

THE CONTRACT WITH AMERICA: THE CRYSTALLIZATION OF THE GOP'S RACIAL AGENDA

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I. INTRODUCTION

"Election Day, November 8, 1994, was a turning point."¹ Indeed it was. When the votes were counted throughout the country, the Republican Party (or "GOP")² found itself in control of the U.S. House of Representatives (the "House"), a Democrat stronghold for the past forty years, and the U.S. Senate. Much of the Republicans' success was primarily due to their new manifesto, the *Contract with America* (the "Contract").

Over 300 Republican candidates³ for the House signed the *Contract* (the "Signatories"). It contained a written "promise" to the American people outlining the agenda for the 104th Congress.⁴ The Signatories pledged to introduce ten specific pieces of legislation in the first 100 days of the new congressional session⁵ and, ultimately, attempt to ratify them.

The Signatories, claiming to be the party of the middle class, boasted that the programs outlined in the *Contract* would benefit all Americans.⁶ However, the *Contract with America* is more accurately a "contract on minorities,"⁷ who almost certainly did not

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¹ CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY AND THE HOUSE REPUBLICANS TO CHANGE THE NATION 3 (Ed Gillespie & Bob Schellhas eds., 1994) [hereinafter CONTRACT WITH AMERICA] (emphasis added).

² The Grand Old Party.

³ CONTRACT WITH AMERICA, *supra* note 1, at 169.

⁴ CONTRACT WITH AMERICA, *supra* note 1, at 6-11.

⁵ CONTRACT WITH AMERICA, *supra* note 1, at 15.

⁶ CONTRACT WITH AMERICA, *supra* note 1, at 12. For instance, the authors state that the September 27, 1994 unveiling of the *Contract* on the steps of the Capitol was "an opportunity to reclaim our mantle as the party of the middle class . . ." CONTRACT WITH AMERICA, *supra* note 1, at 12.

⁷ Kwame Nantambu, *GOP Freezes Out Afro-Americans*, PLAIN DEALER (Cleveland), May 2, 1995, at 9B. As used in this Note, the term "minority" means "[a] racial, religious, political, national, or other group regarded as different from the larger group of which it is part." THE AMERICAN HERITAGE DICTIONARY 800 (2d ed. 1982). This Note focuses on the two largest minority groups in America, African Americans and those of Hispanic origin. Persons of Hispanic origin may be of any race. The total population in the United States in 1994 was approximately 260 million. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, Na-

elect the Signatories.⁸ The *Contract's* programs, if passed by Congress, would have devastating consequences on minorities. Sadly, it is but the latest chapter of a Republican racial agenda.

This Note primarily focuses on two reform proposals: the Personal Responsibility Act ("PRA"),⁹ and the Taking Back Our Streets Act ("TBOSA").¹⁰ This Note, in lesser detail, also discusses the Fiscal Responsibility Act ("FRA"),¹¹ and the Common Sense Legal Reforms Act ("CSLRA").¹² Through empirical evidence,¹³ this Note demonstrates that the *Contract*, either on its face or in its effect, furthers a racial agenda. In particular, Part II illustrates the need for critical review of the *Contract* in light of the Signatories' past public statements and legislative records on civil rights issues. Part III demonstrates how the *Contract's* reform proposals for welfare, criminal justice, and tort litigation, and a balanced budget amendment will disproportionately impact minorities. The central tenet of this Note is that in an ideal society, the percentage of minorities on welfare and under the auspices of the criminal justice system should reflect a cross-section of the population as a whole. Unfor-

tional Data Book 14 (1995). The white population was estimated at approximately 216.5 million, the African American population was estimated at approximately 32.6 million, and the population of those of Hispanic origin was estimated at approximately 26 million. *Id.*

⁸ Minorities in America have long been Democratic supporters. For instance, in 1994, more than 80% of African Americans identified their political affiliation as Democrat, while only approximately 10% identified themselves as Republican. See BUREAU OF THE CENSUS, *supra* note 7, at 268.

⁹ CONTRACT WITH AMERICA, *supra* note 1, at 65-77. The PRA was proposed to overhaul the welfare system and called for block grants to the states in order to administer various social programs. CONTRACT WITH AMERICA, *supra* note 1, at 67.

¹⁰ CONTRACT WITH AMERICA, *supra* note 1, at 37-64. The TBOSA was an anti-crime package that called for expansion of the death penalty, revision of the habeas corpus process, expansion of the "good faith" exception to the exclusionary rule to include warrantless searches and seizures, and increased spending for law enforcement and prison construction. CONTRACT WITH AMERICA, *supra* note 1, at 38.

¹¹ CONTRACT WITH AMERICA, *supra* note 1, at 23-36. The FRA called for, among other things, a balanced budget amendment to the Constitution. CONTRACT WITH AMERICA, *supra* note 1, at 24.

¹² CONTRACT WITH AMERICA, *supra* note 1, at 143-55. The CSLRA proposed limits on punitive damage awards and proposed that the "loser-pays" the winner's legal costs. CONTRACT WITH AMERICA, *supra* note 1, at 144-45.

¹³ While this Note relies primarily on U.S. Census Bureau data, the author recognizes that some observers have questioned the accuracy of the statistics with respect to the Census Bureau's figures on minorities. However, these statistics are the most widely cited source for population statistics. See, e.g., George C. Galster, *Polarization, Place, and Race*, 71 N.C. L. REV. 1421, 1458 (1993); Rebecca Marcus, Note, *Racism in Our Courts: The Underfunding of Public Defenders and Its Disproportionate Impact Upon Racial Minorities*, 22 HASTINGS CONST. L.Q. 219, 234-35 (1994).

tunately, as this Note will demonstrate, this is not the case in America.

II. CRITICAL REVIEW OF THE GOP AGENDA

The Signatories designed their reforms for the benefit of the "American people."¹⁴ However, their America is limited and exclusive. The Signatories authored the reforms to placate a specific audience, wealthy and middle-class white Americans. The idea that the Signatories are concerned with the needs of all Americans is, at best, questionable. Recent history has taught the American people otherwise.

A cursory review of the history of House Republican voting records and their attitudes on civil rights issues reveals their lack of concern about the entire populace.¹⁵ From the earliest days of the civil rights movement in the 1960s, an overwhelming majority of Republican Congressmen have tried to derail civil rights efforts.¹⁶ Notably, then House member from Texas, George Bush, opposed the 1964 Civil Rights Act because, as he stated, it "was passed to protect [only] 14% of the people. I'm also worried about the other 86%."¹⁷

More recent House Republicans, and eventual Signatories, shared the same principles as their predecessors and consistently voted against significant civil rights legislation or initiatives. For instance, in 1988, Congress passed a valuable piece of civil rights legislation, the Fair Housing Amendments Act ("FHAA"),¹⁸ en-

¹⁴ Throughout the *Contract* the Signatories mention the "American people" or "Americans," suggesting that they understand the desires of the entire American population. See, e.g., *CONTRACT WITH AMERICA*, *supra* note 1, at 5, 23, 195.

¹⁵ See, e.g., *infra* pp. 483-86 and notes 17-41. The GOP was a strong advocate for the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments during the Reconstruction period following the Civil War. See, e.g., Robert J. Kaczorowski, *Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction*, 61 N.Y.U. L. REV. 863, 878 (1986); Xi Wang, *Black Suffrage and the Redefinition of American Freedom, 1860-1870*, 17 CARDOZO L. REV. 2153, 2156 (1996). The *Contract* correctly notes that the Republican party was the party of Abraham Lincoln. *CONTRACT WITH AMERICA*, *supra* note 1, at 7. Since that time, however, the Republican party has undergone a radical transformation. Indeed, in debating the passage of the Civil Rights Act of 1990, Senator Howard Metzenbaum (D-Ohio) questioned whether the Republican party was in fact the party of Lincoln or had become the party of David Duke. See 136 CONG. REC. S15,336 (daily ed. Oct. 16, 1990) (statement of Sen. Metzenbaum).

¹⁶ See A. Leon Higginbotham, Jr., *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005, 1018-20 (1992).

¹⁷ Neal Devins, *Reagan Redux: Civil Rights Under Bush*, 68 NOTRE DAME L. REV. 955, 974 (1992) (quoting Ruth Marcus, *What Does Bush Really Believe?: Civil Rights Issue Illustrates Shifts*, WASH. POST, Aug. 18, 1992, at A1).

