

SHOULD PREGNANCY HELP CENTERS OFFER POST-NATAL FINANCIAL SUPPORT TO REDUCE THE INCIDENCE OF ABORTION?

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INTRODUCTION

Judge Robert Bork “objected to *Roe v. Wade* the moment it was decided, not because of any doubts about abortion, but because the decision was a radical deformation of the Constitution.”¹ When it came to the morality of abortion, Bork tells us that he initially “adopted, without bothering to think, the attitude common among secular, affluent, university-educated people who took the propriety of abortion for granted, even when it was illegal.”² By the time he wrote *Slouching Toward Gomorrah: Modern Liberalism and American Decline*, Judge Bork had changed his mind. His chapter on “Killing for Convenience” includes a trenchant critique of many of the arguments commonly offered to justify the morality of elective abortion, and a succinct account of the case for treating every biologically human organism—regardless of its stage of development—as a human being and person.³ The chapter closes with this unforgettable peroration:

The systematic killing of unborn children in huge numbers is part of a general disregard for human life that has been growing for some time. Abortion by itself did not cause that disregard, but it certainly deepens and legitimates the nihilism that is spreading in our culture and finds killing for convenience acceptable. We are crossing lines, at first slowly and now with rapidity: killing unborn children for convenience; removing tissue from live fetuses; contemplating creating embryos for destruction in research; considering taking organs from living anencephalic babies; experimenting with assisted suicide; and contemplating euthanasia.

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1. ROBERT H. BORK, *SLOUCHING TOWARDS GOMORRAH: MODERN LIBERALISM AND AMERICAN DECLINE* 173 (1996).

2. *Id.*

3. *See id.* at 173–85.

Abortion has coarsened us. If it is permissible to kill the unborn human for convenience, it is surely permissible to kill those thought to be soon to die for the same reason. And it is inevitable that many who are not in danger of imminent death will be killed to relieve their families of burdens. Convenience is becoming the theme of our culture. Humans tend to be inconvenient at both ends of their lives.⁴

There is much to agree with in Judge Bork's somber assessment of where we may be heading. Yet the number of abortions annually in the United States has fallen from a high of 1.6 million in 1990⁵ to 1.06 million in 2011, the most recent year for which data is available.⁶ When Judge Bork wrote about abortion as a moral wrong and social problem in 1996, roughly three in ten pregnancies ended in abortion.⁷ In 2011, slightly more than two in ten did.⁸ Those are still appalling statistics for anyone who thinks that abortion is gravely wrong in all or almost all circumstances. Nevertheless, the fact that an unborn child's chances of being aborted have fallen by roughly one-third over the past eighteen years suggests that all is not lost. At least when it comes to abortion, the "general disregard for human life" Judge Bork lamented seems to be shrinking rather than growing.

Much of the credit for the steady decline in the number of abortions undoubtedly goes to the unflagging efforts of the pro-life movement on multiple fronts—including electoral politics, legislation, litigation, education, counseling, and various forms of help and support for women considering whether or not to terminate their pregnancies. Especially important, as the late Bill Stuntz suggested, are the thousands of pregnancy help centers that pro-life organizations and churches have established over the past thirty years. "Those centers lack the power to punish or coerce, but they seem to have the power to change lives: not with rules and threats, but with mercy and relationship."⁹

In this essay, I will consider the arguments for and against providing financial (that is, monetary) aid to pregnant women, in addition to the in-kind aid that pregnancy help centers currently provide. My analysis—

4. *Id.* at 185.

5. See Randy O'Bannon, *56,662,169 Abortions in America Since Roe v. Wade in 1973*, LIFENEWS.COM (Jan. 12, 2014, 5:11 PM), <http://www.lifenews.com/2014/01/12/56662169-abortions-in-america-since-roe-vs-wade-in-1973/>.

6. See *Fact Sheet: Facts on Induced Abortion in the United States*, GUTTMACHER INST. (July 2014), http://www.guttmacher.org/pubs/fb_induced_abortion.pdf [hereinafter *Induced Abortion*].

7. See BORK, *supra* note 1.

8. See *Induced Abortion*, *supra* note 6 ("Twenty-one percent of all pregnancies (excluding miscarriages) end in abortion.").

9. William J. Stuntz, *Law and Grace*, 98 VA. L. REV. 367, 376 (2012).

which is meant as a “think-piece” that will provoke further discussion and exploration of the issue—leads me to suggest that a post-natal financial-aid program would be worth trying on an experimental, pilot-program basis. But even that tentative conclusion assumes that the necessary funds could be raised without reducing the resources currently available to pregnancy help centers. With that in mind, I will conclude with some thoughts on the urgent need for pro-life Americans to put their money where their moral views are. Much of my analysis throughout will be economic in character—appropriately so, in a contribution to a volume honoring a man who was a celebrated pioneer of the “law and economics” movement long before he became a champion of the unborn.¹⁰

I. THE STATUS QUO: A PRE-NATAL MORAL AND MATERIAL SUPPORT, BUT NOT POST-NATAL FINANCIAL AID

The pro-life movement has developed an extensive nationwide network of some 3000 “pregnancy help centers” that offer help and support to women facing unplanned pregnancies.¹¹ The help can take many different forms, both moral and material. Pregnancy help centers often provide far more than just pregnancy tests, ultrasounds, and counseling. Many centers arrange for pre- and post-natal medical care, provide maternity and baby clothes, provide housing and legal assistance, and even offer job training.¹² Some centers may also try to arrange for modest financial support during pregnancy for especially needy women.

