## \*\*\* File Explanation

\*\*\* SDI Note:

**This file is not allowed to be read during the SDI tournament.**

\*\*\* Everyone else:

This is a mostly-completed generic process counterplan. It needs a little bit more work to be complete.

Specifically, you need to spend some time developing the net-benefits. I have a few other ideas that I didn't pursue including a soft power argument (http://nationalinterest.org/blog/paul-pillar/the-soft-power-equal-opportunity-6959), but you also just need to cut and add more impact cards about equal opportunity. This is the dumbest part of the argument (because the impact is not gigantic—it is small and meaningful, but not huge) but someone could do a pretty good job with it, I think.

You also could do some politics research. The counterplan is probably extra-popular (http://www.americanprogress.org/issues/2012/03/americans\_inequality.html). Whether that is a net-benefit, I don't know.

There are also some cool interactions between this counterplan and the transportation rationality critique. Some of the evidence about public participation from the critique could be added to the counterplan and used as net-benefits.

There are no affirmative answers in the file. I haven't found anyone that thinks that Opportunity Impact Statements are a bad idea. Theory and permutation arguments are obviously the #1 response, but some substance is needed, too. Students will need to prepare responses to this counterplan in anticipation of it being read during the season.

I think this counterplan is clearly cheating, but it is strategic and has good evidence to support it. Someone was going to write it, so I wanted to make sure that students were introduced to it during the summer. Don’t take that as an endorsement, though: while it is winnable for the negative, a good affirmative should defeat this counterplan with theory and competition arguments.

—Bill Batterman

## \*\*\* 1NC

### OIS CP

#### The United States federal government should commission an Opportunity Impact Statement on the proposed adoption of [the plan] including consideration of alternative approaches to achieving the goals of the proposal that may be more effective in ensuring equal access to greater opportunity and consideration of the proposal’s compliance with equal opportunity laws and other applicable legal standards. The United States federal government should implement the policy recommended by the Opportunity Impact Statement process.

#### The counterplan solves the case and is net-beneficial—

#### First, subjecting the plan to a prior, binding Opportunity Impact Statement is key to maximize opportunity—the plan threatens to undermine it—every instance is key.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 1)

Debates over the size and scope of federal spending have dominated the political discourse over the last several years. While much discussion centers on the amounts of spending going towards various programs, less attention has been focused on ensuring that taxpayer funds, wherever they are expended, invest in greater opportunity for all communities. The American ideal of opportunity rests on the belief that everyone should have a fair chance to achieve his or her full potential, and is in keeping with core values: equal treatment, economic security and mobility, a voice in decisions that affect us, a chance to start over after misfortune or missteps, and a sense of shared responsibility for each other as members of a common society.

Governmental bodies can expand opportunity each time they support or control any number of projects, from highways and mass transit lines, to schools and hospitals, to land use and economic development, to law enforcement and environmental protection. With prudent management of these projects, they can improve access to quality jobs, housing, education, business opportunities, and good health, among other opportunities, and thus better serve all people in the United States fairly and effectively. All too often, however, such projects perpetuate or even deepen unequal opportunity and further isolate affected communities from resources.

A coordinated process is needed to ensure that public funding complies with antidiscrimination laws and not only confronts barriers to opportunity that affect regions throughout the United States, but also builds the foundation necessary to give all communities a chance to achieve economic security and mobility. We therefore propose that administrative agencies use an Opportunity Impact Statement (OIS) process as part of their evaluation of ongoing and proposed government funded projects and programs. The OIS process is a logical outgrowth of existing statutes, regulations, and executive orders that already require data collection, public participation, and pre- and post- award analysis as part of an administrative agency’s civil rights compliance measures.

#### Second, transportation projects are key—the DOT is failing to ensure equal opportunity now—the plan and permutation link but the counterplan solves.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 12-13)

The Department of Transportation (DOT) encompasses federal agencies that work on issues of air, road, rail, and sea transportation, as well as oil and gas pipelines. 68 The DOT’s spending and policies have a tremendous impact on American life, shaping how individuals and whole communities travel to jobs, health care, commerce, and schools. Although the DOT is obligated to ensure equal access to the benefits of such travel, as well the equal sharing of the [end page 12] burdens that transportation projects can create, those responsibilities have faltered due to the lack of consistent, comprehensive oversight. 69 Independent reviews throughout the years have identified weaknesses in the DOT’s past enforcement of funding criteria that an OIS could help address. For example, the United States Government Accountability Office found that “there was substantial variation in the extent to which states prioritized [highway projects funded by the American Recovery and Reinvestment Act] in economically distressed areas and how they identified these areas. Due to the need to select projects and obligate funds quickly, many states first prioritized projects based on other factors and only later identified whether these projects fulfilled the requirement to give priority to projects in economically distressed areas.” 70

To remedy these concerns, the DOT has full authority to implement all aspects of an Opportunity Impact Statement process on a pilot, targeted, or universal and permanent basis. Title VI authorizes agencies to ensure compliance by withholding funds or “by any other means authorized by law.” 71 The administrative authority to implement this procedure is further amplified by relevant executive orders. 72 Requiring and analyzing data regarding the potential discriminatory impact of programs being considered for federal funding falls well within this mandate and is consistent with the Department’s responsibility “to effectuate its provisions by issuing rules, regulations, or orders of general applicability,” 73 and freedom “to utilize all the resources at its disposal and to seek creative ways to gather necessary information to make preliminary compliance decisions.” 74

An OIS process would enable the DOT to collect the information necessary to prioritize equal opportunity compliance in its funding decisions, create equal opportunity oversight and quality assurance, engage community and advocacy groups in planning and policy development, and provide clear prospective guidance to the states in their efforts to comply with equal opportunity laws.

