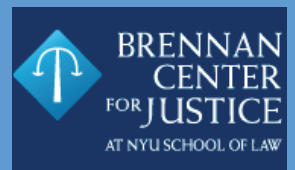


THE DEMOCRACY PROTECTION ACT

**40 WAYS
TOWARD A
MORE PERFECT
UNION**



The Nation.



ABOUT

The New Democracy Project (NDP) is a national/urban affairs institute established in 1981 to utilize the assets of New York City to promote democratic participation, economic fairness and social justice. Due to its existing relationships with leading progressive scholars and advocates, government officials, labor and business leaders and the media, NDP is uniquely positioned to counter the conservative consensus which for so long has dominated the public conversation. www.newdemocracyproject.org

Demos: A Network for Ideas & Action is a non-partisan public policy research and advocacy organization committed to building an America that achieves its highest democratic ideals. We believe this requires a democracy that is robust and inclusive, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a strong and effective public sector with the capacity to plan for the future and provide for the common good. Founded in 2000, Demos work combines research with advocacy—melding the commitment to ideas of a think tank with the organizing strategies of an advocacy group. www.demos.org

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THE DEMOCRACY PROTECTION ACT

40 WAYS TOWARD A MORE PERFECT UNION

From:

Mark Green, President, New Democracy Project

Miles S. Rapoport, President, Demos

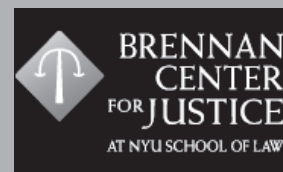
Katrina vanden Heuvel, Editor and Publisher, *The Nation*

Michael Waldman, Executive Director, Brennan Center for Justice

February 20, 2007



The Nation.



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On December 12, 2006, the four organizations hosted a related event entitled *The Democracy Promise* at New York University. We benefited greatly from and would like to extend our warm thanks to speakers who gave their time and expertise, especially **Bill Moyers** for his keynote address and **Regina Eaton**, deputy director of Demos' Democracy Program, for her comments.

We four sponsoring organizations are presenting this report. Because each has a different mission and may have distinct perspectives on the 40 policies proposed, each of the sponsoring organizations does not necessarily support every idea as presented. But we all do agree that this volume reflects the essential principles for a stronger democracy and that reform of democratic institutions should be a central issue in our country's political conversation.

Also, the contact information provided with each proposal is meant only to give interested readers a resource for further information or action.

We would also like to extend our thanks to Aaron Brown and Zareen Dadachanji of Demos for design and layout of this publication.

Anyone who would like to purchase this report can send \$7--or \$4 per copy for orders over 25--to :

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“Democracy can come undone. It’s not something that’s necessarily going to last forever once it’s been established.”

-- Sean Wilentz, *The Rise of American Democracy*

I. INTRODUCTION by Mark Green

What is “democracy”?

The best succinct description is still a “government of the people, by the people and for the people,” in Lincoln’s now hallowed Gettysburg words. From *The Federalist Papers* and Tom Paine’s *Common Sense* to more recently William Greider’s *Who Will Tell the People* (1994) and James Surowiecki’s *The Wisdom of Crowds* (2004), the cornerstone of democracy is majority-rule—that informed citizens know what’s in their best interests.

Greider usefully elaborates several essential principles: “Accountability of the governors to the governed. Equal protection of the law. A presumption of political equality among all citizens...The guarantee of timely access to public debate. A rough sense of honesty in communication between the government and the people.” In other words, democracy is far more a general *process* than a particular *policy*—as in “due process of law”—because an open, honest, and accountable process will in turn produce the best solutions.

The tart of our democratic experiment was both controversial and flawed. Shifting from governance by a hereditary sovereign to popular sovereignty was a radical concept for America in the 18th century, not one fully embraced even by leading citizens. Our second president, John Adams, worried that “every man who has not a farthing will demand an equal vote with any other.” Not surprisingly, a brilliant compromise called the Constitution had sections that, seen from today, are far from democratic. Only men with property could vote. Blacks were counted as three-fifths of a person. The U.S. Senate was un-elected.

But as Rev. Martin Luther King, Jr. observed, “the arc of history is long but it bends toward justice.” So this monumental if imperfect start has steadily been evolving toward “a more perfect union.” The Civil War ended formal slavery (at the cost of 600,000 lives); senators became popularly elected in 1913; women won the vote in 1920—and minorities in effect forty-five years later. The *Gideon-Wainwright* Supreme Court decision of 1963 provided lawyers to those accused of crimes—and the *Freedom of Information Act* in 1965 theoretically made government more transparent. In the 30s, 60s and 90s – under democratic presidents not surprisingly – positive public government showed how a democracy could successfully expand public health care, clean the air, provide for old-age insurance and make products safer.

But this two century climb toward democracy has recently been halted, even reversed. A powerful group of new authoritarians in the Executive Branch, Congress, the clergy and corporations have contempt for the conversation of democracy. Trampling on the value of the flag far more than the couple of fools a

year who burn it, these leaders pose a danger to our Constitutional traditions. Yet this quiet crisis of democracy – lacking the faces of a Hooverville, exploding skyscrapers, coffins back from Iraq – has attracted very little attention. It's time for a movement to expose their assault and repair the broken machinery of government. We call it The Democracy Protection Act.

If there were a Democracy Audit today of our 218 year-long experiment in self-government, the balance sheet would be marred by large liabilities. Consider five areas:

1. A Democracy with Too Few Voters.

By the gauge of turnout, America is in the bottom fifth of democracies in the world. Compare our recent 48 percent average turnout of eligible voters in presidential years to Cambodia's 90 percent, Austria's 85 percent, Western Europe's 77 percent and Eastern Europe's 68 percent. If there were a World Bank category called "democracy poverty," the U.S. would be a candidate for massive international aid.

In most states, cumbersome and antiquated rules discourage potential voters. For example, laws require that thousands of 18 year-old high school students in a city each find their way from many high schools to an election board—instead of having one election board representative go to each high school. And shutting the window for registration 30 days before an election, just when most voters become aware of a contest, is foolish—like closing retail stores the week before Christmas. And because of who doesn't vote, the U.S. has representational inequality. So while America is 51 percent female and 28 percent minority, the U.S. Senate is still only 16 percent female and 5 percent minority, far better than 50 years ago of course but far worse than most European democracies.

Local political operatives often suppress the vote in technical or obviously discriminatory ways. Republican Ohio officials put too few voting machines in low-income Democratic precincts in November 2004, causing long lines and voters leaving before casting ballots. Someone put up signs in African-American areas of Cuyahoga County stating that a) if anyone in their family voted illegally they would lose their children, b) they couldn't vote if they hadn't paid their utility bills and c) because of heavy registration, Republicans should vote on Tuesday and Democrats on Wednesday. The spirit behind these absurd warnings was openly admitted in 2004 by Michigan Republican representative John Pappageorge when he said, "If we do not suppress the Detroit vote, we're going to have a tough time in this election cycle."

One way this is done is through felony disenfranchisement laws. Even though they've paid their "debt to society," ex-cons can't vote, which means that a third of black men in Alabama are excluded; indeed, seven million Americans—or 1 in 32—are currently behind bars, on parole or on probation. Felony disenfranchisement laws are essentially another way to spell Jim Crow.

Nor has the controversy over counting votes ended with chads in Florida. While the 2002 *Help America Vote Act* properly required that states move to electronic voting (something Brazil has figured out how to do successfully for a decade), a Brennan Center for Justice study revealed how easy it is to hack into voting machines. In the 2006 race for the Sarasota, Florida congressional

seat of Katherine Harris, the Republican won by under one percent after 15 percent of touch-screen voters were not recorded as voting in the congressional race, as compared to a 2-5 percent “undervote” in near-by counties.

2. Taking Liberties with the Law.

The Bush Administration invades a country contrary to the UN charter, condones torture, ignores warrants for wiretaps, selectively leaks classified information for partisan gain, rounds up thousands of American Muslims without evidence (leading to no indictments for terrorism), incarcerates hundreds at Guantánamo without charges or lawyers, restricts Habeas Corpus and asserts the power to ignore hundreds of duly enacted laws in “signing statements”—and then the President urges the world to follow his devotion to “the rule of law.”

George W. Bush views the law as largely an extension of politics, a means to an end. So when he was asked at a press conference about the legality of his invasion of Iraq, he answered, “Is it legal? Oh my, I’d better call my lawyer.” For 200 years after *Marbury v. Madison*, courts have had the final say on interpreting laws and the Constitution. Then presidential aides made up a theory called the “unitary executive”—and the President in effect said that he could veto laws *after* signing them into law. So while all prior presidents had published 600 “presidential signing statements” in 200+ years explaining a president’s interpretation of the constitutionality of an enacted law, Bush had pushed this envelope in two ways: he’s produced over 750 “signing statements” in only six years and asserted that if he thinks a law unwise or unconstitutional, he won’t enforce it—*Marbury* be damned.

Why? “We’re at war,” is his perennial answer. But a) the Constitution makes the president the commander-in-chief of the *military*, not the *country* and b) since this is said to be an unending war against terrorism, the “unitary executive” is a fig leaf for one-man rule.

It took the United States Supreme Court--seven of whose nine members were appointed by conservative Republican presidents--to remind Bush in both the *Hamden* and *Hamdi* decisions that the rule of law is not a means but an end in itself. “A state of war,” wrote Justice Sandra Day O’Connor, “is not a blank check for the president.”

There are numerous other examples of this administration being cavalier about the law according to court decisions—spending millions in public funds on sympathetic columnists to write, in effect, state propaganda; violating the Clean Air Act repeatedly; allowing the Corporation for Public Broadcasting to politically interfere in programming decisions—but none worse than its open violation of the 1978 Foreign Intelligence Surveillance Act. That law clearly states that a special FISA court must issue warrants before the government can wiretap Americans contacting foreign agents. Yet even though this court acts quickly, secretly and has rejected only five of 19,000 requests since 1978, the Bush administration said that this requirement is outdated in a new kind of war and can be ignored because of his “inherent powers” in wartime. So officials who repeatedly refer to the “original intent” of a document two centuries years old now want to disregard one that’s 28 years old because of a war on terrorism that’s somehow worse than World War II?

Even the conservative American Bar Association—four hundred thousand lawyers strong—overwhelmingly approved a task force report concluding that the president was violating both the Constitution and statutory law when he authorized his warrantless wiretap program. “Nobody wants to hamstring the president,” said task force head Neal Sonnett, “But we cannot allow the U.S. Constitution and our rights to become a victim of terrorism.”

The “inherent” line of thinking was too much for Bruce Fein, a prominent conservative lawyer who served in President Reagan’s Justice Department: “This is a defining moment in the constitutional history of the United States. The theory used by the administration...could equally justify mail openings, burglary, torture, or interment camps, all in the name of gathering foreign intelligence. Unless rebuked, it will lie around like a loaded weapon ready to be used by any incumbent who claims an urgent need.” (With the new Congress and courts closing in on the administration, the White House reversed itself last month and agreed to seek warrants, as the law had required.)

3. The Legislative Broken Branch.

The legislature of the world’s greatest democracy has not been democratic. Not even close.

First, since money rather than merit so often determines elections--and since political redistricting means fewer competitive elections in any event--Congressional incumbents predictably listen more to donors than to voters. The 2006 defeat of 21 House incumbents (it was five in 2002 and five in 2004) is not serious evidence to the contrary. Since a seven point spread favoring Republicans in 1994 lead to a 52 seat switch that year, why did a larger eight point gap favoring Democrats produce only a 30 seat switch in 2006?

Second, in the past DeLay-Hastert era, Democrats were cut out of all bill-writing while corporate lobbyists sat with staff drafting legislation. And oversight went blind. Congress has failed its checks-and-balances function by essentially becoming a West Wing of the White House. For example, there were 150 hours of hearings into whether President Clinton used his White House Christmas list for fund-raising and 12 into Abu Ghraib. Speaker Hastert would only schedule a bill for a vote if it had a “majority of the majority” and would hold a vote open for as many hours as necessary to secure—i.e., arm-twist or bribe—his way to a majority.

Third, there is a stunning violation of democracy built into the Senate that presumably won’t change but should be part of discussions about majority rule. Today, one state with a population of 35 million (California) elects 2% of the Senate, while 21 states with the same total population elects 42% of the Senate. It’s surely not “one person – one vote” when one-tenth of the country has 20 times the say as a geographically different tenth.

These and other elements have produced the following democratic dysfunction: large majorities in surveys support universal health care, stricter gun control, tax cuts for the middle class paid for by tax hikes on the top one percent, stronger environmental regulation and an immigrant guest-worker program—but none have been enacted by a Congress where 11 percent of the population (in 21 states) can by Senate filibuster thwart an 89 percent majority.

4. Secrecy & Democracy.

Remember the early aphorism of the computer age, GIGO—“Garbage in, Garbage Out”? Now imagine a computer program fed false data or a stock trader basing decisions on rigged balance sheets. Just as machines and markets would fail if they relied on corrupted information, a democracy too will fail if important decisions are based on bad data.

“Democracy cannot exist without an informed public,” is the way Bill Moyers put it, as policies toward witches and wars have proven. If the good people of Salem were sure that certain women were possessed—and President Bush convinced many Americans that Iraq was full of WMD and al Qaeda—then no one should be surprised that our legal and military policies, respectively, were flawed.

In his book *When President's Lie: A History of Official Deception & Its Consequences*, Eric Alterman writes that “if leaders are free to lie—and the press plays along with those lies—then democracy itself is undermined.” Along the same lines, editorialist Michael Kinsley, in a lengthy *New York Times Book Review* essay, concluded that “The great flaw in American democracy is not electoral irregularities...it’s not money...it’s not the outright lying [but] the enormous tolerance for intellectual dishonesty.”

But this doesn’t take us very far since no law can stop leaders from lying or being “intellectually dishonest.” So until voters are better educated and can better distinguish deception from reality, the best we can do is elevate transparency over secrecy. In the Brandeisian spirit that “sunlight is the best disinfectant,” for example, putting campaign contribution disclosure on-line has helped journalists and citizens “follow the money.”

To ensure a healthy democracy with plenty of well-reasoned debate, then, keeping secrets should be kept to a minimum. This has not always been the norm. During the “hot and cold wars of the twentieth century,” concluded the late Senator Daniel Patrick Moynihan, a “culture of secrecy” took root in Washington that has lasted long past the fall of the Berlin Wall. Presidencies prior to Bush’s were plenty secretive—at times excessively so—as any student of the paranoid Nixon administration knows. Yet the Bush government has skillfully capitalized on the calamity of 9/11 by using the tragedy as the perfect cover over and over again to hide information because of a “national security” blanket and to concentrate more authority in their “war president.”

