"I Can't Have My Wages Garnisheed!"

James H. Suddeth III

Follow this and additional works at: https://scholarcommons.sc.edu/sclr

Part of the Law Commons

Recommended Citation
COMMENT

"I CAN'T HAVE MY WAGES GARNISHED!"*
—Irwin M. Fletcher

I. INTRODUCTION .................................................. 525

II. CURRENT STATUS OF WAGE GARNISHMENT IN SOUTH CAROLINA .. 527

III. FEDERAL WAGE GARNISHMENT ........................................ 528

IV. POLICY ARGUMENTS SURROUNDING WAGE GARNISHMENT ........ 530
   A. The Credit Market ........................................... 530
   B. Employment .................................................. 531
   C. Bankruptcy .................................................. 532
   D. Disdain for the Courts ....................................... 533
   E. Family Deprivation .......................................... 533

V. RECOMMENDATIONS ................................................. 534
   A. Exemptions .................................................... 534
   B. Continuing Writ ............................................. 536
   C. Judicial Discretion .......................................... 537
   D. Notice to Debtor ............................................. 538
   E. Limits on Discharge for Garnishment ....................... 538
   F. Creditor Priority ............................................ 539
   G. Creditor Preferences ......................................... 540
   H. Counseling .................................................... 541

VI. CONCLUSION ...................................................... 541

I. INTRODUCTION

Ancient Rome's law, the Twelve Tables of Rome, provided judgment creditors with two remedies against a defaulting debtor: divide the debtor's body into pieces in proportion to the amount he owed each creditor or sell him into slavery.\(^1\) Since Roman times, creditor remedies have evolved into arguably

\(^1\) FLETCH (MCA Home Video 1985).
\(^1\) See W.W. Buckland, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN 619-20 (3d ed. 1966); see also Richard Ford, Imprisonment for Debt, 25 Mich. L. Rev. 24, 24-25 (1926) ("If the debt was still unpaid at the end of [a specified period,] the debtor might be killed or sold into slavery, and competing creditors might divide the body into pieces proportionate to the amount of each one's claim.").

525
more humane procedures.\textsuperscript{2} Even though the enforcement of debt remains unpleasant and unpopular, society generally agrees that debt repayment is a compelling moral obligation which the state should enforce if the debtor defaults.\textsuperscript{3} This Comment examines the creditor remedy of wage garnishment, a species of general garnishment. Today, commentators commonly define wage garnishment as “any legal or equitable procedure through which earnings of any individual are required to be withheld for the payment of any debt.”\textsuperscript{4}

Consideration of the appropriate nature and scope of wage garnishment in South Carolina is timely. Between 1971 and 1993, consumer-installment debt in the United States increased from $106 billion to $785 billion.\textsuperscript{5} As of 1997, total outstanding consumer credit in the United States exceeded $1.2 trillion.\textsuperscript{6} This dramatic increase in the consumer credit industry, coupled with steady urbanization of the economy and the resulting concentration of the work force in wage paying occupations, changed the debtor-creditor relationship forever.\textsuperscript{7} The relationship between debtors and creditors in urban societies has become largely “impersonal” because an urban creditor’s familiarity with a debtor consists of the debtor’s financial data alone.\textsuperscript{8} While rural creditors often can obtain additional, non-financial information through personal dealings with a debtor,\textsuperscript{9} urban creditors know very little about individual debtors and find it more difficult to evaluate credit risks and to avoid using collection remedies. “In a nation of regularly paid wage earners, [creditors find] it advantageous to use wage garnishment.”\textsuperscript{10}

Naturally, widespread scrutiny of creditor practices, such as wage garnishment, followed the increased urbanization and development of the credit


\textsuperscript{3} See Haggerty, supra note 2, at 631; see also Andrew Turek, Debt Collection: Some Proposals for Improvement, 125 SOLIC. J. 521, 521 (1981) (stating that a “judgment creditor has a right to be paid in which the law should support him as far as possible”).

\textsuperscript{4} Federal Wage Garnishment Law in a Nutshell, 20 CLEARINGHOUSE REV. 712, 712 (1986); see also Helen B. Belsheim, Wage Garnishment in Nebraska, 51 NEB. L. REV. 63, 64 (1971) (defining garnishment as “a statutory process by which property, money or credits of the defendant-debtor which are owed to him or held for him by another, the garnishee, are applied to the payment of the debt owed . . . to the the plaintiff-creditor”).


\textsuperscript{8} Id. at 537.

\textsuperscript{9} Id.

\textsuperscript{10} Id. at 538.
industry. However, in reality only a small segment of society “would advocate return to a savings and cash-oriented system which would deny the substantial benefits of an enjoy-now-pay-later economy to many, if not most, consumers.” This inherent conflict between society’s adoption of a credit-based economy and disgust for creditor collection practices, in particular wage garnishment, invites inquiry.

