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## PROJECT PREVENTION: CONCEPT, OPERATION, RESULTS AND CONTROVERSIES ABOUT PAYING DRUG ABUSERS TO OBTAIN LONG-TERM BIRTH CONTROL

Bruce A. Thyer\*

### ABSTRACT

This Article describes the origins and current operation of Project Prevention, a privately-funded program that provides a payment of \$300 to substance abusers who obtain long-term birth control. This practice is intended as a means to prevent the conception of babies to mothers who are prone to expose their developing child to toxic levels of alcohol or other drugs during pregnancy, likely to be unable to care for their child once born, and at risk for having their child removed from their custody by the state and placed in foster care or an adoptive home. Children born to such mothers are at a high risk for developmental disadvantages and incur a high cost to society, which all too often has to provide medical or custodial care for them. Substance-abusing men who enroll in Project Prevention and obtain a verified vasectomy receive a similar payment. Thus far, Project Prevention has enrolled over 5,000 clients and paid out over \$1 million in incentives. Some critics of Project Prevention have raised objections to this program; this Article describes and responds to a number of these objections. The Article concludes that this circumscribed program is highly effective and ethical, and provides a needed preventive service. In this manner, it emulates much larger-scale initiatives funded by the federal government, which have paid for the costs of long-term birth control, including sterilization, for indigent people. The federal government has long-provided financial inducements through foreign aid programs for the poor of other countries to obtain long-term birth control, also including sterilization. Therefore, any criticisms of Project Prevention must also be extended to existing, analogous federally funded programs.

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## INTRODUCTION

An increasing proportion of babies are born out of wedlock or to single mothers in the United States,<sup>1</sup> and these babies lack the social, financial, and emotional advantages that are provided to children raised by their two biological parents. This is stated in a statistical sense and is not meant to imply that single parents, step-parents, or same-sex parents are intrinsically inadequate caregivers. Many unplanned fetuses are aborted, and a significant proportion of unplanned babies are voluntarily given up after birth into state custody by the mother who believes she is unable to properly care for the newborn. When their biological mother or father is judged incapable of providing safe parental care, other newborns, or older babies and children, are proactively taken into custody by the state to be raised by temporary or long-term foster parents, adoptive parents, and in some cases, traditional orphanages. Being raised in institutional settings either by short- or long-term foster parents or by adoptive parents also presents the child with increased risks of homelessness, unemployment, poverty, unwanted pregnancy, and earlier pregnancy.<sup>2</sup> Again, this does not imply that these are inevitable outcomes, but the evidence is fairly certain that children raised by both biological parents tend to fare better in life than those raised in other household configurations.<sup>3</sup>

Many biological parents of unplanned babies are addicted to alcohol or other drugs, which places the fetus at significant risk of developmental injury *in utero* and of neglect, maltreatment, or other forms of abuse during infancy or childhood.<sup>4</sup> These negative effects are even found among such babies who were adopted by non-drug-addicted parents shortly after birth, suggesting that the effects are caused by exposure to alcohol or drugs while the substance-abusing mother was pregnant, not by

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<sup>1</sup> *Unmarried Childbearing*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm> [<http://perma.cc/WXM2-MHQV>] (last updated Sept. 30, 2015).

<sup>2</sup> See M. Köhler et al., *Children in Family Foster Care Have Greater Health Risks and Less Involvement in Child Health Services*, 104 *ACTA PAEDIATRICA* 508, 508 (2015) (concluding that “children in foster care were exposed to more health risks than the control children”); Francesca Lionetti et al., *Attachment in Institutionalized Children: A Review and Meta-Analysis*, 42 *CHILD ABUSE & NEGLECT* 135, 135 (2015); *There Is a Better Way—Executive Summary*, N. AM. COUNCIL ON ADOPTABLE CHILD., [http://www.nacac.org/adoptalk/exec\\_better\\_way.html](http://www.nacac.org/adoptalk/exec_better_way.html) [<http://perma.cc/8K6A-A6ES>] (noting that institutions cause various harms to children, including “developmental problems and long-term personality disorders”).

<sup>3</sup> See, e.g., Michael Rutter et al., *Longitudinal Studies Using a “Natural Experiment” Design: The Case of Adoptees from Romanian Institutions*, 51 *J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY* 762, 769 (2012).

<sup>4</sup> See, e.g., Jenny Rangmar et al., *Psychosocial Outcomes of Fetal Alcohol Syndrome in Adulthood*, 135 *PEDIATRICS* e52, e52 (2015); Emily J. Ross et al., *Developmental Consequences of Fetal Exposure to Drugs: What We Know and What We Still Must Learn*, 40 *NEUROPSYCHOPHARMACOLOGY REV.* 61, 61–62 (2015).

poor post-birth parenting.<sup>5</sup> Developmental delays, injuries, disorders, neglect, or abuse associated with maternal alcohol or drug abuse result in significant long-term medical and custodial costs to the state.<sup>6</sup> Parental substance abuse is a major precipitant to states' taking custody of babies and children,<sup>7</sup> perhaps due to the toxic damage inflicted on fetuses by the mother or subsequent maternal or paternal neglect or abuse after the child is born. Many drug-addicted women find themselves with unplanned pregnancies and drug-addicted men inadvertently conceive babies for whom they lack the capacity to parent.<sup>8</sup>

The societal problem of babies being conceived by drug-addicted mothers or fathers and the resultant deleterious consequences to the child, and in some cases to the mother whose health is impaired by an unplanned pregnancy, are easily preventable. One partial solution is providing substance abusers with long-term contraception.<sup>9</sup> By preventing babies from being conceived, the deleterious consequences of unplanned pregnancies and births are completely avoided. The costs of long-term birth control are small, relative to the costs incurred by the mother, father, or child born to substance-abusing parents.<sup>10</sup> The costs involved for state or private agencies that provide custodial, medical, or rehabilitative care to children born of such parents dwarf the expense of providing long-term birth control.<sup>11</sup> The balance of this Article will describe a private program known as Project Prevention, which provides drug-addicted men and women with a financial payment in return for obtaining long-term birth control in an attempt to reduce the number of children being conceived and born to such parents.

