

INNOVATION

+

EQUITY

TRANSFORM
AMERICA



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TABLE OF CONTENTS

1	Framework for Innovation and Equity
5	90 Day Issues in Financial Services, Larry Parks, Tim Simons, Kevin Chavers
11	Section 1: Growing an Equitable Economy
15	Policy and Security Implications of the Financial Crisis—A Plan for America, James K. Galbraith
33	Community Economic Development and Finance, Karen Chapple
45	Credit Card and Mortgage Debt Problems Facing Low and Moderate Income Households, Gerald D. Jaynes and Frederick W. McKinney.
53	Seeking a Fair and Effective Tax System, Deborah Kobes
67	Section 2: Transforming the Urban Environment
71	Reforming U.S. Environmental Policy, Judith A. Layzer
79	Greening Cities, J. Phillip Thompson
91	Seizing the Opportunity (or Climate, Jobs, and Equity) in Building Energy Efficiency, Joel Rogers
109	Safety, Growth, and Equity: Transportation, Richard Raya and Victor Rubin
125	Section 3: Building a Baseline: Jobs, Housing, and Healthcare
129	A Labor Policy Strategy for Transforming the American Workplace, Thomas Kochan
139	Directions for Affordable Housing Policy in the New Administration, Edward G. Goetz
149	Making the Health Care System Healthier, Bob Master and Paul Alexander
157	Section 4: Re-imagining Citizenship
161	Transformative Thinking in the Civil Rights Domain, Lani Guinier and Gerald Torres
181	Census and Redistricting—Policies to Guarantee Fairness and Equity in Political Representation and Resource Distribution, Anita Earls and Deborah Bey
193	Inclusive Immigration Reform, Jose Calderon
205	Trying Youth as Adults—Equity in the Juvenile and Criminal Justice Systems, Liz Ryan
211	Racial and Ethnic Disparities in the Juvenile Justice System, Mark Soler
219	The Movement to Elect Barack Obama: Prospects, Possibilities, Proposals, Marshall Ganz
225	Policy Index
237	Contributors: MIT Department of Urban Studies and Planning, the MIT Community Innovators Lab (CoLab), the Potomac Coalition, and the Contributors

FRAMEWORK
FOR
INNOVATION
+
EQUITY

"These challenges are not all of government's making. But the failure to respond is a direct result of a broken politics in Washington and the failed policies of George W. Bush.

. . . America, we are better than these last eight years. We are a better country than this . . .

[N]ow is not the time for small plans. "

Barack Obama, August 28, 2008

FOR MANY YEARS, grassroots activists, labor leaders, civil rights organizations, progressive policy experts and academics, committed public servants, and struggling local governments have yearned for the kind of change President-elect Obama represents and articulates. While not organized around a specific program of action, these groups have long

Collectively, these papers call attention to the deep origins of the present crisis brought about by a loss of trust in the integrity of U.S. financial institutions and government regulators, by the long term neglect of the nation's cities and infrastructure, by the decline in leadership of American technology and industry, by the unfairness of falling wages despite rising labor productivity, and by the neglect of the nation's future epitomized in low rates of educational attainment, lack of healthcare, and mass incarceration of many of America's youth. Yet these papers are focused on solutions.

recognized that the deep structural causes of the current crises will require long term solutions based on a re-imagining of many basic ideas—ideas about markets and resources, cities and neighborhoods, workers and families, citizen's rights and responsibilities. Recently, leaders from the Service Employees International Union, the Potomac Coalition, and Atlantic Philanthropies asked the Community Innovators Lab at MIT to develop policy suggestions for the new administration that capture the thrust of aspirations for change heard repeatedly from low-income and minority

constituents. All of the contributors to this report, drawn from across the country, have long histories of work in service of progressive policy change. All responded to this call for papers within a week's time.

Collectively, these papers call attention to the deep origins of the present crisis brought about by a loss of trust in the integrity of U.S. financial institutions and government regulators, by the long term neglect of the nation's cities and infra-

structure, by the decline in leadership of American technology and industry, by the unfairness of falling wages despite rising labor productivity, and by the neglect of the nation's future epitomized in low rates of educational attainment, lack of healthcare, and mass incarceration of many of America's youth. Yet these papers are focused on solutions. There are many things the new administration and Congress can do in the short term, such as retrofitting the nation's building stock, that can produce jobs at low cost while addressing pressing climate issues. There are strategic investments in technology and manufacturing that can put U.S. firms at the forefront in meeting critical global needs in the face of unprecedented urbanization. There are innovations in approaches to healthcare, housing, and education that can signal a seriousness of purpose in changing institutions to tackle the core concerns of ordinary Americans. There are changes that can be made in voting laws, and in ensuring all US residents are counted in the census, that can build upon and strengthen the high levels of civic and political participation that this election has spurred.

The first brief outlines the most critical considerations and policies for new administration over the next ninety days, with recommendations for financial services reform to address the current economic crisis. The remaining papers connect short-term policy changes to long-term reform. The goal of these papers is to open up policy conversations in new directions that we believe go to the heart of our problems and aspirations and that move beyond business as usual. The papers are grouped into four basic categories: 1) growing an equitable economy; 2) transforming the urban environment; 3) sustaining people and families; and 4) re-imagining community.

Now must begin a process of open discussion and engagement of millions of Americans about how to change and improve how the nation works. We can move from an election campaign to begin building a deep infrastructure for sustained civic engagement that changes the political and policy landscape for a generation. We believe that it will take nothing less to meet the challenge that the American people, in electing Barack Obama as our next President, have set for ourselves.

The papers are grouped into four basic categories:

- 1
GROWING AN EQUITABLE ECONOMY
- 2
TRANSFORMING THE URBAN ENVIRONMENT
- 3
SUSTAINING PEOPLE AND FAMILIES
and
- 4
RE-IMAGINING COMMUNITY

90 DAY ISSUES
in Financial Services

LARRY PARKS

TIM SIMONS

KEVIN CHAVER

The Treasury Department specifically and the Financial Services sector in general could have the greatest immediate positive impact on core constituents of the Obama Administration. As you know the current financial crisis is an outgrowth of the housing sector meltdown, cheap credit, mispriced risk, underwriting failure and fraud all contributed to the housing sector turmoil. Moreover, structured impediments in the mortgage backed securitization model have complicated attempts to restructure mortgages on a mass basis. The Bush Administration's response to the housing led banking crisis has been to use taxpayer monies to buoy existing financial institutions, take over Fannie Mae and Freddie Mac, steer mortgage originations through FHA/Ginnie Mae and prop up other potentially failing institutions in the insurance and automotive sector.

In the housing/financial services arena, the Bush Administration did not focus on the needs of consumers, particularly working and middle class families, in its attempt to address the financial crisis. The Bush Administration focused primarily on the bond market and preserving the reputation of the U.S. securities market for overseas investors. It is incumbent upon the Obama Administration's Treasury Department to place the needs of American families on at least the same level of importance as the needs of Wall Street and overseas investors in U.S. debt. To accomplish this will require -- transformative thinking, measuring and execution -- at the Obama Treasury Department.

For instance, as the Obama Administration embarks on reviewing and establishing a regulatory framework in the financial services sector, there are some guiding principles that may need to be included to help establish a framework for legislative engagement, regulatory implementation and personnel selection. Namely:

1. Ensure transparency is in decision making (e.g., limiting sole source contracting, establishing and making available standards for companies receiving governmental assistance).
2. Establish bright line conflict of interest standard.
3. Create a benefit test for consumers, both homeowners and renters -- when assistance is provided.

4. Ensure communities with significant concentrations of foreclosures are provided assistance to mitigate against lost tax revenue.
5. Provide for regulation of all financial institutions at the federal or state level
6. Make sure that activities by the federal government encourage lending and do not increase the cost of debt.
7. Avoid ad hoc decision making by the various agencies that oversee consumer banks, commercial banks and investment banks.
8. Create a community benefit for the taxpayer from any company that the government invests in via cash or guarantee.

Legislative Engagement

Within the first half of 2009, the Administration will need to address financial services regulatory reform as a legislative priority. First, House Financial Services Chairman, Barney Frank and Senate Banking Committee Chairman Christopher Dodd are both conducting hearings on the use of bailout funds. Second, there is a consensus on the Hill that a Systemic Risk regulator needs to exist across the financial services sector. Third, the credit card and the insurance industry are under financial pressure and may seek federal assistance in the near term. The Obama Administration needs to begin a process of addressing key issues organically rather than building upon Bush or Clinton era legislative positions. The inertia within the Treasury will encourage new Administration personnel to default to standard Treasury positions that virtually ignore consumer needs. Some organic parameters may include:

The Transition Team recommending options for the President on the future status of Fannie Mae and Freddie Mac as government sponsored enterprises. That is; lose GSE status and privatize; make them government agencies; return to prior status as stockholder owned GSEs or return to GSE status with government regulating product lines and approving dividends similar to regulated utility companies.

The Transition Team developing a position on how to regulate off-balance sheet items such as derivatives and recommending what entity in government should assume the responsibility;

The Transition Team providing guidance on the Federal Reserve's use of the cash advance window and whether there should be statutory provisions that guide the use of the window;

The Transition Team providing recommendations on the establishment of a Systemic Risk regulator;

The Transition Team providing guidance on the appropriate delivery vehicles for mortgage credit. That is; should the government encourage mortgage originations by commercial banks, S&Ls and credit unions or should they be provided through federally licensed mortgage banks?

The Transition Team providing guidance on whether the asset securitization market should be strengthened and how it should be restructured so that holders of the security have a stake in the ultimate performance of the security and the ability to restructure the security;

The Transition Team recommending methods to use the bailout authority and funding in a manner that reduces foreclosures, benefits localities with high delinquency/default rates and stabilizes housing prices so as to create a floor for mortgage price declines;

The Transition Team providing the President options on creating a federal insurance charter and consolidating the various banking/savings and loan charters;

The Transition Team addressing whether and how federal oversight of hedge funds and other private equity funds should occur and

The Transition Team making recommendations on expanding the Community Reinvestment Act or CRA into all aspects of bank holding companies including investment banking operations;

Regulatory

The Transition Team will need to review how the bailout funding was disbursed; what conditions were placed on the use of the funding; what the intended outcome of the funding is and how to effectively monitor success.

The Transition Team will need to review the pending regulations that have been issued for comment since September and seek to freeze any agency action until after Obama's nominees are in place to run the agencies.

The Transition Team should review pending regulations and determine how the regulations would impact consumer lending along with safeguarding the taxpayer.

The Transition Team would need to explore with the independent agencies what guidelines, examination processes and informal communications the agencies have had with the entities they regulate so as to review these actions to determine how the guidance encourages lending and safeguards the taxpayer.

The Transition Team will need to find out any pending bank failures.

The Transition Team may propose guidance on regulations that need to be implemented and provide a method to ensure lending is encouraged in distressed/at-risk communities; mortgage credit and small business credit is made available at reasonably uniform rates and that student loan lending is encouraged.

The Transition Team may need to give guidance on the use of SUVs and private equity to strengthen weak banks.

The Transition Team needs to recommend regulations on the use of the cash advance window, bailout funding or loan guarantee use for non-financial institutions.

The Transition Team needs to review international standards established for lending practices and accounting practices to determine how compliance impacts American industries and American consumers.

Personnel

The selection of the Treasury Secretary, the Deputy Secretary and the Undersecretary of Domestic Finance and are critical in determining if and how the Obama policies of community investment, transparent decision making and wealth distribution are carried forward. The net for filling these jobs should be broad and include persons with non-traditional and traditional backgrounds that can balance consumer, financial services, broader industry and international needs.

SECTION ONE:
**GROWING AN
EQUITABLE ECONOMY**

Economic and financial challenges will continue to confront the nation beyond the administration's first ninety days in office. Emerging from the current financial crisis, the nation must develop an economy that maintains our international leadership, embraces the emerging alternative energy industry, builds our infrastructure, and empowers urban centers through community economic development. Moreover, transformative economic policy must strive to extend growing wealth and opportunity to all Americans, including currently marginalized people and families.

President-elect Obama has shared a vision of a new, equitable economy, and he has detailed a number of policies to work towards this goal. On a national level, his dedication to expanding green jobs with innovative manufacturing development and a national infrastructure bank can help the U.S. maintain its position in the global economy. His creation of an Office of Urban Policy within the White House to coordinate policies that increase urban economic development will extend economic stability to disadvantaged communities. Finally, his proposed policies to reform bankruptcy and credit card practices will help ensure that individuals and families will still have a chance to access the American dream even if they have been hurt by the recent economic downturn. However, much of Obama's vision focuses on the middle-class rather than the low-income households that are most vulnerable to financial trouble and that need the most assistance to access the opportunities of the new economy. A comprehensive economic strategy should encompass both existing proposals and new, coordinated initiatives to maximize the impact of economic growth across all individuals in our society, beginning with the poorest.

The four papers in this section link broad economic issues of the current crisis and evolving global financial systems to the individual and family-level impacts of the credit crunch. They link Obama's policy proposals to a broader agenda of short-term and long-term federal policy development for national prosperity that benefits from and contributes to deep equity. In the short-term, the administration must empower market regulation to effectively rebuild confidence in US financial systems. Business incentives must not only provide needed resources to particular firms but also direct investment to urban communities that have suffered from disinvestment. Policies to promote community economic stability should tie public subsidies to funding for the Community Reinvestment Act (CRA) and community development financial institutions (CDFIs); include labor standards to ensure job quality; and scale up proven and cost-effective

community-building interventions. Equitable development principles require that all corporate subsidies yield demonstrable community economic benefit and that local source agreements expand opportunities for disadvantaged and local residents through training and apprenticeships. Similarly, a new economic stimulus package should help not only institutions but also individuals through adjusted mortgage terms and fair credit card practices.

A long-term approach to national economic policy should address deeper systemic risks through long-term public investment in US infrastructure, alternative energy, and new climate change technologies. The interdependencies of these policy areas is highlighted by the president-elect's recommended community development "czar" to coordinate economic development efforts across HUD, Labor, Health and Human Services, Transportation, Education, Commerce, and Treasury. The new community development czar also addresses the emerging challenge of energy poverty through policies that address exploding home energy and transportation costs. Public infrastructure investment should not only include the usual housing and transportation strategies but also reshape the built environment with energy efficient construction, new school and community facilities, public housing construction, and public transit. Federal policies affecting income and asset security—from job placement and long-term retention to quality child care and the Earned Income Tax Credit— as well as the asset-building programs of credit repair and savings should become more accessible to the Americans who struggle most for financial security. Underlying all of these measures, the tax system must ensure shared prosperity through a progressive structure of tax rates and incentives that raises enough revenue to provide the critical public services that our country needs without burdening future generations with the debt incurred through our recent fiscal practices.

POLICY *and*
SECURITY IMPLICATIONS
OF THE FINANCIAL CRISIS

A Plan For America

JAMES K. GALBRAITH

Abstract

The global financial crisis challenged the global economy's governance structure and shaken international confidence in the United State's dominant financial role. This paper traces the housing and subsequent speculative commodities bubbles as well as the resulting harm when they burst. These problems originate with the deregulation, mismanagement, and corruption of the financial sector and must be addressed at the fundamental level of defining financial institutions and their regulators. Regulatory agencies must revamp financial rules to dampen financial instability, deflate the commodity bubble, reduce the monopoly rents in the financial sector, set new terms for credit management, and generate productive capital investment. However, the financial system cannot be viewed in isolation. Resolving this problem requires a long-term strategy aimed at the reconstruction of physical infrastructure, reform in patterns of energy use, and the development of new technologies. Aid to those vulnerable populations that

have been harmed by the recent financial crisis must be a part of the solution through unemployment insurance, revenue-sharing to support and expand state and local government public services, job training, adjustment assistance, and jobs programs.

This brief brings together many of the policy proposals of the new administration, from infrastructure and technology investment to housing policy to energy programs, into a broad Framework for equitable economic growth. Rather than a series of individual policies each attempting to improve one aspect of the economy, this paper proposes a coordinated strategy to advance not only the national economy but also opportunities for individuals who have suffered from the recent financial crises. Moreover, this brief emphasizes the role of the U.S. in the international economy, and urges this consideration as part of the next administration's economic strategy.

Policy Recommendations

This nation's economic policy goals should be preserving our dollar as the key reserve currency; maintaining a mutually advantageous economic relationship with China; supporting regional stabilization blocs in exchange for the support of our dollar and investment in the US; and slowly reducing excessive reserve holdings through the reemergence as a technological leader. These goals should be addressed with five critical policy priorities: 1) Foreclosures should be halted. 2) The supply and prices of oil, food, and other commodities regulated by futures markets should be stabilized. 3) Regulatory capacity should be bolstered and regulations reintroduced to the financial system. 4) A fiscal stimulus package should build long-term institutions through general revenue sharing to support state and local public services, a national infrastructure bank, new educational initiatives, and an energy and environmental program. 5) Social Security benefits should be expanded.

Natural Constituencies

The fiscal stimulus package serves a wide range of constituents, because it spans issues with vocal interest groups. State and local governments will endorse federal support given their current fiscal crises. In addition to those immediately served by mortgage assistance, residents of neighborhoods and regions hard hit by the housing crisis should support these policies. Internationally, many countries linked to our economy will support the stabilization of US reserves in exchange for support of their regional stabilization blocs.

The constituency that will be most harmed by these policies are speculators and those holding speculative assets, particularly hedge funds. Policies that return prices to sustainable, lower levels will incur losses for these groups. However, these speculators helped fuel the current crisis and should not be prioritized in the aftermath of the fiscal crisis.

This paper is appearing in the November–December 2008 issue of *Challenge*.

In mid-June 2008, an international group of economists met in Paris to discuss the gravity of the current economic crisis and what the United States should do about it. The meeting was convened by Economists for Peace and Security and the Initiative for Rethinking the Economy. The author presided over the off-the-record discussions, summarized here on his own responsibility. In the process, he provides one of the most comprehensive and compelling assessments of where the United States and the world now stand, and what can be done to ameliorate the situation.

THE DEPTH AND SEVERITY of the ongoing financial crisis provided the most important common ground at the beginning of the meeting. Participants (listed in the Appendix) considered it to be extraordinary by any standard since the 1930s, including the debt crises of the 1980s and the Asian and Russian crises of the late 1990s. One called it “epochal” and “history making.” What distinguishes this crisis from the others are that: (1) it emerges from the United States, that is, from the center and not the periphery of the global system; (2) it reflects the collapse of a bubble in an economy driven by repetitive bubbles; and (3) the bubble has grown into the financial structure in a uniquely complex and intractable way, through securitization -- the bundling of mortgages and derivative products to investors.

The current situation is a global crisis originating in the United States. This fact implies that it calls into question the governance of the global credit economy, long centered in the United States and on its reputation for fair and open dealing. One participant called it a crisis “of the legitimacy of the G1”. Whether a global financial system will continue to be centered in the United States, and on the dollar as a reserve currency, for much longer was already at that time an open question in the minds of the group.

While some in the room chose to interpret the underlying source of the crisis as a matter of macroeconomic imbalances—savings and investment on one side, the trade deficit on the other—most took a darker view. This larger group believes that the country at the center of the world financial system must maintain a current account deficit—otherwise we could not supply the Treasury bills and bonds the rest of the world wishes to hold as reserves. The crisis emerges when the world loses confidence in the system that supports the dollar, because of perceived instability, corruption, and mismanagement, leading to a breakdown of regulatory authority and market order.

Bubbles are endemic to capitalism, but after the early 1930s they did not predominate. Rather, industrialization and technology set the direction. It was only in the late 1990s with the information technology boom that financial considerations—including the rise of venture capital and the influx of capital to the United States following the Asian and Russian crises—again came to dominate the direction of the economy as a whole. The result was capricious and unstable—vast investments in, for instance, dark broadband (unused fiber optic cable), followed by

a financial collapse. Yet it was not without redeeming social merits. The economy prospered, achieving full employment without inflation. And much of the broadband survived for later use.

The same will not be said of the sequential bubbles of the George W. Bush years, in housing and in commodities. The housing bubble—deliberately fostered by the authorities that should have been regulating it—pushed the long-standing American model of support for homeownership beyond its breaking point. It involved a vast victimization of a vulnerable population. The unraveling has social effects extending far beyond that population, to the large class of Americans with good credit and standard mortgages, whose homes are suffering a serious decline in value. Meanwhile, abandoned houses often become uninhabitable, so that the capital created in the bubble is actually destroyed, to a considerable degree, in the slump, with depressing effects on neighboring homes. This is unlike the experience with broadband.

As the housing bubble collapsed, a commodities bubble succeeded it, notably in oil, food grains, and base metals. This is a speculative bubble, which cannot be explained by fundamentals: oil prices doubled from mid 2007 to mid 2008 before subsiding, while total demand for oil was up only a few percentage points. The simultaneous price rises in energy, food, and metals also tell of a common financial source. Regulatory changes, put into law at the turn of the decade by then-senator Phil Gramm [R-TX] and exacerbated by calculated negligence on the part of the Commodities Futures Trading Commission (the “London loophole”) have fostered financial speculation in commodities. The creation of the London loophole in early 2006, in particular, permitted U.S. oil futures to escape U.S. regulation, just before the explosive phase of the bubble. This is probably not coincidental.

Securitization is a long-standing practice, created in the United States by the government-sponsored enterprise Ginnie Mae and taken up by Fannie Mae and Freddie Mac. It is a major reason for the success of American homeownership policy since the New Deal. But the question is, at what point does it go too far? At what point do standards fall too low? It should be clear by now that sub-prime home loans cannot be safely securitized, because the credit quality and therefore the value of the asset cannot be reliably assessed. Further, in the regulatory climate of recent years (where, as William K. Black pointed out, political appointees brought chainsaws to press conferences), ordinary prudential lending practices were abandoned. The housing crisis was infected by appraisal fraud, a fact overlooked and therefore abetted by the ratings agencies. “No one looked at the loan package.” Now the integrity of every part of the system, from loan origination to underwriting to ratings and insurance, is under a cloud. Fraud is deceit, a betrayal of trust. And it is trust that underlies valuation in a market full of specialized debt instruments, off-books financial entities, and over-the-counter transactions. That trust has, as of now, collapsed.

The result as John Eatwell phrased it is that financial crisis takes the form of *market gridlock*—a systematic unwillingness of institutions to accept the creditworthiness of their counterparties. This is especially grave where a counterparty (such as Lehman Brothers or Bear Stearns) has no direct recourse to a lender of last resort and so the crisis naturally erupts in parts of the system that are outside the direct purview of central banks. In other words, deregulation is a vector for transmission of financial crisis. The economist physicist Ping Chen tied this situation to a larger theoretical point: the notion of efficient markets and rational agents, which is based on Brownian motion, is based on an erroneous logic. Unregulated financial markets depend on information and social networks that are inherently unstable and may be explosive.

This reality was driven home in September, 2008 as Fannie Mae and Freddie Mac were nationalized, Lehman Brothers went bankrupt, Merrill Lynch was sold and the insurance giant AIG rescued by a massive line of credit. And then there came the spectacular proposal to authorize \$700 billion in federal purchases of mortgage-backed securities from the financial system. That proposal, conceived in haste, was superseded in mid-October by actions closely mirroring proposals developed by members of the working group and presented to the public in the Washington Post on September 25: extension of federal insurance to all bank deposits, direct support for the commercial paper market, and the purchase by the Treasury of preferred equity in the banking system.

To what degree these actions will calm the markets remains uncertain at present time. But even if they meet that objective, the success will be provisional. The underlying issues of financial market structure and function will remain for the next administration to resolve.

The message of these points for the next American president is fairly clear. No one in the group expected the financial crisis to have disappeared, or even to be under control, by January 2009. At that time there will no doubt be immediate priorities: more fiscal expansion, aid to state and local governments, and fast action against the wave of home losses to foreclosures at present appear to head the “to do” list. But the financial problems will not go away. And that means that a benign credit expansion, like the one that began under President Bill Clinton in 1994 and carried him through his presidency, is not in the cards now.

Instead, the next administration will face an internal demand situation similar in some respects to that of the early 1990s under George H.W. Bush, when banks and other lending institutions—deeply damaged by the third world debt crisis of the early 1980s—chose to sit quietly on large portfolios of U.S. Treasury bonds and to rebuild their capital by exploiting a steep yield curve. They did not reenter the business of expanding commercial and industrial loans until 1994—five or six years after credit had dried up. However, it is unclear at this juncture where the steep yield curve will come from this time.

Further, while recession will dampen commodity prices for the time being, the next administration may not enjoy the climate of reliably stable prices that has been the norm since the early 1980s, making possible the non-inflationary demand expansion that had created full employment by the end of the 1990s. Every step in that direction risks being bedeviled by the instability of basic commodity prices and by the precarious state of the dollar itself. Forces hostile to policy initiatives will exploit these vulnerabilities, to discourage and thwart any systematic strategy favoring economic growth or a new direction for economic development under the next president.

The financial crisis needs to be addressed at its most fundamental level, which is the purpose, functioning, and governance of financial institutions— and their regulators.

Such is, for instance, the obvious implication of the “International Monetary Fund audit” recently announced for the United States, no doubt with the approval of the incumbent Treasury Department. Inflation headlines and tales of deficits and debt will be taken up – are already being taken up -- by the long-standing fiscal doomsday chorus in Washington and on Wall

Street. In other words, a problem that has its origin in the deregulation, mismanagement, and corruption of the financial sector may become, in American political discourse, a perceived problem of public fiscal management and irresponsibility. If this happens, it will severely challenge the ability of presidential leadership to place economic growth on a fundamentally new and more constructive course and to deal with critical issues such as the infrastructure shortfall, energy, and climate change.

For these reasons, the group agreed that in the next administration the problems of the financial sector should take a very high priority, as an integral part of broader economic strategy. The financial crisis needs to be addressed at its most fundamental level, which is the purpose, functioning, and governance of financial institutions— and their regulators. Let me add to this conclusion my view that, as a political matter, it will be essential to keep the financial origins of the larger economic problems in plain view, and for this purpose a vigorous program of regulatory oversight and reform, including limits on executive compensation, also will be essential.

The Unstable Macroeconomic Environment

The U.S. economy was driven forward in the 1990s by a credit expansion focused on investment in information technology and in the mid-2000s mainly by a vast expansion in housing credit, which fueled construction and also sustained, to a large degree, middleclass consumption. These sources of demand expansion are now exhausted and even going in reverse. Meanwhile, large increases in fuel and food prices drain purchasing power, forcing delays in all forms of consumption and

investment that can be postponed. This accounts for the massive drop in (say) automotive sales reported early in the summer.

U.S. effective demand in 2008 was supported by fiscal expansion. The tax reductions enacted in January had a large one-time effect on consumer purchases in May—a “sugar shock” to total demand, though part of it did leak to imports. Increased federal government spending—especially on defense—played an important role, as second-quarter data confirmed. So is the effect of lower interest rates on the value of the dollar and on demand for exports. All these sources of demand growth will be absent next year.

Further, starting in midsummer, states and localities began to implement austerity budgets imposed on them by falling revenue projections, which are a function of falling property valuations, shrinking residential tax bases, and stagnant sales tax revenue as well as the collapse of the auction rate securities market which destabilized their funding. Meanwhile, mortgages and home equity loans are drying up pensions invested in mortgage-backed securities are under-funded, and private investment will likely follow the consumer into a slowdown. There is very little chance that any new sources of demand will arise in the private sector. While in technical terms a recession may be avoided in 2008, absent major effective action, 2009 will see stagnation, with recession increasingly likely.

Given the fact that vacated and unsold houses (unless destroyed outright) stay in inventory for a long time, there is little prospect of a housing recovery any time soon. Nor will a new expansion of loans to the broad population be collateralized by home values. A recovery in housing should indeed not be expected within the policy horizon of the next presidential term, no matter what happens to the financial sector. Something good could happen somewhere else in the economy, for reasons largely unforeseen, as it eventually did in the 1990s in the technology sector. But to rely on such a happy development would be an act of faith. More likely, there will not be good news from private credit markets in 2009, 2010, or 2011. Achieving economic growth in some other way will therefore be an overriding policy goal.

The only other known way is fiscal policy, and this raises two questions: How much fiscal expansion will be needed, and over what time horizon?

Calls are now being heard for a “second stimulus package,” reflecting the fact that the first stimulus package, while effective, was necessarily short-lived. But the same will be true of the second stimulus package, if it is designed in a similar way. And after the election is over, will the coalition now supporting a short-term stimulus stay in place? If not, what then?

The political capital of the new president risks being depleted quite quickly in a series of short-term stimulus efforts that will do little more than buoy the economy for a few months. Since they will not lead to a revival of private credit, each of those efforts will ultimately be seen as “too little, too late” and therefore ending in failure.

Meanwhile a policy of repetitive tax rebates can only undermine the larger reputation of the country, for it is unlikely that the rest of the world will happily continue to finance a country whose economic policy consists solely of writing checks to consumers.

What is the alternative? It is to embark, from the beginning, on a directed, long-term strategy, based initially on public investment, aimed at the reconstruction of the physical infrastructure of the United States, at reform in its patterns of energy use, and at developing new technologies to deal with climate change and other pressing issues. It is to support those displaced by the unavoidable shrinkage of Bush-era bubbles but to do so gradually and effectively— with unemployment insurance, revenue-sharing to support and expand state and local government public services, job training, adjustment assistance, and jobs programs. It is to foster, over a time frame stretching from five years out through the next generation, a shift of private investment toward activities complementary to the major public purposes just stated. It is to persuade the rest of the world that this is an activity worthy of financial support.

The Function of the Federal Reserve

As noted, the new strategy may have to be developed in a hostile environment of unstable oil and food prices. However, it would be a mistake to interpret that instability as inflationary in the normal sense, a sense normally meant to invoke a monetary policy response. In particular, money wages have not changed or caught up; real wages therefore fell—and quite sharply—as commodity prices jumped. As Ben Bernanke acknowledged in a recent speech, nothing in the present movement of price indices can be attributed to wages. In Bernanke’s telling phrase, “the empirical evidence for this linkage is less definitive *than we would like.*” (italics added)

For this reason, practically nothing in the standard formulae governing responsibility for fighting inflation applies. Those formulas were created for a world where Federal Reserve policy acts as a deterrent (through the conduit of “credibility”) against excessive wage increases. But excessive wage settlements have been unknown for a quarter-century. What happened in 2008 was instead is a price bubble created precisely in the financial markets! No lender was ever scared of higher interest rates. And no energy trader or oil producer is deterred from pushing up the oil price by the threat that someone else might have to pay a few extra points of interest on a bank loan six months or a year hence.

Federal Reserve policy—caught between a weak economy and unstable commodity prices—is thus faced with a conflict of objectives and a shortage of instruments. It can, in principle, “fight inflation”— mainly by raising interest rates to support the dollar and hold down the cost of imports, including the price of oil. Luiz Carlos Bresser Pereira calls this “exchange rate populism”—a familiar phenomenon in Latin America, attractive to political leaders but corrosive to development. If the Federal

Reserve had taken this route, the normal channels of domestic economic recovery would be blocked, and in addition to that, the financial markets would unravel, so that a defense of the dollar as a pure monetary policy strategy is unsustainable, even in the short run.

Or the Fed can continue to deal with the ongoing financial crises, supplying liquidity as a first priority, in which case the dollar will settle wherever the consensus of international reserve holders decides it should go. In a flight to quality, it still appears that the best refuge is US government bills and bonds, and so the dollar may not be strongly affected. Indeed, the unfolding crisis has revealed the fatal fragility of the euro system, which provides neither a credible lender of last resort nor unlimited creditworthiness of sovereign governments. The emergency use of Federal Reserve lending to support the European banks is a potentially explosive development, with consequences that could eventually shake the European monetary union to its roots. But the fact that the eurozone is fragile does not prove that the dollar system is strong.

It is a mantra in some quarters that presidents do not comment on the actions of the Federal Reserve. But in this situation, comment is needed. An appropriate comment on the larger role of monetary policy does not amount to interference in routine decision-making, for example, of the Federal Open Market Committee. Rather, it should reflect the core reality: in the past decade the Federal Reserve and other financial regulatory agencies failed in their responsibilities, and now they must take up those responsibilities again.

The events of September, 2008 dispelled many illusions about the Federal Reserve's role, leaving no doubt that system stabilization trumps price stability in a crisis. But the question remains whether the monetary authorities yet appreciate the full burden that now falls on them. For three decades, a cult of deregulation and "market discipline" has dominated discourse on financial matters. The consequences include a system that is not only unstable and out of control, but also intractably opaque and complex, made so in part deliberately to defeat the prospect of effective prudential regulation. Such a system can survive only so long as no one examines it closely. In a crisis, exposure is inevitable; each wave of scrutiny raises new questions and generates new anxieties and the potential for panic.

The entire point of a regulatory system is to regulate. It is to subordinate the activities of an intrinsically unstable and predatory sector to larger social purposes and thus to prevent a situation in which financial interests dictate policy to governments. That is, however, exactly the situation that has been allowed to develop. The job of the Federal Reserve and of the other responsible agencies must now be, in part, to reestablish who is boss. Specifically, there must be a thoroughgoing revamping of the financial rules of the road, to dampen financial instability, to deflate the commodity bubble, to reduce the enormous monopoly rents in the financial sector, to set new terms for credit management, and to generate productive capital investment where it is most required. This is in large part the

Federal Reserve's job, though it has strong interagency and international dimensions. It will remain the Federal Reserve's primary task for the duration, which means that other tools including regulation and supply management must be brought to bear, as needed, to control inflation pressures.

The Future of the International Monetary System

The Paris group included several senior experts on the structure and governance of the international monetary and financial system. Almost all agreed that the present system is in trouble and that major changes are on the horizon if not actually imminent. Whether those changes will come by evolutionary steps or by directed reform was an open question. There was no consensus as to the ideal structure of a new system, but certain lines of the discussion were nevertheless revealing.

The present international monetary system suffers broadly from two critical flaws. First, it has failed to provide stability, hence predictability, for ordinary business activity. Financial flows determine almost entirely the ups and downs of exchange-rate movements with the result that these are largely haphazard, unpredictable, and subject to manipulation. Meanwhile the underlying financial networks are opaque and subject to large systemic risks. Second, it does not provide a framework within which individual countries can pursue coherent development, growth, and full employment strategies. On the contrary, it subjects them to harsh discipline and erratic performance. It is no accident that the major success stories in the developing world—China and India since 1980—were precisely the two countries that did not use foreign bank credit and so remained insulated from financial shocks. Since the late 1990s, these two have been joined by others (notably Argentina) that have realized that the most effective financial strategy is sometimes to withdraw from the international system.

Within this unstable and capricious context, the United States has enjoyed a highly favored position, especially since the early 1980s, as the provider of the sole major reserve currency. How long the dollar can hold this position is a grave uncertainty facing the United States. But the same uncertainty also faces the world, much of which is well served by having a single reserve currency, especially by having it be that of the United States. It is precisely because the United States has been willing to maintain a high level of effective demand despite violating every imaginable balance-of payments constraint that the world economy has been able to grow, and largely to flourish, since 2001. The United States could do this because its debts are in its own currency and at low rates of interest.

A shift to a multi-polar system would remove this feature. It would therefore be extremely risky, because such a system has no consumer- of-last-resort. If no country or region is willing (or able) to run up debts, the others cannot pursue export-led growth toward full employment. Most of the world understands this, and as a practical matter most of the world supports the United States in its role. The

real danger of a collapse is thus not a challenge to U.S. leadership from the outside, but decay and disorder arising from within.

The Bretton Woods system tried to deal with instability through capital control. The idea was to keep private international financial players in check, with global money and a clearing union to settle international accounts, and a system of adjustment that favored expansion by surplus rather than contraction by deficit countries— thus pushing all players toward full employment. The Havana Charter of the International Trade Organization, which was never implemented, stressed the need for this type of asymmetric adjustment, along with exemptions for developing countries from the rigors of free trade. Some in the group favor returning to that vision as the starting point for the design of a new system. Most regard that ideal as unattainable and seek instead the narrower objectives of better control over instability and a greater tendency toward growth and high employment—that is, to cure the flaws of the dollar- reserve system rather than to replace it.

All participants understand that the ultimate survivability of the dollar system cannot be separated from the reputation of the United States, especially in three areas. The first of these is geopolitical: The United States gained financial preeminence after World War II because it was the recognized and accepted leader of the noncommunist world. The United States provided security to that world and received financial privileges in return. In the years since the cold war ended, it has become increasingly clear that the United States is not providing very much security to others and in many eyes has instead become itself a source of instability. The financial position of the country cannot fail to pay the price for this.

The second area where reputation is important is that of financial governance: The United States owed its financial preeminence in part to a widely shared conviction that U.S. financial markets were comparatively clean, stable, and transparent. Obviously that reputation has come under great strain in recent years. The resulting uncertainties do not affect the liquidity of Treasury notes, but they do affect the valuation of the dollar and the attractiveness of dollar denominated securities as reserve assets.

Third, the United States has enjoyed financial preeminence because of its technological leadership. Investors go where things happen. This fact was prominently on display in the late 1990s—the United States got the capital inflow because it was the only country that could generate the technology boom. This asset, too, has been partly squandered, but it can be repaired. Doing so will be a major part of the challenge facing the next administration.

These fundamental issues are obscured by a superficial international regulatory discourse, according to which the central issues facing the financial system are transparency, disclosure, and better risk management by firms—the Basel II agenda. This agenda ignores systemic risk. Yet systemic risk in a changing world is the central and unavoidable question. Meanwhile the International Monetary Fund

(IMF), as an organ of world financial governance, is a spent force, discredited by its rigid ideology and asymmetric service to the creditor states. It is no surprise that developing countries do not want to work with the IMF anymore.

Participants from China, India, and Brazil emphasized that regional financial agreements and, in certain cases, new institutions are already developing. (Of these, of course, the euro is a major example.) Outside Europe these agreements will aim not at fixing exchange rates, but at providing zones of managed change, through a combination of swap networks and capital control, especially inflow control. Regional currencies or clearing units, in Asia and Latin America, seem increasingly possible. These will improve regional economic stability and reduce the demand for dollar reserves, but with adverse effects on U.S. economic stability unless something is done. Many of these developments have already, to a large extent, escaped direct control by the United States.

What Should the United States Therefore Seek?

Our discussions pointed at three major lessons for the next administration:

- First, the key-currency role of the U.S. dollar should be preserved as much as possible, as long as possible, even if it cannot be preserved indefinitely. This can best be achieved by explicit coordination among the major players, including the United States and its largest creditors in the developed and developing worlds. Here the status of China is central. Since the two countries are bound by the force of circumstance to prosper or fail together, the United States should seek a constructive partnership with China in the interest of preserving— for as long as possible—an economic relationship that has greatly advantaged both countries.
- More broadly, the United States should accept both the inevitability and the benefits of regional stabilization blocs, which have the potential to mitigate the risk of financial crisis in large parts of the developing world, permitting sustained economic development. But in return, the emerging regions and their institutions should agree to support the dollar, by stabilizing reserve holdings and fostering investment in the United States.
- Ultimately, excess holdings of U.S. reserves can be reduced through the gradual revival of U.S. technology leadership, especially in the area of energy transformation. It is by selling what it produces that the United States can ultimately make the transition—if a transition is unavoidable—from financial hegemon to “normal country.” It is in everyone’s interest that this transition, if it cannot be avoided, be as smooth, and as slow, as possible.

Policy Priorities for the United States

As a final exercise, the group was asked to consider what the major policy priorities should be for the United States in the economic and financial conditions likely to

face the next administration. This discussion produced considerable consensus on major points.

The next administration will face an acute situation in housing. It is clear that efforts to stem the foreclosure crisis and the massive deflation of house prices now under way are constantly being overtaken by rapid growth in the scale of the crisis. Estimates range up to 10 million households “below water” and a notional loss of household wealth on the order of \$6 trillion. And the matter is extremely time-sensitive: after houses are foreclosed and abandoned, blight settles over the landscape, darkening and deepening the problems for many who were not foreclosed as well as for those who were. An effective policy to halt foreclosures and to keep families in their homes is a most urgent priority. If the next president cannot forestall a rising tide of home loss, no other problems are likely to seem solvable. For these reasons, a new Homeowners Loan Corporation (HOLC) and Resolution Trust Corporation (RTC) should be put in place urgently.

Just as the S&L crisis in the 1980s brought re-regulation to the savings and loans, so the commodity bubble must bring re-regulation to the futures markets. Certain technical steps take priority, especially closing the Enron and London loopholes (as is now being done) and bringing credit default swaps back under regulation as financial rather than commercial positions. More broadly, as Paul Davidson has recommended, the new administration can sell oil from the SPR (as was done during the first Gulf War and after Hurricane Katrina in 2005), if required to help manage the price and to deflate any return of the summer 2008 commodities bubble. As oil prices come down, they should also be stabilized over a reasonable floor: the policy should not be cheap oil but oil sensibly priced to promote conservation without beggaring the middle class.

The new administration can also work with food-producing countries to reduce export restrictions and hoarding. But, as with oil, the price of this concession should be a commitment to new global policies aimed at stabilizing the supply and price of staple foods. After these measures take effect, the Federal Reserve will be under

Fiscal expansion in the next administration therefore needs to be a long-term proposition, and it should focus on building institutions needed for the long run.

Thus, general revenue sharing to support state and local public services, a national infrastructure bank, new educational initiatives including universal pre-kindergarten, an energy and environmental program—all must be conceived of as part of a long-term strategy to stabilize demand, provide jobs, and reestablish the technical basis for U.S. global leadership and eventual reemergence as a dominant exporter in advanced markets.

less pressure to defend the dollar or, worse, produce the deep recession that would be required to reduce demand for food and fuel.

These measures will tend to burn speculators and force financial institutions holding speculative assets to recognize their losses. But this must be done, and for the sake of an economic recovery it should be done sooner rather than later. The view of the group is that the major losses from an unraveling of the commodities bubble would be felt by hedge funds, private equity funds, and other speculative pools, rather than banks—losses that the larger system can tolerate. There is no need for panic. It will be far easier to rebuild the financial system than to cure the urban and suburban blight that an unattended housing crisis will leave behind, let alone to undo the damage of conditions approaching famine in some countries.

Regulatory powers require political will and determination as much as new laws. A will to act can put an end to the self-fulfilling prophecy that governments are (in this area) intrinsically overwhelmed by the complexity of markets. The next administration should therefore move swiftly to repair the vast damage done to regulatory capacity in recent years. It should emphasize the acquisition of authority—filling in the regulatory black holes that have been allowed to develop. It should appoint strong regulators to vacancies on the Federal Reserve Board and elsewhere. It should rebuild the staffs of the regulatory agencies, paying adequately to tap and retain top talent, including senior experts. It should hire enough people to have systemic competence, and it should eschew zealots. It should insist on a clearinghouse for OTC derivatives and that dealers guarantee liquidity, if and as these markets are rebuilt, by making the markets in their securities.

One short-term fiscal stimulus package may be inevitable, given economic distress and the need for an early political victory in this area. But it should be pursued without illusions. The economy will not resume normal growth on the basis of a single such package. Fiscal expansion in the next administration therefore needs to be a long-term proposition, and it should focus on building institutions needed for the long run. Thus, general revenue sharing to support state and local public services, a national infrastructure bank, new educational initiatives including universal pre-kindergarten, an energy and environmental program—all must be conceived of as part of a long-term strategy to stabilize demand, provide jobs, and reestablish the technical basis for U.S. global leadership and eventual reemergence as a dominant exporter in advanced markets.

In addition, since the financial crisis will inevitably bleed into the value of private pensions, the next administration should consider steps to expand social security benefits, so as to put a more secure floor under the incomes of the elderly and the financial position of near-retirees. Long-term capital commitments are appropriately financed with long-term debts. Thus, the pay-as-you-go provisions of the budget process should not serve as a bar to action along these lines. However, there is no harm in programming progressive tax increases for future years, in order to keep

budget-deficit projections under control. If circumstances warrant, those tax increases can always be deferred before they take effect.

It was a central tenet of our conversations that these measures cannot be viewed, or undertaken, in isolation from the international financial position of the United States. Obviously, a successful speculative attack on the dollar would severely disrupt the orderly implementation of this or any other strategy. Equally obviously, a unilateral defense of the dollar via a campaign of high interest rates would severely aggravate the problems of the real economy.

The way out of this dilemma—the only way out—lies in multilateral coordination and collaboration: a joint effort by the United States and its creditors. And this means that the next administration must return, rapidly and with a credible commitment, to the world of collective security and shared decision-making that the Bush administration has been at pains to abandon. An orderly disengagement from Iraq would send a major signal of the intention of the U.S. government to play, in the future, by a different set of rules.

Collective security, in short, is not merely a slogan. It is the linchpin of our future financial and economic security—security that cannot be ensured by any unilateral means. Only a collective effort will keep America's creditors committed to the stability of the dollar reserve system, long enough to affect the next round of economic transformation in the United States. Conversely, continued failure to appreciate the financial and economic dimensions of unilateral militarism is one certain route toward the failure of the next administration's economic and financial strategies. The two largest issues we face—how to maintain American economic leadership in much of the world and how to manage U.S. military power—cannot be separated.

Collective security is, however, also more than simply a way of reducing risks and instabilities. It is the foundation stone for many physical transformations of the economy to come. In particular, it is obvious that the military basis of international power on which the United States continues to rely is completely outdated, and has been for decades. As the U.S. invasion of Iraq has made clear (not least to the professional military), military power alone cannot deliver stability and security—let alone at an acceptable human and social cost. Yet parts of the military establishment continue to develop, and to harbor, the technological talent and capacity for problem solving that every aspect of our energy problem now needs. Shifting the basis of our security system away from one based on military equipment is a key step toward making those resources available.

And the same is true for other countries. China, for example, has long made energy choices favoring coal partly because the resulting power plants are diffuse and militarily expendable. In a secure world, that country would be far more willing to develop its vast hydroelectric potential, as the then-invulnerable United States did in the 1930s. Hydropower is carbon-clean but militarily exposed. A stable reduction of

military fears is a key step toward opening up markets that have the potential to permit resolution of collective problems on the grand scale.

In conclusion: From the beginning, the next U.S. president will face acute situations requiring immediate action, especially in housing. He should aim for early victories in these areas as the foundation for intermediate- and long-term programs. For the medium term, institution-building and the restoration of competent and effective regulatory power over the financial system—both national and international—will be key.

For the long term, the goal should be the transformation of our energy base and the solution of our environmental challenges— nothing less than the rebuilding of the country. And that can be done only in an international financial climate made possible by a return to multilateral decision-making and a commitment to collective security. The American people are ready for this.

The new president should be prepared to explain that leadership in a world community—leadership of collective action on the grand scale—is the true destiny of the United States. It is not in futile warfare but in great endeavors that a great nation finds its future, its purpose, its place in history, and prosperity as well as security, for its people.

Appendix. Participants in the Economists for Peace and Security—Initiatives for Rethinking the Economy Seminar on Finance and Security, Paris, June 16–17, 2008

Americans

Black, William K.: University of Missouri-Kansas City.

Davidson, Paul: New School University; Editor, *Journal of Post Keynesian Economics*.

Galbraith, James K.: The University of Texas at Austin and Chair, Economists for Peace and Security.

Guttman, Robert: Hofstra University and Centre d'Economie del'Université Paris Nord

Harvey, Thea: Director, Economists for Peace and Security

Kregel, Jan: Levy Economics Institute of Bard College and University of Missouri, Kansas City.

Rosser, Barkley: James Madison University; Editor, *Journal of Economic Behavior and Organization*.

Webster, Lucy Law: Board Member, Economists for Peace and Security

French

Blin, Arnaud: Forum for a New World Governance.

Calame, Pierre: Charles Leopold Mayer Foundation for Human Progress.

Chavagneux, Christian: Deputy Editor, *Alternatives Economiques*.

Dembinski, Paul: Observatoire de la Finance.

Fontanel, Jacques: Centre d'Etudes sur la Sécurité Internationale et les Coopérations Internationales, Université Pierre Mendès France, Grenoble.

Gnos, Claude: Université de Bourgogne.

Jacquet, Pierre: Agence Française de Développement and Cercle des Economistes.

Kalinowski, Wojtek: Initiative for Rethinking the Economy

Lalucq, Aurore: Initiative for Rethinking the Economy

Parguez, Alain: Université de Besançon.

Raveaud, Gilles: Université Paris 8 Saint Denis (note-taker).

Others

Agarwala, Ramgopal: Research and Information System for Developing Countries, New Delhi.

Bresser Pereira, Luiz Carlos: Getulio Vargas Foundation, São Paulo; former finance minister of Brazil.

Chen, Ping: China Center for Economic Research, Peking University, and Center for New Political Economy, Fudan University.

Eatwell, John: President, Queens College, University of Cambridge.

Lietaer, Bernard: Research Fellow at the Center for Sustainable Resources of the University of California at Berkeley.

The meeting was sponsored by the Charles Leopold Mayer Foundation for Human Progress.

COMMUNITY ECONOMIC DEVELOPMENT AND FINANCE

KAREN CHAPPLE

Abstract

Economic development policies have developed as inefficient and disconnected programs that promote relocation and do not ensure the economic security of families. Instead, federal policy should connect multiple agencies to provide a comprehensive development strategy. Programs should focus on stabilizing communities by linking corporate subsidies to community economic development outcomes, including labor standards that ensure job quality, and expanding community-building interventions. In addition, they should address both the income and asset security of families.

Policy Recommendations

The next administration can begin these efforts in its first one hundred days with 1) an economic stimulus package that promotes job creation and includes construction spending, specifically deferred maintenance and energy efficient retrofits in infrastructure, schools and community facilities, and public housing; and 2) foreclosure prevention, mitigation and recovery.

Throughout the next presidential term, a community development “czar” should coordinate economic development efforts across agencies according to six guiding principles.

1. All corporate subsidies should require community economic development outcomes.
2. Programs should include labor standards that expand opportunities for disadvantaged and local residents through training and apprenticeships in economic development programs and government-funded construction projects.
3. Efforts should shift away from a narrow housing focus to a broader concept of building community capacity in deserving suburban communities as well as central cities.
4. Coordination of these programs must occur not only across federal agencies but also at the local level.
5. Green building, energy efficiency, and environmental sustainability must be integral to economic development.
6. The federal government should partner with local institutions such as universities to develop and demonstrate new models of community economic development.

Natural Constituencies

These policies have different short and long-term constituencies. Support for these immediate policies emerges from the construction industry and labor unions, communities in need of infrastructure upgrades, and homeowners at risk of losing their houses. In the long-term, construction and environmental constituents will be joined by communities and organizations that have already begun to develop the innovative policies and financial institutions of the next generation of federal policy.

Banks and corporations who currently receive federal subsidies will oppose any new economic development requirements, because this constrains their investment choices. Moreover, these policies could advantage new organizations over the currently dominant firms.

THE FIELD OF COMMUNITY ECONOMIC DEVELOPMENT has blossomed in the past thirty years, but much work remains to be done in order to ensure that economic opportunity and prosperity can reach the most disadvantaged people and places in the U.S.. The current financial crisis highlights some of the strengths and weaknesses of existing programs and offers opportunities for the fundamental restructuring of how communities can benefit from the flow of capital through places and families can cope with adversity and achieve upward mobility. There is also a need to develop long-term strategies to help communities and individuals deal with rising income inequality, disinvestment, and restructuring-- in other words, to build community economic stability and family economic security.

At present, multiple public policies support the mobility of capital and (albeit unintentionally) the decline of place. Governments spend hundreds of billions of dollars in subsidies to corporations to assist their relocation from one community to another. Federal policies underwrite the inefficient extension of infrastructure into the suburbs, ignoring sunk costs in infrastructure and housing in the shrinking cities left behind. The social costs of this dislocation are well documented, and awareness of their climate change impacts (from wasted resources to higher fossil fuel dependence) is growing. Instead, policies to promote community economic stability would tie public subsidies to funding for the Community Reinvestment Act (CRA), community development financial institutions (CDFIs), and other vehicles to improve capital flow through communities; include labor standards to ensure job quality; and scale up proven and cost-effective community-building interventions from Promise Neighborhoods to community gardens.

Ensuring family economic security is even more of a policy challenge, given the growing number with poor or no access to health insurance, income supports, college education loans, transportation, homeownership, and other resources that make healthy, productive lives -- and upward mobility -- possible. Federal policies affecting income and asset security span employment assistance (e.g., job placement, long-term retention, and advancement), work supports that help families retain their earnings (e.g., child care assistance or the Earned Income Tax Credit), and asset-building programs (through

credit repair, financial education, savings, and low-income homeownership programs). Most recently, the biggest challenge for the family budget has become rising gas costs, and work by the Center for Neighborhood Technology suggests that effective policies will address transportation costs simultaneously with housing costs. To address both income and asset security, a promising model for a national demonstration project is the Annie E. Casey Foundation's Center for Working Families, which bundles access to essential economic and work

The two main priorities for the first 100 days of the Obama administration should be:

(1) developing an economic stimulus program that rebuilds infrastructure and creates new jobs across the country and

(2) responding more effectively to the foreclosure crisis and its impacts on the affordable housing market.

supports in one location to help families build self-sufficiency, stabilize their finances, and move ahead.