South Carolina allows only limited wage garnishment. The state legislature affirmatively banned other wage garnishment. However, in recent years various lobbyist groups have proposed wage garnishment statutes to the South Carolina General Assembly. To assist South Carolinians in making an informed decision regarding wage garnishment, Parts II and III of this Comment discuss the current status of wage garnishment in South Carolina and in the United States. Next, Part IV evaluates the main policy arguments surrounding wage garnishment. Finally, Part V provides various recommendations for potential wage garnishment statutes.

II. CURRENT STATUS OF WAGE GARNISHMENT IN SOUTH CAROLINA

As a general rule, South Carolina does not provide creditors with the statutory collection remedy of wage garnishment. In fact, § 15-39-410 of the South Carolina Code expressly prohibits wage garnishment:

The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.

Furthermore, in the context of South Carolina’s duty to recognize foreign garnishment proceedings, § 15-39-420 states that there “[shall not] be any garnishment of earnings for personal services rendered by the employee

---

12. See infra notes 15-19 and accompanying text for a discussion of South Carolina’s wage garnishment law.
15. See infra text accompanying notes 16-19; see also 13 S.C. Jur. Garnishment § 3, at 174 (1992) (explaining that in South Carolina “no general provision for garnishment of earnings for personal services exists” but noting the income withholding and the federal garnishment statute exceptions).
regardless of where the debt was incurred."\textsuperscript{17} Nevertheless, exceptions to the rule exist. For example, South Carolina's version of the Uniform Reciprocal Enforcement of Support Act (URESA)\textsuperscript{18} allows employers to withhold income earned in South Carolina for support orders issued by the courts of South Carolina and other jurisdictions, subject to certain restrictions.\textsuperscript{19}

Section 1673 of Title 15 of the United States Code further restricts the garnishment of a judgment debtor's wages.\textsuperscript{20} Section 1673(a), entitled "Maximum allowable garnishment," establishes a threshold above which a creditor may not garnish a debtor's wages.\textsuperscript{21} This threshold is subject to exceptions found in § 1673(b) and § 1675.\textsuperscript{22} Section 1673(b) states that the "maximum allowable garnishment" set forth in 1673(a) does not apply in cases of support orders, bankruptcy court orders, or any debts owed to the government for state or federal taxes.\textsuperscript{23} Section 1675 declares that "[t]he Secretary of Labor may by regulation exempt from the provisions of § 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar [to the federal guidelines] . . . ."\textsuperscript{24}

### III. Federal Wage Garnishment

Sections 1671 through 1677 of Title 15 of the United States Code set forth the federal garnishment law.\textsuperscript{25} Congress passed the federal wage garnishment statute with two primary goals in mind: (1) to limit the amount of "disposable earnings"\textsuperscript{26} a judgment creditor may garnish from an employee-debtor in one week and (2) to restrict employers' abilities to discharge employees because of wage garnishment.\textsuperscript{27} Section 1673(a) establishes a threshold called the "maximum allowable garnishment."\textsuperscript{28} The statute provides that "an employee's wages may be garnished in an amount not to exceed the lesser of twenty-five percent of the employee's disposable earnings for any one week or the excess of weekly wages over an amount equal to thirty times the Federal minimum

\begin{itemize}
  \item 17. Id. § 15-39-420(2).
  \item 18. Id. §§ 20-7-1315 to -1329 (Law. Co-op. Supp. 1998).
  \item 19. Id. § 20-7-1321(d).
  \item 21. Id. § 1673(a).
  \item 22. Id. §§ 1673(b), 1675.
  \item 23. Id. § 1673(b)(1)(A)-(C).
  \item 24. Id. § 1675.
  \item 25. Id. §§ 1671-1677.
  \item 26. Section 1672(b) defines "disposable earnings" as earnings that remain after certain deductions, such as federal and state taxes. Id. § 1672(b).
  \item 27. See id. §§ 1673-74. In addition, § 1671(a)(1)-(3) expresses three broad goals of the federal law: (1) to prevent creditors from overextending credit and relying on wage garnishment as a safety net, (2) to discourage employers from discharging employees because of wage garnishment, and (3) to promote uniformity in the bankruptcy laws. Id. § 1671(a)(1)-(3).
  \item 28. Id. § 1673(a).
\end{itemize}
hourly wage.”

Section 1673(b) sets forth a list of exceptions to the threshold amount in §1673(a).30 “The law specifies that restrictions on the maximum amount that may be garnished do not apply to bankruptcy court orders under Chapter XIII of the Bankruptcy Act, and debts due for State or Federal taxes.”31 Congress excluded support orders as well.32 If a support order satisfies the requirements set forth in §1673(b)(1)(A),33 a court will enforce a wage garnishment order for the support of any person, subject to the monetary restrictions in §1673(b)(2).34

Section 1674 mandates that “[n]o employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.”35 “One indebtedness” connotes a single debt, despite a creditor’s repeated attempts to garnish the individual debt.36 Willful violations of this section result in a fine, imprisonment, or both.37 In addition, the protection afforded by §1674 renews with each employment,38 so an employer must wipe each new employee’s slate clean.