### I. THE ORIGINS OF PROJECT PREVENTION (PP)

A woman named Barbara Harris was asked by a local hospital if she could foster a newborn just delivered by a mother who was addicted to cocaine.<sup>12</sup> She gladly did so.<sup>13</sup> A year later, she was called again, as the same mother had delivered another

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<sup>5</sup> Thomas M. Crea et al., *Behavioral Outcomes for Substance-Exposed Adopted Children: Fourteen Years Postadoption*, 78 AM. J. ORTHOPSYCHIATRY 11, 11, 15–16, 18 (2008).

<sup>6</sup> NAT'L RESEARCH CTR., PRENATAL SUBSTANCE EXPOSURE 6 (2012), [http://aia.berkeley.edu/media/pdf/AIAFactSheet\\_PrenatalSubExposure\\_2012.pdf](http://aia.berkeley.edu/media/pdf/AIAFactSheet_PrenatalSubExposure_2012.pdf) [<http://perma.cc/DU34-NDRZ>].

<sup>7</sup> Under the Child Abuse Prevention and Treatment Act (CAPTA), states must have procedures to identify newborns exposed to illegal drugs and notify child protective services. CHILD WELFARE INFO. GATEWAY, PARENTAL DRUG USE AS CHILD ABUSE 2 (2012), <http://www.childwelfare.gov/pubPDFs/drugexposed.pdf> [<http://perma.cc/3R8M-FFAP>].

<sup>8</sup> Laura Duberstein Lindberg & Kathryn Kost, *Exploring U.S. Men's Birth Intentions*, 18 MATERNAL & CHILD HEALTH J. 625, 625–26 (2014).

<sup>9</sup> See *Home*, PROJECT PREVENTION, <http://www.projectprevention.org> [<http://perma.cc/D86Z-9RFP>].

<sup>10</sup> See *What's New*, PROJECT PREVENTION, <http://www.projectprevention.org/whats-new/> [<http://perma.cc/E2AX-HZHD>].

<sup>11</sup> *Id.*

<sup>12</sup> See *Frequently Asked Questions*, PROJECT PREVENTION, <http://www.projectprevention.org/faq/> [<http://perma.cc/2EG9-54XR>].

<sup>13</sup> *Id.*

baby.<sup>14</sup> This happened two more times, resulting in Harris's fostering and ultimately adopting a fifth, sixth, seventh, and eighth baby born of the same drug-addicted mother.<sup>15</sup> She helplessly watched as the newborns quivered their way through cocaine withdrawal symptoms.<sup>16</sup> The term "Neonatal Abstinence Syndrome" is used to describe newborns' withdrawal symptoms caused by maternal opioid addiction, another serious complication of *in utero* exposure to narcotics.<sup>17</sup> Harris was irate that the same woman repeatedly birthed babies while being unable to care for them and relinquished them to the care of others.<sup>18</sup> Harris attempted, unsuccessfully, to have the California legislature mandate that any mother who gave birth to a drug-addicted baby be required to use long-term birth control.<sup>19</sup> Failing in that effort, in 1989 she founded Children Requiring a Caring Kommunity, a name later changed to Project Prevention (PP), as a national 501(c)(3) non-governmental organization supported by private donations from individuals and foundations to provide a financial payment to substance abusers who obtain long-term birth control.<sup>20</sup> Here is how PP describes itself:

The main objective of Project Prevention is public awareness to the problem of addicts/alcoholics exposing their unborn child to drugs during pregnancy.

Project Prevention seeks to reduce the burden of this social problem on taxpayers, trim down social worker caseloads, and alleviate from our clients the burden of having children that will potentially be taken away.

Unlike incarceration, Project Prevention [sic] extremely cost effective and does not punish the participants.

We seek and welcome alliances with all sectors of our communities including drug treatment programs, hospitals, social service departments, among others, and have established such contacts throughout the United States.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Eric S. Hall et al., *A Multicenter Cohort Study of Treatments and Hospital Outcomes in Neonatal Abstinence Syndrome*, 134 *PEDIATRICS* e527, e528 (2014).

<sup>18</sup> *Frequently Asked Questions*, *supra* note 12.

<sup>19</sup> *Id.*

<sup>20</sup> Mike Pearl, *An Interview with the Woman Who Pays Drug Addicts to Get Sterilized*, *VICE* (Apr. 24, 2014), <http://www.vice.com/read/project-prevention-compulsory-sterilization> [<http://perma.cc/7CMC-6LQW>]; *see also Home*, *supra* note 9.