#### Third, the counterplan is key to expand opportunity, improve public accountability, and boost civic engagement—crucial to reduce inequality.

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Policymakers are charged with ensuring that federal assistance meets the needs of all Americans. The Opportunity Impact Statement is intended to bring the voice of affected communities, structured efficiency, and balanced analysis to the table in the context of opportunity. The OIS would provide a comprehensive and fair evaluation of significant opportunity impacts, as well as reasonable alternatives, providing decision-makers and the public with full information and allowing for the minimization of adverse impacts. 114 On the federal, state, or local level, implementation of the OIS can help balance the need for efficiency in review of necessary government-funded projects with evidence-based evaluation and transparency.

The Opportunity Impact Statement carries the potential to expand opportunity greatly in communities around the country while encouraging public accountability and civic engagement. Moreover, it is a flexible tool that can be applied to any number of projects, big or small. We believe that providing the Opportunity Impact Statement is an important step in realizing our society’s promise as a land of opportunity.

#### This prevents catastrophic social collapse—inequality is an existential risk.

Creamer 9 — Robert Creamer, political organizer, strategist, and author, owner of Strategic Consulting Group—a political consulting firm that works on many of the country’s most significant issue campaigns, married to Congresswoman Jan Schakowsky of Illinois, 2009 (“Why Growing Income Inequality Is Bad for America,” *The Huffington Post*, October 27th, Available Online at http://www.huffingtonpost.com/robert-creamer/why-growing-income-inequa\_b\_335115.html, Accessed 10-27-2009)

4). Finally, increased income inequality is completely undemocratic. It is a betrayal of our most fundamental democratic values. And it is dangerous to our prospects for long-term survival.

The increasing inequality of income leads inexorably to increasing inequality in the distribution of wealth. Power in the society is more and more concentrated in the hands of a few. It becomes more and more likely that some of our most powerful citizens came to that station not because of their merit, but because they got it the "old fashion way" -- they inherited it. That is directly contrary to our shared belief in a more democratic society -- where power and opportunity are broadly shared -- where no one's power or station in life are determined by accident of birth.

The earliest Americans came to this continent to escape tyranny, aristocracy and plutocracy.

Progressives who stand up against the increasing concentration of economic power in the hands of a few are standing for one of the proudest traditions of our democracy. And our commitment to the democratic distribution of power is not simply an expression of utopian idealism.

In his brilliant study of why societies in the past have failed, called Collapse: How Societies Choose to Fail or Succeed, Pulitzer Prize-winning physiologist and ethno-geographer Jared Diamond concluded that one of the most common factors was "rational behavior" by actors -- and decision-making elites -- that benefited some individual or private self-interest but was harmful to the prospects of the entire society.

He found that this was often complicated because the benefits to a small group that profited from the action were great in the short run, and the resulting damage to everyone else was not very palpable or immediate, except over time.

This problem became especially acute when elites thought they could insulate themselves from the consequences of communal disaster. Then, they were even less prone to make decisions in the public interest.

The increased inequality in the distribution of wealth and income makes this kind of decision-making more and more likely. We see when the interests of the wealthy stand in the way of solutions to the problems of climate change and environmental destruction -- or when we fail to raise enough money for the public education that benefits all children because the few who can afford private schools refuse to pay "higher taxes."

The creation of a democratic society, built on egalitarian principles, is the only real systematic means of assuring that the interests of the entire society are not sacrificed to those of powerful elites. Most stories of decisions leading to catastrophic collapse involve decision-making elites whose interests diverge from the society at large. Democracy is the only real antidote.

The undemocratic increase in the distribution of wealth and income is not only wrong. It is also dangerous to our future survival.

## \*\*\* Solvency/Net-Benefit

### Solvency

#### The counterplan solves and is net-beneficial—

Instead of adopting the plan, the federal government should first commission an Opportunity Impact Statement to assess whether alternative approaches may be more effective in ensuring equal access to greater opportunity and to assess whether the plan complies with equality opportunity laws and other applicable legal standards.

#### The OIS process solves—facilitates public input and ensures compliance with equal opportunity laws.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 4-5)

Our recommended Opportunity Impact Statement process creates a comprehensive and coordinated enforcement protocol with consistent metrics to facilitate compliance with antidiscrimination protections. It provides a comprehensive tool that public bodies, affected communities, and the private sector can use to achieve programmatic goals and to promote programs and projects that offer equal and expanded opportunity for everyone in a community or region. Drawing from best practices found in the application of other types of impact statements, the OIS effectuates crucial equal opportunity protections while increasing the efficacy of review procedures.

In authorizing, funding, and regulating projects, all levels of government have a responsibility to keep the doors of opportunity open to everyone. There is a substantial body of statutes, regulations, and executive orders designed to ensure that recipients of federal funds do not discriminate, in either purpose or effect, on the basis of race, color, ethnicity, disability, gender, or other social characteristics. Although agencies are obliged to enforce these laws, enforcement mechanisms have been significantly neglected over most of the past several decades. 21 The OIS assesses the impact on equal opportunity of proposed or existing federally-funded projects, facilitates public input, and ensures compliance with a range of equal opportunity laws tied to federal spending. These include: Title VI of the Civil Rights Act of 1964; 22 Title VII of the Civil Rights Act; 23 Title IX of the Education Amendments; 24 Section 504 of the Rehabilitation Act; 25 the Age Discrimination in Employment Act; 26 the Americans with [end page 4] Disabilities Act; 27 the Uniform Relocation Act; 28 Executive Order 11246; 29 Executive Order 12898; 30 and Executive Order 12250. 31 Title VI, for example, prohibits discrimination on the basis of race, ethnicity, or national origin in programs receiving federal financial assistance.