Federal garnishment law provides a threshold of protection for debtors; however, it does not preempt the field of garnishment entirely. If a state’s garnishment law is inconsistent with federal law, federal law directs the courts to apply the law that garnishes the least amount of the debtor’s wages, while providing the debtor with the greatest amount of job security.39 Section 1675 permits the Secretary of Labor to exempt a state from federal garnishment law if the state’s garnishment law is “substantially similar” to federal law.40 “The Federal Wage Garnishment Law does not annul, alter, or affect . . . [s]tate laws which prohibit garnishments or provide for more limited garnishments than are allowed under the Federal law.”41 Because South Carolina expressly prohibits wage garnishment, the state’s law is more restrictive than the federal law, and

29. STANLEY MORGANSTERN, LEGAL PROTECTION IN GARNISHMENT AND ATTACHMENT 14 (Legal Almanac Series No. 66, 1971).
33. The support order must be issued “by a court of competent jurisdiction or in accordance with an administrative procedure” that is “established by State law,” must “afford[] substantial due process,” and must be “subject to judicial review.” Id.
34. An employer may withhold no more than 50% of an individual’s disposable earnings if the individual supports another spouse or dependent child, otherwise the employer may withhold no more than 60% of the disposable earnings. Id. § 1673(b)(2)(A)-(B).
35. Id. § 1674(a).
36. EMPLOYMENT STANDARDS ADMIN., supra note 31, at 9.
38. EMPLOYMENT STANDARDS ADMIN., supra note 31, at 10.
41. EMPLOYMENT STANDARDS ADMIN., supra note 31, at 8.
the federal wage garnishment statute does not take effect.

IV. POLICY ARGUMENTS SURROUNDING WAGE GARNISHMENT

In Title 15, § 1671(a) of the United States Code, Congress sets forth the main policy issues surrounding wage garnishment by discussing the impact it has on the credit market, employment, and bankruptcy. In addition to the legislature’s expressed concerns, two additional issues frequently arise in discussions of wage garnishment: debtors’ disdain for the judicial system and the family deprivation resulting from wage garnishment.

A. The Credit Market

Commentators generally offer three arguments in regard to the relationship of wage garnishment and the credit market: (1) restrictions on wage garnishment prevent creditor abuse; (2) elimination of wage garnishment burdens the credit market; and (3) no relationship exists between wage garnishment and the credit market.

When Congress passed the federal wage garnishment law, it believed that restrictions on creditor remedies, such as wage garnishment, eliminate abusive practices in the credit market. In addition, many commentators felt that “a restriction of garnishment [would] affect the granting of credit only by eliminating credit overextension.” Theoretically, if creditors did not overextend credit, they would protect potential debtors. Wage garnishment, as well as other creditor remedies, would become less necessary because debtors are more likely to satisfy their debts on time.

At the same time, many proponents of statutory restrictions on wage garnishment believe that complete “elimination of wage garnishment as a debt collection method . . . could impose a significant burden on the credit market, adversely affecting the economy as well as those families to whom credit would no longer be available.” They argue that eliminating or restricting wage garnishment would increase the amount of uncollectible debts, causing creditors to refuse to extend credit in the future.

45. George Brunn, Wage Garnishment in California: A Study and Recommendations, 53 CAL. L. REV. 1214, 1242 (1965); see also James A. Jablonski, Note, Wage Garnishment as a Collection Device, 1967 WIS. L. REV. 759, 763 (1967) (pointing out that “[c]redit is just as available in New York as it is in California although New York has a much higher exemption”).
47. Grosse & Lean, supra note 43, at 773.
Other commentators simply deny the relationship between wage garnishment and the credit market. Some suggest that wage garnishment laws do not affect the extension of credit because wage garnishment “is only one tool in a creditor’s kit.”50 Others compare the percentage of credit extended to total sales in states with and without wage garnishment.51 According to these commentators, credit is equally available in states with high and low wage exemptions.52 However, one commentator cautions those who rely on that comparison and suggests that “when one examines the figures behind the argument, they prove to be wholly unreliable because they are circular. [The argument] . . . necessarily follows from . . . question-begging assumptions.”53 In the absence of wage garnishment, other methods of collecting debts, which inevitably burden the same class of debtors, necessarily follow; otherwise, creditors would incur losses.54 Accordingly, impact on the credit system is inevitable.