Project Prevention does not have the resources to combat the national problems of poverty, housing, nutrition, education and rehabilitation services. Those resources we do have are spent to PREVENT a problem for \$300 rather than paying millions after it happens in cost to care for a potentially damaged child.<sup>21</sup>

## II. HOW DOES PROJECT PREVENTION OPERATE?

Typically, advertisements in the form of billboards, posters, flyers, newspaper stories, and media interviews in a given community recruit potential clients.<sup>22</sup> Clients complete an application form and provide verification of their addiction history via satisfactory treatment documents, social service files, or arrest records.<sup>23</sup> Referrals are made to local physicians who subsequently provide birth control care.<sup>24</sup> Afterwards, the clients must provide proof, signed by a medical doctor, that they received long-term birth control within two weeks of completing the application.<sup>25</sup> Female clients may choose among a variety of birth control options.<sup>26</sup> Receiving a tubal ligation or Essure procedure (both usually permanent) results in a one-time payment of \$300.<sup>27</sup> Receiving an intrauterine device (IUD) or Implanon (long-term but reversible forms of birth control) results in a \$75 payment following the procedure, a further \$100 payment after six months (with a doctor's verification), and a final payment of \$125 after twelve months (also with a doctor's verification).<sup>28</sup> Male clients only receive a \$300 payment for undergoing a vasectomy, a permanent form of birth control.<sup>29</sup> The application also requests the client's history of previous pregnancies, abortions, births, and the status of any children.<sup>30</sup> Payments are made in the form of a check, not cash payment.<sup>31</sup> All forms of birth control, both long-term and permanent,

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<sup>21</sup> *Objectives*, PROJECT PREVENTION, <http://www.projectprevention.org/objectives/> [<http://perma.cc/LN4B-A3NX>].

<sup>22</sup> *See Media*, PROJECT PREVENTION, <http://www.projectprevention.org/media/> [<http://perma.cc/C5FE-E8YL>]. A sample flyer can be found on PP's website. *See Attention Drug Addicts & Alcoholics*, PROJECT PREVENTION, <http://www.projectprevention.org/docs/flyer.pdf> [<http://perma.cc/2PUV-E76U>]. Additional samples of newspaper articles and videos of interviews also can be found on PP's website.

<sup>23</sup> *Introductory Letter (April 2012: Binding)*, PROJECT PREVENTION, <http://www.projectprevention.org/docs/application-page-1.pdf> [<http://perma.cc/T3AE-W7WT>].

<sup>24</sup> *Home*, *supra* note 9.

<sup>25</sup> *Introductory Letter (April 2012: Binding)*, *supra* note 23.

<sup>26</sup> *See, e.g., id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Client Survey Form (September 2008: Binding)*, PROJECT PREVENTION, <http://www.projectprevention.org/docs/application-page-2.pdf> [<http://perma.cc/ZL9N-E3UD>].

<sup>31</sup> *See Pearl*, *supra* note 20.

provide for the same total payment.<sup>32</sup> Sterilization procedures are not incentivized over other long-term methods.<sup>33</sup>

### III. WHAT ARE THE OUTCOMES OF PROJECT PREVENTION?

Clients have been recruited and paid the financial incentive to obtain long-term birth control in all fifty states, the District of Columbia, the United Kingdom, and several other countries.<sup>34</sup> As of February 2016, 1,962 clients received an IUD; 1,824 women opted for tubal ligations;<sup>35</sup> 1,059 participants selected Depo Provera<sup>36</sup> (which is no longer paid for by Project Prevention);<sup>37</sup> 555 clients received Implanon;<sup>38</sup> 38 participants received Norplant;<sup>39</sup> and 143 men received vasectomies, totaling 5,543 clients since the program was founded.<sup>40</sup>

Based upon client-reported information from the Project Prevention application, the female clients had previously received a total of nearly 5,000 abortions, indicating that this was the most common form of birth control.<sup>41</sup> In addition, there were nearly 800 instances of still-born births and nearly 500 infants living only a short time after birth.<sup>42</sup> Collectively, the client applicants had nearly 6,000 living children being raised by others in foster care or waiting to be adopted.<sup>43</sup> In terms of race and ethnicity, 3,324 clients were white, 1,119 were black, 637 were Hispanic, and 463 listed “other.”<sup>44</sup> Therefore, the majority of clients were white.<sup>45</sup>

<sup>32</sup> See *Introductory Letter (April 2012: Binding)*, *supra* note 23.

<sup>33</sup> See *id.*

<sup>34</sup> See *Home*, *supra* note 9; *Pearl*, *supra* note 20.

<sup>35</sup> See *Tests and Procedures: Tubal Ligation*, MAYO CLINIC (Dec. 9, 2014), <http://www.mayoclinic.org/tests-procedures/tubal-ligation/basics/definition/prc-20020231> [<http://perma.cc/P9YE-EFMM>] (“A tubal ligation—also known as having your tubes tied or tubal sterilization—is a type of permanent birth control.”).

<sup>36</sup> *Frequently Asked Questions About Depo Provera*, REPROD. HEALTH TECHNOLOGIES PROJECT, <http://rhtp.org/contraception/depoprovera/default.asp> [<http://perma.cc/4TP4-Z7RL>] (“Depo Provera is an injection of synthetic progesterone similar to one of the hormones made by a woman’s ovaries.”).

<sup>37</sup> See *Statistics*, PROJECT PREVENTION, <http://www.projectprevention.org/statistics/> [<http://perma.cc/6A36-A6G2>] (last updated Feb. 2016) (stating that Project Prevention “no longer pay[s] for this method”).

<sup>38</sup> *What is Implanon?*, IMPLANON, <http://www.implanon-usa.com/en/consumer/about-it/what-is-implanon/index.xhtml> [<http://perma.cc/6YB2-UUJK>] (“Implanon is a hormone-releasing birth control implant for use by women to prevent pregnancy for up to 3 years.”).