Even pre-natal money payments to the pregnant woman, however, are the exception, not the rule. No pro-life organization of which I am aware routinely offers pregnant women significant monetary aid during pregnancy, let alone after giving birth. Yet because difficult financial circumstances are

10. See generally ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* (1978).

11. See Randall K. O’Bannon, *Part I: The Task of the Modern CPC*, <http://www.nrlc.org/archive/news/1999/NRL699/cpc.html> (last visited Oct. 25, 2014). The de-centralized character of the pregnancy help center movement makes it difficult to establish exactly how many centers are in active operation at any given time. Heartbeat International’s 2011 Worldwide Directory includes 3,718 entries in the United States. This total, however, includes both “traditional pregnancy help centers and medical clinics, maternity support organizations, maternity homes and other residential programs, professional social service agencies, nonprofit adoption agencies, and abortion recovery programs.” MARGARET H. HARTSHORN, *FOOT SOLDIERS ARMED WITH LOVE: HEARTBEAT INTERNATIONAL’S FIRST FORTY YEARS* 93 (2011). For present purposes, four of those other categories (medical, pregnancy support, housing, and social services) would seem to come within a broad “umbrella” category of pregnancy help organizations.

12. See *Resources Available at Pregnancy Care Centers*, NAT’L RIGHT TO LIFE COMM., http://www.nrlc.org/archive/news/2003/nrl12/resources_available_atpregnancy_.htm (last visited Oct. 18, 2014).

among the reasons most commonly cited by women as factors in their decisions to abort, there is good reason to think that post-natal financial aid could induce many women to forego abortions.¹³ Of course, there are numerous other reasons why women have abortions, some of which have nothing to do with money. Many reasons, however, fall somewhere in between: financial aid won't remove the problem, but it could ameliorate it. For example, a young woman who sees herself as not mature enough to have a child might feel less immature if she knew that she and her child would have some savings to draw on during its infancy. Even modest amounts of post-natal financial aid might tip the balance for some women in a way that in-kind aid alone does not.

II. LEGAL CONSIDERATIONS AND OBSTACLES

For several reasons, it would be legally and practically unworkable for a pregnancy help center to pay a woman a lump sum early in pregnancy in exchange for her promise not to terminate her pregnancy. Quite apart from constitutional law, at common law courts typically refuse to order specific performance of contractual obligations to perform personal services.¹⁴ Thus, if the woman took the money and proceeded to have an abortion, the pregnancy help center's only remedy would be to seek the return of its money. Even that remedy might not be available: courts might invoke the woman's constitutional right to an elective abortion as evidence that the contract is against public policy, and hence unenforceable. And in any event, collecting the money from a woman who was needy to begin with would almost certainly be a fruitless task.

These obstacles, however, would not apply to arrangements that don't rely on judicial enforcement to induce the woman to make and keep a promise not to abort her child. The pregnancy help center could promise to make a lump-sum payment to the mother once her child was born.¹⁵ The agreement wouldn't purport to limit the woman's legal right to an abortion in any way; however, because the payment would be contingent upon the child's live birth, the woman would have an additional incentive not to choose abortion. This financial support would supplement, not

13. In a 2005 study by the Alan Guttmacher Institute, seventy-three percent of women reported that inability to afford a baby was one of their reasons for having an abortion. See Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 PERSP. ON SEXUAL AND REPRODUCTIVE HEALTH 110, 113 tbl.2 (2005).

14. See, e.g., *Lumley v. Gye*, 118 Eng. Rep. 749 (Q.B. 1853).

15. A variant of this idea would combine monthly installment payments with a lump-sum payment after the baby was born. In some cases, the prospect of immediate (albeit smaller) payments might supply a greater inducement to a pregnant woman contemplating abortion.

supplanted, the wide range of in-kind aid pregnancy help centers typically offer during pregnancy.

Another potential legal impediment to post-natal financial assistance is our society's dubious but universal prohibition on the sale of parental rights.¹⁶ *Prima facie*, these offers would avoid that prohibition by leaving the mother's post-natal parental rights intact. If the mother wants to keep the child, she is entitled to do so (provided she meets the state's ordinary criteria for fitness). If she wants to put the child up for adoption, she may elect that alternative. In the latter situations, however, a post-natal payment to the mother could be misconstrued as a *quid pro quo* for her agreement to relinquish her parental rights. For that reason, it would probably be prudent for the financing charity to avoid any involvement in placing the child for adoption.

III. HOW MUCH POST-NATAL FINANCIAL SUPPORT SHOULD BE OFFERED?

In designing a program of post-natal financial support, deciding on the amount to be offered is obviously a crucial issue. A helpful starting point for analysis is the average fee paid to a surrogate mother, which is currently approximately \$25,000.¹⁷ If the funding were available, that sum would arguably be a good one to use, at least at the program's inception. If pregnancy help centers offered to pay \$25,000 to every pregnant woman once her child was born, they would be sending a powerful message: the pro-life movement is willing to compensate a woman for the burdens of pregnancy and childbirth, while leaving her free to decide, after her child is born, whether she will raise it or relinquish it for adoption. At the same time, the centers would be offering a financial incentive that would likely be sufficient to induce considerable numbers of women who would otherwise have abortions to carry their children to term.

But of course the funding would not be available. Even if it were possible to distinguish with perfect accuracy the roughly one million women who will have an abortion in the United States each year from the roughly four million women who will give birth, to pay each of them \$25,000 would

16. See RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 197–201 (8th ed. 2011) (describing and critiquing state laws that forbid the sale of parental rights). See also *id.* at 198 n.4 (“[t]he existence of a market in parental rights . . . would reduce the demand for abortion” by allowing pregnant women to make binding contracts to give their children up for adoption).

17. See, e.g., *Estimated Cost of Surrogacy*, REPRODUCTIVE POSSIBILITIES (2014), http://www.reproductivepossibilities.com/parents_exp.cfm (last visited Oct. 25, 2014).

cost \$25 billion per year.¹⁸ That would be a small price to pay to save the lives of one million unborn children. As I discuss below,¹⁹ however, the total combined annual revenues of America's several thousand pregnancy help centers probably do not exceed \$600 million. And even if we had \$600 million to work with—that is, if every dollar were diverted to post-natal financial aid (another obviously unrealistic assumption)—that would amount to only \$600 per woman. It seems intuitively obvious that a post-natal payment of \$600 would only induce a small percentage of women who would otherwise abort to change their minds.

