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Edward J. Rymsza
CUNY School of Law

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

Edward J. Rymsza†

I. INTRODUCTION

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

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

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

† Candidate for J.D., 1997, The City University of New York School of Law; B.A., 1990, York College of Pennsylvania.


2 The Grand Old Party.

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

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

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

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

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

This Note primarily focuses on two reform proposals: the Personal Responsibility Act ("PRA"), and the Taking Back Our Streets Act ("TBOSA"). This Note, in lesser detail, also discusses the Fiscal Responsibility Act ("FRA"), and the Common Sense Legal Reforms Act ("CSLRA"). Through empirical evidence, this Note demonstrates that the Contract, either on its face or in its effect, furthers a racial agenda. In particular, Part II illustrates the need for critical review of the Contract in light of the Signatories’ past public statements and legislative records on civil rights issues. Part III demonstrates how the Contract’s reform proposals for welfare, criminal justice, and tort litigation, and a balanced budget amendment will disproportionately impact minorities. The central tenet of this Note is that in an ideal society, the percentage of minorities on welfare and under the auspices of the criminal justice system should reflect a cross-section of the population as a whole. Unfor-
Unfortunately, as this Note will demonstrate, this is not the case in America.

II. CRITICAL REVIEW OF THE GOP AGENDA

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

A cursory review of the history of House Republican voting records and their attitudes on civil rights issues reveals their lack of concern about the entire populace. From the earliest days of the civil rights movement in the 1960s, an overwhelming majority of Republican Congressmen have tried to derail civil rights efforts. Notably, then House member from Texas, George Bush, opposed the 1964 Civil Rights Act because, as he stated, it "was passed to protect [only] 14% of the people. I'm also worried about the other 86%." More recent House Republicans, and eventual Signatories, shared the same principles as their predecessors and consistently voted against significant civil rights legislation or initiatives. For instance, in 1988, Congress passed a valuable piece of civil rights legislation, the Fair Housing Amendments Act ("FHAA"), en-

14 Throughout the Contract the Signatories mention the "American people" or "Americans," suggesting that they understand the desires of the entire American population. See, e.g., Contract with America, supra note 1, at 5, 23, 195.
15 See, e.g., infra pp. 483-86 and notes 17-41. The GOP was a strong advocate for the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments during the Reconstruction period following the Civil War. See, e.g., Robert J. Kaczorowski, Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction, 61 N.Y.U. L. Rev. 863, 878 (1986); Xi Wang, Black Suffrage and the Redefinition of American Freedom, 1860-1870, 17 CARDOZO L. Rev. 2153, 2156 (1996). The Contract correctly notes that the Republican party was the party of Abraham Lincoln. Contract with America, supra note 1, at 7. Since that time, however, the Republican party has undergone a radical transformation. Indeed, in debating the passage of the Civil Rights Act of 1990, Senator Howard Metzenbaum (D-Ohio) questioned whether the Republican party was in fact the party of Lincoln or had become the party of David Duke. See 136 CONG. Rec. S15,836 (daily ed. Oct. 16, 1990) (statement of Sen. Metzenbaum).

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

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21 Rep. Armey was among only twenty-three Republicans who voted against it. 134 CONG. REC. H16,511 (1988).
25 *Id.* In Rep. Armey's objection to the bill he stated he opposed the bill "not because I oppose civil rights, but to the contrary, because I am a strong supporter of the rights of all Americans, black and white, male and female; and I have never believed that any one group should receive preferential treatment at the expense of others." 136 CONG. REC. H6802 (1990).
30 The *Contract* cites the Republican members of Congress who headed the working groups which were responsible for drafting the proposed legislation. *CONTRACT WITH AMERICA,* supra note 1, at vii.
The *Contract's* chief architect, Speaker of the House Newt Gingrich (R-Ga.), has been openly and relentlessly hostile to civil rights programs, including affirmative action programs.\(^3\) Seemingly at every opportunity, Speaker Gingrich spread his anti-affirmative action message. In October 1995, Speaker Gingrich sent a letter to targeted voters in California, 3,000 miles outside his congressional district, urging them to support the California Civil Rights Initiative ("CCRI"), which would end all affirmative action by the California state government.\(^4\) In June 1995, before a forum of African American journalists, Speaker Gingrich criticized civil rights lawsuits and protests as "obsolete after the Civil Rights Act of 1964 banned discrimination."\(^5\) According to Speaker Gingrich, "poor people need to 'learn new habits' and . . . women and minorities who rely on affirmative action should . . . take advantage of 'enormous avenues for opportunity' that ignore factors of race and sex."\(^6\) Speaker Gingrich also added that affirmative action programs were primarily rooted in lawsuits.\(^7\) He declared: "'[w]hen you create that kind of backward-looking, grievance-looking system, you teach people exactly the wrong habits. They end up spending their lives waiting for the lawsuit, instead of spending their lives seeking opportunity.'"\(^8\) He further stated that the "civil rights movement had gone off-track because it was dominated by those 'who thought there was some way to get fairness of outcome as opposed to equality of opportunity.'"\(^9\)