5. The Economics of Democracy.

There is no exact level of economic inequality that distinguishes a democracy from a plutocracy. There will always be degrees of talent and luck, and therefore degrees of income and wealth. But does the governing philosophy of democracy simply have to accept any scale of wealth produced by the economics of capitalism? Or can a gross mal-distribution of income and wealth so stretch the social contract that it snaps?

Louis Brandeis (again) provided one answer a century ago when he wrote that, “We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can’t have both.” Economic journalist Jeff Madrick in 2004 agreed: “Where does income and wealth inequality start to impinge on civil and political rights and on America’s long commitment to equality of economic opportunity? Where does it both reflect a failure of democracy and contribute to its weakening? There is a good argument to be made that we are already there.”

When the head of ExxonMobil earned \$368 million in a year, or more per hour than his workers earned per year—the democracy promise goes unfulfilled. Indeed, the rich today have become the super-rich and the middle-class families feel as if they’re running up a down escalator. Data and trends on economic inequality are clear:

- Real median income for men has fallen for five straight years. In 1980, the wealthiest five percent of households had 16.5 percent of all income; in 1990 it was 18.5 percent; in 2000, 22.2 percent.
- Between 2000-2006, labor productivity grew by 18 percent, but inflation-adjusted weekly wages rose only one percent.
- More than 2000 companies have illegally backdated stock options to boost executive pay packages.
- The IRS is eliminating the jobs of almost half its lawyers who audit the tax returns of the wealthiest Americans.
- Those with annual incomes of over a million dollars got an \$85,000 annual tax rebate because of the Bush tax cuts, while people earning \$50,000 a year received a couple hundred bucks.
- The number of poor has increased from 31 million to 37 million since 2000; the number of those without health insurance rose from 41 million to 47 million.

A Nobel-award winning economist called all this “a form of looting.” The Calcutta-ization of the American economy is not the result of some “unseen hand” based on market forces—comparable Western economies like Canada, Great Britain and Germany do not see such disparities—but the result of the purposeful policies, not the unseen hand. Not since the Gilded Age when wealthy businessmen essentially appointed U.S. Senators (before direct elections) has big business held such sway in America and Washington. Scores of laws—from cutting job training programs, eroding the minimum wage, reversing ergonomic standards, cutting taxes on the rich and social programs for the poor—contribute to the tilt from labor to capital.

It is beyond doubt that George Bush is redistributing wealth far more than George McGovern was ever accused of—except up, not down. America is moving further away from Lincoln’s stated goal that America should be a place where all would have “an open field and a fair chance [for their] industry, enterprise, and intelligence.”

Just as the last half of the 20th century saw a quadrupling of the number of democracies—just as, in Professor John Gaddis’s view, “The world came closer than ever before to reaching a consensus that only democracy confers legitimacy”—the world’s oldest democracy is being systematically sabotaged. That’s not alarmist, merely descriptive of our crisis of democracy.

It’s time for pro-democracy patriots—for what can be more patriotic than democracy?—to erect stronger levees to withstand the oceans of money, lobbyists and lawless officials threatening to overwhelm our traditions and laws. Because it’s not enough just to bemoan presidents, here are 40 proposals to repair the machinery of democracy. This Democracy Protection Act is offered to officials, activists, advocates and citizens alike in the spirit of Gov. Al Smith, who understood that “the solution to the problems of democracy is more democracy.”

II. EXECUTIVE SUMMARY

A. A Democracy With Too Few Voters:

1. **Enforce National Voting Standards** - Create national standards to assure a more professional, trained, non-partisan staff to implement election day.
2. **Make Electronic Voting Secure** - Use electronic voting machines with paper trails (as ATMs do) to deter or detect fraud.
3. **Establish Voting by Mail** - Follow Oregon's example and send ballots by mail to all eligible voters, a form of universal "no excuse" absentee balloting.
4. **Enact Election Day Registration** - Make it easier to vote by keeping voter registration open until and on Election Day and merge Veterans Day into Election Day to create a national holiday called "Democracy Day."
5. **Create Universal Youth Voter Registration** - Based on high school enrollment, automatically register all 18 year-olds to vote.
6. **Criminalize Voter Intimidation** - Make it a felony to knowingly try to stop others from voting.
7. **Bar "Voter Identification" Rules that Suppress Voting** - Stop states from requiring expensive forms of ID that are tantamount to a new poll tax.
8. **Restore the Vote to People with Felony Convictions** - Enfranchise ex-offenders who have paid their debt to society.
9. **Give the Vote to D.C. Residents** - As America was founded on the principal of "no taxation without representation," give residents of our capital city representation in Congress.
10. **Ensure Responsible Redistricting** - Establish a non-partisan system of former judges to oversee the drawing of the legislative lines.
11. **Elect the President by National Popular Vote** - Organize states that together comprise a majority of the Electoral College to agree to cast their electors to the candidate who wins the popular vote.
12. **Try Proportional Voting** - Instead of winner-take all elections, use proportional voting to allow similar-minded groups to gain seats in closer proportion to their share of the population.
13. **Implement Instant Runoff Voting** - Instead of plurality-wins in multiple candidate races, implement "instant runoff voting" by ranking favored candidates until someone gets an absolute majority.

B. Democratizing Congress:

14. **Tighten Lobbying Laws** - Enact bans on lobbyists' bundling, gifts, meals and travel and create an independent Office of Public Integrity that could investigate and report on congressional transgressions.
15. **Enact "Democracy Funding" in Campaigns** - Establish a federal system of public matching funds for qualifying candidates so that small donors diminish the sway of big interests.
16. **Guarantee Free Air Time for Qualifying Candidates** - Provide guaranteed TV/radio time for qualifying federal candidates as a condition of holding lucrative Federal Communications Commission licenses.
17. **Require Congressional Oversight Hearings** - To spur oversight hearing when a congressional majority covers up for an administration, allow hearings when at least a third of a panel's members request one.

C. Rule of Law:

18. **Restrict Presidential Signing Statements** - Establish rules limiting how these "statements" can become unilateral declarations of law.
19. **End Torture, not Habeas Corpus** – Rewrite the recent Military Commissions Act to make it clear that the United States will not condone torture and will continue to recognize Habeas Corpus petitions.
20. **Ban Federal Funding for Programs that Proselytize** - To comport with the "Establishment Clause," stop funds going to religious-based public programs that proselytize clients.
21. **Teach Science-based Science in Classrooms** - Do not permit creationism or "intelligent design" to be taught in science classes.
22. **Stop Discrimination by Sexual Orientation at Work** - Bar workplace discrimination against gays, lesbians, transgender and bisexual workers.
23. **Establish a Civil Right to Counsel** - Provide counsel to the indigent in major civil cases as provided in criminal cases under Gideon v. Wainwright.
24. **Create a Real Civil Liberties Protection Office** - Especially given proven abuses in the "war on terror," fund and empower an office to investigate and expose civil liberties violations.

D. Secrecy & Democracy:

25. **Strengthen the Freedom of Information Act** - Establish the presumption that all federal agencies should release reasonably requested information under the Freedom of Information Act (i.e., there's a "right to know," not the requirement of proving a "need to know").

- 26. **Publish Budgets for Every Government Agency** – Give taxpayers a right to know how their monies are being spent, subject to very narrow national security exceptions.
- 27. **Reduce Media Concentration** - Enact cross-media ownership rules prohibiting one corporate owner from largely monopolizing print and electronic news in a defined population area.
- 28. **Restore the Office of Technology Assessment** - Restore the Congressional Office of Technology Assessment to provide authoritative and objective analysis of complex scientific issues.
- 29. **Subject Government Contracts to Open Bidding** - Make government contracts transparent, subject to public disclosure and open to intense competition, contrary to nearly half of \$329 billion spent on no-bid contracts in 2004.
- 30. **Strengthen Whistleblower Protections for Federal Employees** - Restore the weakened Whistleblower Protection Act and expand protections to employees in the intelligence and security communities.

E. The Economics of Democracy:

- 31. **Create a Living Wage** -- Raise the minimum wage to a living wage indexed to inflation and reviewed biennially.
- 32. **Establish a Child Savings Fund** – Provide every child at birth a savings account that, with compounding interest, can be withdrawn at 18 for investment – a Keogh for kids.
- 33. **Tax All Income Equally** - To stop AMT from soaking the middle class, either index it to inflation or ideally stop taxing income from work at higher rates than income from capital.
- 34. **Restore Consumer Class Actions** - Stop blocking access to court for consumers who have been bilked in bulk.
- 35. **Assure Net Neutrality** - Assure universal access to the internet so we don't divide Americans into the information-rich and information-poor.
- 36. **Bridge the Digital Divide** - Invest in broadband so that universal access becomes a reality.
- 37. **Review Corporate Compensation** - Require that only independent directors on the Board can vote for increases in pay, subject to shareholders' approval.
- 38. **Enact a Borrower's Security Act** - Establish a "Borrower's Security Act" to bring fair credit practices to an industry that now routinely exploits credulous and confused customers.
- 39. **Expand the Right to Organize at Work** - Allow employees to organize if a majority signs union recognition cards and impose penalties on employers who use intimidation and firings to discourage organizing.
- 40. **Create Citizen Utility Boards** - Create consumer advocacy offices to fight for fair utility rates and practices in legislative and regulatory proceedings.

III. THE DEMOCRACY PROTECTION ACT

A. A Democracy With Too Few Voters

1. Enforce National Voting Standards

Rather than a single unified election system, the U.S. has a “crazy quilt” of over 6,000 separate systems, many of which have their own complex rules and regulations. Even Iraq – with the tremendous flaws in its democratic system – has only one national system. Here there is no federal body with the authority to create and enforce national standards to ensure effective, uniform election procedures. The result is a widely disparate set of election procedures that produce significantly different and often negative voting experiences for different citizens across the country. And because of the irregular nature of the employment and low pay, many poll workers are elderly and retired people, unfamiliar in many cases with new technologies and usually selected because of party loyalty.

For example, after the 2006 primaries, 51 percent of poll workers in Cuyahoga County, Ohio, said they lacked the training and information to do their job well. In San Joaquin County, California, dozens of poll workers went AWOL for the June 2006 primary, leaving some precincts nonfunctioning. And throughout the country in 2006, many poll workers demanded photo ID when it wasn’t required or denied provisional ballots to eligible voters.

Our national elections require national voting standards that will ensure fairness and uniformity in election procedures across states and counties. Recall that the consequential *Bush v. Gore* Supreme Court decision of December 2000 concluded that it was a violation of equal protection for different jurisdictions within Florida to have varying rules and recount procedures. A federal body, such as the U.S. Election Assistance Commission (EAC), should be granted the power to set mandatory minimum standards and to effectively enforce those standards. Presumably, federal monitoring will deter worst state practices, based on H.L. Menken’s insight that “conscience is the sense someone may be looking.” Currently, however, the EAC has minimal authority and a small budget.

An adequately funded national elections agency should professionalize the administration of elections, much as airport screening was significantly upgraded after 9/11 by the Transportation Security Administration. It could require that poll workers receive uniform, consistent training about voting equipment and legal requirements for voting. It could set uniform standards to ensure that all polling places have an adequate number of voting machines to prevent the formation of long lines. Minimum spending thresholds should be established so that lower-income jurisdictions could receive supplemental federal assistance to ensure that our elections are properly funded.

A national election agency could also establish standards for elections equipment (see next proposal). Currently, each state does its own investigation and selects its own equipment. Not surprisingly, the same problems arise over and over again. Federal standards could set a baseline, from which states could make their own determinations. Finally, there should be flexible and transparent standards for the use of

statewide databases in both matching a new registrant to existing state databases and purging voters who are believed to be ineligible. Some of these ideas are included in S. 450, the *Count Every Vote Act*, introduced by Senators Hillary Clinton (D-NY) and John Kerry (D-MA) in the last Congress.

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2. Make Electronic Voting Secure

During the 2006 midterm election, more than 80 percent of voters cast their vote electronically or filled out a paper ballot that was later counted electronically. By 2008, when New York and Connecticut join the nation in the use of electronic voting systems, the change will be nearly complete.

Done right, electronic voting can be a marked improvement over the days of hanging chads. Unfortunately, the shift to electronic voting has been marked by haste, ineptitude, and startling security lapses.

The Brennan Center for Justice at NYU convened a task force of leading computer scientists and election and security experts, including George W. Bush's former cyber-security czar. The conclusion? All three of the most commonly purchased electronic voting systems have significant security vulnerabilities that pose a real danger to the integrity of national, state and local elections. For example, if a hacker wanted to fix a Senate election, the easiest way to do it would be by inserting corrupt software. Voting machines with wireless components are significantly more vulnerable to a wide array of attacks. It would be possible to steal a statewide race with a Palm Pilot and some technical savvy. Yet only New York and Minnesota ban wireless components on all electronic voting systems.

Two white papers drafted by scientists at the National Institute of Standards and Technology (NIST)—a federal agency that recommends and set standards in many fields of scientific research, including voting machines—agreed with the Brennan Center's findings. Citing the Center's work, these papers concluded that electronic voting had to be "software independent" to be secure, meaning there had to be a way outside the machine's own software to prove the accuracy of vote tallies—i.e., paper trails. They also cited and echoed the Brennan Center's findings regarding the dangers of wireless components.

The remedies to avoid corrupt software (and protect system integrity) are not difficult: voter-verified paper records, regular audits of paper records, testing of machines, a ban on wireless components on all machines, decentralized programming and system administration, and procedures for addressing evidence of fraud. Yet, few states have imposed these requirements.

Electronic machines often are hard to use. Several studies conclude that the "residual vote rates"—the difference between the number of ballots cast and the number of valid votes cast in a particular

contest— for certain types of electronic voting machines are higher in low-income and minority communities. But why? After all, ATM machines process thousands of transactions a week without ever giving us too much money. To ensure usability, officials should not assume that voters have familiarity with technology, and they must provide mechanisms for recording and reviewing votes before machines record them, clarify on screen each step in the voting process, plainly notify voters of errors and make error correction easy. Usable machines must also be made accessible to voters with disabilities.

To ensure accountability, jurisdictions must compare voter verified paper records to the electronic record stored by voting machines. This is the most effective way of guaranteeing that votes on electronic machines have been accurately recorded and counted. Only when states agree to greater software and machine reliability and verification—ideally based on a national standard—will “majority rules” be the governing ethic of our democracy.

Senators Dianne Feinstein (D-CA) and Rep. Rush Holt (D.-NJ) plan on introducing legislation in the 110th Congress to require voter-verified paper records. And in a significant step, given Florida’s role in 2000, the Republican governor of the sunshine state announced in early February, 2007, that the state’s paperless touch-screen machines would be replaced by a systems of paper ballots counted by scanning devices.