Complicating the implementation of these policies is the siloed nature of community economic development policies, which can be found in multiple federal agencies, including HUD, Labor, Health and Human Services, Transportation, Education, Commerce, and Treasury. Yet, recent experience has showed us that programs from workforce development to asset-building to economic development are most effective if implemented as part of a comprehensive effort to support households and communities.

The new Obama administration will need to take immediate action to stimulate the economy and assist families caught up in the crisis. Developing community economic development policies to support places and families more effectively will mean a longer term effort to reorganize program management and service delivery both within government and across metropolitan regions. The following addresses first the actions to be taken in the first 100 days to stabilize the economy and its effects on communities, and then turns to the longer-term approaches.

First 100 Days

The two main priorities for the first 100 days of the Obama administration should be (1) developing an economic stimulus program that rebuilds infrastructure and creates new jobs across the country and (2) responding more effectively to the foreclosure crisis and its impacts on the affordable housing market. Despite the need for quick action, these programs should be consistent with longer-term goals for communities and families discussed below, including tying corporate subsidies to community economic development outcomes, ensuring job quality and local hires, and supporting livable cities.

Economic stimulus. An economic stimulus package should focus on construction spending, specifically deferred maintenance and energy efficient retrofits in infrastructure (transportation and sewers), schools and community facilities, and public housing. Spending programs should require that:

- A substantial share (e.g., 30%) of total hours worked on projects will be reserved for local and/or disadvantaged worker hires.
- Allocations will be based upon demonstrated need, the capacity to spend the funds quickly, and the extent to which projects are green (e.g., reduce greenhouse gas emissions by promoting the use of transit or retrofit buildings for energy efficiency)

The economic stimulus bill should also include programs to restore affordable housing financing and create new jobs across all types of businesses. Though the collapse of the homeownership financing system has garnered the bulk of policy attention thus far, the crisis has placed the rental housing construction at risk as well, as developers cannot get financing through institutions coping with the mortgage crisis. The reform of Fannie Mae and Freddie Mac will need to find ways to restore liquidity to rental markets

quickly and prevent this crisis from worsening an already tight affordable rental market. One creative approach that bolsters affordable housing financing and creates an economic stimulus is a temporary modification of the Low Income Housing Tax Credit program – which is currently grinding to a halt in the crisis – that would create a floor price for credits and guarantee equity availability through the Treasury.¹ With tens of thousands of planned affordable housing units at stake, this would be a relatively low-cost intervention that would bring new affordable units onto the market while preserving construction jobs.

The stimulus program should help support job creation in the rest of the economy as well. Two innovative initiatives for short-term job creation come from the Corporation for Enterprise Development. The first is a job growth tax credit of up to one third of the first \$15,000 of wages for new employees over baseline employment, to be offered to all businesses that expand their employment. This program is modeled on the New Jobs Tax Credit in the Carter administration, which created 700,000 jobs in a year with a net cost of around \$13,500 per job; it could also be targeted to certain groups, though that may lessen its effectiveness. The second is a targeted job creation grant program offering private employers direct wage and benefit subsidies to hire resident unemployed job seekers in the most economically disadvantaged communities. In essence, this is a discretionary wage subsidy program. Although more complex to administer than the tax credit, this grant program offers up-front funding, which can be particularly helpful for new firms seeking to grow quickly.

Foreclosure prevention, mitigation and recovery.

With several more waves of mortgage resets yet to come, the Obama administration should maintain a focus on foreclosure prevention. The FDIC's proposed approach to loan modifications – changing from adjustable to fixed rate and lowering the interest rate so that monthly payments are capped at 38% of household income – is promising.

¹ This modification – conceived by Matt Schwartz of the California Housing Partnership and Joel Rubenzahl of Community Economics, Inc. -- would create a temporary 5-year ability for owners that have received an allocation of Low-Income Housing Tax Credits, completed the project and demonstrated full tax credit compliance, to obtain refundable tax credits directly from the Treasury in lieu of selling a partnership interests to an investor. The refundable credit would be paid over a 5 year period (instead of the 10-year tax credit period). Owners could assign the stream of refundable credits to a lender as collateral for five-year loans that would allow the funds to be available to pay off construction financing. The net present value of using the LIHTC in this way would only be around \$.80 despite the shorter credit period. This is due to the loss of the tax benefits (depreciation and other losses) normally packaged to investors with the credits, but this would give developers (particularly NP and governments developers) an alternative way to obtain equity and effectively set a floor to the credit market by giving developers an alternative to the crippled investor market. By creating a floor price for credits and guaranteeing equity availability, it would save dozens and perhaps hundreds of Tax Credit deals that will otherwise die, saving thousands of construction and construction related jobs. Shortening the credit period from 10 years to 5 years would cost the Treasury but eliminating the deductions for the associated tax losses would produce savings that would offset much of this. All of the tax credit requirements would remain and be monitored and enforced through the state allocating agencies and IRS. The cost to save LIHTC projects for one year would be approximately \$1 billion.

However, the cap should be 33%, and it should be expanded to cover all disadvantaged homeowners in foreclosure who want to participate. Since mortgage securitization creates a disincentive for servicers to pursue loan workouts, one important policy shift would be to give the servicer the power to renegotiate loans regardless of the investors downstream.

Financial education workshops are proving effective in many cities, but there is a shortage of certified housing counselors. Future legislation should provide support for the training and staffing of housing and credit counseling agencies. It should also incentivize collaboration between income security and asset-building organizations in financial coaching and education efforts.

The federal government can also take steps to reduce the amount of foreclosure related-displacement. For instance, some counties are sending out information about housing counseling to all homeowners receiving notices of default; this should be mandatory. Extending the foreclosure process in non-judicial states would give more households enough time to restructure their mortgages. Legislation should also enhance protections for renters in order to minimize their displacement.

The \$3.8 billion Neighborhood Stabilization Program begins the process of property recovery, but has several flaws that should be remedied as the program is implemented and reauthorized. For instance, since participation by lenders is voluntary, those in hot market regions are unlikely to participate fully; it will be necessary to mandate compliance from certain lenders in these areas. Second, the funding allocation formula is inequitable in two ways: (1) it includes a factor called “abandonment risk,” which is not prevalent in the Southwest and West regions where foreclosures are disproportionately concentrated and (2) the majority of funds go to households with income over 50% of area median. Allocation formulas should ensure that funds go to the neediest areas and families. Finally, the next version of the program will need to deal with household recovery, providing funding and capacity to provide the financial, social and emotional support services that former homeowners need to recover from foreclosure.

At the same time as implementing these foreclosure-related programs, the new administration should ease government regulations that hinder income and asset security, while stepping up regulation of lenders. The Center on Budget and Policy Priorities has identified multiple barriers to asset accumulation for low-income families. While new regulations stemming from the financial crisis will help reduce predatory lending, one quick policy the administration could support is a payday lending loan cap. These and other proposed regulations and rule changes have few financial implications for the federal government, but can make a huge difference to families and communities.

One of the most critical interventions that the Obama administration should make is launching an educational campaign to explain that CRA and low-income homeownership programs generally are not the cause of the financial crisis, but rather the best hope. Studies have shown that because these programs for the most part offered fixed-rate

loans along with financial education, their recipients have been significantly less likely to go into foreclosure.

First Four Years

As the financial crisis diminishes, the new administration should adopt six principles to guide community economic development. Because of the vast number of federal agencies and programs involved, the Obama administration should appoint a “czar” of community economic development in its Office of Urban Policy.

(1) Achieving community economic stability and household economic security will require coordinating more effectively across federal agencies and mandating similar efforts at the local level. The “czar” of community economic development should begin by reviewing all of the related programs across federal agencies. For instance, place-targeted incentive programs are found at HUD (Empowerment Zones), Treasury (New Markets Tax Credits), and Commerce (HUBZones). Various forms of workforce development programs can be found at Labor, HUD, Health and Human Services, Education, and Transportation. The main federal asset-building program (Assets for Independence) is at Health and Human Services, but low-income homeownership programs are at HUD and Treasury.

But program duplication is the least troubling symptom of the balkanization of federal agencies. The real issue is that programs working in isolation are much less likely to be effective. For instance, evaluations have consistently shown that participants in housing voucher programs, while successfully relocating, are not as able to access employment opportunities from their new location. Housing voucher programs should include resources for employment counseling and connection to community college systems. Likewise, HUD public housing residents and voucher holders are strong candidates for asset building, but the Family Self-Sufficiency unit at HUD is too understaffed to meet demand. Although low-income residents are disproportionately dependent on transit, reliable transit access is too rarely a criteria for financing affordable housing projects. Making a concerted effort to coordinate across agencies will help meet community economic development goals more effectively.

(2) Any form of corporate subsidy should be explicitly tied to community economic development. From the \$700 billion Emergency Economic Stabilization Act of 2008, to the reform of Fannie Mae and Freddie Mac, to the numerous tax credit programs spurring investment in disadvantaged communities, government loans and incentives to business should result in community economic development outcomes.

At present, CDFIs (including community development banks, loan funds, credit unions, micro-loan programs, and venture capital funds) have much more demand than they can accommodate. There is also a need to capitalize new CDFIs in underserved areas, particularly in suburban areas hard-hit by the foreclosure crisis. As banks repay the bailout loans, a designated percentage of the funds should go directly into the CDFI

Fund and the new National Housing Trust Fund, targeted towards bolstering affordable rental housing markets. Other ways to bolster these funds would be to make capital available from the Federal Home Loan Banks, reaffirm a leadership role in CDFI and affordable housing finance in Fannie Mae and Freddie Mac reform legislation, and support successful intermediaries like the Local Initiatives Support Corporation as they build CDFI capacity, attract investors, and build a secondary market for CDFI loans. Yet, even if expanded, these community institutions are not capable of addressing all capital needs. As banks continue to merge and consolidate, modernizing, expanding, and enforcing CRA will help ensure continued capital flow into disinvested communities.

Tax credit programs have had varying impacts on community economic development, and the new administration should carefully support the most effective programs. The worst performer, in nearly all evaluations, is the federal Empowerment Zone program (as well as related state programs). Though it is associated with modest positive impacts in a few cities, in general the program's zones have had no greater success in reducing unemployment or poverty or creating jobs and businesses than comparison areas without zone designation. Yet, place-targeted programs help build community capacity and thus community stability. The administration should consider implementing an improved version of this program, perhaps with a targeted job creation grant program replacing the failed hiring tax credit, more flexibility in implementation, and better integration with workforce development and union apprenticeship programs.

Though only preliminary results are available on the New Markets Tax Credit, it seems to be an inefficient vehicle, with the funding going to private intermediaries swamping the benefit to recipients. The NMTC should be more effectively connected to community development intermediaries (e.g., supporting small business) and include accountability provisions to ensure community benefits. But other less well-known tax credit programs are effective and should be expanded; among them is the Historic Preservation Tax Credit, which has had strong positive impacts and multiplier effects despite its small scale.

Less visible, but much larger in scale, are the bidding wars that states and cities engage in, often using federal funds, to attract corporations. The new administration could slow the stream of these wasteful incentives through both incentive carrots and regulatory sticks. The government could use Commerce and Labor appropriations for federal economic development programs as financial incentives to encourage local governments to join and abide by non-poaching agreements. Building on the highly regarded Trade Adjustment Assistance (TAA) program for workers (run by Labor) and firms (at the Economic Development Administration), the federal government could require relocating firms to pay into a local TAA pool to support the workers and businesses left behind. Other new regulations could include mandated disclosure of deals with companies, including a cost/benefit model analysis to assess incentive packages, and tying in performance requirements, including clawbacks that safeguard public investments.

Although supporting regional innovation clusters is one of the most fashionable economic development ideas at present, recent studies have shown that this strategy is not effective at job creation. A new industrial policy will need to reinvigorate the Manufacturing Extension Partnership program to help bolster the competitiveness of U.S. manufacturers who keep and increase their domestic labor force. Economic development funding should also support job creation by local-serving industry – including arts and cultural centers, recreational facilities, health and child care, and other services – which have the potential to capture more local and regional spending. The administration’s new green economy initiative should prioritize and incentivize the greening of traditional businesses across the country, from utilities to construction to manufacturing to retail and services, rather than simply supporting the cleantech clusters that are appearing in a few high-tech regions.

(3) Labor standards to ensure job quality, connections to training and apprenticeship programs, and local hiring should be built into both economic development programs and government-funded construction projects. Federal economic development programs too often emphasize short-term job creation goals without paying attention to who benefits. Although such programs are needed for the short-term economic stimulus, a longer-term goal should be to develop multiple criteria for allocating funding including quality and stability of employment, share going to local and/or disadvantaged residents, and local skill formation.

Beyond the economic stimulus legislation, there will be multiple opportunities to build labor standards into federal infrastructure programs. For instance, SAFETEA-LU, the federal transportation bill, currently encourages states to make their best effort to direct 30% of total hours worked on projects to local residents. The reauthorization of SAFETEA-LU should make this local hire provision mandatory in regions with high unemployment. There will be similar opportunities in new energy, environmental, and housing legislation.

Studies have repeatedly shown that the most effective workforce development programs connect directly with employers. The new administration should wield two tools to facilitate this connection via federal policy. The first is linking program spending to workforce development capacity: for instance, a designated percentage of all new federal infrastructure spending could support pre-apprenticeships in construction trades. The second is incentivizing cities and states to connect economic and workforce development administratively, by making funding contingent upon agency coordination.

Federal economic development programs too often emphasize short-term job creation goals without paying attention to who benefits.

(4) The growth of suburban poverty and the loss of economic security for many middle-class households create a new set of community economic development needs. Specifically, there is a need to build community development corporation (CDC), CDFI,

and community organizing capacity outside of the traditional urban core and rethink federal agency allocation formulas that do not reflect current needs.

Many of the community organizations that have been able to respond so effectively to the foreclosure crisis are the legacy of Johnson-era interventions, from the Economic Opportunity Act to Model Cities, that built community capacity for a coordinated attack on inner-city poverty. Though many of these CDCs have now come of age, they are not fully prepared for 21st century community economic development struggles. First, they tend to focus more on housing and commercial development than community organizing and leadership development, and second, they are struggling to cope with new needs in distant suburban areas. To address this – without starting a new War on Poverty -- the Obama administration should connect its economic development and infrastructure spending to such capacity-building. Just as short-term economic stimulus programs should be channeled to organizations with the capacity to generate economic activity quickly and effectively, spending programs over the next four years should favor emergent CDCs and community organizing efforts, perhaps by setting aside a designated percentage of funding for these organizations. HUD's Community Outreach Partnership Centers program, which connects university resources to revitalization efforts in distressed communities, can also help with capacity building.

This evolving geography of poverty and community capacity also means rethinking the place-based funding criteria that underlie Community Development Block Grants, EDA programs for distressed communities, many tax credit programs geared at low-income communities, and others. Many deserving suburban communities in large metropolitan areas do not qualify for funding because they are required to apply from within larger, more affluent units; for instance, non-CDBG-entitlement communities receive funding through the county. The administration might replace these increasingly obsolete funding criteria with a fuller set of place-related problem characteristics that trigger eligibility in programs and can be flexibly applied to communities within larger county units or metro areas. These might include poverty levels, asset poverty, unemployment rate (or increase in unemployment), lack of access to health care, high transportation cost burden, and other criteria related to household income and asset security. Yet, while accommodating this new geography of poverty more equitably, CDBG and other programs should not significantly diminish funding to central cities. The continued potential for wealth creation in central cities, where transportation cost burdens are low and asset appreciation is high, makes it imperative that income supports remain in place.

(5) The administration should partner closely with philanthropy and universities in developing and demonstrating new models of community economic development.

Though promising practices abound in community economic development, most will take more time to implement and refine than a political framework will permit. For instance, Promise Neighborhoods might follow the failed path of the Comprehensive Community Initiatives of the 1990s if the administration does not give careful thought first to how to replicate the key design and operating principles of the Harlem Children's Zone, perhaps working in concert with some of the philanthropic foundations that have conducted

previous experiments. With philanthropy as a partner, the administration would also be shielded from criticism as it conducts demonstration projects.

Two examples of new models come from the Annie E. Casey Foundation (on workforce intermediaries) and the Ford Foundation (on shared equity homeownership). The Casey Foundation's National Fund for Workforce Solutions has 22 sites and some 300 funders (including Labor) involved. The Fund is a national venture capital pool that invests in and supports local pools that in turn invest in workforce partnerships that better align workforce funding with employer needs. There is an opportunity to link this effort better with the next generation of federal workforce legislation to ensure that it uses sector-based workforce strategies and aligns better with metropolitan regions and community colleges.

The Ford Foundation is exploring the potential for the shared equity homeownership model to become the dominant approach to subsidized homeownership. This includes different housing models (including limited equity housing cooperatives, community land trusts and deed-restricted houses and condominiums) that sell homes at below-market prices to lower-income buyers and limit the resale price that these homeowners can charge when they later decide to sell. They offer steady wealth creation without the boom and bust of speculation. Inclusion of equity sharing provisions in the Housing and Economic Recovery Act of 2008 was a first step towards a new federal housing policy. However, a joint Obama administration-Ford Foundation initiative would need to make a concerted effort to educate stakeholders and consumers about the model, measure its impact, develop capacity to manage shared equity homeownership units, and develop new standardized national loan products.

(6) Community economic development programs should adopt green building standards and support livable, healthy, and sustainable cities. Given the growing premium on community quality of life and sustainability, community economic development efforts that are “green” will be the most effective at strengthening local economies.

By creating new markets, green building and energy efficiency standards will generate net new growth – and if local hires are mandated, the benefits will accrue to the community. But most important is creating sustainable urban development patterns that link planning for housing and transportation with the goal of reducing greenhouse gas emissions. The community development finance system is not well aligned with regional transportation planning; most affordable housing is located on an ad hoc basis. The next generation of CDFI products should target affordable housing sites located adjacent to existing or proposed transit facilities. For instance, the location-efficient mortgage has proven effective in experiments and could be brought to scale using community financial institutions.

CREDIT CARD AND MORTGAGE DEBT PROBLEMS FACING LOW AND MODERATE INCOME HOUSEHOLDS

GERALD D. JAYNES AND
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Abstract

This brief focuses on mitigating the effects of the current credit crisis on low and moderate income households. The housing crisis threatens one in twelve mortgages with foreclosure as home values drop. Similarly, credit card debt is increasingly straddling households throughout the country. Low and moderate income households have been particularly hard hit by each of these components of the economic crisis. The president-elect has proposed a variety of policy changes to address mortgage and credit card debt, from a universal mortgage credit to banning unilateral credit card changes. This brief focuses on those recommendations that will most effectively stabilize these industries in a manner that is fair for individuals struggling with their debt.

Policy Recommendations

The next administration should address this problem through reform that re-establishes the safety net of consumer protections in bankruptcy and credit market regulations. The two most critical bankruptcy reforms are: 1) modify the bankruptcy means test to allow discretion based on the circumstances causing the bankruptcy and ability to pay; and 2) allowing bankruptcy courts to treat mortgages like other secured debt and be able to restructure mortgage terms on primary homes to make loans more affordable. The federal government should also restrict how credit card companies can target consumers; cap interest rates at pre-2005 levels; and require credit card companies to disclose the consequences of making only minimum required payments.

Natural Constituencies

As with the other policy proposals addressing the housing crisis, the constituencies with the most to gain from this proposal are homeowners burdened by mortgage debt and neighbors who benefit from stable communities. Low-income households burdened with financial obligations, including high medical bills, would similarly benefit from credit card regulations that limit the pain of bankruptcy and the potential for the spiraling costs of excessive interest rates.

The banks with troubled mortgages and credit card companies who profit from the high interest rates of customers who fall behind on their payments would oppose these proposals. The companies have become highly profitable through the actions that these policies would constrain, and their ability to regain losses when customers face bankruptcy would be constrained.

Economic Stimulus and Consumer Protection for Lower and Moderate Income Households

IN ITS ATTEMPT TO CONTAIN the most devastating credit crisis since 1929, the federal government has given the Treasury Department and the Federal Reserve Bank authority to assist financial intermediaries and corporate giants with loans, equity takeovers, and asset purchases. In the wake of such unprecedented events large sectors of the public are voicing the opinion that the government should also provide aid to homeowners facing the prospect of losing their homes in a sea of debt.

- 1 in 12 mortgages are in foreclosure or are delinquent
- Median home prices continue to drop; 2nd quarter prices 2008 were 10% below a year earlier
- Housing starts have reached a 17 year low

Military families, senior citizens, and those with large medical bills are each among the fastest growing types of debtors filing for bankruptcy protection.

Related to the problems in mortgage markets is the problem facing households with consumer credit cards. According to Moody's Investor Service, of \$435 billion in credit card receivables, credit card charge-offs (credit card account balances written off as uncollectible) rose 48 percent from August 2007 to August 2008, 4.61 percent to 6.82 percent. Accompanying sharply rising defaults, cardholders still making payments retired only 17.4 percent of outstanding credit card

debt compared to 20.07 percent a year earlier. The extent and nature of the problem is indicated by the following statistics:

- One in six families owning credit cards pays only the minimum due each month
- Among households with credit card debt, the typical balance of \$2,200 is nearly 5 percent of the median U.S. household's annual income
- Military families, senior citizens, and those with large medical bills are each among the fastest growing types of debtors filing for bankruptcy protection
- Twenty-nine percent of low and middle income households with credit card debt report medical expenses contributed to their current balances

So far, as the policy response to the credit meltdown has unfolded, virtually nothing has been done to directly aid lower and moderate income borrowers with their troubling and related credit problems. Providing aid to lower and moderate income households suffering from the financial and housing crises is good social policy and is fiscally sound.

- While credit card usage has increased across the income spectrum, the largest increases occurred among lower-income groups
- Among households in the lowest 20 percent of the income distribution, the fraction with credit card debt nearly doubled between 1989 and 2004

- Lower and moderate income households spend larger proportions of increased disposable income or asset wealth on current consumption precisely, what an economy sinking into recession needs

As with mortgage rates, lower credit card interest rates for low and moderate income households would increase disposable incomes and spending on goods and services rather than mere reduction of credit card debt. This would bolster any new economic stimulus package creating a quicker recovery.

In response to public demands that household debtors receive some of the federal aid, the Bush administration is reportedly constructing a plan to help as many as three million homeowners facing mortgage terms they cannot afford. According to reports, the government will insure one half of the losses on distressed home mortgages lenders agree to renegotiate under government-established standards leading to lower monthly payments for a minimum of five years.

The plan will not be cheap. And if the recession is deeper and more protracted than expected, this renewed attempt to stabilize the housing and mortgage markets could devour a substantial fraction of the \$700 billion financial bailout approved by Congress this fall. For instance, if \$500 billion in loans are modified under the program and 15 percent default with average losses of 50 cents on the dollar, the government would be on the hook for nearly \$17 billion. If secondary defaults rise to 25 cents on the dollar, taxpayers would pay more than \$31 billion. And, if the final government plan does not contain safeguards ensuring equity across distressed homeowners, the benefits of most of these tax dollars would most likely accrue to more affluent distressed homeowners.

Government programs will face an extreme version of a problem known in financial economics as *adverse selection*. Lenders will attempt to insure their least profitable loans with the Government. Knowing this, in order to keep default costs down, the government must establish criteria aimed at avoiding borrowers who private lenders should ordinarily have rejected in the first place (for example consider the stringent requirements for borrowers seeking relief in the *FHASecure* Program). Low to moderate-income borrowers with spotty credit histories and current mortgages suggestive of fraudulent sales practices will likely be disproportionately shut out of both private sector and government refinance programs. Much of the federal response to distressed low and moderate income homeowners will need to be addressed by allowing bankruptcy courts to restructure their mortgages (see below).

Credit card debt may be an even more serious problem for low and moderate-income households who are less likely to own a home than more affluent Americans. Congress' Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 relaxed usury standards significantly. Interest rates of 25 percent or more were illegal prior to 2005, today credit cards routinely bill around 30 percent interest and charge exorbitant fees making actual rates even higher. The 2005 "reforms" also made it harder for people to get real debt relief through bankruptcy protection by requiring many debtors who fail an income means test to file for bankruptcy under Chapter 13, instead of filing under

Chapter 7. Chapter 13 filings require debtors to set up a repayment plan; alternatively, under Chapter 7 filings, some types of assets are seized but debts are erased.¹ The 2005 “reforms” generally created a more favorable environment for credit card companies to aggressively market their products to low and moderate income borrowers, who had less experience understanding the terms and requirements of these terms and conditions. Regarding the last point, the relaxed regulatory environment caught unknown numbers of borrowers within the web of the credit card industry’s widespread practice of “negative amortization,” a trap where a consumer makes payments but balances continue to grow because of penalty costs. Such penalty costs, e.g. being late with a minimum payment of \$35, can bring a penalty fee larger than the missed payment, applying a super usury interest rate exceeding 100 percent.

Once low and moderate income households got into credit card debt problems, getting out was also costly and in some cases subjected them to abuses by credit counselors and lawyers targeting these “stressed out” consumers.² The so-called reform legislation also increased costs to consumers. A recent study by the United States Government Accountability Office found:

- The average attorney fee for a Chapter 7 case increased from \$712 in 2005 to \$1,078 in 2007
- For Chapter 13 cases, the standard attorney fees rose in nearly all the districts and divisions GAO reviewed; in more than half the cases the increase exceeded 50 percent
- Bankruptcy filing fees increased from \$209 to \$299 for Chapter 7, and \$194 to \$274 for Chapter 13.³

Bankruptcy Reforms

¹ Chapter 7 and Chapter 13 are the most common types of personal bankruptcy avenues. Chapter 7 allows debtors to discharge most unsecured debt such as finance company loans and some medical debts. However, it does not discharge alimony or child support, taxes owed, mortgages, or education loans. Chapter 13 places debtors in a debt restructuring plan. Before 2005 judicial discretion determined eligibility for Chapter 7, afterwards debtors with mean income above the median in their area were generally ineligible for Chapter 7. See Robert H. Scott III, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: how the credit card industry’s perseverance paid off,” *Journal of Economic Perspectives*, Dec. 2007.

² Supposedly nonprofit credit agencies are sometimes fronts for for-profit debt management programs. The fronts steer clients into debt restructuring plans that are lucrative for the program but can keep the debtor in an expensive long-term obligation. A 2003 report on the credit counseling industry by the National Consumer Law Center and the Consumer Federation of America concluded that although some programs used consumer-oriented methods, during the previous decade “complaints about deceptive practices, improper advice, excessive fees and abuse of nonprofit status have grown,” *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees, and Aggressive New Market Entrants*, April 2003.

³ “Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,” GAO-08-697 June 27, 2008.

The new Administration should re-establish the safety net of consumer protections endowed in earlier bankruptcy and credit market regulations that offered households gripped by financial disaster a new start and a second chance to pursue their own version of the American Dream. Stronger regulation of financial markets should combine needed changes in both the mortgage and credit card industries. Two needed reforms are of enormous importance:

Modify the Bankruptcy Means Test. As currently written, the means test to determine if a debtor can file chapter 7 bankruptcy or must file chapter 13 is too rigid. It inadequately differentiates among the circumstances causing someone to seek bankruptcy. Judges considering the debtor's ability to pay based on individual circumstances should be given the discretion to make the determination of what type of bankruptcy protection is offered by the courts. Judges will then have the power to ensure debtors' families retain sufficient resources on which to live.

Allow Bankruptcy Courts to Restructure Mortgage Debt. Low and moderate income homeowners stuck in unaffordable mortgages due to the predatory lending practices of unscrupulous lenders should be given greater protection by allowing bankruptcy courts to treat mortgages like other secured debt and be able to restructure mortgage terms on primary homes to make loans more affordable.

The new Administration should re-establish the safety net of consumer protections endowed in earlier bankruptcy and credit market regulations that offered households gripped by financial disaster a new start and a second chance to pursue their own version of the American Dream.

Additional Credit Card Reforms

The credit card companies have to shoulder some of the blame for the crisis. They are guilty of excessive marketing to low and moderate income households whose credit should have corresponded to their ability to repay. It has not been uncommon for credit card companies to send multiple mailings to consumers offering to pay off old balances in exchange for low teaser rates only to have those rates increased in a few months. Because the credit card companies had relationships with multiple banks, consumers often felt wrongly that they could always get money when they needed it from a new bank with the same card, even if they were having difficulty paying off the balance of the old card. These industry conditions contributed to the increase in consumer credit card debt.

One set of solutions to this problem moving forward would be to consider placing restrictions on how the credit card companies could target consumers and the types of credit that the companies could offer. A precedent of this type of regulation is found in

the rules governing the sale of stocks, bonds and options. Financial institutions have to “know” their customers. These rules attempt to qualify customers based on the appropriateness of the products offered. Currently, there is no such restriction on the offering of credit card services. If appropriate restrictions had been in place, we suspect many of the households now struggling with credit card debt would not be in such dire situations.

At a minimum, new legislation should:

- Eliminate usurious interest rates and fees by recapping interest rates at pre-2005 levels
- Require lenders provide borrowers enhanced disclosure regarding the consequences of making only minimum required payments when repaying credit card debt

SEEKING A FAIR AND EFFECTIVE TAX SYSTEM

DEBORAH KOBES

Abstract

Taxes raise the revenue that the federal government needs to provide public services. In addition, the tax code increasingly houses social policy. Given this dual role, the equity of the tax system should be evaluated from multiple perspectives. First, whether it raises enough revenue for the nation's federal programs. Second, whether the overall system is sufficiently progressive. Third, whether the deductions and credits embedded within the tax code efficiently reach desired beneficiaries, particularly disadvantaged communities. Fourth, whether these initiatives achieve their social goals of improved access to education, child care, health care, housing, and other policies as effectively as alternative policy options.

The Obama administration has proposed a variety of policies to help low and moderate income households, including expanded college, savings, child care, and health care credits; a refundable tax credit for all workers earning up to \$94,000, to offset the regressivity of the payroll tax; and an expansion of the EITC. These changes have some

positive social impact. However, because these changes are not targeted to the neediest populations, they drastically reduce federal revenue and make social spending programs more difficult to fund. This paper proposes that tax incentives should be used only when more effective than spending programs, and then they should be narrowly targeted to achieve social goals without undermining the fiscal health of the federal government.

Policy Recommendations

More equitable tax policy should be pursued in a number of areas of the tax code including payroll taxes, housing deductions and credits, the child-care credit, incentives for higher education and savings, the EITC, estate taxes, and the Alternative Minimum Tax. The next administration should: decrease the regressivity of the payroll tax by not exempting income above \$94,000; expand the EITC for single workers; analyze the distributional impact of the LIHTC; make the child care tax credit refundable, increase qualifying expenses to 50 percent of child care costs, and raise the initial income phase-out but also rapidly phase the credit out; shift higher education benefits to programs outside of the tax code and focus any tax incentives on low-income students; not only encourage saving in low-income households through the tax code but also lower retirement costs through direct spending programs, promoting progressive Social Security benefits and lowering health care costs; restore estate tax laws from the early 2000s; and repeal the AMT, funding the repair through an increase in the top marginal income tax rates.

Natural Constituencies

The natural constituents to these proposals are policymakers interested in reducing the deficit, ensuring that the federal government has the resources to meet its obligations, and increasing the transparency in policy making. Other constituents include those concerned with the solvency of Social Security and Medicare, currently funded by the payroll tax, and families and individuals who benefit from expansions of child care, education, and EITC.

By increasing the progressivity of the tax system, these policies decrease benefits to wealthy and upper-middle class families. Another constituency who would oppose these proposals are people ideologically opposed to redistribution, as symbolized in the presidential campaign by “Joe the Plumber.”

TAXES PROVIDE THE FEDERAL GOVERNMENT with revenues to fund public services including defense, Social Security, and public infrastructure. Our country has long supported a progressive tax code such that higher-income households with a greater ability to pay do pay more, both a share of their income and the total tax burden. The extent of progressivity in the system has evolved over time and is a matter of ongoing debate. However, an equitable federal tax code requires more than a progressive revenue structure. Social policy is increasingly enacted through the tax code. The tax code provides common ground across party lines: Democrats typically support tax incentives as a means to achieve their policy goals, while Republicans endorse these changes as reductions in tax burden. Including myriad programs within the tax structure makes the code complex; changes who benefits from federal initiatives and how they are impacted; and obscures the cost of these policies relative to more direct spending programs.

Given this dual role as a revenue and policy tool, the equity of the tax system should be evaluated from multiple perspectives. First, whether it raises enough revenue for the nation's federal programs. Second, whether the overall system is sufficiently progressive. Third, whether the deductions and credits embedded within the tax code efficiently reach desired beneficiaries, particularly disadvantaged communities. Fourth, whether these initiatives achieve their social goals of improved access to education, child care, health care, housing, and other policies as effectively as alternative policy options. This brief examines specific components of the current tax code and recommends policies to improve the system's equity. In particular, policy recommendations are included for payroll taxes, housing deductions and credits, the child care credit, incentives for higher education and savings, the EITC, estate taxes and the Alternative Minimum Tax.

Including myriad programs within the tax structure makes the code complex; changes who benefits from federal initiatives and how they are impacted; and obscures the cost of these policies relative to more direct spending programs.

Evaluating Equity

Raising revenue: Fiscal conservatives argue that the government should have a limited role in government and limiting revenue can help rein in federal spending. Progressives recognize value in higher levels of government spending to redistribute wealth, provide a social safety net, create access to economic opportunities, fund public services, and invest in the nation. Unfortunately, an equilibrium has developed in which tax revenue remains more constrained than spending. With annual deficits that have grown steadily since the late 1970s (with the exception of the late 1990s) our national debt has doubled

since 1980 from 33 to 67 percent of GDP.¹ Moreover, 40 percent of additional costs in the budget between 2001 and 2007 are attributable to tax cuts.² This unfairly burdens future generations with the problems of our fiscal irresponsibility. They will have to drastically cut programs or increase their own taxes to restore balance in the nation's tax and spending levels.

Overall progressivity: Our nation's view of how progressive the tax system should be has fundamentally changed over time. Within the income tax structure, graduated marginal tax brackets provide a basic level of progressivity. In 1913, when the income tax was created, the highest marginal tax rate was only 7 percent. However, by 1918, this had increased to 77 percent for income above \$14.5 million in 2008 dollars.³ This rate decreased through the 1920s, before increasing again to peak in 1945 at 94 percent for income above \$2.4 million. This level remained high well beyond World War II, at 91 percent in 1963. Throughout this period, the tax structure was highly graduated, with approximately 25 tax brackets. In 1963, married couples earning \$357,700, the current threshold for a maximum tax rate of 35 percent, had a marginal tax rate of 59 percent. In fact, all married couples earning at least \$143,000, currently in the third highest tax bracket, were taxed above the current maximum marginal tax rate. Although this does not include corporate or payroll taxes, these tax brackets support the belief in an extremely progressive tax system for the first fifty years of income taxes.

Since the early 1960s, the top marginal tax rates have slowly decreased, dropping to 70 percent for most of the 1970s and 50 percent in the early 1980s. The revenue neutral Tax Reform Act of 1986 removed loopholes to fund a decrease in the top marginal tax rate to 38.5 percent and the number of tax brackets from fifteen to five. The top bracket further dipped to 31 percent before being raised by Clinton to 39.5 percent. Under the Bush administration, the maximum marginal tax rate has again dropped to 35 percent.⁴ Including changes not only in the income tax but also corporate taxes and the estate tax, taxes as a share of income among the wealthiest households has fallen almost in half between 1960 and 2004, from 60 to 34 percent.⁵ The recent political culture in this country has greatly valued low tax rates throughout all income levels, and reintroducing progressivity through a highly graduated income tax structure is politically difficult.

¹ Budget of the United States, Fiscal Year 2009. Historical Tables:

<http://www.whitehouse.gov/omb/budget/fy2009/sheets/hist07z1.xls>, and Budget of the United States, Fiscal Year 2008, <http://www.gpoaccess.gov/usbudget/fy08/sheets/hist01z1.xls>

² Furman, Jason, Lawrence Summers, and Jason Bordoff. 2007. "Achieving Progressive Tax Reform in an Increasingly Global Economy." Hamilton Project Strategy Paper. Brookings Institution.

http://www.brookings.edu/~media/Files/rc/papers/2007/06globalization_furman/200706bordoff_summers.pdf This paper provides strong arguments for the importance of a progressive tax structure.

³ This would be \$1 million in 1918 dollars. All numbers in this brief are expressed in 2008 dollars indexed to inflation using the Consumer Price Index.

⁴ Internal Revenue Service. 2002. Personal Exemptions and Individual Income Tax Rates, 1913-2002. <http://www.irs.gov/pub/irs-soi/02inpetr.pdf>, and Tax Policy Center. 2007. Tax Facts, Individual Income Tax Brackets, 1945-2008.

<http://taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=474>

⁵ Furman et al. 2007.

However, researchers at the Brookings' Hamilton Project argue that a progressive tax structure is increasingly important as inequality increases, because taxes are an efficient, large-scale, and quick way to reduce inequality and reduced inequality can help the economy.⁶

Public debate, and this brief thus far, has focused on the income tax (and increasingly corporate taxes not discussed in this paper). However, payroll taxes are also a significant part of the tax system. These taxes, which are used to fund Social Security and part of Medicare, account for 35 percent of federal tax revenue, as compared to 43 percent from individual income taxes. Moreover, two thirds of taxpayers contribute more to payroll taxes than individual taxes. 94 percent of wage earning households with a total income below \$100,000 have greater payroll than income tax liability.⁷ Thus, payroll taxes should not be forgotten when examining individual tax burden. Unlike income taxes, the payroll tax is regressive. The basic structure of the tax is a flat rate of 12.4 percent (combined employee and employer contributions) on all wages below \$94,000 plus 1.45 percent on all wages. Because the amount above that threshold is not included in the majority of the payroll tax, high-income workers pay a lower share of their income in payroll taxes than low-income workers. One conservative argument against refundable tax credits and stimulus checks to those without income tax liability is that only those who pay taxes should get money back. However, this ignores the payroll tax component of our tax system.

Recipients of tax incentives: Tax deductions and credits are a blunt tool for reaching targeted populations. These incentives are distributed based on income levels combined with a specific behavior, such as buying a home or attending college. Creating more nuanced incentives, such as helping a teacher buy a modest home proximate to public transportation, is more politically and logistically difficult. Thus, these incentives are likely to provide benefits to those who do not necessarily need them as much a more finely defined population. Moreover, deductions are historically the most popular mechanism within the tax code, and they are scaled to a taxpayer's marginal tax rate such that higher-income households benefit more than lower-income ones (until thresholds at which most deductions and credits are phased out). Nonrefundable deductions and credits also have limited impact on households with little or no income tax liability. Thus, tax credits and deductions should be compared to alternative policy options of explicit spending programs when evaluating how successfully they target vulnerable and needy populations.

Another concern when examining the distributive effects of social policy enacted through the tax code is looking beyond income in defining what populations benefit. As in other forms of social spending, tax incentives targeted at the poor tend to focus on families. Even programs such as the EITC, historically popular among both Republicans and Democrats and that provide incentives to work, help only a very small share of single

⁶ Furman et al. 2007.

⁷ Burman, Len and. 2007. "Two-thirds of Tax Units Pay More Payroll Tax than Income Tax." Tax Facts column by the Tax Policy Center, *Tax Notes*. <http://taxpolicycenter.org/publications/url.cfm?ID=1001065>

workers, focusing almost all the benefit on families with children. While families are politically sympathetic and certainly deserve assistance, this trend leaves out other potentially vulnerable citizens including the single poor.

Social policy goals: These tax incentives should be examined not only in terms of who they reach but how effectively they promote the behavior sought as a policy goal. Returning to the example of housing incentives, the mortgage interest deduction is constrained primarily by a limitation of \$1 million for qualifying loans. Including extra conditions such as proximity to public transportation, square footage limitations, or green construction would complicate the tax code much more significantly than the current policy incentives. This would both decrease participation even among qualified taxpayers and increase noncompliance. Both of these efforts would reduce the efficiency of the tax code in trying to more efficiently promote targeted social goals. In these cases, the advantages of implementing policy through tax incentives should be balanced against the ability to achieve the social goals that are current priorities. National policy goals must be explicitly articulated and then used to measure the value of existing tax incentives and changes in the tax code.

Social policy can be successfully achieved through the tax code when it is designed well. Researchers at the Hamilton Project argue that credits targeted to low-income households can be particularly efficient at reaching particular populations and encouraging desired behavior such as homeownership or health insurance coverage.⁸ Moreover, because tax incentives are easier politically than spending programs, they may sometimes be the only way to pursue or expand some policy efforts. In these cases, maximizing the ability to achieve social policy goals through the tax code is particularly important.

Current Law and the Presidential Candidates

Judging by these four metrics of equitable tax policy, the quality of our tax structure has been greatly damaged during the Bush administration. In 2001, Congress passed the president's proposed Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), followed by several other tax cuts over the next five years. EGTRRA phases in tax cuts over ten years that reduce total federal tax revenue by \$2.2 trillion in that period.⁹ These cuts have also skewed the progressivity of the income tax. EGTRRA and subsequent tax cuts primarily benefited the high-income taxpayers. Households in the top income quintile will receive a tax cut equal to 5.4 percent of their income by 2010 and the top one percent of households will have a 7.3 percent tax cut relative to income, while bottom quintile households will only receive a 0.7 percent cut. Moreover, the top one percent will pay a smaller share of total tax revenue, reducing their portion of total tax revenues by 0.5 percent.¹⁰ These benefits not only reduce progressivity but also unevenly benefit different populations in our society. For example,

⁸ Furman et al 2007.

⁹ Leiserson, Greg and Jeff Rohaly. 2008. "Distribution of the 2001-2006 Tax Cuts: Updated Projections." Tax Policy Center. <http://taxpolicycenter.org/publications/url.cfm?ID=411739>

¹⁰ Leiserson and Rohaly 2008.

more than half of black and Hispanic families do not benefit from these cuts.¹¹ Finally, the social policy effectiveness of these tools is questionable. These tax cuts were marketed to help the national economy grow, but evidence has not suggested that the cuts helped the economy or mitigated the financial crisis currently underway.¹²

Although the tax cuts enacted in EGTRRA are slated to expire in 2011, a return to the tax code of 2000 is not politically feasible. In fact, many have already argued that allowing this to occur would be the greatest tax increase in American history. In this political climate, both Barack Obama and John McCain have emphasized keeping taxes low. McCain proposes to extend all of Bush's tax cuts, double the exemption for children, create a health insurance tax credit in exchange for ending employer tax incentives for providing coverage, and cut corporate taxes. Obama has proposed to roll back some of Bush's cuts on households earning above \$250,000 but to maintain the EGTRRA cuts for other households and to introduce additional cuts. His declared focus is the middle class, and he advertises that his plan maintains lower marginal tax rates for the wealthiest families than during the 1990s and that his total tax revenues as a share of GDP will remain below levels during the Reagan administration.¹³ The goal of both presidential candidates to keep total tax revenue low inhibits the federal government's ability to fund other critical projects. To the extent that social policies are achieved through the tax code, determining the effectiveness and distributional impacts of those programs becomes even more critical.

Policy Areas

This brief examines specific policies enacted through the tax code. Although by no means comprehensive, the policies examined within this paper address significant taxes, those that have evolved recently, and those with clear social policy goals historically enacted through spending legislation.

Payroll taxes

As discussed above, payroll taxes are a major and regressive component of our tax structure. Moreover, the revenue generated through this tax are especially critical because it funds Social Security, a portion of Medicare, and unemployment insurance. These first two costs plus Medicaid account for over 40 percent of domestic spending.¹⁴ These programs have grown tremendously over the past several years and continue to grow at a faster pace than the national economy. In addition to curbing spending in these programs, additional revenue must be raised to meet the costs of these programs.

¹¹ Shapiro, Isaac, Allen Dupree, and Jim Sly. 2001. "More than Half of Black and Hispanic Families Would Not Benefit From Bust Tax Plan." Center for Budget and Policy Priorities. <http://www.cbpp.org/2-15-01tax.htm>

¹² Center for Budget and Policy Priorities. 2006. "Tax Cuts: Myths and Reality." <http://www.cbpp.org/9-27-06tax.htm>

¹³ Barack Obama official website. 2008. "Barack Obama's Comprehensive Tax Plan." http://www.barackobama.com/pdf/taxes/Factsheet_Tax_Plan_FINAL.pdf

¹⁴ Budget of the United States, FY 2009.

Finally, as discussed above, the payroll tax contributions of workers are currently outside of the discourse when discussing the income tax liability of households, often decreasing the impact of targeted deductions and credits.

The next administration has proposed to reduce the regressivity of payroll taxes through refundable tax credits for all workers earning below \$94,000. However, this strategy is expensive, removing revenue from a system that needs to address the growing costs of the programs supported by the payroll tax.

Policy recommendation: Decrease the regressivity of the payroll tax by not exempting income above \$94,000. This salary is almost the 80th percentile in household income, and so households with a salary above that amount and any other earnings have incomes in the top 20 percent of all households.¹⁵ This has obvious resistance above high-income households. This may not be feasible while the economy is recovering from fiscal crisis, but should be considered in the long term. This policy would not only reduce regressivity but also raise revenue for Social Security and Medicare.

Policy recommendation: Add a line to the income taxes indicating total payroll tax liability. This would add some complexity to the tax code, but employers already provide W2s with income tax information to their workers, so this would not be a significant new burden. This payroll liability could then be counted towards tax liability so that even non-refundable tax credits can be extended to those with limited income tax liability but larger payroll taxes.

EITC

The Earned Income Tax Credit (EITC) has historically enjoyed support from both Republicans and Democrats. At approximately \$50 billion, the credit is the largest cash assistance programs to poor families.¹⁶ The impact of the federal EITC is amplified by many cities and states that offer their own EITCs and tie the benefits to federal credit amounts or rules.

The EITC not only provides income to families through a refundable tax credit, but also encourages working by increasing the credit with income until a phase-out threshold. The credit is also based on family structure and size such that households with two children are eligible for a maximum credit of \$4,824 that is almost twice the size than for households with one child. In turn, single filers only qualify for limited subsidies in an extremely narrow income window. These strict constraints on the EITC apply to single workers even if they are paying child care but are non-custodial parents. Thus, these individuals still face many of the same burdens as other parents without equivalent

¹⁵ Tax Policy Center. 2008. Tax Facts, Household Income Quintiles, 2000- 2007. <http://taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=330>

¹⁶ Scholz, John Karl. 2007. "Employment-Based Tax Credits for Low-Skilled Workers" Hamilton Project Discussion Paper 2007-14. The Brookings Institution. http://www.brookings.edu/papers/2007/~//media/Files/rc/papers/2007/12_taxcredit_scholz/12_taxcredit_scholz.pdf

support. Even many childless individuals with low wages struggle in or near poverty. These single tax filers are not only minimally included in the EITC but also excluded from other incentives in the tax code targeted at low income households. Expanding the EITC to these filers would be a simple way to help many additional low-income individuals through the tax code.

While Obama proposes to expand benefits to non-custodial parents, he still continues to emphasize families without addressing the needs of the single poor. In addition, he wants to introduce a refundable tax credit for 95 percent of workers that provides \$500 for individual workers and \$1,000 for working couples.¹⁷ This expensive proposal does not focus on the most vulnerable populations that most need federal support.

Policy recommendation: Encourage work not just among low-income families but also among single workers by expanding EITC benefits to them. Concentrate additional benefits to low and moderate-income households, the groups that would most benefit from additional income. These increases can be promoted as offsetting payroll tax liability, particularly if this liability is shown on income tax returns. John Karl Scholz estimates that doubling the maximum benefit for single filers to \$864 and expanding the income range that qualifies for the EITC would cost up to \$7.3 billion but also increase employment for over 700,000 individuals, reduce crime, and increase marriage rates.¹⁸

Housing

Two major housing policies appear in the tax code. First, homeowners benefit from a deduction for interest paid on mortgages up to \$1 million. This deduction costs the federal government about \$70 billion per year.¹⁹ Benefits primarily accrue to middle and high-income households, because the value of a deduction depends on the taxpayer's marginal income tax rate. These policies certainly need reform – see “Directions for affordable housing policy in the new administration” for discussion and reform options.

Second, the Low Income Housing Tax Credit (LIHTC) is a credit provided to developers to encourage the construction of moderate-income housing. At \$4 billion per year, this credit provides more funding for affordable housing construction than any other federal program. This program is a critical component of the construction of affordable housing, and should be better understood.

Policy recommendation: Evaluate the distributional impact of the LIHTC to determine whether the tax credit provides affordable housing in the communities that most need it as effectively as direct spending programs do. If the LIHTC is currently less efficient, develop components of the credit to increase its efficiency.

Child Care

¹⁷ Obama website 2008.

¹⁸ Scholz 2007.

¹⁹ Tax Policy Center 2008, Income Quintiles.

The tax code seeks to support families through deductions for dependent children. McCain's proposal increases these general deductions for children, but does not shift tax mechanisms to credits or introduce refundability. In addition, the tax code assists with the particular cost of child care. The two primary means for supporting these costs are a nonrefundable credit, the Child and Dependent Care Tax Credit (CDCTC) and a partially refundable Child Tax Credit (CTC). Over the past decade, federal policy increased its support for low-income families predominantly through the child tax credit.²⁰ Primarily because they lack refundability, these expansions have gone to wealthier families rather than increasing value for poor. Researchers at the Tax Policy Center estimate that making the CDCTC refundable would benefit almost a half million additional low-income, urban households.²¹

The need for child care credits reveals two structural problems throughout our country: 1) a lack of access to affordable child care and 2) the difficulties of child rearing for two-earner households. Programs that increase quality day care availability generally and access to affordable care for working families more specifically would be more helpful than cost reduction for the child care programs that are currently available. The demand for quality daycare already exceeds its availability. Thus, long-term solutions should look beyond the tax code to programs that encourage employers to provide on-site care, pay reasonable wages to workers in this industry, and otherwise improve the supply of day care.

Policy recommendation: Implement a Tax Policy Center option to target low to moderate-income urban households by making the CDCTC refundable, increasing qualifying expenses to 50 percent rather than 35 percent of child care costs, and raising the initial income phase-out to \$30,000 but also rapidly phasing the credit out.²² Obama's plan is similar except that his does not change the phase-out for qualifying, and so the benefits of his plan are not concentrated among low-income households but rather require spending on a broader, less targeted share of the population.

Higher Education

In 1996, federal policy shifted from a 30-year effort to provide access to college to low-income students through federal grants to new tax incentives intended to help middle-income families with college costs.²³ These tax programs are the nonrefundable Hope and Lifetime learning credits and tuition deductions. In contrast to the direct spending

²⁰ Berube, Alan, William Gale, and Tracy Kornblatt. 2005. "Tax Policies to Help Working Families in Cities." Discussion Paper 24. Tax Policy Center. This paper provides a thorough discussion of how these incentives relate specifically to urban households. http://taxpolicycenter.org/UploadedPDF/411179_TPC_DiscussionPaper_24.pdf

²¹ Berube et al 2005.

²² Berube et al 2005.

²³ Maag, Elaine, David Mundel, Lois Rice, and Kim Reuben. 2007. "Subsidizing Higher Education through Tax and Spending Programs." Tax Policy Issues and Options Policy Brief 18. Tax Policy Center. http://www.taxpolicycenter.org/UploadedPDF/311453_education.pdf

Pell Grants, three quarters of the benefits from the tax code go to middle and upper-income households.²⁴ Obama has proposed substantial refundable credits. However, his plan would be very expensive because the credits are not targeted to low or moderate income households.

The income tax code increasingly has become a source for funding higher education, but the existing direct subsidies help lower income families more. Emphasis should return to these programs because targeting low-income groups seems more politically feasible in spending programs.

Policy recommendation: Focus higher education benefits on those who need it most. College is an investment and those who can afford the up front costs should pay them, while assistance to those who cannot otherwise attend college is a wise societal investment. To effectively advance the social policy goal of promoting college attendance, any direct spending grants or credits should be predictable and substantial.²⁵ However, large grants are expensive and so they must be targeted to be an affordable social policy. Currently, direct grants are better targeted and so they should be expanded while the tax code is deemphasized. In addition, direct grants rather than the tax code are more straightforward, which can bolster their use.

Policy recommendation: To the extent that tax incentives are used, they can most help low-income students if they refundable and have a relatively low income threshold for phase-outs.

Savings

Policymakers have recently pushed to increase tax-exempt savings among low and moderate households. However, most Americans, particularly low-income ones, are not close to the limits for tax-exempt savings from prior to 2000. The saver's credit enacted in 2001 is a non-refundable credit that helps match IRA and 401(k) contributions, meant to help low and moderate income workers. However, only twenty percent of workers with incomes below \$20,000 and with incomes between \$20,000 and 40,000 participate in tax-favored retirement plans.²⁶ Among those who qualify based on income, only 1 in 7 can benefit because the others do not have income tax liability.²⁷ Obama has proposed to expand the scope of the savers credit and make it refundable.

