45, *supra* note 100, at 1022 (detailing 2021 changes to I.R.C. § 63(c)(2) (2018)).

105. Note that childless workers who are classified as employees (that is, not self-employed) will be fiscally impoverished up to some income level that is slightly *below* the poverty threshold. Calculating this income level for employees is not straightforward because the employer's portion of payroll taxes must be added to the worker's before-tax income to reflect the indirect incidence of the tax. *See* CONG. BUDGET OFF., DISTRIBUTION OF HOUSEHOLD INCOME AND FEDERAL TAXES, 2013, at 26 (2016), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51361-householdincomefedtaxes.pdf [https://perma.cc/7VUT-KVW6] (doing the same).

Doing so reveals that employee childless workers earning income up to $12,460 will bear a federal tax cost that leaves them below the poverty threshold of $12,880. *See* Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732 (Feb. 1, 2021). While it may seem odd that the income amount is below the poverty threshold, the result reflects the fact that the worker's wages are lower than they would be in a no-tax world because the employer pays Federal Insurance Contributions Act (FICA) taxes of 7.65% on the worker's wages. I.R.C. § 3111 (2018). There is general consensus that workers bear the employer's FICA tax portion through lower wages. Fullerton & Metcalf, *supra* note 20, at 1821-22. Therefore, the employer's FICA tax amount must be added to the worker's wages to reveal her actual pretax income.

A worker earning $12,460 in market wages would bear direct payroll taxes of $953 as well as the same amount indirectly through lower wages. Therefore, this worker's adjusted pretax income is $13,413. Total FICA taxes are $1,906, and she would receive an EITC of $1,372. *See* I.R.C. § 32(i) (2018). This worker is left with $12,879 after taxes, just below the poverty threshold and below her adjusted pretax income (inclusive of her employer's FICA tax) of $13,413.

106. INST. ON TAX'N & ECON. POL'Y, *supra* note 22, at 4 fig.1.

107. *See* Elaine Maag & David Weiner, *How Increasing the Federal EITC and CTC Could Affect State Taxes*, TAX POL'Y CTR. 1 (Apr. 22, 2021), https://www.taxpolicycenter.org/sites/default/files

of these states have nonrefundable EITCs that cannot exceed the income tax amount that the person owes.[108] Nonrefundability limits the credits' ability to reduce fiscal impoverishment caused by other taxes, such as sales or property taxes.

Putting aside these shortcomings, ARPA's tax-credit expansions are nothing short of revolutionary. Fiscal impoverishment is a longstanding pathology of the U.S. fiscal system. Indeed, the EITC was originally enacted to ameliorate fiscal impoverishment,[109] but the limited benefit did not go far enough for certain groups of people. Those who have fared the worst are the same individuals who are historically marginalized throughout U.S. safety-net programs—namely, nonworking families and childless adults. At least in 2021, ARPA's expansions move the U.S. tax system closer to one that does not leave any low-income taxpayers poorer than where they started. The next Part considers how to build on these temporary reforms to make the credits more protective and inclusive.

III. MAGNIFYING ARPA'S POSITIVE OUTCOMES

ARPA's tax-credit expansions are a meaningful first step toward addressing fiscal impoverishment, but federal lawmakers could do more to support low-income American households. Most importantly, Congress must make these expansions permanent to reduce fiscal impoverishment for millions of taxpayers going forward.[110] As of October 2021, the Biden Administration and congressional Democrats are indeed working to extend ARPA's reforms.[111] It remains to be seen whether policy makers will extend them permanently or only temporarily.[112] Among other hurdles, polls show mixed evidence on voter support for permanent extension.[113] If Congress cannot extend all of ARPA's reforms, it should at least permanently remove the CTC's earnings threshold so that the credit reaches children with the lowest incomes. Unlike merely increasing the benefit

/publication/161932/how-increasing-the-federal-eitc-and-ctc-could-affect-state-taxes.pdf [https://perma.cc/279D-WK26].

108. *See id*. at 3.

109. *See* Hungerford & Thiess, *supra* note 51, at 1-2.

110. *See* Jurow Kleiman, *supra* note 10 (manuscript at 33) (estimating that millions of households currently face fiscal impoverishment in the United States).

111. *See* U.S. DEP'T OF THE TREASURY, *supra* note 11, at 70-72, 77-80; Konish, *supra* note 11.

112. *See* Mychael Schnell, *Majority in New Poll Says Expanded Child Tax Credit Should Not Be Permanent*, HILL (July 21, 2021), https://thehill.com/policy/finance/564063-majority-in-new-poll-says-expanded-child-tax-credit-should-not-be-permanent [https://perma.cc/QJ37-H67E].