Suppose, on the other hand, that this \$600 million pool of revenues were divided into 24,000 post-natal financial support awards of \$25,000. Plainly, the demand for these awards would exceed the supply. Continuing (heroically) to assume that each of these awards would go to a woman who would otherwise have had an abortion, the pro-life movement could save 24,000 unborn children per year. Yet the opportunity costs of this strategy would make it a disastrous mistake. Although I know of no reliable estimate of how many unborn children are saved each year by America's 3,000 pregnancy help centers, the number is surely much greater than 24,000. Indeed, it would not be surprising if the number were five times as great (i.e., 120,000).²⁰ Put another way, pregnancy help centers may well be saving unborn children at an average cost of under \$5,000 per life—and they are almost certainly saving them at an average cost of far less than \$25,000.²¹

Now let's look at matters the other way around. There are one million plus women per year who are at high risk for deciding to have an abortion. For simplicity, let's assume that the number is 1.5 million, that pregnancy help centers reduce that number to 1.3 million, and that only about one in four of the remaining abortion-vulnerable women ultimately choose to have the baby. The result is that roughly one million women per year have abortions.

18. As I discuss later, many women would not take advantage of the \$25,000 offer because they are so committed, for various reasons, to terminating their pregnancies.

19. See *infra* Part IV.

20. Heartbeat International, which currently includes 1,200 affiliates in the United States and abroad, estimates that “[a]bout 2,000 babies and women (and their families) are saved from abortion each week” in its network. HARTSHORN, *supra* note 11, at 71. This estimate, however, is not accompanied by an explanation of the evidence on which it is based.

21. Of course, saving the lives of unborn children is by no means the only good that flows from the \$600 million in expenditures I'm attributing to pregnancy help centers. That money also spares thousands of women from the negative sequelae that frequently result from elective abortions. And even in those cases in which a pregnancy help center assists a woman who would have managed to choose life even without its help, the support and aid undoubtedly provides important benefits to both mother and child.

Ideally, what we would like to know is how much money it would take to induce each of those women to decide to forego an abortion. We don't know, either in individual cases or in the aggregate, but I will hazard some educated guesses nonetheless. At one extreme, I am confident that many pro-life counselors have had experience with women who came agonizingly close to having the child, but ended up electing to have an abortion. Surely, in some of those cases a pregnancy help center's promise of even \$1,000 in post-natal financial aid would have tipped the balance. At the other extreme, there are unquestionably women who view their pregnancy as such a catastrophe-in-the-making that even a six-figure payment would not alter their decisions to abort.

The vast majority of abortion-vulnerable women, however, probably fall between these two extremes. But where? Let's return to the one market price we have: the average surrogate mother's fee (net of expenses, medical care, etc.) is about \$25,000. That price of \$25,000 represents compensation for the burdens of a pregnancy—and a child—that are *neither* wanted nor unwanted for their own sakes. Many women who are seriously considering an abortion, by contrast, view not only the pregnancy, but also the *child*, as unwanted. They know that if the child is born, they will either have to raise it themselves or relinquish it to be raised by others; they view both alternatives as difficult and burdensome in different ways; and that very knowledge makes the physical and emotional burdens of pregnancy harder to bear. It seems safe to conclude, therefore, that many pregnant women would *not* change their minds if promised a post-natal payment of \$25,000.

On the other hand, many women for whom the pre- and post-natal burdens of pregnancy are difficult to accept are nevertheless deeply conflicted about having an abortion. They are torn between committing themselves to their unborn child and avoiding the burdens of that commitment by ending its life in the womb. For many of these women, a post-natal payment of \$25,000 would *exceed* the amount necessary (in combination with the moral and in-kind support pregnancy help centers already offer) to induce them to choose life. Moreover, as we've seen, there's good reason to think that a pregnancy help center could save more lives by investing \$25,000 in its existing range of support and services than by promising it as post-natal financial aid to a single woman. Clearly, then, awards of \$25,000 are too high under present circumstances.

Awards on the order of \$5,000, by contrast, are large enough that they could reasonably be expected to induce significant numbers of financially needy women who are "on the fence" to choose life, yet low enough that their opportunity costs are not disqualifying. In the remainder of this essay, I will assume that \$5,000 awards are the baseline offer. As we'll see,

however, it may make sense to vary that amount in particular cases, and experience might reveal that somewhat larger awards are necessary.

IV. TO WHICH PREGNANT WOMEN SHOULD POST-NATAL FINANCIAL SUPPORT OFFERS BE MADE?

The next question is how should a pregnancy help center decide to whom it will offer post-natal financial support? The question is vitally important. If the pregnancy help center simply offers a \$5,000 post-natal payment to every pregnant woman it assists, many of those payments will *not* save a life—because the woman, with the center’s moral support and in-kind help, would have had the child even absent that offer. To maximize the number of unborn lives saved, the pregnancy help center must attempt to identify those women whose decisions are most likely to be altered by the promise of a \$5,000 post-natal payment.

How might a pregnancy help center address this problem? A first-cut approach would be to develop eligibility criteria for post-natal financial support. Post-natal financial aid is likely to be a more promising strategy for lower-income women than from those with greater financial resources. Research conducted in 1997 by the Family Research Council found “differing desires and expectations of pregnancy care centers according to women’s economic class and social situation. Not surprisingly, those of more modest monetary means found the offer of housing, legal and financial aid, and job training most appealing.”²² Women in higher socioeconomic levels were more interested in “medical services, free pregnancy tests, and counseling.”²³ But these are generalizations. If a woman’s family is barely hanging on to a middle-class lifestyle, post-natal financial assistance might loom large in her thinking. Accordingly, the eligibility criteria would include the extent of the woman’s financial need, but would also take into account other factors that affected the likelihood that she would resort to an abortion.