<sup>39</sup> See *Norplant*, SUTTER HEALTH PALO ALTO MED. FOUND., <http://www.pamf.org/teen/sex/birthcontrol/norplant.html> [<http://perma.cc/4E8C-XMRG>] (last updated Oct. 2013) (“Norplant is a hormonal implant used for birth control. It is effective for up to five years.”).

<sup>40</sup> *Statistics*, *supra* note 37.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See *id.*

It is clear that Project Prevention is a small-scale success story. Although PP has provided over \$1.2 million in financial payments to over 5,000 clients,<sup>46</sup> relative to the magnitude of the number of children conceived, aborted, born, or dying shortly after birth, PP has not yet significantly impacted the problem. PP has received a considerable amount of publicity, much of it positive, some neutral, and some critical.<sup>47</sup> Below are listed some of the critical objections to the operation of PP, along with some defensive rebuttals.

#### IV. PROJECT PREVENTION IS SAID TO BE COERCIVE

Below are some representative quotations illustrating the perspective that paying drug addicts to obtain birth control is coercive:

- “Other organizations, such as the National Advocates for Pregnant Women and the Committee on Women, Population and the Environment believe Project Prevention is using coercion to achieve this goal. Other organizations and former drug users believe drug abuse is a disease and should be treated and that Project Prevention is imposing on a person’s free will. . . . ‘No matter how you frame it, paying women to become sterilized is coercion.’”<sup>48</sup>
- “The \$200 acts as an external pressure on the drug addicts involved in the CRACK scheme, and limits their freedom to a significant extent. This situation in itself is clearly undesirable, but furthermore it will have a negative effect on the nature of consent.”<sup>49</sup>

Financial incentives are widely used in the United States and around the world to promote health practices, medical care, and what is seen as the social good.<sup>50</sup>

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<sup>46</sup> *What’s New*, *supra* note 10.

<sup>47</sup> *See Media*, *supra* note 22.

<sup>48</sup> Carolina Luna, *Nvate Ndepth: Is Project Prevention Saving Children from Neglect?*, NVATE (May 11, 2012), <http://nvate.com/7796/project-prevention/> [<http://perma.cc/675K-5PW6>].

<sup>49</sup> M. Morgan, *The Payment of Drug Addicts to Increase Their Sterilisation Rate Is Morally Unjustified and Not Simply ‘A Fine Balance,’* 24 J. OBSTETRICS & GYNECOLOGY 119, 121 (2004).

<sup>50</sup> *See* UNIV. MINN. EVIDENCE-BASED PRACTICE CTR., EVIDENCE REPORT/TECHNOLOGY ASSESSMENT, NO. 101: ECONOMIC INCENTIVES FOR PREVENTIVE CARE vi (2004), <http://archive.ahrq.gov/downloads/pub/evidence/pdf/ecinc/ecinc.pdf> [<http://perma.cc/X75B-DL6D>]; *see also* KAREN JOCHELSON, PAYING THE PATIENT: IMPROVING HEALTH USING FINANCIAL INCENTIVES 2, 9 (2007), [http://www.kingsfund.org.uk/sites/files/kf/field/field\\_document/paying-the-patient-kicking-bad-habits-supporting-paper-karen-jochelson.pdf](http://www.kingsfund.org.uk/sites/files/kf/field/field_document/paying-the-patient-kicking-bad-habits-supporting-paper-karen-jochelson.pdf) [<http://perma.cc/UX3K-6YRE>].



Canada provides payments to families for *having* children.<sup>51</sup> China provides benefits for *not having* children and provides punitive sanctions in some instances for having more than one child.<sup>52</sup> Forced abortions are common in China and other countries.<sup>53</sup> Financial incentives are also widely used around the world to promote long-term birth control, including sterilization.<sup>54</sup> In PP, all forms of birth control receive equal reimbursement, permanent as well as long-term.<sup>55</sup> The client and her/his physician jointly determine the method of birth control, not PP.<sup>56</sup> Most clients select long-term birth control, not permanent forms of sterilization.<sup>57</sup>

Although not commonly known, the federal government has frequently paid for long-term birth control and sterilization such as tubal ligation and vasectomy procedures through its health insurance program for the poor, Medicaid.<sup>58</sup> Even less well known is that the United States Agency for International Development (USAID) sponsors vigorous birth control programs in less developed countries and provides financial incentives to motivate poor women to accept sterilization procedures.<sup>59</sup>

In January, the U.S. Agency for International Development (USAID) sent out an electronic bulletin about strengthening family planning services with performance-based incentives. These include “reducing financial barriers for voluntary sterilization” through compensation payments to clients.

. . . .

. . . Despite a law prohibiting the use of American funds for incentive payments, USAID financed 85 percent of the Bangladesh

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<sup>51</sup> *Canada Child Tax Benefit*, CAN. REVENUE AGENCY, <http://www.cra-arc.gc.ca/cctb/> [<http://perma.cc/4FSH-5MWD>].

<sup>52</sup> Jonathan Watts, *China’s One-Child Policy Means Benefits for Parents—If They Follow the Rules*, GUARDIAN (Oct. 25, 2011), <http://www.theguardian.com/environment/2011/oct/25/china-one-child-policy-benefits-rules> [<http://perma.cc/B46P-P8RR>].

<sup>53</sup> See Max Fisher, *Why China’s One-Child Policy Still Leads to Forced Abortions, and Always Will*, WASH. POST (Nov. 15, 2013), <https://www.washingtonpost.com/news/world-views/wp/2013/11/15/why-chinas-one-child-policy-still-leads-to-forced-abortions-and-always-will/> [<http://perma.cc/BLV3-7AZ4>].