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

III. **The Contract’s Relevant Bills and Their Negative Impact on Minorities**

The PRA\(^{42}\) and the TBOSA\(^{43}\) will most profoundly impact minorities. Therefore, an in-depth evaluation is necessary.

A. *The Personal Responsibility Act and Welfare Reform*

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

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

\(^{42}\) See *supra* note 9.

\(^{43}\) See *supra* note 10.

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

\(^{45}\) MARTIN ANDERSON, WELFARE 15 (1981).

\(^{46}\) *Id.* at 16-17.

\(^{47}\) *Id.* at 17.

\(^{48}\) *Id.*

\(^{49}\) CONTRACT WITH AMERICA, *supra* note 1, at 67.

\(^{50}\) CONTRACT WITH AMERICA, *supra* note 1, at 65. For example, after an all-white jury acquitted four white police officers in the brutal beating of black motorist Rodney King, the streets of Los Angeles erupted in flames as enraged ghetto residents took to the streets . . . .
more recent versions of the welfare reform movement. The current stream of reform proposals by the Signatories, however, are the harshest to date. Based on United States Bureau of the Census statistics, the reforms will disproportionately impact America’s minority population.  

Six days later, when the flames had been reduced to smoldering rubble, President George Bush declared that what had triggered the riot was not frustration at an unjust system, not the despair of grinding poverty and blocked opportunity, but rather the failure of the liberal social programs of the 1960’s. JILL QUADAGNO, THE COLOR OF WELFARE 3 (1994).

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

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

The total number of whites receiving government assistance greatly surpasses the number of African Americans and those of Hispanic origin. In 1991, 19.1 million whites, 10.8 million African Americans, and 5.7 million people of Hispanic origin received government assistance. BUREAU OF THE CENSUS, supra note 7, at 378. However, the percentage of the population of African Americans and those of Hispanic origin receiving government assistance is disproportionately large compared to the percentage of the white population. See BUREAU OF THE CENSUS, supra note 7, at 14 (citing overall population statistics). For instance, in 1991, 9.1% of the white population, 33.4% of the African American population, and 26.3% of the population of persons of Hispanic origin were participants in the major government assistance programs. BUREAU OF THE CENSUS, supra note 7, at 378.

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

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

People of color are disproportionately poor in the United States. African-Americans comprised only about 12% of the entire U.S. population in 1991, but they comprised 30.4% of the families living below the poverty line. While Hispanics composed approximately 9% of the U.S. population, they accounted for 26.5% of the families living below the poverty line . . . . These statistics are in stark contrast with the fact that
A comparison between whites and other racial groups in this country demonstrates a "severe and amazingly persistent pattern of income inequality." Over the past two decades, the median household income of blacks has remained at about 59% of the income earned by whites which is a difference of over twelve thousand. Hispanics' median household income is 72% of that earned by whites totalling a difference of over eight thousand dollars. During the past two decades, both of these gaps have grown. African-Americans face an especially disproportionate level of poverty in this country. While approximately 20% of all American children grow up in poverty, nearly half of black children grow up in poverty in the United States. The problem of huge numbers of African-Americans living in poverty does not seem to be improving. As William Julius Wilson explained, "[t]hroughout much of the 20th century, blacks were able to experience social mobility through good-paying, blue collar jobs. Now, as industry has moved to suburban and exurban areas, the traditional avenue out of poverty has been closed off." Racial minorities often find themselves in cycles of poverty that are difficult to escape.\footnote{52}