¹⁸ H.R. 1158, 100th Cong. (1988).

acted to amend Title VIII of the Civil Rights Act of 1968.¹⁹ Specifically, the FHAA sought to revise procedures designed to prohibit discrimination in the rental, sale, and financing of housing and provide funding for housing assistance.²⁰ Rep. Dick Armey (R-Tex.), current House majority leader and co-author of the *Contract*, voted against the FHAA.²¹ In 1990, the House passed the Civil Rights Act of 1990²² to amend the Civil Rights Act of 1964.²³ The 1990 legislation restored and strengthened civil rights laws that banned discrimination in the work place.²⁴ Unsurprisingly, Rep. Armey also voted against the Civil Rights Act of 1990.²⁵ Apparently, Rep. Armey's biases are not limited to his voting on legislation in the House chamber. During a radio interview, Rep. Armey referred to Rep. Barney Frank (D-Mass.), an openly gay member of Congress, as "Barney Fag."²⁶

The Voting Rights Extension Act of 1992 ("VREA"),²⁷ introduced to clarify certain aspects of the Voting Rights Act of 1965,²⁸ is another significant piece of civil rights legislation.²⁹ Once again, notable House Republicans, who eventually oversaw the working groups³⁰ responsible for drafting the ten *Contract* bills, voted against it.³¹ Such individuals included Rep. Bill McCollum (R-

¹⁹ 42 U.S.C. §§ 3601-3619, 3631 (1968).

²⁰ See H.R. 1158, 100th Cong. (1988).

²¹ Rep. Armey was among only twenty-three Republicans who voted against it. 134 CONG. REC. H16,511 (1988).

²² H.R. 4000, 101st Cong. (1990).

²³ 42 U.S.C. §§ 1981-1997j, 2000a-2000h-6 (1964).

²⁴ H.R. 4000, 101st Cong. (1990).

²⁵ *Id.* In Rep. Armey's objection to the bill he stated he opposed the bill "not because I oppose civil rights, but to the contrary, because I am a strong supporter of the rights of all Americans, black and white, male and female; and I have never believed that any one group should receive preferential treatment at the expense of others." 136 CONG. REC. H6802 (1990).

²⁶ *Hill Briefs*, CONG. DAILY (National Journal Inc., Wash. D.C.), Jan. 27, 1995, at 3. The incident arose when Rep. Armey was conducting an interview with radio reporters. When Rep. Armey was asked a question regarding his recent book deal he said "I like peace and quiet, and I [do not] need to listen to Barney Fag . . . [sic] Barney Frank haranguing in my ear because I made a few bucks off a book I worked on." Rep. Armey later apologized to Rep. Frank on the House floor. *Id.*

²⁷ H.R. 5236, 102d Cong. (1992).

²⁸ 42 U.S.C. §§ 1971-1973p, 1973aa-1973gg-10, 1974-1974e (1965).

²⁹ See H.R. REP. NO. 102-656, at 2 (1992). The bill was introduced to reverse two Supreme Court decisions which limited the use of the Voting Rights Act of 1965 as Congress intended. *Id.* See *Presley v. Etowah County Comm'n*, 502 U.S. 491 (1992); *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83 (1991).

³⁰ The *Contract* cites the Republican members of Congress who headed the working groups which were responsible for drafting the proposed legislation. *CONTRACT WITH AMERICA*, *supra* note 1, at vii.

³¹ H.R. REP. NO. 102-656, at 19 (1992).

Fla.),³² Rep. Jim Ramstad (R-Minn.),³³ and Rep. Henry Hyde (R-Ill.).³⁴

The *Contract's* chief architect, Speaker of the House Newt Gingrich (R-Ga.), has been openly and relentlessly hostile to civil rights programs, including affirmative action programs.³⁵ Seemingly at every opportunity, Speaker Gingrich spread his anti-affirmative action message. In October 1995, Speaker Gingrich sent a letter to targeted voters in California, 3,000 miles outside his congressional district, urging them to support the California Civil Rights Initiative ("CCRI"), which would end all affirmative action by the California state government.³⁶ In June 1995, before a forum of African American journalists, Speaker Gingrich criticized civil rights lawsuits and protests as "obsolete after the Civil Rights Act of 1964 banned discrimination."³⁷ According to Speaker Gingrich, "poor people need to 'learn new habits' and . . . women and minorities who rely on affirmative action should . . . take advantage of 'enormous avenues for opportunity' that ignore factors of race and sex."³⁸ Speaker Gingrich also added that affirmative action programs were primarily rooted in lawsuits.³⁹ He declared: "[w]hen you create that kind of backward-looking, grievance-looking system, you teach people exactly the wrong habits. They end up spending their lives waiting for the lawsuit, instead of spending their lives seeking opportunity."⁴⁰ He further stated that the "civil rights movement had gone off-track because it was dominated by those 'who thought there was some way to get fairness of outcome as opposed to equality of opportunity.'"⁴¹

The House Republicans', and ultimate Signatories', voting

³² CONTRACT WITH AMERICA, *supra* note 1, at vii. Rep. McCollum headed the group responsible for the TBOSA.

³³ CONTRACT WITH AMERICA, *supra* note 1, at vii. Rep. Ramstad headed the group responsible for the CSLRA.

³⁴ CONTRACT WITH AMERICA, *supra* note 1, at vii. Rep. Hyde headed the group responsible for the FRA.

³⁵ See, e.g., *infra* notes 36-41.

³⁶ *From the Leadership*, CONG. DAILY (National Journal Inc., Wash. D.C.) Oct. 30, 1995, at 5. Speaker Gingrich went on to state that he believed that the CCRI was "a model which should be looked at by every state, and by the federal government." *Id.* The initiative, Proposition 209, was passed by California voters on November 5, 1996. Robert Pear, *In California, Foes of Affirmative Action See a New Day*, N.Y. TIMES, Nov. 7, 1996, at B7.

³⁷ See *Hill Briefs*, CONG. DAILY (National Journal Inc., Wash. D.C.), June 19, 1995, at 4.

³⁸ *Id.* at 5.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

records and hostile sentiments demonstrate a hidden, and at times blatant, racist agenda. Thus, when analyzing the various proposed legislation in the *Contract*, one must be cognizant of the need to do so with a critical perspective.

III. THE *CONTRACT*'S RELEVANT BILLS AND THEIR NEGATIVE IMPACT ON MINORITIES

The PRA⁴² and the TBOSA⁴³ will most profoundly impact minorities. Therefore, an in-depth evaluation is necessary.

A. *The Personal Responsibility Act and Welfare Reform*

In 1964, President Lyndon Johnson launched the "War on Poverty."⁴⁴ The War on Poverty was a bold agenda designed to provide poor Americans with government aid in the form of medical benefits, cash payments, food stamps, housing, and other benefits.⁴⁵ Through the years, as the struggle to combat poverty increased, so did criticism of the government's efforts.⁴⁶ "Welfare programs were denounced as stingy, unfair, demeaning to recipients, contributing to the breakup of families, and . . . narrow in their coverage"⁴⁷ Some critics called welfare programs "a dismal failure, bankrupt, a mess in need of total reform."⁴⁸ Critics of welfare have tried to dismantle it for nearly three decades. Today, they echo the same old sentiments throughout the country. These criticisms are now in a written and signed Republican *Contract*.

The Signatories labeled President Johnson's War on Poverty and his vision of a Great Society a failure.⁴⁹ They blame much of society's ills, including illegitimacy, crime, and illiteracy, on welfare programs.⁵⁰ The proposals endorsed by the Signatories are only

⁴² See *supra* note 9.

⁴³ See *supra* note 10.

⁴⁴ WILLIAM A. DEGREGORIO, *THE COMPLETE BOOK OF U.S. PRESIDENTS* 574 (3d ed. 1991). President Johnson unveiled his vision of a "Great Society" in a speech at the University of Michigan in May 1964. The Great Society was designed to end poverty and racial injustice. It included the War on Poverty, civil rights legislation, Medicare, Medicaid, and environmental protection. *Id.*

⁴⁵ MARTIN ANDERSON, *WELFARE* 15 (1981).

⁴⁶ *Id.* at 16-17.

⁴⁷ *Id.* at 17.

⁴⁸ *Id.*

⁴⁹ *CONTRACT WITH AMERICA*, *supra* note 1, at 67.

⁵⁰ *CONTRACT WITH AMERICA*, *supra* note 1, at 65. For example, after an all-white jury acquitted four white police officers in the brutal beating of black motorist Rodney King, the streets of Los Angeles erupted in flames as enraged ghetto residents took to the streets

more recent versions of the welfare reform movement. The current stream of reform proposals by the Signatories, however, are the harshest to date. Based on United States Bureau of the Census statistics, the reforms will disproportionately impact America's minority population.⁵¹

Six days later, when the flames had been reduced to smoldering rubble, President George Bush declared that what had triggered the riot was not frustration at an unjust system, not the despair of grinding poverty and blocked opportunity, but rather the failure of the liberal social programs of the 1960's.