Any list of criteria, however, will miss intangibles that could be important. For that reason, the pregnancy center should conduct confidential interviews designed to identify circumstances that make the woman a likely candidate—or not—for an abortion, and that make a \$5,000 grant a plausible incentive—or not—to carry her pregnancy to term. A pregnancy help center seeking to save as many lives as possible with a limited financial-assistance budget would have to make some hard calls. Over time, however, pregnancy

22. O’Bannon, *supra* note 11.

23. *Id.*

help centers would acquire expertise in identifying those women for whom a \$5,000 grant would be most likely to tip the balance in favor of choosing life.

To accelerate the development of that expertise, the pregnancy help center would likely rely on specialization: one or more counselors would be tasked with interviewing all the women who appeared eligible “on paper” to select those thought most likely to abort unless a post-natal financial support were offered. As with financial aid officers at other charities and non-profits, these counselors might be given discretion to vary the awards based on their judgment about the woman’s situation and attitudes. The goal would be to offer the woman just enough financial support to ensure that she committed to not having an abortion. Thus, for example, counselors might be instructed to make offers in the \$2,000–\$8,000 range, while aiming for an average award of not more than \$5,000.

Above all, pregnancy help centers would want to experiment with different strategies in hopes of finding approaches that would maximize the yield from the post-natal financial support budgets. To begin with, varying the baseline award would be important: it might turn out, for example, that a \$7,000 grant is dramatically more effective than a \$5,000 one. Another promising alternative would be to offer every woman a no-questions-asked post-natal award of \$1,000, while making higher offers to those deemed most likely to need them.²⁴ That strategy might pay off by attracting pregnant women who would not have contacted the pregnancy help center in its absence.²⁵ Once they developed a relationship with the center, the hope would be that the support and in-kind assistance it offered—together with the very modest award that attracted them—would lead them to have the child.²⁶

As this last point suggests, it seems clearly preferable to incorporate post-natal financial support into the mix at pregnancy help centers, rather than creating a separate pro-life financial-aid organization.²⁷ Pregnancy help centers strive to provide loving, personalized support to abortion-

24. An interesting variant of this approach would offer every woman a modest post-natal award provided she met certain milestones during pregnancy (e.g., attending prenatal appointments and birthing classes).

25. There is, however, some danger that women who are not seriously considering an abortion would turn to the pregnancy help center in order to obtain the post-natal financial support. Although this problem already exists for any pregnancy help center whose budget cannot provide the full range of its existing services to every woman who seeks its help, the availability of monetary aid would unquestionably exacerbate it.

26. Offering a minimum award would also reduce the risk that some women who were not offered larger rewards would be antagonized by that fact, and would reject the other help available from the center.

27. On the other hand, a national organization might be in the best position to raise the funds needed for a program of post-natal financial support. That organization could then make grants to selected pregnancy help centers, which would develop and administer their own local programs.

vulnerable pregnant women. They are best situated to assess whether, and in what amount, post-natal financial aid could be a decisive factor in an individual woman's final decision. Post-natal financial support would simply be one more way they could empower and encourage pregnant women to have their babies.

How these offers are packaged and presented would also be important. The goal should be to send a message that this post-natal payment is to help support mother and child through the first year or two of the child's life. If the woman ends up having an abortion, she won't need that support, and the payment won't be made. If she does have the child, the money is hers, on the understanding that she will use it for both her child's needs and her own. To be sure, that understanding may not always be honored. For example, a mother might take the \$5,000 and then put her child up for adoption, thus frustrating the program's intent to some extent. But there is no reason to think this would be a common problem, because carrying a child to term and giving birth to it results in a strong mother-child bond that very few women are willing to break. And even when this did occur, the \$5,000 would not have been spent in vain, insofar as it increased the chances *ex ante* that the child would be born rather than killed in the womb.

We should also keep this same *ex ante* perspective in mind when reflecting on the reality that even modest post-natal payments on the order of \$5,000 will sometimes end up going to women who would have borne the child even without the expectation of that monetary support. Of course, it should be a priority to minimize these "mistakes" in order to maximize the number of lives saved within the financial-aid budget. But rather than worry about counterfactuals to which no one—not even the mother herself—will always know the answer, we should remember that, *ex ante*, it will normally be true that the promise of \$5,000 will increase the chances that the woman will choose life.

Beyond that, even viewed *ex post*, the cost per child saved is likely to be very low. Even if post-natal financial support actually changed the outcome from abortion to live birth in only one out of five cases, the cost per life saved would be only \$25,000. And over time, one would hope that the "yield" from promises of \$5,000 in financial aid would be substantially better than that as pregnancy help centers developed expertise in identifying women for whom an award would likely be outcome determinative.

V. UNINTENDED CONSEQUENCES

Any financial-assistance program, public or private, should beware of unintended consequences. Having explained why such programs might

save many unborn lives if designed and executed well, I turn now to various unwanted secondary effects a post-natal financial support program might generate.

A. *Adverse Effects on Eligibility for Public Assistance Programs*

Money payments to mothers who have just given birth could adversely affect their eligibility for various forms of state and federal aid. Prior to 1996, “welfare recipients could lose their eligibility for benefits if they possessed more than \$1,000 in countable assets.”²⁸ The Temporary Assistance for Needy Families (TANF) program—the linchpin of the 1996 welfare reform legislation—provides federal block grants to the states to provide temporary financial support to needy families. Each state sets its own asset limits for TANF eligibility—and in most states they are *very* low: in thirty-nine states and the District of Columbia, the limit is \$3,000 or less, and in five others, \$10,000 or less.²⁹ In the remaining six states (Alabama, Colorado, Louisiana, Maryland, Ohio, and Virginia), however, there is no asset limit.³⁰ If one were choosing a state in which to implement a pilot program offering post-natal financial aid, one of the no-limit states would be ideal. In other states, it might be necessary to sponsor legislation that would exempt post-natal financial-aid payments from the state’s TANF asset limit.