B. Employment

Few would argue that employees who have their wages seized by “garnishment orders . . . face an increased risk of job loss and a decreased potential for promotions, pay raises, and favorable job assignments.”55 Employers dislike wage garnishment because the garnishment process burdens them with numerous direct and indirect administrative costs.56 In addition, multiple wage garnishments signal employers that an employee is generally unreliable.57 To make matters worse for employers, some states may hold them fully liable for the debt of an employee by default judgment if the employer fails to answer a writ of garnishment directed at the employee.58

Many commentators assert job insecurity is an important deterrent to using wage garnishment.59 These commentators believe wage garnishment results in greater harm to the debtor than benefit to the creditor.60 Other commentators recognize the importance of wage garnishment and suggest methods to reduce the impact it has on employers. If the system does not substantially burden

50. Brunn, supra note 45, at 1242.
51. See Jablonski, supra note 45, at 763.
52. Id. ("[T]he volume of retail sales or installment credit is not appreciably lower in states which do not permit wage garnishment.").
54. Id.
55. Letsou, supra note 5, at 602-03.
56. Id. at 603-04.
57. Id. at 604.
58. See Grosse & Lean, supra note 43, at 756; see also Belsheim, supra note 4, at 71 (explaining that in Nebraska employers who fail to file an answer are "held liable for the full amount of the plaintiff's claim").
59. Letsou, supra note 5, at 602-03.
60. See id.
employers, they will have less incentive to fire employees over wage garnishment. One possibility is to create a governmental garnishment agency to administer, among other things, wage garnishment proceedings.\(^6\) This garnishment agency would administer creditor garnishments of employees and relieve employers of the burdens that accompany wage garnishment. Allowing employers to defray the administrative costs associated with wage garnishment by allocating the costs to the debtor or creditor would also relieve a great deal of the burden on the employers.

C. Bankruptcy

Many commentators have compared bankruptcy rates to the existence of wage garnishment statutes in individual states and have concluded that personal bankruptcies increase as garnishment rules become less debtor-friendly.\(^6\) Evidence suggests that states permitting excessive wage garnishment have increased rates of bankruptcy filings.\(^6\) On the other hand, states that forbid wage garnishment, such as South Carolina, have relatively low bankruptcy rates.\(^6\)

It is important to exercise extreme caution when comparing bankruptcy rates to garnishment laws in individual states. A correlation between the two factors does not necessarily indicate a cause and effect relationship.\(^6\) One commentator suggests that bankruptcy is a result of many indeterminable factors,\(^6\) and another opines that ethnicity and indebtedness affect bankruptcy more than wage garnishment.\(^6\) According to Caplovitz’s study, the bankruptcy rate in Detroit, Michigan, which had the harshest garnishment laws of any state in his study, fell below that of Chicago, Illinois, which had a more forgiving

61. See Boyd, supra note 11, at 400 n.149.
62. See Brunn, supra note 45, at 1234-38; see also Belsheim, supra note 4, at 72 ("The number of bankruptcy cases commenced in Nebraska increased from 88 in 1948 to 1,272 in 1969. . . . There is little doubt that many of these voluntary bankruptcies were triggered by wage garnishment."); Haggerty, supra note 2, at 653 ("There is little doubt that the harshness of garnishment laws is strongly related to the number of personal bankruptcies."); Joe Lee, An Analysis of Kentucky’s New Exemption Law, 55 KY. L.J. 618, 630 (1967) ("[T]he threat of garnishment is the most important cause of bankruptcy."); Melvin G. Shimm, The Impact of State Law on Bankruptcy, 1971 DUKE L.J. 879, 896 (1971) (recognizing and explaining the correlation between wage garnishment and bankruptcy filings).
63. See Where Personal Bankruptcies Occur Most, U.S. NEWS & WORLD REP., Jan. 13, 1997, at 12 (showing that bankruptcy rates soared from 350,000 in 1985 to one million in 1996 and that states that allow “aggressive” debt collection have increased rates of bankruptcy).
65. Brunn, supra note 45, at 1235-36.
67. DAVID CAPLOVITZ, CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT 275 (1974).
wage garnishment statute.68 “Some creditors contend that ‘blaming bankruptcies [on] garnishment laws is like blaming traffic tickets on speed limits.’”69 Other commentators attribute increased bankruptcy rates to “outmoded” bankruptcy laws and encourage Congress to amend the Bankruptcy Code to deal with this problem.70 Because “bankruptcy carries some odium and is a social disaster proves nothing about the undesirability of [wage] garnishment . . . .”71 The appropriate inquiry should be whether the creditor properly extended the credit.72

D. Disdain for the Courts

Debtors often view “courts as the agents of their oppressors rather than institutions committed to justice.”73 Wage garnishment only adds fuel to a debtor’s ignitable attitude towards the judicial system. When employers consider discharging employees because of wage garnishment, employers are more likely to fire unskilled, easily replaceable employees rather than “valued” employees.74 The reality of this business decision is disappointing, especially when one considers that the unskilled worker likely lives from paycheck to paycheck and is a member of a minority group already skeptical of our judicial system.75

Although the government cannot possibly please everyone, the legislature and the judiciary can take steps to reduce debtors’ negative attitudes toward the legal system. In the context of wage garnishment law, lawmakers should begin by restricting wage garnishment, for a harsh garnishment law will increase a debtor’s disdain for the judicial system and burden a state when “reckless” and “oppressive” creditors use the state and its laws as a “collection agency.”76

E. Family Deprivation

One of the most devastating effects of wage garnishment is that it depletes debtors’ means of providing for themselves and their families and of paying other debts.77 Therefore, parties generally agree that some exemptions are