Most existing retirement savings tax incentives help the wealthy who have high participation rates in these plans. Reducing the savings incentives for higher-income households is not politically feasible, and so new policies should focus on how much saving credits help low-income households. Moreover, even if saving credits can help the poor, policy design needs to consider how much the poor should be penalized if they

²⁴ Maag et al 2007.

²⁵ Maag et al 2007.

²⁶ Congressional Budget Office. 2007. Utilization of Tax Incentives for Retirement Saving: Update to 2003. <http://www.cbo.gov/ftpdocs/79xx/doc7980/03-30-TaxIncentives.pdf>

²⁷ Berube et al 2005.

need to access their retirement savings for more immediate emergencies. Finally, the quality of retirement for the poor can be helped not only through increased savings but also through changing the level of personal savings needed during retirement age.

Policy recommendation: At a minimum, these credits need to be refundable to benefit low-income workers. However, low participation rates in these programs hinder the effectiveness of helping low-income workers. Federal funding could be better used through programs that help these households once they have retired, particularly through progressive Social Security benefits and lower health care costs.

Estate Tax

The estate tax taxes wealth bequeathed to non-spouses. The tax has provided approximately \$20 billion of revenue per year. In addition, the tax creates incentives that lead to charitable contributions of \$15 billion per year.²⁸ Historically, this tax has been among the most progressive, only paid by the wealthiest households in the country. 90 percent of estates have no liability, the top five percent of households pay 99 percent of the tax, and the wealthiest 0.01 percent of households pay one-third of the tax.²⁹ However, over the last two decades, popular support has developed to eliminate the estate tax. Critics have argued that the “death tax” is unfair double taxation, harms small businesses, and is cruelly forced on family members at a difficult time. The tax cuts of 2001 phase out the estate tax by raising exemption levels and lowering marginal tax rates until 2010, when the estate tax is repealed. According to current law, the estate tax would be reinstated in 2011 at rates similar to 2002 levels. However, Republicans do not want the tax reinstated at all and Democrats have not pushed for a return to the tax at levels of the early 2000s. Obama proposes that the estate tax have a maximum rate of 45% on estates above \$7 million per couple, which are 2009 levels. This is much lower than levels immediately prior to Bush. Prior to EGTRRA it was \$650,000 individual or \$1.3 million for couples, which in today’s dollars would be \$1.65 million.

Policy recommendation: The estate tax should return to the levels required in current law. This would reestablish a \$1 million exemption (\$2 million for couples) and maximum marginal tax rate of 60 percent. These estate tax parameters would provide \$40 billion in tax revenue in 2011 alone.³⁰ This may not be politically feasible unless Democrats take advantage of the need for revenue in the new economic crisis. Additional policy options that simplify the estate tax, close loopholes, and turn to capital

²⁸ Burman, Leonard, William Gale, and Jeff Rohaly. 2005. “Options to Reform the Estate Tax.” Tax Policy Issues and Options Policy Brief 10. Tax Policy Center. http://taxpolicycenter.org/UploadedPDF/311153_IssuesOptions_10.pdf

²⁹ Burman et al 2005.

³⁰ Tax Policy Center. 2006. T06-0124. Current Law and Estate Tax Proposals: Effect on Returns and Tax Liability, 2007-16. <http://taxpolicycenter.org/numbers/displayatab.cfm?DocID=1283>

gains taxation are more politically feasible and maintain some of this estate tax revenue.³¹

AMT

The Alternative Minimum Tax (AMT) was implemented in 1969 to ensure that high-income households pay at least a minimum tax. To achieve this goal, an essentially parallel tax code was established that does not include many of the deductions and credits of the ordinary tax. Originally intended for very few filers, the AMT is now relevant to millions of households, increasingly middle rather than high income, and is projected to hit 43 households in ten years, and 57 million filers if EGTRRA is extended.³² To prevent its growth, Congress has enacted emergency legislation exempting most filers from this tax each year. This is an expensive solution, because the budget assumes that taxes will be paid under current law including higher AMT payments. As the AMT grows, this problem will become increasingly expensive to fix. Assuming the tax cuts of 2001 are extended, repealing the AMT could cost as much as \$1.3 trillion over the next ten years.³³

The AMT presents several equity concerns. First, failing to address this problem burdens future generations with the costs of repair and of the budget imbalance from each year's workaround of the AMT. Second, this tax code is an increasing burden on middle-class families rather than the intended high income targets of the policy. Third, the burden of the AMT is not evenly distributed across groups. Because the AMT is more likely to hurt filers who benefit from deductions, the populations among those most likely to be affected are those who live in states and cities with high local taxes, with high medical expenses, large families, and married couples.³⁴ Fourth, the AMT reduces the transparency in the system, obscuring the impact of tax policies and incentives enacted in the regular individual income tax system. Fifth, different methods of fixing the AMT will have different distributional implications. McCain has proposed to phase out the AMT, but he has not proposed a strategy or favored distribution of the costs.

Originally intended for very few filers, the **AMT is now relevant to millions of households**, increasingly middle rather than high income, and is projected to hit 43 households in ten years, and **57 million filers** if EGTRRA is extended.

³¹ Burman, Leonard and William Gale. 2001. "The Estate Tax Is Down But Not Out." Tax Policy Issues and Options Policy Brief 2. Tax Policy Center.

http://taxpolicycenter.org/UploadedPDF/310382_taxpolicy_2.pdf, Burman et al 2005.

³² Burman, Leonard, Julianna Koch, Greg Lieserson, and Jeff Rohaly. 2008. "The Individual Alternative Minimum Tax: 12 Facts and Projections." Tax Policy Center http://www.taxpolicycenter.org/UploadedPDF/411707_12AMTFacts.pdf

³³ Burman et al 2008.

³⁴ Burman, Leonard, William Gale, Greg Lieserson, and Jeff Rohaly. 2007. "Options to Fix the AMT." Tax Policy Center. http://taxpolicycenter.org/UploadedPDF/411408_fix_AMT.pdf

Policy recommendation: Repeal the AMT and fund it through an increase in the top marginal tax rates. The AMT was intended to ensure that high-income households paid their share of taxes, and so fixing the damage of this structure should not be borne by low and middle-income households. The Tax Policy Center estimates that AMT repeal can be funded completely by a 15 percent increase in the top three marginal tax rates (i.e. the 39.6 percent tax rate becomes 45.7).³⁵ These rates could be slightly offset if the AMT is funded by the return of the estate tax to the levels of the early 2000s (see above). Pairing the estate tax with this specific goal could make the estate tax increases more politically feasible.

³⁵ Burman et al 2007.

SECTION TWO:
**TRANSFORMING THE
URBAN ENVIRONMENT**

The health of the nation extends beyond the economy to the environment, both natural and built. The U.S. must transform its manufacturing sector, develop alternative energy sources, and decrease energy usage in order to protect the natural resources that we rely on and value. In addition, we must strengthen the urban centers that serve as both the core of the nation's economy and home to much of its poverty and disinvestment. These two goals are not independent. Rather, the environment cannot be conserved without a strategy that focuses on urban areas, because they are central to the nation's economy, innovation, and energy consumption. Urban areas will not transform without being included in the country's new technology and economic opportunities. Moreover, a green revolution can provide an entrance into the job market while also lowering energy costs for marginalized, low-income households. President-elect Obama has recognized these links in his goals to create millions of green jobs and to weatherize one million low-income homes per year. These briefs provide equitable strategies to pursue the interconnected goals of fundamental environmental and urban reform.

A transformative approach toward improving the environment requires dramatically shifting incentives facing citizens (consumption) and industry/business (production) to promote conservation and energy efficiency. The three key elements of such an approach would be (1) imposing a price on natural capital, defined as the natural stock that yields a flow of goods and services.; (2) creating a national accounting system that reflects human well being (improvements in quality of life), rather than merely recording cash transactions; and (3) establishing environmental restoration and conservation as the preeminent purpose of federal agencies with environmental responsibilities. Without significant change in environmental practice, future economic gains are likely to be swamped by the damages the existing system creates—volatility, extreme inequality (the poor are most burdened by climate change), and chronic economic and environmental insecurity. Although a cap-and-trade system is currently regarded as the most politically palatable option for inducing environmental change, a carbon tax would likely be more effective in the long run. A carbon tax is less subject to political manipulation, better able to cover every sector of the economy, and more predictable than a cap-and-trade system.

Current framings of urban policy are too narrowly construed to either address urban problems or construct solutions. What is considered

urban policy today consists largely of programs addressing low-income housing, or small-scale business improvements in inner cities such as Empowerment Zones. For America to prosper, cities and metropolitan areas must serve as centers for America's renewal. Over 50 percent of the nation's economic activity is now in cities. This trend will intensify with carbon reduction requirements and high energy costs. To the extent that the US is able to move in solving its own urban problems, it will be in a position to share important lessons (and products) to the rest of the world. Green transformation offers the opportunity to win the war on poverty while making the nation sustainable, and to position the US for leadership in the emergent global green economy.

Greening cities, beginning with greening the nation's mostly urban building stock, is the most reliable pathway to realizing the Obama/Biden promise of creating 5 million new American jobs. This approach requires no new technology and self-finances through energy savings. Retrofitting buildings to improve energy efficiency offers an immediate path to improving our natural and built environment. Existing buildings are grossly energy inefficient and are a major site of energy consumption and greenhouse gas emissions. Improved efficiency is not only the cheapest, most reliable, and climate-friendly way of meeting energy needs, it can also save money for utility customers while earning investors attractive returns (both economic and social). Retrofitting requires extensive labor that can improve our economy, provide jobs to low-skilled workers, and include training and advancement for more skilled opportunities. The market does not currently include these opportunities because such efforts require coordination among multiple parties to overcome barriers such as upfront costs and risk aversion.

Federal policy should focus on developing organizations – government agencies, non-profits, coops – to administer projects that coordinate and provide benefits to utility companies, tenants or energy customers, banks, energy auditors, and certified contractors. One strategy to improve the management capacity of groups that can initiate and oversee these retrofitting projects is to offer them technical assistance. In addition, the federal policy can restructure incentives to 1) mandate energy efficiency; 2) reduce barriers to investment; 3) require full net-metering for customers; 4) developing markets for the "secondary" value of greater efficiency, such as emission trading markets; and 5) encourage greater cost transparency throughout the energy system, and 6) insuring equitable distribution of the benefits of publicly supported energy programs.

Federal transportation policy is closely linked to green redevelopment and also job access. It should focus on public transportation, targeting resources to high-need areas, using resources more efficiently by promoting more compact land uses so that alternatives to driving are convenient to people's homes and jobs, and encouraging community participation in policy and programming through the mechanisms of local activism, coalitions, and litigation.

Beyond these issues affecting urban, minority, and low-income people, national policy must address critical issues such as the recent surge in public transportation ridership; the fiscal crisis facing the Highway Trust Fund and the mass transit account; the role of public-private partnerships in promoting public transportation investment; public transportation linkage to urban congestion pricing initiatives; the relationship of public transportation to energy and global climate change discussions; and other current urgent topics. Additionally, any policy in the surface transportation sector must incorporate the National Surface Transportation Policy and Revenue Study Commission report issued last year pursuant to SAFETEA-LU.

REFORMING U.S. ENVIRONMENTAL POLICY

JUDITH A. LAYZER

Abstract

A genuinely transformative approach to U.S. environmental policy would involve a dramatic shift in the incentives facing consumers and business/industry. The three central elements of such a transformative approach would be (1) imposing a price on natural capital; (2) creating a national accounting system that reflects human well-being, rather than merely recording cash transactions; and (3) establishing environmental restoration and conservation as the preeminent purpose of federal agencies with environmental responsibilities. The collapse of the existing economic system, combined with the increasingly evident toll that system has taken on the global environment, provides an opportunity to experiment with a transformative approach. If we do not take advantage of that opportunity, future economic gains are likely to be swamped by the damages the existing system creates—volatility, extreme inequality, and chronic economic and environmental insecurity. Moving toward environmental sustainability will require not only legislative and administrative policy reform, but also substantial political change.

Policy Recommendations

The single most valuable step the next administration should take to structure the economy so that its workings do not systematically degrade the environment would be to implement a system of prices for natural capital, defined as the natural stock that yields a flow of goods and services. The first action in this category would be to pass legislation that puts a price on carbon, using either a tax or a cap-and-dividend mechanism. Although a cap-and-trade system is currently regarded as the more politically palatable option, in the long run a carbon tax or cap-and-dividend system would likely be less subject to political manipulation, better able to cover every sector of the economy, and more predictable than a cap-and-trade system. A second step the next administration should take in order to enhance the environmental sustainability of public and private decision-making is to replace the existing system of national accounting with one that emphasizes quality of life. A revised accounting-system would focus on qualitative development, defined as improvements in the quality of life, and would aim more explicitly to measure human well-being. Third, the next administration should reinvigorate the existing environmental policy infrastructure through regulatory changes that enhance the EPA's effectiveness and make environmental conservation and restoration the top priority of federal natural-resource agencies.

Natural Constituencies

Conservationists and environmentalists are the primary constituents for these policies. But many states and municipalities that have sought to build their economies around quality of life, for example by instituting smart-growth measures, would also benefit from more supportive federal incentives and rules. Potential constituencies also includes low-income communities that currently bear a disproportionate share of the risks of environmental degradation and could be revitalized by more environmentally sound development.

The primary opponents to pricing natural capital are fossil-fuel producers and manufacturing corporations in carbon-intensive industries. These corporations will be forced to internalize at least some of the costs of their products, potentially hurting both profits and global competitiveness—although international efforts to address environmental decline can level the playing field.

A GENUINELY TRANSFORMATIVE approach to U.S. environmental policy would involve a dramatic shift in the incentives facing citizens and industry/business. The three central elements of such a transformative approach would be (1) imposing a price on natural capital; (2) creating a national accounting system that reflects human well-being, rather than merely recording cash transactions; and (3) establishing environmental restoration and conservation as the preeminent purpose of federal agencies with environmental responsibilities. The collapse of the existing economic system, combined with the increasingly evident toll that system has taken on the global environment, provides an opportunity to experiment with a transformative approach. If we do not take advantage of that opportunity, future economic gains are likely to be swamped by the damages the existing system creates—volatility, extreme inequality, and chronic economic and environmental insecurity. Moving toward environmental sustainability will require not only legislative and administrative policy reform, but also substantial political change.

Pricing Natural Capital

The single most valuable step the next administration could take to structure the economy so that its workings do not systematically degrade the environment would be to implement a system of prices for natural capital, defined as the natural stock that yields a flow of goods and services. Pricing natural capital appropriately would entail eliminating subsidies on extracting virgin raw materials and developing raw land, and imposing taxes or other kinds of charges on renewable and nonrenewable natural resources, as well as on ecological services. Any regressive effects of pricing natural capital should be offset by reductions in taxes on labor—an approach that would have the beneficial effect of encouraging job creation—and by restoring a steeply progressive income tax. Excess revenue raised should be directed to ecological restoration and resilience, as well as toward ensuring that low-income communities benefit from environmental improvements.

The concept of pricing natural capital is based on the premise that markets are highly effective mechanisms for allocating resources. At the same time, it is rooted in an acknowledgment that the contemporary market system emerged in a world in which human and financial capital were scarce, but natural capital was plentiful. That structure is obsolete, however, in the contemporary world of scarce natural capital and abundant human and financial capital. Continuing to treat natural capital as though it were free ensures that we will continue depleting it, with severe consequences: natural systems, which do not operate in a linear fashion, are likely to cease functioning abruptly, creating severe economic shocks. And although human beings are undoubtedly ingenious, we cannot manufacture replacements for the services that air, water, and soil provide.

Above all, federal pricing policies will **facilitate local, state, and regional sustainability initiatives**—such as green-building mandates and efforts to expand and improve public transportation.

Since the 1960s, economists have been making the point that unless and until it becomes expensive to do the wrong thing, businesses and individuals will continue to find ways to do it. As Charles Schultze wrote in 1977: “The problem of environmental quality permeates most of the production and consumption aspects of the economy. Hence the discovery and adoption of pollution-reducing technology will have to be equally pervasive. Unlike the space program or the Manhattan Project, it is not a task that central direction can accomplish well. Rather the institutions and incentives of society have to be modified for a steady long-run effort. Reducing pollution has to become a paying proposition rather than a set of regulations to be fought and delayed.”

Numerous benefits will accompany pricing natural capital. Above all, federal pricing policies will facilitate local, state, and regional sustainability initiatives—such as green-building mandates and efforts to expand and improve public transportation. Currently, such efforts are hamstrung by the distortions introduced by underpriced natural capital. Adjusting the cost of scarce natural capital will also unleash private enterprise, which is far more likely to adopt a cradle-to-cradle manufacturing process if it makes financial sense to do so. Currently, we rely primarily on exhortation to induce environmentally sustainable production, but such an approach is unfair to small business and startups, which are most sensitive to differences in the marginal cost of inputs.

During the campaign, presidential candidates McCain and Obama both endorsed a pricing approach to reducing U.S. carbon emissions. Both supported a cap-and-trade mechanism, although Obama’s plan was both more ambitious in terms of the stringency of its requirements and its support for auctioning permits. Although a cap-and-trade system is currently regarded as the more politically palatable option, a carbon tax would likely be more effective in the long run: a carbon tax is less subject to political manipulation, better able to cover every sector of the economy, and more predictable than a cap-and-trade system. The main objection to a carbon tax is political; its transparency makes it easy to identify winners and losers. Ostensibly, cap-and-trade has a technical advantage as well: It provides more certainty about annual emissions. But the technical and political challenges of administering a cap-and-trade system are likely to undermine its ability to deliver the promised reductions, as evidenced by the European Union’s lack of progress to date and the ineffective international negotiations over avoided deforestation. A compromise option worth considering is the cap-and-dividend approach, which would be both simpler and more equitable than an upstream cap-and-trade mechanism but would not have the political liabilities of a tax. Whatever mechanism is chosen, it must be explicitly adaptive—that is, designed to respond to changes in our scientific understanding of the problem. Furthermore, it is essential that some of the revenues generated be used to offset the effects on low-income citizens of changes in the price of carbon-based energy.

In addition to pricing carbon, both candidates supported massive investments in the development of alternative energy, to reduce the nation’s dependence on carbon-generating fossil fuels (although paradoxically McCain also advocated greatly expanding domestic drilling for oil and gas). Creating a massive fund that can be used to stimulate

alternative and renewable energy development would help restore the United States' economic vitality by spurring the creation of new technology, while establishing the nation's leadership in the global effort to mitigate the harmful impacts of climate change while. Existing research suggests, however, that centralized efforts to direct technological development rarely bear fruit; rather, the primary federal role should be to finance basic research and to ensure the availability of capital for private companies that can develop products.

Adjusting National Accounting

A second step the next administration should take to enhance the environmental sustainability of public and private decisionmaking is to replace the existing system of national accounting with one that emphasizes quality of life. As has been widely observed, as currently constructed, GNP treats any expenditure—even harmful ones, such as spending to incarcerate prisoners—as beneficial, does not account for costs imposed by depletion of natural capital, and fails entirely to show the benefits of ecological services. Moreover, our current accounting system, which is rooted in GNP-based theories of growth, emphasizes quantitative economic expansion. But clearly a finite earth cannot support unlimited physical expansion of the human economy. In any case, research conducted in the last two decades makes abundantly clear that growth and human well-being are not tightly correlated and that, in fact, beyond a relatively modest income level, additional growth is associated with level or declining levels of happiness.

By contrast, a revised accounting system should focus on qualitative development, defined as improvements in the quality of life, and should aim more explicitly to measure human well-being. As envisioned by economist Herman Daly, such a system might include three accounts: one that measures the value of the services rendered by the economy, one that measures the costs of natural resource depletion and pollution, and one that measures the value of both financial and natural capital stocks. Designing and implementing an alternative accounting system could probably be accomplished without legislative change, but it would entail convening an expert commission to solve a host of technical problems.

Reforming Environmental Governance

The reforms proposed above would realign incentives so that citizens and businesses are inclined to make consumption and production decisions that conserve, rather than degrade, the biosphere. They would also facilitate local, state, and regional efforts to institute more sustainable practices. But a third element is also necessary: The next administration should reinvigorate the existing environmental policy infrastructure. The U.S. environmental policy system—which covers a panoply of issues, from air and water pollution control to biodiversity conservation to protection of the earth's atmosphere, and affects every activity in the economy, from agriculture to defense—is increasingly inadequate. Experience with environmental policy over the last 40 years suggest some lessons that can be applied across the board, as we move from a system that relies

primarily on regulation to one in which economic incentives are aligned with environmental priorities.

First, the new administration should seek to ensure that agencies with jurisdiction over the environment have clear and environmentally protective statutory mandates. As it stands, most of the nation's natural-resource agencies face multiple and often conflicting statutory requirements. For example, the nation's fishery conservation law requires managers to conserve fish stocks while simultaneously promoting the economic vitality of the fishing industry. It has succeeded in doing neither; in fact, around the country both fish stocks and fishing communities are in decline. Popular critiques of environmental regulation appropriately emphasize the need for flexibility, to avoid provoking a backlash or discouraging high-performing companies through regulatory irrationality. But historical evidence makes clear that flexibility is only likely to be effective in the context of clear and environmentally protective mandates, which not only elicit better environmental performance, but also create incentives that bring polluters and developers to the table and make negotiations more productive.

Second, the next administration should seek to reform agencies' legislative mandates to ensure that the burden of proof of safety consistently falls on prospective resource developers and polluters. Currently, many environmental statutes put the burden of proof on regulators to demonstrate that a product or activity is environmentally harmful. This requirement imposes tremendous financial and informational burdens on underfunded agencies; it also leaves those agencies highly vulnerable to legal challenges. Transferring the burden of proof is likely to yield environmentally superior performance, while conserving the resources of government agencies so that they can focus on the long-term and synergistic effects of pollution and habitat degradation.

The new administration should seek to ensure that agencies with jurisdiction over the environment have clear and environmentally protective statutory mandates. As it stands, most of the nation's natural-resource agencies face multiple and often conflicting statutory requirements.

Third, the administration should elevate the importance of conservation in the missions of multiple-use agencies. For example, the Interior Department should be a department whose primary purpose is resource and biodiversity conservation, not

resource exploitation. The foremost aim of the Forest Service and the Bureau of Land Management should be to restore and protect the health of the nation's national forests and grasslands, not facilitate their destruction. NOAA Fisheries, which is currently located in the Commerce Department, should move to a new agency responsible for marine affairs, thereby demonstrating the importance of the nation's marine resources. Such changes will not eliminate commercial uses of federal resources; it will, however, ensure that any commercial use is compatible with maintaining the integrity of the nation's natural systems.

At an administrative level, the next administration should work to infuse all federal agencies' activities with an environmental sensibility. After 30 years of nearly uninterrupted conservative control, the federal agencies with jurisdiction over the environment—particularly the Department of Interior agencies and the EPA—have been demoralized and denuded of their most talented staff. If these agencies are to be effective and credible, the next administration must restore the stature and professionalism of the environmental bureaucracy. Doing so will help undo the damage done since the 1980s; it will also attract motivated and talented young professionals who increasingly are imbued with environmental values.

Changing the Politics

None of the recommendations made above are revolutionary; all are well established in and likely to receive overwhelming support from the environmental community. But the resistance to reform from other quarters is likely to be substantial, and it will take a concerted effort to create the broader political will to put them in place. Nearly 40 years after Earth Day, environmentalism is as widely accepted as it has ever been, but many Americans remain ambivalent about changing their lifestyles to achieve environmental goals, and some industries continue to resist efforts to level the playing field on which they operate. Making matters worse, a sustained effort by political conservatives to trivialize environmental problems and shift attention to the costs of regulation has polarized the nation's policymakers.

Eliminating environmentally damaging subsidies and pricing natural capital will entail tax-reform legislation and modifications to a host of laws, such as the Farm Bill and the Water Resources Development Act, that contain subsidies for environmentally damaging activity. It will therefore involve taking on a host of well-defended interests. If it is to succeed, the overall project must be perceived as fair and comprehensive, and it must be explained repeatedly and in a compelling way. As essential as Presidential leadership will be the unwavering support of a broad and committed reform coalition. It has been decades since a national political figure made environmental sustainability a priority. For the next president to do so, he will have to perceive such a supportive and enduring coalition exists. To be effective, he will need a storyline that articulates in a coherent and forceful fashion the fundamental relationship between human well-being and environmental health. He will need to create and capitalize on opportunities to promote environmental awareness, while linking it to other core goals for housing, health care, education, and urban revitalization.

It would be unreasonable to expect implementation of fundamental reforms, much less evidence of impacts, within the president's first term; in fact, the backlash that accompanied President Reagan's tax and budget reforms in 1981 suggests that only a long-term initiative accompanied by ongoing negotiations with members of Congress and advocates is likely to yield enduring results. In any case, it is extraordinarily difficult to measure the results of environmental policies: We lack baseline information on environmental health, and myriad factors besides any individual policy affect environmental outcomes. That said, evidence of deteriorating conditions ought to be

sufficient evidence that the federal government's strategy is not adequate and warrants reassessment. Assembling such evidence will require putting in place an effective national network of environmental monitoring and early-warning systems.

Conclusions

The next administration will face a historic opportunity to change the nation's direction—to move it off the highly individualistic, acquisitive, and inequitable trajectory it has been on. To be successful, however, the president will need to articulate a holistic vision that explicitly links environmental, social, and economic issues. That vision should not be nostalgic; rather, it should conjure a future in which people are secure and content because they have gained reliable access to health care, housing, and education, while conserving a healthy, functioning environment. Such a vision, consistently articulated, holds the promise of creating the political space for on-the-ground legislative and administrative change.

GREENING CITIES

J. PHILLIP THOMPSON

Abstract

Current framings of urban policy are too narrowly construed to either address urban problems or construct viable solutions. What is considered urban policy today consists largely of programs addressing low-income housing, or small-scale business improvements in inner cities such as Empowerment Zones. The focus of this paper will be to reframe cities and metropolitan areas as centers for America's renewal. The proposed strategy builds on the president-elect's commitment to both green jobs and healthy communities. Over 50 percent of the nation's economic activity is now in cities. This trend will intensify with carbon reduction requirements and high energy costs. Beyond this, the US must rebuild its urban areas and concentrate its growing population in cities to reduce carbon and conserve resources. To the extent that the US is able to move in solving its own urban problems, it will be in a position to share important lessons (and products) to the rest of the world. This paper suggests that green transformation offers a couple of major opportunities: to win the war on poverty while making the nation sustainable, and to position the US for leadership in the emergent global green economy. This should be the focus of urban policy.

Policy Recommendations

- Promote energy conservation through retrofitting buildings in cities as a primary climate change and employment strategy.
- Support labor standards, workforce diversity, and workforce development to build a workforce for green retrofitting.
- Support production of energy-efficient appliances in urban areas zoned for manufacturing.
- Prevent displacement of low-income people from cities as a result of urban in-migration caused by higher energy costs and looming carbon penalties for sprawl.
- Facilitate, and shape, financing for green retrofits to initiate urban retrofit programs and to support equitable splitting of returns from green investments.

Natural Constituencies

These policies will likely appeal to urban residents, mayors, governors, environmentalists, conservationists, and labor unions.

These policies will likely stir opposition from large utilities in the nuclear business, and possibly from investment banks opposing public financing of building retrofits (where there is little risk and possibly robust returns).

CURRENT FRAMINGS OF URBAN POLICY are too narrowly construed to either address urban problems or construct solutions. What is considered urban policy today consists largely of programs addressing low-income housing, or small-scale business improvements in inner cities such as Empowerment Zones. Urban problems, however, such as concentrations of poverty, high levels of crime, and fiscal distress of local governments, are not confined to cities. They extend into inner-ring suburbs and to old industrial cities -- often too small, and too capacity-limited to compete for federal anti-poverty funding. Urban problems, moreover, are as much a consequence of transportation policies favoring cars as they are of housing. Past urban programs have lingering effects on the urban poor, having created concentrated poverty and large swaths of cities disconnected from parts of the downtown and the suburbs. Poor public transportation options in many low-income areas; patterns of development that rely on the car; and the disproportionate costs of transportation for low-income families, who spend nearly 40 cents of every dollar they earn on transportation, further exacerbate these problems.¹ Similarly, educational policies are as significant an urban policy issue as housing or other "HUD" issues. Economic policies (4% unemployment is considered optimal by Fed reserve, but that translates to 8% in black communities), as they are related to housing.

A narrow focus on urban poverty additionally masks an important trend over the last two decades in urban areas: stagnation and decline in middle class neighborhoods. New York City is a good example because it has done better than most in the global economy. Focused efforts to build affordable housing and reduce crime in New York stabilized poor neighborhoods in the South Bronx, Harlem, and north Central Brooklyn. Poverty went down in the 1990s in all three parts of the city. Poverty went up in middle class areas of the central Bronx, western Queens, and south-central Brooklyn. These same middle class areas, by the year 2000, fell behind citywide median income by 8 percent compared to where they were in 1980. Poor areas held constant over that time period, while wealthy areas of the city were 39 percent above where they stood in 1980 in terms of relative income in the city.² To generalize in overly blunt terms, conditions in the mostly black and Latino low-income neighborhoods stabilized at a troubling level (one-third of African American minors and 26.9 percent of Latino minors lived in poverty in 2006, compared to a 10 percent poverty rate among white minors), but middle class neighborhoods (white, black, Latino) declined. This reflects the fact that recent economic recoveries have failed to improve work prospects for most workers. New jobs tend to be low paying and lacking benefits. Wealthy neighborhoods pulled away from the poor and the middle class in terms of income and quality of life. It is largely the decline of the middle class that led to the foreclosure crisis at the heart of recent financial meltdowns.

Most importantly, a narrow perspective on urban policy overlooks the centrality of urban areas and their residents to the future welfare of the nation. By the year 2050, a majority of US workers will be persons of color -- precisely the groups suffering disproportionately from inadequate education and training, mass incarceration, social stigma and social

¹ Ibid.

² Reichl, Alexander. 2007. "Rethinking the Dual City." *Urban Affairs Review* 42 (5):659-87.

exclusion. Without change, soon it will not only be urban minorities that are suffering as a result of problems now considered 'minority' issues.

Fortunately, there are promising alternatives. The focus of this paper will be to reframe cities and metropolitan areas as centers for America's renewal. Over 50 percent of the nation's economic activity is now in cities. This trend will intensify with carbon reduction requirements and high energy costs. Beyond this, the US must rebuild its urban areas and concentrate its growing population in cities to reduce carbon and conserve resources. This is also true for other large nations. China and India expect 1 billion additional urban inhabitants in their countries in the next few decades. To the extent that the US is able to move in solving its own urban problems, it will be in a position to share important lessons (and products) to the rest of the world. America's greatest international challenge in the near future will be a battle over economic power. Increasing America's competitiveness is an imperative to meeting this challenge. Accordingly, improving the economic state of America's cities and urban communities is vital to this competitive mission. This issue is crucial to America's economic, national and environmental and energy security. In what follows, I suggest that green transformation offers a couple of major opportunities: to win the war on poverty while making the nation sustainable, and to position the US for leadership in the emergent global green economy. This should be the focus of urban policy.

Why Cities are Key for Carbon Reduction and Energy Conservation

Buildings themselves, obviously concentrated in cities, are the largest single contributor to annual greenhouse gas emissions. Buildings contribute up to 48% of greenhouse gas emissions annually, and at least 60% of electricity generated at US power plants goes to commercial and residential buildings.³ Over 15% of water consumption, 30% of CO₂ emissions, and 40% of waste generation can be attributed to buildings.⁴ To reduce carbon emissions and energy costs, there is no choice but to change how cities are built and how buildings consume energy.

Suburban sprawl, decaying inner-ring suburbs, disappearing green and agricultural spaces, and the sheer extent of paving in cities are likewise unsustainable building patterns that rely on nonrenewable energy resources.⁵ The US consumes 25% of the world's energy and generates 25% of global warming pollution, despite having only 5% of the world's population.⁶ Our pattern of development contributes significantly to energy demands in the US. Sprawling suburbs contribute to excess energy use through low-density development, reliance on automobiles for transportation, and consumption of open land. Given continued population growth and predicted future consumption levels, an unprecedented amount of energy will be required to keep cities—and the national economy—running.⁷ Continuing current building and development patterns will not

³ Energy Information Administration. <http://www.eia.doe.gov/>. Accessed August 2008.

⁴ Ibid.

⁵ American Planning Association. www.planning.org. Accessed July 2008.

⁶ Green Communities. <http://www.greencommunitiesonline.org/>. Accessed July 2008.

⁷ American Planning Association. www.planning.org. Accessed July 2008.

mitigate climate change and, without action, greenhouse gas emissions will continue to grow.

This is not only a US problem. The world's population is growing by an estimated 200,000 people per day, meaning that in the "next 35 years, 2.5 billion people will be added to the current population of 6 billion." The "population of low- and middle-income countries will more than double – to 7.0 billion, compared with 1 billion for high-income countries."⁸ At the same time, urbanization in developing countries is increasing. "Whereas less than 22 percent of the developing world's population was urban in 1960, by 1990 it had increased to 34 percent. By 2015 it is expected to reach 48 percent."⁹ The combined effects of population growth and increased urbanization will likely increase congestion and pollution, and create "greater demand for housing, clean water, sanitation facilities, recreation areas, public transport, health care and education. When rapid migration to cities strains the capacities of governments to provide the necessary services, the result may be a lower standard of living for everyone."¹⁰ This is true everywhere.

Why Nuclear Energy Should Not be Option One for Addressing Energy Demands

Nuclear plants are already proposed in 30 different places in the country, yet the energy conservation approach is cheaper, safer, and better for consumers and workers. For example, Florida's utility wants to build a nuclear reactor at a cost of \$7 billion. It will take a decade to complete the reactor. Reactors require tens of millions of gallons of water for cooling, a problem of capacity in water-starved parts of the country and a problem for marine life. At the same time, the city of Miami is developing an energy conservation plan that will save as much electricity as the new nuclear plant will supply. The Miami plan's cost will likely be about \$2 billion, and it will pay for itself over time because it reduces demand for electricity (producing savings that can pay for retrofits—and more). It can begin right away. Conservation, such as retrofitting buildings, also creates far more jobs than do nuclear plants. Conservation jobs, such as green construction jobs, are more accessible to low-income people than jobs in nuclear plants.

What is Needed to Move An Urban Green/Jobs Agenda?

Retrofitting buildings is the most immediate way to reduce carbon production/energy demand and has the benefit of creating large numbers of blue-collar jobs. Construction is one of the nation's largest industries. According to BLS estimates, the construction industry employed around 9.6 million people in 2006, including 7.7 million wage and salary workers and 1.9 million self-employed workers. As manufacturing jobs, which previously enabled middle class attainment among those without a college education, have declined over the last three decades, the construction industry continues to provide large numbers of non-college educated workers relatively good jobs with benefits and

⁸ World Bank. (2008). <http://www.worldbank.org/depweb/english/modules/social/pgri/index02.html>. Accessed September 2008.

⁹ Ibid.

¹⁰ Ibid.

chances for career advancement.¹¹ Because construction work is largely learned on the job, workers advance career ladders through experience rather than formal education. The fact that the construction industry is spatially bounded to the work site and heavily reliant on labor (despite technological advancements) ensures that labor demand will remain high. With the aging of the American workforce, increasing numbers of construction workers are retiring, creating more job opportunities in the industry.

The growing shift from traditional to green building offers promising growth opportunities for the construction industry. Comprised of both new construction and retrofit projects, green building is growing as a result of public sector legislation, increased environmental awareness by the public, and growing energy and construction materials costs. Every business day, \$464 million worth of construction gets registered with Leadership in Energy and Environmental Design (LEED), a third-party rating system for green building. Given that 75 percent of the total 300 billion square feet of US building stock will be new or renovated by the year 2035 (US Energy Information Administration) green building carries the potential for substantial economic value, which can either accrue mainly to the upper echelons of the private sector or translate into broad social gains. In the latter case, green building could generate “double dividends,” comprised of environmental returns (mitigated climate change, reduced waste, conservation of natural resources) as well as economic returns in the form of quality jobs and small business development.

In Germany, a program to perform energy retrofits on 200,000 homes saved or created 140,000 construction jobs during an industry downturn.”¹² New York City’s green city plan calls for retrofitting 980,000 buildings; they may need as many as 500,000 green construction workers to do the work. Chicago’s green city plan similar calls for retrofitting 600,000 buildings, and they have similar labor needs. Retrofitting the nations 4 million commercial buildings and 230 million residential units calls for a workforce development program of unprecedented magnitude.

The fact that labor accounts for 75 percent of building costs means that adoption of green building standards throughout the building sector heavily depends on a well-trained workforce. Green building education, in the form of curriculum for new labor market entrants and retraining for existing members of the construction labor force, is critical for implementing green retrofitting at scale. Green building requires specialized knowledge and experience at various stages of the process. As architects and engineers design green buildings and outline LEED specifications, general contractors must understand green design plans and know how to order and work with new materials and technologies in order to oversee construction and installation. Among subcontractors, green building knowledge and experience prevents time delays, unnecessary costs, and lost LEED points at the administrative level while adding another level of quality assurance to the end project. Construction apprentice training programs jointly run by building trade unions and major construction companies now provide a solid foundation

¹¹ The average unionized worker in the industry earned an hourly wage of \$19.23 in 2004, while the majority (58 percent) of industry workers lacked a college education.

¹² Ibid.

for the training component of green building workforce development,¹³ yet construction apprenticeship programs are not very widespread.¹⁴ The primary reason is declining union density. At present, 85 percent of workers in the industry are not covered by collective bargaining agreements and therefore without access to joint union-employer training programs.¹⁵ Nonunion firms that compete on the basis of lower prices lack incentives to invest in worker training programs, they prefer to utilize low-wage, low-skill, construction workers that frequently change jobs.¹⁶ Second, construction trade workers deliberately restrict apprenticeship programs in order to prevent a labor surplus. This is in part a defensive response given the industry structure, where the majority of firms are low road and only a small segment of construction jobs offer ample pay and benefits. Therefore, new labor organizing efforts are an important piece of a comprehensive green building workforce development strategy. Another reason for the limited span of construction apprenticeship programs is that women and racial minorities have been historically excluded from building trade unions.

Given the challenges of union-contractor, joint administered, apprenticeship programs in recruiting a more diverse workforce, community-based organizations (CBOs) with the capacity to recruit low-income minority jobseekers into apprenticeship programs can step in as community-based workforce intermediaries.

Given the challenges of union-contractor, joint administered, apprenticeship programs in recruiting a more diverse workforce, community-based organizations (CBOs) with the capacity to recruit low-income minority jobseekers into apprenticeship programs can step in as community-based workforce intermediaries. For instance, a few CBOs have incorporated local hiring provisions as part of community benefits agreements and subsequently tapped into community networks to recruit local low-income minority jobseekers for hiring. CBOs sometimes also administer pre-apprenticeship programs that offer core skills training to participants prior to their entry into apprenticeship

¹³ The estimated benefit of jointly administered construction apprenticeship programs is \$40,000 to \$150,000 per worker, \$1.38 for every dollar invested for employers, and \$50 for every \$1 invested for the federal government, which funds oversight and accreditation (Swanstrom 2008, pp.13). Quoting Jeff Grabelsky: "I'm on the Board of Directors at a program housed at the building trades council here in NYC. That program has a 65% placement rate and an 85% retention rate. I understand that is a remarkable record compared to others. (22 and elsewhere.)"

¹⁴ Compared to an estimated need of 245,900 new skilled construction workers per year between 2004 and 2014, only about 40,000 workers enter construction apprenticeship programs per year (Swanstrom 2008, pp. 13).

¹⁵ 70 percent of apprenticeships are union-management programs.

¹⁶ Since the early 1970s, "low road" firms have gained an increasing share of the building market by competing on the basis of lower prices. These contractors utilize nonunion low-wage (and in many cases undocumented) construction labor, while passing operating costs onto taxpayers (i.e. social security, Medicare, social insurance premiums covering workers' compensation, unemployment insurance, disability insurance, medical costs). Workers employed by the low road construction sector are typically underpaid, less likely to have regular work, and suffer higher rates of fatality and injury due to unsafe work conditions.

programs. Additional supports include remedial instruction in basic math, help in getting a driver's license or small loans to purchase a car (for accessibility of work sites), help purchasing basic tools and appropriate clothing, help with childcare, and a livable wage while in training. While the participation of unions, contractors, communities, and CBOs is necessary to design and active a comprehensive green building workforce development strategy, a supportive institutional framework must first be in place to ensure social gains. Public policies promoting green building, labor standards, workforce diversity, and workforce development are key urban programs needed today. Federal labor laws govern contractor-union relationships as well as labor organizing and collective bargaining efforts, while federal enforcement of health and safety laws, immigration laws, overtime regulations, payroll taxes, and workers compensation premium stipulations shape firm behavior. So far, public policy has vitally shaped demand for green building, mostly by mandating LEED compliance in the institutional building sector.

Related Areas to Building Retrofits: Distributed Energy and Appliances

Building retrofits are not the full solution to urban sustainability but rather a logical starting point before moving outward to broader initiatives (energy, green manufacturing, transportation, urban farming). Two closely related areas to building retrofits are energy generation at the level of neighborhoods (distributed energy) and the production and purchase of energy efficient appliances.

Alternative renewable energy sources offer an opportunity to decrease dependence on fossil fuels (foreign and domestic), yet less than 10 percent of the US's energy comes from renewable sources.¹⁷ Retrofitting buildings provides an opportunity to reduce dependence on fossil fuels during the course of building rehabilitation. Renewable energy sources include hydropower, solar, wind, geothermal, and bioenergy. Each operates at a different scale and must be site specific. Many of these alternative energy resources can be developed and owned at the community level, offering income opportunities for small businesses, cooperatives, and low-income communities. Below are a few examples.

- "...Enough wind power blows through the Midwest corridor every day to also meet 100 percent of US electricity demand."¹⁸ Community scale wind power generation, such as the state initiated efforts in Illinois¹⁹, can partner state support with community banks and lenders to provide loans to farmers and co-operatives to construct wind turbines for renewable energy generation, generating a wind-to-energy market capacity at the community scale.
- Three to ten feet underground, the earth's temperature is about 50-60 degrees year round. Geothermal technologies utilize heat from the earth to heat buildings

¹⁷ US Department of Energy Efficiency and Renewable Energy. www.eere.energy.gov. Accessed August 2008.

¹⁸ Al Gore's Challenge. <http://www.wecansolveit.org/>. Accessed August 2008.

¹⁹ http://www.illinoiscleanenergy.org/renewable_body.asp. Accessed August 2008.

(and water), and uses coolness of the earth to cool buildings. “Geothermal energy...is capable of providing enormous supplies of electricity in America.”²⁰ “Geothermal energy is an enormous, underused heat and power resource that is clean (emits little or no greenhouse gases), reliable (average system availability of 95%), and homegrown (making us less dependent on foreign oil).”²¹ Geothermal facilities range from individual house pumps, to neighborhood facilities, to large scale facilities that use steam or hot water deep under ground to power turbines. Widespread adaptation of geothermal not only offers the prospect of jobs, but also of decreasing energy costs for low-income communities (and thereby raising incomes).

- Distributed generation (DG) is the production of electricity at or near the location where it will be used. Instead of relying on power generated at large, remote facilities and distributed over long transmission lines, DG customers use small, modular generators to produce the power they use. DG units can generate electricity using wind turbines, solar panels, fuel cells, gas-powered micro turbines, or other types of combustion engines. DG is a potential win-win for electricity consumers and society. By investing in DG, consumers can save substantially on their energy costs due to increased fuel efficiency and decreased distribution costs. DG systems also have the potential to decrease prices for other grid customers by limiting the need for transmission and distribution infrastructure expansion and reducing wholesale energy prices. The thermal efficiency of combined heat and power (CHP) and the potential for other renewable forms of DG can substantially reduce greenhouse gas emissions and contribute to climate change mitigation.”²² DG systems can be placed in individual homes, in multi-family buildings, supermarkets, hospitals, etc.. A low-income housing development could, for example, conserve energy usage during the day (do their laundry at night) and sell energy to the grid during peak demand periods of the morning and afternoon to generate income for residents of the development.

The energy approaches above illustrate an approach that can be applied in additional sustainability programs such as capturing storm water runoff for reuse and filtering, or in moving agricultural production closer to urban markets. Programs designed to encourage conservation and production at the community level have far greater potential to generate income and resources in low-income communities than existing “anti-poverty” programs.

Another important area for metropolitan planning related to building retrofits concern the manufacture and purchase of energy-efficient appliances. New York City’s green city

²⁰ Al Gore’s Challenge. <http://www.wecansolveit.org/>. Accessed August 2008.

²¹ US Department of Energy Efficiency and Renewable Energy. <http://www1.eere.energy.gov/geothermal/overview.html>. Accessed August 2008.

²² Montoya, Luis. Unpublished Masters Thesis 2008. Department of Urban Studies and Planning. Massachusetts Institute of Technology. The Road Still Not Taken: How Combined Heat and Power Can Contribute to a Sustainable Energy Future in Massachusetts

plan, for example, considers the bulk purchase of millions of energy efficient small and large appliances (residents of the city discard 170,000 large and 2,000,000 small appliances per year). It is conceivable that some, or many, of new energy-efficient appliances could be produced in urban areas zoned for manufacturing and hosting abandoned factories.

The Cost of Doing it Wrong

Greening cities will require a paradigm shift in how we think about development and how we think about social equity. Creating new development patterns essentially means uniting the nation in physical proximity. To entice suburbanites to return to the city, and to do so in a manner that does not displace the urban black and Latino poor, it requires a real commitment to social equity and its spatial implications. For example, the increase in population in cities will lead to higher real estate costs, it already has in many parts of

Programs designed to encourage conservation and production at the community level have far greater potential to generate income and resources in low-income communities than existing “anti-poverty” programs.

the country. One of three things will likely happen to poor people now concentrated in cities: (a) they will be stuck with higher costs for housing, compounding their existing housing affordability crisis; (b) they will be forced to move into the distant suburbs for cheaper housing, and stuck in suburbs with high transportation costs—and with no net reduction of sprawl; (c) they will live in informal settlements (urban squalor) in cities so that they can get to work. Building integrated cities (class and racial) implies changes in attitude about the role of public institutions, policies, and funding – about where public money is invested. Efforts to green cities often forces contentious debate between those prioritizing the environment, promoting economic development, and advocating for social justice (such as affordable housing).²³ For instance, Portland’s growth boundary is seen as a model for protecting open and agricultural land and preventing endless sprawling development. However, with the decreasing availability of urban land, Portland’s program has become controversial, as low-income families have suffered from rising housing costs and costs of living.²⁴

What Should the Federal Government Do?

Frame the Challenge – from Adversity to Cooperation in Building Urban America

²³ Campbell, Scott. 1996. “Green Cities, Growing Cities, Just Cities? Urban Planning and the Contradictions of Sustainable Development” in Scott Campbell and Susan S. Fainstein (Eds.), *Readings in Planning Theory* (pp435-458). Malden, MA and Oxford: Blackwell Publishing.

²⁴ Marshall, Alex. 2000. *How Cities Work: Suburbs, Sprawl, and the Roads Not Taken*. Austin: University of Texas Press.

Our economic models and political systems are largely defined around who has and who goes without, and the trade offs in allocating resources across groups. These debates have not changed fundamentally since the 19th century. Neither capitalism nor socialism are suitable intellectual frameworks for addressing climate/energy resource challenges because they are both based on a fundamental notion of ‘us’ versus ‘them’ and how to allocate a limited supply of goods. Yet, in the current climate, ‘they’ are us, and we are ‘them.’ If we do not find ways to live together in cities across lines of class and race, the ecological cost to society will be high. If regions do not cooperate in sharing water and other natural resources, the entire nation will suffer. Similarly, if nation-states pursue self-interests without regard to other nations, environmental catastrophe (not to mention conflicts over limited resources) is assured. In order to move in this direction we have to develop a much wider view --- of future generations, of cities, of national and global citizenship. This is the crucial urban agenda, and it needs to be reframed.

Facilitate, and Shape, Financing for Green Retrofits

Although green retrofitting pays for itself over time, there is a need for upfront investment to initiate programs. There are also equity issues to be decided regarding who should benefit from savings produced by public investments in retrofitting (e.g., landlords or tenants).

SEIZING THE OPPORTUNITY (FOR CLIMATE, JOBS, AND EQUITY) IN BUILDING ENERGY EFFICIENCY

JOEL ROGERS

Abstract*

Retrofitting buildings to improve energy efficiency offers an excellent path to improving our natural and built environment. Existing buildings are grossly energy inefficient and are a major site of energy consumption and greenhouse gas emissions. Improved efficiency is not only the cheapest, most reliable, and climate-friendly way of meeting energy needs but it also saves money for utility customers while earning investors attractive returns. Finally, retrofitting requires extensive labor that can improve our economy, provide jobs to low-skilled workers, and enable training and advancement to more skilled work opportunities. President-elect Obama recognizes this potential in his proposals to use green technology training to build a clean technology workforce and to improve the efficiency of both new and existing buildings. However, the market does not

* Thanks to Sharon Alpert, Ann Beier, Elissa Berger, Scott Bernstein, Dan Cantor, Paul Cillo, Josh Cohen, Dan Dolgin, Laura Dresser, Jared Duval, Doug Foy, Richard Freeman, Bracken Hendricks, Jeremy Hays, Van Jones, Ian Kim, Harlan Lachman, Billy Parish, Chuck Sabel, George Sterzinger, and Eric Sundquist for useful discussion.

currently include these opportunities because such efforts require coordination among multiple parties to overcome barriers such as upfront costs and risk aversion. This brief outlines a strategy, including specific policy proposals, to overcome these barriers and successfully transform our built environment to an energy efficient one.

Policy Recommendations

Federal policy should focus on developing organizations – government agencies, non-profits, coops – to administer projects that coordinate and provide benefits to utility companies, tenants or energy customers, banks, energy auditors, and certified contractors. One strategy to improve the management capacity of groups that can initiate and oversee these retrofitting projects is to offer them technical assistance. In addition, the federal policy can restructure incentives to 1) mandate energy efficiency; 2) reduce barriers to investment; 3) require full net-metering for customers; 4) developing markets for the “secondary” value of greater efficiency, such as emission trading markets; and 5) encourage greater cost transparency throughout the energy system. For these initiatives to be successful, the programs must both encourage deep participation throughout society and focus on equity issues such extending benefits to low-income households, providing not only more jobs but also higher quality jobs, and engaging communities.

Natural Constituencies

This policy framework creates opportunities for constituents across the wide range of groups that it seeks to coordinate. For example, energy customers will support reduced costs while banks can gain from new investment opportunities. The main constituency, however, would be the construction industry, contractors, and energy auditors that would provide the labor the retrofitting itself.

The most opposition to this strategy will arise from the mandates for energy efficiency that are included to promote deep participation in this new model. Tough builder standards and similar legislation could add project constraints and costs to contractors who seek to maintain flexibility and keep their costs low.

NOBODY SERIOUSLY DISPUTES the facts that: (1) buildings are the site of gigantic energy consumption and greenhouse gas (GHG) emissions in the U.S. and grossly inefficient in their energy use; (2) efficiency is the cheapest, most reliable, and climate-friendly way of meeting energy needs; (3) prudent investment in improving building energy efficiency can save utility customers (especially the poor) lots of money and earn investors an attractive return; (4) “retrofitting” buildings with current materials and technology to improve energy efficiency requires a lot of labor — ranging from entry-level to very skilled — which has to be done here.¹

So you might think that building energy retrofits would be a killer app, of appeal to anyone concerned about climate, energy security, helping the poor, making money, or growing domestic employment. But it’s not. Compared to the size of the opportunity — at its limit, covering all *300 billion square feet* of building space in America with cost-effective retrofit measures — the amount of retrofitting that goes on is tiny. This is so even in our cities, which account for most global warming and consume most of their energy in buildings.²

Why is this? And what is needed to get building retrofits done at scale? In what follows I assume a market test on financing — that loaned or invested capital for the work needs to generate a risk-adjusted market rate of return.³ So another way of asking our question

¹ On these different claims: (1) Buildings account for 40 percent of total U.S. energy consumption (70 percent of U.S. electricity consumption) and 43 percent of U.S. carbon emissions, a larger share than either transportation or industry; (2) Efficiency savings on the order of 20-30 percent are readily achievable by better insulation, lighting, and HVAC equipment and controls; more intensive efficiency measure applications can achieve savings on the order of 50-60 percent on a simple cost-effective basis (i.e., savings payback of more than full cost during lifetime); current consumption expenditures on building energy were about \$350B in 2005 and should be about \$400B this year, so the potential available savings should be somewhere north of \$200 billion; (3) Efficiency costs approximately 3 cents per kWh of energy saved; measures are often one-time and low maintenance (e.g., insulation); the cleanest power plant is one not built; poor households devote a disproportionate share of income to home energy costs (often upwards of 10 percent) both because they have less income and tend to live in less efficient buildings and use less efficient appliances; common industry estimates show measures reaching 20-30 percent gains in efficiency paying for themselves in 3-5 years, and those reaching 50-60 percent improvements paying back in 8-10, implying internal rates of return of 10-33 percent; (4) Every \$1M spent on retrofits generates about 10 person years of employment in direct installation of efficiency measures and another 3-4 person years in the production of relevant materials; buildings don’t usually move.