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

First, AFDC payments would be restructured. Under the PRA, mothers under the age of eighteen who bear children out of wedlock would be denied AFDC benefits for their children.\footnote{54} The states, at their discretion, would be able to deny AFDC and housing benefits to mothers who are ages eighteen through twenty.\footnote{55} States would be given the option of eliminating AFDC benefits after the recipients have received welfare for two years.\footnote{56} Under the PRA, states would be required to "drop families"\footnote{57} who have received AFDC benefits for five years.\footnote{58}
Second, states would be given extensive powers to develop and administer work programs tied to the receipt of welfare payments. Under the PRA, the states would be granted the authority to develop their own work programs and determine who may participate in them. Under this plan, states would be required to transfer welfare recipients who received benefits for two years into work programs. The work programs would require welfare recipients to work an average of thirty-five hours a week. Welfare participants would be permitted to participate in work programs for no more than two years. The states would further be required to terminate AFDC payments to families who received welfare benefits for five years, whether or not the AFDC recipient has participated in the work program.

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

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

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

59 Contract with America, supra note 1, at 66, 71-72.
60 Contract with America, supra note 1, at 72.
61 Contract with America, supra note 1, at 71.
62 Contract with America, supra note 1, at 71-72.
63 Contract with America, supra note 1, at 71.
64 Contract with America, supra note 1, at 71-72.
65 Contract with America, supra note 1, at 67, 72-73.
66 Contract with America, supra note 1, at 67.
67 Contract with America, supra note 1, at 73. The exceptions noted by the Signatories are refugees over seventy-five years of age, those lawfully admitted to the United States, or those who have resided in the United States for at least five years.
68 See supra notes 44-45 and accompanying text.
69 Contract with America, supra note 1, at 67.
70 President Johnson’s War on Poverty has been characterized as “a well-intended but poorly executed effort to treat [the racial inequality] malady.” Quadagno, supra note 50, at 4.
and children will suffer most by the Republican welfare reform.\textsuperscript{71}
The statistics, while unpleasant, cannot be ignored. In 1993, 45.9% of all African American children and 39.9% of all children of Hispanic origin lived below the poverty level, while 17.0% of all white children lived below the poverty level.\textsuperscript{72} In 1993, 31.3% of all African American families and 27.3% of all families of Hispanic origin lived below the poverty level, while only 9.4% of all white families lived below the poverty level.\textsuperscript{73} Finally, in 1994, 60% of all the African American family households, and 31% of all Hispanic origin family households, were headed by single females, while 21% of white family households were headed by single females.\textsuperscript{74} Moreover, in 1991, 33.4% of the African American population, and 26.3% of the population of those of Hispanic origin were participants in the major assistance programs in the United States, while only 9.1% of the entire white population were participants.\textsuperscript{75} As the above statistics demonstrate, it is clear that the Contract's welfare proposals will have a disproportionately devastating effect upon minorities in America.

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

\textsuperscript{71} BUREAU OF THE CENSUS, supra note 7, at 378.
\textsuperscript{72} BUREAU OF THE CENSUS, supra note 7, at 480.
\textsuperscript{73} BUREAU OF THE CENSUS, supra note 7, at 484.
\textsuperscript{74} BUREAU OF THE CENSUS, supra note 7, at 61.
\textsuperscript{75} BUREAU OF THE CENSUS, supra note 7, at 378. The major assistance programs covered were AFDC, General Assistance, SSI, food stamps, Medicaid and housing assistance. BUREAU OF THE CENSUS, supra note 7, at 378. Others have noted similar statistics.

Statistics on poverty rates [demonstrate] that black families have maintained a poverty rate that is roughly three and-a-half times (twenty percentage points higher than) the poverty rates of white families. By comparison, the Hispanic rate is roughly three times higher (sixteen percentage points more) than that of whites. Galster, supra note 13, at 1425 (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, No. 751, STATISTICAL ABSTRACT OF THE UNITED STATES, 1991, at 465); see Lisa A. Crooms, Don't Believe the Hype: Black Women, Patriarchy, and the New Welfarism, 38 HOW. LJ. 611, 615 (1995).

\textsuperscript{76} See generally CONTRACT WITH AMERICA, supra note 1, at 65-77.
\textsuperscript{77} See, e.g., Crooms, supra note 75, at 622; Beverly Horsburgh, Schrödinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color, 17 CARDozo L. REV. 531, 535 (1996); Lucy A. Williams, Race, Rat Bites and Unfit
For example, the *Contract* proposes that its welfare reform program is designed to fight, among other things, illegitimacy, crime, and illiteracy. With that insight, the Signatories boast that the Republican party grasps something that Democrats do not—"incentives affect behavior." Currently, the federal government provides young girls the following deal: Have an illegitimate baby and taxpayers will guarantee you cash, food stamps, and medical care, plus a host of other benefits. As long as you stay single and [do not] work, [we will] continue giving you benefits worth a minimum of $12,000 per year ($3,000 more than a full-time job paying a minimum wage). [It is] time to change the incentives and make responsible parenthood the norm and not the exception.