68. Id.
69. Grosse & Lean, supra note 43, at 767 (quoting from John W. Johnson, Executive Vice President, American Collectors Association, to the Washington Law Review (Jan. 22, 1968)).
70. Id. at 768.
72. Id.
73. CAPLOVITZ, supra note 67, at 88.
75. Id.
77. Belsheim, supra note 4, at 70; see also HOMER KRIPE, CONSUMER CREDIT 292 (1970) (noting that wage garnishment deprives a low-income worker of the income that the worker needs to support his family).
necessary. The difficult task is deciding just how much of the debtor’s wages to exempt. Exemptions are a vital aspect of any wage garnishment statute, and this Comment discusses them in Part V.A. If society prefers to keep families off welfare and to encourage all workers to contribute to society, then states allowing wage garnishment must establish a system that enables debtors to keep enough of their wages to support themselves and their families. People often forget that wage garnishment also affects those who rely on the debtor’s wages, such as a spouse or children.

V. RECOMMENDATIONS

A. Exemptions

Because wage garnishment eliminates debtors’ means of supporting themselves and their families and of paying other debts, parties generally agree that a wage garnishment statute should exempt some portion of the debtor’s paycheck. In the interest of equity and efficiency, any wage garnishment statute should (1) express basic wage exemptions as a percentage and (2) apply all exemptions automatically. When statutes express exemptions in fixed dollar amounts, the amounts continually become outmoded, forcing legislatures to revise the statute’s exemption amount to reflect the current value of money. In addition, problems arise when legislatures fail to create exemptions that apply automatically. Even though lawmakers may provide debtors with exemptions, debtors often fail to claim them.

After laying the foundation for a garnishment statute’s exemptions, lawmakers should shift their focus to the actual exemptions themselves. Economists estimate that average wage-earners in an inflationary economy must hold onto eighty-five to ninety percent of their salary just to meet expenses. “[T]herefore, . . . permitting a creditor to garnish more than ten [to fifteen] percent of the debtor’s wage . . . might properly be characterized as

78. Belsheim, supra note 4, at 70.
79. For example, a wage garnishment statute could establish an income threshold and not allow creditors to garnish a debtor’s wages if the debtor’s income falls below that threshold. See id. at 76-77.
81. See Belsheim, supra note 4, at 70.
82. See id. at 75-76; see also Grosse & Lean, supra note 43, at 786 (stating that a “wage exemption should be expressed as a percentage”).
84. Id. at 786.
85. Id. at 787; see also Haggerty, supra note 2, at 661-62 (noting that in California less than five percent of garnished employees ever filed for exemptions); Jablonski, supra note 45, at 765 (describing Wisconsin’s exemptions as “ineffectual” because debtors rarely “make a trip to court to assert them”).
86. Sweeney, supra note 2, at 203.
antisocial." Considering an employee’s need to live at or above the subsistence level, legislatures should establish a base exemption amount of eighty-five to ninety percent. A base exemption percentage, rather than a fixed dollar amount, may appear to be unfair to lower income debtors. "However, the person earning [a higher income] is more likely to have nonexempt property which can be levied upon, while the low income person is more likely to incur the small debts for which wage garnishment is the only means of execution." Some commentators suggest scaling the exemption to reflect the debtor’s annual income. However, a scaling provision would require continual revision and would be difficult to control.

Legislatures should also provide debtors with the opportunity to supplement the base exemption with additional, more targeted exemptions based on an individual debtor’s qualifications. In this respect, state garnishment laws could be “as individual as snowflakes.” States commonly condition exemptions on “the wage earner’s status as head of a household; the use to which the salary may be put, usually in-state family support; the character of the wages to be garnished; or the character of plaintiff as collection agency.” In addition, a state may want to establish a minimum income that a debtor must make in order to be subject to wage garnishments.

Other commentators believe that statutory exemptions to wage garnishment create more problems than they solve. Some states, for example, condition an employee’s exemptions, in part, on “common necessaries.” In essence, a “common necessaries” clause provides that the law may exempt a debtor’s wages unless the debtor incurred the debt for the “common necessaries of life.” “Common necessaries” clauses could discourage debtors from claiming exemptions. Debtors may decide to forfeit their exemptions rather than hassle with litigating the issue of whether they incurred debts for “common necessaries.”

In addition, public policy argues against these clauses. According to opponents of “common necessaries” clauses, “the statute puts the prudent (or

87. Id.
88. See Grosse & Lean, supra note 43, at 787 (“A person with a large family earning [a relatively low income] probably needs more than 85 [to 90] percent of his income, while a person earning [a higher income] probably needs less.”).
89. Id.
90. Brunn, supra note 45, at 1248.
91. Id.
93. Sweeney, supra note 2, at 203 (footnotes omitted).
94. See Belsheim, supra note 4, at 76-77 (suggesting the establishment of a maximum income “ceiling above which all wages may be garnished”).
95. Sweeney, supra note 2, at 205.
96. Brunn, supra note 45, at 1217-20.
97. Id.
98. See id. at 1219.
poor) family which buys only essentials into a worse position than the family that buys nonessential items on credit.”