A similar analysis applies with regard to the Supplemental Nutrition Assistance Program, which provides food stamps to eligible recipients and their families. Under federal law, households may have only \$2,000 in countable resources. However, the resources of persons eligible to receive TANF benefits are not counted.³¹ Thus, it appears that so long as the woman’s assets fall below her state’s TANF limits, she will also be eligible for SNAP benefits (assuming her income is not disqualifying). The same apparently holds true as to eligibility for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which gives federal grants to states to provide “supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-

28. Creola Johnson, *Welfare Reform and Asset Accumulation: First We Need a Bed and a Car*, 2000 WIS. L. REV. 1221, 1267 (2000).

29. U.S. DEP’T. OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, 10TH REPORT TO CONGRESS, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM (TANF) 85–86 fig.12-F (2013), available at http://www.acf.hhs.gov/sites/default/files/ofa/10th_tanf_report_congress.pdf.

30. *Id.*

31. See *Supplemental Nutrition Assistance Program (SNAP): Fact Sheet on Resources, Income, and Benefits*, U.S. DEP’T. OF AGRIC., <http://www.fns.usda.gov/snap/fact-sheet-resources-income-and-benefits> (last modified Oct. 3, 2014).

breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk.”³²

B. *Changes in Women’s Sexual Behavior*

A second type of unintended consequence involves changes in women’s sexual behavior in response to the availability of post-natal financial aid. In the unlikely event that the payments were large (e.g., \$25,000), some women might get pregnant because they wanted the money for their own purposes. In the scenario on which I am focusing, in which the payments are at the modest \$5,000 level, a different effect would be more likely to occur: knowing that post-natal aid was available, some women might be less careful to avoid unwanted pregnancies.

From a pro-life standpoint, although neither of these consequences is desirable, it would be wrong to treat them as disastrous. A woman who has a child because she wants the post-natal payment is becoming a mother for a badly flawed reason. But she may become a good mother nonetheless; and even if not, her child may still lead a fulfilling life. The same analysis applies to the woman who takes fewer precautions against becoming pregnant, and ultimately decides to have the child in part because financial support is available.

There is one scenario, however, in which the unintended consequence must be characterized as perverse. Suppose that a woman takes fewer precautions against becoming pregnant because she knows that post-natal financial support is available. Having become pregnant, however, she decides to have an abortion despite the financial and in-kind support she is offered. Here, the unintended consequence would be an abortion that would not have occurred but for the post-natal financial aid program.

It seems unlikely, however, that post-natal support payments on the order of \$5,000 would significantly impact the sexual behavior of very many women; even those women who were less careful would often have the child because of the \$5,000. In short, although these unintended consequences are undesirable, one would predict that they would be uncommon, and would be greatly exceeded by the number of children saved by post-natal financial support.

32. See *Women, Infants, and Children (WIC)*, U.S. DEP’T OF AGRIC., <http://www.fns.usda.gov/wic/women-infants-and-children-wic> (last modified Oct. 8, 2014).

C. *Undermining Caring Relationships Between Pregnancy Help Centers and Women*

Pregnancy help centers rightly pride themselves on an ethic of care that aims to support and empower the pregnant woman as a whole person. Providing in-kind aid and support can help build a relationship of trust between the mother-to-be and those who are helping her and her unborn child. Offering money is different, particularly when the payment is contingent on the woman's "performance," to use the language of contract law. There is a real risk that some women will be turned off by such an offer, and others could be deterred from contacting a pregnancy help center at all.

This risk, however, seems manageable. A pregnancy help center that offers the woman a post-natal payment to help provide for her and her child is not proposing a commercial transaction. I am not envisioning that the woman's counselor will tell her "we're offering you a cash payment to not have an abortion." Instead, the counselor would explain that concerned donors have provided discretionary funds that the pregnancy help center can distribute for post-natal support in cases where that help might make the most difference in the lives of mother and child.

D. *Public Relations and "Message" Problems*

From a public relations standpoint, the most worrisome scenario is charges that pro-life groups are bribing women to have babies that they will have great difficulty raising and nurturing effectively. One can also anticipate accusations that pro-lifers are tricking women into years of hard work, responsibility, and expense in exchange for a pittance up front. The best answer, I suspect, would be to let mothers who have received post-natal financial aid speak for themselves and their children on what that help meant to them, both as it bore on their decisions not to abort, and as it affected their post-natal experiences. Beyond that, post-natal financial aid would effectively answer the pro-choice canard that the pro-life movement cares only about the unborn and is indifferent to the plight of needy or neglected children.

Some may worry that if pregnancy help centers pay women not to have abortions, the message that a child is a blessing will be undermined. But if pro-life organizations didn't think children were a blessing, they would not be willing to pay to increase their chances of being born. Further, as I've already suggested, pregnancy help centers should (and surely would) frame

their offers as support for struggling mothers and their infants, not as “ransom money.”

VI. WHERE WILL THE MONEY COME FROM?

The pro-life movement is not exactly awash in cash. The leading pro-life organizations operate on remarkably small budgets. The National Right to Life Committee and its Educational Trust Fund had combined revenues of roughly \$9 million as of 2012–13³³ while Americans United for Life had revenue of about \$4.7 million in 2012.³⁴ The same is true of the pregnancy help center umbrella organizations. Heartbeat International had total revenues of \$2.6 million and less than \$500,000 in assets in 2012,³⁵ and Care Net reported total revenues of \$4.8 million and \$3 million in assets.³⁶ These organizations are in no position to fund an ambitious top-down program that would enable pregnancy help centers to offer \$5,000 post-natal payments to a subset of the pregnant women they assist.