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3. Institute Voting By Mail

Voting on the first Tuesday in November is a cherished civic tradition. But why exactly do we expose democracy to the risks of bad weather, long lines and mechanical malfunction? As part of a system with Election Day Registration and early election centers, there is an alternative that’s been tried and that works—voting by mail.

In 1981, the Oregon legislature authorized a test of voting by mail in some local elections. A decade later, the state had evolved into a bi-furcated system where citizens voted by mail in local elections and traditionally at polling places in state-wide elections on Election Day. The turning point came in 1996, when voters only voted by mail in the special U.S. Senate election that year. Turnout increased, problems were few, and a referendum then passed providing for it in all future elections.

Here’s how it works. As described by Don Hamilton in an American Prospect article on “The Oregon Voting Revolution”: “In the three weeks before the election, voters get a packet in the mail. They mark the ballot in blue or black and place it in an anonymous envelope, which is then put in a second envelope. The voter then signs that outer envelope and mails it to the county elections office. The voter pays the 39 cents

for the stamp, which doesn't constitute a poll tax, the courts decided, because a voter also may drop it off in person for no charge."

Voting by mail has become hugely popular in Oregon—a 2003 poll by the University of Oregon showed a majority of 81 percent preferring it to going to a polling place. Journalist Robert Kuttner and Postal Rate Commissioner Ruth Goldway explained its virtues:

Writes Kuttner: "Despite the loss of a secret voting booth in favor of the kitchen table, there are no reports of anyone abusing Oregon's more open process to buy votes. The vote count is vastly simplified since it takes place at the county level, rather than precinct by precinct. The risk of counting inaccuracy or chicanery is minimized. There is no worry of machines breaking down, being in short supply, or hacked; no long lines; no partisan wrangling at polling places; and far less incentive for last-minute smears. And, at a time of electronic horrors, vote by mail is the ultimate paper trail."

Writes Goldway: "Moreover, in doing away with voting machines, polling booths, precinct captains and election workers, the state estimates that it saves up to 40 percent over the cost of a traditional election. Vote by Mail could offer real advantages if it were adopted nationwide. Voters would not need to take time off from work, find transportation, find the right polling station, get babysitters or rush through reading complicated ballot initiatives. This country's 35,000 post offices could provide information, distribute and collect voting materials and issue inexpensive residency and address identifications for voting purposes."

Critics raise three serious objections: that it could be more susceptible to fraud; that the expanded period of voting could lead to "differentials in knowledge" among voters; and that the systems could hurt those without stable addresses or clearly marked mailboxes, groups likely to be poor or minority.

First, voter fraud is already a felony—and any large-scale effort to manipulate voters would likely involve too many people to go undetected. Also, the best safeguard is the voter's signature. This autograph on the outside of the ballot envelope must match the signature on file from the voter registration card, much like banks can study the signature on the back of a check. In any event, it would take an army of conspirators to rig an election by mail, which seems unfeasible.

Second, there will always be "differentials" in knowledge, with some voting on a lark while others substantively study all candidates. But voting over a three week period does discourage the kind of dirty tricks that attempt to alter the result the weekend before a vote; and a catastrophic natural or man-made event on that Tuesday—9/11, in fact, was an election day in New York City, which was cancelled late morning—cannot lead to perverse results if there's open balloting over time.

Third, to avoid the possibility that voting by mail might disproportionately hurt poor or minority voters, any such systems should be combined with EDR and the creation of "early election centers" where people could physically vote well before election day.

In a near-perfect example of Brandeis's wisdom that states in federal systems can be "laboratories of experimentation," Oregon's success is now leading other states to try voting by mail, like Arizona, California, Colorado and Washington. All states should adopt the successful Oregon model. Then an 18th century technology called the Post Office may be the answer to the problems of a 21st century technology called

electronic voting. Better than only electronic voting is electronic voting with a paper trail. But better than either may be *only* a paper trail—i.e. a verifiable mail ballot.

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4. Enact Election Day Registration

Arbitrary registration deadlines limit voter participation. Thirty-seven states end voter registration weeks before Election Day—often long before end-of-campaign debates and news coverage, which is when many voters start to pay attention. Indeed, most voters only focus on elections in the final few days before the election itself. Election Day Registration (EDR), also known as “same-day voter registration,” permits eligible citizens to register and vote on Election Day.

And it makes a difference. In Montana, which first implemented EDR in 2006, the number of EDR voters was twice the number of votes that decided that state’s U.S. House election. Currently, seven states allow EDR: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, Wyoming and Montana.

In those states with EDR, youth voting is higher, provisional ballots are not a problem and our mobile population can still participate in elections:

- States with EDR, on average, have youth voter turnout rates that are 14 percentage points higher. According to a May 2001 poll, nearly two-thirds (64 percent) of all non-voters said that allowing people to register and vote on Election Day would make them more likely to vote.
- In the 2004 presidential election, more than one million registered voters had registration problems and many cast provisional ballots that went uncounted. EDR virtually eliminates the need for provisional ballots. With EDR, all eligible citizens who arrive at the polls can register or re-register and vote like everyone else; so they participate even if their names have been incorrectly purged or were not added in time for the election, or are valid first time voters, thus insuring that every vote will be counted.
- According to the U.S. Census Bureau, on average 73 percent of eligible voting-age citizens voted in EDR states in the 2004 election -- about 12 percentage points higher than the national average.

Another 27 percent, 55 million American citizens, were not registered to vote; experts predict that EDR could bring many of these citizens into the system.

- More than 40 million Americans, or 14 percent of the population, moved between March 2002 and March 2003. The young, people of color, and low-income populations are the most mobile. Many of these individuals want to vote but inadvertently miss the registration deadlines. With EDR, new residents can simply re-register at their new voting precinct on Election Day and vote.

Given these provable benefits, all our states should join the existing seven to implement EDR. As for election day itself, why is it a work day, making it harder for working people to vote? Ideally, let's merge Veterans Day into an Election Day on the first Tuesday of November and call this holiday "Democracy Day"-which would be a wonderful way also to pay tribute to veterans who risked or gave their lives to assure that democracy survives.

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5. Create Universal Youth Voter Registration

As noted, our elections suffer from a lack of participation, especially among young people: in 2006, while national turnout rates averaged close to 40 percent, voting by young Americans was only 24 percent; in 2004, with a national turnout of 60 percent, barely 40 percent of eligible 18-24 year-olds turned out to vote for president; and less than 60 percent of eligible voters in this age group are even registered to vote.

While there are many challenges to engaging young voters, one is surely the hurdle of voter registration. Since public high school is compulsory, and the government already has databases with all student names, a high school-based voter registration and education system would create an effective means of engaging new generations of young people in our political process. State legislatures should enact laws that:

- allow 16-year-olds and 17-year-olds to "pre-register" to vote at their high schools, as is done in Hawaii, to become effective on their 18th birthdays;

- require a “voting mechanics” module in high school as part of civics learning; and
- automatically register newly eligible voters, as is typical in many nations.

Until and if EDR spreads and takes care of mobile voters or those with lapsed registration, universal youth registration is desirable in and of itself. By making voter registration and education a part of every young person’s high school experience, we would come in line with the international norm of having citizens and government share responsibility for a fair and accurate voter registration process. Moreover, we would be developing a culture of political participation for all Americans. So not only would 18 years-olds automatically be registered but they would also feel more obligated to actually vote.

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6. Criminalize Voter Intimidation

Of course political candidates try to win elections by generating more votes than their opponents. A less recognized alternative is to intimidate an opponent’s supporters and thereby suppress his/her votes. Few states have enacted clear and effective prohibitions against these abuses.

Organized misinformation campaigns often target minority communities. In the 2006 elections, 14,000 Latino residents in Orange County, California received a letter in October warning that it was a crime for immigrants to vote and cautioning that they could be jailed or deported if they went to the polls, although naturalized immigrants enjoy the same voting rights as native-born citizens.

Many states allow partisan operatives to selectively challenge a voter’s eligibility at the polls—sometimes resulting in challenges based on the voter’s race, ethnicity or English-language skills. Nearly 50 Asian Americans were challenged as ineligible to vote in a majority-white, Alabama village in August 2004—a Vietnamese-American was running for office there. According to his Anglo opponent, “we figured if they couldn’t speak good English, they possibly weren’t American citizens.”

Ongoing voter intimidation and suppression reflect the inadequacy of current legal standards and enforcement. States and the federal government must adopt strong policies and procedures for preventing these abuses. Legislation introduced in 2007 by U.S. Senators Barak Obama (D-IL) and Chuck Schumer (D-NY)—the *Deceptive Practices and Voter Intimidation Prevention Act*—would encourage investigations of deceptive practices, establish criminal penalties for those found to have perpetrated them, and create a process for providing full and accurate information to misinformed and intimidated voters. For one example, it would make it a crime to knowingly tell voters the wrong day for an election. If willfully cheating consumers of their money can be a crime, willfully cheating citizens of their vote should be as well.

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7. Bar “Voter Identification” Rules That Suppress Voting

Across the country, states are imposing a new barrier to voting: a requirement that voters show forms of identification that are expensive or hard to get. This demand goes far beyond a general need to ensure that voters are who they say they are, especially since there is very little hard data that fraudulent voting is a widespread or serious problem. Rather, new verification rules impose demands that cumulatively drive away many thousands of eligible voters.

It’s hard to escape the conclusion that suppression was the whole idea. Approximately ten percent of voting-age Americans lack driver’s licenses or other state-issued photo ID. (Remember all those who lacked a car when Katrina hit New Orleans? Most didn’t have drivers’ licenses either.) IDs cost time and money—up to \$100 for a driver’s license, \$45 for a birth certificate, \$97 for a passport, and over \$200 for naturalization papers. To register, some citizens have to take hours off of work and travel far distances to visit government offices open only during the day—while others may be too frail to exert any such effort. A recent Georgia law demanding that voters show one of a limited number of forms of government-issued photo ID has been enjoined by federal and state courts. In stark comparison, the notorious poll tax—when the U.S. Supreme Court declared it unconstitutional in 1966—cost voters only \$8.79 (in current dollars).

Who is disenfranchised by rigid ID requirements? No surprise here: the elderly, students, people with disabilities, the poor and people of color. One in three Georgians over the age of 75 lacks a driver’s license. Fewer than three percent of Wisconsin students have drivers’ licenses listing their current address, while African Americans have drivers’ licenses at half the rate of whites. A recent study showed that only 22 percent of black men aged 18-24 had a valid driver’s license.

Let’s be clear: if it’s ID that government wants, there are alternatives that won’t disenfranchise people. Any government ID should do—from a veteran’s card to a Social Security card to a WIC card. Above all, states should (a) give ample and clear notice of what the rules are and (b) devise verification rules that maximize voter participation.

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8. Restore the Vote to People with Felony Convictions

Over five million Americans are barred from voting due to a criminal conviction. Often, felony disenfranchisement is the result of laws enacted in the Jim Crow era as a way to suppress the vote of black citizens. For example, Carter Glass, a delegate to the Virginia Constitutional Convention in 1906, said of his felony-voting statute, “This plan will eliminate the darkey as a political factor in this state in less than five years.”

Despite the numerical magnitude of the problem, the American public is relatively unaware that felony disenfranchisement laws keep three-quarters of ex-offenders, who are working, raising families, and paying taxes in our communities, from having a say in how their lives are governed.

Because there are no federal standards, these laws vary state by state, creating a patchwork of inconsistent policies and practices across the country. Laws range from allowing people in prison to vote in Maine and Vermont, to lifetime disenfranchisement for all people with felony convictions in Virginia, Kentucky and Florida. The remaining states fall somewhere in between, with laws that deny the vote based on a wide variety of factors, including the nature of the conviction, the type of sentence, satisfaction of waiting periods and payment of legal fines. As a result, people with criminal convictions, legislators and even election officials are often unsure of what their state law requires. Survey results in several states have shown that this confusion often leads to massive illegal disenfranchisement of eligible voters with criminal convictions.

To address these problems, all states should automatically restore the vote to people upon their release from prison, as Rhode Island chose to do in a 2006 referendum. Lawmakers should also enact measures that: 1) notify people with convictions about the loss and restoration of voting rights; 2) require government agencies to assist people with voter registration when they regain their right to vote; 3) ensure information sharing between elections and criminal justice agencies; and 4) require elections officials to educate the public about a state’s felony disenfranchisement laws and restoration procedures.

Ostracizing people with felony convictions who are returning to the community promotes neither public safety nor democracy. Forty years after the Voting Rights Act, it’s time to repudiate Carter Glass, ideally by federal law or, if necessary, state-by-state.

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9. Give the Vote to D.C. Residents

In 1801, residents of the District of Columbia lost the right to vote for House and Senate members in Maryland and Virginia when those states ceded land to create the U.S. Capitol. Two centuries later, the people of D.C.—60 percent black—still suffer taxation without representation. According to a recent study, however, 78 percent of Americans are unaware that D.C. residents lack full voting rights.

And the number of District residents is not trivial; it is comparable to the population of several states. According to the 2000 census, the population of Washington D.C. (572,000) is close to that of Wyoming (494,000), Vermont (609,000), Alaska (627,000) and North Dakota (642,000).

This lack of democratic representation limits the influence that District citizens have on congressional legislation involving health, governance, budgeting, taxes, gun control and other matters directly affecting D.C. lives and livelihoods. Yet these citizens fight for America in times of war and are asked to serve on juries to uphold federal laws. They are also required to pay federal taxes, which means they literally suffer from the kind of taxation without representation that the Founders used as grounds for independence from England over 200 years ago.

Further, limits on D.C. voting rights contradict international treaties. The U.S. has signed the International Covenant on Civil Rights, the Organization of American States' American Declaration of the Rights and Duties of Man, and the Convention on the Elimination of All Forms of Discrimination, all of which call for full voting rights for adult citizens. The U.S. government is thereby advocating voting rights in other countries that it does not provide to all of its own citizens.

Courts have rejected claims that disenfranchisement of District of Columbia residents is unconstitutional, holding that voting rights for D.C. is a matter for the legislature, not the courts, to resolve. Constitutional scholars agree that Congress has the authority to enact legislation giving District residents the vote. When it comes to fundamental rights, the Supreme Court has ruled that discrimination must be for a "compelling reason." What compelling reason could there possibly be?

This injustice may be finally ending. As the Congress considers a plan to give Utah a fourth congressional seat, advocates of D.C. voting rights will be insisting that it be linked to providing a House seat for D.C.

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10. Ensure Responsible Redistricting

Redistricting exerts a powerful influence over citizens' ability to choose candidates and affect representative governing bodies. As is well known from bizarrely shaped "gerrymandered" districts, those who draw the maps can engineer district boundaries to further partisan advantage, protect incumbents and dilute the voting strength of minority communities. In effect, incumbents can choose their voters rather than voters choosing their incumbents.