113. *See id*.

amount, removing the earning threshold is a change in kind, not degree, providing a scaffold on which future expansions can build.

Assuming that policy makers will extend ARPA's reforms in some way, they should be mindful of gaps in the credits that would undermine the reforms' positive effects going forward. This Part identifies several such gaps and suggests how lawmakers might rectify them.

A. Make Child-Eligibility Rules More Inclusive

Many low-income households will not benefit from ARPA's expansions because they run afoul of rigid eligibility rules related to family structure.[114] Most notably, the CTC requires that a taxpayer be closely related to a child and live with her for more than half the year in order to claim her for the credit.[115] Eligible relatives include parents, grandparents, siblings, and aunts and uncles.[116] A child who does not live with a sufficiently close relative for at least six months of the year cannot be claimed by anyone.[117]

These rules exclude children being raised or informally fostered by family friends and more distant relatives, like cousins. They also exclude children facing housing instability and those who live with multiple caregivers throughout the year—such as a child who lives with her mother for five months, her father for five months, and her grandparents for two months. These children are very likely among the most vulnerable; they would benefit greatly from additional support.

There are several ways for Congress to remedy this exclusion. Perhaps most importantly, Congress should expand the type of care relationships that make someone eligible to claim the CTC.[118] One option is to increase the list of eligible

114. I discuss child-claiming rules in detail in other work, explaining how they operate to exclude some of the most vulnerable children. *See* Jacob Goldin & Ariel Jurow Kleiman, *Whose Child Is This? Improving Child-Claiming Rules in Safety Net Programs*, 131 YALE L.J. (forthcoming 2022).

115. I.R.C. §§ 24(c), 152(c) (West 2021). Note that there is a narrow exception for noncustodial parents if a custodial parent agrees to allow the other parent to claim the child. *See* INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 501, DEPENDENTS, STANDARD DEDUCTION, AND FILING INFORMATION 13 (2021), https://www.irs.gov/pub/irs-pdf/p501.pdf [https://perma.cc/U48E-5YMQ].

116. I.R.C. § 152(c)(2) (West 2021).

117. *Id.* §§ 24(c), 152(c).

118. Other family-benefit programs allow adults to claim benefits for children who are distantly related to them or not related to them at all. For instance, SNAP programs allow a nonparent to claim a child as long as the child is under that person's "parental control." 7 C.F.R. § 273.1(b)(iii) (2021). Other legal areas are also beginning to recognize the need for an expanded understanding of family and care relationships. For example, some states have

relationships to include more distant relatives. Another is to use a more holistic primary-caregiver standard, rather than allowing only a finite set of eligible relationships. For instance, a recipient could be any person who provides significant care to a child, regardless of whether she is related to the child. Caring for a child might include supervising the child's daily activities, coordinating schooling or medical care, providing financial support, and so forth.[119] Yet another option is to eliminate the relationship test entirely, requiring only that the claimant live with the child in order to receive benefits.[120] All of these options would expand eligibility relative to the current rules.

To address children with unstable housing, Congress could adopt an evaluation period shorter than the annual test that the current law applies.[121] For instance, a biannual or quarterly evaluation period would allow claims from those who live with a child for fewer than six months in a year. And for children who still cannot be claimed by anyone, Congress could allow children to claim themselves under limited circumstances.[122] Children of all ages may already file tax returns in certain cases, often with help from an adult.[123] Congress could expand the CTC to allow a child to file on her own behalf. The IRS could deposit funds into an account in the child's own name or into a beneficiary account controlled by a responsible party, such as a parent, legal guardian, or third-party organization.[124]

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expanded the definition of care relationships that are eligible for paid family-leave protections, to enable people to care for extended and "chosen" family. *See generally* Deborah A. Widiss, *Chosen Family, Care, and the Workplace*, 131 YALE L.J.F. 215 (2021) (surveying family definitions in state family-leave laws and arguing for broader adoption of expanded definitions of family relationships).

119. *See, e.g.*, *Canada Child Benefit: Who Can Apply*, GOV. OF CANADA, https://www.canada.ca/en/revenue-agency/services/child-family-benefits/canada-child-benefit-overview/canada-child-benefit-before-you-apply.html#primary [https://perma.cc/J24F-79YM] (describing who is considered the primary caregiver for the purpose of the Canada Child Benefit).

120. I have proposed this reform elsewhere. *See* Jacob Goldin & Ariel Jurow Kleiman, *Designing a Universal Child Allowance: Who Can Claim Which Kids?*, BROOKINGS INST.: UP FRONT (Apr. 12, 2021), https://www.brookings.edu/blog/up-front/2021/04/12/designing-a-universal-child-allowance-who-can-claim-which-kids [https://perma.cc/38VF-7UBV].