#### The OIS process is effective and efficient—existing impact statements prove.

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The OIS process has the potential to better facilitate, coordinate, and expedite review and compliance under these anti-discrimination provisions, including Title VI. On both the federal and state levels, impact statements are a well-established mechanism intended to ensure that policymakers have full awareness of the impact of proposed rules or actions. 34 Fiscal impact statements from the non-partisan Congressional Budget Office, for example, outline the costs and benefits of legislation, and many states have adopted similar financial analyses for legislative action. 35 Iowa, Connecticut, and Minnesota have established impact statements that review proposed changes in criminal justice policy to determine whether such action will exacerbate or reduce racial disparities in sentencing and incarceration. 36 Another well-known impact statement is the Environmental Impact Statement (EIS) that the National Environmental Policy Act 37 requires federal agencies to prepare, based on available data and investigation, when a project is [end page 5] likely to have a significant effect on the environment. The EIS compares the proposed project to other alternative approaches, and invites public scrutiny and public comment, thus facilitating informed and democratic decision making in the pursuit of sustainable development.

The proposed Opportunity Impact Statement pursues similar goals in the context of opportunity. The OIS is designed to promote careful consideration of significant positive and negative opportunity impacts arising from proposed federally-funded projects. It also creates a single formal evaluation procedure that both ensures meaningful public participation in the agency’s consideration of the proposed action and avoids duplicative or uncoordinated attempts at complying with equal opportunity mandates after the fact.

While this issue brief focuses on illustrations of the OIS as it could be applied by federal agencies, it is important to note that states, localities, and private actors would also benefit from initiating use of an OIS. At all levels, the OIS serves to provide a comprehensive, efficient framework to better ensure compliance with existing law.

#### Here’s more evidence that describes the counterplan—it is key to maximize opportunity.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

Agency leaders should work together to develop uniform guidelines for Opportunity Impact Statements (OIS) as a standard part of the disbursement process. As with the environmental impact statements currently required under the National Environmental Policy Act, the relevant agency would require the submission of information and collect and analyze relevant data to determine the positive and negative impacts of the proposed federally funded project. Here, however, the inquiry would focus on the ways in which the project would expand or constrict opportunity in affected geographic areas and whether the project would promote equal opportunity or deepen patterns of inequality.

While the measures of opportunity would differ in different circumstances, the inquiry would typically include whether the project would create or eliminate jobs, expand or constrict access to health care services, schools, and nutritious food stores, foster or extinguish affordable housing and small business development. At the same time, the OIS would assess the equity of the project's burdens and benefits, such as whether it would serve a diversity of underserved populations, create jobs accessible to the affected regions, serve diverse linguistic and cultural communities, balance necessary health and safety burdens fairly across neighborhoods, and foster integration over segregation. As in the case of environmental impact statements, the OIS process will require public comment and participation, sometimes including public hearings.

Both independently and through the input of affected individuals and groups, the relevant agencies would assess the existence and viability of alternative approaches with a more positive impact on opportunity. Where needed, agencies would provide technical assistance to states, municipalities, and other putative fund recipients, strengthening their capacity to develop projects that expand opportunity, and to comply with the Opportunity Impact Statement process.

### Now Key

#### Every instance is key—

Every federal policy should be subjected to OIS scrutiny in order to ensure that they do not perpetuate unfairness and inequality based on race, gender, class, or other characteristics. Only the counterplan can fulfill the government's responsibility to maximize equal opportunity—that’s *Opportunity Agenda*.

#### The counterplan sets a precedent—now is the key time to develop norms that support opportunity.

powell 9 — john powell, Executive Director of The Kirwan Institute for the Study of Race and Ethnicity and Gregory H. Williams Chair in Civil Rights & Civil Liberties at the Moritz College of Law at Ohio State University, et al., with Stephen Menendian, Senior Legal Research Associate at The Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, and Jason Reece, Senior Researcher at The Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, 2009 (“The Importance of Targeted Universalism,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The manifold crisis of our fundamental institutions, from our system of health care provision to the regulatory apparatus of our banking system, has produced a once-a-century opportunity for institutional change. The opportunities to transform our present institutional and regulatory arrangements are now open. The policies we promulgate will set the course of development for generations to come, just as the post-New Deal and post- WWII arrangements laid the groundwork for generations that followed them. This window of opportunity will remain open for only so long, and the chance for dramatic change will diminish. In this moment, we can work towards building a more equitable future or repeat the mistakes of the past. It is critical that we meet these opportunities with the proper solutions now. If we fail at this, we will be trying to correct our missteps for years to come.

#### Now is the key time—ensuring equal access during the economic recovery is vital.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The need for promoting opportunity is stronger than ever, given current efforts to revitalize the economy through the American Recovery and Reinvestment Act of 2009 and other recovery proposals under consideration by the President and Congress. These proposed plans involve unprecedented federal spending linking multiple sectors, and create an opportunity for extraordinary and lasting investment in communities throughout America that need assistance in moving forward toward a strong economic future. This memo introduces a new and promising policy strategy designed to ensure that publicly supported and regulated projects provide equal and expanding opportunity to all the communities they serve: The Opportunity Impact Statement.