Some government reform groups and scholars have in recent years proposed independent redistricting commissions as a remedy. Today, a dozen states—including Arizona, Colorado, Iowa, Pennsylvania and Washington—have delegated to non-legislative bodies the authority to draw district boundaries. Such bodies represent one means to help ensure that those with vested interests in the outcomes (incumbents, political parties) are not able to hijack the process. In New York State, where vested interests do control the outcomes, a challenger who had earned 40% of the primary vote against a long-term incumbent suddenly found that the redistricting process had moved the lines a few blocks—leaving his house in a different district than the incumbent he had threatened. That is not how a democracy should function.

Redistricting bodies vary widely among states. In some, the process by which individuals responsible for redistricting are selected does not lead to an appropriately diverse body. In others, the standards governing where the lines may be drawn appear inadequate for elevating the public's interests above all others. Without appropriate mechanisms and priority-ranked criteria that serve public aims, outcomes may differ little from those achieved by the free-for-all redistricting schemes in place in many states today.

Whether through an independent redistricting commission or other means, redistricting should be governed by the following distinct standards:

- *Political Equality and Minority Representation* - fair and adequate representation, with particular attention to communities historically underrepresented in the political process and to defined communities of interest.
- *Redistricting Criteria* - a properly balanced set of redistricting criteria that serve to promote fairness and advance the public interest.
- *Public Confidence* - an open process with transparency in the proceedings of the decision-makers, strong provisions for solicitation and receipt of public input, open and accessible meetings, the publication of data and documentation.
- *Partisan Fairness* - a neutral, unbiased process that aims to ensure that neither major party would benefit unfairly under an adopted redistricting plan.
- *Voter Choice and Government Accountability* - optimal voter choice and the ability of the electorate to hold the government accountable.

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11. Elect the President by National Popular Vote

Today, the state-by-state Electoral College system makes most Americans entirely irrelevant in presidential elections. Candidates focus exclusively on a handful of some 13 “battleground” states that just happen to be closely divided. The remaining “spectator” states, where about 140 million eligible voters live, currently include seven of the nation’s 11 largest states, 12 of the 13 smallest states, and most of the medium-sized states. They are so red or blue that they rarely, if ever, see a presidential nominee or his/her ads. And when candidates don’t meet with or answer questions from local residents and journalists—about, say, housing in Los Angeles or New York City, for example—their campaigns are more likely to ignore such issues.

The Electoral College violates the “one person one vote” principle because each state’s electoral votes are equal to its House members and Senators. So in terms of the presidential election, Wyoming has four times the per capita representation of California. It turns out there’s affirmative action in the Electoral College, here favoring smaller, rural states. And, of course, the current system can produce a president who lost the popular vote, as occurred in 2000.

With so many voters ignored, it’s not surprising that turnout suffers, particularly among young voters.

There is a different way. Currently, 48 states (and D.C.) award all of their electoral votes to the candidate who wins the most votes in their state. But this “unit rule” system is not constitutionally mandated. It is up to the states to determine how to award their electoral votes. In fact, Maine and Nebraska currently award some of their electoral votes by congressional district, not by winner-take-all.

This means that nationwide popular election of the president can be implemented without amending the Constitution. Here's how: States pass identical laws in which they agree to award all of their electoral votes to the presidential candidate who receives the most popular votes in all 50 states and D.C. This state legislation, in the form of an interstate compact that ensures states comply with its terms, would only go into effect when it has been enacted by enough states to elect a president—that is, by states possessing a majority (currently 270) of the electoral votes. At that point, the Electoral College becomes entirely ceremonial, and every voter in every covered state instantly becomes important in electing the president.

Endorsed by leading Republicans and Democrats and newspapers like the *New York Times* and *Los Angeles Times*, the National Popular Vote plan is a politically feasible way to fulfill the overwhelming wish of Americans to replace our rusty Electoral College system with a truly national vote.

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12. Try Proportional Voting

To ensure fairer access to power and greater minority representation in government, reformers should implement proportional voting, starting in local races. Traditional voter systems are winner-take-all, and they deny just representation by awarding 100 percent of power to a 50+ percent majority. Almost half of all voters can be left unrepresented, as communities of color, women and third parties are often stuck with minority status and diminished influence. As a result, those in power are able to successfully ignore entire constituencies.

Proportional voting systems alter this dynamic by allowing similar-minded groups of voters to gain seats in closer proportion to their share of the actual population. Religious, political and ethnic minorities are less likely to be ghettoized. Stephen Hill describes how it actually worked in West Texas City of Amarillo:

Although more than 20 percent of the city's population was Black or Latino, no Black or Latino candidates had been elected to the school board in more than two decades under the city's at-large winner-take-all elections. Instituted to settle a voting rights lawsuit, proportional voting had an immediate impact: Of four open seats, one went

to a Black candidate and another to a Latino candidate, and voter turnout increased more than three times over that of the previous school board election. In the next election, another Latino was elected. Women won their first seats as well. Within two election cycles, Amarillo's school board became more representative without having to gerrymander a single district.

There are several different versions of proportional voting systems, and more than 100 communities in the United States use one. The three main systems are cumulative voting (voters cast as many votes as seats and can give multiple votes to one candidate), limited voting (voters have fewer votes than seats and winners are determined by a simple plurality), and choice voting.

Of the three, choice voting is more complicated, yet the most likely to provide fair results to both minority and majority populations. Voters rank candidates in order of preference, and candidates need an exact minimal proportion of votes to be elected. If there are ten open seats, candidates need about 10 percent of the vote to win. So if a voter's first choice candidate doesn't need his vote because she can either be elected without it or because she has too few votes to be elected, the vote then counts for the voter's second-choice candidate, and so on.

Voters in Cambridge, Massachusetts, New Zealand, Australia, and Ireland vote by choice voting, and have successfully increased minority representation. Cambridge, where Blacks are 13 percent of the population, has had a Black representative on its city council since the 1950s. Because all groups are assured of some representation, there have been reduced racial and ethnic conflicts than where one group gets nearly all potential seats or spoils.

Proportional Representation can be applied to any level of government where there is a multi-member body (legislature, school board), but it should begin in more local elections before being attempted more broadly.

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13. Implement Instant Runoff Voting

Three's a crowd in American democracy. When more than two people seek an office, a candidate can win even if the majority of voters don't like the winner. Plurality-winning primaries allow third, fourth or fifth candidates to be spoilers and winners not to be the most popular candidate.

Under Instant Runoff Voting (IRV), voters rank their choices for an office: 1, 2, 3 (or more if there are more aspirants). In the first round of counting, the voters' #1 choices are tallied. Any candidate with a majority of the vote of course wins the election, whether primary or general. If no one wins a majority, however, the trailing candidate is eliminated. So should your #1 choice lose, your vote counts for the candidate that you ranked next best. The reallocated votes are then added to the totals of the remaining top vote-getters. A majority winner is guaranteed once the field is reduced to the top two candidates. With electronic voting, all these calculations can be made on election night.

Beyond assuring majority rule, IRV saves taxpayers' money and cuts the costs of campaigns since there's only one primary and no runoff; reduces negative campaigning because candidates will want to be an acceptable second choice for their opponents' supporters; increases turnout since the electorate needs only to show up to the polls once, not twice; and can level the general election playing field if the challenger's party avoids an additional and often divisive run-off contest while the incumbent saves money and energy.

Instant runoffs also encourage candidates to run more high-minded races, as they need to simultaneously court second and third choice voters who might be alienated by the sliming of their first choice. So instead of seeking a plurality by only working their respective racial, religious or community niches, candidates have to seek votes outside their own particular constituency. The winner then won't be elected by a sliver of voters only because the majority was divided among more generally favored aspirants.

Lastly, on Election Day, IRV frees voters to vote their consciences without the worry of wasting their vote on a long-shot "spoiler" candidate (e.g. a Ralph Nader, a Libertarian, a Right-to-Life party candidate, a Labor Party candidate) since their ballots will be re-cast for their next choices if their true preference loses.

Australia, Ireland and London all use IRV for their highest offices; Arkansas and Louisiana use it for overseas military voters. Since San Francisco first enacted an IRV in 2002, four cities have seen IRV ballot measures pass with an average of 72 percent. In November 2004, San Francisco voters elected seven city council members in IRV election—saving the city \$1.2 million.

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B. Democratizing Congress

14. Tighten Lobbying Laws

However pejorative the word “lobbyist,” it’s imbedded in the First Amendment “right of the people...to petition the government for a redress of grievances.” Lobbying is an essential way to educate government officials about what citizens think and need.

But then there’s a) corrupt influence-peddlers like Jack Abramoff, b) an army of 34,000 registered lobbyists (that’s an average of 64 per member) and c) lobbyists who give and raise money for members they importune.

It’s not democracy when Republican lobbyists in the Hastert-Delay regime would draft legislation in closed-door meetings with Hill majority staff, while Democratic members were excluded entirely.

In this context, seven civic organizations led by Public Citizen—also including the League of Women Voters, Common Cause, U.S. PIRG, the Campaign Legal Center, Democracy21 and the Public Campaign—have proposed a reform package of six essential reforms which properly understand that the congressional Ethics Committees are largely hopeless and hapless. (Of several pending bills, S. 2349 introduced by Sen. Russ Feingold (D-WI.) and Sen. Barack Obama (D-IL) is the strongest.) The six are:

- *Break the nexus between lobbyists, money and lawmakers.* Cap contributions from lobbyists and lobbying firm PACs to federal candidates at \$200 per election and prohibit them from soliciting, arranging or delivering contributions and from serving as officials on candidate campaign committees and leadership PACs.
- *Prevent private interests from financing trips and from subsidizing travel for members of Congress and staff, and executive branch officials and federal judges.* Corporations and others should be prohibited from making privately owned planes available for Members to travel at the cost of a first class air tickets rather than the cost of a chartered plane.
- *Ban gifts to members of Congress and Staff.* The gift ban should close the existing loophole in the gift rules that allow lobbyists and others to pay for parties held to “honor” or “recognize” specific members, such as the lavish parties held at the national party conventions.
- *Slow the revolving door.* Prohibit members of Congress and senior executive branch officials from making lobbying contacts or conducting lobbying activities for compensation in either branch for years after leaving their positions. Prohibit senior congressional staff from making lobbying contacts for compensation with former offices or committees for two years after leaving their positions.
- *Oversee and enforce ethics rules and lobbying laws through an independent Office of Public Integrity and establish significant penalties for violations.* Establish an independent Office of Public Integrity in Congress, with sufficient resources, to monitor and oversee financial disclosure and lobbying reports; advise Members, staff and lobbyists on compliance with the rules; conduct investigations of

non-frivolous allegations of ethics violations, including complaints filed by Members and outside individuals and groups; present cases involving potential ethics violations to the Congressional Ethics Committees for consideration and action; and refer potential lobbying law violations to the Justice Department for civil enforcement.

- *Throw sunshine on lobbying activities and financial disclosure reports.* Require lobbying reports and Members' financial disclosure reports to be filed in an electronic format and made fully searchable on the Internet; lobbying reports to be filed on a quarterly bases; lobbyists and lobbying firms to disclose grassroots lobbying activities; lobbyists to file a list of the Members' offices and congressional committees they lobbied during the quarter; and reports to be filed disclosing the financial backers of stealth lobbying coalitions.

*At the start of the 110th Congress, the House and Senate passed versions of 2, 3 and 4 above.

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15. Enact “Democracy Funding” in Federal Campaigns

The evidence that money shouts is mountainous: Ninety-four percent of the time, the bigger-spending Congressional candidate wins and the average price of a House seat rose from \$87,000 in 1976 to \$1 million in 2006. As money metastasizes throughout our political process, the erosion of our democracy should be evident to the Left and Right alike:

- *Special Interests Get Special Access and Treatment.* While members publicly and indignantly deny that big contributions often come with strings attached, all privately concede the obvious mutual shakedown—or as one Western senator said, “Senators are human calculators who can weigh how much money every vote will cost them.” The access that money buys, of course, doesn't guarantee legislative success, but the lack of it probably guarantees failure.
- *Fundraising Is a Time Thief.* Imagine if someone kidnapped all candidates for state and federal office for half of each day. The story would be bigger than Jack Abramoff and would surely lead to calls for tougher penalties against political kidnapping. Well, there is such a culprit. It's the current system of financing political campaigns, which requires officeholders in election years to spend half their time fundraising not merely to raise enough money but to raise far more than any rival.
- *The Money Game Deters Talented People from Running.* One jurist called them “the silent casualties” of the political process, women and men of talent who can't pay the ticket of entry and therefore never seek office.

So although issues like terrorism, healthcare and pollution absorb far more public attention and concern, the scandal of strings-attached money corrupting politics and government is the most urgent

domestic problem in America today, because it makes it harder to solve nearly all our other problems. How can we produce smart defense, environmental and health policies if arms contractors, oil firms and HMOs have such a hammerlock on the committees charged with considering reforms? The culprit is not corrupt candidates but a corrupt system that coerces good people to take tainted money.

Several cities and states however—like New York City and Maine and Arizona—have implemented various campaign finance laws that do either or both of two things: create a financial floor for qualifying candidates by providing matching public funds and, in exchange, establish a financial ceiling which participating candidates cannot exceed. Until and when the Supreme Court overturns the 1976 Buckley v. Valeo, which prohibits spending limits on campaigns or wealthy candidates, systems providing for the public funding of public elections must be voluntary.

“Democracy Funding” could follow either the New York City or the Arizona model. Under the first, 4-to-1 matching grants are made for all gifts up to \$250 from people who can vote for the candidate (so a \$25 gift becomes \$125); under the second, after a candidate crosses a certain threshold—say, raising 1,000 contributions of at least \$5—he or she receives all subsequent funding up to a specified ceiling from the public treasury.

Democracy Funding of elections avoids First Amendment arguments, since it increases speech instead of significantly limiting it, and majorities of 70 percent regularly support it. How does it advance First Amendment values to allow a few wealthy interests to spend millions of special interest dollars to drown out the voices and contributions of millions of average citizens?

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16. Guarantee Free Airtime for Qualifying Candidates

Campaign costs have soared as candidates race to outspend one another in order to grab voters' attention. The cost of airtime is the number one expense, consuming 50 percent to 60 percent of a smart campaign's budget. More than \$1.8 billion was spent on political ads in 2006, up from a record \$1.7 billion spent in the presidential year of 2004.