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

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

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78 *Contract with America*, supra note 1, at 65.

79 *Contract with America*, supra note 1, at 75.

80 *Contract with America*, supra note 1, at 75.


82 Id. at 529.


84 *Contract with America*, supra note 1, at 70.

85 *Contract with America*, supra note 1, at 70 (emphasis added).

86 See *Contract with America*, supra note 1, at 65.

87 See *Anderson*, supra note 45, at 89.
first poverty laws forbade private citizens to give donations to the able-bodied poor. These laws were supported by the belief that such donations did not encourage recipients to find work. Unfortunately, the Signatories made the same assumption as this early English legislation that the poor receiving aid are lazy and do not want to work. Psychologist Erich Fromm stated that

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

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

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

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

88 See Anderson, supra note 45, at 89.
89 See Anderson, supra note 45, at 89.

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

Id.
spirit of GOP welfare reform lives in these words."\textsuperscript{92}

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

\textbf{B. The Taking Back Our Streets Act and Criminal Justice Reform}

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

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

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

\footnote{92} \textit{Id.} at H3742.

\footnote{93} John F. Harris & John E. Yang, \textit{Clinton to Sign Bill Overhauling Welfare}, \textit{WASH. Post}, Aug. 1, 1996, at A1. "Clinton said the measure has 'serious flaws' . . . but he pledged to sign it anyway because it is the 'best chance we will have in a long, long time' to fulfill his 1992 campaign promise of 'ending welfare as we know it.'" \textit{Id.}

\footnote{94} Acknowledging that there would be protest, "Clinton said that he would work to correct the bill's deficiencies with later legislation." \textit{Id.}


\footnote{96} \textit{Id.}

\footnote{97} \textit{Id.}

\footnote{98} \textit{Contract with America, supra note 1, at 37.}

\footnote{99} \textit{Contract with America, supra note 1, at 37.}

\footnote{100} \textit{Contract with America, supra note 1, at 38.}
The TBOSA's provisions are wide-ranging. First, it proposes to reform the habeas corpus process. Specifically, it would place time limitations on filing federal and state habeas corpus appeals, and would limit prisoners to one appeal. Second, jury instructions for death penalty cases would be reformed. Under the TBOSA, juries would be instructed to recommend a death sentence if aggravating factors underlying the crime outweigh mitigating factors. Juries would also be required to refrain from considering any "influence of sympathy, sentiment, passion, prejudice or other arbitrary factors." Third, federal courts would be directed to dismiss any "frivolous" lawsuits by prisoners. Fourth, the "good faith" exception to the exclusionary rule would be expanded to include the introduction of evidence where the police acted in "good faith" in a warrantless search and seizure incident. Fifth, mandatory minimum sentencing would be required for "state or federal drug or violent crimes that involve the possession of a gun." Sixth, criminals would be required to pay restitution to their victims as a result of their criminal activity. Seventh, block grants would be allocated to local law enforcement bodies specifically for "law enforcement" and not for crime prevention programs. Eighth, any illegal alien convicted of an aggravated felony would be deported. Finally, money would be allocated to the states for building and expanding prisons.

With the help of enormous media exposure, many Americans believe that the crime rate in this country has escalated to unprec-
dented proportions. Daily television viewers are treated to a large dose of violent crime through the nightly news programs, "cop shows," and tabloid news. As a result, crime has become an important political platform for the GOP, which uses it to instill more fear and garner more votes from their constituency.

Few can deny that the crime problem in America is profound. However, the media has misled American viewers. In the United States, violent crimes reported to the police actually dropped by 3% from 1991 to 1992, and 2% from 1992 to 1993. Moreover, as The New York Times reported, a recent FBI survey from 1995 data concluded that the overall violent crime rate in America is at its lowest since 1989, and the country's murder rate is at the lowest in ten years.