JILL QUADAGNO, *THE COLOR OF WELFARE* 3 (1994).

⁵¹ Minorities comprise a disproportionate percentage of America's poor. Although the number of whites (26.2 million) living below the poverty level in 1993 was greater than African Americans (10.8 million) and those of Hispanic origin (8.1 million), the percentage of the African American and those of Hispanic origin populations living below the poverty level greatly exceeds the percentage of the white population living below the poverty level. In 1993 for individuals, 12.2% of the white population lived below the poverty level, 33.1% of the African American population lived below the poverty level, and 30.6% of those of Hispanic origin lived below the poverty level. BUREAU OF THE CENSUS, *supra* note 7, at 481. For families in 1993, 9.4% of the white population, 31.3% of the African American population, and 27.3% of the population of those of Hispanic origin lived below the poverty level. BUREAU OF THE CENSUS, *supra* note 7, at 484.

"The poverty index is based solely on money income and does not reflect the fact that many low-income persons receive non[-]cash benefits such as food stamps, Medicaid, and public housing." BUREAU OF THE CENSUS, *supra* note 7, at 450. By way of example, in 1993, the poverty borderline for an individual was a yearly income of \$7,363. For a family of four it was \$14,763. BUREAU OF THE CENSUS, *supra* note 7, at 481.

The total number of whites receiving government assistance greatly surpasses the number of African Americans and those of Hispanic origin. In 1991, 19.1 million whites, 10.3 million African Americans, and 5.7 million people of Hispanic origin received government assistance. BUREAU OF THE CENSUS, *supra* note 7, at 378. However, the percentage of the population of African Americans and those of Hispanic origin receiving government assistance is disproportionately large compared to the percentage of the white population. See BUREAU OF THE CENSUS, *supra* note 7, at 14 (citing overall population statistics). For instance, in 1991, 9.1% of the white population, 33.4% of the African American population, and 26.3% of the population of persons of Hispanic origin were participants in the major government assistance programs. BUREAU OF THE CENSUS, *supra* note 7, at 378.

The major assistance programs were Aid to Families with Dependent Children ("AFDC"), General Assistance, Supplemental Security Income ("SSI"), food stamps, Medicaid, and housing assistance. BUREAU OF THE CENSUS, *supra* note 7, at 378.

Others have also demonstrated that minorities "experience poverty in much greater numbers than corresponds with their percentage of the population." See, e.g., Marcus, *supra* note 13, at 235.

People of color are disproportionately poor in the United States. African-Americans comprised only about 12% of the entire U.S. population in 1991, but they comprised 30.4% of the families living below the poverty line. While Hispanics composed approximately 9% of the U.S. population, they accounted for 26.5% of the families living below the poverty line These statistics are in stark contrast with the fact that

A comparison between whites and other racial groups in this country demonstrates a "severe and amazingly persistent pattern of income inequality." Over the past two decades, the median household income of blacks has remained at about 59% of the income earned by whites which is a difference of over twelve thousand. Hispanics' median household income is 72% of that earned by whites totalling a difference of over eight thousand dollars. During the past two decades, both of these gaps have grown. African-Americans face an especially disproportionate level of poverty in this country. While approximately 20% of all American children grow up in poverty, nearly half of black children grow up in poverty in the United States. The problem of huge numbers of African-Americans living in poverty does not seem to be improving. As William Julius Wilson explained, "[t]hroughout much of the 20th century, blacks were able to experience social mobility through good-paying, blue collar jobs. Now, as industry has moved to suburban and exurban areas, the traditional avenue out of poverty has been closed off." Racial minorities often find themselves in cycles of poverty that are difficult to escape.⁵²

The PRA's purported aim is to "reduce government dependency, attack illegitimacy, require welfare recipients to work, and cut welfare spending."⁵³ According to the *Contract*, these objectives will be achieved in a number of ways.

First, AFDC payments would be restructured. Under the PRA, mothers under the age of eighteen who bear children out of wedlock would be denied AFDC benefits for their children.⁵⁴ The states, at their discretion, would be able to deny AFDC and housing benefits to mothers who are ages eighteen through twenty.⁵⁵ States would be given the option of eliminating AFDC benefits after the recipients have received welfare for two years.⁵⁶ Under the PRA, states would be required to "drop families"⁵⁷ who have received AFDC benefits for five years.⁵⁸

whites comprise about 80% of the U.S. population, but account for only 8.8% of the families living below the poverty line.

Marcus, *supra* note 13, at 234-35 (citations omitted).

⁵² Marcus, *supra* note 13, at 235 (citing George C. Galster, *Polarization, Place, and Race*, 71 N.C. L. REV. 1421, 1424-25 (1993); Cornel West, *The '80s. Market Culture Run Amok*, NEWSWEEK, Jan. 3, 1994, at 49; William Julius Wilson, *Hope for Our Cities*, PEOPLE, Jan. 17, 1994, at 81).

⁵³ CONTRACT WITH AMERICA, *supra* note 1, at 66.

⁵⁴ CONTRACT WITH AMERICA, *supra* note 1, at 70.

⁵⁵ CONTRACT WITH AMERICA, *supra* note 1, at 66.

⁵⁶ CONTRACT WITH AMERICA, *supra* note 1, at 66.

⁵⁷ CONTRACT WITH AMERICA, *supra* note 1, at 66.

⁵⁸ CONTRACT WITH AMERICA, *supra* note 1, at 66.

Second, states would be given extensive powers to develop and administer work programs tied to the receipt of welfare payments.⁵⁹ Under the PRA, the states would be granted the authority to develop their own work programs and determine who may participate in them.⁶⁰ Under this plan, states would be required to transfer welfare recipients who received benefits for two years into work programs.⁶¹ The work programs would require welfare recipients to work an average of thirty-five hours a week.⁶² Welfare participants would be permitted to participate in work programs for no more than two years.⁶³ The states would further be required to terminate AFDC payments to families who received welfare benefits for five years, whether or not the AFDC recipient has participated in the work program.⁶⁴

Finally, governmental spending on major welfare programs such as AFDC and public housing programs would be cut drastically.⁶⁵ They would be consolidated with other programs, including food stamp and school lunch programs, and become a block grant to the states.⁶⁶ In addition, many non-citizens would also be denied any welfare payments.⁶⁷

To say that Johnson's War on Poverty⁶⁸ was an "unqualified failure"⁶⁹ is simply untrue. The primary goal of welfare, to help those who are unable to help themselves financially, is still intact and has been achieved in part. Of course, there are flaws in the present welfare system, and some degree of reform is necessary.⁷⁰ Yet the Signatories' proposal in the *Contract* is extreme and highly suspect.

Despite the fact that Bureau of the Census statistics were readily available to the Signatories, they nevertheless chose to ignore them. These chilling figures demonstrate that minority women

⁵⁹ CONTRACT WITH AMERICA, *supra* note 1, at 66, 71-72.

⁶⁰ CONTRACT WITH AMERICA, *supra* note 1, at 72.

⁶¹ CONTRACT WITH AMERICA, *supra* note 1, at 71.

⁶² CONTRACT WITH AMERICA, *supra* note 1, at 71-72.

⁶³ CONTRACT WITH AMERICA, *supra* note 1, at 71.

⁶⁴ CONTRACT WITH AMERICA, *supra* note 1, at 71-72.

⁶⁵ CONTRACT WITH AMERICA, *supra* note 1, at 67, 72-73.

⁶⁶ CONTRACT WITH AMERICA, *supra* note 1, at 67.

⁶⁷ CONTRACT WITH AMERICA, *supra* note 1, at 73. The exceptions noted by the Signatories are refugees over seventy-five years of age, those lawfully admitted to the United States, or those who have resided in the United States for at least five years.

⁶⁸ See *supra* notes 44-45 and accompanying text.

⁶⁹ CONTRACT WITH AMERICA, *supra* note 1, at 67.

⁷⁰ President Johnson's War on Poverty has been characterized as "a well-intended but poorly executed effort to treat [the racial inequality] malady." QUADAGNO, *supra* note 50, at 4.

and children will suffer most by the Republican welfare reform.⁷¹ The statistics, while unpleasant, cannot be ignored. In 1993, 45.9% of all African American children and 39.9% of all children of Hispanic origin lived below the poverty level, while 17.0% of all white children lived below the poverty level.⁷² In 1993, 31.3% of all African American families and 27.3% of all families of Hispanic origin lived below the poverty level, while only 9.4% of all white families lived below the poverty level.⁷³ Finally, in 1994, 60% of all the African American family households, and 31% of all Hispanic origin family households, were headed by single females, while 21% of white family households were headed by single females.⁷⁴ Moreover, in 1991, 33.4% of the African American population, and 26.3% of the population of those of Hispanic origin were participants in the major assistance programs in the United States, while only 9.1% of the entire white population were participants.⁷⁵ As the above statistics demonstrate, it is clear that the *Contract's* welfare proposals will have a disproportionately devastating effect upon minorities in America.