Legislatures must avoid “common necessaries” clauses and similar exemption clauses that defeat the underlying goal of exemptions, which is to reduce the harsh effects of wage garnishment on the debtor.

B. Continuing Writ

Some states allow judgment creditors to garnish a debtor’s wages on a single debt as often as the creditor likes. In fact, some state statutes anticipate repeated levies on the same debt because employers in these states pay the creditor only the percentage of wages owed to the debtor at the time of service. If the debtor fails to satisfy the debt after a single pay period, the creditor must execute a levy against the debtor’s wages repeatedly until the debtor satisfies the entire judgement. Obviously, this process becomes extremely laborious and expensive to all parties involved. “Each writ imposes additional expense upon the creditor and the employer, and increases the possibility of the debtor being fired.” For this reason, lawmakers should allow initial writs of garnishment filed with the court to be continuous. The creditor’s writ of garnishment would attach to the debtor’s wages and remain attached until the debtor satisfied the debt fully. A continuing writ provision simplifies the garnishment procedure and reduces the cost to all parties involved. In addition, such a provision assures judgment creditors, waiting to garnish the debtor, that the debtor is paying off prior debts in a timely fashion. Creditors often object to continuing writ provisions because they allow a single creditor to hold up a debtor’s wages for an extended period of time. However, these creditors fail to realize that a continuing writ actually protects creditors by helping to keep the debtor solvent. “Perhaps this is as it should be under a system that does not provide for an equal distribution of the debtor’s income among all his creditors.”

99. Id. at 1219. On the other hand, proponents of “common necessaries” clauses argue that “those who sell essentials should have better means of collecting their debts than companies which extend credit for unessential or luxury purchases.” Id.

100. See id. at 1220 (noting that a “feature of California’s wage garnishment procedure is that it permits multiple levies”); see also Belsheim, supra note 4, at 79 (“The Nebraska statutes permit the creditor to garnish the debtor’s wages on the same debt as frequently as he chooses . . . .”).

101. See Belsheim, supra note 4, at 79.

102. See id.

103. Grosse & Lean, supra note 43, at 789; see also Jablonski, supra note 45, at 768 (“Continuous garnishment increases the probability of job loss and bankruptcy.”).

104. Brunn, supra note 45, at 1225.

105. Id.

106. Id.

107. Jablonski, supra note 45, at 772.

108. Belsheim, supra note 4, at 79.
C. Judicial Discretion

Wage garnishment is burdensome on states and their legal systems when creditors use the state as a collection agency. While judges dislike creditors' abuse of the system, often the system ties the judges' hands. Generally, judges receive "boilerplate" writs of garnishment, containing little more than the amount of the claim against the debtor. In these cases, the judges cannot assess the merits of the case and can use only their discretionary power to determine the amount of costs to add to the original debt. Requiring more detailed pleadings in the garnishment process and providing the courts with a substantial amount of discretion might reduce the harshness of a garnishment statute. If the parties provide the court with sufficient facts, a judge can better assess the situation. A wage garnishment statute should provide judges with the discretion to shape remedies based on the facts of each case and should allow for a liberal interpretation of the statute's language. For example, the judge could "consider factors such as [the] debtor's number of dependents, housing expenses, food and clothing, transportation, healthcare expenses, child care expenses and other household income of the judgment debtor." In addition, the garnishment law might enable courts to consider "the circumstances of the defendant, including any other actions pending or judgments outstanding against him, the amount of the defendant's income and the amount of the claim or demand. Upon proof of change of circumstances of the defendant, any order for payments... may... be set aside... or altered...."

Establishing a cause of action for wrongful garnishment might also reduce some of the problems associated with wage garnishment. A suing debtor could establish liability based on the common law torts of malicious prosecution or abuse of process or on a state statute. Although wrongful garnishment could potentially protect debtors, the cause of action's effectiveness depends on debtors actually using it. Unless debtors draw this sword, the cause of action is useless.

109. Kripke, supra note 53, at 30; see also supra Part IV.D.
111. Id.
112. Id.
113. In addition to enhancing the pleading requirements, courts might consider changing other administrative requirements. For example, increasing filing fees for a writ of garnishment might reduce the number of garnishments filed. In addition, allowing courts to defray employers' administrative costs might secure debtors' jobs by softening the burden on employers.
115. Brunn, supra note 45, at 1225-26 n.74.
D. Notice to Debtor

A creditor might wait to file a writ of garnishment until just before the debtor’s pay period ends. As a result, debtors do not discover that a creditor garnished their wages until they pick up their paychecks and notice that a creditor took a portion of it. To eliminate this element of surprise and to provide debtors with an opportunity to pay the debt, or at least negotiate with the creditor, legislatures should require creditors to provide debtors with notice and demand prior to garnishment.119 In 1982, an Ohio court established the following requirement:

[A]t a minimum, such procedures should include prompt service of the notice of garnishment upon the judgment debtor; a notice explaining that defenses, including exemptions, may be available which would nullify the garnishment and restore the assets, with a description of a simple procedure for requesting a hearing; and a prompt hearing and decision on the claimed defense.120

In addition, a notice requirement might reduce the burden on employers by eliminating them from the garnishment process in some cases. If a debtor negotiates with the creditor and the parties agree on a payment plan, the employer will avoid the potentially burdensome garnishment process completely.