<sup>54</sup> Nicole M. Bellows et al., *Review of Performance-Based Incentives in Community-Based Family Planning Programmes*, 41 J. FAM. PLAN. & REPROD. HEALTH CARE 146, 146 (2015).

<sup>55</sup> See *supra* note 32 and accompanying text.

<sup>56</sup> See *Frequently Asked Questions*, *supra* note 12.

<sup>57</sup> See *id.*

<sup>58</sup> Jed Bickman, *Should Addicts Be Sterilized?*, SALON (May 2, 2012, 8:00 AM), [http://www.salon.com/2012/05/02/should\\_addicts\\_be\\_sterilized\\_salpart/](http://www.salon.com/2012/05/02/should_addicts_be_sterilized_salpart/) [<http://perma.cc/6U7B-NYS2>].

<sup>59</sup> Betsy Hartmann, *The Return of Population Control: Incentives, Targets and the Backlash Against Cairo*, DIFFERENT TAKES, Spring 2011, at 3, <http://popdev.hampshire.edu/sites/default/files/uploads/u4763/DT%2070%20Hartmann.pdf> [<http://perma.cc/YQV4-7Y58>].

program's incentive costs. It got around the law by calling the incentives "compensation payments." Sterilization 'acceptors' received a cash payment equivalent to several weeks of wages and a new sari for women or sarong for men at a time when many villagers only owned one piece of clothing. Doctors, clinic staff, health workers, traditional midwives and even members of the public received a fee for each client they "referred" or "motivated" to be sterilized. As a result, the whole health care system was skewed toward sterilization and access to temporary methods of contraception was severely curtailed. Sterilization rates rose especially high in the lean season before the harvest when peasants were desperate for cash to buy food.<sup>60</sup>

Detractors of PP's paying drug addicts \$300 in return for utilizing selected long-term birth control should turn their attention to the government's more pervasive use of financial incentives—a manner that apparently preferences sterilization over other forms of long-term birth control.

#### V. PROJECT PREVENTION IS SAID TO BE RACIST

- "These organizations say Project Prevention is 'exploitative, coercive and racist.'"<sup>61</sup>
- "Children Requiring a Caring Kommunity (C.R.A.C.K.), also known as Project Prevention, focuses on reducing the number of unwanted or substance-addicted children who are being born to women, particularly low-income African American women, who are actively engaged in substance abuse."<sup>62</sup>
- "Project Prevention's C.R.A.C.K. program clearly has a racist agenda that is not in the best interest of those who it purports to serve."<sup>63</sup>
- "[I]t only serves to curtail the rights and liberties of poor women, many of whom are African American and Latina. . . . The very nature of the

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<sup>60</sup> *Id.* at 1–2 (citing BETSY HARTMANN, *REPRODUCTIVE RIGHTS AND WRONGS* (1995)); *Repositioning in Action E-Bulletin: Strengthening Voluntary Family Planning Services with Performance-Based Incentives: Potentials and Pitfalls*, USAID (2011), [https://web.archive.org/web/20111017154328/http://usaid.gov/our\\_work/global\\_health/pop/techareas/repositioning/repfp\\_ebulletin/index.html](https://web.archive.org/web/20111017154328/http://usaid.gov/our_work/global_health/pop/techareas/repositioning/repfp_ebulletin/index.html).

<sup>61</sup> Luna, *supra* note 48.

<sup>62</sup> Gaynor I. Yancey, *Recovery: An Alternative to Sterilization of Chemically Dependent Women*, 9 J. AFR. AM. STUD. 43, 44 (2005).

<sup>63</sup> Jacquelyn Monroe & Rudolph Alexander, Jr., *C.R.A.C.K.: A Progeny of Eugenics and a Forlorn Representation for African Americans*, 9 J. AFR. AM. STUD. 19, 29 (2005).

assumptions on which Project Prevention is based reflects racist, classist, and sexist attitudes.”<sup>64</sup>

The accusation of racism is belied by the facts. Harris, who is white, is married to a black man.<sup>65</sup> They have mixed-race biological children and have adopted four children born of a black, drug-addicted mother.<sup>66</sup> The majority of PP’s clients are white, not black or Hispanic.<sup>67</sup>

The Centers for Disease Control and Prevention (CDC) report that in 2011, black and Hispanic babies accounted for almost 78% of the abortions in New York City.<sup>68</sup> According to the CDC, in terms of disproportional impact, black babies are far more likely to be aborted than white babies.<sup>69</sup> Thus, in contrast to the methods of birth control promoted by PP, abortion exerts a far greater, disproportionate impact on black women and children.

#### VI. PROJECT PREVENTION IS A FORM OF EUGENICS FOR ELIMINATING THE UNFIT

- “It’s not up to me to decide who has value. Any organization that thinks it’s OK to decide who has the right to live is arrogant in the extreme.’ [Stuart Sorenson, a mental health and addict worker in London,] also pointed out that the European Convention on Human Rights designed to prevent another Nazi Holocaust makes the activities of Project Prevention illegal in Europe, because it amounts [sic] a discriminatory practice against a population of vulnerable adults: ‘It’s essentially a form of eugenics dressed up in a thin veneer of compassion.’”<sup>70</sup>
- “While the developer and supporters of C.R.A.C.K. believe that their efforts to save children from drug addicted mothers are benign and non-racial, their efforts, nonetheless, have roots in racism and resemble a eugenic philosophy.”<sup>71</sup>

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<sup>64</sup> Suzanne Shatila et al., *C.R.A.C.K.: Unethical? What About Misogynist, Racist, and Classist?*, 9 J. AFR. AM. STUD. 32, 33 (2005).