The *Contract's* racial agenda is also furthered by its justifications of the need for reforms. In its discourse, the *Contract* offers numerous blanket characterizations of welfare recipients to convince its constituency that the suggested reforms are necessary.⁷⁶ In doing so, the *Contract* reinforces many of the stereotypes concerning the poor in America.⁷⁷

⁷¹ BUREAU OF THE CENSUS, *supra* note 7, at 378.

⁷² BUREAU OF THE CENSUS, *supra* note 7, at 480.

⁷³ BUREAU OF THE CENSUS, *supra* note 7, at 484.

⁷⁴ BUREAU OF THE CENSUS, *supra* note 7, at 61.

⁷⁵ BUREAU OF THE CENSUS, *supra* note 7, at 378. The major assistance programs covered were AFDC, General Assistance, SSI, food stamps, Medicaid and housing assistance. BUREAU OF THE CENSUS, *supra* note 7, at 378. Others have noted similar statistics.

Statistics on poverty rates [demonstrate] that black families have maintained a poverty rate that is roughly three and-a-half times (twenty percentage points higher than) the poverty rates of white families. By comparison, the Hispanic rate is roughly three times higher (sixteen percentage points more) than that of whites.

Galster, *supra* note 13, at 1425 (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, NO. 751, STATISTICAL ABSTRACT OF THE UNITED STATES, 1991, at 465); see Lisa A. Crooms, *Don't Believe the Hype: Black Women, Patriarchy, and the New Welfareism*, 38 How. L.J. 611, 615 (1995).

⁷⁶ See generally CONTRACT WITH AMERICA, *supra* note 1, at 65-77.

⁷⁷ See, e.g., Crooms, *supra* note 75, at 622; Beverly Horsburgh, *Schrödinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 535 (1996); Lucy A. Williams, *Race, Rat Bites and Unfit*

For example, the *Contract* proposes that its welfare reform program is designed to fight, among other things, illegitimacy, crime, and illiteracy.⁷⁸ With that insight, the Signatories boast that the Republican party grasps something that Democrats do not—"incentives affect behavior."⁷⁹

Currently, the federal government provides young girls the following deal: Have an illegitimate baby and taxpayers will guarantee you cash, food stamps, and medical care, plus a host of other benefits. As long as you stay single and [do not] work, [we will] continue giving you benefits worth a minimum of \$12,000 per year (\$3,000 more than a full-time job paying a minimum wage). [It is] time to change the incentives and make responsible parenthood the norm and not the exception.⁸⁰

According to the Signatories, teenage girls are getting pregnant so that they may receive welfare benefits.⁸¹ Thus, logically, Republicans believe that the current American welfare system has become a "cash cow" to the poor mother. The Signatories apparently feel that denying benefits to mothers on welfare will teach them "responsibility."⁸² Additionally, Speaker Gingrich has stereotyped a typical welfare recipient as a "thirteen year old drug addict [who is] pregnant" and whose baby faces the option of ending up in a "dumpster" or a "boarding school."⁸³ Moreover, in its attack on single parents,⁸⁴ the *Contract* states that "two out of every three African-American children are born out of wedlock."⁸⁵

The Signatories argue that guaranteed income to the poor under the current welfare system in America creates a lifestyle of dependency, and encourages recipients not to work.⁸⁶ This concern is not novel. For hundreds of years, there has been the concern that giving money to the poor might encourage recipients to stop working.⁸⁷ For example, in the fourteenth century, England's

Mothers: How Media Discourse Informs Welfare Legislation Debate, 22 FORDHAM URB. L.J. 1159, 1163 (1995):

⁷⁸ CONTRACT WITH AMERICA, *supra* note 1, at 65.

⁷⁹ CONTRACT WITH AMERICA, *supra* note 1, at 75.

⁸⁰ CONTRACT WITH AMERICA, *supra* note 1, at 75.

⁸¹ Carla M. da Luz & Pamela C. Weckerly, *Will the New Republican Majority in Congress Wage Old Battles Against Women?*, 5 UCLA WOMEN'S L.J. 501, 528 (1995).

⁸² *Id.* at 529.

⁸³ *Meet the Press: Incoming House Speaker Newt Gingrich, On Proposed Legislation Geared Toward Governmental Reform, Foreign Policy and His Novel* (NBC television broadcast, Dec. 4, 1994).

⁸⁴ CONTRACT WITH AMERICA, *supra* note 1, at 70.

⁸⁵ CONTRACT WITH AMERICA, *supra* note 1, at 70 (emphasis added).

⁸⁶ See CONTRACT WITH AMERICA, *supra* note 1, at 65.

⁸⁷ See ANDERSON, *supra* note 45, at 89.

first poverty laws forbade private citizens to give donations to the able-bodied poor.⁸⁸ These laws were supported by the belief that such donations did not encourage recipients to find work.⁸⁹ Unfortunately, the Signatories made the same assumption as this early English legislation that the poor receiving aid are lazy and do not want to work. Psychologist Erich Fromm stated that

[m]an, by nature is not lazy, but on the contrary, suffers from the results of inactivity. People might prefer not to work for one or two months, but the vast majority would beg to work Misuse of the guarantee would disappear after a short time, just as people would not overeat on sweets after a couple of weeks, assuming they would not have to pay for them.⁹⁰

Requiring able bodies to support themselves is legitimate. However, the *Contract* continues to stereotype and stigmatize welfare recipients as lazy, preferring to cash-in on welfare payments rather than work.

The PRA fails to accurately address the causes of the welfare problem in America. Furthermore, the Signatories are using welfare recipients as scapegoats. They attempt to scare their constituency by misinforming them that those on welfare are the source of the problem rather than what they really are—victims.

Unfortunately, in some instances, the ugly Republican message has been successful. On the House floor in March 1995, Rep. Cynthia McKinney (D-Ga.) read a hate letter that she received in which the writer compared African American women on welfare to "monkeys."⁹¹ As Rep. McKinney so articulately concluded, "the

⁸⁸ See ANDERSON, *supra* note 45, at 89.

⁸⁹ See ANDERSON, *supra* note 45, at 89.

⁹⁰ Erich Fromm, *The Psychological Aspects of the Guaranteed Income*, in *THE GUARANTEED INCOME: NEXT STEP IN ECONOMIC EVOLUTION?* 177-79 (Robert Theobald ed., 1965).

⁹¹ 141 CONG. REC. H3741 (daily ed. Mar. 24, 1995) (statement of Rep. McKinney). The letter stated:

After watching your Negro boss do her jungle act about bringing back the brown shirts, I think we need some color shirts to control these Negro females who pop out . . . Negro children like monkeys in the jungle. No, I think the monkeys are more civilized. We real Americans [do not] intend to support . . . Negro children who live like rats in a hole and [do not] have a chance to become human. The welfare system is the cause. Even whites are becoming trash just like Negroes who pop out all these . . . Negro children. [Do you not] understand that we Americans are trying to civilize you? Why do you fight so hard? The jungle is in Africa, though you have turned D.C. into an American jungle. Grow up and become an American.

Id.

spirit of GOP welfare reform lives in these words."⁹²

Amid much controversy and after two prior presidential vetoes, President Clinton accepted and signed into law a welfare bill "largely written on Republican terms."⁹³ Much of the bill was conceived from the Republican's PRA found in the *Contract*. In particular, AFDC benefits will end and be replaced with block grants from the federal government to the states;⁹⁴ states will be permitted to end payments to unwed teenage mothers;⁹⁵ benefits will be limited to five years, but states may impose a shorter limit;⁹⁶ and the bill prohibits immigrants, including legal immigrants, from receiving various welfare programs, such as food stamps and Medicaid.⁹⁷

B. *The Taking Back Our Streets Act and Criminal Justice Reform*

The Signatories, through the *Contract*, attempt to save the "American Dream."⁹⁸ They proposed a tough anti-crime package. Their proposal stated:

The American Dream cannot survive without safety and security for individual Americans—for all of you. When our children are afraid to go to school, when husbands and wives are afraid to walk to the grocery store, and when society as a whole is being threatened, government must meet its responsibility to protect our streets, our schools, and our neighborhoods.⁹⁹

According to the *Contract*, the TBOSA symbolizes the

Republican approach to fighting crime: making punishments severe enough to deter criminals from committing crimes, making sure that the criminal justice system is fair and impartial for all, and making sure that local law enforcement officials (who are on the streets every day) and not Washington bureaucrats direct the distribution of federal law enforcement funds.¹⁰⁰

⁹² *Id.* at H3742.