E. Limits on Discharge for Garnishment

One of the main concerns regarding wage garnishment is its effect on a debtor’s ability to maintain employment.121 Wage garnishment necessarily imposes some burden on employers, and, unless prohibited by law from doing so, employers will continue to discharge garnished employees as a result. One way to protect debtors from losing their job is to reduce the burdens on

119. Id. at 788; see also Brunn, supra note 45, at 1249 (suggesting that garnishment be permitted only after notice and a hearing); Suzanne Campbell, Note, Debtor-Creditor, 10 U. ARK. LITTLE ROCK L.J. 173, 181 (1987-88) (explaining that Arkansas requires “a ‘Notice to Defendant’ be attached to each writ of garnishment, explaining exemptions . . . and [the debtor’s] right to a hearing[,] . . . and requiring that a copy of the writ . . . be mailed to the judgment debtor the same day that the writ is served upon the garnishee”); Joanne C. Ferriot, Comment, Garnishment and the Poor in Louisiana, 33 LOY. L. REV. 79, 84 (1987) (“A pre-seizure notice of wage garnishment would be of great utility . . . by giving [the attorney] some time to work with the employee/debtor and the creditor to arrange a settlement of the debt.”).


121. See supra Part IV.B.
employers. Aside from prohibiting wage garnishment, lawmakers can protect debtors by limiting employers’ ability to discharge employees over wage garnishment.122

Many employers adopt policies that forbid discharging employees for wage garnishment until a certain number of garnishments occur.123 Despite the employees’ need to work, employers depend on these policies to reduce the burdens wage garnishment places on them, such as administrative expenses and the possibility of default judgments.124 When employers exercise their discretion, they commonly fire unskilled, easily replaceable employees.125 Unfortunately, the discharged employee is likely to be dependent on each paycheck and to be highly in debt.126 In this context, one can easily understand the importance of statutory limitations on an employer’s ability to discharge employees over wage garnishment.127

Undoubtedly, employers object to statutory limitations on their right to discharge employees.128 Fundamentally, employers may well view these restrictions as violating their business judgment. Employers’ interests are legitimate, but they do not carry the day. “A family’s financial crisis may have widespread effects: effects on the creditors, effects on the legal machinery of society, effects often . . . in terms of unemployment insurance, welfare payments, personal tensions, and even family break-up.”129 For this reason, at least one commentator suggests that wage garnishment laws should completely prohibit discharge for garnishment130 because a no-discharge-for-garnishments rule encourages employers to work with their employees and help them solve their debt problems.131

F. Creditor Priority

A wage garnishment statute must establish a system of creditor priority to alleviate unnecessary disputes between creditors over which creditor is entitled to the debtor’s wages. Some states base creditor priority on the time of service

---

122. Belsheim, supra note 4, at 78.
123. See Grosse & Lean, supra note 43, at 757.
124. Id. at 756; see also supra text accompanying note 56 (discussing the administrative costs that burden employers).
125. Id. at 758.
126. Id.
127. Numerous methods exist to limit an employer’s ability to discharge employees. See, e.g., 15 U.S.C. § 1674(a) (1994) (prohibiting discharge for a single indebtedness); see also Grosse & Lean, supra note 43, at 792 (recommending an amendment to Washington’s garnishment statute that would prohibit an employer from discharging an employee unless the employee is garnished at least three times in a 12-month period).
128. Brunn, supra note 45, at 1233.
129. Id. (footnote omitted).
130. See id.
131. Id. (suggesting that the employer might provide assistance through counseling or credit unions).
of the income execution,\textsuperscript{132} but at least one commentator has questioned this approach.\textsuperscript{133} She compares the typical unsecured creditor involved in a wage garnishment process to secured creditors under the Uniform Commercial Code and suggests that the unsecured creditor, like the secured creditor, might be "in a position to determine . . . his priority at the time he extends credit to the debtor."\textsuperscript{134} She proposes a system of priority based on the order in which the creditors perfect debts by filing financial statements.\textsuperscript{135}