121. *Id.*

122. Specifically, children should only be able to claim themselves when no qualifying adult is eligible or available to do so. Limiting the availability of this option will help to ensure that benefits are channeled through responsible adults as frequently as possible. Limiting this option will also help to prevent gaming by ineligible adults.

123. *See* INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 929, TAX RULES FOR CHILDREN AND DEPENDENTS 3-4 (2021), https://www.irs.gov/pub/irs-pdf/p929.pdf [https://perma.cc/C2HS-AXZ2] (providing rules for when children must file a tax return).

124. The Social Security Administration's "representative payee" program offers one model for how children self-claims could work. *See* SOC. SEC. ADMIN., PUB. NO. 05-10076, A GUIDE FOR

Data on demographics and family structure should inform policy makers choosing among various reform options. The goal should be to design rules that ensure that all children—especially the most vulnerable—benefit from the expanded CTC.

B. Consider Additional Reforms to Protect Childless Workers

As explained above, the EITC expansion is not large enough to protect all childless workers from bearing net-positive federal taxes. For some people earning poverty-level wages above $9,820, net federal taxes will still be high enough to push them into poverty or further into poverty. One relatively simple solution would be to link the EITC and other tax inputs to federal poverty guidelines. Doing so would ensure that tax calculations specifically account for fiscal impoverishment. For instance, the maximum childless EITC could be calculated as 15.3% of the HHS Poverty Guidelines, which would yield a maximum credit of $1,970 ($2,665 for married couples) in 2021.[125] Congress could also increase the standard deduction so that it aligns with the HHS Poverty Guidelines. For example, in 2021, this reform would require an increase from $12,550 to $12,880.[126] Doing so would ensure that those living at or below the poverty line do not face income taxes on top of federal payroll taxes. It is worth noting that increasing the standard deduction would benefit taxpayers at all income levels, not only low-income taxpayers, since taxpayers at any income level may take the standard deduction.

These reforms would still not protect childless workers from fiscal impoverishment caused by regressive state and local taxes. Even so, that does not mean that the federal government should increase the EITC to cover all state and local taxes. Doing so would allow states with the most regressive fiscal systems to freeride on others. Rather, each level of government—local, state, and federal—should separately consider how to reduce fiscal impoverishment within its own system.

Representative Payees 1 (2019), https://www.ssa.gov/pubs/EN-05-10076.pdf [https://perma.cc/4U8N-Z4TC] (providing guidance to individuals who receive Social Security payments on a beneficiary's behalf, including children).

125. This amount is 15.3% of $12,880 (the one-person poverty guideline) and $17,420 (the two-person poverty guideline). Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732 (Feb. 1, 2021). Note that a more accurate calculation would account for the fact that half of the FICA tax is borne indirectly by the worker through reduced wages. *See supra* note 105 for further explanation.

126. Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. at 7732.

C. Legislate More Dramatic Inclusion

Finally, Congress should consider extending support to certain groups that are intentionally excluded from refundable tax credits—specifically, families with undocumented children and nonworking childless adults. Safety-net programs nearly always categorically exclude both undocumented individuals and nonworking childless adults.[127] Yet the two groups face distinct political hurdles. Political support for undocumented children has recently increased, partly due to the movement to support those brought to the United States as children, often called "Dreamers."[128] Immigrant children granted Social Security numbers under the Deferred Action for Childhood Arrivals (DACA) program are even sometimes eligible for safety-net benefits.[129] Nonworking childless adults, on the other hand, are excluded from essentially all federal safety-net programs aside from Medicaid.[130] Although they are a diverse group, many may be experiencing short-term job loss or have an intellectual disability or other disability that does not rise to the level required for state or federal disability insurance.[131]

Regarding families with undocumented children, since 2017, the CTC has excluded children who lack a Social Security number.[132] Congress should revoke this limitation and reinstate these children's eligibility.[133] Families with children

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127. *See* Andrew Hammond, *The Immigration-Welfare Nexus in a New Era?*, 22 LEWIS & CLARK L. REV. 501, 514-18 (2018) (describing immigrant families' eligibility for public-benefit programs); Kristina Cooke, David Rhode & Ryan McNeil, *The Undeserving Poor*, ATLANTIC (Dec. 20, 2012), https://www.theatlantic.com/business/archive/2012/12/the-undeserving-poor/266507 [https://perma.cc/MV39-YA4J] (describing the decline in safety-net support for able-bodied adults without dependents); *supra* notes 67-70 and accompanying text.