### Investment Key

#### Federal investment determines opportunity—Gulf Coast reconstruction proves.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 2-3)

The reconstruction of the Gulf Coast in the years after Hurricane Katrina presents a strong example of the pitfalls and the potential of government investment decisions. In the years after the storm, the reconstruction of the Gulf Coast only exacerbated inequalities that had already existed in the region before the storm. 6 Due to failed housing policy, lack of transportation, and discrimination that shut out many people of color from reconstruction jobs, 7 African-American and Latino evacuees were more than twice as likely to be unemployed two months after the storm as their white counterparts. 8 Lucrative federal hurricane recovery contracts that had the potential to reinvigorate local businesses and economies went mostly to large, out-of-state companies; as of May 2006, local businesses in Alabama, Louisiana, and Mississippi had received only 18 percent of those contracting funds. 9 Minority contractors, too, were largely overlooked in the initial contract awards. 10

Bush Administration policies played a key role in narrowing the opportunities for equal employment and economic growth in the post-Katrina reconstruction effort by limiting labor and equal opportunity protections. On September 8, 2005, President George W. Bush announced the suspension of the Davis-Bacon Act in the Gulf Coast, eliminating a guarantee that federally contracted workers would receive local prevailing wages, and thus making it harder for unionized contractors to receive federal reconstruction funds. 11 The next day, the U.S. Department of Labor suspended requirements that government contractors have an affirmative action plan addressing the employment of women, minorities, and people with disabilities, if the companies were first-time government contractors working on the reconstruction effort. 12

And as the employment opportunities and protections in the post-Katrina years diminished, a series of public investment decisions made it even harder for low-income [end page 2] communities of color to remain in the region. After the hurricane, the government permanently closed Charity Hospital where nearly three-quarters of the patients were African American and 85% had income levels below $20,000. 13 The education system had been dismantled since the hurricane, and most of the public schools were replaced by charter schools with selective admission policies and enrollment caps, to the exclusion of thousands of predominantly low-income children of color. 14

#### The counterplan would have resolved those issues.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 4)

Imagine, instead, that the federal government had allocated its investments in the rebuilding of the Gulf Coast through the lens of greater and more equal opportunity. The U.S. Department of Housing and Urban Development, for example, could have considered the demographics of New Orleans neighborhoods to ensure that rebuilding rules and the disposition of habitable public housing did not unnecessarily prevent African Americans and other groups from returning to the city. In addition to maintaining fair labor and equal employment opportunity rules, it could have assessed contractor workforce recruiting and hiring practices compared with the regional pool of qualified workers. Evaluating these factors, to determine how taxpayer funds should be deployed after a cataclysmic disaster with deep racial and socioeconomic implications, could have produced both a more equitable and a more prosperous region. More broadly, there is an ongoing need for federal agencies and other actors to assess— through a systematic and informed approach— how their decisions advance equal opportunity and comply with anti-discrimination laws.

### Spillover

#### The counterplan spills over to better policies in the future.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 12)

D. Transparency and Accountability

In 2009, when the Recovery Accountability and Transparency Board created Recovery.gov, the website used to track the government’s stimulus allocations, they set a new and heightened standard for government transparency. 65 Previously, the Office of Federal Financial Management had only been able to collect information on the initial recipients of federal funds. 66 However, after 2009, they were able to collect a second level of data—this time, on the secondary entities to which their initial grants had been distributed. 67

The OIS process would fulfill the public’s elevated expectations of transparency through a public, written report, as well as a record of the goals, data, analysis, and public comments that led to the report’s conclusions. Interactive online and geographical information system mapping applications can further increase the accessibility of reports. The report will guide governmental and community decision making regarding the proposed project, while providing guidelines for the future development and regulation of projects that are ultimately approved. Moreover, the OIS serves as a uniform record across agencies demonstrating good faith efforts to comply with equal opportunity requirements.

#### The counterplan is key to expand overall opportunity.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The Opportunity Impact Statement carries the potential to expand opportunity greatly in communities around the country while encouraging public accountability and civic engagement. Moreover, it is a flexible tool that can be applied to any number of projects, big or small. We believe that providing the Opportunity Impact Statement is an important step in realizing our society's promise as a land of opportunity.

#### Only the counterplan can solve—it is key to demonstrate a national commitment to expanding opportunity.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

What's been in short supply since then isn't discipline or effort - it's national commitment. Opportunity doesn't just happen, in other words. It takes bold leadership, innovative ideas, public investment, and shared as well as individual effort.

Americans are ready for a new opportunity agenda - one that moves us all forward while continuing to address the structural barriers faced by people of color, women, and others. The pillars of such a policy agenda are easy to identify: health and health care, jobs and business, housing and lending, education, and criminal justice. But a 21st century approach needs to reflect 21st century realities: globalization, migration, new technology, and an increasingly diverse population have to be transformed from challenges into strengths. We need to proactively address subtle modern forms of racial, ethnic, class, and gender bias. New policies must ensure more equitable investment in place—in neighborhoods and regions, not just cities and states—as an instrument of more broadly shared prosperity.

Expanding opportunity for this and future generations is crucial to our nation's success, and must be a core responsibility of each presidential administration. It's a mission that should permeate nearly everything government does, rather than being relegated to a discrete set of "opportunity programs." Energy policies, infrastructure policies, economic policies, health care policies, and criminal justice policies, among others, should all pass through the opportunity filter. Though the breadth and equality of opportunity in our nation is currently threatened, we have it in our power to reinvent its promise for a new century.

### Uniqueness

#### Our net-benefit is unique—opportunity is declining in the status quo.

Jenkins 7 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2007 (“Lost Opportunity,” *TomPaine.com*, July 17th, Available Online at http://www.tompaine.com/articles/2007/07/17/lost\_opportunity.php, Accessed 10-08-2009)

Recent figures from the Organization for Economic Cooperation and Development bring home what millions of Americans already know: that the very promise of opportunity in America is fading for everyday people, with grave implications for everyone in our country.