<sup>65</sup> *Id.* at 37.

<sup>66</sup> *Id.*; Monroe & Alexander, *supra* note 63, at 21.

<sup>67</sup> See Shatila et al., *supra* note 64, at 36 (noting that, of Project Prevention’s paid clients, approximately 49% were Caucasian, 33% were African American, and 10% were Latino).

<sup>68</sup> Michael W. Chapman, *NYC: 78% of Abortions Were Black and Hispanic Babies*, CNS NEWS (Dec. 1, 2014, 1:03 PM), <http://cnsnews.com/news/article/michael-w-chapman/nyc-78-abortion-were-black-and-hispanic-babies> [<http://perma.cc/B73W-YPYM>].

<sup>69</sup> See Karen Pazol et al., Ctrs. for Disease Control & Prevention, *Abortion Surveillance—United States, 2011*, MORBIDITY & MORTALITY WKLY. REP., Nov. 28, 2014, at 7, [http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6311a1.htm?s\\_cid=ss6311a1\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6311a1.htm?s_cid=ss6311a1_w) [<http://perma.cc/2H32-SK6F>] (noting that non-Hispanic black women had a significantly higher abortion rate than that of non-Hispanic white women).

<sup>70</sup> Bickman, *supra* note 58.

<sup>71</sup> Monroe & Alexander, *supra* note 63, at 21.

- “[T]he C.R.A.C.K. program is rooted in the policies of eugenics . . . .”<sup>72</sup>

Any program of eugenics is predicated upon the idea that certain conditions are hereditary in nature.<sup>73</sup> PP makes no assertion that alcohol addiction or substance abuse are hereditary.<sup>74</sup> Further, the small scale of PP’s impact, fewer than 2,000 clients in total opting for sterilization,<sup>75</sup> belies any potential eugenic effect. In contrast, the disproportionate impact of abortion on blacks and Hispanics represents a far greater eugenic-like impact, with over 1,800 black babies estimated to be aborted every day and approximately 16 million since the Supreme Court’s decision in *Roe v. Wade*<sup>76</sup> in 1973.<sup>77</sup>

#### VII. PROJECT PREVENTION GIVES MONEY TO DRUG ADDICTS WHO CAN THEN USE IT TO BUY DRUGS

- “Some opponents say that, since the financial incentive is tantamount to giving addicts money to buy drugs, Project Prevention should be illegal.”<sup>78</sup>

Many persons who are addicted to alcohol or other drugs receive social welfare and other benefits that are paid in the form of cash or the equivalent, such as food stamp cards (technically Supplemental Nutrition Assistance Program, or SNAP).<sup>79</sup> Benefits awarded through the Temporary Assistance for Needy Families (TANF) program are delivered through reloadable electronic cards, which can be spent like cash.<sup>80</sup> Persons disabled by medical or mental health problems caused by drug or alcohol addiction are eligible to receive monthly Social Security Disability payments.<sup>81</sup> Unemployment compensation payments provide another example where the

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<sup>72</sup> Sharon E. Moore et al., *Introduction to the Pros and Cons of C.R.A.C.K.: A Viable Solution to Parental Substance Abuse?*, 9 J. AFR. AM. STUD. 3, 4 (2005).

<sup>73</sup> *See id.* (stating that the Eugenics Movement advocated sterilization of the genetically unfit to avoid passing on “bad genes”).

<sup>74</sup> *See id.* (noting that the program “focuses primarily on reducing the number of children exposed to maternal substance abuse”).

<sup>75</sup> Shatila et al., *supra* note 64, at 34.

<sup>76</sup> 410 U.S. 113 (1973).

<sup>77</sup> BLACKGENOCIDE.ORG, <http://www.blackgenocide.org/black.html> [<http://perma.cc/PLG3-8GQW>].

<sup>78</sup> Bickman, *supra* note 58.

<sup>79</sup> *See generally Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP’T AGRIC., <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> [<http://perma.cc/R7CL-5B59>].

<sup>80</sup> *See* GENE FALK, CONG. RESEARCH SERV., RL32748, THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT: A PRIMER ON TANF FINANCING AND FEDERAL REQUIREMENTS 20 (2013), <https://www.fas.org/sgp/crs/misc/RL32748.pdf> [<http://perma.cc/DRN7-8ADP>].

<sup>81</sup> *See generally Benefits for People with Disabilities*, SOC. SECURITY ADMIN., <http://ssa.gov/disability/> [<http://perma.cc/FFB7-FDVA>].

government provides cash assistance to persons who may be addicted to substances; other social welfare agencies, faith-based groups, and non-governmental organizations routinely give money to substance abusers.<sup>82</sup> Even Habitat for Humanity is sometimes embarrassed when the people to whom it deeded a new or renovated home, built with donated labor and materials, use the new dwelling as a place to sell drugs or for other illegal purposes.<sup>83</sup> Clearly, there is ample precedent for providing substance abusers with monetary payments or their equivalents without mandating or otherwise having control over how that money be spent or the benefit used. To contend that substance abusers are automatically unable to spend money wisely promotes a form of stigma.