² Globally, cities contain 50 percent of the world’s population (by 2030, at least 60 percent), consume 75 percent of its energy, and account for 80 percent of its GHG emissions. As a share of local energy consumption by cities, buildings regularly account for more than 60 percent. In dense cities like NYC, they account more than 80 percent.

³ This test may strike some as unduly demanding, but I think it’s recommended on both practical and normative grounds. Practically, the prospect of entirely “free” capital (i.e., capital with no interest or repayment obligation) is vanishingly slim, especially in the amount needed for a big effort. Normatively, even less demanding capital should be spent wisely. A market test helps ensure that.

is this: Why doesn't the market for retrofits work, and how can we fix that?

Why The Market For Retrofits Doesn't Work

An old joke has it that an economist spots a \$20 bill on the sidewalk but doesn't bother to pick it up because she knows it can't exist. In a world of complete competitive markets with only coordination problems standing in the way of increased wealth (problems that markets solve brilliantly), such unclaimed values aren't possible. In the real world, of course, markets are beset by "imperfections" (i.e., departures from the competitive market ideal) and "failures" (i.e., limits to that ideal in optimizing social welfare) that routinely miss values. The economist's failure to distinguish theory from reality is the joke here, and it's on her.

Retrofitting buildings for greater energy efficiency is something like that \$20 bill. The opportunity is there and people don't pick it up. But this isn't because they're in the grip of a theory so strong that it makes facts disappear. It's because they don't even see the bill, or lack the strength to pick it up, or discover that they must run about the block several times before getting near it, only to have somebody else snatch it away from them. What's funny about that?

But so much for an overtaxed metaphor. The reason building energy retrofits aren't a killer app is that in the real world there are all sorts of barriers to realizing their value. Setting aside lack of interest or preference for other spending, among *tenants and owners* of buildings these barriers include:

1. Poor information (on costs, savings, people to do the work, etc.);
2. Lack of capital or access to capital (capital markets for building efficiency are not well developed, and only the Nobel committee gives a prize for banking on the poor⁴);
3. Split incentives (X pays the energy bills but Y owns the property);
4. Limited tenancy or ownership (why invest in efficiency if you're not around to get its benefits?);

⁴ I refer to receipt of the 2006 Nobel Prize in Economics by Dr. Muhammad Yunus, whose Grameen Bank helped establish microcredit as a tool in economic development. Yunus' first (personal) loan of \$27 was to 42 self-employed craftspeople. \$6 billion in like loans after, Grameen's default rate is < 1 percent.

Many things are desirable, but two seem most critical:

(1) For tenants/owners, much clearer incentives to take action, and radically lowered transactions costs in taking it.

That would mean, ideally, no upfront capital costs, immediate and ongoing net savings, turnkey solutions on getting the work done properly, and no obligation beyond the period of their tenancy/ownership.

(2) For external investors, savings aggregation and reliable recapture of loaned capital. That would mean ways of pooling savings from diverse sources, and providing the individuals getting those savings compelling reason to pay back loaned capital.

5. Costs of disruption (especially with many different people doing different parts of the work, who wants their life interrupted?);
6. General risk aversion and “social skepticism” (people are much more sensitive to losses than gains; that’s especially so if gains require the cooperation of other people).

External *investors* in energy efficiency have some of these same problems but also those of:

7. Disaggregation (highly dispersed individual savings, each with negotiation costs on capture, rather than a single big opportunity);
8. Creditor default (we all know what that is).

Of course not all situations or people have these difficulties. Some many have none of them — say, an adventurous young homeowner in expected permanent residence, in good health and flush with money, whose best friends include many electricians and HVAC contractors. But most people have some of these problems, and poor people tend to have a lot of them.

How To Fix That

If that’s why retrofits aren’t being done anywhere near the scale we desire, how might we fix that? Many things are desirable, but two seem most critical:

(1) For tenants/owners, much clearer incentives to take action, and radically lowered transactions costs in taking it. That would mean, ideally, no upfront capital costs, immediate and ongoing net savings, turnkey solutions on getting the work done properly, and no obligation beyond the period of their tenancy/ownership.

(2) For external investors, savings aggregation and reliable recapture of loaned capital. That would mean ways of pooling savings from diverse sources, and providing the individuals getting those savings compelling reason to pay back loaned capital.

Are these things achievable in a reasonable model that might be applied in the real world? Yes they are. Here is a relatively simple model with six key players and four key contracts among them.

In rough order of appearance, the actors and their respective roles are:

1. A coordinating entity, here called **E2** (for “Energy Efficiency”), responsible for the project’s administration. E2 would be the aggregator of customers/savings for the capital provider, the point of accountability for energy consumers, the manager of those actually doing the retrofit work. E2 could take any number of legal forms: a government entity or public-private partnership of some sort, a private for-profit or non-profit, a coop, etc.

2. A **utility** that regularly bills tenants/owners of properties for energy or other essential services and is willing to put a charge for E2 services on that bill and forward collected charges to E2. This could be a conventional energy utility or a water utility or provider of some other necessary service to the property. Nonpayment of the E2 charge would make the E2 program participant liable to discontinuance of that essential service (so, shutting off their heat or electricity or water).⁵
3. An **energy customer/E2 participant** willing to pay for the cost of efficiency measures on her utility bill if the annual repayment obligation is lower than their estimated energy savings⁶ and if the payment obligation applies to her only during her tenancy/ownership (after which the unpaid obligation attaches to next tenant/owner or, in case of sale, is wrapped into the sale price).
4. A source of capital or **bank** that is willing to loan money to E2 for the work if it aggregates a large number of such customers/participants and acts as their intermediary. This bank could be an actual bank or group of banks, or a government, foundation, private investor, pension fund, or community savings pool, or any combination thereof. The loan itself could take many forms, and draw from different sorts of capital (public and private, taxed and not). In operation, it would ideally work at first as an open line of credit that E2 could draw down only as needed, and then as a revolving loan fund where income from participants is recycled out as capital for new work.
5. A certified and bonded energy **auditor** to recommend appropriate retrofit measures. Whatever the cost of capital, measures financed in the program would be restricted to those that have expected full saving payback well short of their expected life and imply payment charges well less than expected savings.⁷

⁵ I don't attend here to the many contingencies and variations in dealing with partial payment; state and municipal disconnection rules in case of non-payment; use of public or other guarantees against default; or the applicability of current utility ability to anticipate non-payment in rate proceedings (thus visiting them, as is done now, on all ratepayers), etc. These are among the many important details that need to be worked out, locally, in negotiation among the local parties and demands of local law.

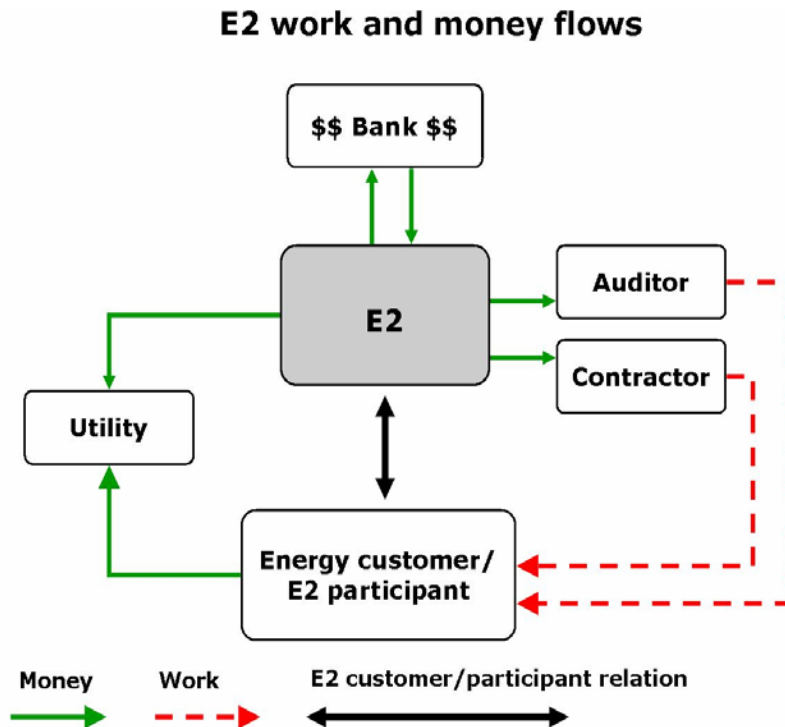
⁶ Estimated savings are calculated based on the past verified average efficiency gains from the measures applied. We could alternatively measure before/after consumption directly, but getting to such direct measurement is presently difficult. Greater efficiency also raises a threat of moral hazard, with consumption potentially increasing because of its greater efficiency. Relying on verified past average efficiency gains seems like a fair, and certainly simpler, way to administer this.

⁷ As a rule of thumb that gives some margin in meeting other terms, Paul Cillo and Harlan Lachman of the Energy Efficiency Institute and PAYS[®] recommend restricting measures to those that pass a " $\frac{3}{4}$ - $\frac{3}{4}$ " test requiring that (a) the term of payment for the measure not exceed $\frac{3}{4}$ ths of its estimated useful life and (b) annually not exceed $\frac{3}{4}$ ths of the measure's estimated annual savings.

6. A certified and bonded **contractor** to do the work.

The model would work like this (contracts numbered in bold). In expectation of adequate demand for E2 services and resulting individual savings, bank loans E2 money at interest for use as operating capital **(1)**. E2 identifies customers willing to pay for retrofit work on the above terms and contracts with an auditor **(2)** to determine the scope of appropriate measures at their property. Customer approves scope of work and assumes obligation to pay E2 via utility bill **(3)**. E2 contracts with contractor to do the work **(4)**.⁸ Work is done and verified by E2. Repayment to E2 begins via the participant's utility bill.

In the figure below, the solid green lines represent the flow of money; the dotted red lines the flow of work; the two-sided black arrow the ongoing E2-customer/ participant relation.



⁸ Here we propose separating the auditor, contractor, and financing roles to avoid the conflicts of interest and potential for opportunism intrinsic to most ESCOs (energy service companies). Along with seeking the highest return (which favors quick payback measures over the deepest energy-savings ones), ESCOs typically perform both the auditor and contracting functions, charge for use of their capital in the performance contracts they offer clients (but typically not on terms visible to clients), and produce or vend for a producer of the recommended efficiency equipment. With more experience, some of this separation of roles, especially the auditor/contractor ones, might be usefully reconsidered. Auditing has its own costs, and participants don't like disruption. Appropriately monitored, we can easily imagine combining the auditor and contractor functions, or running them in cooperation and more or less simultaneously. Also, note that these concerns about ESCOs are only that, and not a bar to working with them. ESCOs are obviously the repository of much skill in realizing efficiency savings, and this should be tapped into.

This model gets rid of most of the barriers noted above. It dramatically lowers risk and transactions costs for both recipients of services and capital providers. For tenant/owners, it requires no upfront capital, improves incentives by virtually guaranteeing immediate and ongoing net savings, and is indifferent to the length of their tenancy/ownership. For investors, it aggregates savings while providing justified confidence in repayment. To tenants/owners, the value proposition is: “If E2 fronts you the costs of achieving greater energy efficiency and guarantees measures that do that, are you willing to begin paying back those costs out of some of your savings while you’re here?” For investors the proposition is: “If E2 organizes and aggregates a large pool of potential energy savers and guarantees you repayment from them out of their savings, are you willing to loan on that?” Both propositions are straightforward and attractive.

Here’s what this would look like for an individual tenant/owner, say a homeowner. Assume the homeowner’s pre-E2 average monthly energy costs are \$200. She approves E2 retrofit measures that achieve a 25 percent increase in the home’s energy efficiency, saving her \$50 on energy consumption. Assume that the cost of the applied measures was \$2000, using capital loaned at an 8 percent rate of interest on a 7-year amortization schedule, which implies monthly payments of \$31.17.⁹ Assume finally some modest administrative charges added by E2, here set for convenience in rounding at \$3.83 (at a bit over 10 percent of flow, quite reasonable). The customer’s utility bill would include a summary that might look like this:

Pre-E2 energy consumption	\$200
Your consumption this month	\$150
Your estimated E2 savings	\$ 50
E2 service charge	\$ 35
You owe this month	\$185

Now \$15 a month (\$180 a year) may seem like too little to motivate anybody. But it’s still found money from the standpoint of the customer, and after amortization would rise to \$50 a month (\$600 a year). And if energy costs rise, which seems very likely, the E2 deal will only look better. Say that costs double, so that our homeowner (absent E2 participation) would face charges of \$400 rather than \$200. Now the bill might look like this:

Estimated consumption without E2	\$400
Your consumption this month	\$300
Your estimated E2 savings	\$100
E2 service charge	\$ 35
You owe this month	\$335

⁹ Of course, different amounts of borrowed capital, interest payers, and amortization schedules are all possible. We chose a rough mid-point in the payback on typical retrofit measures, including those getting the deeper savings we are after, and a standard market rate of interest.

Here, doubled energy costs doubles the top line on the bill, from \$200 to \$400. But it also doubles the worth of savings, from \$50 to \$100 a month (\$600 to \$1200 a year). The homeowner still doesn't pocket all those savings during amortization. But since her repayment schedule has remained unchanged while energy costs have risen, she also sees a good deal more of them. Net savings during amortization have more than quadrupled, rising from \$15 to \$65 a month (\$180 to \$780 a year). These numbers are probably big enough to get almost anyone's attention.

There are ways to sweeten this deal further for E2 participants, and I'll explore some of these below. For the moment, however, let's take the model to be clear and attractive enough to ask about its implementation.

Getting To Scale

So how do we get to wide implementation of something like this model?

Most of its ingredient elements and antecedent conditions already exist. Along with countless examples of achieved savings from improved building energy efficiency and "shared savings" programs that utilities and ESCOs run with (typically larger) larger customers, we have examples of on-bill repayment schemes (via energy utility bills or property-taxes).¹⁰ We have political demand for greater building efficiency, especially from mayors, and interest from private capital in financing projects with large aggregated savings.¹¹ We also, of course, have lots of energy customers worried about rising home energy bills, plenty of poor people looking for green pathways out of poverty, and general if diffuse public interest in doing something about climate change.

What are chiefly lacking are the E2-type entities to combine and harness these different elements and public interest into operational business plans. We lack some relevant *management/ organizing* capacity to run E2s — to persuade local civic leaders, recruit and service customers, negotiate with banks and utilities, target services at different points in building tenancy and ownership, monitor auditors and contractors, and otherwise handle administration on the terms indicated. There are also challenges/opportunities in realizing the *equity* promise of building retrofits, in improving

¹⁰ New Hampshire, Hawaii, and Kansas now require at least some meter-based repayment of efficiency costs (see www.paysamerica.org), and Berkeley, CA now has a program to pay back investments in residential solar through property taxes (see www.cityofberkeley.info/sustainable).

¹¹ On interest from mayors, nearly 800 cities have joined the Climate Protection Agreement (see usmayors.org/climateprotection/) to achieve Kyoto GHG reductions. Virtually all make building efficiency a key part of reaching their goals. NYC's climate action plan (www.nyc.gov/html/planyc2030), for example, includes retrofitting some 900,000 buildings. On interest from private capital markets, basically all major banks are now scouting around in this area. The \$5B they've committed to the Clinton Foundation's building retrofit effort with C40 cities (see www.clintonfoundation.org/) remains the most dramatic single example of interest, but it is hardly alone.

their support in *policy*, and in achieving “*deep participation*” in building efficiency projects, by which I mean the joint maximization of investor/tenant/owner involvement and the depth of available savings achieved.

Let’s now consider these challenges/opportunities, and some of the work needed to meet/realize them. What follows is by no means intended to be exhaustive of the problems and promise, just a look at some of the work ahead.

Management/Organizing

E2 entities can again take different legal forms and organize their diverse corporate functions in different ways. But they will all need the capacity to develop business plans, handle money, negotiate deals, and navigate the complicated politics of what could soon be very large projects. This is considerable management/organizing capacity, beyond that of many of those with interests in building energy efficiency. We should be looking for potential allies in assembling that capacity (e.g., utilities, national or local ESCOs, progressive unions, community groups, etc.), and anticipate and encourage experimentation with different organizational models for finding the right combination of business competence and soul.¹²

We should also be prepared for some failures (the greatest source of learning), but work to avoid unnecessary failure by publicizing old mistakes or, more happily put, by widely sharing knowledge of what’s been tried before and how it did. More generally, we should build learning routines for the new community of practice we hope to engender among E2-led efforts. That means an easily accessible (inevitably web-based) clearinghouse, displaying information on past efforts in building efficiency, emerging projects, current industry practice, major technology changes, etc., and supporting this new community’s development of shared performance metrics, evaluation routines, program refinements in light of evaluation, benchmarking, and other ongoing information sharing.¹³ Nobody with the ambitions assumed here knows precisely what they’re doing here. We should admit our uncertainty, proceed as transparently as possible with the best available knowledge, and learn better how to learn together.

Especially since the field is moving so quickly, there will be need for more advanced sorts of technical assistance (TA) — in new financing possibilities, application of new technologies, new governance models, etc. — to the community of E2s. Where this capacity exists it is scattered among multiple, often competing, and often for-profit

¹² Indeed, it would help immediately to have a list of alternatives that can be revised through future practice: different legal structures for these entities, different financing mechanisms at different points in their development, an inventory of the sorts of ongoing technical capacities they need, guides to assembling those capacities in different communities, estimates of costs of getting started, standards for outsourcing their necessary functions, etc.

¹³ The beginnings of such a clearinghouse will soon be available at Green For All (www.greenforall.org).

organizations. There's need for thought on the design of some sort of cooperative (or, if you prefer, "open source," "peer production," "collective intelligence") model for its delivery — pulling from each TA provider what they are best at and combining it with contributions from others — at a cost that fledgling E2s can afford.

Finally, we should explore whatever potential economies of scale and scope can be realized by direct program collaboration among members of the E2 community of practice. Among these are: (1) economies in joint training of their management/organizer leadership; a shared labor market, and recruitment to it, for the staff jobs they will have; peer-to-peer cross-site training; etc.; (2) economies in joint public education and advocacy work (e.g., on the benefits of building efficiency, the costs of present policy); in the use of shared technologies in community outreach (organizing the community of potential participants is obviously a major issue throughout); in pooled response to new opportunities (in policy, financing, etc.) or challenges; (3) economies in developing shared tools or research capacity for community assessment, targeting, business planning; (4) economies in the training needed for the actual work involved in projects (e.g., shared community college or other training curricula, assessment and screening tools for job candidates, routines on job placement and monitoring, training delivery modes); (5) economies in aggregating project finance on a multiple-site basis, to spread risk and further reduce capital costs. Not all of these will prove equally useful, and better opportunities will inevitably surface. The point is to keep an eye out for them all, and get the capacity to explore the promising ones.

If this field takes off, the costs of all these things — management/organizing capacity-building, learning infrastructure, advanced technical assistance, economies of scale and scope from more intense program coordination — can eventually be competed away or absorbed into general program administration. But the field is certainly not there yet. This suggests a natural role for private philanthropy¹⁴ or public capital.¹⁵ The bottom line is that to advance this model and get wide replication we need a few examples of doing this right and infrastructure for doing more of it, along the lines just described. And whatever the "market test" on actual performance we accept here, neither of these things is likely to come — at least, again, on the ambitious terms proposed here — from private markets. It requires risk-taking entrepreneurs for the public good, not just the private one.

Equity

¹⁴ Especially since the field is new, it also presents an opportunity for philanthropy not just to help but to improve its own practice — with a cooperative initiative drawing money from multiple sources but sharing realistic expectations on the duration of support (conditioned on measurable progress on goals), eligibility criteria (including local matching requirements) that respect variation in local capital availability and philanthropic culture, metrics on progress, discipline in their enforcement, etc.

¹⁵ If philanthropy does not step up to this, government should. Even in a model that relies heavily on private capital to pay for the work, it's entirely appropriate for public money be used to improve the efficiency of project administration and especially its ability to advance public interest goals.

To realize the equity promise of this work (i.e., its potential for poverty reduction and opportunity expansion for the poor and working class) we need capacity to recruit, train, and credential individuals seeking work in the building efficiency field (as regards training, in most cases, community college training as an energy auditor or HVAC technician is a good start); to place and retain them in institutions doing that work (companies, unions, others); and to assemble the additional social supports needed in both areas.

We have good models on all these elements from other industries, but again there's need to harvest past experience for lessons and to measure and diffuse good practices as applied to this one. We immediately need, for individual sites: plausible projections on new job demand from building efficiency projects; maps of their existing recruitment/training/placement/mentoring capacities; design of cost-effective ways of increasing that capacity; assessment of community college, employer, and other institutional interest in helping do this, and the terms of their help. Again and throughout, we should also be looking to realize economies of scale and scope and cross-site

The real equity goal is not employment *per se* — after all, as generations of civil rights leaders have pointed out, slavery was a full employment system — but employment in decently compensated jobs with real opportunities for advancement. Getting to decent compensation requires cementing alliances with unions, community organizations, high-road employers, and political leaders with interests in the same, and negotiating workable standards that they are all prepared to help enforce.

learning. To take some immediate examples: (1) there is no reason on earth why standardized detailed templates on all the tasks just mentioned should not be available to all; (2) no reason why job estimates done in one city are not shared with others; (3) no reason why those involved in different cities in the equity aspect of their respective programs should not be comparing notes.

There are also governance issues around equity, specifically whether the chief responsibility for achieving it should lie with E2s or with some other organization. On the one hand, the issue is important enough to command attention at the center of project administration. The success of E2s depends on high participation and

community support, and that support is unlikely without some real equity gains to that community.¹⁶ On the other hand, there are natural tensions between satisfying these equity concerns and the market test that sustainable E2s must meet to survive. The latter will naturally incline E2s to select for service providers already prepared to do the

¹⁶ Of course, one way to generate jobs for the community is to assign them tasks in project administration itself, as against the actual retrofit work. For example, community organizations could be paid to help recruit program participants. But we think this role, while important, should not come at the expense of getting to the “real” jobs in construction, plumbing, electrical work, etc., and assume that most community residents would agree.

work, potentially shortchanging the additional training and other services for those most in need. Mitigating those tensions is another natural role for government or philanthropic support, with such public-minded entities assuming some of those training and support services.

A different but related issue concerns tradeoffs between job quantity and job quality. The real equity goal is not employment *per se* — after all, as generations of civil rights leaders have pointed out, slavery was a full employment system — but employment in decently compensated jobs with real opportunities for advancement. Getting to decent compensation requires cementing alliances with unions, community organizations, high-road employers, and political leaders with interests in the same, and negotiating workable standards that they are all prepared to help enforce (e.g., prevailing wages and employer neutrality on organizing). But while such standards are now widely accepted in many public contracts, they are far from universal, and getting to that point will in many cases require a fight. Getting to career ladders will be even more complicated, since it will often require changes in the practices of the allies in that fight (e.g., unions and high-road employers). Again, there are useful lessons to draw from other industries in how community, business, and union support for both standards and career opportunities can be organized, even under sharply competitive conditions and community desperation for any employment. But even under more favorable conditions this is tough work, and a good deal more complicated than persuading someone to retrofit their house. We need to get ready to do it.

Policy

While our model can generally work under current law, there is every reason to improve the legal environment for building efficiency. That would among other things mean: (1) mandating efficiency investments (e.g., through tougher builder and appliance standards, or requirements to meet those standards at property point-of-sale or major rehab¹⁷); (2) removing barriers to those investments (e.g., by aligning the treatment of energy costs and building improvements under federal tax law, removing state and municipal land use laws that discourage dense development or transit-oriented development, internalizing the infrastructure costs of sprawl to the developers who lead it, getting full cost accounting on all new building construction, and life-cycle accounting on new infrastructure, removing barriers to value purchasing); (3) requiring full net-metering for customers (i.e., permitting customers to sell capacity to the grid as well as buy it, and to realize value from peak load reduction or other gains from efficiency of value to utilities) and the availability of utility billings systems to non-utility-led E2s, while

¹⁷ Just one point here, to emphasize both the availability of proven efficiency practices and the slowness of their diffusion: it is now more than a *quarter century* since San Francisco enacted its Residential Energy Conservation Ordinance (RECO), which requires upgrades at point of building rehab or sale (see www.sfgov.org/site/uploadedfiles/dbi/Key_Information/19_ResidEnergyConsBk1107v5.pdf). But only a handful of cities have followed its example. Also, even the best law means nothing without enforcement, so resources for enforcement should be part of any proposed change.

compensating utilities for costs in increasing energy efficiency and not just the costs of new generation and distribution and sale; (4) developing markets for the “secondary” value of greater efficiency (e.g., emissions trading markets, efficiency trading markets, forward capacity markets¹⁸) and giving E2s the right to play in them; (5) encouraging greater cost transparency throughout the energy system, from real-time energy pricing for consumers to valuation of externalities (positive as well as negative) of different energy generation/efficiency measures.

These are all complicated issues, involving many legitimate differences on the precise elements of best design. Part of work ahead is to get closer to a sophisticated and consensus public interest view on them. But one thing is already clear. While all these changes are in the public interest, and many offer “win-win” opportunities for the public and the energy industry, there will also be a fair amount of industry resistance to many if not all such reforms. So in addition to figuring out more precisely what we want, we need to frame the issues in ways that are understandable and motivating for the public¹⁹ and to organize the public to achieve reform despite opposition.²⁰

Deep Participation

Finally, we need to find a workable means of maximizing *both* external investor and owner/tenant participation *and* the depth of energy savings achieved. High participation for very modest efficiency goals (skimming) will not do. Neither will deep energy savings for a tiny share of population. What we’re after are high participation rates that leave as little unclaimed efficiency behind as possible.

The problem is that deep savings usually imply a longer payback period (i.e., a lower rate of return) for investors and greater disruption for existing tenants/owners. External

¹⁸ Cap-and-trade systems on GHG emissions and raise-and-trade systems on energy efficiency work on the same general principles. A standard on permissible activity is set and then moved over time in the direction favored by policy, with permits awarded or auctioned to those engaging in the activity, and those on either side of the standard allowed to trade (buy and sell) these permits to reach universal compliance. In GHG emissions trading, where emissions are capped and lowered over time, those above the permissible level buy permits from those below it. In efficiency trading, where the standards are raised over time, those above the mandated level sell permits to those below it. As used here, a forward capacity market is a market for meeting expected future energy demand that values avoided new generation (i.e., efficiency) as highly as those of new generation capacity.

¹⁹ A simple frame might be this: (1) consumers have a right to know the cost of their energy consumption in real time; (2) avoided generation costs should be valued at least as highly as new (dirty) ones.

²⁰ In building that public it will be important, as on other “environmental” issues, to emphasize the equity, productivity, and security gains from less energy consumption, not just the public health and climate ones. Energy consumption is heavily regressive and now hurts the working class as well as the poor, waste in production is lost value of no benefit to any business except the energy one, and the distortions of our foreign policy that follow from our energy dependence are perhaps too well known to require comment.

investors don't care about disruption but are concerned about liquidity and rates of return. For tenants/owners the interests are approximately opposite. They don't care about investor liquidity or return, and on our model they should be willing to accept long paybacks²¹ — since amortization schedules can easily be adjusted to get them net savings throughout, and the remaining obligation goes elsewhere on vacancy or sale. But they do care very much about disruption.

High participation can help overcome both the investor and tenant/owner problems. With a big enough pool of participants, it's easier to adjust the mix of applied measures to get quicker buy-down of debt and an average payback that satisfies capital without sacrificing opportunities for deep savings. A large pool also permits targeting the application of measures to periods of low occupancy activity (e.g., during temporary vacancy, or already-scheduled rehab, or sale) while ensuring a steady flow of work.²² Such targeting, which obviously avoids disruption, also allows greater cost-effective deep savings by reducing their cost.

But how do we get to high tenant/owner participation if direct energy cost savings aren't motivation enough? One way is to require it. Pass a law requiring that all buildings, within a given period or upon major rehabilitation or sale, meet a certain standard of energy efficiency — and then keep raising that standard. That's simple enough. All is needed is public will.

Another way is to elicit highly voluntary participation by further reducing its risks and increasing its return for key players. That means reducing external investors' risk of default or increasing their effective return (ideally to the point that they are willing to free up capital at lower nominal interest rates), and/or increasing the ability of tenants/owners to capture benefits in addition to lower energy costs. For external investors, risk can be reduced by using less demanding capital (e.g., public money or philanthropy) for credit enhancement, including guarantees on expected defaults. Return can be increased by awarding their investment favored tax treatment. For tenants/owners, we've already taken out all risk in our model. But return can be increased by tying participation to benefits other than energy cost savings. Participants might for example be given favored public service, financial credit, or tax treatment — from accelerated permitting of property development, to better credit ratings by financial institutions, to partial relief from local property taxes. They could be awarded value for the contribution their efficiency makes to peak load reduction or service reliability (something highly valued by utilities), or to the ends valued in the current or anticipated markets mentioned above (e.g., markets in GHG trading, efficiency, forward capacity), or to values in new markets

²¹ I don't mean to overstate this. Especially among homeowners, despite the built-in assurances of the model, there is probably some limit to their tolerance for really long paybacks. But in truth we don't really know this either, and there's some obvious contrary evidence in the frequency of 30-year mortgages, so it's another place where more experience and evaluation are needed.

²² Alternatively, if this is unduly restrictive, one could make the contract with tenants/owners two-staged, with immediate application of less disruptive measures and postponed (but obligated) application of more disruptive ones upon such periods of occupancy activity.

we can imagine to value the positive local externalities of building energy efficiency (e.g., its contribution to the health and productivity of their occupants²³). And, looking beyond energy efficiency, the model described here can easily be wedded to almost any other way of producing value within buildings. One obvious way is to use buildings as a source of distributed energy generation, e.g., anything from solar panels to micro-CHP (combined heat and power, a.k.a. cogeneration). No doubt there are others.

In combination, such efforts could substantially improve the payback to tenants/owners. Consider a revised, and frankly fanciful version of our first homeowner example. This assumes the same basic numbers as in that first bill — with a \$2,000 retrofit on a home with prior monthly energy costs of \$200 a month, realizing a 25 percent increase in efficiency. But it also assumes cheaper financing: say at 5 percent instead of 8 percent, which would drive the monthly payments down to \$28.27; modest gains in administrative efficiency (perhaps following from wide participation), so administration adds only \$1.73 in additional costs (this particular figure, again, only for rounding). And it assumes homeowner participation in (1) GHG emissions markets, (2) forward capacity or other efficiency markets, (3) some local program that values the positive externalities just mentioned, and (4) sale of energy back to the grid — with \$40 coming from each activity monthly. Then the bill might look like this:

Pre-E2 energy consumption	\$200
Your consumption this month	\$150
Estimated E2 energy savings	\$ 50
This month's GHG credit	(\$ 40)
This month's negawatt credit	(\$ 40)
This month's local positive externality credit	(\$ 40)
This month's sale back to grid	(\$ 40)
E2 service charge	\$ 30
You owe this month	\$ 20

So now we're talking *serious* money savings: \$180 a month (\$2160 annually) during amortization, \$210 a month (\$2520 yearly) thereafter. Indeed, after amortization, the homeowner's energy bill effectively disappears. Instead of spending \$2400 a year on this household necessity, she's *netting* \$120 a year.

Beyond mandates and more material incentives, finally, there is moral persuasion and appeal to the public good. Defensive and battle-weary partisans of social progress often forget to make such "soft" arguments, even though it was precisely such arguments — for decency, regard for others, a concern for justice, a "blessed community" of equals,

²³ This is not a joke. Greater building energy efficiency makes buildings more comfortable and healthy for those within them. And less stressed and physically uncomfortable occupants, with fewer sick days and longer attention spans (among students, higher achievement scores!), are cumulatively much more productive. Gains to productivity here are widely estimated at 15 percent. Applied to a national economy of ≈ \$15 trillion annual GDP, that represents a bit over \$2 trillion in added value.

etc. — that first got them into their present line of work. They shouldn't be so bashful. As we strive to master the arcana of local landlord-tenant law, emerging energy markets, and new energy technologies; to get the individual material incentives right; to develop the market tested business model; to capture the greatest possible number of secondary benefits; etc. — we should not fail to make the social argument for building efficiency. Along with making economic sense, greater building efficiency is an obvious way to contribute to community health and shared prosperity, and to reduce the U.S. contribution to the global disaster of global warming, which will be visited most horribly on the world's poor and entirely innocent future generations. That improved building efficiency is a very small and mundane step toward healing our communities and planet also makes it no less worth taking. Indeed, small and mundane is sometimes good. It's called everyday life, which we should all be enjoying and making it possible for everyone forever to enjoy. Small and mundane also usually means that everyone can contribute, which is not a bad thing in building a democratic society.

Indeed, as improbable as it may now sound, doing our best to reduce the carbon imprint of the buildings we live and work in should be an ordinary civic expectation — as basic as obeying traffic lights, not driving drunk, or not blowing cigarette smoke in somebody's face — not an occasion for canonization. It just means avoiding unnecessary waste that's socially poisonous. That's pretty basic, isn't it?

But enough. Meeting and realizing the challenges and opportunities of *management/organizing, equity, policy, and deep participation* is the work ahead, and obviously there's a lot of it. The good news remains that the terrain on which this work will be moving forward has recently and fundamentally tilted in ways that favor its advance. There is both elite and popular demand for doing something about climate change, and emerging popular demand that the clean energy economy be more equitable than the dirty one. Building retrofits, with their associated cost-savings for the working class and poor and "green collar" job opportunities, are a natural way to meet both demands. This opportunity is especially evident in cities, with their density of inefficient buildings, poor people, generally progressive politics, and leadership on climate. And as just shown, there is in fact a plausible model for doing such building retrofits at scale — with most of its separate elements, if not their combination at scale, already proven — that can meet a market test on performance and attract private capital.

That is a nice point of departure.

SAFETY, GROWTH, AND EQUITY: TRANSPORTATION

RICHARD RAYA AND VICTOR RUBIN*

Abstract

Transportation investments have a strong impact on development and the quality of life for local residents. Good transit systems connect people within communities or negatively impact them. Low-income and minority groups use transit, bike, and walk more often than whites and higher-income groups. However, our nation has a legacy of transportation policies and investments that inadequately serve low income and minority communities and often isolate them from jobs, services, education, and housing opportunities essential to escape poverty and fully participate in society. In addition, environmental advocates are beginning to push back against a transportation infrastructure that has been promoting sprawl for decades.

The new administration has proposed to strengthen the nation's core transportation network, in part through a new infrastructure reinvestment bank. This brief links new infrastructure to equitable transportation policies and investments, particularly in urban areas. Local and regional governments will need to play the lead role in financing the

construction and maintenance of our transportation infrastructure, with the federal government subsidizing innovative programs.

Policy Recommendations

Federal transportation policy should build on regional successes in infrastructure programs. While numerous policies have been implemented, the next administration should draw on initiatives concentrated around the following themes: 1) Standards, measurement, and assessment to shed light on inequities and increase government accountability for serving the needs of low-income and disadvantaged communities. 2) Target resources to high-need areas and increase funding levels overall for infrastructure. 3) Use resources more efficiently by promoting more compact land uses so that alternatives to driving are convenient to people's homes and jobs. 4) Encourage community participation in policy and programming through the mechanisms of local activism, coalitions, and litigation.

Natural Constituencies

Communities, focused on transit oriented development, with large low-income populations, and in dense urban areas would greatly benefit from these transportation policies. Environmentalists fighting sprawl and civil rights activists seeking equitable infrastructure would also support these transportation developments.

Anyone opposed to higher taxes is likely to oppose efforts to expand funding for infrastructure, but this is particularly true in municipalities and states that already have high tax rates. In addition, suburban communities that currently benefit from existing transportation policy will oppose funding structures that prioritize public transit, bicycle paths, and pedestrian friendly infrastructure.

**PolicyLink thanks Kristi Kimball for research that contributed to this brief.*

OUR NATION'S TRANSPORTATION INFRASTRUCTURE is composed of many interconnected systems—a network of interstate and regional highways, local streets and roads, rail and bus transit systems, bicycle and pedestrian infrastructure (such as bike lanes, sidewalks, paths, and greenways), as well as paratransit and other transportation services for the elderly, the disabled, and others with special transportation needs. Local and regional governments play the lead role in financing the construction and maintenance of our transportation infrastructure, with the federal government playing a smaller, but nevertheless significant, role via subsidies. In 1956, Congress established the Highway Trust Fund to finance the construction of the interstate highway system, with revenues from the federal tax on gasoline. In the early 1980s, Congress broadened the fund to provide some funding for transit as well. For every 18 cents of federal gas tax, about 3 cents flow to transit, and about 15 cents to highways.¹

With the passage of the federal ISTEA (Intermodal Surface Transportation Efficiency Act) law in 1991 and the TEA-21 law in 1998, some new flexibility was given to states to determine how best to spend their federal transportation dollars. This included using some highway funds for transit or alternative modes of transportation. For example, California, which has taken advantage of the new flexibility and funding for alternative modes of transportation more so than most other states, annually spends over \$15 billion on transportation; about half of that funding is raised locally. The state receives between \$3 and \$4 billion in federal transportation funding annually, and the state kicks in over \$4 billion as well.² Local funds equal twice the federal contribution. In fact, federal funds account for only one-sixth of San Francisco Bay Area transportation funding. Thus, California's example can provide lessons for national approaches for a more equitable transportation infrastructure.

Transportation and Regional Development

Transportation investments have a strong impact on development and the quality of life for local residents. Roads and transit systems have the potential to bring great economic benefits to communities and individuals. The U.S. Department of Commerce estimates that a \$1 billion investment in highway and transit improvements in California would directly and indirectly provide over 26,000 jobs, generating about \$870 million in personal income.³ Investments in transit systems and transit-oriented development (TOD)—a mix of housing and commercial development within walking distance of transit stations—can spark new investment and redevelopment in local communities. Good transit systems connect people to jobs, services, and educational opportunities. This is especially important for households without access to a car. Investments in clean transit can also reduce traffic congestion and air pollution as well as improve public health at the community level.

Likewise, transportation projects can also have serious and negative impacts on communities. For example, the practice of siting urban highways through existing low-income and minority communities has displaced thousands of families in cities across the nation, reduced the supply of affordable housing, physically divided thriving communities, and served as a precursor to disinvestment and urban blight in these

¹ "Fueling Transportation Finance: A Primer on the Gas Tax," Brookings Institution, March 2003.

² "California Travels: Financing our Transportation," Legislative Analyst's Office, May 2000.

³ "California Transportation Plan 2025," California Department of Transportation, 2004.

areas. Additionally, automobile emissions, noise, and traffic danger from highways and major thoroughfares impact the health of families living nearby.

Investments in transportation infrastructure have been a driving force behind regional growth trends and the rise of “suburban sprawl,” a dispersed, low-density pattern of single-use development that makes driving the only convenient mode of travel. In a recent survey, the nation’s leading urban scholars ranked the federal subsidy of the interstate highway system as the number-one influence on the American metropolis over the past 50 years.⁴ The 41,000-mile interstate highway system transformed American cities by facilitating suburbanization and sprawl development and triggering white flight from central cities. By paving new roadways to cheap land outside the central city, highway builders made it possible for developers to put new housing and development in outlying areas which were previously inaccessible.

The car is king in most of the United States. In California, state residents make the vast majority of their trips by car (86 percent), and 84 percent of trips to work are made by individuals driving alone. Public transit accounts for 2.2 percent of trips annually, 8.4 percent are made on foot, and about 1 percent is made by bicycle.⁵ Although driving is the mode of choice, children and youth, the elderly, and the disabled are often dependent on alternative modes of transportation for independent mobility, and these segments of society are steadily growing. Those who cannot afford cars or who are unable to drive independently face substantial barriers to mobility today. In 2000–2001, 9.3 percent of California households did not have a car.⁶ Additionally, over 90 percent of former welfare recipients have no access to a car.⁷

Without a car, many job opportunities are out of reach for welfare recipients and low-income families. Researchers studying the most recent national travel data conclude, “Clearly, many low-income households are cut off from some destinations they need to reach because they cannot afford the automotive transportation needed to access most parts of metropolitan areas.”⁸ A study conducted by the Transportation and Land Use Coalition of the Bay Area (TALC) found that poor transit service is a barrier to health for many families. In Contra Costa County, only 20 percent of residents in low-income neighborhoods have transit access to a hospital; 33 percent have transit access to a community clinic, and only 39 percent have a supermarket within walking distance of their homes.⁹

⁴ Robert Fishman, “The Top Ten Influences on the American Metropolis of the Past 50 Years,” Fannie Mae Foundation, 1999.

⁵ “2000–2001 California Statewide Household Travel Survey—Final Report,” California Department of Transportation, June 2002.

⁶ “2000–2001 California Statewide Household Travel Survey—Final Report,” *op. cit.*

⁷ “Beyond Gridlock,” Surface Transportation Policy Project, 2000. (*Note:* This statistic is based on a survey of former welfare recipients by a social services agency. Respondents had an incentive to answer “no” when asked if they owned a car, as means-tested benefits can be taken away if their assets are too high; the value of most cars would put them over the asset limit.)

⁸ John Pucher and John Renne, “Socioeconomics of Urban Travel: Evidence from the 2001 NHTS,” *Transportation Quarterly* (Summer 2003), vol. 57, no.3, p. 54.

⁹ “Roadblocks to Health: Transportation Barriers to Healthy Communities,” Transportation and Land Use Coalition, 2002.

Low-income and minority groups use transit, bike, and walk more often than whites and higher-income groups. Generally, transit ridership declines as income increases, and this drop is particularly stark for bus transit. Low-income households are eight times as likely as wealthy households to take a trip by bus (4 percent vs. 0.5 percent).¹⁰ The most

Our nation has a legacy of transportation policies and investments that **inadequately serve and often isolate low-income and minority communities** from jobs, services, education, and housing opportunities essential to escape poverty and fully participate in society.

recent national survey shows that African Americans are almost six times more likely than whites to take transit (5.3 percent vs. 0.3 percent), and Latinos are about three times more likely to ride transit than whites (2.4 percent vs. 0.3 percent).¹¹

Our nation has a legacy of transportation policies and investments that inadequately serve and often isolate low-income and minority communities from jobs, services, education, and housing opportunities essential to escape poverty and fully participate in society. In fact, the civil rights movement began with efforts to fight racism in the transportation system.¹²

Shortly after Rosa Parks refused to move to the back of the bus, Martin Luther King, Jr., and others organized the Montgomery, Alabama, bus boycott; and later the “Freedom Riders” risked their lives traveling across the country to exercise their right to ride on desegregated buses.

The modern “transportation equity” movement has grown out of a merging of civil rights and environmental justice efforts. Still in its infancy, the transportation equity (or transportation justice) movement gained national recognition and momentum in the 1990s. The objective of this movement is to ensure equal access for all people to social and economic opportunities by providing equitable services and equitable levels of access to all places.¹³ Clearly, different groups in society have different constraints on their ability to travel, so a one size-fits-all solution for transportation is not the goal. An equitable transportation system will be flexible and responsive to the needs of different communities and groups.

Promising Practices

I. Standards, Measurement, and Assessment

New data collection and public reporting requirements can be used to shed light on inequities and increase government accountability for serving the needs of low-income and disadvantaged communities. The following are some examples of promising practices along these lines:

¹⁰ Pucher and Renne, *op. cit.*, pp. 49–77.

¹¹ Pucher and Renne, *op. cit.*

¹² Robert D. Bullard, Glenn S. Johnson, and Angel O. Torres, eds., *Highway Robbery: Transportation Racism and New Routes to Equity*, Cambridge: South End Press, 2004.

¹³ Thomas W. Sanchez, Rich Stolz, and Jacinta S. Ma, “Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities,” A Joint Report of Harvard’s Civil Rights Project and the Center for Community Change, 2003; available at: http://www.civilrightsproject.harvard.edu/research/transportation/trans_paper03.php.

PRACTICE: Report the geographic distribution of transportation investments.

In 1975 the federal Home Mortgage Disclosure Act required banks to report mortgage lending activity by ethnicity, race, gender, income, and geographic location; this helped identify redlining and other discriminatory practices.¹⁴ The Community Reinvestment Act, enacted in 1977, also seeks to prevent redlining and requires banks to meet the credit needs of the entire community, including low- and moderate-income neighborhoods.¹⁵ Presently, the federal TEA-21 bill requires reporting on an annual “list of projects” for which federal transportation funds are spent. The next step is to break down the project data to the street level, or the census tract, so that social equity advocates have better information about how their communities are faring in terms of the allocation of public investment dollars for transportation. This finer-grain reporting was initially proposed in 2004 during the TEA-21 reauthorization process.¹⁶

PRACTICE: Revise transportation planning models and metrics.

Local transportation systems are often designed to maximize the speed and efficiency of car travel, at the expense of other modes of travel. Autocentric transportation systems become self-fulfilling prophecies because alternative travel modes are so inconvenient or unsafe that most people choose to drive. But low-income and disadvantaged populations have lower auto ownership rates than other groups, so they bear the brunt of poorly designed alternative modes. Transportation models should be revised to maximize the efficiency of multiple travel modes; people who live in dense urban areas and near transit are more likely to take more trips via transit, biking, and walking.

One key problem is the use of traditional “Level of Service” (LOS) standards for cars. LOS standards, which guide the design of streets and roads, measure how quickly motor vehicles can move along a roadway and through intersections and determine space needed for parking. This LOS approach maximizes traffic speeds (which is fine for highways, but not so desirable for neighborhood streets) and creates a bias in street design against special infrastructure and accommodations for bicyclists, walkers, or transit riders because these features might slow the flow of cars.

Dan Burden, a nationally known expert on walkable design and Director of Walkable Communities Inc., has developed new Level of Quality (LOQ) guidelines that are meant to show graphically why some streets work better than others for access, safety, and mobility of all modes of travel.¹⁷

The Florida Department of Transportation has developed new multimodal LOS standards as well as procedures for determining multimodal level of service and

¹⁴ “Home Mortgage Disclosure,” Comptroller’s *Handbook*, July 2005; available at: <http://www.occ.treas.gov/handbook/hmda.pdf>.

¹⁵ Community Reinvestment Act Information, Comptroller of the Currency; available at: <http://www.occ.treas.gov/crainfo.htm>.

¹⁶ *Note:* This type of reporting will need to identify “who” benefits. For example, replacement of the Nimitz freeway in West Oakland would misleadingly show up on a “funds by zip code” map as a huge investment in West Oakland.

¹⁷ For more information about the LOQ guidelines and walkable communities, please visit: <http://www.walkable.org/library.htm>.

concurrency in multimodal transportation districts. In 2000, the Florida legislature created a Multimodal Transportation District (MMTD) alternative to enable local governments to address transportation concurrency through development of high-quality multimodal environment.¹⁸ A MMTD is an area designated within the Comprehensive Plan where the first priority is given to encouraging and enhancing non-auto forms of transportation.¹⁹

II. Targeting Resources to High- Need Areas

PRACTICE: Increase funding for transit.

Transit is an important lifeline for millions of Americans who cannot afford a car or are not able to drive themselves—disproportionately affecting low-income, the disabled, children and youth, and elderly populations. According to the U.S. Department of Transportation (2002), over 90 percent of welfare recipients do not own a car.²⁰ Additionally, people of color are more dependent on transit than whites are for mobility and job access in metropolitan areas.

(a) *Free the gas tax.* The distribution of gas tax revenues within states often penalizes cities and urban areas because restrictions on this funding complicate using these revenues to address urban transportation needs. Thirty states restrict their gas tax revenues to be used for highway purposes only.²¹ This limits the state’s ability to finance mass transit, congestion relief, air quality improvement projects, and other options not related to highways. A 1993 U.S. General Accounting Office report emphasized that without access to state gas tax revenues, some transit systems have to rely almost exclusively on funding from local sales taxes, which is inconsistent and often inadequate to meet their needs. Between 1998 and 2001, only four states spent more than 15 percent of their gas tax revenues on transit—New York, Connecticut, Rhode Island, and Maryland. In all four states, statutory provisions set aside substantial portions of net revenues for transit. For example, Maryland spent 37 percent of its gas tax revenues on state highways, 36 percent on local roads, and 23 percent on transit.

(b) *Create dedicated revenue sources for transit.* In March 2004, San Francisco Bay Area voters approved a \$1 increase in the toll on the Bay Bridge, with all of the revenues dedicated to regional transit projects, including substantial funds for transit operations. Overall, the measure will raise \$125 million annually for transit. The key criterion for projects funded through the bridge toll is that there must be a “bridge nexus,” meaning that the projects reduce congestion on one or more state toll bridges in the region.²²

¹⁸ Florida State Code, Chapter 163.

¹⁹ Center for Urban Transportation Research, University of South Florida; <http://www.nctr.usf.edu/projects/Year4/527-07.html>

²⁰ “Transportation and Poverty Alleviation,” Surface Transportation Policy Project (STPP) Fact Sheet; available at: <http://www.transact.org/library/factsheets/poverty.asp>.

²¹ Robert Puentes and Ryan Prince, “Fueling Transportation Finance: A Primer on the Gas Tax,” Brookings Institution, March 2003; available at: <http://www.brookings.edu/es/urban/publications/gastax.htm>; and “Better Tools Needed for Making Decisions on Using ISTEA Funds Flexibly,” General Accounting Office Report GAI/RCED-94-25, 1993.

²² Transportation and Land Use Coalition; http://transcoalition.org/c/sus_brtoll/btoll_home.html

(c) *Create a Regional Transit Vision to shift regional investments into transit.* San Diego’s regional agencies responsible for transportation and land use jointly created a “Regional Transit Vision” (RTV) to formalize their commitment to public transit as a key to maintaining and improving quality of life in the region. The RTV includes state-of-the-art bus travel, signal priority for transit, a customer-focused system, real-time information, and faster, integrated transit service throughout the region that is competitive with driving. These agencies have jointly pursued new local sales tax funding and also allocated a portion of state and federal transportation dollars to priority projects identified in the RTV.²³ In 2004, county voters approved Proposition A, a 40-year extension of TransNet (a half-cent sales tax for transportation improvements). The tax extension garnered approval from 67 percent of the voting public and will generate \$14 billion for transportation improvement projects.

PRACTICE: Invest in bicycle and pedestrian infrastructure.

Pedestrian-vehicle collisions now rank among the leading causes of death and hospitalized injury for children. Minority children and children from low-income households are particularly vulnerable because they make a higher percentage of their trips on foot.²⁴

(a) *Design streets for bicyclists and walkers as well as for drivers.* It is much more efficient and effective to integrate planning for bicyclists and pedestrians into the design of streets and roads from the beginning—often called “routine accommodation”—rather than retrofitting streets and intersections later on to address bike and pedestrian safety. The U.S. Department of Transportation has issued design guidelines encouraging state and local transportation agencies to consider bicycle and pedestrian travel as part of all transportation projects. The guidance includes the following policy statement: “Bicycle and pedestrian ways shall be established in new construction and reconstruction projects in all urbanized areas unless one or more of three conditions are met: (1) bicyclists and pedestrians are prohibited by law from using the roadway. In this instance, a greater effort may be necessary to accommodate bicyclists and pedestrians elsewhere within the right of way or within the same transportation corridor; (2) the cost of establishing bikeways or walkways would be excessively disproportionate to the need or probable use. Excessively disproportionate is defined as exceeding 20 percent of the cost of the larger transportation project; or (3) where sparsity of population or other factors indicate an absence of need.” This is strong guidance that could be more aggressively enforced at the state and local levels to improve bicycle and pedestrian infrastructure. For example, the Florida DOT has integrated bicycle and pedestrian facility design information into its standard highway design manuals, and the New Jersey DOT is in the process of doing so. In California, the state Department of Transportation, CalTrans, issued its own guidance for local transportation agencies in “Deputy Directive 64.”²⁵

²³ Available at: http://www.sandag.org/uploads/publicationid/publicationid_816_3746.pdf ; or see the homepage for the RTV at: <http://www.sandag.org>.

²⁴ “Can’t Get There From Here: The Declining Independent Mobility of California’s Children and Youth,” a Joint Project of the Surface Transportation Policy Project, Transportation and Land Use Coalition, and Latino Issues Forum, September 2003; available at: http://www.transact.org/ca/Childrens_Report/Kids_Report.pdf.