128. Jens Manuel Krogstad, *Americans Broadly Support Legal Status for Immigrants Brought to the U.S. Illegally as Children*, PEW RSCH. CTR. (June 17, 2020), https://www.pewresearch.org/fact-tank/2020/06/17/americans-broadly-support-legal-status-for-immigrants-brought-to-the-u-s-illegally-as-children [https://perma.cc/H4VX-HZH3] (finding that "74% of Americans favor a law that would provide permanent legal status to immigrants who came to the U.S. illegally as children, while 24% are opposed").

129. *See* Hammond, *supra* note 127, at 515.

130. *See* Cooke et al., *supra* note 127; *supra* notes 67-70 and accompanying text.

131. *See* Steven Carlson, Dorothy Rosenbaum & Brynne Keith-Jennings, *Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?*, CTR. ON BUDGET & POL'Y PRIORITIES 7-9, 12-13 (2016), https://www.cbpp.org/sites/default/files/atoms/files/2-8-16fa.pdf [https://perma.cc/SYD5-ATP8].

132. I.R.C. § 24(h)(7) (West 2021); Chuck Marr, Kris Cox, Stephanie Hingtgen & Katie Windham, *Congress Should Adopt American Families Plan's Permanent Expansions of Child Tax Credit and EITC, Make Additional Provisions Permanent*, CTR. ON BUDGET & POL'Y PRIORITIES 4 (2021), https://www.cbpp.org/sites/default/files/5-24-21tax.pdf [https://perma.cc/LLH3-NEPM] (arguing the same).

133. *See* Marr et. al., *supra* note 132, at 4.

who have Social Security numbers, including DACA beneficiaries, already qualify for benefits under the CTC's current rules.[134] Reforming the law to include children without Social Security numbers would help support all families in the United States with children, regardless of the children's or the parents' immigration status. Moreover, this reform is not a dramatic change to the law—rather, it would mark a return to recent prior law.[135] Although immigration policy is a fraught topic, there is relatively broad support for policies that help those brought to the United States as children.[136]

Providing cash support to nonworking childless adults would require a significant shift in how we think about redistribution. Nondisabled childless adults are the emblematic "undeserving poor" and are excluded from meaningful support under nearly all social safety-net programs.[137] Although the EITC is an exception to this pattern, its reach is limited to people working in the formal labor market. The American public has shown little appetite for extending cash support to nonworking childless adults.[138]

ARPA's expansions may foreshadow a future where such support is possible. The COVID-19 pandemic exposed our shared vulnerability, affording policy makers the political will to enact long-overdue reforms to safety-net programs.[139] Although these reforms were made possible by pandemic-related stimulus spending, they also reflect a growing recognition of the labor market's volatility and the chronic economic instability plaguing American households.

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134. *See* I.R.C. § 24 (West 2021) (providing eligibility rules to claim the CTC).

135. *See id.* § 24(e) (providing that a qualifying child must have a taxpayer-identification number, not limited to Social Security numbers); *id.* § 24(h)(1), (7) (temporarily amending subsection (e) to require a Social Security number for tax years 2018-2025).

136. *See, e.g.*, Krogstad, *supra* note 128.

137. Cooke et al., *supra* note 127. *But see supra* note 70 (explaining that thirty-eight states have expanded Medicaid coverage to childless adults).

138. *See* Greg M. Shaw, *Changes in Public Opinion About the American Welfare State*, 124 POL. SCI. Q. 627, 641-42 (2009) (describing public aversion to providing cash support to able-bodied, nonelderly adults); *cf. The Public's View of Tax Reform and Other Domestic Issues*, POLITICO & HARVARD T.H. CHAN SCH. OF PUB. HEALTH 8 (2017), https://www.politico.com/f/?id=0000015e-a4d7-d873-adfe-bdd740140000 [https://perma.cc/9RZT-Q9E2] (reporting that 72% of respondents support work requirements for childless adults receiving Medicaid).

139. *See generally* Andrew Hammond, Ariel Jurow Kleiman & Gabriel Scheffler, *How the COVID-19 Pandemic Has and Should Reshape the American Safety Net*, 105 MINN. L. REV. HEADNOTES 154 (2020) (describing reforms to U.S. safety-net programs during the COVID-19 pandemic).

CONCLUSION

Although born out of crisis, ARPA's reforms reflect a growing collective awareness that American families and workers deserve better. Widespread fiscal impoverishment in the United States violates human dignity and breaches the government's foundational duty to not harm citizens and residents. Millions of low-income households are not only excluded from safety-net programs, but are actually *made* poor by local, state, and federal taxes. ARPA's reforms eliminate or mitigate this fiscal impoverishment for many. Even so, policy makers could and should do more to support vulnerable households. As policy makers work toward extending ARPA's expansions, they should ensure that the new law is permanent, as well as sufficiently protective and inclusive. If they fail to do so, it will be incumbent on some future Congress to repair the law and extend support to those who need it most.

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