#### VIII. DRUG ADDICTS ARE INCAPABLE OF MAKING RATIONAL DECISIONS ABOUT BIRTH CONTROL

- “[I]f addicted women are viewed as not responsible enough to have a baby, then they should also be viewed as not responsible enough to give informed consent to having a serious medical procedure in exchange for drug money.”<sup>84</sup>
- “If a person who is addicted to crack cocaine and has few material resources is in no position to assume responsibility for a baby, are they truly capable of making long-term or permanent decisions about their reproductive health?”<sup>85</sup>
- “[T]here is nothing voluntary about asking a man or woman to give up the ability to reproduce for money when under the influence of highly addictive substances. . . . [T]he only thing that Project Prevention succeeds in doing in [sic] preying upon low-income women who may not be able to make sound and logical decisions about their futures due to their drug addiction.”<sup>86</sup>

If a person is incapable of giving informed consent to common medical procedures involving birth control, is she capable of making rational decisions about conceiving a child, carrying that child to term, or raising that child? Do those who

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<sup>82</sup> See, e.g., *Unemployed Drug Users in Ga. Risk Benefits*, FOXNEWS.COM (June 1, 2012), <http://www.foxnews.com/us/2012/06/01/unemployed-drug-users-in-ga-risk-benefits/> [<http://perma.cc/2NP3-FNB5>]; see also *Behavioral Health Treatment Services Locator*, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN., <http://www.findtreatment.samhsa.gov/locator/link-fedHHS> [<http://perma.cc/BCN4-BD6L>].

<sup>83</sup> See Patrick McNamara, *Home Returned to Habitat for Humanity Following Drug Conviction*, ARIZ. DAILY STAR (Apr. 29, 2014, 12:00 AM), [http://tucson.com/news/blogs/police-beat/home-returned-to-habitat-for-humanity-following-drug-conviction/article\\_b1e420ba-0239-5844-9c6e-64eedf4d5aec.html](http://tucson.com/news/blogs/police-beat/home-returned-to-habitat-for-humanity-following-drug-conviction/article_b1e420ba-0239-5844-9c6e-64eedf4d5aec.html) [<http://perma.cc/3RXP-VKXX>].

<sup>84</sup> Bickman, *supra* note 58.

<sup>85</sup> *Id.*

<sup>86</sup> Shatila et al., *supra* note 64, at 34, 36.

contend that drug addicts cannot make informed decisions about long-term birth control also contend that these persons are incapable of making a decision to have an abortion? Should drug abusers and alcoholics be denied the right to an abortion because of their presumed limited capability to provide informed consent? Is consenting to an abortion—terminating the existence of a fetus—somehow a less significant decision than the decision to obtain an IUD?

All medical procedures are predicated on the principle of informed consent.<sup>87</sup> Accordingly, the provider, physician or otherwise, must ensure that the client is properly informed and understands the risks and benefits of a procedure before receiving care.<sup>88</sup> This is especially true with medical procedures involving surgery. Before surgery, all patients are required to sign an informed consent form, also signed by the physician, indicating the patient's consent and the physician's attestation that the client is capable of giving rational and informed consent.<sup>89</sup> A large portion of PP's clients receive Medicaid coverage, the federal health insurance program for the poor.<sup>90</sup> Medicaid provides coverage for long-term birth control, including sterilization procedures such as tubal ligation and vasectomies.<sup>91</sup> Medicaid's Consent for Sterilization form contains language indicating that the provider discussed non-permanent forms of birth control with the patient, the patient appears to be mentally competent, and the patient understands the nature and consequences of the procedure.<sup>92</sup> The patient must sign, affirming they "UNDERSTAND THAT THE STERILIZATION MUST BE CONSIDERED PERMANENT AND NOT REVERSIBLE [AND] HAVE DECIDED THAT [THEY] DO NOT WANT TO BECOME PREGNANT, BEAR CHILDREN OR FATHER CHILDREN."<sup>93</sup> The Medicaid Consent for Sterilization form is readily found on the internet.<sup>94</sup> It has been written in understandable language,<sup>95</sup> and a version is also available in Spanish.<sup>96</sup> Sterilization is actually the

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<sup>87</sup> Deborah Bartz & James A. Greenberg, *Sterilization in the United States*, 1 REV. OBSTETRICS & GYNECOLOGY 23, 29 (2008) (discussing procedures to ensure a patient is fully informed).

<sup>88</sup> *Id.*

<sup>89</sup> For an example of such an informed consent form, see U.S. DEP'T OF HEALTH & HUMAN SERVS., OMB NO. 0937-0166, CONSENT FOR STERILIZATION (2015) [hereinafter CONSENT FORM], <http://www.hhs.gov/opa/pdfs/consent-for-sterilization-english-updated.pdf> [<http://perma.cc/A4AN-DZLR>].

<sup>90</sup> Bickman, *supra* note 58.

<sup>91</sup> See Bartz & Greenberg, *supra* note 87, at 29 (discussing Medicaid procedures for sterilization).

<sup>92</sup> CONSENT FORM, *supra* note 89.

<sup>93</sup> *Id.*

<sup>94</sup> See, e.g., *id.*

<sup>95</sup> See Nikki B. Zite et al., Consent to Sterilization *Section of the Medicaid-Title XIX Form: Is It Understandable?*, 75 CONTRACEPTION 256, 259 (2007) (assessing the comprehensibility of the consent form).