⁹³ John F. Harris & John E. Yang, *Clinton to Sign Bill Overhauling Welfare*, WASH. POST, Aug. 1, 1996, at A1. "Clinton said the measure has 'serious flaws' . . . but he pledged to sign it anyway because it is the 'best chance we will have in a long, long time' to fulfill his 1992 campaign promise of 'ending welfare as we know it.'" *Id.* Acknowledging that there would be protest, "Clinton said that he would work to correct the bill's deficiencies with later legislation." *Id.*

⁹⁴ Barbara Vobejda, *House Passes Major Overhaul of Nation's Welfare Programs*, WASH. POST, July 19, 1996, at A1.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ CONTRACT WITH AMERICA, *supra* note 1, at 37.

⁹⁹ CONTRACT WITH AMERICA, *supra* note 1, at 37.

¹⁰⁰ CONTRACT WITH AMERICA, *supra* note 1, at 38.

The TBOSA's provisions are wide-ranging. First, it proposes to reform the habeas corpus process.¹⁰¹ Specifically, it would place time limitations on filing federal and state habeas corpus appeals, and would limit prisoners to one appeal.¹⁰² Second, jury instructions for death penalty cases would be reformed.¹⁰³ Under the TBOSA, juries would be instructed to recommend a death sentence if aggravating factors underlying the crime outweigh mitigating factors.¹⁰⁴ Juries would also be required to refrain from considering any "influence of sympathy, sentiment, passion, prejudice or other arbitrary factors."¹⁰⁵ Third, federal courts would be directed to dismiss any "frivolous" lawsuits by prisoners.¹⁰⁶ Fourth, the "good faith" exception to the exclusionary rule¹⁰⁷ would be expanded to include the introduction of evidence where the police acted in "good faith" in a warrantless search and seizure incident.¹⁰⁸ Fifth, mandatory minimum sentencing would be required for "state or federal drug or violent crimes that involve the possession of a gun."¹⁰⁹ Sixth, criminals would be required to pay restitution to their victims as a result of their criminal activity.¹¹⁰ Seventh, block grants would be allocated to local law enforcement bodies specifically for "law enforcement" and not for crime prevention programs.¹¹¹ Eighth, any illegal alien convicted of an aggravated felony would be deported.¹¹² Finally, money would be allocated to the states for building and expanding prisons.¹¹³

With the help of enormous media exposure, many Americans believe that the crime rate in this country has escalated to unprece-

101 CONTRACT WITH AMERICA, *supra* note 1, at 43-44. The primary function of a writ of habeas corpus "is to release from unlawful imprisonment." See BLACK'S LAW DICTIONARY 709 (6th ed. 1990). The writ permits a prisoner to challenge a conviction on constitutional grounds. *Id.*

102 CONTRACT WITH AMERICA, *supra* note 1, at 43-44.

103 CONTRACT WITH AMERICA, *supra* note 1, at 45-46.

104 CONTRACT WITH AMERICA, *supra* note 1, at 45.

105 CONTRACT WITH AMERICA, *supra* note 1, at 38.

106 CONTRACT WITH AMERICA, *supra* note 1, at 53.

107 The exclusionary rule "commands that where evidence seized has been obtained in violation of the search and seizure protections guaranteed by the U.S. Constitution, the illegally obtained evidence cannot be used at the trial of the defendant." BLACK'S LAW DICTIONARY 564 (6th ed. 1990).

108 CONTRACT WITH AMERICA, *supra* note 1, at 52-53.

109 CONTRACT WITH AMERICA, *supra* note 1, at 47.

110 CONTRACT WITH AMERICA, *supra* note 1, at 47-49.

111 CONTRACT WITH AMERICA, *supra* note 1, at 49-50. The TBOSA would also "repeal sections of the recently enacted crime control act that provide specific funds for drug courts, recreational programs, community justice programs, and other social prevention spending." CONTRACT WITH AMERICA, *supra* note 1, at 50.

112 CONTRACT WITH AMERICA, *supra* note 1, at 54.

113 CONTRACT WITH AMERICA, *supra* note 1, at 51-52.

dented proportions.¹¹⁴ Daily television viewers are treated to a large dose of violent crime through the nightly news programs, "cop shows," and tabloid news.¹¹⁵ As a result, crime has become an important political platform for the GOP, which uses it to instill more fear and garner more votes from their constituency.¹¹⁶

Few can deny that the crime problem in America is profound. However, the media has misled American viewers.¹¹⁷ In the United States, violent crimes reported to the police actually dropped by 3% from 1991 to 1992, and 2% from 1992 to 1993.¹¹⁸ Moreover, as *The New York Times* reported, a recent FBI survey from 1995 data concluded that the overall violent crime rate in America is at its lowest since 1989, and the country's murder rate is at the lowest in ten years.¹¹⁹

Beyond mischaracterizing the crime problem in America, the TBOSA's flaws go much deeper. In its purported intent to save the "American Dream," the *Contract* shatters it for many. In a criminal justice system that may be fairly characterized as racist,¹²⁰ the proposals in the *Contract* would tighten the system's racist grip.¹²¹

¹¹⁴ See David Zucchino, *Today's Violent Crime Is Old Story with a Twist*, PHILA. INQ., Oct. 30, 1994, at A1.

¹¹⁵ *Id.*

¹¹⁶ See BUREAU OF THE CENSUS, *supra* note 7, at 268. In 1994, according to the Bureau of the Census, approximately 45% of whites identified their political affiliation as Republican, compared to less than 10% of African Americans. BUREAU OF THE CENSUS, *supra* note 7, at 268.

¹¹⁷ See Zucchino, *supra* note 114, at A1.

¹¹⁸ BUREAU OF THE CENSUS, *supra* note 7, at 199. Violent crime includes murder, rape, robbery, and aggravated assault. BUREAU OF THE CENSUS, *supra* note 7, at 199.

¹¹⁹ *Violent Crime Declines 8 Percent in Big Cities*, N.Y. TIMES, Oct. 13, 1996, at 25. The FBI survey was "compiled from crimes reported to more than 16,000 law-enforcement agencies covering 95 percent of the nation's population." *Id.* See also Clifford Krauss, *New York Crime Rate Plummets to Levels Not Seen in 30 Years*, N.Y. TIMES, Dec. 20, 1996, at A1.

¹²⁰ It is noted that reliance solely on statistical data does not necessarily prove that the criminal justice system is racist. However, the statistics that follow, which demonstrate "the magnitude of the disparities [between African Americans and whites in the criminal justice system] ought to give us pause." David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy's "Politics of Distinction"*, 83 GEO. L.J. 2547, 2557 (1995).

¹²¹ It has been recognized that

there are a greater percentage of black males incarcerated in the United States than in South Africa. There are 14,625,000 black men in the United States, of which 454,724 are incarcerated. South Africa has 15,050,642 black men and only 109,739 of them are incarcerated. "Nearly one in every four black men in the United States between 20-29 years of age is under the control of the criminal justice system—whether in prison or jail, on probation, or parol." This over-representation of minority groups is not only a black-white issue—it affects all racial minorities in the United States.

[W]e really should not be surprised to find some form of racial bigotry present in the criminal justice system. It is surely evident in the society at large, and the criminal justice system is not isolated from the larger society. Indeed, the evidence is persuasive that the system is heavily influenced by the surrounding culture.¹²²

The force of this proposition is reflected in various ways. In 1992, African Americans made up approximately 12% of the total population, while whites made up approximately 83% of the population.¹²³ In 1992, 8.3% of the estimated 21.4 million African American adults¹²⁴ were either in jail or prison, on probation or parole.¹²⁵ In contrast, 1.7% of the estimated 160 million white adults were either in jail or prison, on probation or parole.¹²⁶ Moreover, in 1992, approximately 3,930 African Americans eighteen years of age and older out of every 100,000 Americans were arrested, while approximately 793 white people eighteen years of age and older out of every 100,000 Americans were arrested.¹²⁷ Indeed, others have noted similar findings.

A number of national studies have yielded startling statistics regarding the high proportion of minorities involved in the criminal justice system. In a 1990 study, the Sentencing Project reported that, nationally, the total number of black males aged [twenty] to [twenty-nine] who were under some control by the criminal justice system was greater than the total number of similarly-aged black males enrolled in college. Of all black males in this age range, 23% were either in prison or jail, or on probation or parole. The study stated that 6.2% of whites and 10.4% of Hispanics in the same age range were similarly involved in the criminal justice system. A 1993 Sociological Quarterly paper by

Marcus, *supra* note 13, at 237 (citations omitted).