Opportunity is one of America's strongest ideals, and one of our greatest national assets. It is the idea that everyone deserves a fair chance to achieve his or her full potential and that, when that happens, our entire nation prospers. Opportunity encompasses the value of mobility—the focus of the OECD figures—but also the values of equality, security, a voice in decisions that affect us, a chance to start over after missteps or misfortune, and a shared sense of responsibility for each other as members of a common society. The coming presidential election is the right time to demand a new commitment to opportunity and a new recognition that we're all in it together.

The figures from the OECD—an international think tank that measures economic and social indicators in the world's wealthy countries—show a strikingly low level of mobility in the United States, especially compared with other industrialized nations. The OECD found that economic upward mobility between generations is lower in the United States than in Canada, Sweden, Germany, Spain, Denmark, Austria, Norway, Finland, and France. British kids born to fathers in the bottom fifth of U.K. national earnings have less than a 30 percent chance of ending up in that earning group themselves, while U.S. kids have more than a 40 percent likelihood of remaining stuck at the bottom.

The OECD research sadly reinforces the findings of The Opportunity Agenda's 2006 State of Opportunity in America , which surveyed several decades of public data, as well the 2007 update released in April of this year. For example, between 2003 and 2004 (the latest figures available), income grew nearly twelve times more rapidly among the top 1 percent of U.S. income groups than the bottom 90 percent, mirroring trends that began in the early 1980s. Between 2001 and 2004, the top fifth of U.S. households gained wealth, while the bottom four-fifths lost it. At the same time, the nation's colleges and universities, a major engine for social and economic mobility, became less affordable for working families. Between 2004 and 2006, for example, college affordability declined in 17 states, and need-based student aid badly failed to keep pace.

The data also show that racial barriers to mobility persist. The Opportunity Agenda's research showed that while white households experienced an average increase in income of over $20,000 between 1974 and 1994, before seeing those gains cut in half by 2004, African-American and Latino median household income lagged far behind that of whites at each measurement point, and increased to a smaller degree than for white households. By 2004, the black-white income gap was more than $20,000, with the Latino-white gap not far behind.

In other words, both equality and mobility are at risk in our country, along with other core elements of opportunity. And that's bad for all of us. In discussing the OECD report, a recent New York Times editorial quotes Federal Reserve Chairman Ben Bernanke's argument that while economic outcomes need not be equal, "economic opportunity should be as widely distributed and as equal as possible." That economic truth echoes our country's moral belief that where you start out in life should not preordain where you end up, and that what you look like or where you come from should not determine the benefits, burdens or responsibilities that you bear in American society.

#### Opportunity is declining in the status quo.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

In recent decades, however, our opportunity advance has largely stalled. The traditional steppingstones-a decent job at a living wage, affordable housing and health care, quality schools and a college education- have become more elusive and less secure. The 45.7 million Americans without health insurance, and the many more who are underinsured, grapple daily with threats to their physical, family, and economic security. Americans working full time at the minimum wage cannot afford adequate market-rate rental housing in virtually any local housing market. One in every hundred adult males is warehoused in jails or prisons, generally with little rehabilitation during their incarceration and daunting obstacles to economic and political participation after release.

In today's America, family resources and background are an increasingly accurate guide to lifelong achievement. Economic origins matter more than we would like to imagine, and more, sadly, than they did in our parents' and grandparents' time. But race, national origin, and gender also matter independently of class. Even with income and educational differences taken into account, for example, African-Americans and Latinos are less likely than other Americans to have regular and accessible health care. Irrespective of insurance status, people of color are less likely to receive necessary medical procedures, and more likely to receive undesirable forms of treatment, such as limb amputations for diabetes.

Opportunity is not only declining but, by many measures, becoming more unequal. In the criminal justice arena, state incarceration rates have gone up dramatically; the prison population has become more racially imbalanced at the same time. Juvenile justice outcomes are badly skewed. Young people of color are more likely to be placed in secure juvenile facilities, while white youths stand a better chance of being sent to private facilities or diverted from the juvenile system altogether. In 2006, three young people of color were in custody for every one white youth - and not because of differences in the severity of their offenses. (Two-thirds of all young people in custody were incarcerated for a nonviolent crime.) The same dynamics govern access to quality public schools, reputable banks and lenders, and even grocery stores and other sources of affordable, healthy food.

Research shows that these trends are due not to some change in the nature or drive of the American people, but to disinvestment in policies and systems that keep the doors to opportunity open. From the late 1940s until the 1970s, our country backed up its belief in opportunity with major policy initiatives, like the G.I. Bill, the Higher Education Act, the 1964 Civil Rights Act and the Equal Pay Act. These policies worked. They help explain why the postwar decades were a time of rising prosperity and opportunity for Americans across the board, and a time when millions of women, people of color, and immigrants entered the economic, political, and social mainstream.

### Economic Growth Impact

#### Preserving opportunity is key to economic recovery.

Jenkins 9 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“Recovering Opportunity,” *The American Prospect*, September 15th, Available Online at http://www.prospect.org/cs/articles?article= recovering\_opportunity, Accessed 10-08-2009)

Because we are all part of an interconnected economy, the need to address these gaps in opportunity is an economic as well as a moral imperative. The United States cannot stage a full or lasting recovery without addressing these gaps. Moreover, if the American Recovery and Reinvestment Act merely restores the economy to the inadequate and unequal conditions of 2007, the nation will remain on a long-term path toward sustained economic insecurity.