²⁵ “Design Guidance Accommodating Bicycle and Pedestrian Travel: A Recommended Approach,” U.S. Department of Transportation, 1999; available at:

In the city of University Place, Washington, the redevelopment of Bridgeport Way has become a model of best practices in redesigning streets to better accommodate bicycle and foot traffic. Bridgeport Way was a five-lane suburban style roadway, and it was a central spine for a new downtown for the community of University Place. The roadway had a poor safety record, and it was experiencing significant traffic congestion. Walking and bicycling along the roadway was treacherous. Using a highly interactive set of public visioning activities, known as a charrette, the city manager and newly elected officials were able to gain consensus to rebuild the street as a four lane, median divided road with bike lanes, sidewalks, planter strips, and tree canopy.²⁶

(b) Replicate the Safe Routes to School program. The California state legislature enacted the Safe Routes to School program in 1999 and set aside \$20 to \$25 million in federal transportation funds annually for projects that improve traffic safety and pedestrian and bicycle infrastructure near schools. Since its inception, the program has been very popular, with applications from local governments for four or five times more funding than was available in the first few years; there have been proposals to make permanent California's program, which is scheduled to expire in 2007.²⁷ A number of other states have implemented similar programs in recent years, and the federal government modeled portions of TEA-3 after it.

(c) Emulate the Safe Routes to Transit program. Bicycling and walking are cost-effective and sustainable ways to reach regional transit stations, yet many commuters drive to transit stations instead, citing traffic safety as their main concern.²⁸ In the San Francisco Bay Area, the East Bay Bicycle Coalition and the Transportation and Land Use Coalition teamed to propose and win approval for the new Safe Routes to Transit program that will promote bicycling and walking to transit stations by making these connecting trips easier, faster, and safer. The new \$22.5 million Safe Routes to Transit (SR2T) Program received voter approval in March 2004 through Regional Measure 2, a \$1 bridge toll increase for regional transit. SR2T funds can be used for:

- securing bicycle storage at transit stations, stops, city carshare pods;
- safety enhancements for pedestrian and bike access to transit stations, stops, city carshare pods;
- removal of pedestrian and bike barriers on roads and intersections near transit stations; and
- system-wide transit enhancements to accommodate bicyclists or pedestrians.

PRACTICE: Target special funds to disadvantaged communities.

(a) Maintain and expand the JARC program. The federal Jobs Access Reverse Commute (JARC) program provides special funding for local transportation agencies to help ensure that low-income and disadvantaged citizens have adequate access to jobs

<http://www.fhwa.dot.gov/environment/bikeped/Design.htm>; and CalTrans Deputy Directive 64; online on the California Bicycle Coalition website at: <http://www.calbike.org/pdfs/caltransdir.pdf>.

²⁶ Dan Burden, "Building Communities with Transportation," Distinguished Lecture Presentation at the Transportation Research Board Conference, Monday, January 10, 2001, Washington, DC; Available online at: <http://www.walkable.org/library.htm>.

²⁷ See <http://www.transact.org/ca/children.htm> and www.calbike.org.

²⁸ See http://www.transcoalition.org/c/bikeped/bikeped_saferoutes.html.

that are dispersed across the metropolitan region. Many people have benefited from additional transit service and special routes funded through this program. For example, in Tennessee, the Chattanooga Area Regional Transportation Authority (ARTA) is using multi-year JARC funds to expand transit services that connect low-income people with jobs in both rural and urban parts of Hamilton County, which includes the City of Chattanooga and surrounding suburban communities rich with entry-level employment opportunities. ARTA extended neighborhood bus routes and expanded hours of operation up to 19 hours a day to accommodate those working earlier and later shifts and on Saturdays; it improved transit service to employment corridors in suburban areas; and it created new flexible transportation options such as vanpools to suburban job sites and paratransit services. Overall, the program improvements reach more than 2,000 employers and 20,000 entry-level jobs, and they reach 65 childcare facilities with capacity for 2,200 children within a quarter mile of new transit stops.²⁹

(b) Create free student bus pass programs. To ensure that low-income children have consistent, affordable transportation to school, Alameda County Transit implemented a pilot program offering free and reduced-price bus passes to students in Alameda and Contra Costa counties during 2002 and 2003. This program helped 24,000 East Bay youth get to and from school. However, budget cutbacks forced Alameda County Transit to terminate the program. Based on the success of the Alameda County Transit pilot, Contra Costa County voters passed Measure J in 2004, which established a \$14.5 million program to expand the subsidy for bus transit fares for low-income students.³⁰

III. Increase Funding Overall

PRACTICE: Raise the gas tax.

User fees such as the gas tax are among the most effective, efficient, and equitable approaches to transportation finance, according to UC Berkeley Professor and transportation finance expert Dr. Martin Wachs. However, the revenues from state and federal gas taxes have declined in recent years to only 35 percent of all roadway spending in 2003. Between 1947 and 1963, the California gas tax increased three times; but after that, it was not raised for more than 20 years. In 1957, the California state gas tax was 6 cents per gallon. If it had risen with inflation, today it would be 32.5 cents per gallon, rather than the current 18 cents per gallon.

Consequently, local governments have resorted to less stable and less equitable sources of revenue for their transportation needs, such as local sales taxes and borrowing. Concerns have been raised that a gas tax hike would disproportionately impact low-income families, but research conducted by MIT economist James Poterba finds that “low-expenditure households devote a smaller share of their budget to gasoline than do their counterparts in the middle of the expenditure distribution.” The gas tax is more equitable than other forms of taxation because it works as a user fee, impacting consumers in proportion to their use of transportation infrastructure. By acting

²⁹ See the Community Transportation Association of America at: <http://www.ctaa.org/ntrc/atj/practices/>; and “Profiles of Success—Chattanooga,” Brief no. 2, November 2001.

³⁰ See <http://www.mtc.ca.gov/news/transactions/ta0102/pass.htm>; http://www.transact.org/ca/bus_pass.pdf; http://www.actransit.org/pdf/SRTP_chap5.pdf, p. 19; and <http://www.ccta.net/EXTENSION/TEP/TEP.pdf>, p. 20.

as a price signal to the motorist, the gas tax can also encourage more efficient use of highways and can boost demand for more fuel-efficient vehicles. Both equity and efficiency are better served by increasing the gas tax rather than more regressive local taxes.³¹

PRACTICE: Support local transportation sales taxes that invest in a balanced mix of transportation modes.

Design local sales tax measures to invest in a balanced mix of transportation modes. In particular, it is critical that local sales taxes provide funding for transit operations, which have very few other sources of funding. Local sales taxes are also an important funding source for transportation for seniors and the disabled.

In 2000, the Transportation and Land Use Coalition (TALC) of the San Francisco Bay Area brought together public interest groups, ranging from homeless advocates to environmentalists, bicyclists, and the League of Women Voters in support of Alameda County's "Measure B" local transportation sales tax that invested heavily in transit and pedestrian safety. The earlier version of the measure (1998) did not have broad support and had less emphasis on transit. After an initial failure, TALC's social equity and environmental coalition won some substantial changes in the funding allocations, shifting the majority of the funding to mass transit and other alternatives to driving alone, and allocating only 18 percent of the funding for highways. This broad coalition brought new public support to the ballot measure, and an overwhelming 81 percent of voters approved the revised measure in 2000.³²

In November 2004, San Diego voters approved the "TransNet" measure, a local sales tax increase for transportation that will generate \$14 billion over 40 years. This balanced transportation measure allocates funding in thirds among transit (including new Bus Rapid Transit), highway, and local road improvements. In addition, \$1 million is earmarked annually for bicycle paths and facilities, and an extensive \$850 million environmental mitigation program is also funded.³³

PRACTICE: Support local smart growth sales taxes.

To truly enable smart growth and to make alternatives to driving convenient, investments in transportation, affordable housing, and parks must be done in a coordinated and mutually reinforcing manner. Two state legislators in California recently proposed a financing measure that would enable better coordinated infrastructure investments at the local level. In 2003 Assembly member Darrell Steinberg (D-Sacramento) and Senator Richard Alarcón (D-Los Angeles) proposed two amendments to the California state constitution (ACA 14 and SCA 11) to provide new financing tools to upgrade local communities. ACA 14 and SCA 11 would have lowered the voter approval threshold

³¹ See Martin Wachs "Improving Efficiency and Equity in Transportation Finance," Brookings Institution, April 2003, online at: <http://www.brookings.edu/es/urban/publications/wachstransportation.htm>; and James Poterba, "Is the Gasoline Tax Regressive?," NBER Working Paper No. W3578, 1991, online at: <http://www.ssrn.com/>.

³² See http://www.transcoalition.org/archives/msrb/measureb_victory.html and Robert D. Bullard et al., *Highway Robbery*, *op. cit.*

³³ See <http://www.sandag.cog.ca.us/>; click on the "TransNet" homepage.

from two-thirds to 55 percent for local sales tax and bond measures for communities that want to invest in a mix of community infrastructure and amenities, with a minimum investment of 20 percent in affordable housing, transportation improvements, parks, and other general infrastructure. An analysis by PolicyLink, based on historical data from local school bond measures before and after the passage of Proposition 39 in 2000, concludes that a lower vote threshold for local infrastructure funding measures would prompt local voters to respond to the community infrastructure gap with more local money. Prop 39 lowered the vote threshold for school construction bonds to 55 percent. Since its passage, 147 school districts in California have approved school bond measures, and of those, 82 districts—more than half—had never succeeded in passing a school bond measure before.³⁴

IV. Efficient Use of Resources: Joint Use and Creative Reuse

One important way to use resources more efficiently in the transportation sector is to promote more compact land uses so that alternatives to driving are convenient to people's homes and jobs.

PRACTICE: Envision the entire region in your planning.

Regional visioning efforts allow community members and other key stakeholders to participate in creating a comprehensive plan for how their region will accommodate growth in future years, while maintaining quality of life. The vision serves as a foundation for local agencies to integrate land use planning, transportation systems, infrastructure projects, and other public investment strategies in the region. For example, in Oregon two community groups—1000 Friends of Oregon and Sensible Transportation Options for People—spearheaded an effort to consider alternatives to a highway, and their visioning project gained national acclaim. In 1996, the project “Making the Land Use, Transportation, Air Quality Connection” (a.k.a. LUTRAQ) received national awards for transportation planning from the American Planning Association and the U.S. Environmental Protection Agency. For the groups that supported this visioning project, the true measure of LUTRAQ's success is that it helped to change the way transportation and land use will develop in a part of the Portland metropolitan area. It also demonstrated that citizens' efforts can generate ideas and analyses that change the way their regions grow.³⁵

PRACTICE: Condition transit funding for local governments on smart growth zoning.

A long-term experiment with compact development around transit stations in Arlington County, Virginia, has had great success. For 30 years, Arlington County has focused commercial development and multifamily housing within walking distance of the Rosslyn-Ballston Metro Corridor. More than 22.5 million square feet of office space has been

³⁴ See PolicyLink, *Investing in a Sustainable Future: An Analysis of ACA 14 and SCA 11* at: <http://www.policylink.org/pdfs/ACA14.pdf>; factsheet on ACA 14 at: <http://www.transact.org/ca/aca14.htm>; and factsheet on SCA 11 at: <http://www.transact.org/ca/sca11.htm>.

³⁵ Information on Oregon's LUTRAQ effort at <http://friends.org/resources/lutraq.html>. Other best practices in community visioning from states across the nation: <http://www.transact.org/report.asp?id=231>.

developed in the corridor; more than three million square feet of new retail is within walking distance of the five stations; and the number of households near transit has doubled over 30 years. Office rents in the corridor command a premium over other suburban locations, and vacancy rates are lower. New housing starts in the area are booming, but traffic on arterial and neighborhood streets has not increased as much as expected, given the level of development. The focused development pattern has also benefited the transit system. Unlike other Metro lines, where 57 percent of riders arrive by automobile, necessitating the construction of expensive parking, 73 percent of the Rosslyn-Ballston corridor patrons walk to the Metro, with only 13 percent driving. This creates significant savings for the Metro system because pedestrians do not require a parking space or bus service to access the stations.³⁶

In 2005 a coalition of environmental, transit, and housing groups in the San Francisco Bay Area convinced the Metropolitan Transportation Commission (MTC) to condition \$12 billion of new transit investments for local cities (in the 2005 Regional Transportation Plan) on the adoption of city plans and local zoning codes that would allow significant housing and walkable community design around existing and future transit stations. The Transportation and Land Use Coalition led the campaign, in conjunction with the Greenbelt Alliance and the Nonprofit Housing Association. The groups estimate taxpayers and commuters could save \$1.8 billion per year in transportation costs as a result of smarter land use planning and development around transit.³⁷

PRACTICE: Create incentive programs for transit oriented and pedestrian friendly development.

One model of best practices comes from the San Francisco Bay Area. In 1998, the MTC launched the Transportation for Livable Communities (TLC) program in response to community demands. MTC's intent was to invest in town centers, public transit hubs, and key streets as a way of fostering community vitality and recapturing a small-town atmosphere that has been lost in many Bay Area cities. Initially, the program provided planning grants, technical assistance, and capital grants to help cities and nonprofit agencies develop transportation-related projects fitting the TLC profile. In November 2000, the program was expanded to include a Housing Incentive Program (HIP), which rewards local governments that build housing near transit stops.³⁸

PRACTICE: Attract more transit riders and increase system efficiencies.

The Los Angeles Bus Rapid Transit (BRT) System solved many of the problems common to traditional bus systems. By creating dedicated bus lanes, fewer stops, and priority at traffic signals, the Los Angeles Metropolitan Authority has been able to reduce passenger travel times by 29 percent and increase ridership by 40 percent.³⁹ The BRT

³⁶ See Hank Dittmar, "Development around transit good for drivers, too," *Washington Business Journal*, 8/25/2003; and Dittmar and Gloria Ohland, eds., *The New Transit Town: Best Practices in Transit-Oriented Development*, Island Press, 2004. See also:

<http://www.reconnectingamerica.org/html/RA/book/synopsis.htm>.

³⁷ See "It Takes a Transit Village," Transportation and Land Use Coalition, November 2004; available at: http://www.transcoalition.org/reports/village/village_home.html, and http://transcoalition.org/c/landuse/landuse_home.html.

³⁸ See MTC's TLC program at: http://www.mtc.ca.gov/planning/smart_growth/tlc_grants.htm and MTC's HIP program at http://www.mtc.ca.gov/planning/smart_growth/hip.htm.

³⁹ See http://www.mta.net/projects_programs/rapid/overview.htm.

project began in 1998. Relative to rail, BRT's cost of construction was low and its time to get online was short. For example, TALC reports that the same \$8.2 million that built 42 miles of BRT infrastructure would have bought only 251 feet of Bay Area Rapid Transit rail extension to the San Francisco airport.⁴⁰

V. Community Participation in Policy and Programming: Local Activism, Coalitions, and Litigation

PRACTICE: Foster local activism and coalitions.

In Massachusetts, during the development of the state's 25-year transportation plan, which will direct billions in transportation funding, a coalition of more than 20 community-based organizations, the "Action for Regional Equity Alliance," appealed to the state in 2004 for a more open and equity-focused transportation planning process: for broader public participation mechanisms, longer comment periods, a citizen advisory board, and other improvements.⁴¹

In New York City, the Straphangers built coalitions and held neighborhood forums to campaign for the improvement of transit service, safety, and cleanliness and for transit fare affordability. Since 1979, the group has helped to win \$30 billion for transit repairs, led successful campaigns for unlimited ride passes and free subway-to-bus transfers, and issued 30 widely cited reports on the quality of subway and bus service.

California's state transportation department, Caltrans, created two grant programs in early 2000 to support community engagement and planning for transportation improvements in disadvantaged and low-income communities. In 2003, over 250 community groups united to defend the Caltrans grants that Governor Gray Davis cut in his 2003–2004 budget. The protest from community groups helped restore those funds in the budget, and now momentum is rising to make these programs permanent. Projects that have been funded includes outreach to low-income and minority community members of Fresno and a Welfare to Work Transportation Assistance Program for low-income individuals in San Joaquin County.

PRACTICE: Devolve transportation decision making to the regional level.

Although the federal ISTEA and TEA-21 laws were designed to provide more opportunities for local involvement in transportation decision making, many state DOTs still wield considerable power over state and federal transportation funds. In most states, the DOT receives and manages all the federal transportation money, and in some states, local decisions and needs are simply ignored by the state. California's state law SB 45, enacted in 1997, is a national model for devolving decision-making power over state and federal funding to regional governments (RTPAs and MPOs). SB 45 put three quarters of the transportation funding in the hands of regional governments; in doing so,

⁴⁰ See http://www.transcoalition.org/reports/revt/case_study.html.

⁴¹ See <http://www.policylink.org/BostonAction/>.⁴⁶ See Caltrans's homepage for CBTP grants: <http://www.dot.ca.gov/hq/tpp/offices/ocp/cbtpg.htm>; the Caltrans homepage for EJ grants: <http://www.dot.ca.gov/hq/tpp/grants.htm> and click on "EJ grants." For a factsheet on these grants by the California Alliance for Transportation Choices visit: <http://www.transact.org/ca/initiative%202003%202004%20attachments/EJ-CBTP%20grants%20fact%20sheet.pdf>.

it aimed to increase funding flexibility, accountability for expenditures, and funding to urbanized regions where congestion typically occurs. Only a few years after the enactment of California's suballocation law, it is clear that greater local control has led to increased investments in public transit. California alone accounted for over half of all federal funding flexed to transit nationwide during the first four years of SB 45 (1998–2002).⁴²

PRACTICE: Take advantage of litigation.

(a) *Challenge transportation investment decisions.* In Atlanta, Georgia, the metropolitan transit system, MARTA, has a long history of shortchanging black customers, favoring service improvements and infrastructure investments for the wealthier white suburbs over the black communities. The ongoing activism of community members in the Metropolitan Atlanta Transportation Equity Coalition (MATEC) has helped low-income black communities fight unfair decisions and win a number of service improvements, with many of the improvements resulting from a federal Title VI and ADA complaint that the group filed in 2000.⁴⁹ In Los Angeles, the Bus Riders Union successfully sued the LA Metropolitan Transportation Authority (MTA) in the mid-1990s for discrimination based on its patterns of investment in service routes.⁴³

Across the nation, a number of social equity and environmental justice groups have successfully challenged the federal certification of their local MPO for failing to meet the federal requirements for public involvement in the transportation planning process.

(b) *Challenge the disproportionate accumulation of negative impacts in communities.* In West Harlem, New York, a local environmental justice group, WEACT, filed a Title VI complaint with the U.S. Department of Transportation against the Metropolitan Transportation Authority of Manhattan (MTA) because of the agency's practices in siting diesel bus depots and its plans to use additional land in the community for more bus facilities. Six of the eight depots operated by the MTA were located in West Harlem at the time.⁴⁴

(c) *Challenge the certification of Metropolitan Planning Agencies (MPOs).* Across the nation, a number of social equity and environmental justice groups have successfully challenged the federal certification of their local MPO for failing to meet the federal requirements for public involvement in the transportation planning process. These challenges create a strong incentive for MPOs to improve their public engagement practices because losing federal certification puts at risk hundreds of millions of federal transportation dollars. For example:

⁴² See Robert Puentes and Linda Bailey, "Improving Metropolitan Decision Making in Transportation: Greater Funding and Devolution for Greater Accountability," Brookings Institution Series on Transportation Reform, October 2003, online at: www.brookings.edu/urban; and STPP *Progress Newsletter*, March 2003, online at: http://www.transact.org/progress/pdfs/March_2003.pdf.

⁴³ See Bullard, *op. cit.*, and <http://www.busridersunion.org/engli/WhoWeAre/overview.htm>.

⁴⁴ Retrieved from: <http://www.weact.org/programs/index.html>.

- The MPO serving Montgomery, Alabama, was recently given a conditional recertification and orders to improve public participation and compliance with civil rights laws. Although the City of Montgomery accounts for 70 percent of the population in the MPO service area and 49 percent of residents are racial minorities, the city has only one-third of the votes on the MPO board, and there is no minority representation. (Battles over urban representation on MPO boards have also been waged in Denver, Colorado; Detroit, Michigan; and Chicago, Illinois.)
- In the San Francisco Bay Area, a coalition of transportation and environmental justice groups challenged the certification of the Metropolitan Transportation Commission. As a result, the agency has implemented new outreach activities in the community.
- Certification battles were also waged in the late 1990s and early 2000s in a number of cities and counties, including: Atlanta, Georgia; Miami-Dade, Florida; San Antonio, Texas; and Chicago, Illinois.⁴⁵

⁴⁵ Bruce McDowell, "Improving Regional Transportation Decisions: MPOs and Certification," Brookings Institution, September 1999; online at <http://www.brookings.edu/metro/mcdowelllexsum.htm>; and conversation with Rich Stolz of the Transportation Equity Network (TEN), online at <http://www.transportationequity.org/index.shtml>.

SECTION THREE

**BUILDING A
BASELINE**

Jobs, Housing and Healthcare

An equitable policy framework must support not only the natural and built environment but also people and families. Particularly during this moment of financial and housing crisis, people throughout the country are struggling to meet their most basic needs: jobs to support themselves and their families, stable and affordable housing, and reliable and accessible health care. With each of these issues currently central to the national agenda, advancements in providing a baseline for these needs can have broad, long-term impact.

The president-elect has committed to several major policy initiatives in each of these areas. The administration's refundable tax credits proposals for workers, mortgage interest, and health care as well as plans to create five million new jobs, restructure bankruptcy laws, and improve health insurance rules and coverage ease the burden of this difficult economy. However, the focus of these policies is the middle class rather than the population most vulnerable in this economic downturn: low and moderate-income households. The last several months illustrates that a solid baseline for the basic needs of employment, housing, and health care is a critical necessity. Obama's plans are an important first step in this process. We must also broadly re-evaluate the role of these critical necessities, and develop a long-term strategy to provide them to all Americans as a fundamental right. With their basic needs met, individuals will be empowered to more actively contribute to improving our society.

Labor policy is the most direct link between individuals and the national economy and provides the best opportunity to reverse the wage inequality and low-income stagnation of the past several decades. In the short-term, any further economic stimulus packages offered by the administration must incorporate quality job promotion. A labor strategy must promote innovation while ensuring that workers share in the prosperity generated. Moreover, as the president-elect has begun to articulate in his policies for work/family balance, labor policy should be developed as one component of a comprehensive effort to improve the quality of life for workers and their families.

Homeownership is in flux as mortgages default, public agencies and private corporations reconsider foreclosure policies, and local governments scramble to respond to dramatic drops in their revenue base. As foreclosures reach and exceed record levels, this nation's housing policy should be aimed at enhancing housing security and stability for the millions of low income residents most often burdened by sub-prime mortgages and most vulnerable to the changing housing market. Short-term

policy must focus on homeowners. However, recent events should serve to redirect our long-term national housing strategy away from an almost exclusive focus on homeownership to a new focus on providing affordable access to homes whether they are rented or owned. These efforts will require the construction of new public and affordable housing units and increased access to vouchers that allow low-income households to access the private market. In addition, they will require the reduction of policies that favor homeownership and provide costly incentives to many households who would own their home regardless of federal policy.

America's health care system has fallen behind most other wealthy countries, with high costs and poor outcomes. The high costs of health care further burden many households when high medical costs force them to take on credit card debt or fall behind in their other bills. This system needs to be reformed in the short-term with cost containment, because quality health care has become expensive for everyone and unattainable for many. The most powerful tool for reform is Medicare, which is among the largest non-defense costs to the federal government. Additional health policy reforms should reestablish the regulatory capacity of the Food and Drug Administration. Long-term health policy should extend health insurance coverage universally and advance health initiatives beyond health insurance and coverage of medical services. The administration should recognize that preventive programs improve health outcomes, but so do other federal policies that are not currently included in a strategy to improve our nation's health. In particular, agriculture policy and subsidies, infrastructure that encourages or discourages bicycle use and walking rather than driving, and schools with space in their curriculum for recess and physical education greatly affect the health of our nation and must be part of a comprehensive strategy to lower costs and improve health outcomes across the country.

A LABOR POLICY STRATEGY FOR TRANSFORMING THE AMERICAN WORKPLACE

THOMAS KOCHAN

Abstract

As discussed in earlier briefs, labor policy must link new jobs to energy innovation. However, policy should not just create new jobs but high quality jobs, and increase job quality in the existing workforce. The president-elect offers many of the same policies working towards this goal as presented in this brief: promoting unions, increasing the minimum wage, expanding family friendly business policies, and using trade agreements to improve labor standards abroad. The president must ensure, however, that these various policies are coordinated to promote the larger goal of access to high quality jobs throughout the economy.

The national economy must be transformed through significant changes in the workplace to create and sustain jobs that fully utilize workers' knowledge and skills, drive innovation and productivity and ensure workers share equitably in the prosperity generated. The major challenges for labor policy are to reverse the rising unemployment; increase wages in tandem with productivity growth; modern workplace

policies to support “two-income” and “single parent” families; foster public and private investment in workforce development; fix the basics of labor law and putting labor-management relations on a more innovative and cooperative course; rebuilding confidence in regulatory agencies; and developing new principles for holding trading partners accountable for meeting basic labor standards and improving wages in line with productivity growth in their countries.

Policy Recommendations

The next administration should focus on four top legislative priorities for labor policy: 1) If a larger economic stimulus package is needed, it must be complemented with other labor market legislative and administrative initiatives. 2) The Employee Free Choice Act should be passed to restore workers’ ability to form unions and gain access to collective bargaining, and to engage workers and their unions to achieve the innovation and productivity growth needed to get wages moving in tandem with productivity. Additional provisions should be included to promote demonstration projects. 3) The Family and Medical Leave Act should be expanded and enactment of the Healthy Families Act to provide paid sick leave for all workers. 4) Funding should be increased for employment and training, tax credits for private sector investment in training and development, and reforms of unemployment insurance to support worker mobility across jobs. The coordination and development among existing workforce agencies, as well as cooperation with other policy priorities, will be needed to improve labor policy.

International policies will also be needed for healthy labor policy. The next administration should promote trade agreements that require compliance with the ILO’s core labor standards; fund technical assistance for our trading partners; and hold multinational corporations accountable for monitoring and demonstrating compliance with minimum labor standards throughout their full supply chains.

Natural Constituencies

Workers have a lot to gain from this new strategy for labor policy. The proposal would connect them to economic stimulus, improve their collective bargaining power, expand their medical leave, and create training opportunities.

Corporations would object to the shift in power away from management to their workers and the higher wage and benefit costs. This policy attempts to alleviate these concerns with the credits and funding for job training. Also, comparable international labor standards would make the costs of production more competitive in the U.S.

BARACK OBAMA HAS PLEDGED to take immediate actions to respond to the deepening economic crisis and to embark on an ambitious strategy to transform the American economy to once again make it work for all Americans. Such a transformation will require significant changes in the American workplace to create and sustain jobs that fully utilize workers' knowledge and skills, drive innovation and productivity and ensure workers share equitably in the prosperity generated. The central task of the Obama Administration's labor and employment appointees is to facilitate this transformation. This will require a coordinated effort across all labor and employment agencies, hard work with the Congress to achieve a set of necessary legislative reforms, and leadership in engaging business, labor, and community groups working government toward this common goal.

We are at one of those historic moments in which there is a dire need and a rare opportunity to both reverse the downward spiral in the economy and lay a foundation for a sustainable recovery. It is equivalent to the situation Franklin Roosevelt encountered as he entered the White House in 1933. Roosevelt's first steps were to stabilize a collapsing economy by declaring a bank holiday and implementing a regulatory structure to secure our financial institutions. But then, and for the next several years, the Roosevelt Administration and Congress invested in job creation and enacted the labor policies that gave workers the tools needed to lead a sustained economic recovery. Unemployment insurance, minimum wages, the right to form a union and engage in collective bargaining laid the foundation that allowed workers to receive a fair share of the economic progress they helped to create.

Barack Obama will face a similar challenge and opportunity when he takes office in January 2009. An equally bold set of innovations in labor market policies and administration will be needed to give today's workforce the tools to contribute to and share in the benefits of a sustained economic recovery. This paper lays out an Obama agenda for doing so starting on Day One of his Administration. It incorporates policies he has endorsed and builds on his strategy for creating good sustainable jobs.

The Challenges

The major challenges facing the American workplace given the current economic crisis and following the neglect and direct harm inflicted by the Bush Administration include:

1. Reversing the rising unemployment (6.1% in September), negative job growth (760,000 jobs lost so far in FY2009 and the massive job losses likely to come in the months ahead) and growing number of discouraged, marginally engaged, and underemployed workers. This will require an immediate economic stimulus package focused directly on job creation **and** a workforce and workplace strategy that ensures the new jobs pay good wages, allow workers to make full use of their skills and ideas to drive productivity and innovation, and provide workers the bargaining power and voice they need to ensure they shared equitably in the economic gains they help produce.

2. An equally pressing, longstanding, issue is the failure of wages to increase roughly in tandem with increases in aggregate productivity. Between 1980 and 2005 productivity grew by more than 70% while average compensation grew only about 5%. Even these modest compensation gains are now eroding further as inflation has surged to 5.6%, well above the growth in wages. The full set of labor and employment policy initiatives must support the goal of once again having wages move in tandem with productivity growth.
3. The modern workforce has changed dramatically over the years with the growth in the labor force participation of women and mothers. Our workplace policies and practices, however still don't provide family and medical leave or paid sick leave to about half of the workforce. All our labor market policies need to be modernized to better respond to the changes in the labor force created by the "two-income" and the "single parent" family, and the increased interdependence between family and work responsibilities.

The full set of labor and employment policy initiatives must support the goal of once again having wages move in tandem with productivity growth.

4. An economy that wants to be competitive and to rebuild and sustain a middle class must rely upon a highly educated, skilled, and mobile labor force. Yet America's investment in workforce development and training lags far below that of other

advanced economies (among OECD countries we rank at or near the bottom in terms of percent of GDP invested in training and workforce development). Increased public and private investment in workforce development and related labor market adjustment services will be needed to permit us to adapt to changes in the types of employment available to our citizens. Unemployment and trade adjustment programs need to be modernized and integrated to support all workers in moving to new jobs regardless of the reason for their job displacement.

5. Employees have lost their voice at work. Labor law is so broken that few workers can hope to gain access to a union and collective bargaining by following the procedures provided under labor law. Moreover, labor law and practice continues to be mired in adversarial principles and relationships that are an anathema to productive, innovative, and cooperative relationships workers want and the economy needs. Fixing the basics of labor law and putting labor-management relations on a more innovative and cooperative course are necessary first steps in transforming America's workplaces.
6. The Bush Administration has undermined the effectiveness of the agencies responsible for enforcing and administering workplace policies and regulations. Bush appointees to OSHA, Wage and Hour Administration, the NLRB, the National Mediation Board, the Federal Mediation and Conciliation Service, EEOC

and other employment agencies either do not believe in the missions they are charged to carry out and have acted repeatedly to weaken and discredit their agencies. Appointing knowledgeable and trusted professionals to the “workplace” agencies is a necessary first step toward rebuilding confidence in their work and one that must be carried out promptly if they are to have any impact upon the current economic climate.

7. Trade policy stands at an impasse in large part over the question of whether, and if so, how to link labor standards’ protection abroad and employment opportunities at home to trade agreements. Breaking this impasse will require new principles for holding trading partners accountable for meeting basic labor standards and improving wages in line with productivity growth in their countries and for new strategies for enforcing and upgrading their own labor standards.

A Transformational Strategy

Addressing these challenges will require: (1) strong and clear leadership on the part of the President and his appointees to key positions in his Administration, (2) a short but strategic legislative agenda to be pursued at the very outset of the new Administration, (3) a new two-track approach to rebuilding the labor and employment regulatory agencies, and (4) a clear set of principles to guide all of our trade agreements.

Top Four Legislative Priorities

1. Senator Obama has put forward a bold economic stimulus plan calling for a \$2,300 human capital investment tax credit for firms creating jobs in America. He has also proposed to create new jobs in key sectors such as renewable energy, infrastructure repair, and health care. The plan also calls for extension of unemployment benefits for those who have exhausted their current benefits and for eliminating income taxes on these benefits. These are necessary first steps to jumpstart economic recovery. An even bigger job creation program may be needed if, as now expected, job losses continue to spread in large numbers across the economy. Whatever the size and targets of the stimulus package, it needs to be complemented with the labor market legislative and administrative initiatives outlined below to ensure these investments lead to a sustainable, worker led recovery.
2. Along side the stimulus package, equal priority should be given to passing the Employee Free Choice Act to restore workers’ ability to form unions and gain access to collective bargaining, and to engage workers and their unions to achieve the innovation and productivity growth needed to get wages moving in tandem with productivity. The Employee Free Choice Act should be treated not solely as an effort to restore workers’ rights but also as a key element in the President’s economic strategy for both rebuilding the middle class and transforming the American economy and American workplaces. To achieve these latter objectives, provisions should be added to the current draft of this bill

- to give the Secretary of Labor the discretion to approve and fund experimental and demonstration projects in key industries aimed at building the 21st century workplaces that fully utilize workers' skills, knowledge, and capabilities to drive improvements in productivity. This flexibility is critical to implementation of a new regulatory/enforcement model and development of a forward looking workforce strategy.
3. Another early legislative initiative should be the expansion of the Family and Medical Leave Act and enactment of the Healthy Families Act to provide paid sick leave for all workers as a first step in supporting those who are struggling to meet their dual work and family responsibilities.
 4. Increased funding for employment and training, tax credits for private sector investment in training and development, and reforms of unemployment insurance to support worker mobility across jobs should be built into the first Administration budget submitted to Congress. The Labor Department's budget for employment and training now totals approximately \$5.5 billion, compared to the peak level expenditure in 1979 of \$17 billion. Adjusted for growth in the labor force this amounts to about an 87% reduction as a percent of GDP. Even returning to peak levels would keep the US ranked at or near the bottom of all OECD countries (and well below the 4 percent of GDP of the benchmark country, Denmark). But government funded training and labor market adjustment services should be matched by and coordinated with private investments by firms and unions.

There clearly are other workforce/workplace issues warranting legislative action. Health care reform is at the top of everyone's list and will need to be addressed and will be put forward by the Obama Administration. Health care and the labor market reforms listed above will keep Congress busy for much of its first session following the election. In the meantime, much of the transformation agenda can also be achieved through administrative actions. An administrative strategy for doing so is outlined below.

A Two-Track Enforcement and Administrative Reform Model

Effective enforcement of workplace laws and regulations should begin by appointing highly respected and knowledgeable professionals to direct the key regulatory agencies. These appointments must be made immediately or meaningful change cannot take place before the mid-term election cycle looms. The Administration must signal on Day One a clear break with past enforcement policies and must cope with a number of immediate challenges to its initiatives. (e.g. the negotiation of new labor agreements in the oil refining industry (January 2009) and of multiple labor agreements in the airline industry (2009 and early 2010)).

While budget resources will be limited, there is an urgent need to reverse the cuts in staff and budgets of a number of key agencies (OSHA, Wage and Hour, and others). The increased resources that are available, however, will never be sufficient to do the

job of assuring compliance with, much less upgrading of, our current workplace standards. A new approach to enforcement is needed in which the traditional enforcement tools are targeted on the most egregious violators, and employees, unions, community advocacy groups, and progressive employers are engaged to supplement traditional enforcement efforts. The role of progressive employers is especially key. The “best practices” of these employers should be viewed as industry benchmarks for others to learn from both to upgrade their employment practices and to foster innovation, productivity growth, and improved quality of service.

Better coordination across agencies is also needed. The Secretary of Labor will need to work in close coordination with the various labor agencies—the Federal Mediation and Conciliation Service, the National Mediation Board, the National Labor Relations Board, and the Federal Labor Relations Authority as well as the civil rights agencies—to ensure that they are working without unnecessary duplication and, consistent with their statutory responsibilities, to ensure safe, fair workplaces that promote innovation, productivity and improved service.

Data from individual enforcement agencies should be integrated to make public and transparent information on firms’ compliance records and to showcase employers with exemplary workplace practices. Workers should have an easily accessible “one-stop” complaint capability in which they can access enforcement of their safety, wage and hour, equal employment opportunity, and/or labor relations rights. Federal enforcement efforts need to be better coordinated with state-level efforts.

Finally, labor and employment policy needs to inform and be coordinated with the strategies of other parts of the Administration’s economic, trade, transportation, and health care policies. To achieve its transformational objectives, the Administration needs to follow the example of leading firms that integrate and coordinate their human resource strategies and policies with their key business strategies and policies.

We should hold our trading partners to the same social contract that we establish for the US economy. Trade agreements should both require compliance with the ILO’s core labor standards and require trading partners to demonstrate on an annual or bi-annual basis that average wages are increasing in tandem with growth in labor productivity.

Labor Standards and Trade

The debate over trade needs to be reframed to one that actually embeds a clear and effective means of enforcing and upgrading basic labor standards.

1. We should hold our trading partners to the same social contract that we establish for the US economy. Trade agreements should both require compliance with the ILO’s core labor standards and require trading partners to demonstrate on an

- annual or bi-annual basis that average wages are increasing in tandem with growth in labor productivity.
2. Our government should fund technical assistance (perhaps in conjunction with the ILO) to upgrade the enforcement capabilities of our trading partners. The same enforcement model proposed for enforcing labor standards and regulations in the US should be adopted as part of trade policies, *i.e.*, enforcement of targeted on businesses with the worst records coupled with advice and assistance in upgrading practices that improve performance and labor conditions for those firms demonstrating a willingness to implement such practices and conditions.
 3. US transnational firms should be held accountable for monitoring and demonstrating compliance with minimum labor standards throughout their full supply chains. A number of leading firms have been working with NGOs and host countries to implement codes of conduct and monitoring mechanisms. We can learn from these experiences and hold all US firms accountable for developing and implementing equivalent mechanisms.

Workplace Innovations Strategies to Support Public Investments

The Administration will be investing significant public resources in a number of strategic industries to stimulate job creation—to promote development of alternative energies, repair the nation’s infrastructure, and provide universal, high quality, cost efficient health care. Each of these initiatives requires a workforce strategy to realize its objectives.

1. **Investment in Alternative Energy.** Creation of good, sustainable jobs is an important aspect of these investments along with reducing America’s dependence on fossil fuels and imported oil. We must have in place a workforce strategy to assure that these investments pay off in good, productive, and sustainable jobs. The default result (*i.e.*, if there is no explicit e strategy in place) will be a no-win, predictable debate over prevailing wage or Davis-Bacon rules for setting wages. The Administration will need to be clear that it stands behind and will enforce the principle that these jobs should pay at least prevailing wages. In addition, policies should be put in place to hold business and labor accountable for creating jobs and workplaces that not only comply with all workplace laws and regulations, but that build the knowledge-based work systems and labor management relationships necessary to achieve high productivity *and* high wages. This means requiring those receiving federal funding to respect workers’ right to organize by not using any government funds to deter unionization and holding both management and labor unions accountable for building state of the art high performance workplace relationships and practices. To do so the Secretary of Labor should be authorized to create industry councils to identify, learn from, and diffuse practices needed to build and sustain high performance workplaces. Investment funds should be allocated

and/or reallocated to reward those firms that have state of the art practices in place.

2. **Infrastructure Repair.** The same approach as outlined for investment in alternative energies should be followed for investments targeted for repairing the nation's infrastructure. In addition, where feasible business and labor unions involved in infrastructure repairs should be encouraged to negotiate project labor agreements to promote efficiency, avoid work stoppages, and resolve any representational and jurisdictional issues as they come up. Pres. Bush rescinded the Executive Order authorizing Project Labor Agreements on federally funded projects. The next President should reissue this Executive Order on day one of his Administration.
3. **Health Care Reform.** Whatever health care reforms are enacted will require a well-developed workforce strategy that insures the needed number of well educated and qualified health care workers are available to meet expanding demand. As with the principles outlined for investments in renewable energies there should be a prohibition on the use of federal funds to oppose unionization and provisions to hold employers and unions accountable for engaging and coordinating the health care workforce in ways that improve the quality and control the cost of health care.

Summing Up

If communicated clearly, forcefully, and widely to the public and to the business, labor, NGO, and community groups directly involved in employment relations today, the strategy laid out above would contribute to transforming both the American economy and American workplaces in ways that would create new, sustainable jobs, strengthen our competitiveness, and provide working families a path to a middle class standard of living. But this transformational strategy will require leadership from key labor policy appointees and strong support from the President. The President and his appointees will need to mobilize and bring together all these groups to focus on the objective of making the economy work for the common good. I believe this is not only essential. It is also possible at this unique moment in history, given the broad recognition of the challenges facing the economy in general and working families in particular.

The alternative is to treat labor policy as a backwater—something that needs to be done to satisfy a political constituency but kept at bay from the rest of economic and social policy making in the Administration. That would be a mistake that would frustrate all parties—the President and other Administration policy makers and the labor movement. It would also miss a unique opportunity to change the direction of work and employment policy and, indeed, to change the direction of the economy and the country.

DIRECTIONS FOR AFFORDABLE HOUSING POLICY IN THE NEW ADMINISTRATION

EDWARD G. GOETZ

Abstract

The new presidential administration will find itself facing an historic economic crisis based primarily upon dysfunctional housing finance markets. As foreclosures reach and exceed record levels, this nation's housing policy should be aimed at enhancing housing security and stability for millions of families with low incomes. The Obama administration currently focuses housing policy efforts on protecting homeownership, complemented by increased affordable housing as part of an anti-poverty strategy. This brief expands the view of national housing policy to building access to affordable and stable housing regardless of whether it is rented or owned.

National housing policy has focused on a misplaced attempt to reduce concentrations of poverty, and programs have been halted or underfunded except in the arena of homeownership. However, an overly aggressive expansion of homeownership has hurt the nation, and the risks of homeownership have been greater for low-income families. The U.S. federal government must reassert the importance of rental housing and

acknowledge the need for renewed subsidies for this sector of the housing market. New federal housing policy should focus on the primary objective of ensuring sufficient affordable housing for a growing population, recognizing the role and importance of state and local governments in this policy arena.

Policy Recommendations

A new strategy for affordable housing should enact policies with five basic objectives. 1) The Renewal of the public housing program. This can be achieved through policies that include discontinuing Hope VI; avoiding the demolition of public housing whenever possible; and funding the development of new public housing through a range of financing options. 2) The expansion of federal assistance for rental housing. This requires the preservation of existing affordable and subsidized units; the expansion of the Housing Choice Voucher program of rent subsidies for low-income families; the expansion of rental subsidy programs to create new affordable rental housing; and the reduction of regulatory barriers to affordable housing in suburban communities. 3) An increase in regional housing opportunities. This can be achieved through regional, rather than local, housing authorities; regulatory innovations to encourage local governments to promote affordable housing; and fair share housing programs. More proactive policy could reform regulations to preempt of local regulatory authority. 4) The restoration of balance in federal support for housing. This can be achieved by limiting the mortgage interest deduction and creating an apartment rental income deduction. 5) Support for local housing innovations.

Natural Constituencies

This affordable housing strategy has several basic constituencies. Current renters and owners of apartment buildings will gain from the increased access to this form of housing. In addition, local organizations providing housing innovations will benefit from federal attention. Finally, policymakers and political activists who support voucher programs would support the expansion of such efforts in housing.

Two main groups will oppose these policies: Mortgage lenders and homeowners will be hurt by the loss of incentives for homeownership. Changes to the mortgage interest deduction would be particularly unpopular because of the long history of federal policies promoting homeownership. In addition, local governments that regulate affordable housing will oppose their loss in control over zoning, which is currently one of their least contested powers.

THE NEW PRESIDENTIAL ADMINISTRATION will find itself facing an historic economic crisis based primarily upon dysfunctional housing finance markets. As foreclosures reach and exceed record levels, this nation's housing policy should be aimed at enhancing housing security and stability for millions of families with low incomes.

Our current housing policy is distorted by ill-advised dispersal efforts aimed at displacing subsidized families from their current communities, and by an over-emphasis on homeownership assistance. We need to reorient national housing policy in ways that will make it more effective in achieving housing security and stability for disadvantaged families.

In the past 15 years our national housing policy has been distracted, aimed primarily at shifting subsidized households from place to place in a misplaced attempt to reduce concentrations of poverty. In service to this objective we have demolished thousands of affordable housing units, begun to dismantle the nation's public housing stock, and disrupted the lives and social support networks of countless low-income families. These years have seen not only a wave of policy experiments in dispersing the poor (e.g., the Gautreaux program in Chicago, Moving To Opportunity, and HOPE VI), but also dozens of studies of dispersal's impact. The verdict is in—and for the most part, it is negative. Policies that relocate the poor outside of high-poverty neighborhoods usually fail to improve their economic situation or health, and often disrupt their social support system, creating new difficulties to overcome. The ineffectiveness of spatial solutions to poverty raises the question of just how strong the relationship is between poverty and space or place in the 21st century. Evidence from the 2000 census, for example, shows a decline in concentrated poverty. While this decline is not universal, it certainly reinforces the notion that our policy focus on concentrations of poverty may, in fact, have been misguided. Even at its peak, concentrated poverty was a marginal phenomenon; in 1990 only 18 percent of poor people in metropolitan areas and only 12 percent of all poor people in the nation lived in such neighborhoods. It is hard to argue for a compelling causal connection between place and poverty when more than 80 percent of the poor live in income-integrated neighborhoods. These efforts to displace and relocate assisted households have taken our eye off what should be the real objectives of housing policy, meeting the basic housing needs of millions of low-income families.

Over the same time period, federal housing policy initiatives have been halting or underfunded except in the arena of homeownership. From Bush to Clinton to Bush again, each administration made homeownership the centerpiece of federal housing efforts. One could argue that these efforts were *too* successful. The national rate of homeownership hit an all-time high of 69 percent in 2004. Much of the most recent growth was the result of aggressive expansion into “new markets” through the use of unconventional financing mechanisms and the growth of sub-prime lending. The excesses of the sub-prime market are behind a significant portion of the current foreclosure crisis. In any case, the risks of homeownership have always been greater for low-income families who are a) more likely to purchase homes in lower-cost neighborhoods in which appreciation in home value is least likely, and b) more likely to

purchase at market peaks when financing is more readily available. It is unclear whether the market for homeownership can be expanded much beyond what already exists in the U.S.

Greater housing needs exist within the rental market and among those who depend on rental housing. The U.S. federal government must reassert the importance of rental housing and acknowledge the need for renewed subsidies for this sector of the housing market. One-third of Americans live in rental housing, and at some point in the lifecycle virtually everyone is a renter. Most of the families in need of affordable housing and most families with low and very low incomes are renters.

The U.S. federal government must reassert the importance of rental housing and acknowledge the need for renewed subsidies for this sector of the housing market.

New federal housing policy should focus on the primary objective of ensuring sufficient affordable housing for a growing population. The approaches taken by the new administration should reflect the principle of federal leadership, but should also recognize the role and importance of state and local governments in this policy arena. Federal housing policy should focus on the following five objectives:

1. Renew the public housing program.

Public housing is a critical support for over two million disadvantaged Americans. Two thirds of the households living in public housing contain an elderly person or person with a disability. Contrary to the widespread public image, most public housing in the U.S. is well run, in good condition, and highly valued by its occupants. Waiting lists for public housing remain very long in most U.S. cities. The vast majority of public housing units are well-functioning and they provide an important resource to disadvantaged households. Over the past 20 years, however, the U.S. Department of Housing and Urban Development (HUD) has been systematically disinvesting in this housing stock, primarily through demolition. About 250,000 units have been torn down during this time period.

The flagship program in this regard is the HOPE VI program. This program funds the demolition of public housing units, the displacement of vulnerable families, and the redevelopment of old sites into mixed income developments. These developments typically contain a fraction of the original number of public housing units, and private management practices make it virtually impossible for most of the original residents to come back and live at the new, redevelopment site. This program has become the largest federal bulldozing program since Urban Renewal, and its impact is as racially-disproportionate as was the urban renewal program. Originally created to deal with the most dysfunctional of the public housing stock (originally estimated at around 86,000 units), the program has continued to operate despite demolishing almost twice that many units. Extensive studies of the impact of HOPE VI on public housing families indicates

no consistent benefits across a range of outcomes and in particular no impact at all on the self-sufficiency, earnings, or economic security of residents.

- HOPE VI should be discontinued immediately. Public housing developments that need physical improvements, upgrading, and updating, should be rehabilitated in a manner that ensures the continued occupancy of current residents.
- Demolition of public housing should be avoided wherever necessary. This housing stock is a vital resource that should be preserved whenever possible. Should demolition be unavoidable, one for one replacement of all units should be required (reinstating a policy in place until the mid-1990s), and such replacement should be required prior to demolition.
- The federal government should fund the development of new public housing. It has been many years since net additional units of public housing have been built; it is time to again expand the stock. One virtue of the HOPE VI program was the shift in site design guidelines for public housing units. Older emphases on modernist architectural approaches have been abandoned in favor of more traditional designs that emphasize individualized architectural amenities, the blending of subsidized and market rate units together, and attention to the issue of defensible space. These tenets could and should be incorporated into an expansive program of new public housing development.
- A range of financing options are available for new public housing development, including low-income housing tax credits, debt financing, and direct federal government grants. Experience in the HOPE VI program shows that these options can work in producing public housing.

2. Expand federal assistance for rental housing.

Subsidies for rental housing have suffered over the past 20 years as the focus of federal housing policy has shifted to homeownership. The Joint Center for Housing Studies at Harvard University estimates that nearly half of all renters paid more than 30 percent of their incomes for housing in 2006 and about one quarter spent more than 50 percent. The National Low Income Housing Coalition estimates that we have a shortage of 2.8 million affordable rental units in this country. The next administration needs to renew affordable rental housing efforts. Such an effort would focus on four initiatives: 1) the preservation of existing affordable and subsidized units, 2) continuation and expansion of the Housing Choice Voucher program of rent subsidies for low-income families, 3) expansion of rental subsidy programs to create new affordable rental housing, and 4) the reduction of regulatory barriers to rental, multi-family, and affordable housing in suburban communities of metropolitan areas.

- Preservation of existing affordable units is critical as the subsidies and use restrictions put in place for projects completed 15 to 30 years ago expire. Approximately 350,000 federally subsidized units have been lost in this manner in the past 10 years and close to a million Section 8 units are vulnerable to such conversion in the next several years. Action to preserve these units is essential

in meeting the affordable housing needs of the country. The new administration should support Congressman Barney Frank's, "Housing Preservation and Tenant Protection Act." This draft legislation provides first right of purchase to "preservation purchasers" who will maintain the long-term affordability of units. It also provides for project-based vouchers to maintain affordability, and for the replacement vouchers to be provided for all units in the project.

- The Housing Choice Voucher (HCV) program provides a mobile subsidy that families can use on qualified apartments throughout a local housing market. This program has become, along with the Low Income Housing Tax Credit, one of the two largest programs of housing assistance in the country. Yet during the last administration, funding cuts have forced many local housing authorities to reduce the number of families assisted through the HCV program. As one of the main means of providing rental assistance to low-income families, adequate funding for the HCV program is essential.
- At the same time, the HCV program does not work well in all markets. Tight housing markets with low vacancy rates due to a mismatch between supply and demand for rental housing are particularly unsuitable for HCV subsidies. Families with vouchers in a highly competitive housing market generally find themselves unable to lease up units as landlords choose from among the many applicants without voucher assistance (and thus without the programmatic red tape and requirements that accompany the voucher). More than 30 years of experience with housing vouchers have demonstrated this limitation of the program. Thus, an expanded effort to build more affordable units is necessary in most cities. The Low Income Housing Tax Credit is an important element in this effort and its authorization should continue and the program expanded. The federal government should also initiate additional efforts to subsidize the development of new units of affordable housing. The exact nature of these programs can take many forms, from "project-based" Section 8 subsidies to interest rate write-downs, to tax incentives. Federal and state government experience with such programs date to the 1960s. There are many models that have been used and that could be re-initiated at the federal level.
- The federal government should take steps to ensure that multifamily rental housing is being built in all of the nation's communities. Often, developing suburban areas exclude such housing because of concerns about its fiscal or social impacts. The exclusion is achieved through the creation of regulatory barriers in local zoning and development guidelines. Reducing these barriers would allow a wider range of housing type and affordability in growing suburban areas (see #3 below for more).

3. Support regional housing opportunities.

As the next administration expands affordable housing efforts, care should be taken to create affordable housing options in the suburbs as well as in the central cities of

metropolitan areas. According to the Brookings Institution there are now more poor people living in American suburbs than in our central cities. Most of our population growth continues to take place in suburban areas. It is absolutely critical that these areas make a wide range of housing types and price levels available. Affordable housing options are needed in declining inner-ring suburbs as well as near the job centers emerging in the nation's boomburbs. The federal government needs to play a central role in the elimination of local regulatory barriers to affordable housing and it needs to pursue proactive policies to see that affordable housing gets built throughout all of the communities in metropolitan areas. Ensuring suburban affordable housing options can be accomplished in several ways.