Paul Taylor, executive director of the Alliance for Better Campaigns, a non-partisan group that advocates for free airtime, sums up the scam this way: "Our government gives free licenses to operate on the public airwaves on the condition that they serve the public interest. During the campaign season, broadcasters turn around and sell access to these airwaves to candidates at inflated prices. Meanwhile, many candidates sell access to the government in order to raise special-interest money to purchase access to airwaves. It's wonderful arrangement for the broadcasters, who reap the windfall profits from political campaigns. It's a good system for incumbents, who prosper in the big-dollar, high-ante political culture of fair speech. But it's lousy deal for the rest of us."

We need to return to elections that are competitions of ideas, not merely dollars—and the reform of our airwaves is an important step in this direction.

In recent years, reformers have proposed requiring broadcasters to provide free television and/or radio time before elections for candidates to discuss issues. Despite broad public support—in 2002, the Pew Center for People and the Press found that 73 percent of Americans support such a measure—proposals have stalled. Yet free air time is the most widely-used campaign finance regulation in the world. Countries that provide air time at no charge include France, Australia, India, Israel, Chile, South Africa and Russia.

As a condition of being awarded a free, lucrative broadcast license, the Federal Communications Commission should require broadcasters to provide free broadcast (TV and radio) vouchers to parties and qualifying candidates who win their parties' nominations. Candidates, particularly those from urban areas where several congressional districts exist within one TV/radio market, could trade their vouchers to their party in exchange for funds to pay for direct mail or other forms of communication. The system creates a market for broadcast vouchers that, because of pricing incentives, ensures their efficient distribution.

A comprehensive campaign finance reform program should provide candidates with a right of access to the public airwaves. Until then, the voucher proposal should be restricted to those candidates who accept spending limits. Whether vouchers were used for airtime or exchanged for party monies for direct mail, candidates would report them as expenditures. Under such a system, spending limits would retain their integrity. The value of the vouchers should be set at \$250,000 for House candidates (or a quarter of the treasury of the average winner) and vary by population for Senate candidates, with candidates in midsize states receiving up to \$2.5 million in vouchers. As in democracy funding, candidates would be required to reach contribution thresholds to qualify for vouchers.

Senator Dick Durbin (D- Ill.) is preparing legislation for a version of free airtime so that public candidates can reduce their financial dependence on private donors. According to Common Cause, more than

half of the newly elected Democrats in 2006 support the general idea. Publicly-owned airwaves should be used to educate the public in public elections.

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17. Require Congressional Oversight Hearings

Legislative oversight has been an important feature of democracy since even before the ratification of our Constitution. In 1742, William Pitt the Elder described the powers of the Parliament: “we are called the grand inquest of the nation, and as such it is our duty to inquire into every step of public management, either at home or abroad, in order to see that nothing has been done amiss.” Then in President Washington’s first term, the House of Representatives investigated a failed military mission into Indian territory. Yet two centuries later, the Republican-controlled Congress in 2000-2006 failed to seriously investigate some of the Bush Administration’s most egregious examples of waste, fraud and abuse, including the mishandling of Hurricane Katrina; no-bid contracts to Halliburton; illegal domestic spying; and torture at Abu Ghraib and Guantanamo.

Congressional oversight of the executive branch and of private industry is an important and necessary power of our legislature, and should not be left to the whims of a majority party covering up its own misdeeds. That is why congressional committees should mandate oversight hearings whenever either the chairman or a third of a committee’s members believe they are warranted.

Congressional Democrats tried to initiate hearings into a myriad of issues over the past few years, but Republicans were able to prevent them. Relegated to minority status and unable to hold hearings without approval of the majority party, Democrats held unofficial “basement hearings” out of frustration. In one series last fall, the Democratic Policy Committee examined Halliburton’s role as large beneficiary of the Iraq War; yet these were entirely unofficial and got little attention from the Administration, the media or the public. (Of course, the switch in control in the new session has potentially changed this dynamic for now.)

Allowing a third of a committee’s members to initiate a hearing helps assure that “checks and balances” exists in fact rather than merely on paper. History illustrates that oversight can both affect executive action or lead to legislative action. The Pecora oversight hearings examining abuses on Wall Street led to the Securities Act of 1933 and the Securities Exchange Act of 1934; the Church Committee’s investigation into Cold War domestic spying abuses led to the passage of the 1978 Foreign Intelligence Surveillance Act; congressional hearings on acid rain and pollution led to the Clean Air Act in 1990. And the Truman and Fulbright hearings, held *during* World War II and Vietnam, showed how an open democracy can be self-

critical and correct mistakes while in the midst of war—a fact ignored by an administration saying of terrorism, “either you’re with us or with the terrorists.”

We need to assure that Congress, particularly during sessions in which the same party controls the Executive and Legislative branches, will still monitor the Executive Branch so that laws are enforced, officials held accountable and reforms proposed. One party government can—and has—frustrated democracy.

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C. Rule of Law

18. Restrict Presidential Signing Statements

Since President Bush took office in 2001, he has issued more “signing statements” than all three of his predecessors combined—more than 750, according to a widely-cited estimate of Charlie Savage in the *Boston Globe*. Worse, he’s used them not to interpret laws but in effect to veto them.

Presidents traditionally used these signing statements to sparingly express their own interpretation of legislation while signing bills into law; in the event that a particular law ends up in court, judges can include the president’s interpretation along with legislative language and intent to clear up any ambiguities about the law in question.

Yet this administration has employed the signing statement as though it were a virtual line-item veto—a kind of all-powerful fiat. President Bush signs a bill into law and then announces in his signing statement his authority to circumvent that law—like restrictions on torture or opening Americans’ mail without a warrant—ignoring mandatory legislative provisions and treating them instead as merely advisory or precatory ones. In short, the president unilaterally grants himself the power to selectively enforce the duly enacted laws of Congress, notwithstanding a two century precedent of judicial supremacy in resolving constitutional or statutory disputes according to *Marbury v. Madison*. The current administration has made signing statements the preferred device for the expansion of presidential power, a tool that it routinely uses to realize its theory of the “unitary executive.” The American Bar association called the President’s use of signing statements “contrary to the rule of law and our constitutional system of separation of powers.”

Legislation designed to reduce the legal authority of signing statements runs the risk of doing just the opposite. By calling for more legal justifications for signing statements, Congress could actually underwrite their legitimacy. The more attention signing statements command as viable commentary on given legislation, the more authority an executive might claim to acquire beyond his constitutionally specified powers.

Therefore, it is imperative to craft legislation that focuses on specific avenues for oversight—both from the courts and from Congress. To begin with, legislation could include provisions that give Congress “standing to sue” when the president announces plans to enforce only parts of a bill. Moreover, Congress should make use of one of its oldest and most formidable tools to keep the executive in much-needed check: its power of oversight through investigative committee and the withholding of appropriations. To avoid the usurpation of legislative powers, Congress needs to engage in regular and thorough investigations of presidential action after a signing statement is issued. It also must withhold appropriations when a president shows his disregard for legislative intent or procedure. Then, as now, the courts could restore checks and balances rather than delegate all legislative interpretation to one-man rule.

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19. End Torture, Not Habeas Corpus

Democracy has been unnerved since 9/11. A country that was famous for its heritage of liberties has become a country that winks at torture. To be sure, President Bush insists when asked that “we don’t torture.” But the mounting evidence of abuse—those photos at Abu Ghraib, the scores of first-hand accounts, and the piles of Justice Department documents instructing that torture is okay—all tell a different story.

Today, America is seen around the world as a nation that tortures. For example, although the form of torture known as “waterboarding” was used by the Gestapo, the Khmer Rouge, North Koreans and Japanese—where we held it to be a war crime after 1945—President Bush has twice refused to condemn the practice when asked in separate interviews by the Today Show’s Matt Lauer and FOX’s Bill O’Reilly. Indeed, when one FOX journalist asked Vice President Cheney if “dunking someone under water to get information isn’t a no-brainer”, Cheney replied, “it is to me.”

At the same time, the Administration has shown callous disregard of long-standing liberties. In a kind of etiquette for killing, armed conflict has long had rules and laws. And since the Revolutionary War, Americans have prided themselves on their just treatment of prisoners of war. This tradition has been ignored. Worse, the President has claimed power to wield the detention powers of the battlefield against citizens in the American heartland. American lead the world when it came to the 1949 Geneva Conventions, and now 192 nations are party to them. Today, the Bush Administration has rushed to abandon those rules, endangering in the process American soldiers’ well-being in future conflicts.

While some may regard these extensive policies on how to conduct themselves and treat prisoners as roadblocks to victory, the president of the Israeli Supreme Court, Ahron Barak, noted that “sometimes a democracy must fight with one hand tied behind its back. Nonetheless, it has the upper hand. Preserving the rule of law and recognition of individual liberties constitute an important component of [a democracy’s] understanding of security.”

When the U.S. puts at risk “the moral basis of our fight against terrorism,” as General Colin Powell has explained, we also put at risk our nation’s security. The President’s constant refrain that “we’re at war” and need for good intelligence simply doesn’t fly as a practical matter. It might work in the world of hit television show 24, but not in the real world. Here’s why:

- there has never been a real “ticking bomb” terrorism scenario;
- there is no evidence that torture produces reliable intelligence;
- torture degrades and dehumanizes those who use it; and torture places us at greater risk because:
 - it produces more angry recruits for the other side;

- it puts at greater risk our own soldiers when they're apprehended;
- it makes it harder to get wavering enemies to surrender; and;
- it compromises our ability to argue for international human rights norms.

This debate culminated in the summer and fall of 2006 when the Supreme Court invalidated the President's military commission plan and held that the minimal protections of the Geneva Conventions applied to all combatants. Instead of complying with that ruling of the Court, the Republican Congress in effect stuck its finger in the Supreme Court's eye. Passed in 2006, the Military Commission Act:

- allowed the president to unilaterally draft executive orders to define what levels of pain and torture were permissible under the Geneva Conventions;
- stripped lower courts of jurisdiction to hear habeas corpus filings; and
- permitted the use of coerced testimony, hearsay and classified evidence against defendants.

In a Senate hearing on the pending bill, former United States Attorney Thomas P. Sullivan, representing detainees at Guantanamo, told senators that "I believe that if this bill is passed with these habeas-stripping provisions, then after I am dead and the members of this Senate hearing are dead, an apology will be made just as we did for the incarceration of the Japanese citizens in the Second World War. This is shameful and momentous."

Torture is un-American, immoral and counter-productive. The right of "habeas corpus" (literally "produce the body"), to the contrary, is a cornerstone of constitutional justice. We need to return to proud American traditions that repudiate torture and restore liberty rights. This means repealing the torture rules, the "enemy combatant" provisions and the habeas-stripping provision of the Military Commission Act. Senator Chris Dodd (D-CT) has already made proposals to this effect.

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20. Ban Federal Funding for Programs that Proselytize

The United States is a secular democracy, with the “Establishment Clause” of the very First Amendment making clear that government can’t control religion—and religion can’t control government. So the current expansion of funding and the relaxation of safeguards for “faith-based initiatives” demand closer scrutiny to ensure that taxpayer dollars are not spent on proselytizing or supporting discrimination.

Churches and other faith-based organizations (FBOs) have long been appropriately and significantly involved in providing social services. In the past FBOs interested in federal funding were required to set up a separate 501(c)3 non-profit organization that served two important functions: protecting the parent church from legal risk and ensuring that there was no proselytizing to clients. Yet the current White House Office of Faith-Based and Community Initiatives (OFBCI) does not require churches to set up a secular non-profit and has provided billions to them through grants. There is little oversight preventing grantees—who received at least \$2.1 billion in 2005—from using government funds to proselytize while providing social services. Mentorkids USA, for example, is a Christian group that keeps track of whether their at-risk youth clients had “discussed God” or “accepted Christ this month”; a federal court found that Mentorkids was illegally using faith-based initiative grant money to “advance religion.”

Faith-based grantees are also allowed, by default, to discriminate in hiring based on the teachings of their religion, despite civil rights-based federal regulations. (President Bush has asked Congress to codify this right.) FBOs, taking government money, can reject job applicants because they are of a different faith or are believers not in good standing with the church—say, an evangelical taking birth control. That Mentorkids program required mentors to sign a statement agreeing that they believed “in one holy, universal and apostolic church.”

In order to preserve religious freedom and social services for every member of our democracy, Congress should: 1) require churches, synagogues and mosques to set up a secular 501(c)3 in order to receive federal funds, 2) prohibit religion-based employment discrimination in any federally-funded organizations, and 3) create legislation protecting beneficiaries of social service programs from religious discrimination or preaching. This final step is the most important, because a program meant to help the neediest in our democracy should not trample on the rights of those it helps.

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21. Teach Science-based Science in Classrooms

The teaching of religion-based doctrines in science classrooms—better known as creationism or “intelligent design” (ID)—has the potential to blur and compromise Jefferson’s vaunted “wall of separation” between church and state. The teaching of evolution in public schools should be a religion-neutral issue, but religious conservatives have transformed it into a false debate between religion and science.

The contentiousness over creationism has caused both sides to misrepresent the debate. Proponents of creationism or ID have framed the issue in terms of offering a “critical analysis” of evolution or simply providing another point-of-view, which has led to denigration of evolution supporters as “anti-religious” or “anti-critical.”

But “critical analysis” does not mean that creationism is a valid critique of evolution, nor does it mean that “critical analysis” is left out of science. While scientific inquiry does hinge upon provable observations, this method of inquiry is not incompatible with religious faith. Defenders of scientific inquiry should be careful not to alienate religion but instead stress the different places that science and religion occupy, especially in a secular democracy like America’s.

An effective solution is to acknowledge that the relationship between science and religion is a valid topic for analysis, though not one that creates a fruitful discussion in the science classroom. It is instead a discussion best reserved for social studies classes, courses on religion or society at large.

In November of 2005, all eight school board members running for re-election in Dover, Pennsylvania lost to candidates supported by Dover C.A.R.E.S. (Citizens Actively Reviewing Educational/Economic Strategies), a group formed to keep creationism outside of the science classroom. Before the election, the Dover school board gained national attention for being the first to introduce “intelligent design” as an alternative to evolution in science classes. Dover CARES supported all eight challengers and focused the debate on keeping rational inquiry at the heart of science while keeping concepts such as creationism in the realm of humanities-based classes. In a district where 70 percent of voters are registered Republicans, the sweep demonstrated a bipartisan triumph for scientific integrity.

As U.S. District Judge John E. Jones said in his rebuke to Dover’s board members, there is “overwhelming evidence [that ID] is a religious view, a mere re-labeling of creationism, and not a scientific theory.” Private religion should be kept out of public science classrooms and instead left to our homes, churches and synagogues, where it belongs. The “wall of separation” as embodied in the First Amendment exists to protect people of all faiths to practice their beliefs free from government coercion.