### Human Rights Impact

#### The counterplan is key to human rights.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The recent and ongoing investments in the nation's economic recovery have the potential to not only revitalize our economy, but also the American promise of opportunity itself. American opportunity is the idea that everyone should have a fair chance to achieve his or her full potential, and that ensuring this fair chance requires not only certain basic conditions, but also the fulfillment of specific core values: equal treatment, economic security and mobility, a voice in decisions that affect us, a chance to start over after misfortune or missteps, and a sense of shared responsibility for each other as members of a common society. Fulfilling those values is not merely good policy, but part of our fundamental human rights.

### International Law Impact

#### The counterplan is key to fulfill the U.S.’s commitment to international law.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

In addition to these federal laws, international human rights laws support the use of the Opportunity Impact Statement. These include the Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women (CEDAW). In a recent effort, the City of San Francisco adopted CEDAW as part of its municipal law, resulting in a gender audit that was similar in key aspects to the Opportunity Impact Statement.

The U.S. Supreme Court has increasingly relied on these standards in its interpretation of domestic legal obligations.

### Racism Impact

#### Err neg—all things being equal, the counterplan is more likely to decrease racial discrimination—this is a moral imperative—conflict and destruction are inevitable in a world where racism is tolerated.

Memmi 99 — Albert Memmi, Professor Emeritus of Sociology at the University of Paris, 1999 (*Racism*, Published by the University of Minnesota Press, ISBN 0816631654, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved.

Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark [end page 163] history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?). Racism illustrates, in sum, the inevitable negativity of the condition of the dominated; that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. *In that sense,* we cannot fail to rise to the racist challenge.

However, it remains true that one's moral conduct only emerges from a choice; one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is "the truly capital sin."22 It is not an accident that almost all of humanity's spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in [end page 164] banishing injustice, because injustice engenders violence and death.

Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. "Recall," says the Bible, "that you were once a stranger in Egypt," which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal--indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

### A2: Delay

#### The counterplan doesn’t overburden the DOT or fund recipients.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 13-14)

1. Data Collection within the DOT [end page 13]

The DOT Title VI regulations already authorize the level of data collection that would be required under the OIS process, though these have lacked proper enforcement in the past. For example, DOT regulations require that both fund recipients and sub-recipients “have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving federal financial assistance.” 75 An OIS pre- or postapproval data collection requirement would simply provide a more uniform and predictable approach to fulfilling this requirement. Although this analysis directly references the DOT requirements under Title VI of the Civil Rights Act of 1964, courts have recognized the common structure and legislative goals of Title VI, Title IX of the Education Amendments of 1972, 76 and Section 504 of the Rehabilitation Act of 1973, and have interpreted them similarly. 77 The data collection and analysis requirements laid out in the DOT Title VI regulation and order are similarly required to comply with these other civil rights laws as well. 78

The DOT’s authority to collect data regarding possible discriminatory disparate impact is further evident in its order effectuating Executive Order 12898, which addresses environmental justice concerns. The DOT order states, in part:

[T]o assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order. 79

### A2: No Authority

#### The executive has the authority to do the counterplan.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

The Executive Branch has the authority on Day One to implement a coordinated system for implementation and enforcement of those safeguards, as well as placing other conditions on the distribution and receipt of federal funds that expand opportunity. Either an interagency task force or a lead agency should be designated for the coordination of opportunity expansion across federally funded programs, potentially through the Department of Justice. Whatever formulation is adopted, the entity will need staffing, resources, investigative and enforcement authority adequate to implement its responsibilities.

### A2: Can’t Implement

#### All relevant agencies can enact the counterplan.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

Each of these functions is well within the role and capacity of federal agencies, each of which is already responsible for ensuring compliance with civil rights and other restrictions on federal funding. Every agency has administrative discretion in the method of fulfilling its mission. And many have significant experience in providing guidance and technical assistance to fund applicants and regulated entities. The federal government's authority under the Spending Clause of the Constitution, moreover, extends beyond its ordinary regulatory power, affording the Executive greater leeway in enforcing national policy. At the same time, states and localities have the option of declining federal funds, and, thereby, avoiding many of these requirements, if they find them too burdensome. Ultimately, it is the responsibility of the federal government to ensure that its investments expand opportunity, and the choice of state and local entities whether to seek those investments.

## \*\*\* Competition

### Prior Binding Key

#### The plan should be enacted ONLY if the OIS endorses it—

The process of conducting an OIS is vital to reveal its impact on opportunity—enacting the plan before completing an OIS puts the cart before the horse.

#### The OIS has to be prior and binding—the permutation fails.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 11)

The results of Opportunity Impact Statements can both ensure compliance with equal opportunity laws and help federal agencies decide which projects are most worthy of support. If, based on the data collected and reviewed and the public comments submitted, a federally funded program is shown to have a disproportionate adverse effect on a particular community covered by Title VI or other equal opportunity statutes, the funding applicant or recipient should be required to “prove a substantial legitimate justification for its practice.” 63 Absent that showing, or if a less discriminatory alternative is found, federal funding should not go forward. 64

#### The process has to precede the disbursement of funding to solve.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 9)

Instituting an OIS process would strengthen existing data collection requirements and would allow federal agencies to analyze a project or program’s relative ability to expand or diminish access to opportunity within a region before the allocation or disbursement of federal funds, thus proactively effectuating civil rights mandates.