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

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115 Id.
116 See BUREAU OF THE CENSUS, supra note 7, at 268. In 1994, according to the Bureau of the Census, approximately 45% of whites identified their political affiliation as Republican, compared to less than 10% of African Americans. BUREAU OF THE CENSUS, supra note 7, at 268.
118 BUREAU OF THE CENSUS, supra note 7, at 199. Violent crime includes murder, rape, robbery, and aggravated assault. BUREAU OF THE CENSUS, supra note 7, at 199.
119 Violent Crime Declines 8 Percent in Big Cities, N.Y. TIMES, Oct. 13, 1996, at 25. The FBI survey was "compiled from crimes reported to more than 16,000 law-enforcement agencies covering 95 percent of the nation's population." Id. See also Clifford Krauss, New York Crime Rate Plummets to Levels Not Seen in 30 Years, N.Y. TIMES, Dec. 20, 1996, at A1.
120 It is noted that reliance solely on statistical data does not necessarily prove that the criminal justice system is racist. However, the statistics that follow, which demonstrate "the magnitude of the disparities [between African Americans and whites in the criminal justice system] ought to give us pause." David Cole, The Paradox of Race and Crime: A Comment on Randall Kennedy's "Politics of Distinction," 83 GEO. L.J. 2547, 2557 (1995).
121 It has been recognized that there are a greater percentage of black males incarcerated in the United States than in South Africa. There are 14,625,000 black men in the United States, of which 454,724 are incarcerated. South Africa has 15,050,642 black men and only 109,739 of them are incarcerated. "Nearly one in every four black men in the United States between 20-29 years of age is under the control of the criminal justice system—whether in prison or jail, on probation, or parol." This over-representation of minority groups is not only a black-white issue—it affects all racial minorities in the United States.
We really should not be surprised to find some form of racial bigotry present in the criminal justice system. It is surely evident in the society at large, and the criminal justice system is not isolated from the larger society. Indeed, the evidence is persuasive that the system is heavily influenced by the surrounding culture.\(^{122}\)

The force of this proposition is reflected in various ways. In 1992, African Americans made up approximately 12% of the total population, while whites made up approximately 83% of the population.\(^{123}\) In 1992, 8.3% of the estimated 21.4 million African American adults\(^ {124}\) were either in jail or prison, on probation or parole.\(^ {125}\) In contrast, 1.7% of the estimated 160 million white adults were either in jail or prison, on probation or parole.\(^ {126}\) Moreover, in 1992, approximately 3,930 African Americans eighteen years of age and older out of every 100,000 Americans were arrested, while approximately 793 white people eighteen years of age and older out of every 100,000 Americans were arrested.\(^ {127}\) Indeed, others have noted similar findings.

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

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\(^{122}\) Greg D. Russell, The Death Penalty and Racial Bias: Overturning Supreme Court Assumptions 1 (1994). The author devotes an entire chapter in which he discusses how racism produces different outcomes throughout the criminal justice system. The author discusses research compiled on, among other things, bias in crime detection, bias in police behavior and arrest, bias in the grand jury, prosecutor and courtroom, and bias in judicial sentencing. Id. at 49-71.

\(^{123}\) Bureau of the Census, supra note 7, at 14. In 1992, the white population was approximately 213 million, the African American population was 31.6 million, and the population of those of Hispanic origin was 24.2 million. Bureau of the Census, supra note 7, at 14.

\(^{124}\) The adult population consists of those over eighteen years of age. See infra note 125.


\(^{126}\) Id.

\(^{127}\) U.S. Dep't of Justice, Bureau of Justice Statistics Sourcebook of Criminal Justice Statistics 378 (1994).
J. Kramer and D. Steffensmeir reported that blacks represented 13% of the U.S. population and 50% of those persons in prisons. In the proceedings of the "Studying Race and Gender Bias in the Criminal Justice System" workshop at the 1993 BJS/JRSA National Conference on Enhancing Capacities and Confronting Controversies in Criminal Justice, it was noted that while blacks account for approximately 12% of the U.S. population they represented 64% of the robbery arrests, 55% of homicide arrests, and 32% of the burglary arrests.\textsuperscript{128}

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

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


\textsuperscript{129} \textit{See supra} notes 120-128 and accompanying text.