<sup>96</sup> See U.S. DEP'T OF HEALTH & HUMAN SERVS., CONSENTIMIENTO PARA LA ESTERILIZACIÓN (2015), <http://www.hhs.gov/opa/pdfs/consent-for-sterilization-spanish-updated.pdf> [<http://perma.cc/WL6P-9CEG>].

most common form of contraception used by couples in the United States.<sup>97</sup> Indeed, the federal government has launched a major initiative to promote the use of sterilization procedures or long-term reversible methods of contraception among Medicaid patients.<sup>98</sup> There appears to be little public policy objection to providing poor people with long-term birth control, including sterilization.<sup>99</sup> Why object when a private organization does the same? Planned Parenthood sterilized over 800 women and 4,100 men during 2013–2014,<sup>100</sup> far greater numbers than PP. Undoubtedly, some of these Planned Parenthood patients were addicted to alcohol or other drugs.

Individuals who are addicted to alcohol or other drugs do not necessarily live in a continuous state of drug-induced, clouded consciousness and impaired judgment. Many go for days in between bouts of substance use, are employed, and even are good parents. Safeguards are currently in place to assure that all individuals provide informed consent to medical procedures, including permanent and long-term methods of birth control. It is important to emphasize that sterilization procedures such as tubal ligation or vasectomy constitute a minority percentage of the birth control procedures received by PP's clients.<sup>101</sup>

#### CONCLUSION

Project Prevention is a relatively small-scale program aimed at preventing the occurrence of a specific social ill: the birth of a child to a parent who is unprepared to properly raise that child.<sup>102</sup> The deleterious health and social consequences on the substance-abusing mother are easily preventable by long-term birth control. The health and social consequences of a fetus being exposed to toxic quantities of alcohol or other drugs *in utero*, of babies born to substance-abusing parents experiencing neglect or abuse, and of those babies needing to be remanded to state custody, foster care, or be adopted are likewise avoidable via long-term birth control. These are serious social problems that cost individuals, states, and the federal government significant sums to provide prenatal, postnatal, and custodial care for the mothers and children.<sup>103</sup>

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<sup>97</sup> Bartz & Greenberg, *supra* note 87, at 24.

<sup>98</sup> See, e.g., CINDY MANN, U.S. DEP'T OF HEALTH & HUMAN SERVS., CMCS MATERNAL AND INFANT HEALTH INITIATIVE (2014), <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-18-2014.pdf> [<http://perma.cc/S6NF-LCTX>].

<sup>99</sup> See, e.g., Hartmann, *supra* note 59, at 1 (noting that the USAID has promoted “reducing financial barriers for voluntary sterilization” through compensation payments to clients”).

<sup>100</sup> PLANNED PARENTHOOD, 2013–2014 ANNUAL REPORT 18 (2014), [https://www.plannedparenthood.org/files/6714/1996/2641/2013-2014\\_Annual\\_Report\\_FINAL\\_WEB\\_VERSION.pdf](https://www.plannedparenthood.org/files/6714/1996/2641/2013-2014_Annual_Report_FINAL_WEB_VERSION.pdf) [<http://perma.cc/2URP-EK6Q>].

<sup>101</sup> See *Statistics*, *supra* note 37.

<sup>102</sup> See Moore et al., *supra* note 72, at 4 (noting that the program's primary purpose is to reduce the number of children exposed to maternal substance abuse).

<sup>103</sup> See Richard P. Barth et al., *A Comparison of the Governmental Costs of Long-Term Foster Care and Adoption*, 80 SOC. SERV. REV. 127, 129 (2006) (noting the costs of adoption).

As a privately funded program, Project Prevention cannot alleviate all of the social problems facing substance abusers and their children. It can and does choose to focus on one highly circumscribed issue. Abortion clinics are not usually criticized for failing to provide a full spectrum of healthcare services. Similarly, it is illegitimate to critique Project Prevention because it does not provide substance abuse treatment, housing, food, day care, or other forms of assistance to substance abusers. Through a modest financial incentive, substance abusers can be motivated to make a responsible decision to obtain long-term birth control. Most such methods of birth control chosen by the clients are reversible.<sup>104</sup> Most clients are white.<sup>105</sup> Safeguards exist to ensure that clients who opt for long-term birth control make informed decisions.<sup>106</sup> Accusations that Project Prevention is somehow based on a racist philosophy or a program of eugenics are ill-founded. The federal government has long paid for Medicaid clients to obtain long-term birth control and has provided financial incentives through its international development programs for poor citizens of other countries similarly to obtain long-term birth control, including tubal ligations and vasectomies that result in permanent sterilization.<sup>107</sup> Such governmental programs impact the lives of hundreds of thousands of people each year. The far more modest effects of Project Prevention are vastly superseded by these existing taxpayer-funded initiatives.

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subsidies); CHMURA ECON. & ANALYTICS, MEASURING THE COSTS OF FOSTER CARE AND THE RETURN ON INVESTMENT FOR THE “GREAT EXPECTATIONS” INITIATIVE (2010), [http://www.nrcpfc.org/education\\_summit/meeting\\_materials/day1/Workshop%20G\\_Measuring%20the%20Costs%20of%20FC\\_Great%20Expectations%20Initiative.pdf](http://www.nrcpfc.org/education_summit/meeting_materials/day1/Workshop%20G_Measuring%20the%20Costs%20of%20FC_Great%20Expectations%20Initiative.pdf) [<http://perma.cc/K6GJ-YD7T>] (quantifying the economic and social costs of aging out foster youth in Virginia).

<sup>104</sup> See Shatila et al., *supra* note 64, at 34 (noting that only 42% of clients chose sterilization over long-term birth control).

<sup>105</sup> See *supra* note 67 and accompanying text.

<sup>106</sup> See, e.g., CONSENT FORM, *supra* note 89.

<sup>107</sup> See *supra* notes 59–60 and accompanying text.