#### The OIS process has to be binding—funding before completing an OIS fails to ensure opportunity.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 15-16)

3. Project Analysis

Once data has been collected, the DOT body reviewing the OIS must determine whether there is a potentially unlawful disparate impact. The agency should compare the demographic composition of the most relevant jurisdiction in which the project would be located with the demographic composition of the populations that would be benefited and burdened by the project. The existing DOT Title VI regulations provide examples that concretize the agency’s role in analyzing comparative impact information. Regulations for DOT agencies (such as the Federal Highway Administration and others) 83 require the collection and analysis of comparative data. For instance, in order to ensure that transportation routes equitably serve all communities and are “convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population,” the agency must compare neighborhood demographic data for the jurisdiction in question with the demographic characteristics of proposed routes.

This comparative analysis to determine disparate impact is also amply reflected in the case law. 84 Such cases make clear that to properly determine whether a disparate impact exists, the DOT reviewing body must analyze the comparative benefits and burdens of a project or policy across the racial, ethnic, and other characteristics covered by the equal opportunity laws. If a proposed federally funded program is shown to have a disproportionately adverse effect, the agency should determine that a prima facie case of discrimination arises, thus raising the presumption that funding will be denied. The funding applicant or recipient should then be given [end page 15] the opportunity to “prove a substantial legitimate justification,” 85 rooted in demonstrated facts, for its presumptively discriminatory practice. But even if the federal fund applicant or recipient is able to show a “substantial legitimate justification” for its challenged practice, funding may still not go forward if “an equally effective alternative practice which results in less racial disproportionality” exists. 86 This is a factual inquiry in which public input is crucial.

#### Minneapolis proves—prior, binding OIS is key.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 16)

As an example, the original plans for the Central Corridor Light Rail Transit project in Minnesota ran through predominantly African American and Asian American neighborhoods between St. Paul and Minneapolis and provided the fewest number of stations relative to the number of transit riders in those neighborhoods, compared to other neighborhoods. 87 It was only after each community filed a civil rights complaint with the Federal Transit Authority that the region’s metropolitan planning organization agreed to install additional stops in the minority communities. 88 And even with the stations approved, the communities are currently being offered little to ensure that market-driven transit oriented development does not displace existing small businesses and low-income residents. 89

Employing an OIS process in the planning of transportation investments could effectively avoid these situations. In the case of the Central Corridor Light Rail Transit project, as a condition of receiving or continuing government funding for the plan, the local metropolitan planning organization would be held to their existing civil rights requirements to collect data showing the relative benefits and burdens the project would have on access to opportunity for local communities; consult and address any social science research on the project’s impact on the local area; and actively solicit, engage, and document public concerns and testimonies regarding the project’s effects. The agency would then analyze the data presented to determine if any impermissible disparate impacts arise and, if the funding applicant could provide no substantial legitimate justification for its plan or if there was a less discriminatory alternative to the plan, the public funding would not go forward. By engaging in this process at the front end, community groups would no longer have to engage in the prolonged and cumbersome process of filing civil rights complaints after a project has been approved in order to have their voices heard. And, throughout the project’s development, as a condition of continued funding, transportation agencies would have the necessary information and analysis available to consistently uphold the promise of equal opportunity for all of the communities they affect.

#### Subjecting a proposed policy to rigorous scrutiny via an OIS is key to generate public involvement and maximize opportunity—this must occur before the policy is adopted.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The Opportunity Impact Statement (OIS) is a road map that public bodies, affected communities and the private sector can use to ensure that programs and projects offer equal and expanded opportunity for everyone in a community or region.

On both the federal and state level, impact statements are a well-established practice, intended to ensure that policymakers have full awareness of the impact of proposed rules before taking major action. Fiscal impact statements from the non-partisan Congressional Budget Office outline the costs and benefits of congressional legislation, and many states have adopted similar financial analyses for legislative action. Iowa, Connecticut and Minnesota have established impact statements that review proposed changes in criminal justice policy to determine whether such action will exacerbate or reduce racial disparities in sentencing and incarceration. Perhaps the most well-known impact statement is the federal Environmental Impact Statement (EIS) found in the National Environmental Policy Act (NEPA) that federal agencies must prepare when a major construction or other project is likely to have a significant effect on the environment. An EIS is prepared based on available data and investigation. It compares the proposed project to other alternative approaches, and invites public scrutiny and public comment. Ultimately, it aims to facilitate informed, sophisticated and democratic decision-making that pursues sustainable development in service to the public interest.

The Opportunity Impact Statement seeks to pursue similar goals in the context of opportunity. Just as the EIS is designed to "force federal agencies to carefully consider significant environmental impacts arising from projects under agency jurisdiction" and to create a formal procedure in which "members of the public are afforded an opportunity for meaningful participation in the agency's consideration of the proposed action, " the Opportunity Impact Statement will bring both the voice of affected communities and balanced analysis to the table in the context of opportunity.

Using empirical data as well as community input and investigation, the OIS will assess the extent to which a project will expand or contract opportunity for all—e.g., Would jobs be created or lost? Would affordable housing be created or destroyed?—as well as the extent to which it will equitably serve residents and communities of different races, incomes and other diverse characteristics—e.g., Would displacement or environmental hazards be equitably shared by affected communities?

These factors would be considered in the context of communities' differing assets, needs and characteristics. For example, will a construction project offer job-training opportunities to both women and men from communities with high unemployment rates, or will it bypass those communities? Will a new highway or light rail system connect distressed minority neighborhoods to quality jobs, hospitals and green markets, or will it further isolate those communities? Experience shows that simply asking these types of questions and requiring a thorough and public response will have a positive effect on the development of publicly subsidized or authorized projects.