¹²² GREGORY D. RUSSELL, *THE DEATH PENALTY AND RACIAL BIAS: OVERTURNING SUPREME COURT ASSUMPTIONS* 1 (1994). The author devotes an entire chapter in which he discusses how racism produces different outcomes throughout the criminal justice system. The author discusses research compiled on, among other things, bias in crime detection, bias in police behavior and arrest, bias in the grand jury, prosecution and courtroom, and bias in judicial sentencing. *Id.* at 49-71.

¹²³ BUREAU OF THE CENSUS, *supra* note 7, at 14. In 1992, the white population was approximately 213 million, the African American population was 31.6 million, and the population of those of Hispanic origin was 24.2 million. BUREAU OF THE CENSUS, *supra* note 7, at 14.

¹²⁴ The adult population consists of those over eighteen years of age. See *infra* note 125.

¹²⁵ TRACY L. SNELL, U.S. DEP'T OF JUSTICE, *CORRECTIONAL POPULATIONS IN THE UNITED STATES*, 1992, at 5 (1995).

¹²⁶ *Id.*

¹²⁷ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS* 378 (1994).

J. Kramer and D. Steffensmeir reported that blacks represented 13% of the U.S. population and 50% of those persons in prisons. In the proceedings of the "Studying Race and Gender Bias in the Criminal Justice System" workshop at the 1993 BJS/JRSA National Conference on Enhancing Capacities and Confronting Controversies in Criminal Justice, it was noted that while blacks account for approximately 12% of the U.S. population they represented 64% of the robbery arrests, 55% of homicide arrests, and 32% of the burglary arrests.¹²⁸

The Signatories of the *Contract* apparently ignored these disturbing statistics. Thus, according to these statistics, a large and discriminating disparity exists between a minority's contact and a white person's contact with the criminal justice system.¹²⁹ Therefore, the reforms proposed by the Signatories will disproportionately touch the lives of minorities in America.¹³⁰

The habeas corpus reform proposed by the *Contract* is deceptive and should be more appropriately referred to as habeas corpus "repeal."¹³¹ The reform will affect state and federal habeas corpus process in both capital and noncapital cases.¹³² The time limitations and "one appeal rule"¹³³ will have a tremendous negative ef-

¹²⁸ Georgia Supreme Court Commission on Racial and Ethnic Bias in the Court System, *Let Justice Be Done: Equally, Fairly, and Impartially*, 12 GA. ST. U. L. REV. 687, 766 (1996). See also Robert Carter, *Racism and the Criminal Justice System: The Struggle Continues*, 10 NAT'L BAR ASS'N MAG. 34, 36-38 (March/April, 1996).

¹²⁹ See *supra* notes 120-128 and accompanying text.

¹³⁰ It is a sad reality in America that individuals in some racial groups are more likely than others to go to prison than college. See, e.g., MARC MAUER, THE SENTENCING PROJECT, AMERICANS BEHIND BARS: THE INTERNATIONAL USE OF INCARCERATION, 1992-1993, 18 (1994); Paul Butler, *The Evil of American Criminal Justice: A Reply*, 44 UCLA L. REV. 143, 145 n.8 (1996); Cole, *supra* note 120, at 2557; Georgia Supreme Court Commission, *supra* note 128, at 766; Nantambu, *supra* note 7, at 9B.

For instance, in 1992, the total number of African American males who were incarcerated in state or federal prisons (399,755), SNELL, *supra* note 125, at 70, closely approached the number of African American males who were enrolled in college (527,000). BUREAU OF THE CENSUS, *supra* note 7, at 180. By contrast, the number of white males in college (5,210,000), BUREAU OF THE CENSUS, *supra* note 7, at 180, greatly exceeded the total number of white males incarcerated in state or federal prisons (386,103), SNELL, *supra* note 125, at 70. Indeed, the number of African American males incarcerated actually outnumber those in college when combining the state or federal prison population with the jail population. In a 1994 study by the Sentencing Project, it was determined that in the United States in 1992, the number of African American males who were incarcerated in prisons or jails was 583,000, while the number of African American males who were enrolled in institutions of higher education was 537,000. MAUER, *supra* note 130, at 18.

¹³¹ Symposium, *Are Executions in New York Inevitable?*, 22 FORDHAM URB. L.J. 557, 599 (1995) (quoting NAACP attorney George H. Kendall).

¹³² CONTRACT WITH AMERICA, *supra* note 1, at 43.

¹³³ CONTRACT WITH AMERICA, *supra* note 1, at 44.

fect on prisoners seeking legitimate constitutional challenges to their sentences. As NAACP attorney George Kendall stated, the proposed habeas corpus reform will "handcuff and blindfold the federal judiciary, preventing it from granting any remedy whatsoever even when it is faced with egregious, shocking, harmful violations of the Bill of Rights in capital cases."¹³⁴

The death penalty has remained a topic of bitter debate throughout the years in America. In the Signatories' effort to expand capital punishment, the *Contract* proposes two new mandates on jury instructions in criminal cases. First, juries would be instructed to recommend the death penalty if aggravating factors outweigh mitigating factors.¹³⁵ Second, "juries must also be instructed to avoid any 'influence of sympathy, sentiment, passion, prejudice or other arbitrary factors' in their decisions."¹³⁶

In one of his final opinions before his retirement from the United States Supreme Court, Justice Blackmun passionately articulated his antipathy towards the death penalty in *Callins v. Collins*.¹³⁷ He wrote:

From this day forward, I no longer shall tinker with the machinery of death. For more than [twenty] years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.¹³⁸

Justice Blackmun stated that the death penalty, as the ultimate form of punishment, has always been and remains to be fraught with "arbitrariness, discrimination, caprice and mistake."¹³⁹ He also acknowledged that the arbitrariness of the sentencer's discretion to afford mercy is heightened by the problem of race.¹⁴⁰ Race, as Blackmun declared, "continues to play a major role in determining who shall live and who shall die."¹⁴¹

Justice Blackmun's observations are borne out by the statistics. In the United States from 1930 to 1993, more African Americans (2,154) were executed than whites (1,864).¹⁴² Moreover, there is

¹³⁴ Symposium, *supra* note 131, at 599.

¹³⁵ CONTRACT WITH AMERICA, *supra* note 1, at 45.

¹³⁶ CONTRACT WITH AMERICA, *supra* note 1, at 45.

¹³⁷ 510 U.S. 1141 (1994) (Blackmun, J., dissenting).

¹³⁸ *Id.* at 1145.

¹³⁹ *Id.* at 1144.

¹⁴⁰ *Id.* at 1153.

¹⁴¹ *Id.*

¹⁴² BUREAU OF THE CENSUS, *supra* note 7, at 220.

evidence that the death penalty is grossly and disproportionately applied where the victims are white and the defendants are black.¹⁴³ In Georgia, for instance, "blacks who kill whites are sentenced to death at nearly [twenty-two] times the rate of blacks who kill blacks, and more than [seven] times the rate of whites who kill blacks."¹⁴⁴

Rather than realize the inherent flaws with the death penalty, the Signatories simply ignored them. The evidence of discrimination in death penalty sentencing was overwhelming, yet the Signatories still encouraged capital punishment. This reform is another way to insure a guilty verdict in capital cases and broaden the use of the death penalty by the Signatories who encouraged capital punishment. Similarly, the abolishment of the so-called "arbitrary factors" in jury instructions—sympathy, sentiment, passion or prejudice—would either expressly or implicitly abolish considerations of race, poverty or mental deficiency. The Signatories attempted to foreclose the jury's consideration of valid, meaningful factors which play a prominent role in shaping the life, and now death, of a human being.

The *Contract's* death penalty reforms are the most disturbing of the TBOSA proposals. A serious reform measure would be to dismantle capital punishment in America altogether because of its inherent prejudice, arbitrariness and error. Yet, the Signatories ignored the death penalty's grim truth. Their proposals would force a jury to refrain from applying their own knowledge, insight, and reservations about capital punishment.

The Signatories also proposed a reform which mandated federal courts to dismiss any "frivolous or malicious" lawsuits filed by prisoners.¹⁴⁵ Unquestionably, this would have an enormous effect on all prisoners, who would find it much more difficult to challenge their treatment behind bars. Naturally, there have been suits which many people may consider frivolous (e.g. male prisoner suing for his right of access and to wear bras and lipstick,¹⁴⁶ inmates

¹⁴³ See DAVID C. BALDUS ET AL., *EQUAL JUSTICE AND THE DEATH PENALTY* 149-50 (1990).