\textbf{G. Creditor Preferences}

In addition to the system of creditor priority discussed in Part V.F, one commentator suggests lawmakers establish a second method of prioritizing the repayment of debts by distinguishing between types of creditors.\textsuperscript{136} "Consideration should be given to granting a preference to the creditor who extends credit when the debtor is able to pay rather than treat him equally with the creditor who extends credit at a higher rate of return when the debtor is already overburdened with debt."\textsuperscript{137} A preferential system, combined with other tactics, might influence creditors to stop extending unwise credit.\textsuperscript{138} Proponents of this idea believe attempts to educate debtors are futile.\textsuperscript{139} Instead, they direct reform at the creditors, whom they see as the heart of the problem.\textsuperscript{140} Nevertheless, others caution the proponents of this preferential system and remind them of the credit market's nature: "[a] creditor realizes that some of his debtors are going to default . . . but he does not know which ones. Shall we say that the credit was improvidently extended because some percentage of [the

\begin{itemize}
  \item \textsuperscript{132} See, e.g., Belsheim, supra note 4, at 79 ("The Nebraska statutes give priority to the creditor who is first in time with the service of process on the employer."); Brunn, supra note 45, at 1225 ("Generally the first creditor who gets his papers to an officer is given priority until he is paid off."); Grosse & Lean, supra note 43, at 790 (suggesting that "[a]ny writ served upon an employer subsequent to a previous writ on the same wages covering the same payroll period [be deemed] void"); Sweeney, supra note 2, at 214 (explaining that in New York "priority is determined by the time of delivery of the income execution order to the sheriff of the county of debtor's residence or employment").
  \item \textsuperscript{133} See Belsheim, supra note 4, at 79.
  \item \textsuperscript{134} Id. at 79-80.
  \item \textsuperscript{135} Id. at 80; see also Ferriot, supra note 119, at 94 (explaining that in Louisiana "[o]rdinary garnishments, e.g., for consumer debts, are ranked in the order in which they were incurred and prime all subsequent debts of this type"); Cecilia M. Martaus, Garnishment of Employee Wages in Ohio: Whose Money Is It Anyway?, 18 OHIO N.U.L. REV. 197, 209 (1991) (discussing Ohio's "first in time is first in right" rule).
  \item \textsuperscript{136} See Belsheim, supra note 4, at 80.
  \item \textsuperscript{137} Id.
  \item \textsuperscript{138} See Kripke, supra note 53, at 28-29 (setting forth various arguments with respect to restricting creditor practices).
  \item \textsuperscript{139} See id.
  \item \textsuperscript{140} See Haggerty, supra note 2, at 646 (noting that the second most popular reason for failure to repay debts was voluntary overextension by creditors).
\end{itemize}
H. Counseling

No set solution for resolving the problems associated with wage garnishment exists. Some people believe society should deemphasize the education of debtors, including low-income debtors, and refocus its attention on reforming creditors' practices. They believe many of the problems associated with wage garnishment would disappear if society were to prevent creditors from overextending credit. Others believe society should continue to focus on educating and counseling debtors. According to one commentator "the situation is one that calls for something more than putting the debtor through the wringer of garnishment again and again. A counselor working with the debtor might be able to provide him with a budget which he understands and can live with." 

VI. CONCLUSION

As a result of increased urbanization and growth in the credit industry, wage garnishment naturally evolved into the creditors' remedy of choice. Although South Carolina currently prohibits wage garnishment, most states provide creditors with a system of wage garnishment. Numerous states pattern their garnishment laws after the federal wage garnishment statute, providing debtors with a minimum level of protection. Because South Carolina does not currently provide creditors with an efficient and reliable means of recovering debt, it should consider implementing a wage garnishment statute. In considering such a statute, lawmakers should look first at the policy issues surrounding wage garnishment. If South Carolina decides to adopt a wage garnishment statute, the recommendations provided in Part V will help the legislature craft a statute that prevents undue hardship on wage-earning debtors. "The ideal legislative solution would . . . tailor collection law [so as to] force the debtor to repay what he can afford[,] while leaving [the debtor] the funds and the opportunity to continue functioning as a productive member of the

141. Kripke, supra note 53, at 29.
142. See id. at 28-29.
143. See id.
144. See Belsheim, supra note 4, at 80-81.
145. Id.
146. See Nettles, supra note 114, at 28 (noting that the only states with no wage garnishment statutes are New Hampshire, North Carolina, Pennsylvania, South Carolina, Texas, and Vermont).
147. South Carolina allows a creditor to attach a debtor's property. However, this procedure is often fruitless because the sheriff returns a "nulla bona" execution order, meaning "no goods," stamped on it. Id. at 27.
The consumers with the strongest distaste for wage garnishment desperately need the remedy most. "Specifically, those wage earners who now have no collateral to offer except their weekly salary in future weeks will be cut off from all credit, since there will be no basis for extending credit to them."  

A restrictive wage garnishment statute, complete with sufficient exemptions, should protect debtors and their dependents from the detrimental effects of wage garnishment. A well-crafted wage garnishment law will protect debtors by providing a reasonable and orderly means of repayment, while providing creditors with a method of recovering the money owed to them.

James H. Suddeth, III

149. Kripke, supra note 77, at 290 (quoting Consumer Credit Protection Act: Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency, 90th Cong. 1209 (1967) (statement of Fred Noz, Ass’n of Commercial and Prof’l Attorneys)).