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22. Pass the Employment Non-Discrimination Act

The federal Employment Non-Discrimination Act (ENDA) would bar workplace discrimination against gays and lesbians in hiring, firing, promotion or compensation, a vision of equality supported by a vast majority of Americans in polls. The bill – S.1705 sponsored by Sen. Edward Kennedy (D.-MA) and 44 other senators in the 108th Congress in 2003—has languished while millions of hardworking Americans suffer workplace discrimination for an inherited sexual orientation.

Such discrimination strikes at a fundamental American value: the right of each individual to do his or her job and contribute to society without facing unfair bias. Fairness in the workplace has been protected under federal law in cases around the country. That’s why federal law currently provides legal protection against employment discrimination on the basis of race, gender, religion, national origin or disability. But sexual orientation or gender identity remain unprotected categories.

Fourteen states and the District of Columbia have passed laws prohibiting discrimination based on sexual orientation. Most of these laws are broader in scope than ENDA, covering discrimination not only in employment but also in housing and public accommodations—meaning the federal government will have a lot of catching up to do even after ENDA is enacted.

Indeed, protecting sexual minorities on the job has become the standard at most large corporations (many of whom have publicly endorsed ENDA). And according to the Government Accountability Office, such protective measures have not led to much litigation, despite the speculation of opponents. Nor does ENDA punish “thought crimes” or create “special rights” as other critics insist; indeed, the bill explicitly prohibits preferential treatment and quotas. In addition, it exempts small businesses, religious organizations and the military, does not require benefits to the same-sex partners of employees and does not allow the remedy of affirmative action for the lasting consequences of such discrimination. ENDA would simply afford to all Americans basic employment protection from discrimination based on irrational prejudice.

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23. Provide Civil Right to Counsel

According to the landmark 1965 Supreme Court decision of *Gideon v. Wainwright*, if you are charged with a crime, face prison and are unable to afford an attorney, the U.S. Constitution requires that one be appointed for you. But in civil cases, where you may suffer from losing your child or your home—consequences as potentially staggering as a stint in prison—no counsel is guaranteed.

Most low-income people with civil cases involving basic human needs proceed without counsel, unable to effectively present their claims. If one side lacks counsel in a civil case involving, say, the possible loss of a home, child or significant income, it is difficult for a judge to dispense “blind justice.” In a democracy where the judiciary has primary responsibility for protecting individual rights, this is fundamentally unjust.

One part of the solution is to increase funding for civil legal aid lawyers. The Legal Services Corporation, which distributes federal funding to finance legal assistance throughout the country, receives only a fraction of the revenue needed. As a result, more than half of those who request such assistance are turned away.

Another part of the solution is to expand the civil right to counsel. Counsel is currently guaranteed by some states in limited categories of civil cases—for example, to parents facing a permanent termination of parental rights or to mentally ill people facing involuntary civil commitment. But few states promise counsel to parents charged with child neglect or abuse, and only two states promise counsel to parents disputing child custody. And no state guarantees counsel to those facing eviction.

In 2006, the American Bar Association called on states to provide counsel in “adversarial proceedings where basic human needs are at stake.” Taking up the challenge, state and local bar associations are urging adoption of “civil right to counsel” laws. And civil right to counsel lawsuits, grounded in state constitutions, are now pending in several states.

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24. Create a Real Civil Liberties Protection Office

After September 11, 2001, an anxious Congress expanded executive and law enforcement authority to fight terrorism. That authority has often been abused.

The U.S. still detains some 400 people at Guantanamo Bay, most for years, without charging them with any crime. Graphic images from Abu Graib repulsed the nation, raising further concerns about our country's adherence to international treaties and the most basic human rights standards. Use of extraordinary rendition—the practice of transporting non-Americans to secret locations in foreign lands where interrogators use torture techniques—has increased.

Closer to home our nation's intelligence agencies have conducted electronic surveillance on Americans. They have millions of potential targets, not just terrorists, in their sights in violation of the Foreign Intelligence Surveillance Act. And under a secret Bush administration program initiated weeks after the World Trade Center attacks, counter terrorism officials gained access to financial records from a vast international database and examined banking transactions involving thousands of Americans and others in the United States. The President has even reserved the right of postal inspectors to open mail without a warrant. Each day it seems that new revelations of secret counterterrorism operations come to light – operations that undermine the liberties, protections and democracy we are seeking to export abroad.

The National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) was so concerned with overreaching by government in the name of counterterrorism that it urged Congress to create an oversight board housed within the executive branch to look out for civil liberties abuses during this time of expanded authority. The Commission realized the urge to override civil liberties and to take any steps available to get the “bad guys” can be overpowering. While federal law enforcement focused on finding and prosecuting people, another federal agency, the Commission realized, was needed to focus on protecting people's rights.

Our nation needs to build an institutional voice empowered to expose attacks on civil liberties in the name of law enforcement. This is by no means a radical idea. Analogues exist on the local level, where jurisdictions have developed “citizens complaint review boards,” independent agencies outside the police department that can take an objective view when questions of police abuse or misconduct arise.

In December 2004, Congress did create the Privacy and Civil Liberties Oversight Board, but it exists more on paper than in practice. The Board lacks funding—its \$1.5 million budget pales in comparison to the \$13 million budget of a Homeland Security's privacy office alone. The Board lacks access to information—a year after the media uncovered the illegal eavesdropping program, the NSA briefed the Board about it. The Board also lacks the authority to subpoena documents and does not have independence because all of its five members serve at the President's pleasure. If Congress has created separate departments to advocate for commercial, agricultural, environmental and educational interests, why not an agency to advocate for civil liberties?

Congress needs to create a real oversight agency, one with the resources and power to identify, investigate and eliminate civil liberties abuses existing within the federal government. The agency must be

independent, include presidential and congressional appointees, and receive substantial funding—like a fixed percentage of the Department of Justice funding—so it can fulfill its mission without fear of arbitrary or vindictive budget cuts by a president or congress. That mission might include investigating reported abuses of terrorism suspects held in the U.S., subpoenaing information on surveillance programs by the NSA, requesting that Congress hold hearings on alleged civil liberties abuses and writing an annual report on the state of civil liberties in a time of terror.

Representative Carolyn B. Maloney has introduced H.R. 1310, the Protection of Civil Liberties Act, for herself and 23 bipartisan co-sponsors, that would reconstitute the Privacy and Civil Liberties Oversight Board as an independent agency within the executive branch, make all appointments to the board's membership subject to Senate confirmation and limit the board's partisan composition to not more than three members from the same political party. Currently, all but one of the oversight board's members is Republicans. But legislation protecting civil liberties need not only stand alone. Each time Congress enacts a piece of terrorism-fighting legislation, it should also include safeguards to ensure the protections of civil liberties as well.

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D. Secrecy & Democracy

25. Strengthen the Freedom of Information Act

Since assuming office, the Bush Administration has consistently and blatantly attacked the Freedom of Information Act (FOIA). The law—signed by Lyndon Johnson in 1966—was premised on the ideas that a) taxpayers who paid for information should have access to it and b) a strong democracy presumed knowledgeable citizens. The law marked the first time that Americans had the right to access federal agencies’ records funded with their tax dollars. Government would now presumptively disclose information within twenty business days unless it could demonstrate one of nine exemptions that allow the government to keep information secret, including classified material, trade secrets, and personal information affecting a person’s privacy.

However, the Bush Administration has in effect reversed this presumption. In 2005, for each \$1 spent declassifying old secrets, federal agencies spent \$148 creating and storing new secrets. In addition, the pace of classification has jumped by 75 percent since 2001, reversing the Clinton administration’s desire for openness as the official presidential policy. An internal memo from October 2001, circulated by then attorney general John Ashcroft, spells out how agencies should look for any reason to deny these requests or defer to administration allies in the Department of Justice. The note implicitly encourages interminable delays in processing those FOIA requests, lowering the chances for any timely or effective oversight action.

In one swoop, Bush and Ashcroft reversed a decade-long trend in how our government interacts with the governed: instead of routinely granting FOIA requests unless there was a clear exemption under the law, this duo decided to deny every request unless legal action was threatened against them. Charges for processing these requests also jumped considerably. When People for the American Way tried to obtain papers about the detainees rounded up after September 11—who were being prosecuted in secret and denied due process and habeas corpus—the Justice Department demanded the non-profit organization pay \$373,000 in “search fees” before they would even begin looking.

The Bush Administration has seized the war on terror as its justification for restricting information, citing one of FOIA’s nine exemptions: information “specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy.” This language essentially allows the President to hide whatever they want behind the curtain of “national defense or foreign policy.”

The bipartisan Open Government Act and Faster FOIA Act—both sponsored by Pat Leahy (D-VT) and Senators John Cornyn (R-TX)—were attempts in 2005 to strengthen the original principles that guided the creation of FOIA. These proposed laws would help FOIA requesters receive timely responses and establish a hotline where citizens could track the status of their requests. Leahy and Cornyn are expected to reintroduce these measures in the 110th Congress. Enacting them would significantly advance the principle of transparency as a cornerstone of democracy.

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26. Publish Budgets for Every Government Agency

Every government agency should make its budget easily accessible to the public in a timely fashion. Specifically, budgets should be available online and with the related budget justification documents, already presented to Congress, to explain the rationale. While taxpayers technically have the right to see appropriations under the Freedom of Information Act, agencies are too often withholding too much under the guise of “national security” concerns. As a result, inquiring citizens are frequently denied access to the information needed to ensure government officials are held accountable for their actions.

The publication of budgets has long been a tool for accountability. Transparency obviously helps prevent budget abuses—think Alaskan Rep. Don Young’s “bridge to nowhere”—and law-evading on the part of government leaders. There can be no easy reliance on dirty tricks and extraordinary rendition “black site” slush funds when the public—especially knowledgeable advocates, activists and scholars—can see where the money is going. That is why the publication of previously classified budgets was one of the recommendations of the 9/11 Commission. This proposal would combat the excessive secrecy that undermined government performance in the lead up to September 11th and presumably the Iraq War.

Of course, federal agencies overuse the argument that “national security” will be jeopardized if they are required to provide details and estimates on their spending. (American citizens provide all that information when they pay their own taxes, which is what entitles them to this budgetary information in the first place.) In response, Congress should enact legislation that Senators Barack Obama (D-IL) and Tom Coburn (R-OK) introduced in 2006 that would require the Defense Department to publish all budget justification documents online within 48 hours of delivering those documents to Congress. All government agencies should not only be required to do the same, but Congress should also set a strict and narrow definition of what materials can be redacted due to “national security” concerns. The United Kingdom, the Netherlands, and Canada, to name a few countries, all publish information on their national intelligence spending, putting the lie to the test to those who insist that secrecy is essential to the survival of democracy, when in fact it’s transparency that is essential to democracy.

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27. Reduce Media Concentration

Since the Reagan era, the Federal Communications Commission (FCC) has increasingly handed power back to corporate media giants, devaluing local broadcasting and ownership. As media ownership has been deregulated, the few mechanisms the FCC has—such as restricting cross-ownership of print and broadcast media in the same community—are in danger of being eroded by those more interested in the bottom line of maximum profits rather than the Federal Communication Act’s standard programming in “the public interest.”

The FCC must enact cross-media ownership rules that prohibit one corporate owner from monopolizing print and electronic news in a defined population area to preserve local programming, including the voices of historically silenced people.

The logic of “deregulation” is that if the government places fewer restrictions on corporations, then the market will promote competition and advance consumer interests. But due to imperfections in the market for scarce broadcast space, in reality the effects of “deregulation” have nurtured the growth of corporate giants like Clear Channel, which owns over 1,200 channels, and has virtually eliminated local voices and further undermined the concept of airwaves as a public utility. Because the dominance of large corporations makes it nearly impossible for community-based channels to start up or survive, the loosening of FCC regulations has led to the loss of local journalism.

In 2003, then-FCC Chair Michael Powell was determined to gut longstanding rules designed to prevent the growth of media monopolies. Among other things, regulations prevented one broadcast network from owning another and prohibited a company from owning cable TV systems and over-the-air TV stations in the same community; they also prohibited ownership of newspapers and TV stations in the same community. If Powell had gotten his way, more media mergers would have dramatically altered the media landscape and diminished local access to the media.

But the public and a unique coalition of liberal and conservative activist groups mounted an unprecedented protest against the rule changes. More than two million Americans contacted Congress and the FCC arguing for the retention of limits on media monopoly—including groups as varied as the NRA and MoveOn.org. As media scholar Robert McChesney says, “Whatever your first issue of concern, media had better be your second, because without change in the media, progress in your primary area is far less likely.” Public outcry reached such a pitch that the House and Senate took action to override some or all of the rules, and in 2004 a federal appeals court overturned the FCC proposal. The court specifically rejected the idea of cross-ownership as well as the FCC’s flawed methodology of using a “diversity index” to measure the different media in local communities.

Current FCC Chair Kevin Martin is now proposing a new round of rule changes that would again try to increase media consolidation. He seems especially eager to get rid of two important protections: the “newspaper-broadcast cross-ownership rule,” which currently disallows companies from owning a television or radio station and the major daily paper in the same area; and the local ownership limits that keep a company from owning more than one television station in most markets (they are allowed to own two as long as there are eight other competitors, but this only applies in large markets). Again, as in 2003—or until the FCC has a different composition—only public pressure and congressional action can avoid greater media concentration and recreate the “multiplicity of tongues,” in Judge Learned Hand’s phrase, that is at the core of the First Amendment. The public must again rise up to oppose the move toward greater monopoly, and congressional pressure will go a long way in keeping the FCC from gutting the current rules.

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28. Restore the Office of Technology Assessment

The Congressional Office of Technology Assessment (OTA) should be restored to provide authoritative and objective analysis of complex scientific and technical issues for the federal government. From 1974 to 1995, the OTA had been a small department in the federal government providing numerous, accurate reports for policymakers.

Thus the OTA was a kind of public advocate for the scientific community nested within the government itself, abrogating misinformed policies on topics from the effectiveness of AIDS prevention techniques to the application of solar technology to national energy needs. In the frenzy of the budget-stripping 1990s, the OTA was killed off, despite its comparatively tiny annual budget of \$22 million and universally lauded product.

But such a body is very valuable in a democracy where good information is a perquisite to good policy, especially where officials are asked to legislate and extemporize on issues often difficult for laypeople to understand. The OTA at least offered a neutral and governmental countervailing force to those who had a self-interest, political interest or ideological need to disregard the fact-based reality of a situation—most

obviously, President Reagan's "Star Wars" missile defense and the current President Bush's approach to the stem-cell and Plan B issues.