¹⁴⁴ *McCleskey v. Kemp*, 481 U.S. 279, 327 (1987) (emphasis in original). In *McCleskey*, the petitioner was an African American man convicted of murder and sentenced to death. *Id.* He sought habeas corpus relief in federal court and offered a statistical study as evidence that a disparity in the imposition of the death penalty in Georgia based on the victim's race and the defendant's race existed. See BALDUS, *supra* note 143.

¹⁴⁵ *CONTRACT WITH AMERICA*, *supra* note 1, at 53.

¹⁴⁶ *Jones v. Warden*, 918 F. Supp. 1142 (N.D. Ill. 1995).

complaining about white only underwear rule;¹⁴⁷ inmates not provided with towel racks for wet towels¹⁴⁸). Although memorable, the actual number of these types of suits are few, and in most (if not all) instances, they are dismissed.¹⁴⁹

Although the *Contract* states that it is not seeking to diminish inmates' rights,¹⁵⁰ the *Contract's* reforms are based on such lawsuits.¹⁵¹ In reality, the vast majority of prisoners' lawsuits are meritorious. They involve topics of serious concern to any human being, such as inadequate medical treatment,¹⁵² overcrowding, and unsafe and unsanitary living conditions.¹⁵³

Consider, for instance, the following federal cases from Alabama. In *Newman v. Alabama*, a quadriplegic inmate spent months in the prison hospital suffering from bedsores.¹⁵⁴ The sores eventually developed into open wounds because of a lack of medical care.¹⁵⁵ As a result, the sores became infested with maggots.¹⁵⁶ In *Pugh v. Locke*, many deficiencies in the living conditions of most of the inmates were apparent. For example, the living quarters of the inmates were inadequately heated; diseases and body lice were widespread due to their filthy old cotton mattresses; the prison failed to furnish toothbrushes, toothpaste, or shampoo; the inmates had no eating and drinking utensils and had to use tin cans; and food was stored in filthy units which were infested with insects.¹⁵⁷

Newman and *Pugh* are far more representative of the legitimate interests that comprise a typical inmate's lawsuit. They address serious legal issues involving violations of prisoners' rights under the Eighth and Fourteenth Amendments. Unlike the examples cited

¹⁴⁷ *Burnette v. Phelps*, 621 F. Supp. 1157 (M.D. La. 1985).

¹⁴⁸ *Id.*

¹⁴⁹ *See id.*; see also *Jones*, 918 F. Supp. at 1145.

¹⁵⁰ *CONTRACT WITH AMERICA*, *supra* note 1, at 61.

¹⁵¹ *CONTRACT WITH AMERICA*, *supra* note 1, at 61. The *Contract* states that "[p]risoners have asserted that a lack of Frisbees, art supplies, and chunky peanut butter (as opposed to creamy peanut butter) constitutes cruel and unusual punishment." *CONTRACT WITH AMERICA*, *supra* note 1, at 61.

¹⁵² *Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972), *aff'd in part*, 503 F.2d 1320 (5th Cir. 1974), *reh'g denied*, 506 F.2d 1056 (5th Cir.), *cert. denied*, 421 U.S. 948 (1975).

¹⁵³ *Pugh v. Locke*, 406 F. Supp. 318 (M.D. Ala. 1976), *aff'd and remanded*, *Newman v. Alabama*, 559 F.2d 283 (*Pugh* was consolidated with *Newman*), *reh'd denied*, *Pugh v. Locke*, 564 F.2d 98 (5th Cir. 1977), *cert. granted in part, judgment rev'd in part sub nom.*, *Alabama v. Pugh*, 438 U.S. 781, *cert. denied*, 438 U.S. 915 (1978).

¹⁵⁴ *Newman*, 349 F. Supp. at 285.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Pugh*, 406 F. Supp. at 322-23.

by the *Contract*, these cases more often than not shock the conscience.

By proposing this reform, the GOP is again focused upon a prison population that contains a disproportionate number of minorities.¹⁵⁸ Such reforms serve only to intensify their plight. This is simply another attempt to remove constitutional rights from prisoners, who are the "least-represented group in society."¹⁵⁹ For each meritless lawsuit that this proposal prevents, there are potentially dozens of legitimate actions that will also be foreclosed. The Signatories exploit the most outrageous examples to create legislation. They take the position that "[i]t is easy to try to convince the American public that every lawsuit filed by an inmate is frivolous"¹⁶⁰ simply because they are prisoners.

The *Contract* also seeks an expansion of the "good faith" exception to the exclusionary rule.¹⁶¹ This proposal would extend the Supreme Court's decision in *United States v. Leon*.¹⁶² The *Contract* proposes to extend the "good faith" exception to the exclusionary rule to apply to searches conducted without a warrant.¹⁶³ The Signatories argue that this is necessary to remedy the suppression of reliable evidence under the current rule, which seemingly permits guilty defendants to either "go free or receive reduced sentences as a result of a favorable plea bargain."¹⁶⁴

This proposal does more harm than good. Opponents of the expansion of the "good faith" exception note that "[t]he notion that the rule needs to be relaxed because 'hordes of criminals are being released [on] legal technicalities' is a myth."¹⁶⁵ Further-

¹⁵⁸ See *supra* notes 120-128 and accompanying text.

¹⁵⁹ Jeff Barker, *Congress Moves Closer to Limiting Inmate Lawsuits*, ARIZ. REP., Nov. 13, 1995, at B1 (quoting Kathi Westcott, coordinator of a Washington, D.C. based prisoners rights coalition).

¹⁶⁰ *Id.* (quoting Donna Leone Hamm, founder of Middle Ground, an Arizona prisoner's rights group).

¹⁶¹ CONTRACT WITH AMERICA, *supra* note 1, at 52-53.

¹⁶² 468 U.S. 897 (1984). *Leon* held that the exclusionary rule does not apply when the police act in "good faith" on a defective search warrant. *Id.* The "good faith" exception to the exclusionary rule "provides that evidence is not to be suppressed under such rule where that evidence was discovered by officers acting in good faith and in reasonable, though mistaken, belief that they were authorized to take those actions." BLACK'S LAW DICTIONARY 564 (6th ed. 1990).

¹⁶³ CONTRACT WITH AMERICA, *supra* note 1, at 52-53.

¹⁶⁴ *Leon*, 468 U.S. at 907.

¹⁶⁵ Kenneth Jost, *Exclusionary Rule Reforms Advance: Opponents Claim Proposals Unconstitutional, Encourage Police Misconduct*, 81 A.B.A. J. 18 (1995) (quoting Thomas Davies, Professor of Law at the University of Tennessee). Davies stated that the exclusionary rule has been narrowed by a number of rulings by both the Rehnquist and the Burger Supreme Courts. *Id.*

more, this expansion would not only undermine the principles of the Fourth Amendment, but also would promote police misconduct. The police undoubtedly will have little or no trouble persuading a court that they meet the minimal "reasonable basis" requirement for believing the search was valid.

In yet another chapter on the federal government's "war on drugs," the TBOSA proposes mandatory minimum sentences of ten years for federal or state drug or violent crimes that involve the possession of a gun.¹⁶⁶ However, since stringent sentencing guidelines restrict judges' discretion at sentencing, in many instances the punishment does not fit the crime.¹⁶⁷ Mandatory sentences have come under increased attack by members of the judiciary.¹⁶⁸ Supreme Court Justice Anthony Kennedy stated that "mandatory minimums are an imprudent, unwise, and often unjust mechanism for sentencing."¹⁶⁹ The *Contract* ignores the concerns of the judiciary. Thus, even when a person does not actually use the gun to commit the drug crime, he will automatically receive a ten year sentence, regardless of whether it was found on the defendant's person. In other words, even if a nexus does not exist between the gun seized and the illegal drug activity, the defendant will nevertheless receive the full mandatory prison sentence of ten years.

The other proposals offered in the TBOSA provide additional harsh methods to fight crime.¹⁷⁰ Nevertheless, because of the racism inherent in the American criminal justice system, all of these proposals will affect a disproportionate number of minorities.¹⁷¹

Since the commencement of the 104th Congress, some provisions of the TBOSA were enacted as part of the anti-terrorism legislation that was signed into law in late April 1996.¹⁷² The most

¹⁶⁶ *CONTRACT WITH AMERICA*, *supra* note 1, at 46-47.

¹⁶⁷ See, e.g., 140 CONG. REC. S10,281 (daily ed. Aug. 2, 1994) (statement of Sen. Paul Simon). Sen. Simon quoted a number of people in opposition to mandatory minimum sentences, including Justice Anthony Kennedy. *Id.*

¹⁶⁸ *Id.*; see also Edward A. Adams, *Federal Judge Scores Mandatory Sentences for Dealing in Drugs*, N.Y.L.J., Aug. 26, 1993, at 1.