Nor do the pregnancy help centers themselves seem better situated to undertake such programs. Based on a fifty-state sample of IRS Form 990s filed by pregnancy help centers whose names include the word “pregnancy,” it appears that almost 75% of centers have annual revenues under \$250,000, while less than 10% have revenues over \$500,000.³⁷ If indeed there are

33. See Nat'l Right to Life Comm. Inc., IRS Form 990, Return of Organization Exempt from Income Tax (OMB No. 1545-0047) (2013), available at http://990s.foundationcenter.org/990_pdf_archive/520/520986195/520986195_201304_990O.pdf; Nat'l Right to Life Comm. Educ. Trust Fund, IRS Form 990, Return of Organization Exempt from Income Tax (OMB No. 1545-0047) (2012), available at http://990s.foundationcenter.org/990_pdf_archive/521/521241126/521241126_201304_990.pdf. Non-profit organizations that are exempt from income taxes must file annual reports called Form 990s with the Internal Revenue Service. The Urban Institute's National Center for Charitable Statistics maintains a searchable database for each non-profit's Form 990. See *Search Active Organizations*, NAT'L CTR. FOR CHARITABLE STATISTICS AT THE URBAN INST., <http://nccsweb.urban.org/PubApps/search.php> (last visited Oct. 25, 2014).

34. See Americans United For Life, IRS Form 990, Return of Organization Exempt from Income Tax (OMB No. 1545-0047) (2013), available at http://990s.foundationcenter.org/990_pdf_archive/363/363906065/363906065_201206_990.pdf.

35. See Heartbeat Int'l, IRS Form 990, Return of Organization Exempt from Income Tax (OMB No. 1545-0047) (2012), available at <http://www.heartbeatinternational.org/images/hbImages/Hearbeat%202012%20990%20Public%20Disclosure%20Copy.pdf>.

36. See *Financial Information*, CARE NET, <https://www.care-net.org/aboutus/financial.php> (last updated June 30, 2012). Birthright is based in Canada (although many of its affiliates operate in the United States), and I have not located information about Birthright's revenues or assets (as opposed to those of its local American affiliates).

37. I searched the National Center of Charitable Statistics' (NCCS) database by state for organizations whose names include the word “pregnancy.” The overwhelming majority of these organizations are pregnancy help centers. These searches yielded a total of 912 centers, of which 22 (2.5%) had revenues over \$1 million, 55 (6%) revenues of \$500,000-\$999,999, 160 (17.5%) revenues of

approximately 3,000 pregnancy help centers,³⁸ and if, as is true for my sample, their average revenue is roughly \$200,000, my crude estimate of their total annual revenues is \$600 million.³⁹ Although total revenues in that range attest to the breadth and depth of support for the pregnancy help center movement, the fact that individual centers typically operate on budgets of less than \$250,000 makes it unlikely they could fund post-natal financial support programs.⁴⁰

Still, couldn't pregnancy help centers pool some of their resources to create a pilot program for post-natal financial aid? Perhaps. But to provide even 1,000 women with \$5,000 post-natal payments would require a \$5 million annual fund. While a small-scale program along these lines might be feasible, a significantly larger program would generate more information

\$250,000-\$499,999, 269 (29.5%) revenues of \$100,000-\$249,999, and 406 (44.5%) revenues under \$100,000. Pregnancy help centers without the word "pregnancy" in their names might have higher or lower average revenues than this sample. See NAT'L CTR. FOR CHARITABLE STATISTICS, <http://nccs.urban.org> (last visited Oct. 25, 2014).

38. It would be surprising if only one-third of pregnancy help centers have the word "pregnancy" in their names. On the other hand, charitable organizations whose revenues typically are lower than \$25,000 per annum are not required to file Form 990s with the IRS. Especially in small communities and rural areas, this suggests that there are many pregnancy help centers that do not appear in the NCCS database because they do not file Form 990s. That, in turn, implies that my estimate of the average revenues of pregnancy help centers is too high, because it is based on the subset of centers that file Form 990s.

39. This estimate omits the value of the millions of hours of service contributed by those who volunteer at pregnancy help centers. The Family Research Council's 2010 report on the 1,969 pregnancy help centers affiliated with Care Net, Heartbeat International, and/or the National Institute of Family and Life Advocates (NIFLA) estimated that these pregnancy centers "drew on the help of 71,000 volunteers who performed an estimated 5,705,000 uncompensated hours of work in 2010." FAMILY RES. COUNCIL, PREGNANCY RESOURCE CENTER, *A PASSION TO SERVE 4* (2nd ed. 2010), available at <http://www.frc.org/get.cfm?i=LK12A29&f=PG09I02>. Extrapolating from that sample to a total of 3,000 pregnancy help centers yields a rough estimate of about 8,500,000 volunteer hours. Because pregnancy help center volunteers are drawn from all walks of life and occupations, it would be quite difficult to construct an estimate of the average value of their time. Fundamentally, however, these volunteers are serving as pro-life social workers, which suggests using that occupation as a baseline. The average hourly wage for social workers in the United States is about \$27/hour, with social workers at the 25th percentile earning about \$19/hour, and those at the 10th percentile about \$15/hour. *Occupational Employment and Wages, May 2013:21-1029 Social Workers, All Other*, U.S. DEPT. OF LABOR, BUREAU OF LABOR STATISTICS, (May 2013), <http://www.bls.gov/oes/CURRENT/oes211029.htm>. \$15/hour seems a conservative estimate of the value of their time in the absence of more detailed data. On that assumption, pro-life volunteers are making an enormous in-kind contribution of some \$124 million annually. Important as they are, however, the efforts of these volunteers do not directly increase the revenues available to pregnancy help centers (though surely they enable centers to provide their services at lower out-of-pocket cost).