Over the last five years, Rep. Rush Holt (D-NJ) has introduced several bills that would bring back the OTA with a budget of \$20 million annually, but none have succeeded despite having significant support. Similarly, Sen. Jeff Bingaman (D-NM) introduced a bill in 2004 that would have funded technology assessment through the Government Accountability Office. His legislation argued that "it is important for Congress to be better informed regarding the impact of technology on matters of public concern, including implications for economic, national security, social, scientific, and other national policies and programs." Restoring the OTA will once again help bring discussion of what is scientifically feasible and shift debate out of the heavens and back to Earth.

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29. Subject Government Contracts to Open Bidding

Government contracts should be transparent, subject to public disclosure and open to intense competition. Competition encourages innovation and savings for taxpayers, in addition to preventing waste and abuse. But in recent years, the awarding of no-bid contracts has increased. According to the Project on Government Oversight, at least 45 percent of the \$329 billion the federal government spent in fiscal year 2004 was awarded without competition.

While no-bid contracts are sometimes necessary in emergency situations—such as during the early weeks after the Hurricane Katrina disaster—they should be used sparingly. Although the hurricane hit August 29, in the six months following November 30, 2005, fifty percent of contracts to rebuild the Gulf Coast were awarded without competition. In June 2006, the Government Accountability Office found that up to \$1.4 billion in Hurricane relief funds were wasted through improper and possibly fraudulent payments—surely much of this money would not have been squandered if there had been open bidding and intense oversight on the funds.

Fraud, waste and abuse of government funds by private contractors have also been rampant in Afghanistan and Iraq, where the awarding of no-bid contracts has been widespread. Examples abound: in 2003, Halliburton subsidiary KBR received a no-bid contract for \$2.4 billion to restore oil services in Iraq, and their substandard work prompted the Defense Contract Audit Agency to challenge \$200 million in fuel contracts. Despite this red flag, KBR was awarded a competitive contract for \$1.2 billion to do similar work the following year, giving the company ample opportunity to overcharge and do poor work. Pentagon auditors eventually challenged \$45 million of \$365 million in reviewed costs, citing a long list of abuse by KBR, including: “paying a supplier more than it was due”; cutting cost estimates in half when “pressed on its true expenses”; and billing “for work performed by the Iraqi oil ministry.”

If there’s no competitive bidding, taxpayers will pay more while corporations seek profits without efficiency. A transparent bidding process should be established that is opened to contractors of all sizes. When no-bid, limited-bid, sole-source and classified contracts are awarded, close oversight should determine whether the lack of competition was essential. Congress should eliminate loopholes in existing legislation—such as the *Competition of Contracting Act of 1984*—that prevent full and open bidding.

There also needs to be increased oversight of how contractors are spending federal dollars. Senators Barack Obama (D-IL) and Tom Coburn (R-OK) have introduced various bills aiming to increase oversight; one law successfully created an Internet database to track federal spending. Another proposal by the two senators would have established a Chief Financial Officer to oversee Gulf Coast reconstruction dollars before they were spent. In June 2006, Senator Byron Dorgan (D-ND) proposed an amendment to the Pentagon Budget that would have established “a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.” Because it was barely defeated by the then-Republican majority Senate, Dorgan is likely to introduce it in the new 110th Congress.

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30. Strengthen Whistleblower Protections for Federal Employees

From Dan Ellsberg revealing the Pentagon Papers to Joe Darby exposing the torture at Abu Ghraib, whistleblowers have played an important role in maintaining honesty and integrity in government. Unfortunately, federal employees—especially those in the security agencies—are finding themselves with fewer and fewer protections against retaliation should they decide to come forward. Threatening the careers and livelihoods of truth tellers who would report wrongdoing is counterproductive, making Americans less secure.

The whistleblower protection system has deteriorated to the point where even sympathetic experts try to discourage would-be truth tellers. William Weaver, a senior advisor to the National Security Whistleblowers Commission, said, “When I get calls from people thinking of blowing the whistle, I tell them, ‘Don’t do it’...[they] end up with their lives destroyed.” The problem is two-pronged: 1) employees at the FBI and intelligence agencies like the CIA and NSA were never protected under the 1989 *Whistleblowers Protection Act* (WPA), and 2) protections afforded to other federal employees under WPA have been consistently weakened by federal courts. The result is that employees are stripped of their security clearances, pressured into resigning or fired outright.

The Government Accountability Project (GAP), with nearly 30 years of experience advocating for whistleblowers, has published a best practices policy for protecting government employees. Strong legislation to shield a whistleblower’s career and expose wrongdoing needs to address five areas:

1. Protections must have wide coverage. This allows whistleblowers to give a wide range of evidence, make a report to a wide range of people and expose a wide range of abuses. Legislation must also protect anonymity and those who are seen as aiding a whistleblower.
2. Protections must guarantee whistleblowers a true day in court and other alternatives for dispute resolution for any labor-management issues.
3. Protections must set realistic standards by which whistleblowers can prove illegal retaliation and must set a minimum of three months before whistleblowers automatically waive their rights.
4. Protections must provide real relief for vindicated whistleblowers including comprehensive compensation, interim relief, coverage of attorney fees, the option to transfer and require personal accountability for violators.
5. Protections must provide for a credible corrective action process including consulting the whistleblower, complete transparency and allowing whistleblowers to file “qui tam” actions.

The previous congress nearly expanded whistleblower protections to employees in the security community but provisions were ultimately cut from the 2007 Defense Authorization Bill. Also, Rep. Ed Markey (D-MA) had introduced H.R. 4925, a bill that GAP called the “gold-standard” in whistleblower legislation. With such recent movement, advocates are hopeful that the 110th Congress will pass three bills—S. 274, H.R. 1317 and H.R. 5512—that would result in the same protections.

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E. The Economics of Democracy

31. Create a Living Wage

In 1968, the minimum wage was \$1.60. Adjusted for inflation, in today's dollars that would equal \$9.28, which is a good goal for reformers to aim for. To ensure the minimum doesn't stall at that number for several years, advocates should promote legislation that ensures that the living wage is adjusted for inflation. In addition, loopholes in minimum wage laws that leave workers vulnerable should be closed, and greater enforcement of wage laws should be promoted so workers are able to collect what they have earned.

An increase to \$9.28 or even \$7.25 would ease economic pressures for working families, disadvantaged, and low-wage workers. One-fourth of minimum wage workers have children under 18, including 1.4 million single working parents. Because a wage increase primarily affects those below, at or just above the poverty line, it will automatically assure help to those who need it most. So it would also help historically disadvantaged groups such as women, Blacks, and Latinos. In addition, studies show that increasing the minimum wage—and therefore the purchasing power of working families—leads to an increase in employment, especially in lower-wage communities.

Due to inflation, the buying power of the minimum wage has been steadily eroding. America's lowest-paid workers now receive less per hour, in real terms, than in any point in the past fifty years. Working a 40-hour week, a worker earning minimum wage brings home less than \$11,000 a year. The goal instead should be: "make work pay."

Critics say that the minimum wage hurts small businesses which have to lay off workers if pay goes up, but a study by the Center for American Progress and Policy Matters Ohio compared states with only the federal minimum versus states above the federal minimum: employment in small businesses grew 50 percent more in states with a higher minimum wage and inflation-adjusted small business payroll. Growth was again half as much more in high minimum wage states.

Understanding that it didn't help business if his workers wouldn't buy his product, Henry Ford in 1914 unilaterally introduced his own minimum wage for Ford employees by doubling average pay. Raising wages "has the same effect as throwing a stone in a still pond," said the industrialists by creating an "ever-widening circle of buying."

Washington today could take a lesson from Detroit then. The current minimum wage has stalled at \$5.15 for ten years, and the federal government's inaction on increasing the minimum wage has prompted states and cities to raise the minimum wage for their jurisdictions. Indeed, in January 2007, the House voted to raise the federal minimum wage to \$7.25, phased in by 2009—and Senate passed a version but only if linked to tax cuts for small businesses. It's now not clear what, if anything, might emerge from a conference committee. This is progress, though not nearly a large enough increase. Rather than engage in a continuous game of catch-up to raise the minimum wage after long stretches of time, reformers should focus on establishing a federal living wage, adjusted each year to reflect increases in the cost of living.

In 2004, the minimum wages for red states Florida and Nevada were raised by statewide ballot initiatives, with majorities of 71 percent and 68 percent respectively. There were also five minimum wage ballot

initiatives in 2006 as voters in Arizona, Colorado, Missouri, Montana and Ohio all voted to raise the minimum wage for workers in their states; legislatures in Arkansas and Michigan also raised it for their workers.

Democracy doesn't presume any particular wage, but if the gap between the top eschelon and the bottom 25 percent grows too large, millions of citizens cannot enjoy the promised benefits of a democracy. It's essential to enact a living wage indexed to inflation so working people can afford the necessities of life.

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32. Establish Child Savings Accounts

The United States government should endow a Child Savings Account (CSA) for every child to ensure that every American has a “starter kit” for success. In today's America, the positive correlation between financially secure parents and successful children is growing as the divide between the rich and poor widens. These accounts would serve as a kind of early IRA, guaranteeing that children of all income brackets and ethnic origins will have such options as pursuing college studies or starting a business.

Following the British model of child trust funds, the government would provide parents with vouchers for \$1000-\$2000 to start a CSA for each of their children. Parents can then decide how to manage these long-term savings accounts or have the government manage them. Families will be encouraged to add to these tax-free accounts, and additional vouchers will be available to low-income families who can not make the same contributions that wealthy families can as a child grows. CSA savings can only be withdrawn only when a child turns 18. In order to protect low-income families and the usefulness of a CSA, households will not become ineligible for any tax credits they may otherwise receive when a child turns 18 and claims the funds.

Much like the 1944 G.I. Bill, which invested in millions of veterans by helping them attend college or buy a house, CSAs will ultimately build a stronger American economy and society. As children participate in financial decisions as they approach 18, they will be encouraged to pay more attention to the market and the daily politics of the government—you'll get involved if your own money is at stake. Especially since the American savings rate in 2006 went negative for the first time since the late 40s, CSAs will naturally teach children to save from a young age, encouraging life-long financial planning.

Proponents of similar programs propose using the much-debated estate tax to fund the program. According to United for a Fair Economy, a modest tax on inheritances over \$10 million would create, conservatively, an annual fund of more than \$150 billion in the near future given the enormous transfers of wealth expected from baby boomers to their children. Peter Barnes, a multi-millionaire and member of Responsible Wealth, writes, “I was lucky enough to have parents who paid for my education at Harvard, helped me purchase my first home and invested in my first startup. Now I’ve established trusts funds for my sons to do similar things. But what about the millions of American children who aren’t as fortunate as mine?” CSAs would be a cashing of the promissory note of American democracy.

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33. Tax All Income Equally & Adjust the Alternative Minimum Tax

Far from its original purpose, the alternative minimum tax (AMT) is increasingly trapping the middle class with high tax bills yet still allowing the nation’s richest to use tax shelters and pay decreased tax rates. Enacted in 1969, the AMT was meant to make sure the super-rich paid at least a minimum level of taxes, even if a series of neatly applied shelters and loopholes allowed them to escape any liability. Unfortunately, the AMT is not indexed to inflation and newer tax laws have created loopholes outside the AMT, so more middle class households are being caught up in a net that catches fewer big fish.

According to the Brookings Institution, by 2010 the AMT will hit 37 percent of middle class households making only \$50,000-\$75,000 and 73 percent of those making \$75,000-\$100,000. These are staggering numbers considering that less than 3 percent of households in either bracket paid the additional tax in 2002. The AMT threshold is set at what “wealthy” was in 1969 and has never been adjusted, so many of today’s—and most of tomorrow’s—AMT households aren’t rich but are taxed as if they are.

The National Taxpayer Advocate, a government IRS watchdog, has consistently ranked the AMT as one of the biggest problems facing taxpayers. Fixing it requires more than a simple repeal because, untouched, it could raise as much as \$1.3 billion for the U.S. Treasury over the next 10 years and because without the AMT some of the wealthiest Americans would likely continue to avoid paying income taxes. As recommended by the Center for American Progress, the ideal fix would an overhaul of the entire tax code with all types of income from salary to dividends taxed under the same rate structure. Why should earnings from labor be taxed at higher rates than earnings from passive investment? Only when the code is purged of income tax loopholes and shelters can we seriously consider a full repeal of the AMT.

Short of such complete reform, the next best ways to protect the middle-class are to 1) index the AMT to inflation as has been proposed several times in Congress and 2) set a minimum threshold of \$100,000 under which taxpayers are exempted from the AMT, as suggested by the *New York Times*. To really ensure

that average working people won't pay a higher percentage of their earnings in taxes than their bosses, these AMT fixes should be combined with tax credits for college tuition and a reinstatement of the estate tax.

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34. Restore Consumer Class Actions

This proposal is grounded in two truths about democracy. First, unless everyone has access to courts to vindicate their rights, we've abandoned a cornerstone of democracy called equal justice. Second, if corporations cheat consumers in bulk, consumers should be able to sue in bulk.

Imagine that a large auto reseller rigs its odometers; or an HMO regularly refuses to pay claims; or a drug company charges 25 percent over market because of a price-fixing conspiracy; or a retail outlet racially profiles its customers as they walk into the store; or a company misleads shareholders in its initial public offering. Now assume that each victim lost \$5,000 and that the costs of litigation would be \$50,000+ per case.

The only efficient way to recover damages would be for all victims of the same fraud to band together in a consumer class action to take the auto reseller, drug company or HMO to court. Too efficient, apparently. Just when business pages began to read like corporate crime blotters—from Enron, WorldCom, backdating of stock options, severance packages worth \$210 million—business lobbyists led by the U.S. Chamber of Commerce launched a years-long all-out assault on consumer class actions. They claimed that lawsuits and payouts had skyrocketed, even though they were falling, and that litigation cost businesses \$250 billion annually, even though the authors of that study and number—the insurance consulting company of Tillinghast-Towers Perrin—later said that it reflected the cost of running the insurance industry and was “not a reflection of litigated claims or of the legal system.”

But it worked. The combination of contributions, anecdotes and falsehoods led Congress to enact the so-called “Class Action Fairness Act” in 2005. It required that nearly all consumer class actions based on violations of state law and brought in state court be transferred to federal court, even though federal courts were over-loaded already and leading judicial organizations, including Chief Justice Rehnquist's Judicial

Conference, opposed it. Why federal courts? Because, admitted the Chamber, federal courts were less likely to agree to certify such large cases and would throw them out as “unmanageable.” So if 10,000 consumers in one state sued a company doing business in that state, the case wouldn’t be heard by judges familiar with state law but would be sent to a federal court if even a small minority of the plaintiffs were from another state or the defendant was headquartered in another state. Then in a Catch 22, certification would likely be denied and the case effectively would be over.