\textsuperscript{130} It is a sad reality in America that individuals in some racial groups are more likely than others to go to prison than college. \textit{See}, e.g., Marc Mauer, \textit{The Sentencing Project, Americans Behind Bars: The International Use of Incarceration}, 1992-1993, 18 (1994); Paul Butler, \textit{The Evil of American Criminal Justice: A Reply}, 44 UCLA L. Rev. 143, 145 n.8 (1996); Cole, \textit{supra} note 120, at 2557; Georgia Supreme Court Commission, \textit{supra} note 128, at 766; Nantambu, \textit{supra} note 7, at 9B.

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


\textsuperscript{132} \textit{Contract with America, supra} note 1, at 43.

\textsuperscript{133} \textit{Contract with America, supra} note 1, at 44.
ffect on prisoners seeking legitimate constitutional challenges to their sentences. As NAACP attorney George Kendall stated, the proposed habeas corpus reform will "handcuff and blindfold the federal judiciary, preventing it from granting any remedy whatsoever even when it is faced with egregious, shocking, harmful violations of the Bill of Rights in capital cases."\(^{134}\)

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

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

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

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

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

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\(^{134}\) Symposium, *supra* note 131, at 599.

\(^{135}\) *Contract with America*, *supra* note 1, at 45.

\(^{136}\) *Contract with America*, *supra* note 1, at 45.


\(^{138}\) *Id.* at 1145.

\(^{139}\) *Id.* at 1144.

\(^{140}\) *Id.* at 1153.

\(^{141}\) *Id.*

\(^{142}\) *Bureau of the Census*, *supra* note 7, at 220.
evidence that the death penalty is grossly and disproportionately applied where the victims are white and the defendants are black.\footnote{See David C. Baldus et al., Equal Justice and the Death Penalty 149-50 (1990).} In Georgia, for instance, “blacks who kill whites are sentenced to death at nearly \emph{[twenty-two] times} the rate of blacks who kill blacks, and more than \emph{[seven] times} the rate of whites who kill blacks.”\footnote{McCleskey v. Kemp, 481 U.S. 279, 327 (1987) (emphasis in original). In McCleskey, the petitioner was an African American man convicted of murder and sentenced to death. \textit{Id.} He sought habeas corpus relief in federal court and offered a statistical study as evidence that a disparity in the imposition of the death penalty in Georgia based on the victim’s race and the defendant’s race existed. See Baldus, \textit{supra} note 143.}

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

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

The Signatories also proposed a reform which mandated federal courts to dismiss any “frivolous or malicious” lawsuits filed by prisoners.\footnote{Contract with America, \textit{supra} note 1, at 53.} Unquestionably, this would have an enormous effect on all prisoners, who would find it much more difficult to challenge their treatment behind bars. Naturally, there have been suits which many people may consider frivolous (e.g. male prisoner suing for his right of access and to wear bras and lipstick;\footnote{Jones v. Warden, 918 F. Supp. 1142 (N.D. Ill. 1995).} inmates...
complaining about white only underwear;\textsuperscript{147} inmates not provided with towel racks for wet towels\textsuperscript{148}). Although memorable, the actual number of these types of suits are few, and in most (if not all) instances, they are dismissed.\textsuperscript{149}

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

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

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

\textsuperscript{148} Id.
\textsuperscript{149} See id; see also \textit{Jones}, 918 F. Supp. at 1145.
\textsuperscript{150} \textit{Contract with America, supra} note 1, at 61.
\textsuperscript{151} \textit{Contract with America, supra} note 1, at 61. The \textit{Contract} states that “[p]risoners have asserted that a lack of Frisbees, art supplies, and chunky peanut butter (as opposed to creamy peanut butter) constitutes cruel and unusual punishment.” \textit{Contract with America, supra} note 1, at 61.
\textsuperscript{154} \textit{Newman}, 349 F. Supp. at 285.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Pugh, 406 F. Supp. at 322-23.
by the Contract, these cases more often than not shock the conscience.