40. The different branches of the pregnancy help center movement also vary with regard to the menu of services they typically offer. Birthright, which focuses heavily on counseling and only minimally on providing in-kind support, is a case in point. The NCCS Database currently lists 203 Birthright affiliates. Of these, only one had total revenues over \$500,000, and only fifteen had total revenues over \$100,000. On average, then, Birthright centers operate on much smaller budgets than centers affiliated with Heartbeat International and Care Net. See *supra* sources cited note 33 and accompanying text.

about what works and what doesn't and would save more lives. Given their current resources, it would be difficult for pregnancy help centers, even collectively, to sponsor a program with annual outlays in the \$50 million range. To do so would require pregnancy help centers to make significant cuts in programs whose value has already been demonstrated, and that appear to be working well.

Where then could pregnancy help centers hope to find the \$50 million per year that would be necessary to fund a program to provide 10,000 women per year with \$5,000 post-natal payments? I'm under no illusions that it would be easy to raise that kind of money. But one can usefully turn this question around: why not view offering financial aid to pregnant women at high risk for elective abortion as a fundraising *opportunity* for donors interested in exploring the life-saving potential of a new strategy? Consider this precedent: in 1998, Ted Forstmann and John Walton donated \$200 million dollars to fund private educational scholarships for low-income children trapped in failing public schools.⁴¹ Today, the Children's Scholarship Fund continues to provide scholarships averaging around \$1,600 to more than 25,000 families with children in grades K-8.⁴² Might there not be one or more wealthy pro-life donors similarly willing to underwrite a Crisis Pregnancy Financial Aid fund? Even if not, Catholic and Evangelical churches could raise large sums if they were persuaded to throw their fundraising weight behind such an initiative. The idea might even prompt some contributions from pro-choice persons who agree with former President Clinton's mantra that abortion should be "safe, legal, and rare."⁴³ A private program that seeks to empower pregnant women to reject abortion by promising substantial financial assistance for mother and child could appeal to a wide range of charitable donors.

Imagine that a program on this scale was tried, and that all indications were that its 10,000 post-natal grants were inducing several thousand of the grantees to choose life over abortion. Could one ever hope to take such a program "to scale?" The size of the charitable-giving "pie" in the United States provides some reason for optimism. For 2013, the National Center for Charitable Statistics estimates that total charitable giving exceeded \$316 billion, of which about 72% came from individuals, 15% from foundations,

41. See *History*, CHILDREN'S SCHOLARSHIP FUND, <http://www.scholarshipfund.org/about/history/> (last visited Oct. 25, 2014).

42. See *Our Impact: Making it Possible*, CHILDREN'S SCHOLARSHIP FUND, <http://www.scholarshipfund.org/our-impact/> (last visited Oct. 20, 2014).

43. Alison Mitchell, *Clinton, in Emotional Terms, Explains His Abortion Veto*, N.Y. TIMES (Dec. 14, 1996), <http://www.nytimes.com/1996/12/14/us/clinton-in-emotional-terms-explains-his-abortion-veto.html>.

7% from bequests, and 6% from corporations.⁴⁴ To fund \$5,000 post-natal payments to 100,000 women would require \$500 million dollars per year—that is, about 0.16% of all charitable giving. To be sure, the unborn do not live among us and cannot speak for themselves, and consequently their plight is less likely to arouse sympathy and concern. The difficulty can be analogized to the familiar problems with building popular support for foreign aid to help those living in truly desperate poverty. But consider the foreign-aid benchmark set by twenty-two wealthy nations, including the United States, at the 2002 Monterrey Conference. Each country agreed to make “concrete efforts” toward the goal of giving 0.7% of its national income in aid to the poorest countries, which would yield a total of about \$195 billion—a sum thought sufficient to eradicate “extreme poverty” and greatly reduce the incidence of premature deaths worldwide.⁴⁵ If I may be allowed to fantasize for a moment, a post-natal financial aid fund equipped with 0.7% of all charitable giving could spend \$2.2 billion per year—enough to fund \$5,000 awards for 440,000 women (or \$10,000 awards for 220,000).

Of course, we are considering private charitable giving, not government funding—and it is probably unrealistic to expect large-scale contributions from those who are not strongly pro-life. But the latter group is more than large enough to fund our hypothetical \$500 million/year program. Public opinion polls consistently show that roughly 20% of Americans are strongly pro-life—that is, they believe that abortion should be illegal under all or almost all circumstances.⁴⁶ As of 2012, there were approximately 235 million Americans over 18, out of a total population of 309 million.⁴⁷ Roughly 50 million adult Americans, therefore, identify themselves as strongly pro-life. If each of them gave an additional \$10 per year for post-natal financial aid, an annual fund of \$500 million would be feasible and sustainable. Put differently, if we assume that 20% of total charitable giving

44. *Charitable Giving in America: Some Facts and Figures*, NAT'L CTR. FOR CHARITABLE STATISTICS, <http://nccs.urban.org/nccs/statistics/Charitable-Giving-in-America-Some-Facts-and-Figures.cfm> (last visited Oct. 20, 2014).

45. *See International Aid – A Solution*, POVERTY.COM, <http://www.poverty.com/internationalaid.html> (last visited Oct. 21, 2014) (Chart entitled *2013 International Aid Donated (Official Development Assistance)*). A handful of countries, including Norway, Sweden, Denmark, Luxembourg, and the United Kingdom, have met that goal. The United States is currently at 0.19% and has no timetable for reaching 0.7%. *Id.* Even meeting the 0.19% benchmark, however, would generate more than \$500 million in funding for post-natal financial support.

46. *See* Steven Ertelt, *CNN Poll: 62% Want All or Most Abortions Made Illegal*, LIFENEWS.COM (Sept. 15, 2011, 3:45 PM), <http://www.lifeneews.com/2011/09/15/cnn-poll-62-want-all-or-most-abortions-made-illegal/> (“21 percent want all abortions illegal.”).