- Restructuring the way in which public housing is delivered locally by making housing authorities regional in nature. Currently, when the federal government dispenses transportation funding to metropolitan areas, it requires that a metropolitan planning organization be in existence to plan for and administer transportation funds. Housing markets are regional in the same way that transportation systems are regional. The allocation of federal subsidies for affordable housing should be coordinated regionally in the same manner that transportation funds are.
 - During the 1960s, the federal government provided for the review of federal grant applications by regional bodies to ensure their compliance with metropolitan strategies. This “A-95” review power, combined with HUD incentive grants for regional planning, led to a brief flurry of activity on local fair share housing programs. The regional authorities, however, were not typically very influential institutions in most regions. Most did not deal directly with the issue of housing and few had the power to compel local compliance with regional initiatives. Though these formal agencies, called Councils of Governments (COGs), provided a necessary forum for discourse on regional land-use concerns, they were not sufficient by themselves to result in local regulatory reform. What made the efforts of these COGs work (when they did work) in relation to affordable housing was the leverage of federal grants for regional development. When those incentives declined, so did regional housing efforts.
- The federal government should pursue policies to encourage local governments to develop affordable housing. Most agree that the state level is the most appropriate place from which to monitor and influence local regulatory practices. The state governments have the power, if not frequently the will, to pre-empt local zoning ordinances, even to develop statewide development controls to affect changes in the ability to produce affordable housing.
 - Regulatory innovations at the local level include density bonuses for the development of affordable housing, inclusionary zoning programs that set aside a percentage of units for affordability, and housing linkage programs that require affordability goals of developers. The techniques to

reform regulatory practices exist in abundance. The question of the appropriate federal role is not so clear. One approach would be for HUD could condition water and sewer grants on a community's progress in allowing and facilitating the development of low-cost subsidized housing within its jurisdiction.

- Fair share housing programs are designed to spread the distribution of affordable housing opportunities throughout metropolitan areas. The federal role here could be to require participation in regional housing agreements for fair share housing of all urban grantees under the CDBG and HOME programs. This would, of course, require a two-step process. First, HUD could provide assistance for a mobilization of those metropolitan areas that do not have regional agreements. Second, CDBG and HOME assistance could be made contingent upon participation in such agreements.
- An alternative approach to regulatory reform would involve the preemption of local regulatory authority in cases where the development of affordable housing is excessively constrained. Several states have initiated such review processes. These can be supported and expanded by the federal government. The mechanism for federal preemption could range from the review of a specific federally-subsidized housing proposal (first recommended by the Kaiser Commission over 30 years ago), to the review of any housing proposal designed to further fair share objectives, to a complaint process available to advocacy groups or developers (so-called “developer remedies”).

4. Re-balance federal support for housing.

The federal government supports housing in two ways; through direct budgetary expenditures (primarily via programs in place at HUD) and through tax expenditures resulting from incentives built into the tax code. The size of the tax expenditures now in place dwarfs actual budgetary expenditures. The single largest tax expenditure is the mortgage interest deduction. It was estimated to be \$76 billion in 2006. The majority of these expenditures go to wealthier households; one-half of the benefits are taken by just 12 percent of the wealthiest tax payers. These benefits are taken by homeowners and not renters; they increase with the size and cost of a family's home; they are claimed only by those who itemize deductions in their federal income tax. All of these features ensure that the mortgage interest deduction is a substantially regressive use of federal resources. Furthermore, studies reveal no evidence that this feature of the tax code has any impact on the rate of homeownership in the country.

- The mortgage interest deduction can and should be significantly limited, freeing up revenues that could be put to better use in many of the programs outlined above. Limits could be pegged to the size of the home, the value of the home or the income of the taxpayer claiming the deduction. All of these would help address the most regressive element of this nation's housing policy.

- Apartment rental income should be a deduction from taxable income in order to treat apartment income exactly like the housing service flow provided by an owner-occupied house. Because households for which rental is preferred may tend to be disproportionately low and moderate income, tax policies that penalize home rental are regressive in nature. But mortgage interest deductibility is not actually a subsidy for home ownership, even if for no other reason than that apartment landlords also can take out mortgages on apartment properties and can deduct the interest costs of those mortgages from their otherwise taxable income. Rather, differential income tax treatment between owner versus rental housing in the U.S. is not any sort of tax subsidy at all, but rather a tax penalty, on rental housing. The penalty is quite large, on the order of one-quarter to one-third of the entire cost (or value) of the housing in question.¹

5. Support local housing innovations.

Since the 1980s when federal housing subsidies were first slashed by over 80 percent, state and local governments have initiated a long list of innovative approaches to building affordable housing. Community land trusts, local housing trust funds, and anti-gentrification tax programs are among a long and growing list of initiatives emerging at the local level in states across the country. The federal government should establish a way of recognizing and rewarding local innovations in housing assistance. Local governments that devote own-resources to housing assistance or that innovate through new program development should be rewarded through existing grant programs such as CDBG or HOME, or rewarded through a newly created grant program devised specifically for this purpose.

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¹ For a complete development of this economic model and quantitative analysis, see David Geltner's paper: "The Income Tax Penalty on Rental vs Owner-Occupied Housing: An Argument for Apartment Rent Tax Exemption"

MAKING THE HEALTH CARE SYSTEM HEALTHIER

BOB MASTER AND
PAUL ALEXANDER

Abstract

The president-elect has indicated that health care is a top priority for his administration. He has committed to the goal of providing affordable, accessible health care for all Americans through tax credits, changes in employer provided insurance, and the creation of a National Health Insurance Exchange. Obama also hopes to lower health care costs using a variety of policies, although this is a lower short-term priority. This brief argues that the fundamental goal of healthcare reform is achieving equilibrium between not only healthcare cost and access to care but also greater quality.

Changes in this system should be transformative in terms of improving quality, access, equity and reducing costs. Moreover, immediate policy should focus on quick and meaningful cost control to pave the way for achieving long-term goals including universal entitlement and the elimination of health disparities. The critical place to start healthcare reform is a new vision for Medicare, which is the single most effective vehicle for change that exists in the American Health Care scene. Reform must also introduce

and incorporate a national dialogue that identifies value within the system. In addition, the Food and Drug Administration must restore its credibility and establish a new relationship with the pharmaceutical industry. Finally, a national health promotion and prevention initiative should expand programs promoting diet, exercise, nutrition, and early screening. These efforts can provide the basis for long-term change to restore a high quality, cost effective delivery system accessible to all Americans.

Policy Recommendations

The next administration should focus its health care policy on Medicare, reform of the FDA, and a national health promotion and prevention initiative. Four basic Medicare changes are critical for reducing health care costs while providing equitable access to care. Medicare needs to be a competitive option to private health insurance for employers, because it is a more cost effective option than alternatives. To make Medicare even more affordable and to improve its efficiency and quality, negotiated Part D drug prices is essential. The fragmented care delivery systems of Medicare and Medicaid should be resolved through a policy for dual eligibles that is aligned and tightly integrated with the promotion of the right kind of Medicare Advantage Special Needs Plans for this most medically and socially complex subset of beneficiaries. Finally, many Medicare payment policy changes are needed in addition to promote efficiency and quality.

The FDA needs to reestablish its credibility through policies that reassert its effective authority. Legislation should grant the FDA that authority, to be complemented by additional staff and fellows from various fields, funding to update software systems, and overseas offices to regulate products before they are imported. Finally, national health promotion and prevention programs that focus on diet, exercise, nutrition, early screening should be expanded. These efforts promote a healthier society and can reduce the long-term costs to the health care system.

Natural Constituencies

Unemployed Americans, households struggling to pay insurance premiums and uncovered medical costs, seniors enrolled in Medicare, and employers hoping to offer affordable health insurance benefits to workers are all invested in the reduction of health care costs.

Pharmaceutical companies will strongly opposed both Medicare negotiating drug prices and an improved regulatory capacity for the FDA. In addition, this proposal attracts opposition from those who prefer to support the market as a way to reduce health care costs and improve quality care.

THE FUNDAMENTAL GOAL of healthcare reform is achieving equilibrium between healthcare cost, quality, and access to care. The focus of both campaigns has been cost and access to care. However, with the current economic system the priorities related to healthcare reform should shift to more incremental change leading to substantive reform.

Hospitals and health systems throughout the United States are trying to maintain their balance against buffeting financial pressures, with one eye on rising clinical costs and

The core question for the next administration's healthcare policy is this: **How do we quickly and meaningfully achieve cost control?** If we do not have the will to achieve this, then everything else that we want such as universal entitlement and the elimination of disparities, will be a fantasy.

the other on shrinking payments. CFOs and other leaders live daily with the “on the ground” realities of those pressures, while the larger healthcare policy debate continues to focus on big picture issues, such as financing mechanisms, infrastructure, quality, and access. Missing from the big and the day-to-day pictures, however, is a concept still largely alien in health care: value. How do we identify value, and how do we ensure that patients, payers, and providers neither endure, pay for, nor deliver care that has no value? At a time of ballooning costs and finite resources, maximizing value in health care is clearly an economic imperative.

What is less recognized is that it is an ethical imperative as well. Do You Really Get What You Pay For?

Essential to any healthcare reform proposal will be a national dialogue on the “value” of care. When you consider cost shifting, price controls, tax credits and the changing roles of employers as payers the healthcare value proposition will be challenged. This will be both a personal and national conundrum.

The next President needs to engage in a national dialogue with consumers on the value of healthcare – this will be critical to ensuring that all stakeholders make the choices and sacrifices necessary for successful healthcare reform.

Policy Recommendations

The core question for the next administration's healthcare policy is this: How do we quickly and meaningfully achieve cost control? If we do not have the will to achieve this, then everything else that we want such as universal entitlement and the elimination of disparities, will be a fantasy. The short term priorities of the Obama administration should be as follows:

- Medicare Reform
 - Ensuring quality and access for baby boomers and seniors
- FDA Reform
 - Ensuring safe and effective medications through increased oversight

- National Prevention Initiative

Medicare Reform

The critical place to start healthcare reform is a new vision for Medicare, which is the single most effective vehicle for change that exists in the American Health Care scene today. The current program is in jeopardy and represents a cost of more than \$425B annually for taxpayers. There should be a careful analysis of the Rx Drug Benefit under the current Medicare System as well.

Both Presidential nominees have indicated that they want to reform the current Medicare system. Many experts estimate between \$20B - \$40B (conservative estimate with some estimates over \$100B) in savings that can be achieved through running a more efficient program; these resources will be essential to funding healthcare reform for the next administration.

This new vision includes the following:

1. Medicare needs to be a competitive option to private health insurance for employers. In 2009, we will likely see the uninsuring and under insuring of American workers at an alarming rate as the recession takes hold. Medicare with its very low administrative expense ratio, current reimbursement approaches and anticipated future payment policies, is a much more cost effective option to employers and workers, and thus must be a part of a "choice option" for employers and their employees, to commercial insurance products and Health Savings Accounts. Otherwise there is no way that we will end once and for all, unsustainable cost escalation, wage suppression, and indefensible disparities in the cost and covered benefits offered by commercial insurance.
2. To make Medicare even more affordable and to improve its efficiency and quality, negotiated Part D drug prices is essential. Medicare has the purchasing power to set prices much like Canadian provinces, or European single payer systems. Medicare needs to be unshackled to use that purchase power, as an alternative to the bewildering array of current Part D pharmacy vendors, with its layers of administrative complexity and cost.
3. Medicare and Medicaid policy for dual eligibles needs to be aligned and tightly integrated with the promotion of the right kind of Medicare Advantage Special Needs Plans for this most medically and socially complex subset of beneficiaries. Only 15% of Medicare beneficiaries are dually eligible for Medicaid because of income status or disability. However, because of their social and

The critical place to start healthcare reform is a new vision for Medicare, which is the single most effective vehicle for change that exists in the American Health Care scene today.

medical complexity, they account for nearly 40% of Medicare expenditures. The same dually (Medicare and Medicaid) eligible beneficiaries are also the state Medicaid "budget busters" accounting for 40-52% of state of Medicaid expenditures nationwide. The lack of Medicare/Medicaid financing and program integration perpetuates fragmented care delivery systems, with missed opportunities to promote accountable delivery systems, primary care medical homes and the systematic ability to substitute lower cost home and community care for hospital or nursing home care. The creation of an integrated Medicare and Medicaid, financing, quality monitoring and contracting vehicle can go a long way to redress this set of circumstances. The Commonwealth Care Alliance experience for dually eligible seniors, in the Massachusetts Senior Care Options program, demonstrates the potential power of this integration to improve quality and reign in costs.

4. Many Medicare payment policy changes are needed in addition to promote efficiency and quality. Without getting too much into the weeds, two of these include: 1) pay for performance measure to reduce medical errors and suboptimal processes of care. 2) episode of care, payment approaches that bundle hospital, specialists and post hospital nursing home service payments to reduce discontinuity and inappropriate hospital readmissions, with its human and financial costs.

Medicare is the most potent lever for change that we have today. It can be transformative in terms of improving quality, access, equity and reducing costs. It is a lever that only awaits the appropriate political will. "In crisis, there is opportunity."

FDA Reform

There is a perception of crisis that has compromised the credibility of FDA and of the pharmaceutical industry. Critics say the FDA regulators need more distance from the drug companies. But those who speak for the drug makers continue to warn that excessive oversight slows the process of having new drugs for needy patients. Most stakeholders-- the agency, the industry, consumer organizations, Congress, professional societies, health care entities--appear to agree on the need for certain improvements in the system.

The FDA has been under intense scrutiny over the past few years and as a result has begun to transform the way in which they regulate the pharmaceutical and life sciences industries. Gone are the days of fast track approvals and dozens of NDAs. The threshold for safety has also increased dramatically in the midst of such disasters as ENHANCE, VIOXX, AVANDIA and CELEBREX. Senior congressional leadership has taken on the transformation of the FDA as their central healthcare position and as a result the landmines are numerous.

In Feb of this year, The National Press Club hosted Food and Drug Administration (FDA) Commissioner Andrew von Eschenbach to speak on the future of the FDA. He spoke highly of his agency calling it the “gold standard” for health regulation.

Eschenbach’s speech followed a consistent message revolving around a single theme: change. He told the participants that developments in medicine and food production are forcing the FDA to adapt to the world’s changing technologies. He said that the FDA was established a century ago to protect consumers from the dangers of ill goods but that the FDA of the 20th century is not adequate to face challenges in the 21st century posed by cloned animals, genetically modified crops, and medicines that can alter biology (e.g. regenerative medicine – some are calling the vanguard of 21st century healthcare). We are on the cusp of a worldwide explosion of activity in this rapidly growing field of biomedicine that will revolutionize health care treatment – especially with ’09 opening to follow-on biologics. In order to confront the challenges of this new age, Eschenbach said that the FDA needs to be “recreated.”

According to Eschenbach, this year the mandate was:

- 700 new officials to be hired as additional FDA
- Launch a fellowship plan to recruit 2,000 people from various fields to receive FDA training.
- \$250 million spend to update software systems and expand their electronic database
- FDA offices overseas beginning with China to regulate products before they are shipped to the U.S.

In order to accomplish these goals, Eschenbach called for Congress to pass legislation granting the FDA increased authority. He also asked for the public’s support and said that industries must accept strong corporate responsibility for the goods they produce. In Fiscal Year 2009, Eschenbach has asked for \$2.4 billion to protect and promote the safety of the American public.

National Prevention Initiative

Diet, exercise, nutrition, early screening and prevention have all be directly linked to better health outcomes. In addition, prevention is directly linked to significant cost savings on the long-term healthcare system. Central to any healthcare reform initiative will need to be a comprehensive health promotion and prevention effort. This effort would include all stakeholders (employers, payers, providers, patients, patient advocates, etc.) to get serious on prevention starting with nutrition, diet and exercise. Particular important are investments in public health measures that promote health and reduce disease relating to tobacco use.

Long term Goals

Primary care is being decimated and its restoration, empowerment and enhancement is

essential for a high quality, cost effective delivery system. Healthcare quality can be improved through innovation and more effective dissemination of medical knowledge. The following actions can promote this change:

- Change the healthcare delivery model to emphasize integrated care coordination in a continuous learning environment
- Establish nationwide health information connectivity between health care providers to improve both the efficiency and quality of care
- Increase patient health literacy and provide consumers with information essential to making sound health care choices

SECTION FOUR:
**RE-IMAGINING
CITIZENSHIP**

The contested realms of civil rights have advanced significantly over the past fifty years. Yet, over-incarceration of black and brown men, disenfranchisement of felons, racial profiling and criminalization of immigrants, voting discrimination and ongoing racial barriers in higher education, as well as census undercounting of minorities, continue to create major structural barriers to full participation. These barriers pose urgent threats to the full scale citizen engagement required now to make the changes this country needs.

At its core, a transformative civil rights program will encourage Americans to expand and re-imagine their ideas about membership in our society and the mutual benefits and responsibilities that attend that membership. The Obama administration's civil rights platform-- combating hate crimes, gender and race-based employment discrimination and deceptive voting practices, and eliminating race-based sentencing disparities—are important measures to address some of the barriers. But they represent a piecemeal and reactive approach rather than a forward looking, proactive strategy for fundamental change. After eight years of an administration hostile to many core concepts of civil rights and profoundly out of touch with the plight of the least advantaged in our society, we urgently need a full-scale examination of the ways in which exclusion and inequality are embedded in laws, regulations and institutional culture and practices. While examining race permits us to see many critical barriers, race alone cannot explain the complex dynamics that produce inequality in American society today. Incorporating the interaction of race, class, gender, immigration status, sexual orientation and other factors also contributes to a framework for civil rights that generates potential for broader alliances. For example, the Texas 10% Plan in higher education—providing automatic admission to the flagship University of Texas schools to any public high school student graduating in the top 10% of the class—not only measurably increased admission of African American, Latino and rural white students but also created unprecedented opportunities for high-achievers from each of these groups.

This effort requires long-term vision coupled with immediate action. Short-term measures should include consultation with civil rights leaders and members of Congress to help agency heads understand the concerns of minority constituents. Creating more sophisticated data collection mechanisms within the GAO, OFCCP and other agencies will enable more effective measurement of employment discrimination, voting rights violations and hate crimes, and will also provide the Obama civil rights

program with more finely-tuned information about the complex dynamics of exclusion today. Success will be measured by the depth and breadth of a reinvigorated public database on relevant measures of exclusion. Measurably increasing public funding for census preparations will help ensure that the most vulnerable members of our national community are not overlooked. Longer-term innovations to strengthen civil rights enforcement could include promoting a community consultation and engagement approach to the legislative, litigative and administrative efforts of the Civil Rights Division of the Department of Justice, the Office of Contract Compliance, and other federal agencies responsible for civil rights enforcement. Engendering a high level of transparency and communication will enable agencies to learn from citizen experimentation rather than simply issuing decrees. Success with such initiatives could be measured by an increase in the number of citizen consultations and a growing body of information about promising practices that begin to shape civil rights enforcement. Building on the unprecedented levels of community engagement and interest in voting stimulated by the Obama campaign, support for the Advancement Project's efforts to constitutionalize an affirmative right to vote would expand the range of protections available to at-risk voters.

Painful conflict over immigration policy has highlighted that citizens are not the only members of our national community. Domestic immigration policy should extend legalization and paths to citizenship to undocumented workers. Indeed, it is likely that the only realistic approach to securing US borders is trade policy that helps increase economic opportunities and enforcement of international labor standards through the ILO in Mexico and other sending countries.

These briefs offer a starting point for expanding civil rights, setting youth on a positive path for civic engagement, and setting new standards of mutual responsibility for all members of our society regardless of minority status.

TRANSFORMATIVE THINKING IN THE CIVIL RIGHTS DOMAIN

LANI GUINIER AND GERALD TORRES

Abstract

Structural exclusion operates at many levels. The salience of race permits us to see the obvious barriers but it alone does not explain the complex dynamics that produce the inequality that we observe. Harms that disproportionately affect people of color allow us to identify the existence of a problem. However, we will be misled if we proceed just based on evidence of racial exclusion. Preoccupation with such evidence alone may ignore the interaction of race and class; it may undermine the potential for developing cross-racial alliances; it may obscure the ways in which the inequality is embedded in the structure of institutional culture and practices.

The Obama administration's civil rights platform-- combating hate crimes, gender and race-based employment discrimination and deceptive voting practices, and eliminating race-based sentencing disparities—are important measures to address some of the barriers. But they represent a piecemeal and reactive approach rather than a forward-looking, proactive strategy for fundamental change. After eight years of an administration hostile to many core concepts of civil rights and profoundly out of touch

with the plight of the least advantaged in our society, we urgently need a full scale examination of the ways in which exclusion and inequality are embedded in laws, regulations and institutional culture and practices.

Transformative thinking in the civil rights domain rejects the idea that now is the time to transcend race. At the same time it does not focus solely on race. The approach identifies and explains larger problems of structural inequality and then builds the collective will to address them. Solutions are dynamic and transparent. They cannot be considered effective if they ignore the complex of contributory factors, distract attention from the problem they were originally designed to redress, or create new problems that undermine the justification for the intervention in the first place. Rather than entrenched and automatic responses, provisional approaches are proposed that are continuously reconsidered in light of experience and new information. Diversity must be conceived as a group phenomenon: Impacts on communities as well as individuals must be considered. To be most effective, Inclusive policies must be aligned with the democratic missions of public institutions.

Policy Recommendations

Federal policy should:

- Encourage experimentation within colleges and universities to determine effective ways to address exclusion in particular contexts
- Reward national service by subsidizing tuition at private institutions of higher education not just public colleges (as with the new GI Bill).
- Encourage private colleges and universities not just to admit more veterans at the same time that they develop a less individualistic learning environment so that those with diverse life experience can thrive.¹
- Re-emphasize the importance of institutional outputs not just individual inputs in higher education;
- Shrink the importance of selection effects (reducing the role of high stakes testing to rank and sort individual applicants); and
- Expand the significance of treatment effects (the institutional climate, the learning environment and the commitment to developing diverse problem solving teams among faculty and students).
- Whereas in the context of higher education federal policy should encourage local experimentation to generate new models of access and opportunity, in the voting context federal policy needs to establish a baseline of uniformity.
- Constitutionalize the right to vote as an affirmative federal right rather than as a creature of state law that is protected primarily in the negative.
- Situate legislative, litigation, and administrative efforts of the Civil Rights Division at DOJ, Office of Federal Contract Compliance, etc in an organizing environment.
- Emphasize transparency and engagement where agencies learn from citizen experimentation rather than just making decrees.

¹ See infra notes 12 and 16 (describing the role of peer support to help veterans, used to functioning as a team, navigate college life with its highly individualistic focus).

- Meet with national civil rights leaders and members of Congress to understand their concerns and priorities.
- Create forums for brainstorming and deliberation that are transparent and publicly legitimate.
- Consider the Legislative Agenda for Strengthening Our Nation’s Democracy that was initiated by Demos, America Speaks and Everyday Democracy. Its recommendations include:
 - committing to universal voter registration for all eligible Americans, beginning with Election Day Registration for all Americans, and full implementation of the National Voter Registration Act.
 - adopting a broad set of voter-convenience measures such as early voting and vote by mail,
 - and developing national standards for election administration.
- Support the Advancement Project’s effort to constitutionalize an affirmative right to vote
- Develop racial and gender data collection mechanisms that are appropriate for complex systems
- Avoid reducing data collection to simple box checking
- Use data collection as a source of feedback not just enforcement [i.e. learn from and modify programs in response to data rather than simply use data to coerce outcomes]

Natural Constituencies

An expansive approach to social inclusion that uses race as a lens to examine structural dilemmas has the potential to vastly expand constituencies for social justice by helping people understand the connections between their own group interests and concerns and those of others.

For those who have been playing by the existing remedial frameworks of civil rights, innovative challenges can create a significant threat to their positions. Thus, for example, middle class African Americans living in majority white neighborhoods were wary of the Texas 10% Plan, which organized admission benefits to the University of Texas at Austin according to the highest levels of racial segregation.

IN THIS DOCUMENT we aim to present a transformative cross-racial (but not post-racial) perspective for civil rights enforcement that starts with a coalition-building and democracy-enhancing *framework*. We then apply the framework to three *policy ideas*—*equal educational opportunity, civic participation and racial data collection*. We conclude with an approach to *implementation* that embodies the participatory values of the initial framework. Under girding the framework, the policies and their implementation is a basic yet potentially counter-intuitive move to redefine without repudiating the use of race. Our analysis starts with race and rejects the idea that the time has come to transcend race. Yet our focus on race is NOT in fact a preoccupation with race. Race, for us, is a diagnostic tool. It telegraphs problems that others also confront; it makes visible problems that are otherwise hidden. We propose a new way of looking at race, a 21st century way of looking at race that is not special interest pleading but is not color blind either. It uses the lens of race to SEE what is happening under the surface to everyone.

Because of time constraints, what follows is primarily illustrative. It is not comprehensive.²

It is imperative to frame contemporary challenges in ways that reach out to include more people than the conventional civil rights constituencies. The goal is to encourage all Americans to see their fates as informed by and linked to the fates of people of color. And, conversely, people of color need to be as invested in reducing inequities associated with class and gender as they are in questions of racial disparity.

We have found the miner's canary metaphor useful to explain this move to *linked fates*.³ Like the canary in the coal mines, blacks and Latinos have a more "fragile" respiratory system. Barack Obama observed this phenomenon when he declared while stumping in Iowa in November 2007, when white Americans get a cold, blacks and Latinos suffer from pneumonia.⁴ This is precisely why the miners took the canary with them – when the canary gasped for breath it served as an early warning signal that the atmosphere was becoming too toxic for the miners, not just the canary. The vulnerability of those who have historically been marginalized (whether by race, gender or sexuality) is thus a source of knowledge because their vulnerability and visibility allow us to "see" what is often otherwise hidden. Watching the canary exposes social, cultural and structural mechanisms that may otherwise be concealed or naturalized as individual failings.

² We have additional factual and empirical documentation to support the claims we make in this brief report. We have not included all of the documentation here in order to get the report to you in a timely fashion. If it becomes appropriate, we will, of course, include more support for our claims.

³ Lani Guinier and Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (Harvard University Press 2002)

⁴ Email from Danielle Gray to Lani Guinier, Nov. 29, 2007

Many white Americans see the vulnerability of the canary as the canary's problem for which the rest of us bear little responsibility. From this perspective, the response to distress is to blame and then at some point "fix" the bird, or blacks and Latinos, to bring the analogy back to race. The result is to stigmatize individuals for the deeper social ills reflected in their conditions, rather than to view them as the early warning signal that they are.

The problems of blacks ultimately cannot be solved without addressing the fundamental problems that afflict others who are similarly situated even though they do not bear the additional stigma of racially-based human bondage. **The bottom line is that those who are most aggrieved still need allies not just patrons.**

It is not just the perspective of white Americans, however, that needs to change. Many civil rights advocates are still captive to a 20th Century Jim Crow logic that constrains them to voicing their concerns as individual complaints or group-specific

grievances. People of color, including blacks, are beginning to understand that the challenges of the 21st Century are not just about race. The new challenges require changes in the basic way that people of color articulate their concerns to become part of a larger cause. African Americans and others may legitimately understand the struggle from slavery to freedom as unique. Yet, the problems of blacks ultimately cannot be solved without addressing the fundamental problems that afflict others who are similarly situated even though they do not bear the additional stigma of racially-based human bondage. The bottom line is that those who are most aggrieved still need allies not just patrons.⁵ They need to be part of networks and coalitions that contribute to a more dynamic understanding of structural problems.

In other words, issues of racial justice cannot be divorced from issues of class and gender and geography.⁶ Nor can the solution to the problem of race in America be addressed simply by overcoming or merely reducing the prevalence of individual bias. The issue of race in the 21st century is more complex than the prejudices of discrete individuals, although, as the works of social and cognitive psychologists demonstrate, unconscious racial bias is widespread.⁷ Moreover, the existence of unconscious racial bias still very much matters because, among other things, it allows race to be used to distract our attention from what we have in common: a criminal justice system that locks

⁵ Guinier and Torres, *supra* note 2 At 127 – 128 (separate groups of Vietnamese and Latinos in California joined in coalition to challenge a school district's disciplinary assumptions and policies but only after competing grievances that were borne out of identity politics were neutralized when the questions were framed as a collective challenge); See *also Id.* at 131 – 138 (summarize Nelson Johnson story with K-Mart); (283-294 (The Role of Allies)

⁶ See Emily Bazelon, The Next Kind of Integration, New York Times Magazine July 20, 2008 at http://www.nytimes.com/2008/07/20/magazine/20integration-t.html?_r=1&ref=magazine&oref=slogin (describing mapping in Louisville, Kentucky that demonstrates the interacting relationship between class, race and geography).

⁷ Cite Mahzarin Banaji, <http://chronicle.com/temp/email2.php?id=mmrXFphjqF2csRdhtQW3jdnxcWkqFRb> (describing the findings of the implicit association test administered to millions of Americans)

up more people than any other country; that has become the major instrument of urban policy in too many cities, and that throttles our ability to fund higher education because building and maintaining prisons take priority in state budgets. The disparities in the criminal justice system obviously affect blacks and Latinos, particularly young black and Latino men. BUT the misallocation of resources is also having painful impact on poor whites in rural America who are also not getting a shot at the American Dream. The same argument is true about education -- the dominant perception is that urban blacks are the ones failing in bad schools but rural whites are also not performing well or going on to college.

A transformative framework for civil rights requires an approach that identifies and explains larger problems of structural inequality and then builds the collective will to address them. Solutions need to be dynamic and transparent; it is not enough simply to meet fixed and predetermined goals. The process of change should also be self-reflective. At each stage it is imperative to examine and invite criticism in order to learn from mistakes. The remedies should be experimental, with a willingness to deviate from articles of faith in order to consider innovative interventions as well as to encourage alternative approaches at the local level. At the same time, the enthusiasm for bottom-up democracy requires basic, uniform and nationally enforced commitments to fundamental rights.

Most importantly, although solutions necessarily will be experienced at an individual level, long-term success cannot be evaluated without also considering effects on communities as well. For example, it makes no sense for a university to proudly claim there are many diverse individuals in its entering class. It is the class itself -- as a class -- and not the individuals in the class -- that is diverse. And it is when the diversity of the class is consciously constructed in the service of the institution's public mission that diversity will help the institution realize that mission as well as the needs of our democracy. In the same way that an orchestra produces more music and more power than the individual musician, the individual is made stronger by recognizing the linkages each has to one another. The individual does not disappear. The individual's unique qualities are augmented and highlighted.

Policy Implications

Equal Educational Opportunity:

The current admissions process for higher education utilizes a ranking system presumably based on individual merit. Blacks and Latinos do not tend to perform as well as whites on these conventional metrics of individual success such as the SAT, the ACT or the LSAT. Using the frame of the miner's canary, however, we discover that what initially appears to be a racial problem is actually a much more complex sociological phenomenon that disadvantages applicants based on class and geography, not just race. Within each race and ethnic group, as parental income goes up so do test scores. Indeed, poor and working class whites, as well as residents of rural communities, do not

perform as well as suburban whites on these tests either. The standard metrics of individual merit don't test individual merit as much as they reveal cross-generational and inherited privilege that is often manifest as material wealth and cultural capital. At the same time, these scores are better indicators of parental income and educational background than they are predictors of future student performance.

For these reasons, affirmative action has been an important tool to level the playing field. But the practice of affirmative action comes with many costs. It is viewed as an exception to, rather than a component of, merit. Its visibility obscures the larger injustice being done by conventional merit metrics. Because the conventional metrics are presumed to be objective, affirmative action beneficiaries are often resented and stigmatized. The greater tragedy is when affirmative action beneficiaries internalize the stigma.

We propose an alternative way to level the playing field to make higher education accessible to a truly representative group of future leaders and citizens. But the alternative is not to move from a race-based program to a class-based program. We are opposed to any single factor trumping another when in fact race and class are both closely tied and neither alone is a proxy for the other. In fact, research findings suggest that the core problem is actually intergenerational disadvantage, which is not captured by looking only at race or only at class.⁸ Nonetheless, race remains such a salient feature in our society that we cannot ignore it entirely in favor of a preference for supposed neutrality. Finally, the problem of individual merit functioning as a stalking horse for wealth goes to the heart of the admissions process itself and cannot be cured by any marginal set of preferences.

Instead, we propose to use the lessons of race to fundamentally shift the conversation away from fiddling with the metrics of *individual merit* in order to spotlight instead the larger problem of whether universities are manipulating the selection process to enhance their reputations while avoiding their democratic responsibilities. We need a full and honest discussion about how the mission of the university in our democracy can best be served by focusing on the creation of a diverse student body and a faculty prepared to educate them for the challenges of the 21st Century. By diverse we mean diverse by race, by class, by geography, by gender, and other criteria as well. However, we do not advocate assessing individuals on their so-called individual "diversity." Instead, we encourage institutions to see diversity as a group phenomenon that is 1) a problem-solving asset, 2) a team building incentive structure and 3) an educational benefit.

As a problem solving asset diversity has what Scott Page calls "toolkit logic."⁹ People who think alike, Page says, "get stuck." Indeed, collective diversity, in Page's view, trumps individual ability. Page argues that we should view people as "collections of

⁸ See Emily Bazelon, *The Next Kind of Integration*, and *New York Times Magazine* July 20, 2008 at http://www.nytimes.com/2008/07/20/magazine/20integration-t.html?_r=1&ref=magazine&oref=slogin (describing experimentation in Louisville, Kentucky using a class plus race formula for mapping disadvantage geographically rather than individually).

⁹ Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies*, 361-62 (2007)

tools,” and our goal should be to put together a collection of people with as many tools as possible to encourage innovative problem solving.¹⁰ By viewing diversity as crucial to building problem solving teams that won’t get stuck in the same place over and over, institutions can begin to realize their larger goals at the same as they better prepare individual students to participate and collaborate in an increasingly complex, heterogeneous democracy.

Thinking about diversity as a group phenomenon carries a special benefit as a team building incentive structure for people coming from very different environments, such as black or Latino graduates of inner city high schools¹¹ or white veterans who served in Iraq.¹² When faced with an unfamiliar situation, individuals who feel out of place or experience a loss of confidence may retreat or give up. When they are able to share feelings of social isolation with others who are similarly situated, it can create what is called the “posse” effect – the camaraderie, affirmation and collective purpose that reinforces a sense that they belong after all. But while team building can benefit people of color and veterans (of all colors), it is equally important to prepare the larger group of students to learn collaborative problem-solving.

As a pedagogical approach, diversity in the classroom promotes learning and critical thinking. The exchange of different perspectives forces students and faculty to re-examine deeply held assumptions. It also helps students and faculty to enhance their communication skills, by training them to reach across differences to convey their ideas.

We propose a shift from a race-based affirmative action program that focuses on individual access to higher education (providing a “preference” or second look for individual people of color) to a mission-driven focus on democratic institutional responsibilities. Affirmative action is vulnerable to the extent it is presented as an exception from merit. But we propose a framework in which our attention moves from *private merit* to *democratic merit* and in the process diversity becomes an essential element of merit not its enemy.

Both *private merit* and *democratic merit* are similar in that they attempt to ascertain a valuable or worthy dimension of an activity or set of actions. They both seek to reward *actions* that a society values. Private merit and democratic merit, however, differ in the level at which they assess those actions in conjunction with those values. In private

¹⁰ Id. Page gives the example of three people taking a test as part of the competition for two open slots on a research team. The conventional approach is to rank order the applicants, Spencer, Jeff and Rose by the number of correct answers each provided. But Page argues that it is important to view the three people as a group not an unrelated collection of individuals. Thus, if Spencer and Jeff -- the two top scorers --each got the same questions wrong, it might do better to hire the top scorer (Spencer) and Rose (the person who came in third) if Rose actually got right all the questions that Spencer got wrong.

¹¹ See discussion, *infra*, of Posse Foundation.

¹² Lizette Alvarez, *Combat to College*, New York Times Education Life Section, Nov. 2, 2008 at <http://www.nytimes.com/pages/education/edlife/index.html> (“veterans of the Afghan and Iraq conflicts are used to working as a team, looking out for their buddies, following orders. College – *my* homework, *my* grade, *my* dreams – is a whole different world”).

merit, competition between two individuals yields a ranking based on the merits. This is not the case in *democratic merit*. Indeed, democratic merit –unlike private merit -- is not possessed or owned by individuals. Nor is it ranked on a single, uniform metric.

Instead, the basis for a democratic merit judgment is an institutional or community level assessment of the social, political or public value of the activity or actions *in the aggregate* and *in the relevant local context*. Private merit is a principle that claims to reward people for their individual achievement. In fact, it actually tends to reward people for their inheritance. Democratic merit is a principle of collective decision-making whose purpose is to create an incentive structure that aligns institutional actions with a democratic mission.

Some examples of democratic merit involve:

Rewarding service, e.g. GI Bill¹³

Texas Ten Percent Plan, rewarding hard work and assuring representation statewide by class, race and geography¹⁴

Clark University Park Campus School – admitting students by lottery to a school that emphasizes low stakes writing as a vehicle for developing critical thinking skills; the focus shifts to the treatment effect and away from the selection effect¹⁵

The basis for a democratic merit judgment is an institutional or community level assessment of the social, political or public value of the activity or actions *in the aggregate* and *in the relevant local context*.

¹³CECILIA CAPUZZI SIMON, The New G.I. Bill: A Primer, New York Times Education Life Nov. 2, 2008 at http://www.nytimes.com/2008/11/02/education/edlife/GIBILL-PRIMER.html?_r=1&oref=slogin&pagewanted=print; Gerald Torres, The Elusive Goal of Equal Educational Opportunity in *Law and Class in America* 331, 341 – 348 (Paul Carrington and Trina Jones eds. NYU Press 2006); Lani Guinier, Admissions Rituals as Political Act: Guardians at the Gates of Our Democratic Ideals, 117 Harv. L. Rev. 113, 161-162 (Nov. 2003).

¹⁴ See, e.g., <http://www.house.state.tx.us/media/chamber/80.htm> (House debate on Senate Bill 101, Conference Committee Report, May 27, 2007; coalition represented here by Rep. McReynolds, representing a rural white constituency, Rep. Helen Giddings, a black legislator from Dallas and Rep. Alonzo, also from Dallas rise to speak in defense of the ten percent plan and succeed in thwarting effort to cap the program); Lani Guinier and Gerald Torres, The Miners Canary 72-74; 94-96; 106-107 (2002); Lani Guinier, Admissions Rituals as Political Act: Guardians at the Gates of Our Democratic Ideals, 117 Harv. L. Rev. 113, 161-172, 216-219 (Nov. 2003); Gerald Torres, The Elusive Goal of Equal Educational Opportunity in *Law and Class in America* 331, 341 – 348 (Paul Carrington and Trina Jones eds. NYU Press 2006)

¹⁵ Lani Guinier, Admissions Rituals as Political Act: Guardians at the Gates of Our Democratic Ideals, 117 Harv. L. Rev. 113, 214-216 (Nov. 2003); cf Malcolm Gladwell, Getting In, The New Yorker, Oct. 10, 2005 (contrasting a beauty school, with its emphasis on identifying people who are already beautiful (the selection effect), to the marine corps, with its emphasis on institutional value added to people who meet basic qualifications (the “treatment” effect))

Taking advantage of the “Posse effect” – importance of critical mass and diversity as a group rather than individual phenomenon¹⁶

Admissions decisions are moments when public colleges, universities, or law schools define themselves to the community. When institutions reconstitute themselves through annual selection rituals, they define who they are as educational institutions, as educational communities, and as community actors in their local and national neighborhoods. They can use their admission practices as learning moments (as in the Posse Foundation). Their admissions standards can become expressions of commitment to the community (as in the University Park Campus School in Worcester) and to the state (as in the Texas Ten Percent Plan). They are in a unique position to rethink the relationship between their educational and public mission more carefully in light of their crucial role in training the next generation of citizens and leaders in our democracy. Like the school district in Louisville, Kentucky, colleges and universities can serve as laboratories of democracy.¹⁷

The federal government should reward experimentation at the state level and encourage institutions to use race as a diagnostic and feedback tool that helps reinforce the relationship between education and democracy.

More specifically, the federal government should use some of the significant subsidies it currently provides colleges and universities to enable them to:

- Re-emphasize the importance of institutional outputs not just individual inputs;
- Shrink the importance of selection effects (reducing the role of high stakes testing to rank and sort individual applicants); and
- Expand the significance of treatment effects (the institutional climate, the learning environment and the commitment to developing diverse problem solving teams among faculty and students).
- It should reward national service by subsidizing tuition at public colleges (as with the new GI Bill). But it should also encourage private institutions to admit more veterans at the same time that these institutions develop a less individualistic learning environment so that veterans and others with diverse life experience can thrive.¹⁸

Civic Participation:

¹⁶ See, e.g., Posse Foundation at <http://www.possefoundation.org/> (The Posse Foundation identifies, recruits, and trains youth leaders from urban public high schools and sends these groups as “Posses” to top colleges and universities in the country. The Foundation uses a team building process as an educational experience for the students as well as a means of identifying and composing a group with the skill set to pursue academics and to promote cross-cultural communication on campus. Its commitment to group learning reflects research findings that peer support (the “posse” effect) motivates students academically and socially, especially those who are first in their family to attend college.

¹⁷ See supra note 7 re article by Emily Bazelon.

¹⁸ See supra notes 11 and 15 (describing the role of peer support to help veterans, used to functioning as a team, navigate college life with its highly individualistic focus).

Voting is an entry ticket into the broader political community. Despite the passage of the landmark Voting Rights Act of 1965, many people of color, especially those who live in poor communities, are often targeted by 1) partisan efforts at voter suppression at the polls, 2) burdensome registration or voting requirements that discourage them from even going to the polls (for example the photo voter id requirements in Indiana), or 3) administrative incompetence.¹⁹ Others are disenfranchised directly (as ex-felons or as in Florida in 2000 those mistakenly purged as if they were ex-felons) or indirectly (because they live in communities with large numbers of people under the supervision of the criminal justice system whose disenfranchisement reduces the political clout of the entire community).²⁰ The Obama campaign has been masterful in anticipating and responding to voter suppression efforts. But future campaigns may not have the resources or the strategic intelligence to conduct as successful an on-the-ground Election Day operation. An Obama Presidency should therefore reassure people who formerly felt their participation was either discouraged or meaningless that they will always be able to vote without being cross-examined, demeaned, or forced to wait in long lines because of administrative bungling.²¹

Here, again, the experience of race telegraphs a set of structural dysfunctions that affect everyone: our decentralized system of elections fails to encourage all citizens to participate in government decision-making during as well as after the election. During the election, too many potential voters are denied access to the ballot. The tradeoff that is made allows states to proceed in ways that directly or indirectly disenfranchise massive numbers of voters on the grounds that the burdens are trivial or the meaning of the right to vote rests on the integrity of the ballot for those who do get to vote-- rather than on full participation by all members of the electorate. This tradeoff is permitted even when the results disproportionately disenfranchise people of color²² and where the

¹⁹ See e.g., http://www.huffingtonpost.com/2008/11/04/virginia-voting-broken-ma_n_140897.html (describing unsuccessful efforts by Advancement Project (AP) attorney Judith Browne-Dianis to sue Virginia Gov. Tim Kaine to expand polling place hours on election day 2008 in anticipation of malfunction in the electronic voting machines; in fact AP Attorney Browne-Dianis told the Huffington Post at 10AM Nov. 4, 2008: "Some people have been here since 6 a.m., and the first voters are just finishing now." Apparently the reason, according to the polling judge at this Richmond location, that they did not even have backup paper ballots as required by state law was "They [the Board of Elections] were supposed to give 'em to us, and they didn't.")

²⁰ Cite AP Report; Foreword statistics; Spencer Overton, *Stealing Democracy*

²¹ Susan Saulny, *Obama Inspired Black Voters Warm to Politics*, *New York Times*, Nov. 2, 2008 at http://www.nytimes.com/2008/11/02/us/politics/02first.html?_r=1&ref=todayspaper&oref=slogin

²² *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008) (April 28, 2008) (Justice Stevens writing for the plurality) (Petitioners claimed that the voter ID law made it more difficult for seniors, the homeless, the disabled, and the poor to vote; the Court found that the law was a neutral, nondiscriminatory means of preventing voter fraud). See *id.* at 1634 n.25 (Justice Souter dissenting: "In 1994, the U.S. Department of Justice found that African-Americans in Louisiana were four to five times less likely than white residents to have government-sanctioned photo identification." (quoting Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631, 659 (2007)); see also *id.* (describing a June 2005 study by "the Employment and Training Institute at the University of Wisconsin-Milwaukee, which found that while 17% of voting-age whites lacked a valid driver's license, 55% of black males and 49% of black

Supreme Court acknowledged that the law, for which not a single Democrat voted, was a Republican effort to disenfranchise Democratic voters.²³ Moreover, the justification for the discrimination – election fraud – does occur, but it is an inside job: election officials are almost wholly responsible for flawed election outcomes through sloppiness, administrative errors and outright manipulation.²⁴

As a thought experiment, consider the criminal justice context, where a different moral tradeoff is at least articulated. We are told that it is better to allow 12 guilty people to go free than to convict one innocent person. The argument behind such a value judgment is that the state should do its utmost to preserve the liberty of its citizens and provide due process of law to protect all citizens who face the coercive power of the state in the criminal courts. Contrast that to the voting context where the judgment was made as recently as April of this year by the United States Supreme Court that the Constitution is not violated where a state (in this case Indiana) enacts a law that potentially disenfranchises 43,000 people in order to avert the possibility that one hypothetical person might cast a fraudulent ballot. The Court determined that such a tradeoff is legitimate, at least on its face, even in the absence of any evidence that anyone in Indiana has in fact committed in-person ballot fraud.²⁵ In other words, the state is not required to minimize the burdens associated with the exercise of the fundamental right to vote. Justice Stevens (usually one of the most liberal Supreme Court Justices) explained the trip to the Bureau of Motor Vehicles (as much as 17 miles away for some residents), to obtain a photo ID, -- and the advance assembling of documents necessary to

females were unlicensed, and 46% of Latino males and 59% of Latino females were similarly unlicensed”).

²³ *Id.* at 1624. Justice Stevens cited District Judge Barker for the proposition that the litigation was the result of a partisan dispute that had “spilled out of the state house into the courts.” *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006). Likewise, Judge Evans of the Seventh Circuit began his dissent: “Let’s not beat around the bush: The Indiana voter photo ID law is a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic.” *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 954 (7th Cir. 2007) (Evans, J., dissenting). Justice Stevens also raised this question during oral argument before the Supreme Court: “If you look at the real world impact and you ask whether the Democratic Party has standing to challenge the law, is it relevant that the State legislature is split entirely on party lines?” Transcript of Oral Argument at 61, *Crawford*, 128 S. Ct. 1610, available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/07-21.pdf.

²⁴ See, e.g., DAVID MOORE, *HOW TO STEAL AN ELECTION: THE INSIDE STORY OF HOW GEORGE BUSH’S BROTHER AND FOX NETWORK MISCALLED THE 2000 ELECTION AND CHANGED THE COURSE OF HISTORY* (2006). This would be key for those who grew up as Republicans in Chicago (think Justice Stevens) or who, like a majority of Americans polled, continue to share the misperception that in-person voter fraud is widespread. See, e.g., ADVANCEMENT PROJECT, *IN PURSUIT OF AN AFFIRMATIVE RIGHT TO VOTE 22* (2008), available at <http://www.advancementproject.org/pdfs/RTV-Report-Final-Printed-Version.pdf>.

²⁵ *Id.* at 1619 and note 12. The Court held that a state can condition the fundamental right to vote upon the voter’s ability to obtain a government-issued photo ID — a document not readily available to indigent, elderly or disabled citizens. See also Lani Guinier, *Supreme Court Foreword: Demosprudence Through Dissent*, *Harv. L. Rev.* (Nov. 2008).

establish one's identity --as a mere inconvenience rather than the formidable handicap it is for many marginalized people.²⁶

To take this thought experiment to its logical conclusion, we suggest that there should be no less vigilance in preserving the ultimate liberty – i.e., the freedom of law abiding citizens to exercise the franchise -- that lies at the heart of self-government than in preserving the physical liberty of an innocent person who is accused of a crime. The due process and equal protection clauses require us to enforce certain obligations in the criminal or even the civil regulatory system. However, in the voting context the courts routinely surrender that same obligation to a hodge-podge of makeshift rules that differ from state to state.

Presumably the right to vote is a fundamental component of national citizenship. Yet, it is haphazardly managed at the state and even county level across the country. As a result, across the country there is a patchwork of rules and local agencies that lead to inconsistent judgments as to who can register. Thus, we advocate more aggressive Congressional legislation to enforce a federal right to vote.²⁷

Whereas in the context of higher education federal policy should encourage local experimentation to generate new models of access and opportunity, in the voting context federal policy needs to establish a baseline of uniformity. Because the conduct of voting at the local level is often in the hands of political partisans, such administrators need a uniform set of rules and a clear mandate affirming a different set of tradeoffs between the right to participate and the state's interest in the integrity of the process. There can and should be experimentation consistent with democracy from the bottom up, but only on the conditions that local efforts are designed to increase access to the franchise and that those efforts go further in that direction than what is otherwise required.

The key policy initiative here is to make the right to vote an affirmative and fundamental right of national citizenship. Because of time limitations we cannot lay out all the alternatives but we recommend several studies that offer exciting new options, including the Advancement Project's recommendations to constitutionalize the right to vote as an affirmative federal right rather than as a creature of state law that is protected primarily in

²⁶ Justice Stevens responded to the statistics Justice Souter cited in his dissent regarding the unavailability of public transportation in many regions of the state by suggesting that elderly and indigent citizens may have an opportunity to obtain a photo identification at the BMV "either during a routine outing with family or friends or during a special visit to the BMV arranged by a civic or political group such as the League of Women Voters or a political party." *Id.* at 1623 n.20 (opinion of Stevens, J.). In other words, the state's obligation to ensure access to the ballot can be privatized.

²⁷ Although HAVA (Help America Vote Act) has made strides in requiring state coordination of voting rules, we also urge the Obama Administration to support a constitutional amendment guaranteeing the affirmative right to vote. See ADVANCEMENT PROJECT, IN PURSUIT OF AN AFFIRMATIVE RIGHT TO VOTE (2008), *available at* <http://www.advancementproject.org/pdfs/RTV-Report-Final-Printed-Version.pdf>.

the negative.²⁸ We also urge the Transition Team to consider the Legislative Agenda for Strengthening Our Nation's Democracy that was initiated by Demos, America Speaks and Everyday Democracy. Its recommendations include committing to universal voter registration for all eligible Americans, beginning with Election Day Registration for all Americans, and full implementation of the National Voter Registration Act. It also includes adopting a broad set of voter-convenience measures such as early voting and vote by mail, and developing national standards for election administration.

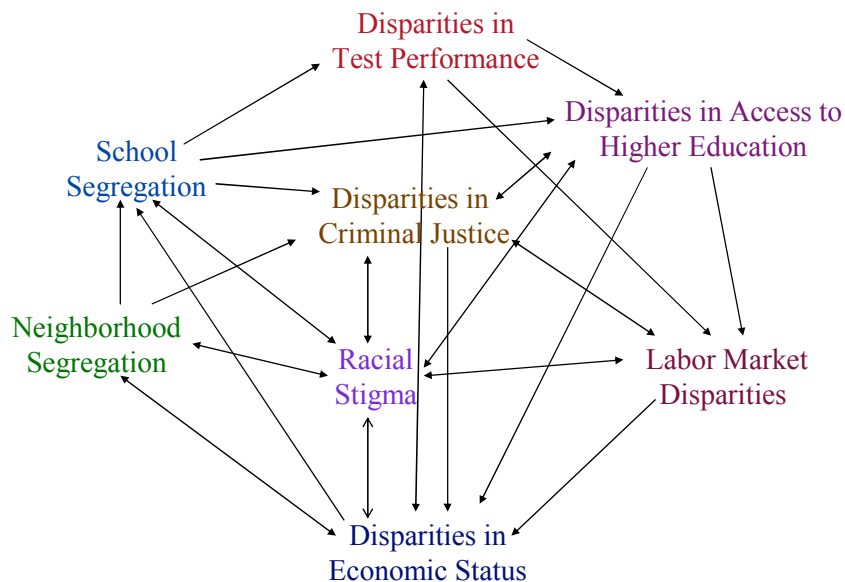
Racial Justice screen

Structural exclusion operates at many levels. The salience of race permits us to see the obvious barriers but it alone does not explain the complex dynamics that produce the inequality that we observe. Harms that disproportionately affect people of color allow us to identify the existence of a problem. However, we will be misled if we proceed just based on evidence of racial exclusion. Preoccupation with such evidence alone may ignore the interaction of race and class; it may undermine the potential for developing cross-racial alliances; it may obscure the ways in which the inequality is embedded in the structure of institutional culture and practices.

Too often the remedies of one era become the received wisdom of another. For example, many of the remedies pursued in the past have relied on individuated strategies, have assumed the problem is psychological rather than structural, and have developed one-size-fits-all solutions. If the problem is inadequate resources for black schools, however, the answer is not necessarily in all cases busing to promote integration. If the problem is unequal access to higher education, the answer is not necessarily affirmative action to promote diversity. Such interventions are useful tools but the tools should not be converted to the goals. Nor should they be considered effective if they ignore the complex of contributory factors, distract attention from the problem they were originally designed to redress, or create new problems that undermine the justification for the intervention in the first place. Rather than entrenched and automatic responses we propose provisional approaches that are reconsidered in light of experience and new information.