¹⁶⁹ 140 CONG. REC., *supra* note 167, at S10,281. Justice Kennedy made these and other comments during a House Appropriations subcommittee hearing on the Supreme Court budget. 140 CONG. REC., *supra* note 167, at S10, 281.

¹⁷⁰ *CONTRACT WITH AMERICA*, *supra* note 1, at 47-52. The other proposals include victim restitution, block grants to the states specifically for law enforcement as opposed to crime prevention programs, and the allocation of money to the states for building more prisons. *CONTRACT WITH AMERICA*, *supra* note 1, at 47-52.

¹⁷¹ See *supra* notes 120-128 and accompanying text.

¹⁷² Joan Biskupic & Helen Dewar, *Senate Would Limit Appeals on Death Row; Anti-Terrorism Bill Wins in 91-8 Vote*, WASH. POST, Apr. 18, 1996, at A1. Although the legislation focused primarily on anti-terrorism measures, the bill, in addition to the habeas corpus proposal, also provided more money for state law enforcement and the depor-

noteworthy aspect of that bill, which primarily was enacted as a tool to fight domestic and international terrorism, contained the GOP's habeas corpus "reform" to restrict the number of appeals by all prisoners, including death-row inmates.¹⁷³ In most circumstances, inmates would be restricted to one federal appeal, and federal judges would have to defer to state court rulings to determine if an inmate's constitutional rights were violated.¹⁷⁴

C. Other Proposed Reforms

Two other proposed reforms in the *Contract* merit some discussion because of their potentially devastating effects on the poor. They are the Fiscal Responsibility Act ("FRA")¹⁷⁵ and the Common Sense Legal Reforms Act ("CSLRA").¹⁷⁶ Although these reforms will devastate the poor in general, they will disproportionately impact minorities.¹⁷⁷

First, the FRA proposes a balanced budget amendment to the Constitution.¹⁷⁸ Under this plan, the Signatories proposed to balance the budget by the year 2002.¹⁷⁹ Although requiring the federal government to balance the budget may be fiscally sound, the burdens associated with doing so will fall squarely upon the poor's shoulders. The heart of the GOP's plan for balancing the budget includes huge cuts in federal aid to the states.¹⁸⁰ The Center on Budget and Policy Priorities (the "Center") projected that such cuts, which would include a \$100 billion annual loss in federal aid to state and local governments, would have a destructive effect on the states.¹⁸¹ The Center predicted "that by the year 2000, two years short of a [GOP proposed] balanced budget, the loss of federal aid would exceed all state spending in all [fifty] states on programs for the poor."¹⁸²

tation of non-citizens who commit crimes. See Mary Jacoby, *Vetoed Blocked the GOP's 'Contract'*, CHI. TRIB., Apr. 28, 1996, at 3.

¹⁷³ Jacoby, *supra* note 172, at 3.

¹⁷⁴ Helen Dewar, *Hill Negotiators Agree on Anti-Terrorism Bill*, WASH. POST, Apr. 16, 1996, at A7.

¹⁷⁵ CONTRACT WITH AMERICA, *supra* note 1, at 24.

¹⁷⁶ CONTRACT WITH AMERICA, *supra* note 1, at 144.

¹⁷⁷ See *supra* notes 51-52 and accompanying text.

¹⁷⁸ CONTRACT WITH AMERICA, *supra* note 1, at 24.

¹⁷⁹ CONTRACT WITH AMERICA, *supra* note 1, at 32.

¹⁸⁰ William M. Welch, *Liberal Group: Balanced Budget Will Cost States*, USA TODAY, Jan. 31, 1995, at 5A.

¹⁸¹ *Id.* The author provides telling statistics. The loss in aid to the states "would amount to \$342 per person nationally, and run as high as \$591 per person in Alaska; \$577 per person in Mississippi; and \$566 per person in New York." *Id.*

¹⁸² *Id.*

The Signatories of the FRA clearly are not concerned with balancing the budget. If so, they would begin their cuts with oversized spending programs such as the defense budget.¹⁸³ At the moment, "the defense budget is three times as large as the total of all federal cash, food, housing, jobs, and education benefits for the poor."¹⁸⁴ In fact, the Signatories actually proposed strengthening the national defense, including increased spending for the Pentagon.¹⁸⁵ Thus, the intent of the Signatories is not to balance the budget, but rather to sabotage the poor. Fortunately, such efforts have failed thus far. The balanced budget amendment did not become law. President Clinton vetoed it, "declaring its spending cuts too harsh."¹⁸⁶

Second, the *Contract*, aiming to discourage frivolous tort litigation, proposes the CSLRA.¹⁸⁷ The most radical provision of the CSLRA imposes a "loser pays" approach.¹⁸⁸ This approach would require the loser in various types of federal cases to pay the legal fees of the winner, including attorneys' fees.¹⁸⁹ However, the "loser pays" provision of the CSLRA is not simply a device aimed at stopping "frivolous lawsuits"¹⁹⁰ as represented, but rather "a device designed by selfish corporations to discourage lawsuits—both legitimate and frivolous—which threaten their profits."¹⁹¹

Because it will discourage legitimate lawsuits by individuals against huge corporations, the "loser-pays" provision "is a losing approach for most Americans,"¹⁹² especially the poor. For example, a poor person who sustains serious injuries as a result of a defective product and is out of work must now make a choice. Should he pursue his legitimate claim against the product's manufacturer or risk losing his home, savings, and other assets if he loses his suit?¹⁹³ Under the GOP's "reform," he would have to pay not only the costs of the corporate manufacturer, but also the potentially tens of thousands of dollars in legal fees of the law firm that

¹⁸³ See Ken Schechtman, *Contract Is Out of Balance*, ST. LOUIS POST DISPATCH, Apr. 27, 1995, at 7B. The author states that the defense budget is \$260 billion. *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ CONTRACT WITH AMERICA, *supra* note 1, at 92-93 (The National Security Restoration Act).

¹⁸⁶ Jacoby, *supra* note 172, at 3.

¹⁸⁷ CONTRACT WITH AMERICA, *supra* note 1, at 144.

¹⁸⁸ CONTRACT WITH AMERICA, *supra* note 1, at 145.

¹⁸⁹ CONTRACT WITH AMERICA, *supra* note 1, at 145.

¹⁹⁰ CONTRACT WITH AMERICA, *supra* note 1, at 18.

¹⁹¹ Alan Dershowitz, 'Loser Pays' Tort Reform Aptly Named, BUFFALO NEWS, Mar. 15, 1995, at B3.

¹⁹² *Id.*

¹⁹³ See *id.*

represented the manufacturer.¹⁹⁴

Access to justice should not be restricted only to those who can pay for it.¹⁹⁵ However, this "reform" does in fact impose such a system. As a result, it threatens the very heart of the American consumer's legal rights and protections. The "loser pays" rule would all but remove the means of all Americans, except the powerful and wealthy, to assert their rights in a court of law. Like the balanced budget amendment, product liability reform to limit punitive damages on personal injury cases and the "loser-pays" provision failed to become law during the 104th Congress.¹⁹⁶

IV. CONCLUSION

November 8, 1994 was indeed a turning point for America. Quite simply, it began a disturbing new era in American government. The *Contract with America* has many themes. It is a manifesto empowering white and wealthy America. It is about suspicion and distaste for those groups that are outside of the Republican mainstream — minorities and the poor. It is about Republicans stoking the fear of middle-class white voters. However viewed, the *Contract with America* is a document replete with racism. The Republican initiatives outlined in the *Contract*, either facially or subtly or in their purpose or effect, will disproportionately devastate minorities in America.

The 1996 elections provided the Republicans with an opportunity to push through the remaining proposals on their agenda in the 105th Congress. Indeed, many Republican candidates attempted to capitalize upon the success of the programs proposed in the *Contract*, and their hidden racial undertones, in their 1996 campaigns. In their platforms, we heard echoes of the *Contract* in their promises to balance the budget, fight crime, and strengthen family values. The GOP's racial agenda is not new. However, in light of the Republican majority's success in legislating portions of their manifesto, and as a result of the November 5, 1996 elections, a need for skepticism exists now more than ever.

¹⁹⁴ See *id.*

¹⁹⁵ See Ervin A. Gonzalez, *Big Business Is Selling Bill of Goods*, SUN SENTINEL (Ft. Lauderdale), May 6, 1995, at 15A.

¹⁹⁶ Securities litigation reform, which was part of the GOP tort reform, has become law. Jacoby, *supra* note 172, at 3.