47. *See Age and Sex Composition in the United States: 2012*, List of Tables Containing Census Data, U.S. CENSUS BUREAU (2012), <http://www.census.gov/population/age/data/2012comp.html> (last updated Nov. 13, 2013).

is by pro-life persons, a goal of \$500 million would still represent only 0.8% of their total donations. This goal may never be realized, even if post-natal financial aid is tried and proves very successful at saving unborn lives at low cost. The fact remains that it *could* be achieved without painful sacrifice, and without short-changing other good causes.

VII. IN THE FACE OF OPPORTUNITY-COST UNCERTAINTY, A MODEST PILOT PROGRAM OF POST-NATAL FINANCIAL AID IS PROBABLY WORTH TRYING

If post-natal financial support is such a good idea, why aren't pregnancy help centers already providing it? The answer may well be that given their tight budgets, pregnancy help centers are right not to offer financial aid—or, if they have some funds for that purpose, to limit it to pre-natal aid. My suggestion is not that pregnancy help centers are misallocating their resources. Rather, I'm suggesting that they are substantially underfunded relative to the array of life-saving opportunities they face—including those cases in which the life of an unborn child would be saved by post-natal financial aid, but not saved by the other available inducements.

Now consider a related question: imagine that a pro-life donor agreed to give \$50 million per year for the next ten years to Heartbeat International or Care Net for their unrestricted use. Should all of that money be used to fund a post-natal financial aid program? Some of it? None of it? I don't claim to know. Perhaps some, most, or all of that \$50 million could be better used to establish pregnancy help centers in locations where none or too few currently exist.⁴⁸ If we knew that more centers, more ultrasounds, more counseling, and more in-kind aid would save more unborn children than 10,000 carefully chosen awards of \$5,000, the intriguing concept of post-natal financial aid should remain on the drawing boards.

At some point, however, the marginal gain from spending another \$50 million to add new pregnancy help centers (or expand existing ones) will fall below the marginal gain from spending \$50 million on post-natal financial aid. For all we know, the pregnancy help center movement may already have reached that point. The same principle applies to all forms of pro-life

48. For example, in 2004, Heartbeat International's study of pregnancy help centers in relation to abortion clinics revealed that "many clusters of abortion clinics have only one or two pregnancy help centers nearby, and some of the clinics did not have a pregnancy center within twenty miles or more!" HARTSHORN, *supra* note 11, at 71. The disparities were (and are) greatest in metropolitan areas, and particularly in African American and Latino communities in many of those areas. *Id.* at 72. Heartbeat International has responded by redoubling its efforts to establish and support pregnancy help centers in these areas of greatest need. *Id.* at 72–73.

activism. If it were determined that pro-life advertisements or pro-life counseling outside abortion clinics save more lives than pro-life social services, the pro-life movement should shift resources from the latter to the former. So too for money spent on direct financial aid to pregnant women: we need to study its effectiveness and allocate resources accordingly.⁴⁹

Unlike these other strategies, however, post-natal financial aid has never been tried, despite its obvious potential to save lives. We need to know more than we do about the extent to which the mostly low-income, mostly young women who have abortions would respond favorably to modest offers of post-natal financial support. For that reason, it seems to me that a pilot program, funded and overseen by a national pregnancy help organization, but administered by selected pregnancy help centers, would be worth trying on an experimental basis. The size of this program would be a function of multiple variables, including the availability of funding and the advantages of distributing funds among at least a handful of pregnancy help centers, so that a variety of approaches could be tried. If experience with the program suggests a high yield—that is, if the evidence indicates that a high percentage of the women who accept these grants would otherwise have had abortions—the program should be expanded and made a fundraising priority. If the yield is low, and remains low despite attempts to fine-tune the program, it should be ended and its funding deployed elsewhere in the service of saving unborn lives.

CONCLUSION

In this essay, I've argued that a guarded case can be made for adding a new form of support to the existing mix of care and services pregnancy help centers provide to pregnant women: post-natal financial support. I've suggested that payments of \$5,000 would be large enough to make a difference in many cases, but small enough that they could be offered to many (though by no means all) the women who seek help at selected pregnancy care centers. Recognizing the limited funds available, I've also suggested that this idea should be implemented in the form of a pilot program at selected pregnancy help centers.

I do not attribute the fact that no such program exists, even on an experimental basis, to complacency or myopia on the part of pro-life leaders or pregnancy help centers. On the contrary, I attribute it to the inadequate level of support that the pro-life movement is currently

49. To be sure, studying the effectiveness of financial grants to women who give birth rather than aborting will not be easy, because it may often be difficult to determine whether the woman would have given birth anyway.

receiving from the fifty million or so Americans who identify themselves as strongly pro-life. In describing that support as inadequate, I intend no criticism of the countless pro-life individuals who have given generously of their money, and of their time as volunteers in a variety of roles.⁵⁰ The fact remains: although pregnancy help centers do invaluable work within their limited budgets, there is much more they could do with greater funding, including offering post-natal financial aid to women they judge would be induced by such aid to forego an otherwise likely abortion. Those of us not manning the phones, serving as sidewalk counselors outside clinics, or volunteering at pregnancy help centers should be writing more and bigger checks to pregnancy help centers (and other pro-life organizations) so that live-saving ideas such as this one could be put into practice and evaluated. For two reasons, we should allocate more of our charitable giving to the pro-life movement (and to pregnancy help centers in particular) than to most of the other worthy causes that compete for our limited charitable-giving budgets. First, because saving lives—born or unborn—should be a top priority. Second, because few if any charitable organizations in the United States save so many lives at such low cost.

50. *See History, supra* note 41 (detailing the contributions of volunteers at pregnancy help centers).