²⁸ See ADVANCEMENT PROJECT, IN PURSUIT OF AN AFFIRMATIVE RIGHT TO VOTE (2008), available at <http://www.advancementproject.org/pdfs/RTV-Report-Final-Printed-Version.pdf>

Complexity Diagram²⁹



Source: Barbara Reskin, <http://faculty.washington.edu/reskin/>

We propose to use racial data collection at the federal level as a spur to experimentation that promotes democratic participation in the broad sense we have described earlier. Although data collection is crucial to ensure compliance with basic mandates, its potential should not be limited to coercion. We have three basic suggestions to harness leverage points, promote interdisciplinary research and ultimately encourage institutional change in which the institutions view their role as partners rather than noncompliers. Our three suggestions, which again need more time to flesh out, are:

- Avoid reducing data collection to simple box checking
- Use data collection as a source of feedback not just enforcement [i.e. learn from and modify programs in response to data rather than simply use data to coerce outcomes]
- Develop data collection mechanisms that are appropriate for complex systems

Implementation –

²⁹ Please note that the purpose of this diagram is not to follow the arrows or to identify cause and effect but to observe the totality of the picture.

As Barack Obama said on Oct. 29, 2008 in his 30-minute infomercial, “Most important, I will open the doors of government and ask you to be involved in our democracy again.” This is precisely what US Senator Barack Obama, community organizer turned politician, claims was his original goal for entering politics.³⁰ He wanted to create jobs and a decent future for the youth of his district. Yet, for many of the Chicago politicians from whom he sought counsel, the only jobs they wanted to talk about were theirs and his. Reacting to a sense that politics had become a career not a calling, he said in 1995, a politician should begin “to see his job as an organizer, as part teacher and part advocate, one who does not sell voters short but who educates them about the real choices before them.”³¹ He argued that a necessary counterweight to the self-preservation impulse of the politician was the formation of “grass-root structures that would hold [him] and other elected officials more accountable for their actions.”³² The strategic intelligence of the Obama campaign, from its shrewd focus on caucus states to its refusal to pay walking around money to local politicians, suggests that President-Elect Obama recognizes the importance of keeping people mobilized before *and* after the

³⁰ He attempted to apply the techniques of community organizing to mobilize people to work for change. J. Scott, ‘At State Level, Obama Proved to be Pragmatic and Shrewd’, *New York Times*, 30 July 2007, A1, A12.

³¹ At the time Obama advocated “organizing ordinary citizens into bottom-up democracies that create their own strategies, programs, and campaigns and that forge alliances with other disaffected Americans.” Elected officials play a critical catalytic role in rebuilding democracy from the bottom-up. The full interview is worth reading. See Hank DeZutter, What Makes Obama Run, December 8, 1995 at <http://www.chicagoreader.com/features/stories/archive/barackobama/>

Today, after three years of law practice and civic activism, Obama has decided to dive into electoral politics. He is running for the Illinois Senate, he says, because he wants to help create jobs and a decent future for those embittered youth. But when he met with some veteran politicians to tell them of his plans,

“Now an agenda for getting our fair share is vital. But to work, it can’t see voters or communities as consumers, as mere recipients or beneficiaries of this change. It’s time for politicians and other leaders to take the next step and to see voters, residents, or citizens as producers of this change. The thrust of our organizing must be on how to make them productive, how to make them employable, how to build our human capital, how to create businesses, institutions, banks, safe public spaces--the whole agenda of creating productive communities. That is where our future lies.

The right wing talks about this but they keep appealing to that old individualistic bootstrap myth: get a job, get rich, and get out. Instead of investing in our neighborhoods, that’s what has always happened. Our goal must be to help people get a sense of building something larger.

“What if a politician were to see his job as that of an organizer,” he wondered, “as part teacher and part advocate, one who does not sell voters short but who educates them about the real choices before them? As an elected public official, for instance, I could bring church and community leaders together easier than I could as a community organizer or lawyer. We would come together to form concrete economic development strategies, take advantage of existing laws and structures, and create bridges and bonds within all sectors of the community.

³² *Id.*

election.³³ One way to do that is to insist that agency officials tap into the local knowledge of activists who are embedded in their communities.

The lessons of an unusual cross-agency initiative during the early years of the Clinton Administration are instructive. During the transition in 1992, environmental advocates promised civil rights advocates that they would make environmental justice one of the issues the Administration would take up. The Clinton Administration, in an effort to meet that obligation, subsequently developed an inter agency task force run through the Council on Environmental Quality in the Office of the Vice President. The leadership was located in the Division of Environment and Natural Resources of the Department of Justice (DOJ). Gerald Torres, then Deputy Assistant Attorney General for Environment and Natural Resources at DOJ, identified grass roots environmental justice organizations from around the country and invited them to talk to his staff about the issues they perceived to be problematic at the local level. After a two week process in which Torres and his staff met for 8 hours a day with these advocates, none of whom were national figures, Torres discovered three things. First, he learned that the agencies had to be flexible enough to deal with local conditions.³⁴ There could not be a uniform standard that did not protect particularly vulnerable populations. Second, he discovered that there was already broad and widespread inter racial cooperation at the local level. Poor people understood that it was their poverty as well as their race that was at the heart of their victimization. People on the ground saw that race and class were linked in ways that people in the national organizations did not seem to recognize or chose to ignore when it would vitiate the effectiveness of their own advocacy. Third, people at the local level understood issues of the environment in ways that were far broader than the way environmental lawyers did.³⁵ They understood crime, mortality, and morbidity as environmental problems. They taught themselves how to do neighborhood grass-roots epidemiology. We can see current examples of this in the data mapping that the Advancement Project does in Los Angeles. AP collects information from government sources and then makes that information accessible not only to ordinary people but to

³³ See Lani Guinier, *Beyond Electocracy: Rethinking the Political Representative as Powerful Stranger*, 72 *Modern Law Review* 1, January 2008.

³⁴ For example, South Asian refugees, who were relocated to the California Delta, ate a greater proportion of fish than the general population and even more fish than other poor people. Similarly the subsistence diet of Native Americans in certain parts of the country included a disproportionate amount of fish as compared to the general population. Poor blacks, especially in the South, also ate more fish, some of which they caught off bridges. This fish represented a significant portion of the protein content of their diet but because levels of contamination permitted in the fish were based on the "standard American diet" these subpopulations were actually subject to much greater risk. Without the local environmental justice organizations bringing this to the federal government's attention, it would not have become something that federal agencies would have felt responsible for. Well before Katrina, they understood that when there was a rain event in the South, the authorities would flood poor neighborhoods so the levees would not overflow.

³⁵ Similarly Prof. Mary Wood, University of Oregon Law School, who has been teaching environmental law for 17 years, describes environmental lawyers as overly technocratic, meaning they are consumed with enforcing the technical rules rather than vindicating the purpose of the statutes, which were passed in order to eliminate the hazards of environmental contamination. Prof. Woods has started working with tort lawyers instead, because she finds them to be both more imaginative and more attuned to the actual harms experienced by their clients.

other government agencies.³⁶ In other words, local organizations can play crucial networking roles in linking the data bases of different government agencies to each other and making those data bases available online so that community organizations also have access to them.

Back in 1993, Torres started drafting Executive Order 12898, which said that all agencies had to take into account the effect of their activities on environmental justice communities (i.e. “minority” and “low income” populations).³⁷ He and the General Counsel for the Environmental Protection Agency (EPA) and the Council for Environmental Quality (CEQ) then created an inter-agency task force to ensure that each agency would produce a strategy to comply with the Executive Order. At the end, after the Executive Order was signed, a National Environmental Justice Advisory Council (NEJAC) was designed to provide an ongoing forum for environmental justice advocates to meet with the federal government. Meetings of the Advisory Council were scheduled around the country to reduce the travel cost to the local activists.

Another example of an attempt to take advantage of local knowledge, to mobilize people to hold the Administration accountable and to reinforce the idea that the federal government had a trust duty was the 1994 Listening Conference. For the first time in the history of the federal government, the Department of Interior and DOJ convened a meeting with all of the federally recognized tribes in which cabinet level officers and below were the audience and the tribal leaders were given the resources to run the conference and to outline and dictate the issues that should dominate the federal Indian policy during the Clinton Administration years.³⁸

TAKE AWAYS:

There are a number of techniques to create constituencies of accountability in the Obama Administration. None of these are new. All of them have a proven track record of success so long as people remain committed to the core principles of democratic legitimacy and effective governance. From the 1990s examples of the Listening Conference and the NEJAC,³⁹ as well as the contemporary power mapping that AP does with its Healthy Cities Initiative, citizens are a crucial integrative force for sustainable change. Some of the elements that should be considered include the following:

³⁶ See AP Healthy City Initiative at <http://www.advanceproj.org/index.php?q=c/what/sc/hc>

³⁷ http://www.epa.gov/Region2/ej/exec_order_12898.pdf

³⁸ http://www.usdoj.gov/opa/pr/Pre_96/June95/303.txt.html (See, e.g., Attorney General Janet Reno’s statement, “At last year’s National American Indian Listening Conference we listened to the tribe’s concerns, we heard what we were doing right and what we were doing wrong, and we went back and did our very best to improve the Department’s responsiveness to tribes and represent tribal interests to the extent the law allows.”)

³⁹ Consider as well the experience of NAACP LDF staff member Jean Fairfax whose role during the 1960s and 70s was to organize plaintiffs as well as mid level government bureaucrats to get their help in understanding how to enforce civil rights laws.

- Situate legislative, litigation, and administrative efforts of the Civil Rights Division at DOJ, Office of Federal Contract Compliance, etc in an organizing environment.
- Emphasize transparency and engagement where agencies learn from citizen experimentation rather than just making decrees.
- Teach officials to listen to citizen entrepreneurs.
- Get information from multiple sources.
- Identify local change agents and idea entrepreneurs and bring them together to brainstorm.
- Meet with national civil rights leaders and members of Congress to understand their concerns and priorities.
- Compile ideas that work and solicit feedback.
- Direct media attention to local examples that work. Mobilize local and national resources strategically.
- Create forums for brainstorming and deliberation that are transparent and publicly legitimate.

Conclusion: Democracy From the Bottom Up

Barack Obama's candidacy is America's story. Obama's story shows the promise of America's story. But we cannot simply celebrate the fact of Barack Obama's candidacy alone -- his character, his unique vantage point, his commitment to being inclusive. Nor can we assume that his election as a black man in a majority white country -- as gigantic a step as that is -- can alone do all of the heavy lifting to produce the promise of genuine equality or genuine democracy. His election is a historic milestone that affirms the importance of creating space in which to organize. At the same time his visionary leadership must be supported by ideas that continue to inspire cross-racial coalition building and policies that can be implemented to take maximum advantage of his call to struggle together for change that is transformative. In the civil rights context, such change requires a break with conventional wisdom at the same time that it builds on the insights and successes of the past.

When Barack Obama decided to run for office for the first time, he was optimistic that elected officials could pursue a new strategy to overcome the political paralysis that kept ordinary people from actively participating in helping to make the decisions that affected their lives. Interviewed in 1995, Obama rejected the politics of integrationist assimilation to the extent it primarily helps a few upwardly mobile blacks. He also dismissed as impractical the politics of black nationalism to the extent that black nationalists advocate

but do not organize ordinary folks around an agenda of realistic change. Coming out of his experience as a community organizer, Obama's vision involved "bottom-up democracies" that strategize ways to forge coalitions across race and class lines. He viewed the politician as a catalyst for rebuilding these alliances among disaffected Americans.

We have tried to provide a transformative framework, a set of policies, and implementation strategies that can make President-Elect Obama's vision of sustainable democratic change possible. Our model for rebuilding democracy from the bottom up requires us to confront the debilitating crosscurrents of our racial past. Yet instead of weakening us, we trust that the struggles of *e pluribus unum* can become the foundation for a more perfect union.

**CENSUS AND
REDISTRICTING**
*Policies to Guarantee Fairness
and Equity in Political
Representation and Resource
Distribution*

ANITA EARLS AND DEBORAH BEY

Abstract

The federal government relies on census data to guide the distribution of hundreds of billions in federal financial assistance to state and local governments, nonprofits, businesses, and individuals. Census data plays an important role beyond financial assistance and regulation in informing the design, implementation, and evaluation of a variety of federal efforts. The data are used to inform programs such as TANF, and programs concerning a range of issues from small business development, affordable housing, transportation planning, women in the labor force, farm labor policy, immigration policy, veteran and senior citizen health, adult education and disabled students. The census, is, of course, also vitally important for the re-districting process.

This paper considers approaches to addressing the risk of census undercounting, the need for greater funding for census operations, more diverse census staff, measures to ensure members of Latino communities, who are understandably concerned about recent increases in immigrant raids, will be enabled to fully participate in the census.

Census outcomes fundamentally shape the redistricting process and resulting electoral maps. Full and fair participation in the census is thus indispensable to the preservation of democratic rights. Aggressive census outreach is critical in this vein.

Policy Recommendations

To make the Census the most accurate possible and the redistricting process and the plans that result, from Congress to state legislatures to the city council, fair to all voters, the following policies at the federal level should be pursued:

1. An aggressive public outreach campaign must be put in place immediately by the Census Bureau and the Department of Commerce, targeted to groups with a known history of undercount and populations that are likely to be difficult to reach in 2010, to prevent an undercount and ensure census accuracy. To the extent possible, follow-up procedures for non-responsive households should be tested in census-like conditions.
2. Of the \$212 million budgeted for the 2010 census, only \$12 million goes to the economically disadvantaged. Given estimates that past census undercounts have reached as high as 10 percent, more resources are needed to address this serious concern. In addition, census operations should be modified to dispense with fingerprinting of census workers and ICE should suspend immigration raids while the Census is conducted.
3. The Census should count inmates as residents in their actual home districts, not in the districts where they are incarcerated.
4. Congress should pass legislation that would give states the option to use multi-member districts with proportional or semi-proportional representation voting systems instead of the current federal law that requires all congressional districts to be single-member districts.
5. If the Supreme Court upholds the requirement of “supermajority” districts where voting is racially polarized, Congress should act to amend Section 2 of the Voting Rights Act to clarify its prohibition on vote dilution.
6. Make grants available to state legislatures and other state agencies to put in place meaningful public access to redistricting technology so that ordinary citizens and community groups can draw illustrative redistricting plans and have a role in the redistricting process.
7. Insure vigorous enforcement of the law by the Voting Section of the Civil Rights Division when it reviews and monitors the redistricting plans submitted to it under Section 5 of the Voting Rights Act following the 2010 Census.

Natural Constituencies

Improved census methods and resources can predictably be supported by both marginalized communities and the agencies who share a common interest in accessing greater resources.

During tight budgetary periods, Census improvement measures can easily fall victim to fiscal conservatives who know there will be little public outcry if measures are cut.

Efforts to count inmates in their home districts rather than where they are incarcerated can have very significant impact on the political fortunes of the communities with prisons.

THE FEDERAL GOVERNMENT relies on census data to guide the distribution of hundreds of billions in federal financial assistance to state and local governments, nonprofits, businesses, and individuals. Census data plays an important role beyond financial assistance and regulation in informing the design, implementation, and evaluation of a variety of federal efforts. The data are used to inform programs such as TANF, and programs concerning a range of issues from small business development, affordable housing, transportation planning, women in the labor force, farm labor policy, immigration policy, veteran and senior citizen health, adult education and disabled students.

The census, is, of course, also vitally important for the re-districting process. After each census is conducted, state legislatures rely on the census population data to redraw Congressional and state legislative district boundaries. Local governments use these data to determine the size and shape of county and city council districts, school board districts, and voting precincts, and to enable state and local governments to create legislative districts that comply with standards for population equity (“one person, one vote”) and racial and ethnic fairness (Voting Rights Act).

Census data plays an important role beyond financial assistance and regulation in informing the design, implementation, and evaluation of a variety of federal efforts.

Redistricting following the 2010 Census, the fundamental altering of political boundaries for legislative governing bodies at the federal, state and local levels, will have significant implications for the ability of traditionally disenfranchised communities, including minority and low-income voters, to participate in the political process. Two important policy questions relating to the Census will impact redistricting, 1) the extent to which there is a differential census undercount that could dilute minority voting strength by undercounting minority populations in certain areas; and 2) whether prison populations are counted for one-person, one-vote purposes in determining district lines for state legislatures and local governing bodies such as school boards and county commissions.

Beyond the intersection of census and redistricting, federal voting rights policy also affects whether the redistricting process results in fair representation, even though redistricting is fundamentally a task for state legislatures and local governments. Federal enforcement of the Voting Rights Act, including review of certain redistricting plans under Section 5 of the Voting Rights Act, will determine whether those plans fairly take account of minority voting strength where racially polarized voting continues to be prevalent.

I. Policies

To make the redistricting process and the plans that result, from Congress to state legislatures to the city council, fair to all voters, the following policies at the federal level should be pursued:

- 1. An aggressive public outreach campaign must be put in place immediately by the Census Bureau and the Department of Commerce, targeted to certain groups based on what is known already about the populations that were undercount in the last census and what can reasonable be predicted to be difficult to reach populations in 2010, to prevent an undercount and ensure census accuracy. To the extent possible, follow-up procedures for non-responsive households should be tested in census-like conditions.**

Under the current administration, there has been a failure to pay sufficient attention to the potential undercount. Compared to the outreach efforts that were in place by this time of the decade in preparation for the 2000 Census, the Census Bureau's plans and preparation for 2010 are woefully inadequate. Moreover, the fear among immigrant populations is greater than ever, but less is being done to ensure that they will respond to the census. The Census Bureau has cut back on its dress rehearsal process. The AP reported last spring that "The Census Bureau has scaled back its dress rehearsal for the once-a-decade national head count, raising fears that thousands of soldiers, immigrants and other hard-to-reach people will go uncounted when the population survey is conducted in 2010. 'It's like sending up a rocket for a moon shot and not doing the final test on how to land,' warned former Census Bureau Director Kenneth Pruitt, who oversaw the agency during the 2000 count."¹ In oversight hearings last summer, the GAO reported on the many aspects of the Census Bureau's plans for follow-up to non-responding households that have not been tested under census-like conditions.² It is critical to reverse these errors and put in place all possible emergency measures to ensure that the Census is more accurate.

The Department of Commerce and the Census Bureau would be responsible for implementing a new more effective approach to the undercount. The danger in not pursuing such an approach is that hard to reach populations, including racial and ethnic minorities, the homeless, and rural low-income communities will not be counted. Areas where they live will not be properly represented in reapportionment and redistricting. By virtue of being invisible, not counted in the Census, they will lose political efficacy as well as not be allocated their fair share of federal funds.³

¹ Garance Burke, "Test Run for 2010 Census is Scaled Back, Worrying Experts" AP 4/24/2008.

² See GAO, "2010 Census: Plans for Decennial Census Operations and Technology Have Progressed, But Much Uncertainty Remains", Statement of Mathew J. Scire, Director, Strategic Issues and David A. Power, Director, Information Technology Management Issues, Testimony Before the Committee on Oversight and Government Reform and the Subcommittee on Information Policy, Census and National Archives, House of Representatives, June 11, 2008.

³ The U.S. Census Monitoring Board, in its final report to Congress, concluded that: "In 2003, the first year fully impacted by the undercount, the funding loss in 31 undercounted states and the District of Columbia averages \$114 per uncounted individual." Price Waterhouse Coopers, in its report for the Census Monitoring Board on the effect of the 2000 census undercount, found that

One initiative with proven effectiveness in addressing the Census undercount is the Partnership Program. Under the program, the bureau has teamed up with thousands of organizations — including state, local and tribal governments, churches, schools, corporations and community service groups. More than 100,000 partnerships were established in the years leading up to the 2000 census and were widely acclaimed as crucial to its success. Racial minorities, in particular, were more accurately counted than in previous attempts. It is estimated in 2000, the African-American undercount was reduced by more than half — to 1.84 percent from 4.57 percent in 1990 and the undercount estimates for Asians, and Native Americans were vastly reduced.⁴ For Latino communities, the Partnership Program may be most urgent: it appears that undercount numbers for Latinos may be growing. While in 1990, 5.2 of the Latino population was undercounted, by 2000, the Census Bureau estimated that fully 30% of those not enumerated were Latinos.

For all minorities, without robust partnerships, undercounts are likely to revert to the high levels of the past. Critically important issues are shaped by the count—not just the number of Congressional representatives from each state, but also, the composition of electoral districts and the allocation of federal dollars. To the extent the census is skewed, so is the resulting representation of millions of minorities and even beyond that, our entire governance scheme.

2. Census Operations.

Increase Funding

At a July 10, 2008 Congressional hearing held to inquire into the Census Bureau's approach to addressing the undercount the lack of resources for the upcoming census was a primary area of concern. Of the \$212 million budgeted for the 2010 census, only \$12 million goes to the economically disadvantaged. Given estimates that past census undercounts have reached as high as 10 percent, more resources are needed to address this serious concern. In recent years, Congress has not been able to pass an appropriations bill containing the Census Bureau budget before the new fiscal year begins. As a result, the Census Bureau is often forced to operate on a continuing resolution based on the previous year's budget. With the approach of the census year, a significant ramp-up in annual funding is urgently needed. Working off of a continuing resolution delays critical phases of planning and implementation, and so increases the

every southern state was disadvantaged to some degree by the 2000 Census undercount. Moreover, many of the states with the largest undercounts in 2000 were southern states, including Virginia, North Carolina, Louisiana, Georgia and Florida. The Price Waterhouse report estimated that the federal funding loss to the 58 largest counties adversely affected by the undercount would reach \$3.6 billion over the ten year period, or \$2,913 per uncounted person in these jurisdictions. The local impact in some areas is substantial. The U.S. Census Monitoring Board estimated that 59,063 people in Louisiana were not counted in the 2000 Census, many in Orleans parish. Because of Louisiana's undercount, the state will lose from \$4 million to \$6 million per year in federal funds.

⁴ Civilrights.org

risk of a less accurate census and the possibility of driving up overall costs as Bureau officials seek to play catch up late in the game.

Ensure proper management of the Local Update of Census Addresses (LUCA) **process** to ensure that a mailed survey can reach each household.

The Bureau's Master Address File (MAF) is based largely on U.S. Postal Service address listings. However, the MAF can miss new construction, building conversions from non-residential to residential use, garages converted to residential use, and apartment subdivisions. The mortgage foreclosure crisis will certainly impact the Bureau's ability to acquire valid addresses. LUCA, first carried out for Census 2000, allows localities and states to review the MAF and suggest additions and changes in address listings. Communities can also make use of alternative address listings such as utility accounts, real property records, construction and demolition permits, and "911" records, as well as field visits, to supplement address confirmation.

Dispense with fingerprinting for temporary workers.

The Census Bureau currently plans a massive effort to fingerprint its entire temporary work force of 500,000 census takers. Such a logistical feat will require hundreds of millions of dollars and countless hours. Bureau funds could be better spent on the urgently needed measures described above. In the past, the bureau has screened workers via FBI name checks, securing a waiver of the requirement to fingerprint federal employees. Those efforts were adequate to keep the public safe: in 2000, four census employees were accused of crimes, but in all four cases the charges were either dropped or the accused was acquitted. Census workers are entrusted with valuable personal information that should be protected, this would seem to be an argument for more thorough background checks, not fingerprinting. Also, requiring fingerprinting of all temporary employees may hinder efforts to diversify the Bureau's temporary workforce.

Halt immigration raids during the enumeration process

Raids during the population count would further discourage many undocumented residents, already an understandably fearful group, from cooperating with the government's count. In 2000, federal officials did not conduct raids for several months before and after the census. This helped to improve the count in Latino communities overall. The undercount of the Latino population can be drastically improved if the Bureau is given sufficient funding to hire bilingual canvassers and by putting more money into popular education to allay the deportation fears by various segments of the Latino population.

- 3. The Census Bureau must change its policy and practices regarding how it counts prison inmates. The Census should count inmates as residents of their real home addresses.**

Currently inmates are counted where they are incarcerated, not where they come from. For many states, this results in legislative and city council districts that disproportionately empower rural white voters in those districts. For example, 60% of Illinois' inmates are from Cook County, but 99% of the state's prison cells are from outside the county. When state legislative districts are drawn, districts that include prisons have significant percentages of their population as non-voting inmates. This results in prison districts having undeserved strength in state legislatures and more influence than they otherwise would have in state affairs. At the local level, the distortion is even greater. For example, a recent article in the *New York Times* identified a city councilman in eastern Iowa elected with two votes, because the rest of his city council ward included 1,300 residents of the state's largest prison.⁵ Fair representation requires that inmates be counted where they come from, not where they are incarcerated.

Finding that "the evidence of political inequities in redistricting that can arise due to the counting of inmates at the prison location is compelling", the National Research Council of the National Academies has called for the Census Bureau to begin collecting the home addresses of people in prison and to study whether this alternative address should be used in the Census. The report, authored by leading demographers, statisticians and sociologists, was commissioned by the Census Bureau to reexamine where people should be counted in the Census.⁶ The report also recommended that as an interim solution, the Bureau should publish an alternative version of the PL94-171 redistricting data in the 2010 Census, so that states and counties can choose to redistrict without prison populations.

It also has been argued that the United States Census practice of counting inmates in their districts of incarceration rather than their home districts for the purpose of establishing electoral and Congressional representation is a violation of international treaty. The non-partisan public policy and advocacy centers Demos and the Prison Policy Initiative (PPI) submitted reports to the Committee for the Elimination of Racial Discrimination (CERD) in Geneva. Demos and PPI urged the committee to scrutinize the racially discriminatory redistricting practice of crediting rural white counties with additional population based on the presence of disenfranchised inmates in violation of Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Demos/PPI comments were included in a larger submission prepared by the U.S. Human Rights Network. The United States ratified the CERD treaty in 1994, and therefore is bound under international law to work to eliminate policies that are intentionally or unintentionally racially discriminatory.

The Census Bureau would be responsible for implementing a policy that enabled inmates to be counted in their home districts. The danger in not implementing this policy is that African-Americans and other racial minorities will continue to be

⁵ Sam Roberts, "Census Bureau's Counting of Inmates Benefits Some Rural Voting Districts", *New York Times*, Oct. 23, 2008.

⁶ National Research Council, **Once, Only Once, and in the Right Place: Residence Rules in the Decennial Census**, September 14, 2006.

underrepresented in redistricting plans for state legislatures and local governing bodies, and they will not have an equal opportunity to participate in the political process.

4. Congress should pass legislation that would give states the option to use multi-member districts with proportional or semi-proportional representation voting systems instead of the current federal law that requires all congressional districts to be single-member districts.

One area in which federal law restricts how states redistrict is the requirement that each congressional district is to elect just one representative.⁷ In September, 1999 the Subcommittee on the Constitution of the House Judiciary Committee held hearings on H.R. 1173, which would give states the option of using systems other than single-member districts for congressional districts.⁸ By allowing States to elect Congressional representatives from multi-member districts, the States' Choice of Voting Systems Act would have opened the possibility for full representation to be used in Congress. Introduced in 1999, the bill attracted 16 co-sponsors. This bill authorizes states to use multi-member districts so long as they comply with the one-person, one-vote requirement and the Voting Rights Act.

A better proposal is one by Fairvote⁹ that specifies the types of election systems that can be used in the multi-member districts. These election methods are superior to single-member districts because they make it possible for sizeable racial minorities who are politically cohesive to elect candidates of choice without being a majority in a single-member districts. Requiring single-member majority–minority districts as the only option for fair representation for minority voters opens up the redistricting plan to challenge as a racial gerrymander. Being able to draw multi-member districts that create the possibility for creative alliances and coalitions while still providing politically cohesive minority groups the opportunity to elect their candidate of choice is a preferable option in some circumstances.

5. If the Supreme Court affirms the North Carolina Supreme Court's interpretation of Section 2 of the Voting Rights Act to require districts that empower minority voters in areas where there is legally significant racially polarized voting to be 50% or greater in minority population even though minority voters can elect candidates of choice in districts that are less than 50% minority, Congress should act to amend Section 2 of the Voting Rights Act to clarify its prohibition on vote dilution.

On October 14, 2008, the Supreme Court heard oral arguments in *Bartlett v. Strickland*,¹⁰ which raises the question whether a racial minority that constitutes less

⁷ 2 U.S.C. § 2(c) (2008).

⁸ The transcript of the hearing is available at:

http://commdocs.house.gov/committees/judiciary/hju62487.000/hju62487_of.htm

⁹ See Fairvote, "Sample Proportional Voting Legislation for Congress", available at:

<http://www.fairvote.org/?page=421>

¹⁰ No. 07-689, U.S. Supreme Court.

than 50% of a proposed district's population can state a vote dilution claim under Section 2 of the Voting Rights Act. The circuits are split on this issue, with the First Circuit willing to consider such claims while the Fourth and Fifth Circuits have held that plaintiffs must make a bright line 50% voting age population showing in order to establish vote dilution.

The reasons for protecting the creation of coalition districts that are less than 50% minority but elect candidates of choice of minority voters are extensively examined in the amicus briefs filed on behalf of civil rights and good government groups in support of the position of the State of North Carolina. They argued that race would play less of a factor in redistricting while still permitting the state to empower African-American voters. Coalition districts allow minority voters to create political alliances with like-minded voters and work towards decreasing the prevalence of racially polarized voting.

Federal policy can impact the degree to which citizens and community groups can play a meaningful role in redistricting, whether it is carried out by the legislature or a redistricting commission.

Coalition districts recognize the progress we have made without sacrificing the hard fought gains achieved by widespread litigation under Section 2 of the Voting Rights Act. Without protection for coalition districts, minority candidates will continue to be excluded from office where voting continues to be racially polarized.

If the Supreme Court rules against the State of North Carolina and eliminates the possibility of Voting Rights Act protection for coalition districts, it is possible that North Carolina will lose over half the state legislative districts currently under 50% black that elect candidates of choice of black voters. Nationally, nearly half of the members of the Congressional Black Caucus are elected from districts that are less than 50% black in voting age population. None of these districts could claim protection under the Voting Rights Act and would be in jeopardy of being lost. State legislative districts around the country would no longer be protected. Congress can correct this problem through legislation that clarifies that, just as Section 2 of the Voting Rights Act does not contain a 50% requirement to demonstrate vote dilution, it is not congress' intent to impose such a requirement.

- 6. The federal government, through a completely revamped Civil Rights Division, should make grants available to state legislatures and other state agencies to put in place meaningful public access to redistricting technology so that ordinary citizens and community groups can draw illustrative redistricting plans and have a role in the redistricting process.**

States control how they conduct redistricting, and some have chosen to reform what appears to be an excessively incumbent-driven process by using various types of redistricting commissions. Federal policy can impact the degree to which citizens and community groups can play a meaningful role in redistricting, whether it is carried out by the legislature or a redistricting commission. Every state will have some program of public hearings during the redistricting process and many states provide that citizens can

use a centrally-located public access computer with redistricting software to draw redistricting plans. However, usually these facilities are completely inadequate for most people to use because they are not easily accessible. With advances in technology, there are numerous ways to make it possible for community groups or individuals with internet access and basic computer skills to have access to the data necessary to draw redistricting plans which they can then use to evaluate a jurisdiction's proposed plans and which they can introduce into the legislative process. The federal government can encourage states to make such opportunities available by providing funds for projects that empower citizens to directly participate in redistricting.

7. Significant resources and attention should be paid to ensuring that the Voting Section of the Civil Rights Division has the capacity to effectively review and monitor the redistricting plans submitted to it under Section 5 of the Voting Rights Act.

From 2000 to 2006, the Department of Justice objected to 54 submissions of all types, protecting over 650,000 minority voters. During the same period, the Department's requests for more information resulted in 57 submissions being withdrawn, protecting another 532,000 minority voters. Many of these changes affecting voting were redistricting plans that unfairly made minority voters worse off. The Section 5 preclearance process, as reauthorized in 2006 for another 25 years by the Fannie Lou Hamer, Rosa Parks & Coretta Scott King Voting Rights Reauthorization and Amendments Act, Pub. L. No. 109-246, (2006) remains a crucial source of protection for the 16 states that are covered in whole or in part.

In recent years much attention has been paid to the politicization of the Civil Rights Division and the Voting Section in particular. In addition to revitalizing the Division in order to restore proper enforcement of civil rights laws generally, it will be important for the redistricting process to ensure that the Voting Section is able to monitor carefully all the redistricting plans submitted to it and to issue objections when those plans unfairly disadvantage minority voters.

INCLUSIVE IMMIGRATION REFORM

JOSE CALDERON

Abstract

The new administration should reframe the debate surrounding immigration from the current divisive dialogue to one that promotes social justice for all members of the national community. A new strategy should 1) work to empower language minorities within a framework of genuine ethnic and cultural diversity; 2) advance a commitment for an equal and just society that recognizes historical inequities based on race, gender, class, sexuality, and immigration status; and 3) recognizes that environmental problems affecting our community cannot be solved without also addressing the fundamental problems that respect no borders-- insufficiently regulated global capital and exploitation by multinational corporations. Immigration results from a real need of this economy and a set of policies and initiatives that generate the present situation. However, anti-immigration efforts address only supply – the flow of unauthorized migrants – without reducing employer demand for this labor or changing economic opportunity in sending countries. Immigration policy should be inverted to allow immigrant workers the right to work here and receive legalization rights leading to citizenship while also building the economies of other nations, particularly in Central America.

Policy Recommendations

Domestic policy should expand the process of legalization for new immigrants while international policy should bilateral job-creation and economic development in sending countries. The next administration should begin by increasing the number of permanent resident visas, leading to citizenship, rather than considering temporary worker programs. A first step in achieving this goal is to reduce the backlog of immigrant applications already in process. Other worthwhile legislative proposals include providing undocumented children who grew up in the United States with a mechanism for obtaining in-state tuition in the institutions of higher education; allowing undocumented farm workers to earn the legal right to permanently stay in this country by continuing to work in agriculture; and various strategies debated in California.

International policy must be emphasized in conjunction with these changes, because workers will not stop moving to the U.S. as long as their home countries do not offer economic opportunity. The federal government must reexamine “free trade” agreements so that they do not simply provide a means for companies in search of cheap labor and less regulation a way to hide the hidden costs of their social and environmental destruction. Instead, the U.S. must restructure the economies both here and abroad through policies that invest in research, development, education, training, child care, and the inner cities.

Natural Constituencies

These inclusive immigration policies will draw their primary support from undocumented workers, their families, and their employers. In addition, education advocates concerned about educations opportunities for youth should support this immigration strategy. Member of the international community will support the economic development initiatives elsewhere.

Many Americans are opposed to an expansion of immigration and the legalization of current undocumented workers. They will oppose any proposals such as these that expand the rights of immigrants.

THE NEW ADMINISTRATION should reframe the debate surrounding immigration from the current divisive dialogue to one that promotes social justice for all members of the national community. A new strategy should 1) work to empower language minorities within a framework of genuine ethnic and cultural diversity; 2) advance a commitment for an equal and just society that recognizes historical inequities based on race, gender, class, sexuality, and immigration status; and 3) recognize that environmental problems, affecting our communities, cannot be solved without also addressing the fundamental problems created by rampant global capital, profit, and exploitation by multinational corporations that respect no borders.

Federal policy should pursue an ultimate goal of full legalization for all undocumented immigrants and their right to reunification of families. In the short-term, the new administration should stand against the enforcement policies that the Bush administration and anti-immigrant politicians continue to place in the forefront. The recent demonstrations have, at least, resulted in a beginning dialogue on the issue of legalization rather than blanket enforcement. The Republicans, and some conservative Democrats, clearly wanted to reconcile the Senate and House versions of immigration bills – only if they criminalize our undocumented communities and those that support them.

A new approach to immigration that promotes social justice must stand against a “bracero” program or any immigration program that is meant to use the labor of the immigrant short-term and deport him or her when the employer is done with them. Further, a “bracero” program would destroy any gains that the United Farm Worker’s Union has made in obtaining better working conditions for farm workers. Hence, any legalization program of undocumented immigrants should include that all labor laws should apply to them and that they should have the right to organize and form a union. Also, even if they end up returning year after year, there should be a mechanism for them to legalize themselves and their families after a certain period of time.

Causes of and Public Reaction to Immigration

Wayne Cornelius, Director of the Center for Comparative Immigration Studies has proposed that “the most important policy lessons to be gleaned from the U. S. experience with controlling ostensibly “unwanted” immigration over the last decade are negative ones.” Immigration results from a real need of this economy and a set of policies and initiatives that generate the present situation. Moreover, public opinion does not provide a clear mandate for a significantly more restrictive policy:

- Public opinion data consistently have shown that the American public is not totally anti-immigrant, although it does not want an expansionary immigration policy. In a 2004 national sample, by the Gallup News Service, just under half of respondents approved of current levels of immigration or an increase. In another 2004 survey by the Associated Press nearly as many respondents believed that immigrants were having a beneficial impact as a “bad influence.” When asked in another survey, carried out by National Public

Radio also in 2004, to choose between the statements that “Immigrants today strengthen our country because of their hard work and talents” and “Immigrants today are a burden on our country because they take jobs, housing, and health care,” respondents split evenly; -- each statement was endorsed by 47 per cent, with 6 percent undecided.

- The U. S. public does not perceive significant, direct competition between immigrants and native-born workers in the labor market. In contrast to arguments of anti-immigrant groups that immigration hurts the economy by driving wages down and causing unemployment among native-born workers, a majority of Americans interviewed in national surveys since 1995 thought that immigrants only take jobs that citizens refused to take.
- The reality is that the public continues to hire immigrant workers – for their businesses and homes, even during periods of recession.

While some of our politicians continue to make the immigration issue the main item on their agenda – the American public does not place this issue at the top of their list as the main issue to focus on. In national surveys that ask about the main problems that government should be addressing, no more than 1 -2 percent of interviewees typically mention immigration as the most important problem facing the country – about the same percentage as those who respond “don’t know.” Only when immigration policy has been placed in the context of 9/11 anti-terrorism efforts – or when there are well-organized campaigns for anti-immigrant ballot measures (such as proposition 187 in 1994 in California and Proposition 200 in Arizona) – does the issue seem to come to the forefront.

At the same time, coalitions have developed to successfully defend the rights of immigrants. On March 25, 2006, over a million people marched in Los Angeles against H. R. 4437, a bill that would make it a felony to reside in the U.S. as an undocumented individual. As a result of the massive protests, the bill died in the U. S. Senate. One year later, on May 1, 2007, a coalition of thousands of immigrants and their supporters marched in support of a comprehensive immigration bill and against the federal government’s increase in immigration raids at the workplace and in targeted communities.

The immigrant rights movement has been able to stop immigration raids each time that they have emerged in various localities. At the same time, the movement has been effective in building coalitions that are uniting diverse groups and communities in advancing strategies and policies aimed at turning back the post-September 11th provisions that have increased the categories of “deportable” crimes and that have further criminalized

This emerging trend, demanding “legalization” for the 12 million undocumented immigrants in the U. S., has shown how a united proactive response can be effective in exposing the scapegoating of immigrants, mobilizing support for pro-immigrant legislative policies, and building broad community-based coalitions to defend the civil and human rights of all immigrants and their supporters.

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Recent Anti-Immigrant Strategies and Policy

The U. S. government has a historical pattern of restrictive policies and raids on immigrants when the country is experiencing an economic downturn or when there are social conditions and cutbacks that need a scapegoat. When the economy went downward during the depression of the 1930s, any Mexican-origin person who applied for welfare, unemployment, or any type of social service was forced to leave the country under the U.S. government category of “voluntary repatriation.” Approximately half of those deported were U.S. citizens, a clear violation of both their civil and human rights. Raising concerns over national security issues as a result of World War II, the U. S. government instituted additional bills in 1941 and 1950 to deny visas and deport individuals on the basis of public safety or political leanings.

In this contemporary period, on an international level, there is a movement of immigrants from poorer countries to more developed ones (Sutcliffe, 1993: 84-107). The response in the U. S. and in European countries has been twofold: on the one hand, the companies (and even some government officials) see the need for immigrants to fill employment voids (particularly when these countries are faced with an aging population). On the other hand, these countries do not want to acknowledge them as human beings with basic human rights.

Up until September 11, 2001, there was a movement toward some form of legalization for the estimated 12 million undocumented immigrants in the U.S. However, after September 11th, the issue of immigration became a national security issue. The most significant measure was the passage of the USA Patriot Act which allowed wide latitude for law enforcement agencies to conduct searches, to use electronic surveillance, and to detain persons suspected of being terrorists. The act expanded the definition of “terrorists” for the purposes of removing any immigrants certified by the U.S. Attorney General as having engaged in terrorist activities (Hom, 24-26).

Wayne Cornelius proposes that “The U. S. strategy – quite intentionally, in the view of many critics – addresses only the supply side; the flow of unauthorized migrants; it does nothing serious to reduce employer demand for immigrant labor. A supply-side-only strategy inevitably fails to deter “unwanted” immigration from Mexico and other Third World countries, while further entrenching unauthorized workers in the U. S. labor force. There has been a growth of “unauthorized immigration” in the U. S. – at a time when more is being spent on immigration control than ever before. The U. S. Congress has quintupled spending for border enforcement activities since 1993, to \$3.8 billion in Fiscal Year 2004, and tripled the size of the Border Patrol, to more than 11,000 agents.

Rather than spreading out the new resources all along the southwest border, a decision was made to concentrate them on four segments of the border (Operation Hold the line in El Paso in 1993; followed by Operation Gatekeeper in San Diego in 1994; Operation Safeguard in central Arizona in 1995; and Operation Rio Grande in south Texas begun in 1997. The logic of immigration policymakers was that if they could effectively control these main gates, “geography would do the rest,” as former Department of Homeland Security Commissioner Doris Messner recalled.

The result has been that, after ten years, the concentrated enforcement strategy has resulted in undocumented immigrants staying longer or settling permanently in the U. S. Data from surveys of Mexican migrants in transit or returning from the U. S. document these trends. As border patrol has tightened, a higher percentage of migrants have sought assistance from professional “coyotes”. Border enforcement has also greatly magnified the physical danger associated with entry into the U. S. Since 2000, an average of 404 migrants have died each year as a direct consequence of trying to cross into the U. S. These statistics understate the number of deaths since they include only migrants whose bodies have been recovered by the Border Patrol and the Mexican police. As Wayne Cornelius puts it: “To put this death toll in perspective, the fortified U. S. border with Mexico has been more than 10 times deadlier to migrants from Mexico during the past nine years than the Berlin Wall was to East Germans throughout its 28-year existence.

A final consequence of the enforcement strategy – has been to stimulate organized vigilante activity on this side of the border. In some areas, the U. S. Border Patrol has openly collaborated with these groups – receiving data from them and picking up groups of immigrants whom the vigilantes have rounded up.

Recently, anti-immigrant forces have pushed hateful and punitive policies to the front, and seen in the Sensenbrenner HR 4437 bill that passed in the U.S. House of Representatives. The Senate Judiciary Committee sent a more positive bill to the floor, which included legal residency for undocumented immigrants and family reunification, though with weak guarantees for working and civil rights and denial of important due process rights like legal counsel and judicial review of cases. At the same time, Senate Majority Leader Bill Frist introduced his own bill and a Hagel-Martinez “compromise” bill was worked out that still includes provisions for making felons of undocumented immigrants and their supporters, indefinite detentions, restricted due process rights such as of judicial review of contested cases, and mandatory employer verification of workers’ status. Unfortunately, the bill that the Senate finally agreed to has more negative effects than positive. It will divide our immigrant communities by creating a three-tiered system that includes the deportation of millions (if implemented). It requires millions to leave the country before being able to return. The politicians must have their heads in the clouds if they think that the immigrants who are here now -- are going to return. Hence, it will only legalize a small percentage in the end. Further, some of the requisites that the bill is requiring will leave out a large percentage of our undocumented immigrant families (leaving those out who have minor legal offenses and requiring large penalties that need to be paid by those who might be included in the legalization process).

At a state level, Senate Republicans in the California Assembly have proposed 25 measures this legislative session that would restrict illegal immigrants' access to college, block state-funded benefits and encourage police officers to act as immigration agents. While none of these bills are likely to pass, this state has not seen this many anti-immigrant bills since the 1993-94 legislative session saw the passage of anti-immigrant Proposition 187. The results of this fear hysteria are present in the state: an increase in hate crimes against immigrants – and nativist vigilante actions and rhetoric that have targeted, not only Latino and Latina immigrants, but middle-eastern and South Asian people.

It is important to understand that these anti-immigrant actions are based on prejudice and misinformation. The truth is that: our immigrant brothers and sisters pay more in taxes than they receive in educational and social services. As pointed out above, the urban institute found that documented and undocumented immigrants pay \$70.3 billion in tax payments but draw out only \$42.9 billion in total services – and they add billions more to the economy in consumer spending. In spite of high poverty rates among immigrants, they use fewer public benefits than citizens. The anti-immigrant groups attack our undocumented brothers and sisters particularly on this point. Again, as pointed out above, these attacks are unfounded. Undocumented immigrants are not eligible for welfare, food stamps, or most other social programs. Except for pre-natal care, undocumented immigrants do not qualify for government-provided medical treatment, except in emergencies.

Further, there has been no respectable research indicating that public benefits and services in the U.S. Serve as a magnet for immigrants. On the other hand, several studies demonstrate that the long-run benefits of immigration greatly exceed the short-run costs.

Anti-immigrant groups and conservative politicians support more enforcement. Yet, numerous studies show that enforcement policies are only resulting in more division and suffering in our communities.

Domestic Policy Alternatives

Policy approaches to immigration can follow one of two fundamentally different paths. One approach – is that proposed by various politicians – to restrict immigrants' access to public services. Governor Pet Wilson, in support of Proposition 187, proposed that immigrants would leave the state en masse if public services were cut off. However, Wilson's thinking was false; there has been no direct, scientifically reliable evidence to support the idea that the decisions of immigrants to migrate have been influenced by the availability of public services. Proposition 187 made parents afraid, but it did not result in their returning to their home countries. The U. S. Welfare Reform Law of 1996, a federal law which not only Kept immigrants but also legal permanent residents from receiving virtually all federally-funded benefits (like food stamps and Medicaid)

stimulated no mass exodus of undocumented immigrants, and neither did it result in lessening of the immigrants who continued to come to the U. S..

In contrast, another option is expanding the process of legalization for new immigrants. This can be done through increasing the number of permanent resident visas, leading to citizenship. National policy should recognize that when amnesty is allowed and the undocumented status is removed, wages and productivity increase for *all* workers, not just immigrants. Even the various studies indicating that undocumented workers in certain industries do bring downward pressure on wages, find that it is not the immigrant that is to blame. The way to eliminate this downward pressure is by giving undocumented workers labor protection. As the exploitation of wages is reduced and working conditions improved, more equality is created between immigrant workers and resident workers.

From a public policy perspective, it would be preferable to move directly to a sizable increase in permanent-resident visas to accommodate immigrant workers in labor-intensive industries. This would have better long-term results (than a short-term temporary worker program) by giving immigrants the possibilities of being a part of a work force that both benefits from and contributes much to the larger society.

National policy should recognize that when amnesty is allowed and the undocumented status is removed, wages and productivity increase for *all* workers, not just immigrants.

As part of this, we need to support the opening of legal channels to citizenship. Immigration lawyer Peter Shey argues that we can, right now, make it a priority to pressure the U. S. government to reduce the backlog of immigrant applications already in process.

The country is at an all-time high of 2.6 million pending applications – 1.8 million of which are “relative” applications. Shey proposes that the U. S. should enact a reasonable statute of limitations for immigrants already in this country. There is no reason why the Department of Homeland Security should not take care of processing all those already in the pipeline. In this context, it is absurd to be talking about a temporary worker’s program when there are already millions waiting in line to be legalized.

Rather than always being on the defensive, it is important to support such bills as the DREAM ACT which addresses the tragedy of young people who grew up in the U. S. and who have graduated from U. S. high schools but who, because of current immigration laws, have no mechanism for obtaining in-state tuition in the institutions of higher education and who have no way of obtaining legal residency.

Another proactive bill, which is still being debated in Congress, is the AGJobs bill -- sponsored by a broad-based national coalition of farm worker organizations, labor unions, agricultural employers and immigrant advocates. This bill will allow undocumented farm workers to earn the legal right to permanently stay in this country by

continuing to work in agriculture. Unlike President Bush's immigration "reform" plan, the AGJobs bill's temporary immigration status lead to permanent legal status and eventually citizenship for undocumented farm workers and their family members in this country.

Federal policy should pursue efforts that will allow immigrant workers the right to work here and receive legalization rights that will lead to permanent residency and citizenship. This means genuine legalization proposals to adjust the status for all undocumented immigrants where they can be treated as full human beings -- with no expansion of temporary guest worker programs and with labor law protections.

The federal government can also look to three state level proposals in California as models for national policy:

- Rather than an increase in narrow enforcement policies that are promoting wasted resources on militarizing our borders and compelling local police officers to enforce federal immigration laws, the efforts should be supported like those of Assembly speaker Fabian Nunez to include a provision in the California state budget that would withhold state funding from local law enforcement organizations that act as immigration agents.
- Assemblyman Hector DE La Torre (in AB 2060) seeks to require the Department of Community Services and Development to contract with and allocate funds to local organizations to provide free naturalization services to the approximately 2.7 million immigrants eligible for naturalization in California. These types of initiatives will help in putting an end to the backlog of immigrant applications already in process. We are at an all-time high of 2.6 million pending applications, 1.8 million of which are 'relative' applications. In this context, we need to support legislation that will advance family reunification and the immediate processing of the backlog of pending visa applications.
- Senator Gil Cedillo's bill (Sb 160), The California Dream Act, would permit undocumented immigrant students who have grown up in California and graduated from California high Schools to receive a California Community College Board of Governors fee waiver, and establishes procedures for enabling these students to participate in all student aid programs in the community college, cal state, and University of California systems.

The problem with Bush's temporary worker program is that it does not fit the realities of today's immigrant work force. Less than one out of ten immigrants now employed in the U. S. is working in agriculture or some other seasonal job. Further, because of technological changes, even agricultural jobs increasingly are year-round. Rotating temporary workers through permanent jobs will simply not work, but politicians do not want to acknowledge this. They do not want to acknowledge that there are permanent jobs in an advanced industrial economy that cannot be filled with native-born workers.

Contrary to the stereotype of undocumented immigrants as single males with very little education who perform only manual labor in agriculture or construction, a new Pew Hispanic Center report shows that most of the undocumented live in families, a quarter has at least some college education, and that immigrants can be found in many sectors of the U. S. economy. The report estimates the number of persons living in families in which the head of the household or the spouse is an undocumented immigrant – 13.9 million as of March, 2004, including 4.7 million children. Of those individuals, some 3.2 million which are U. S. citizens by birth but are living in “mixed status” families in which some members are undocumented, usually a parent, while others, usually children, are citizens by birthright. The report finds that at least 6.3 million undocumented were employed as of March, 2004, comprising 4.3 percent of the work force even though it has been illegal for employers to hire workers lacking proof of proper immigration status since 1986. While 3 percent of undocumented are employed in agriculture, 33 percent have jobs in service industries, and substantial shares can be found in construction occupations and 17% in production, installation and repair. A quarter of the undocumented have at least some college education and another quarter has finished high school.

International Policy

Immigration patterns will not significantly change because of domestic immigration policies. Instead, workers will remain in or return to Mexico or Central America when the economy in these countries improves. Thus, to reduce immigration to the U.S., the federal government must work with other national governments to strengthen their economies. In particular, the U.S. should develop of bilateral job-creating approaches in key immigrant-sending areas. In the case of Mexico, it is in the roughly 5% of Mexican municipios (counties) that contribute the largest share of immigrants to the U. S. However, the U. S. and Mexican governments have not shown any serious interest in this developmental approach.

The international terrain of immigration has shifted with NAFTA. The “free trade agreement” as it is called, has removed existing trade barriers, eliminated tariffs left on American imports, allowed U. S. corporations full ownership of companies in Mexico, and granted U. S. financial services greater access to Mexican markets. Any talk of benefits to the Mexican people becomes questionable when one looks at the dismal results of the “maquiladora” industry all along the Mexican side of the border. These corporations which have runaway from the U. S. in search of cheap labor and less regulation have not been able to hide the hidden costs of their social and environmental destruction. Not only have they been caught polluting the air and water but they have also had a profound effect on the cohesion of the Mexican family. It is commonplace for these plants to primarily hire women and children. No compensation is made for the hidden costs of profit: familial disintegration and inadequate housing, health, and child care.

Of course, in today's world, no economy is independent and it would be silly to offer protectionism as an alternative. It is also silly to offer the bracero program as an

alternative programs, like the bracero program, are merely a legal means of exploiting workers and paying them low wages with few benefits and shipping them back before they can be organized. The Bracero program is not only a means of exploiting cheap labor: it is a way of breaking unions both here and abroad.

Instead, a larger need is to address what the "free-trade" agreement is seemingly substituting: the need for restructuring the economy with policies that would invest in research, development, education, training, child care, and the inner cities. The foundations and networks for a successful federal strategy are rooted in local efforts that use hometown associations to gather remittances and invest in the economic development of immigrants' home countries.