This business victory is predictably emboldening corporate interests to further reduce the civil justice and regulatory systems. The “Paulson Committee” is targeting the recently enacted Sarbanes-Oxley law and shareholder lawsuits by saying that since IPOs are up in London and Hong Kong but down in the U.S., the fault must be the law and lawsuits. *The New York Times* disagreed: “In fact, that share had been declining since 1996, even before the Asian financial crisis. It hit bottom in 2001 and has risen since. United States markets lost their dominance of initial stock offerings for numerous reasons that have little to do with regulation...”

With consumer class actions under such assault in the past decade, a new Congress and new President should try to restore and strengthen the civil justice system in at least four ways:

- Congress must conduct an “outcomes” study of the so-called “Class Action Fairness Act” (CAFA) to see if cases shifted to federal courts are being certified less often and are being dismissed more frequently.
- If CAFA has helped undermine state-law consumer class actions and their ability to deter corporate wrong-doing, CAFA should be revised to allow class actions to stay in state courts if at least a third of the plaintiffs allegedly damaged reside in a particular state and if the pre-CAFA jurisdictional requirements have been met.
- Congress should closely question the anecdotal and baseless assault on shareholder lawsuits and Sarbanes-Oxley before new building new walls between consumers and courts.
- To better deter fraud that costs consumers many millions in the aggregate, Congress should create a private right of action under the Federal Trade Commission Act to help consumers to deter and be compensated for unfair and deceptive acts and practices that occur on a multi-state or nationwide basis, much as consumers or citizens in states can act as “private attorneys general” under state consumer protection laws to supplement the activities of busy attorneys general.

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35. Assure Net Neutrality

The preservation of “net neutrality” is essential to maintaining the Internet as an interactive network where ideas can be shared freely without control over their content by corporate gatekeepers. To allow a few companies to dominate it, warned Marjorie Heins, Director of the Free Expression Policy Project, would mark the “end of the Internet as we know it.”

If companies can pay to have their content delivered over speedier and more reliable wires, and if Internet service providers only seek profits, then nonprofit advocacy groups, small businesses, and low-income families would endure significant disadvantages. Content would be delivered to the majority of users at slower speeds—and fewer citizens would have access to this diminished content. Without net neutrality, Internet service providers would effectively discriminate against content based on its source or ownership—or could directly block or slow down access to content they didn’t like.

Communications legislation with no meaningful net neutrality protection passed the House in June 2006; an amendment proposed by Representative Ed Markey (D –MA) to institute such protection failed. In the Senate, Ted Stevens (R – AL) has introduced telecommunications legislation without net neutrality language of any sort. Passage of his bill would mean the end of the free flow of online content, should broadband service providers choose to discriminate against online content that they disfavor.

Although the Telecom lobby is large and powerful, there is tremendous potential for grassroots activism on this issue—and already an expanding coalition of nonprofit groups, activists, and small businesses has slowed the passage of Senator Stevens’s bill. Until there is affirmative legislation assuring net neutrality, the immediate goal is simply to prevent its passage.

Visit www.savetheinternet.com – the leading grassroots campaign for the preservation of net neutrality. On its website, you can click on a map of the United States and see exactly where each senator stands on net neutrality. There are also updates on the status of the current telecommunications bill, and information about rallies and relevant events throughout the country.

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36. Bridge the Digital Divide

With the passage of the Federal Communications Act in 1934, Washington recognized that all Americans, rich and poor, should have easy access to some form of electronic communication. Now, with the explosion of internet use, ensuring universal access has become the latest and most important front in extending these basic rights to Americans who cannot afford to pay for high-speed internet. Only 20 percent of American households currently have high-speed Internet access; 35 percent of Americans use dial-up, and 40 percent don't have any Internet access at home. (That is, of course, to say nothing of the 35 percent of Americans who don't own a computer at all.)

In 1996, the idea of universal service was expanded in the Telecommunications Act to include three major goals: first, to increase access to advanced telecommunications services; second, to make services to all consumers, including those in low income, rural, insular and high cost areas; and finally, to promote the availability of quality services at reasonable and affordable rates. Since then, the digital landscape has changed—connecting to the Internet is no longer, in itself, sufficient to serve the public interest. Unless universal service includes advanced services like broadband access, we'll have another major class divide—not only between the rich and poor financially, but between the information-rich and information-poor. The former would be linked to the modern economy and culture, while the latter would be stuck in a rut on the side of the “information superhighway.”

The federal government needs to invest in high-speed networks so that universal access – actual universal access – can be a reality. Subsidies for such networks would be a start, initially funded by new fees on broadband providers and consumers. The creation of municipal broadband access is also an important step towards the creation of universal access. Such diverse places as Philadelphia, Pennsylvania; Chaska, Minnesota; Scottsburg, Indiana; Green County, North Carolina; Corpus Christi, Texas; and Los Angeles all have extensive Wi-Fi projects underway and furnish encouraging success stories. Though increasing municipal broadband access is a desirable step, universal access is a crucial goal that warrants a broad commitment.

Congress must expand the idea of universal service beyond the 1996 Telecommunications Act definition, ensuring that all citizens have access to advanced telecommunication services like broadband access. People living in rural or low-income areas cannot be left behind in the digital revolution.

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37. Review Corporate Compensation

In recent years America has been going through a new Gilded Age based on Oscar Wilde's observation that "Nothing succeeds like excess." But several maverick billionaires, such as Warren Buffet, Ted Turner and George Soros have cautioned that this new aristocracy of wealth can stifle growth because too much capital is controlled by heirs rather than innovators. Then in 2004, Fed Chair Alan Greenspan revealed, in his usual indirect way, what politicians wouldn't about growing disparities of wealth and income. "For the democratic society," he told Congress in testimony about growing income disparity, "that is not a very desirable thing to allow to happen."

The signs of our new aristocracy of wealth are everywhere around us. It's when Kenneth Lay earned \$100 million the year Enron went bust. It's when Jack Welch's retirement package—beyond a \$120 million payout—specifically includes Red Sox tickets, country club memberships, free use of a corporate jet and a Manhattan apartment for life—along with flowers, wine and laundry service. It's the bankrupted Delphi parts division of GM watching its new CEO, Robert Miller, seek a wage reduction from \$27 to \$10 an hour, while receiving a signing bonus of \$3 million. It's Forbes magazine's four hundred richest Americans being six times richer in 2005 on average than the four hundred richest in 1985, notwithstanding an intervening market crash. It's the top 10 percent earning 30 percent of all income from the 1940s to the 1970s, but 40 percent now.

If such riches were truly linked to performance—like the huge but earned rewards given to such pioneers as Edwin Land, Frederick Smith or Pierre Omidyar for creating the Polaroid Company, FedEx, and eBay, respectively—that would be one thing. Instead, excessive corporate pay and perks often result from the back-scratching between a CEO and his hand-chosen Board of Directors who create a system of "capitalism without risk"—i.e., pay goes up in good times as a reward, and pay goes up in bad times as an incentive. And why is it "class warfare" to point out that as the riches of a very few skyrocket in our "winner take all" economy, there's a growing income gap that traps millions in no-exit and low-pay work? As Warren Buffet refreshingly noted, there is a class war—except his echelon started it and is winning.

The SEC has properly pushed for more disclosure so at least shareholders and the media can see what's happening—although, as Graef Crystal notes, such disclosures largely enable compensation consultants to tell boards to raise compensation by pointing to anyone earning more than their top guys.

A better solution would be four-fold: first, require compensation committees of boards to be entirely comprised of independent directors so CEOs couldn't basically write their own ticket; second, force management and the board to disclose the names of their compensation consultants to assure they're not one and the same; third, as is done effectively in Great Britain, let shareholders make a non-binding vote on pay to help publicly pressure managers to follow pay-for-performance practices; fourth, allow shareholders a) to vote on "change of control" compensation schemes and b) to force managers to give some compensation back if it later had to restate earnings, as Barney Frank (D-MA), the incoming chairman of the House Financial Services Subcommittee, has proposed.

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38. Enact a Borrower's Security Act

Today Americans owe some \$850 billion in credit card debt or more than triple the \$238 billion in 1990. In addition, households cashed out \$715 billion worth of home equity between 2001 and 2005, much of it used to pay down high-cost credit card debt.

As incomes have fallen or stagnated and costs of basics such as health care, housing and college have all risen faster than inflation, many households are using credit cards as a private safety net. However, that net quickly turns into a vise thanks to a largely deregulated lending industry engaged in punitive and capricious practices.

Today there are no legal bounds to the amount of fees and interest that credit card companies can charge borrowers. In addition, credit card companies, unlike other lenders, are allowed to change the terms on cards at anytime, for any reason. As a result, cardholders often borrow money under one set of conditions and end up paying it back under a different set of conditions. Legal limits on interest rates and fees have traditionally been established by the states under "usury laws." But because card companies can export interest rates from the state in which they are based, consumers are left unprotected from excessive rates, fees and sudden changes in account terms.

A *Borrower's Security Act* would restore responsible credit practices to the lending industry by extending fair terms to borrowers. Specifically, legislation is needed to:

- Eliminate universal default terms by requiring that any penalty rate increase or fee increase must be linked to a material default directly related to a specific account with that lender.
- Limit penalty rate increases to no more than 50 percent above the account's original rate. (For example, a 12 percent interest rate could be increased to an 18 percent penalty rate.) This policy would still provide the issuer with significant additional protection against payment risk. Changes in bankruptcy laws have provided additional protection for credit card issuers in the event of borrower default, further reducing the justification for higher penalty rates.
- Provide at least 30-days advance notice that the card issuer is raising the cardholder's interest rate.
- Prohibit the retroactive application of pricing changes so that rate changes are applied only to purchases made after the issuer gives notice of the rate change.

- Ensure that grace periods and payment posting rules and practices are not designed to trigger late charges and penalty rates.

Legislation introduced in the 109th Congress attempted to enact some of these provisions: S. 2655, the *Credit Card Reform Act* (introduced by Senator Menendez (D-NJ)), and S. 499, the *Credit Card Act* (introduced by Senator Dodd (D-CT)).

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39. Expand the Right to Organize at Work

“Anyone in the United States can join a political party, a faith group or a community organization simply by signing up,” began a January 1, 2007 *Nation* magazine editorial. “But such freedom of association stops at the workplace door. When workers try to form a union under current rules, they run a gauntlet of antiunion intimidation and propaganda from their supervisors and outside consultants while waiting for a union election.”

Over the last twenty years, any labor step forward has been followed by at least two steps back, so that today’s right to organize seems more a paper privilege than an actual right to the average worker. Like any powerful institution, labor has its flaws and can be unresponsive, disordered or corrupt, but its history overwhelmingly demonstrates a key democratic equation: no unions, no workplace reforms. We owe the minimum wage, the two-day weekend, pension plans and work-based healthcare to unions. Members themselves make 28 percent more pay than their non-union counterparts, 25 percent more have healthcare and 54 percent more have a guaranteed pension plan.

Nonetheless, the percentage of the workforce that is unionized has fallen by two-thirds in the last 50 years and the severely under-funded National Labor Review Board (NLRB) has essentially lost its ability to keep the playing field between employees and employers level. With more than 25,000 open labor complaints and a slate of appointees handpicked by big business, the NLRB is so slow to complete the organizing process that individual employers have the time to squash a union movement through prolonged intimidation. In some cases, the pitifully low penalties actually encourage illegal bullying and firings because businesses find that it makes more financial sense to pay the fines than to negotiate with employees. So much sense that an estimated 25 percent of employers illegally fire at least one worker during a union drive and 75 percent hire outside consultants to win the fight. It should therefore come as no surprise that while 53 percent of workers in polls say they’d like to join a union, only 12.5 percent of them are actually members of unions.

Organized workers are often the only barrier between sheer corporate exploitation and decent working conditions. Consider the recent story of the Coalition of Immokalee Workers, which exposed how Taco Bell, one of the biggest restaurant companies in the country, was tolerating horrific conditions on its Florida tomato plantations. Workers endured withheld pay, threats of violence, no sick or vacation days and squalid living arrangements. Boycotts, protests and stockholder resolutions forced the company to fix its predatory pay system that had been stagnant since 1980 in spite of nearly doubled productivity.

Because the right to organize and collectively bargain is a fundamental human right, Congress should enact the Employee Free Choice Act (EFCA), introduced as S.842 by Senator Edward Kennedy (D-MA) in the 109th Congress. Combined with a fully funded NLRB, it would go a long way toward preventing workplace atrocities by creating a fairer employee organization process. This bill supported by 44 senators and 215 representatives in the last congress would:

- allow employees to organize if a majority signs union recognition cards, so-called “card-checked” recognition;
- rein in anti-union intimidation and firings by raising the penalties for offending employers from the current negligible levels; and
- create an arbitration process to settle bargaining in stymied first-contract talks.

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40. Establish Citizen Utility Boards

When Americans pay the monthly utility bills or need service from a local utility company, they probably feel that they live in a society that’s more monarchical than democratic. The complaints of a lone consumer are useless when it comes to fighting the seemingly arbitrary rates and policies of utility companies. But a Citizen Utility Board (CUB) can unify and amplify thousands of residential ratepayers in a way that utility companies can’t ignore.

When it comes to services like electricity, natural gas and cable, many Americans don’t have a choice among providers. Infrastructure often allows one company to have a mini-monopoly in an area, removing the natural forces of competition that protect consumers from inflated pricing and poor service in a free market. Big utilities have long used their own powerful lobbyists before congress and regulatory organizations to advance their own agenda—usually maintaining their monopolies and preventing limitations on rates and hikes. As the cost of this lobbying is passed onto consumers, ratepayers have actually been paying for their own victimization.

CUBs are nonprofit and nonpartisan organizations funded by a voluntary nominal fee of \$5-10 annually. An uncompensated Board of Directors and regional delegates, all elected democratically by the membership, hires the advocacy staff to fight for fairer rates and intervene on ratepayers' behalf in legislatures, before agencies, and in court. The key to creating a CUB is giving organizers the right to include membership forms in some government mailing received by taxpayers. Called "piggybacking," this form of mailing—made possible by the action of state legislatures or regulatory commissions—is a cost-effective mechanism for raising a membership.

The Citizen Utility Board then retains a professional staff of lawyers, researchers and lobbyists to fight a consumer version of "taxation without representation." Since Illinois established its statewide CUB in 1984, it has saved ratepayers \$10 billion on natural gas, telecommunications and more. In 2005, the CUB of Oregon saved Pacific Power consumers \$76 million in upcoming rates and fought for an 86 percent reduction in proposed increases. The CUB also took steps to limit those "phantom taxes" that appear on utility bills but are both unexplained and unjustified.

The Center for the Study of Responsive Law has written a model law for creating CUBs and has made it available on their website. It states that a CUB is integral in "establishing adequate and affordable utility service to all residential customers in order to preserve the health and general welfare of the citizens of this state."

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