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

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

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

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158 See supra notes 120-128 and accompanying text.
160 Id. (quoting Donna Leone Hamm, founder of Middle Ground, an Arizona prisoner's rights group).
161 CONTRACT WITH AMERICA, supra note 1, at 52-53.
162 468 U.S. 897 (1984). Leon held that the exclusionary rule does not apply when the police act in "good faith" on a defective search warrant. Id. The "good faith" exception to the exclusionary rule "provides that evidence is not to be suppressed under such rule where that evidence was discovered by officers acting in good faith and in reasonable, though mistaken, belief that they were authorized to take those actions." BLACK'S LAW DICTIONARY 564 (6th ed. 1990).
163 CONTRACT WITH AMERICA, supra note 1, at 52-53.
164 Leon, 468 U.S. at 907.
165 Kenneth Jost, Exclusionary Rule Reforms Advance: Opponents Claim Proposals Unconstitutional, Encourage Police Misconduct, 81 A.B.A. J. 18 (1995) (quoting Thomas Davies, Professor of Law at the University of Tennessee). Davies stated that the exclusionary rule has been narrowed by a number of rulings by both the Rehnquist and the Burger Supreme Courts. Id.
more, this expansion would not only undermine the principles of the Fourth Amendment, but also would promote police misconduct. The police undoubtedly will have little or no trouble persuading a court that they meet the minimal "reasonable basis" requirement for believing the search was valid.

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

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

Since the commencement of the 104th Congress, some provisions of the TBOSA were enacted as part of the anti-terrorism legislation that was signed into law in late April 1996. The most

166 Contract with America, supra note 1, at 46-47.
170 Contract with America, supra note 1, at 47-52. The other proposals include victim restitution, block grants to the states specifically for law enforcement as opposed to crime prevention programs, and the allocation of money to the states for building more prisons. Contract with America, supra note 1, at 47-52.
171 See supra notes 120-128 and accompanying text.
172 Joan Biskupic & Helen Dewar, Senate Would Limit Appeals on Death Row; Anti-Terrorism Bill Wins in 91-8 Vote, Wash. Post, Apr. 18, 1996, at A1. Although the legislation focused primarily on anti-terrorism measures, the bill, in addition to the habeas corpus proposal, also provided more money for state law enforcement and the depor-
noteworthy aspect of that bill, which primarily was enacted as a tool to fight domestic and international terrorism, contained the GOP's habeas corpus "reform" to restrict the number of appeals by all prisoners, including death-row inmates. In most circumstances, inmates would be restricted to one federal appeal, and federal judges would have to defer to state court rulings to determine if an inmate's constitutional rights were violated.

C. Other Proposed Reforms

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

First, the FRA proposes a balanced budget amendment to the Constitution. Under this plan, the Signatories proposed to balance the budget by the year 2002. Although requiring the federal government to balance the budget may be fiscally sound, the burdens associated with doing so will fall squarely upon the poor's shoulders. The heart of the GOP's plan for balancing the budget includes huge cuts in federal aid to the states. The Center on Budget and Policy Priorities (the "Center") projected that such cuts, which would include a $100 billion annual loss in federal aid to state and local governments, would have a destructive effect on the states. The Center predicted "that by the year 2000, two years short of a [GOP proposed] balanced budget, the loss of federal aid would exceed all state spending in all [fifty] states on programs for the poor."
The Signatories of the FRA clearly are not concerned with balancing the budget. If so, they would begin their cuts with oversized spending programs such as the defense budget. At the moment, “the defense budget is three times as large as the total of all federal cash, food, housing, jobs, and education benefits for the poor.” In fact, the Signatories actually proposed strengthening the national defense, including increased spending for the Pentagon. Thus, the intent of the Signatories is not to balance the budget, but rather to sabotage the poor. Fortunately, such efforts have failed thus far. The balanced budget amendment did not become law. President Clinton vetoed it, “declaring its spending cuts too harsh.”

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

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

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183 See Ken Schechtman, Contract Is Out of Balance, ST. LOUIS POST DISPATCH, Apr. 27, 1995, at 7B. The author states that the defense budget is $260 billion. Id.
184 Id.
185 CONTRACT WITH AMERICA, supra note 1, at 92-93 (The National Security Restoration Act).
186 Jacoby, supra note 172, at 3.
187 CONTRACT WITH AMERICA, supra note 1, at 144.
188 CONTRACT WITH AMERICA, supra note 1, at 145.
189 CONTRACT WITH AMERICA, supra note 1, at 145.
190 CONTRACT WITH AMERICA, supra note 1, at 18.
192 Id.
193 See id.
represented the manufacturer.\textsuperscript{194}

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

IV. CONCLUSION

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

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

\textsuperscript{194} See id.

\textsuperscript{195} See Ervin A. Gonzalez, \textit{Big Business Is Selling Bill of Goods}, \textit{Sun Sentinel} (Ft. Lauderdale), May 6, 1995, at 15A.

\textsuperscript{196} Securities litigation reform, which was part of the GOP tort reform, has become law. Jacoby, \textit{supra} note 172, at 3.