Transforming Immigration

This nation needs a new direction that, rather than scapegoating the immigrant for all the ills of the society, will look at them as human beings. Let us support a new direction and support legalization initiatives that reward immigrants for all the contributions that they make to this society.

Rather than always being on the defensive, this administration should support coalitions, such as ones that have been building, holding language and immigrant rights classes, building "vote by feet" districts of political power, and uniting all that can be united in: developing a visionary agenda to turn back the post-September 11th provisions that have increased the categories of "deportable" crimes and that have further criminalized immigrant workers.

TRYING YOUTH AS ADULTS

Equity in the Juvenile and Criminal Justice Systems

LIZ RYAN

Abstract

Each year, an estimated 200,000 youth in the U.S. are tried, sentenced, or incarcerated as adults, many of whom are charged with non-violent offenses. However, trying youth as adults harms both youth and public safety. This brief proposes that the new administration support a variety of policy initiatives to reduce the harmful effects and extent of adult sentencing of youth. These changes can only be implemented by a strong Office of Juvenile Justice and Delinquency Prevention.

Policy Recommendations

A new federal approach to juvenile justice should begin with the reauthorization of existing legislation, the Juvenile Justice and Delinquency Prevention Act. The administration should collect data on the effect of transfer policies - including the number of youth transferred and the ways in which they are transferred - and their impact as the basis for future action. In addition, the administration should oppose any legislation that increases the number of youth transferred to the adult criminal justice system, while increasing engagement of youth and families affected by the juvenile and criminal justice systems. Capacity for change should be built through technical assistance and financial support to States to comply with the jail removal and sight and sound core requirements; incentives for comprehensive and meaningful collaborations; and a stronger Office of Juvenile Justice and Delinquency Prevention.

Natural Constituencies

Juvenile justice advocates would support each of these efforts. In addition, other youth institutions such as schools and public health agencies would benefit from a stronger juvenile justice system. Other groups who support these changes include juvenile corrections associations, many professionals who run adult jails, system stakeholders, and youth and their parents. Finally, communities that have high rates of youth participation in the criminal justice system would also be constituents for these changes.

EACH YEAR, AN ESTIMATED 200,000 youth in the U.S. are tried, sentenced, or incarcerated as adults, many of whom are charged with non-violent offenses. On any given day, nearly 7,500 young people are locked in adult jails and more than 2,600 young people are locked in adult prisons.

Evidence Against Trying Youth as Adults - Trying youth as adults:

- ***Harms public safety:*** Research shows that youth prosecuted as adults are more likely to reoffend. Reports released by the U.S. Centers for Disease Control and Prevention and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) found that youth prosecuted in the adult criminal justice system are much more likely to re-offend when compared to youth who committed similar crimes, but were retained in the juvenile justice system.
- ***Causes long-lasting harm for youth:*** Youth housed in adult jails are at a higher risk of violence and suicide than those in the juvenile justice system. For example, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities. Additionally, up to one-half of youth detained in adult jails pre-trial are not convicted as adults, but will have spent between 1-6 months in an adult jail.
- ***Disproportionately affects African-American youth:*** According to the most recent data available, African-American youth were only 19% of youth arrested by federal agencies, but African-American youth were 61% of the youth convicted as adults in the federal criminal justice system.
- ***Contradicts public opinion:*** A Zogby poll conducted last year found that 92% of Americans believe that the decision to try a youth in adult court is best made on a case-by-case basis by a neutral decision-maker, such as a juvenile court judge. In addition, national polling shows that a vast majority of Americans support rehabilitating, rather than punishing, even serious juvenile offenders.

Research shows that youth prosecuted as adults are more likely to reoffend.

Recommendations for the New Administration

- ***Support and sign into law a strong reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP):*** This legislation is a major vehicle for juvenile justice reform at the federal level and is currently due for reauthorization. The JJDP provides grants to States to assist with juvenile crime prevention and intervention programs. CFYJ supports a strong JJDP reauthorization that includes the recommendations of the National Juvenile Justice and Delinquency Prevention Coalition, which includes over 80 national organizations who work on youth development and juvenile justice issues. The recommendations should be implemented, including expansion the JJDP's jail removal and sight and sound core requirements to include youth no matter what court they are in - juvenile or adult.
- ***Oppose/veto any legislation or amendment that increases the number of youth prosecuted in the adult criminal justice system:*** Given the harmful effects of

prosecuting youth in the adult system, the new Administration should veto any bill that allows more youth to be prosecuted in or transferred to adult courts at either the State or federal levels.

- **Collect data on transfer policies in States and at the Federal level:** Data on the prosecution of youth to the adult criminal justice system is lacking in States and in the Federal criminal justice system. The new Administration should initiate a data collection effort by providing resources to States to track and evaluate the impact of transfer laws.

For each State and the federal system, collected data should include 1) the number of youth prosecuted and transferred into the adult system, 2) in each jurisdiction, how youth are prosecuted or transferred to the adult system; 3) where and how long youth transferred are held pre-trial; 4) where and how long youth who are transferred are held post-conviction; and 5) the nature and length of post-release activities for transferred youth, such as probation. For each category, the data should be disaggregated by race, ethnicity, gender, and age.

- **Conduct research on the effects of prosecuting youth in the adult criminal justice system:** The new Administration undertake additional research efforts on the impact of transferring youth to the adult criminal justice system. This research should include 1) recidivism and 2) collateral consequences of transfer to the adult system, such as educational attainment, employment, and access to federal programs (such as Medicaid).
- **Provide technical assistance and financial support to States to comply with the jail removal and sight and sound core requirements:** The current JJDP law's "jail removal" core requirement prohibits youth who are charged as juveniles from being held in adult detention facilities before their adjudication hearing except in very limited circumstances. In these limited circumstances, the "sight and sound separation" core requirement ensures that youth are be sight and sound separated from adult inmates.

With regard to the jail removal and sight and sound core protections, the new Administration should provide support and technical assistance to 1) ensure that States are in compliance with current law; 2) for States not in compliance with current law, help States to become fully compliant; 3) for States already in compliance with current law, encourage the development of best practices; and 4) assist States come into compliance with any new jail removal and sight and sound separation requirements included by Congress in the forthcoming JJDP reauthorization bill.

- **Strengthen OJJDP:** The OJJDP must be strengthened by 1) refocusing OJJDP on the JJDP and its core protections for children; 2) improving the provision of technical assistance to states, 3) updating JJDP regulations to reflect current priorities and core protections; 4) restoring the comprehensive nature of the agency including conducting research and gathering data, identifying and disseminating best practices and relevant information, leading demonstration projects, providing training and technical assistance, and promoting the expansion of effective practices in the field; and 5) increasing transparency and accountability.

- ***Increase engagement of youth and families affected by the juvenile and criminal justice systems:*** The new Administration should undertake new efforts to engage a wide variety of stakeholders in the juvenile and criminal justice fields, particularly youth and their families who have been involved in these systems.
- ***A Federal juvenile justice strategy should create incentives for comprehensive and meaningful collaborations:*** Juvenile justice efforts should be coordinated among state and local agencies, programs, and organizations that serve children, including schools, law enforcement agencies, juvenile courts, departments of corrections, and public health agencies.

The OJJDP must be strengthened by 1) refocusing OJJDP on the JJDPA and its core protections for children; 2) improving the provision of technical assistance to states, 3) updating JJDPA regulations to reflect current priorities and core protections; 4) restoring the comprehensive nature of the agency including conducting research and gathering data, identifying and disseminating best practices and relevant information, leading demonstration projects, providing training and technical assistance, and promoting the expansion of effective practices in the field; and 5) increasing transparency and accountability.

RACIAL AND ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM

MARK SOLER

Abstract

Youth of color are disproportionately represented in juvenile justice systems across the country, and the rates of overrepresentation increase as youth go deeper into the system. Racial stereotyping is a major contributor to Disproportionate Minority Contact (DMC), but it plays out in a variety of ways in juvenile justice systems. Major causes of this disparity include: structural inequities in society; policies that are race-neutral on their face but impact primarily youth of color; higher presence of police in low-income communities; lack of cultural competence and language interpreters in the justice system; overdependence on the juvenile justice system as a provider of family support and treatment services; ineffective representation; and an absence of effective employment programs. Local efforts that have begun to address these barriers over the past eight years have had significant impact, but the federal government has not been a major presence in these initiatives. The next administration's policies regarding juvenile justice should build on recent developments in pilot programs designed to reduce the disproportionate minority population within the system. A federal juvenile justice

strategy, as begun by the guidelines for states included in the Senate's recent reauthorization of the Juvenile Justice and Delinquency Prevention Act, should expand on the lessons of innovative efforts throughout the country.

Policy Recommendations

The next administration's policies regarding juvenile justice should build on recent developments in pilot programs designed to reduce the disproportionate minority population within the system. A federal juvenile justice strategy, as begun by the guidelines for states included in the Senate's recent reauthorization of the Juvenile Justice and Delinquency Prevention Act, should expand on the lessons of efforts throughout the country through: the development of a local governing body to oversee DMC reduction efforts; creation of objective detention screening instruments to reduce subjective stereotyping at intake; a determination of how to expedite the process and avoid lengthy incarceration; and the establishment of community-based programs and services as alternatives to detention and post-adjudication commitment to state institutions. These policies must employ detailed data to drive decision-making and include the regular monitoring and evaluation of ongoing efforts.

Natural Constituencies

Foundations that have developed pilot programs that form the basic of this strategy and advocates for minority youth support will support these proposals. In particular, minorities that suffer from lack of cultural competence and interpreters will immediately benefit from the ability to better understand the criminal justice system.

This proposal challenges judges, police, and case workers within the juvenile justice system, and they are likely to resist such critiques. In addition, communities and individuals worried about crime and who believe that punishment deters crime would oppose efforts to reduce incarceration.

THIS MEMO WILL ADDRESS three aspects of racial and ethnic disparities in the juvenile justice system, sometimes referred to as Disproportionate Minority Contact (DMC): (1) causes of DMC, (2) history and context of efforts to reduce DMC, and (3) effective strategies for reducing DMC.

Causes of DMC

Youth of color are disproportionately represented in juvenile justice systems across the country, and the rates of overrepresentation increase as youth go deeper into the system. For example, youth of color are one-third of the adolescent population in the United States, but two-thirds of the youth in locked detention and placement. Research demonstrates that youth of color are treated more harshly than white youth at every stage of juvenile justice systems throughout the country, *even when charged with the same category of offense.*

Research demonstrates that youth of color are treated more harshly than white youth at every stage of juvenile justice systems throughout the country, *even when charged with the same category of offense.*

Moreover, in many parts of the country there are no accurate data on the number of Latino youth in the juvenile justice system. Instead, Latino youth are counted as “white” or “black.” Without accurate data, it is difficult for communities to plan and coordinate effective culturally and linguistically appropriate services for youth and their families.

Racial stereotyping is a major contributor to DMC, but it plays out in a variety of ways in juvenile justice systems. This issue is like an onion, with many layers, and peeling it is an important part of efforts to reduce DMC. Identifying the particular causes of DMC in there are more black youth locked up – they commit more of the crimes!”), does not appear to be a major factor in DMC. Self-reporting studies indicate that African-American youth commit slightly more violent crime than white youth, about the same amount of property crime, and much *less* drug crime. However, arrest rates of African-American youth for violent crimes are dramatically higher than the self-reporting rates, and arrest rates for black youth for drug offenses are even higher. Thus, other factors appear to be more important than any differential rates of offending.

Major causes of DMC affect the number of youth of color who enter the juvenile justice system and how deeply they penetrate into the system. They include the following:

Structural inequities in society. Poor housing, lack of legitimate employment opportunities, and inadequate schools all contribute to disproportionate crime by youth of color. Poor schools are particularly important. Substandard teaching, crowded classrooms, undiagnosed educational disabilities, and lack of available counselors lead to truancy, suspensions, eventual expulsions, unstructured and unsupervised time, and delinquent behavior. Inflexible “zero tolerance” policies, the presence of school police “resource officers,” and high-stakes testing with strong disincentives for low-performing students lead to push-outs for the slightest misbehavior.

Policies that are race-neutral on their face but impact primarily youth of color. The Illinois automatic transfer statute provided that youth arrested for a drug offense within 1,000 feet of a school or public housing project were automatically charged in adult criminal court rather than juvenile court. Though neutral on its face, in practice virtually all prosecutions occurred in Cook County, in the city of Chicago, and involved African-American or Latino youth. The statute was recently amended to provide that such prosecutions will originate in juvenile court.

Differential police practices. Crime is more common in low-income communities. People of color are more likely than whites to live in low-income communities. The police and many people in low-income communities want a higher police presence to deter crime, so police target those communities. There may be no racial stereotyping involved, but a higher police presence results in more arrests, i.e., more arrests of young people of color.

Lack of cultural competence. The chief judge of the juvenile court in a major urban area reported that he had interpreted the failure of Latino youth to look him in the eye in court as an admission of guilt and a lack of respect for authority, and considered that in determining dispositions. Fortunately, Latino staff in the court advised him that in Latino culture it is improper to look an authority figure in the eye in such circumstances, and appropriate to look down. Once he understood the cultural context, he changed his sentencing policies.

Net-widening. In many jurisdictions, stakeholders such as prosecutors and judges seek to bring as many youth into the juvenile justice system as possible as a way to provide family support and treatment services. Despite their good intentions, all too often those services do not exist, or are severely over-extended, or are inaccessible geographically to those who need them most.

Lack of objective and culturally competent detention screening instruments. Confinement before trial (“detention”) is a major determinant of whether youth will be incarcerated after sentencing. Under most state statutes, detention should only be used if the youth is likely to commit a serious offense while his or her case is pending, or is not likely to show up at court appearances. In many locations, decisions to detain are made subjectively by intake staff and are subject to racial stereotypes. Objective and culturally competent detention screening instruments have been used in many jurisdictions to distinguish youth who should be detained from those who can be released to parents or guardians, or placed in community-based supervision programs.

Ineffective representation of youth. Most youth are represented in court by public defenders and many public defenders have huge caseloads, inadequate resources for investigators and even computers, little specialized training, and bare-minimum salaries. With such burdens, many public defenders have no time to meet with their clients before court hearings, investigate cases fully, file motions, or develop individualized dispositional (sentencing) plans.

Lack of interpreters in court, lack of bilingual and bicultural probation staff, lack of bilingual public defenders, lack of Spanish-language materials for Latino youth and parents. Most Latino youth have sufficient English language skills to be able to understand their proceedings, but many of their parents are not bilingual. In many jurisdictions, the parents do not understand the proceedings, cannot talk directly with attorneys and the court, and cannot read court documents that they are asked to (and do) sign.

Lack of culturally competent programs. In many jurisdictions, the programs available to youth of color through the Probation Department are not matched to their backgrounds, experiences, culture, language, and interests. Not surprisingly, youth of color quickly lose interest in such programs and do not find them to be effective.

Lack of effective employment programs. Youth who exit the juvenile justice system need structured activities – school or jobs – to avoid recidivating. However, many have little interest in school, and there are few opportunities for legitimate employment available to them.

History and Context of Efforts to Reduce DMC

In my view, there have been three phases of efforts to reduce DMC. The first phase was the period up to about 1990 and primarily consisted of research and laying a foundation for later efforts. During that period, there were numerous research studies and reports published that documented the over-representation of youth of color in the juvenile justice system, particularly at arrest and detention. However, there was little effective activity on the ground to actually reduce that over-representation. High points of the early period were the publication by the Coalition for Juvenile Justice of *A Delicate Balance*, a report on racial disparities in juvenile justice to the President, Congress and the Administrator of the federal Office of Juvenile Justice and Delinquency Prevention; and inclusion by Congress of a provision requiring states to “address” DMC in the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) in 1988.

The second phase was from the early 1990s to the middle of this decade, and was characterized by creative new efforts, a reliance on collection and analysis of data to drive policy-making, and demonstration of success in actually reducing DMC. During the second phase, there were pioneering efforts to actually reduce DMC in juvenile justice systems. The Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) began in December, 1992, as a national effort to reduce detention populations without jeopardizing public safety, and reduction of racial and ethnic disparities affecting youth of color quickly became one of its core strategies. JDAI has stressed the collection and analysis of data at key points in the front end of the juvenile justice system. In 1997, John Rhoads became the Chief Juvenile Probation Officer in Santa Cruz County, CA, and led their successful effort to reduce detention of Latino youth in that county. In 1998, Multnomah County, OR, successfully reduced DMC so that the likelihood of an arrested youth being held in detention in the county was the same for white youth and for youth of color. Both Santa Cruz and Multnomah are JDAI sites.

In February, 2000, Building Blocks for Youth, a national multi-strategy initiative to reduce DMC, issued the first of ten reports on DMC issues. In April, 2000, the second Building Blocks report, *And Justice for Some*, received unprecedented news coverage, including the front page of *The New York Times*, newspapers in major cities throughout the country, all of the major television networks and NPR, and local radio throughout the country. In 2001, James Bell created the Haywood Burns Institute, with a mission to reduce the over-representation of youth of color in local juvenile justice systems. With his prior experience directing an effective Building Blocks for Youth project in King County, WA, he soon became a leader in addressing racial and ethnic disparities. In 2002, Congress expanded the scope of efforts to reduce racial and ethnic disparities by looking at Disproportionate Minority Contact (rather than Confinement) and made “addressing DMC” a core requirement in the JJDP, thus making federal funding contingent on state attention to the issue.

The third phase started in the middle of this decade and is continuing. In this phase, this issue is “going to scale,” and the lessons of the earlier phases are being applied in a significant number of jurisdictions around the country. In 2004, the MacArthur Foundation launched Models for Change, its major juvenile justice reform initiative, with DMC reduction as one of the targeted areas in the four MfC “core” states – PA, IL, LA, and WA. JDAI expanded to more than 100 sites around the country and DMC reduction is fully integrated into its detention-reduction efforts. In December, 2007, the MacArthur Foundation launched the DMC Action Network, coordinated by the Center for Children’s Law and Policy (CCLP), to expand its DMC reduction work into four new states – KS, MD, NC, and WI. The Haywood Burns Institute has expanded its work, and has developed a basic set of DMC data components that sites should collect, and those are being collected in all of the DMC Action Network sites. CCLP has developed a set of DMC Performance Measures, and those are also being reported by all of the DMC Action Network sites. In the current reauthorization process for the federal Juvenile Justice and Delinquency Prevention Act, the bill approved by the Senate Judiciary Committee with bipartisan support (S. 3155) contains more detailed guidelines for states on how to address DMC.

The final Building Blocks for Youth report, *No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Justice System*, documents the work of the Burns Institute, JDAI, and other efforts around the country, including closing or removing poor youth of color from large abusive institutions (Louisiana, South Dakota, California), preventing the construction of more such institutions (California, New York), and legislative reforms such as amending the automatic transfer statute in Illinois that was implemented almost exclusively against black and Latino youth. The lessons from these efforts, as noted in the report, are consistent and not surprising:

This work is difficult.
It requires commitment over extended periods of time.
It must focus specifically on race and ethnicity.

Detailed data are indispensable.
 Multiple strategies are necessary.
 The media can be an effective resource.
 There are many ways to define success.
 Persistent work can pay off in significant reforms.

Effective Strategies for Reducing DMC

The efforts by the Casey Foundation's JDAI, the Haywood Burns Institute, the Center for Children's Law and Policy, and the MacArthur Foundation's Models for Change have several common characteristics:

- Development of a local governing body to oversee DMC reduction efforts, with representation from all stakeholders, including parents, community leaders, and youth;
- Use of detailed data – particularly on race, ethnicity, gender, geography, offense, and incarceration -- to drive decision-making;
- Creation of objective detention screening instruments to reduce subjective stereotyping at intake;
- Review of case processing to determine how to expedite the process and avoid lengthy incarceration;
- Establishment of community-based programs and services as alternatives to detention and post-adjudication commitment to state institutions;
- Identification of other appropriate interventions to reduce DMC, including policy changes and new legislation; and
- Regular monitoring and evaluation of ongoing efforts.

These efforts have had significant impact. Multnomah County (Portland), OR, reduced its disproportionate confinement of youth of color by establishing alternatives to detention such as shelter care, foster homes, home detention and a day reporting center. Peoria County, IL, reduced disproportionate referrals of youth of color to the juvenile justice system by principals and teachers through working with the school system to strengthen school-based conflict resolution protocols. Travis County (Austin), TX, reduced its disproportionate incarceration of youth who violated probation by establishing a Sanction Supervision Program, which provides

Over the past eight years the federal government, notably the Office of Juvenile Justice and Delinquency Prevention, has not been a major presence in efforts to reduce DMC.

more intensive case management and probation services to youth and their families. Berks County (Reading), PA reduced its detentions of youth of color by establishing a race- and ethnicity-neutral screening instrument for youth referred for detention.

Over the past eight years the federal government, notably the Office of Juvenile Justice and Delinquency Prevention, has not been a major presence in efforts to reduce DMC. S. 3155, the bill to reauthorize the Juvenile Justice and Delinquency Prevention Act which was approved by the Senate Judiciary Committee on July 31, 2008, includes specific guidelines for states in addressing DMC which reflect the lessons learned by JDAI, the Burns Institute, CCLP, and Models for Change, including:

- (A) Establishing coordinating bodies, composed of juvenile justice stakeholders at the State, local, or tribal levels, to oversee and monitor efforts by States, unit of local government, and Indian tribes to reduce racial and ethnic disparities;
- (B) Identifying and analyzing key decision points in State, local, or tribal juvenile justice systems to determine which points create racial and ethnic disparities among youth who come into contact with the juvenile justice system;
- (C) Developing and implementing data collection and analysis systems to identify where racial and ethnic disparities exist in the juvenile justice system and to track and analyze such disparities;
- (D) Developing and implementing a work plan that includes measurable objectives for policy, practice, or other system changes, based on the needs identified in the data collection and analysis under subparagraphs (B) and (C); and
- (E) Publicly reporting, on an annual basis, the efforts made in accordance with subparagraphs (B), (C), and (D).

THE MOVEMENT
TO ELECT
BARACK OBAMA

Prospects, Possibilities, Proposals

MARSHALL GANZ

Abstract:

THE PRESIDENT-ELECT OBAMA'S CAMPAIGN became a social movement within a political campaign. However, rather than ending with the election, this movement has the possibility to flourish. Obama and his advisers must determine what shape such a movement could take, how government could encourage it, and how the interaction of government and movement could strengthen our democracy. The most promising avenue would be to turn Obama for America into a new organization that would create a representative governing body and invite organizers, leaders, and volunteers to work through it as a major venue for "active citizenship" at all government levels. Such active citizenship would delegate responsibility and invite citizens to join in the work of strategizing, mobilizing, and enacting public policy at state and local levels. The crises that we now face require this type of investment from the full range of our citizenry and offer the opportunity to reengage ourselves in the work of self-government.

"I will ask for your service and your active citizenship when I am President of the United States. This will not be a call issued in one speech or one program—this will be a central cause of my presidency."

Barack Obama, Colorado Springs, July 2, 2008

"Delaware County, Pennsylvania, volunteers have a fierce case of, 'Well, we're all fired up now, and twiddling our thumbs!' I suspect it can't only be happening here, but all over the country. Here, ALL the leader volunteers are getting bombarded by calls from volunteers essentially asking, 'Nowwhatnowwhatnowwhat?'"

Marilee Taussig, Delaware County, Pennsylvania, November 17, 2008.

The campaign to elect Barack Obama as President launched a movement. Across the country, some 3.5 million citizens contributed to this historic effort. Rooted in the motto of "respect, empower, include," the campaign recruited, trained and deployed some 3000 community organizers who structured, trained, and coached thousands of local leadership teams. Those teams, in turn, worked together to mobilize individuals in each community to take part in the campaign in record numbers. They became the foundation of a renewed civic infrastructure urgently needed to deal with the critical challenges of our time.

Now, the question is, can it flourish? Or, as one Wisconsin team leader put it, the question is whether "the Obama administration understands the true power of the network they have created."

It is time to consider the shape such a movement could take, how government could encourage it, and how the interaction of government and movement could strengthen our democracy. Such clarity is needed if we are to address our most critical public challenges: from climate change, to economic renewal, to education and health care.

Historically, social movements were launched outside the electoral process, rooted in communities, workplaces, or churches. They only later reshaped party politics and public policy. The civil rights movement, for example, began to organize in the South in the 1950s, reshaped both parties in the 1960s, and, as a result won major policy reform.

The Obama campaign became a social movement within a political campaign. It went beyond generating lists of donors and potential donors. It trained full-time organizers who were mostly in their 20s; organized thousands of local leadership teams (1,100 in Ohio alone); and engaged at least 1.5 million volunteers. Because this campaign built its own organization at the local level - rather than relying on the usual pastiche of interest groups, party organizations, and 527s—it can be a major new force in responding to today's most pressing challenges and help usher in reform unmatched since the 1930s.

But as President-elect Obama and his advisors tackle the urgent task of re-peopleing the Federal government, some important questions must be addressed.

Can a sitting President govern the country and lead a movement at the same time? Not only is Obama required to provide leadership to the entire country, he must bring the best leadership he can into government. That means President Obama may provide the movement with moral and political leadership but not its organizational leadership. Who can? And how would it work?

Trying to "turn it over" to the Democratic Party will not work. One can turn over lists, but not people, much less a movement.

Some people, especially political operatives, seem focused on transforming the Obama movement into a Web-based network: funds could be raised, information shared, emails called for, etc. As a kind of Presidential "MoveOn," such a network could mobilize support when needed, albeit thinly. But this would omit the "community organizing" that infused the campaign with the grassroots leadership that gave it its strength.

More promising—and challenging—would be an effort to turn Obama for America into a new organization, perhaps a 527 or 501(c)(4). Such a "Campaign for a New America" would create a representative governing body and invite organizers, leaders, and volunteers to work through it as a major venue for "active citizenship" at all government levels. One strength of the Obama campaign was a focus on shared values that freed volunteers from rigid "issue silos" of progressive politics and facilitating participation within a far more diverse constituency. In the tradition of American social movements, it linked local action to national purpose, investing local effort with national impact, and anchoring national goals in local reality. This new organization could link the pursuit of national, state and local policy goals, facilitate local community action, and offer the training, coordination, and communication which the campaign did so well. And it could serve as a wellspring of support for candidates for local, state and national public office.

The work of volunteers in the Obama campaign demonstrated an appetite for active citizenship that many thought dead, especially in young people. The excitement, however, is not about the social service voluntarism extolled by the first President Bush as "a thousand points of light." The excitement is about empowerment, working with others to organize, advocate, and practice politics.

This is what "active citizenship" means. It involves delegating responsibility and inviting citizens to join in the work of strategizing, mobilizing, and enacting public policy at state and local levels.

This approach to governance is not unfamiliar. During the Civil War, for example, the Federal Government created the U.S. Sanitary Commission as a structure through which women organized themselves—and their communities—to address medical needs of soldiers and, later, veterans. It evolved into the Red Cross. During World Wars and Depression government created similar structures through which citizens could actively engage in the collaborative work needed to address these challenges. In these cases, citizens were

called upon to organize not because it was a "nice thing", but because without citizen engagement these crises could not be addressed.

The crises we now face can also be addressed with the depth, breadth and ambition with which we faced these earlier crises. Dealing with these challenges will require citizen engagement in every neighborhood, town, city, county and state. It will call for an unprecedented degree of commitment by individuals, families, communities, and all manner of public and private institutions. In other words, dealing the challenges we now face may offer the opportunity to reengage ourselves in the work of self-government.

For this to work, however, and for the full range of our citizenry to participate, government will not only have to create the structure, but provide training, tools, and leadership. In the past, such opportunities for civic leadership development have either been taken advantage of mainly by the privileged—drawing on experience, practices, and resources already available to them—or they have been narrowly focused on the needs of "underserved populations." For many years, however, while many institutions focused on social service provision, our civic leadership skills have atrophied. The Obama campaign demonstrated that the need, appetite, and value of civic leadership training—or organizing—cuts across class, race, and region.

The major investment by the Obama campaign in the development of civic capital—infrastructure of leadership, teams, and organizers—has already changed us, creating new capacity, opportunity, and possibility. Citizen efforts to support the Obama program have already begun to spring up around the country. And, of course, its organizers have become the object of major recruiting efforts by community organizations, the labor movement, the climate change people, and citizen groups of every ilk. The major "recruiting effort," however, could—and ought to be—in service to the nation itself.

POLICY INDEX

This table indexes all of the policy recommendations that are proposed within “Innovation + Equity = Transform America.” Each policy is listed with the author and page number for the brief - or briefs - in which it is proposed. The table is organized according to the document's sections. An additional category, cross-cutting policies, includes the proposals that articulate the themes and recommendations of multiple authors throughout the document. Within each section, the policies are divided into regulatory and legislative recommendations. The policy index serves not to explain the proposals but rather as a reference to recommendations that are contextualized within the briefs.

Cross Cutting Policies

Page

Additional economic and fiscal stimulus programs should build long-term institutions through general revenue sharing to support state and local public services, a national infrastructure bank, new educational initiatives, an energy and environmental program, and affordable housing. These programs should promote job creation in an effort that complements labor market legislative and administrative initiatives. In particular, job creation should include construction spending, specifically deferred maintenance and energy efficient retrofits in infrastructure, schools and community facilities, and public housing.

Galbraith 15,
Rogers 91,
Raya and
Rubin 109,
Kochan 129,
Goetz 139

Federal policy should address foreclosure through prevention, mitigation, and aiding recovery through: loan modifications; housing counseling to all homeowners receiving notices of default; extending the foreclosure process in non-judicial states; easing government regulations that hinder income and asset security, while stepping up regulation of lenders; and launching an educational campaign to explain that CRA and low-income homeownership programs generally are not the cause of the financial crisis, but rather the best hope.

Galbraith 15,
Chapple 33,
Goetz 139

Community economic development programs should adopt green building standards and support livable, healthy, and sustainable cities. These efforts should promote energy conservation through retrofitting buildings in cities as a primary climate change and employment strategy.

Chapple 33,
Thompson
79,
Rogers 91,
Kochan 129

International policy that promotes the economies of other countries, particularly our trade partners and sending countries for immigrants. “Free trade” agreements should be reexamined so that they do not simply provide a means for companies in search of cheap labor and less regulation a way to hide the hidden costs of their social and environmental destruction. These agreements should require compliance with the ILO’s core labor standards and require trading partners to demonstrate on an annual or bi-annual basis that average wages are increasing in tandem with growth in labor productivity.

Galbraith 15,
Kochan 129,
Calderon 193

Growing an Equitable Economy

Page

Regulatory and Administrative Changes

Coordinate more effectively across federal agencies and mandating similar efforts at the local level to establish community economic stability and household economic security. A “czar” of community economic development can lead these efforts.

Chapple 33

Legislative and Programmatic Recommendations

The supply and prices of oil, food, and other commodities regulated by futures markets should be stabilized.

Galbraith 15

Social Security benefits should be expanded.

Galbraith 15

Immediate spending programs should require that a substantial share (e.g., 30%) of total hours worked on projects will be reserved for local and/or disadvantaged worker hires. Allocations should be based upon demonstrated need, the capacity to spend the funds quickly, and the extent to which projects are green (e.g., reduce greenhouse gas emissions by promoting the use of transit or retrofit buildings for energy efficiency).

Chapple 33,
Thompson
79,
Kochan 129

Any form of corporate subsidy should require community economic development outcomes.

Chapple 33

Labor standards to ensure job quality, connections to training and apprenticeship programs, and local hiring should be built into both economic development programs and government-funded construction projects.

Chapple 33,
Kochan 129

Adapt the FDIC’s proposed approach to loan modifications – changing from adjustable to fixed rate and lowering the interest rate so that monthly payments are capped at 38% of household income – to a 33% cap. Also, expand it to cover all disadvantaged homeowners in foreclosure who want to participate.

Chapple 33

Build community development corporation (CDC), CDFI, and community organizing capacity outside of the traditional urban core and rethink federal agency allocation formulas that do not reflect current needs.

Chapple 33

The federal government should partner with local institutions such as universities to develop and demonstrate new models of community economic development.

Chapple 33

Modify the Bankruptcy Means Test to adequately differentiate among the circumstances causing someone to seek bankruptcy.

Jaynes and
McKinney 45

Allow bankruptcy courts to restructure mortgage debt.

Jaynes and
McKinney 45

Place restrictions on how the credit card companies could target consumers and the types of credit that the companies could offer.

Jaynes and
McKinney 45

Growing an Equitable Economy (continued)

Page

Decrease the regressivity of the payroll tax by not exempting income above \$94,000. This policy would not only reduce regressivity but also raise revenue for Social Security and Medicare.

Kobes 53

Add a line to the income taxes indicating total payroll tax liability.

Kobes 53

Encourage work not just among low-income families but also among single workers by expanding EITC benefits to them.

Kobes 53,
Kochan 129

Make the child and dependent care tax credit (CDCTC) refundable, increasing qualifying expenses to 50 percent rather than 35 percent of child care costs, and raising the initial income phase-out to \$30,000 but also rapidly phasing the credit out.

Kobes 53

Focus higher education benefits on those who need it most with direct spending grants or tax that are predictable and substantial. To the extent that tax incentives are used, they can most help low-income students if they are refundable and have a relatively low income threshold for phase-outs.

Kobes 53

At a minimum, savings credits need to be refundable to benefit low-income workers. However, low participation rates in these programs hinder the effectiveness of helping low-income workers. Federal funding could be better used through programs that help these households once they have retired, particularly through progressive Social Security benefits and lower health care costs.

Kobes 53

The estate tax should return to the levels required in current law. This would reestablish a \$1 million exemption (\$2 million for couples) and maximum marginal tax rate of 60 percent.

Kobes 53

Repeal the AMT and fund the change through an increase in the top marginal tax rates. The AMT was intended to ensure that high-income households paid their share of taxes, and so fixing the damage of this structure should not be borne by low and middle-income households. The Tax Policy Center estimates that AMT repeal can be funded completely by a 15 percent increase in the top three marginal tax rates (i.e. the 39.6 percent tax rate becomes 45.7).

Kobes 53

Transforming the Urban Environment

Regulatory and Administrative Changes

The new administration should seek to ensure that agencies with jurisdiction over the environment have clear and environmentally protective statutory mandates. Layzer 71

Policies should elevate the importance of conservation in the missions of multiple-use agencies. Layzer 71

Legislative and Programmatic Recommendations

Implement a system for pricing natural capital offset by reductions in taxes on labor and progressive income tax. Carbon tax is the most efficient way to do this. Layzer 71

The federal role in developing alternative energy should be to support basic research and make capital available to private companies. Layzer 71

The next administration should redesign national accounting to include quality of life. The national account should measure three components: the value of the services rendered by the economy; the costs of natural resource depletion and pollution; and the value of both financial and natural capital stocks. Layzer 71

The administration should reform agencies' legislative mandates to ensure that the burden of proof of safety consistently falls on prospective developers and polluters. Layzer 71

A long-term strategy to eliminate environmentally damaging subsidies and price natural capital will involve taking on a host of well-defended interests. It will entail tax-reform legislation and modifications to a host of individual laws, such as the Farm Bill, that contain subsidies for environmentally damaging activity. Layzer 71

Power Plant Pollution Rules should be focused through the EPA to protect vulnerable urban children, asthmatics, and the elderly from these pollutants by using EPA's authority under the Clean Air Act ("CAA"). DOE and EPA should better address EJ issues in the new siting and expansion of power plants underway in the Southeast and Midwest. Layzer 71

Disincentives for tribe and the wind developers should be modified so the tribe can transfer the tax credit and thus taxes on the developer can be more equitably distributed (or reduced). Kobes 53,
Layzer 71

Support labor standards, workforce diversity, and workforce development to build a workforce for green retrofitting. Thompson 79,
Kochan 129

Support production of energy-efficient appliances in urban areas zoned for manufacturing. Thompson 79

Transforming the Urban Environment (<i>continued</i>)	Page
Prevent displacement of low-income people from cities as a result of urban in-migration caused by higher energy costs and looming carbon penalties for sprawl.	Thompson 79, Goetz 139
Facilitate, and shape, financing for green retrofits to initiate urban retrofit programs and to support equitable splitting of returns from green investments.	Thompson 79, Rogers 91
Mandate efficiency investments through tougher builder and appliance standards, or requirements to meet those standards at property point-of-sale or major rehab.	Rogers 91
Remove barriers to retrofitting investments by aligning the treatment of energy costs and building improvements under federal tax law, removing state and municipal land use laws that discourage dense development or transit-oriented development, internalizing the infrastructure costs of sprawl to the developers who lead it, getting full cost accounting on all new building construction, and life-cycle accounting on new infrastructure, and removing barriers to value purchasing.	Rogers 91, Raya and Rubin 109, Goetz 139
Require full net-metering for customers (i.e., permitting customers to sell capacity to the grid as well as buy it, and to realize value from peak load reduction or other gains from efficiency of value to utilities) while compensating utilities for costs in increasing energy efficiency as well as the costs of new generation and distribution and sale.	Rogers 91
Develop markets for the “secondary” value of greater efficiency through emissions trading markets, efficiency trading markets, or forward capacity markets.	Rogers 91
Encourage greater cost transparency throughout the energy system, from real-time energy pricing for consumers to the valuation of externalities of different energy generation and efficiency measures.	Rogers 91
Elicit voluntary participation in the new model of energy efficiency by further reducing its risks and increasing its return for key players. This should be achieved through reducing external investors’ risk by using less demanding capital for credit enhancement, including guarantees on expected defaults, and providing favored tax treatment. Tenants that participate might be given benefits beyond energy costs savings such as favored public service, financial credit, or tax treatment.	Rogers 91
Report the geographic distribution of transportation investments.	Raya and Rubin 109
Revise transportation planning models and metrics.	Raya and Rubin 109
Increase total infrastructure revenues by raising the gas tax; supporting local transportation sales taxes that invest in a balanced mix of transportation modes; supporting local smart growth sales taxes. Increase funding for transit. (a) Free the gas tax. (b) Create dedicated revenue sources for transit. (c) Create a Regional Transit Vision to shift regional investments into transit.	Raya and Rubin 109
Invest in bicycle and pedestrian infrastructure. (a) Design streets for bicyclists and walkers as well as for drivers. (b) Replicate the Safe Routes to School program. (c) Emulate the Safe Routes to Transit program.	Raya and Rubin 109

Transforming the Urban Environment (*continued*) **Page**

Target special transportation funds to disadvantaged communities. (a) Maintain and expand the JARC program. (b) Create free student bus pass programs. Raya and Rubin 109

Envision the entire region in transportation planning in three ways: Condition transit funding for local governments on smart growth zoning. Create incentive programs for transit oriented and pedestrian friendly development. Attract more transit riders and increase system efficiencies. Raya and Rubin 109

Foster local activism and coalitions. Raya and Rubin 109

Devolve transportation decision making to the regional level. Raya and Rubin 109

Encourage litigation to: (a) Challenge transportation investment decisions. (b) Challenge the disproportionate accumulation of negative impacts in communities. (c) Challenge the certification of Metropolitan Planning Agencies (MPOs). Raya and Rubin 109

Building a Baseline: Jobs, Housing, and Healthcare

Regulatory and Administrative Changes

Develop workforce agencies through: reversal of the cuts in staff and budgets of a number of key agencies; better coordination across agencies; and integrated data from individual enforcement agencies. Kochan 129

The Food and Drug Administration should be expanded on several fronts: 700 new officials to should be hired; a fellowship plan should recruit 2,000 people from various fields to receive FDA training; \$250 million should be dedicated to updating software systems and expanding an electronic database; FDA offices should be established overseas to regulate products before they are shipped to the U.S. Master and Alexander 149

Legislative and Programmatic Recommendations

Pass the Employee Free Choice Act to restore workers' ability to form unions and gain access to collective bargaining, and to engage workers and their unions to achieve the innovation and productivity growth needed to get wages moving in tandem with productivity. Provisions should be added to the current draft of this bill to give the Secretary of Labor the discretion to approve and fund experimental and demonstration projects in key industries. Kochan 129

Expand the Family and Medical Leave Act and enactment of the Healthy Families Act to provide paid sick leave for all workers. Kochan 129

The first Administration budget to Congress should increased funding for employment and training, tax credits for private sector investment in training and development, and reforms of unemployment insurance to support worker mobility across jobs. Kochan 129

Building a Baseline (continued)

Page

The federal government should fund technical assistance (perhaps in conjunction with the ILO) to upgrade the enforcement capabilities of our trading partners. Kochan 129

US transnational firms should be held accountable for monitoring and demonstrating compliance with minimum labor standards throughout their full supply chains. Kochan 129

HOPE VI should be discontinued immediately. Goetz 139

Demolition of public housing should be avoided wherever necessary. Goetz 139

Federal policy should preserve of existing affordable units. Barney Frank’s, “Housing Preservation and Tenant Protection Act” serves as a model to provide first right of purchase to those who will maintain the long-term affordability of units. It also provides for project-based vouchers to maintain affordability, and for the replacement vouchers to be provided for all units in the project. Goetz 139

Provide adequate funding for the Housing Choice Voucher (HCV) program. Goetz 139

Expand efforts to build more affordable units in most cities. The Low Income Housing Tax Credit is an important element in this effort and its authorization should continue and the program expanded. Goetz 139

The federal government should fund the development of new public housing and take steps to ensure that multifamily rental housing is being built in all of the nation’s communities. A range of financing options is available for new public housing development, including low-income housing tax credits, debt financing, and direct federal government grants. Goetz 139

New policies should make housing authorities regional. Goetz 139

The federal government should pursue policies to encourage local governments to develop affordable housing. One approach would be for HUD could condition water and sewer grants on a community’s progress in allowing and facilitating the development of low-cost subsidized housing within its jurisdiction. Goetz 139

Federal policy should require participation in regional housing agreements for fair share housing of all urban grantees under the CDBG and HOME programs. Alternatively, regulatory reform could involve the preemption of local regulatory authority in cases where the development of affordable housing is excessively constrained. Goetz 139

The mortgage interest deduction can and should be significantly limited. Limits could be pegged to the size of the home, the value of the home or the income of the taxpayer claiming the deduction. Kobes 53, Goetz 139

Apartment rental income should be a deduction from taxable income in order to treat apartment income exactly like the housing service flow provided by an owner-occupied house. Kobes 53, Goetz 139

Building a Baseline (continued)

Page

The federal government should establish a way of recognizing and rewarding local innovations in housing assistance. Goetz 139

Medicare needs to be a competitive option to private health insurance for employers. Master and Alexander 149

Negotiated Part D drug prices policies should established to make Medicare even more affordable and to improve its efficiency and quality. Master and Alexander 149

Medicare and Medicaid policy for dual eligibles needs to be aligned and tightly integrated with the promotion of the right kind of Medicare Advantage Special Needs Plans for this most medically and socially complex subset of beneficiaries. Master and Alexander 149

Many Medicare payment policy changes are needed in addition to promote efficiency and quality. Two critical changes are: 1) pay for performance measure to reduce medical errors and suboptimal processes of care. 2) episode of care, payment approaches that bundle hospital, specialists and post hospital nursing home service payments to reduce discontinuity and inappropriate hospital readmissions. Master and Alexander 149

A national health promotion and preventive campaign should encourage nutrition, diet and exercise. Master and Alexander 149

Re-imagining Citizenship

Regulatory and Administrative Changes

The federal governments should completely revamp the Civil Rights Division. Guinier and Torres 161, Earls and Bey 183

Strengthen the Office of Juvenile Justice and Delinquency Prevention Ryan 205

Develop of a governing body to oversee Disproportionate Minority Contact reduction efforts. Soler 211

Legislative and Programmatic Recommendations

Encourage experimentation within colleges and universities to determine effective ways to address exclusion in particular contexts. Guinier and Torres 161

Reward national service by subsidizing tuition at private institutions of higher education not just public colleges (as with the new GI Bill). Guinier and Torres 161

Encourage private colleges and universities to admit more veterans at the same time that they develop a less individualistic learning environment so that those with diverse life experience can thrive. Guinier and Torres 161

Re-imagining Citizenship (continued)

Page

Re-emphasize the importance of institutional outputs not just individual inputs in higher education; shrink the importance of selection effects (reducing the role of high stakes testing to rank and sort individual applicants); and expand the significance of treatment effects (the institutional climate, the learning environment and the commitment to developing diverse problem solving teams among faculty and students).

Guinier and Torres 161

Establish a baseline of uniformity in the voting and support efforts to constitutionalize an affirmative right to vote. Policies include universal voter registration for all eligible Americans; adoption of a broad set of voter-convenience measures such as early voting and vote by mail; and the development of national standards for election administration.

Guinier and Torres 161

Constitutionalize the right to vote as an affirmative federal right rather than as a creature of state law that is protected primarily in the negative.

Guinier and Torres 161

Situate legislative, litigation, and administrative efforts of the Civil Rights Division at DOJ, Office of Federal Contract Compliance, etc in an organizing environment. This broader effort should emphasize transparency and engagement where agencies learn from citizen experimentation rather than just making decrees, include Congressional leaders, and forums for brainstorming and deliberation that are transparent and publicly legitimate.

Guinier and Torres 161

Develop racial and gender data collection mechanisms that are appropriate for complex systems and avoid reducing data collection to simple box checking. Use this data collection as a source of feedback not just enforcement.

Guinier and Torres 161

Implement an aggressive public outreach campaign by the Census Bureau and the Department of Commerce, targeted to certain groups based on what is known already about the populations that were undercount in the last census and what can reasonable be predicted to be difficult to reach populations in 2010, to prevent an undercount and ensure census accuracy.

Earls and Bey 181

Improve Census Operations by increasing funding; dispensing with fingerprinting for temporary workers; and halting immigration raids during the enumeration process.

Earls and Bey 181

The Census Bureau must change its policy and practices regarding how it counts prison inmates. The Census should count inmates as residents of their real home addresses.

Earls and Bey 181

Congress should pass legislation that would give states the option to use multi-member districts with proportional or semi-proportional representation voting systems instead of the current federal law that requires all congressional districts to be single-member districts.

Earls and Bey 181

If the Supreme Court affirms the North Carolina Supreme Court's interpretation of Section 2 of the Voting Rights Act to require districts that empower minority voters in areas where there is legally significant racially polarized voting to be 50% or greater in minority population even though minority voters can elect candidates of choice in districts that are less than 50% minority, Congress should act to amend Section 2 of the Voting Rights Act to clarify its prohibition on vote dilution.

Earls and Bey 181

Re-imagining Citizenship (continued)	Page
Grants should be made available to state legislatures and other state agencies to put in place meaningful public access to redistricting technology so that ordinary citizens and community groups can draw illustrative redistricting plans and have a role in the redistricting process.	Earls and Bey 181
Significant resources and attention should be paid to ensuring that the Voting Section of the Civil Rights Division has the capacity to effectively review and monitor the redistricting plans submitted to it under Section 5 of the Voting Rights Act.	Earls and Bey 181
Federal immigration policy should expand the process of legalization by increasing the number of permanent resident visas and reducing the backlog of immigrant applications already in process.	Calderon 193
Support the DREAM ACT and similar bills to provide children who graduated from U. S. high schools with in-state tuition in colleges.	Calderon 193
Support legislation that allows undocumented farm workers to earn the legal right to permanently stay in this country by continuing to work in agriculture.	Calderon 193
International policy should promote bilateral job-creation and economic development in sending countries.	Calderon 193
Support a strong reauthorization of the Juvenile Justice and Delinquency Prevention Act.	Ryan 205
Oppose any legislation that increases the number of youth transferred to the adult criminal justice system.	Ryan 205
Collect data on transfer policies in States and at the Federal level and research on the effects of transferring youth to the adult criminal justice system	Ryan 205
Provide technical assistance and financial support to States to comply with the jail removal and sight and sound core requirements.	Ryan 205
Increase engagement of youth and families affected by the juvenile and criminal justice systems.	Ryan 205
Create incentives for comprehensive and meaningful collaborations among state and local agencies, programs, and organizations that serve children, including schools, law enforcement agencies, juvenile courts, departments of corrections, and public health agencies.	Ryan 205
Create objective detention screening instruments to reduce subjective stereotyping at intake.	Soler 211
Determine how to expedite the process and avoid lengthy incarceration.	Soler 211
Establish community-based programs and services as alternatives to detention and post-adjudication commitment to state institutions.	Soler 211
Employ detailed data to drive decision-making and include the regular monitoring and evaluation of ongoing efforts.	Soler 211

CONTRIBUTOR
BIOGRAPHIES

MIT DEPARTMENT OF URBAN STUDIES AND PLANNING

The Department of Urban Studies and Planning (DUSP) is a department within the School of Architecture and Planning at MIT. It is comprised of four specialization areas (also referred to as Program Groups): City Design and Development; Environmental Policy and Planning; Housing, Community and Economic Development; and the International Development Group. There are also three cross-cutting areas of study: Transportation Planning and Policy, Urban Information Systems (UIS), and Regional Planning.

Since its inception in 1933, the Department of Urban Studies and Planning has consistently remained one of the top planning schools in the country. Now totaling close to 60 teaching faculty members (more than half of whom are full-time tenured and tenure-track faculty), it has the largest planning faculty in the United States.

MIT COMMUNITY INNOVATORS LAB

The Community Innovators Lab (CoLab) is a center for planning and development within the MIT Department of Urban Studies and Planning (DUSP). CoLab's strategy is to work with low income and excluded people to put their assets to work to transform politics and the market and create socially, economically and environmentally sustainable cities. We support the development and use of knowledge by excluded communities to build cooperation, deepen civic engagement, improve community practice, inform policy, support creative problem-solving, mobilize community assets, and generate shared wealth. We believe that community knowledge can drive powerful innovation to help make markets an arena for advancing social justice.

Our work focuses in three areas: democratic engagement, shared wealth generation and urban sustainability. The daunting challenges of building healthy, prosperous, peaceful, communities continue to grow in troubling economic times. Yet, with those challenges come opportunities for learning, innovation and new kinds of value creation. Most marginalized communities hold a wealth of assets that can be leveraged to improve material and physical well-being. Knowledge formed in struggles to transform communities is significant, sophisticated, and essential for framing and addressing the planning and development challenges that communities face. Established in 1998 as an outgrowth of the Community Fellows Program at MIT's Department of Urban Studies and Planning, CoLab pairs community groups with DUSP faculty and students, joining community and academic expertise to create innovative experiments in participatory planning, community asset development and shared wealth creation. CoLab also supports students and faculty to develop stronger coordination among their efforts and to begin capturing the knowledge imbedded in *their* on-the-ground experience through reflective practice. Our ultimate goal is to use innovation and sustained democratic engagement in marginalized communities to improve their sustainability and well-being.

POTOMAC COALITION

The Potomac Coalition, Inc., (T.K.A. The Coalition) a Washington, DC based corporation founded in 1992, is a non-partisan policy development, political advocacy, and fundraising organization. Its focus is on expanding economic opportunities for Urban Americans. Its strategy – developing new initiatives that can be implemented by federal policymakers. Overall the Coalition creates an apparatus to give Urban Americans a voice in the decision making process.

The Coalition is composed of men and women in the Legal, Medical, Financial Consulting, and Governmental Affairs professions – as well as Business Owners, Corporate and Non-Profit Executives, former and present Congressional Staffers, and Career Public Servants.

The Coalition is funded by membership dues, of which over 90% are used for policy development and political advocacy that the membership deems appropriate in helping the Coalition obtain its goals. In 1992, the Coalition made a financial contribution to the Clinton/Gore election effort. In 1996, the Coalition increased its financial contributions to the Democratic Party fourfold. In both the 1992 and 1996 Presidential Elections, the Coalition engaged in grassroots advocacy for the Clinton/Gore Campaigns in New Jersey and Pennsylvania. In the 2000 election cycle, Coalition members participated in grassroots efforts in Florida and Pennsylvania. Finally, in 2004, Coalition Members were active in Ohio, and Pennsylvania for John Kerry and again its members doubled their financial contributions to the campaign.

ABOUT THE CONTRIBUTORS

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Anita Earls, is the Director of the Southern Coalition for Social Justice. The organization was founded in 2007 in Durham, North Carolina by a multi-disciplinary group, predominantly people of color, who believe that families and communities engaged in social justice struggles need a team of lawyers, social scientists, community organizers and media specialists to support them in their efforts to dismantle structural racism and oppression. She has twenty years' experience in the field of voting rights. From April 1998 to August 2000 she was a Deputy Assistant Attorney General in the Civil Rights Division of the United States Department of Justice with oversight

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Marshall Ganz, is Lecturer in Public Policy at the Hauser Center for Nonprofit Organizations in Harvard University's Kennedy School of Government. He entered Harvard College in the fall of 1960 and left to volunteer as a civil rights organizer in Mississippi. In 1965, he joined Cesar Chavez and the United Farm Workers, eventually becoming its Director of Organizing. During the 1980s, he worked with grassroots groups to develop effective organizing programs, designing innovative voter mobilization strategies for local, state, and national electoral campaigns. Ganz then completed his undergraduate degree; was awarded an MPA by the Kennedy School in 1993; and completed his PhD in sociology in 2000. He teaches, researches, and writes on leadership, organization, and strategy in social movements, civic associations, and politics.

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