### Every Instance Key

#### Every instance is key—subjecting the plan to an OIS Statement is vital to maintain fairness and equality.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

An important chance to promote opportunity arises each time a governmental body supports or controls a major public or private project. Taxpayers support, and governments initiate and regulate, a wide range of projects, from highways and mass transit lines, to schools and hospitals, to land use and economic development, to law enforcement and environmental protection. These projects, in turn, can improve or restrict access to quality jobs, housing, education, business opportunities and good health, among other opportunities. And, depending on their design and administration, they can serve all Americans fairly and effectively, or they can create and perpetuate unfairness and inequality based on race, gender or other aspects of who we are.

Despite the progress we have made as a nation, research shows that people of color, women, immigrants and low-income people continue to face unequal barriers to opportunity in a range of situations, including education, employment, health care, housing, economic development, asset-building, business opportunities, environmental protection and in the criminal justice system. In authorizing, funding and regulating projects, federal, state and local governments have a responsibility to keep the doors of opportunity equally open to everyone. And history shows that when they fulfill that role, we move forward together as a society.

#### Every instance is key—the plan matters.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

One immediate step that a new administration should take is to make the expansion of opportunity an important and explicit consideration in the funding of state and local programs. The federal government distributes billions of dollars to state, municipal, and private institutions for medical services, highway construction, public housing, and law enforcement, among other activities. Each of these appropriations holds the potential to expand or equalize opportunity, or to perpetuate or worsen existing patterns of inequality.

#### Our net-benefit is a disad to the plan—adoption of the plan without subjecting it to an OIS means that regulations protecting equal opportunity will be ignored—the plan will be implemented in a way that harms opportunity.

Jenkins 8 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2008 (“The Promise of Opportunity,” *New Progressive Voices: Values and Policies for the 21st Century*, Published by The Roosevelt Institution, Available Online at http://newprogressivevoices.org/opportunity/, Accessed 10-08-2009)

A patchwork of federal statutes and regulations already offer the skeleton of a system that directs federal funding toward the expansion of opportunity. That skeleton includes, for example, provisions of the Hill Burton and Medicaid acts, various regulations of Title VI of the Civil Rights Act of 1964, and the Uniform Relocation Act. Broadly, these policies were designed to protect against overt discrimination and provide some support for marginalized communities when affected by federal legislation. But with few exceptions, those provisions have not been enforced by the relevant regulatory agencies. And there has never been a coordinated federal monitoring or enforcement strategy that spans their overlapping provisions and prioritizes opportunity. Regulations have been enforced defensively and in isolation, if at all. The federal courts, moreover, have systematically stripped Americans of the right to enforce these provisions through litigation. And there are, in any event, gaps in the coverage afforded by existing legislation.

### Public Participation Key

#### Public participation is key.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 14-15)

2. Public Input and Participation for DOT Projects

Public input is an essential factor in the Opportunity Impact Statement because it can illuminate possible consequences that the DOT’s data collection alone might miss. By engaging diverse public participation at the approval stage, moreover, the Department can lay the groundwork for wide utilization of programs that are later approved. Several DOT orders direct its agencies to involve the community when undertaking new projects. The authority for the DOT solicitation and consideration of public input regarding disparate impacts of federally funded projects can be found, among other places, in the DOT Title VI Order, which specifically requires the DOT Director of Civil Rights to “[d]isseminate information to and provide continuous and meaningful consultation with the public concerning the Department’s Title VI program, including, in appropriate situations, the provision of material in languages other than English.” 80 Public input and participation are similarly required by the DOT to effectuate Section [end page 14] 504 of the Rehabilitation Act, 81 and another DOT order (5301.1) includes a similar public participation requirement for all programs, policies, and procedures that affect “American Indians, Alaska Natives, and Tribes.” 82

These DOT orders emphasize the need for a public input and participation process in any coordinated effort to effectively and expeditiously implement the DOT’s civil rights compliance efforts and inform its decision-making. Serious dedication to these principles could help the DOT better understand the potential impact of its projects and allow it to avoid negatively or unfairly impacting the communities.

#### Prior binding public comment is key to facilitate opportunity.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 9-10)

B. Public Participation and Access to Information

While data collection and analysis are crucial to anticipating and preventing unlawful discrimination and promoting opportunity for all communities, they are not enough. Because discrimination, and in particular, discriminatory impacts of facially neutral policies or practices, is not often readily apparent, federal agencies must enable the public to access information on proposed policies and activities and to meaningfully participate in the regulatory review process. 56 It is important that federal agencies take specific steps, where relevant, for [end page 9] participation by members of the public with limited English proficiency; 57 persons with disabilities; 58 American Indians, Alaskan Natives, and Tribes; 59 and other groups relevant to equal opportunity enforcement who might otherwise face barriers.

To the extent practicable, public comment should be facilitated for all proposed projects or programs in the form of community meetings, written public comment submissions, and academic and social science research and analysis. Requiring an active analysis of public comment in the OIS can help funding recipients anticipate consequences that their own data might have missed. Advocates working in the environmental justice sector, as one example, have been developing strategies for meaningful public engagement. 60

### Tiebreaker

#### Even if it results in the plan, the counterplan is net-beneficial.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 12)

More broadly, however, the results of Opportunity Impact Statements can help to determine public spending priorities even in the absence of a civil rights violation. When choosing among two or more applicants for federal assistance that are otherwise equally attractive, funding agencies should select the applicant whose OIS indicates it will produce greater and more equal opportunity, even if none of the putative programs would actively violate equal opportunity laws.

### Mutually Exclusive

#### The plan and the counterplan are mutually exclusive—here’s evidence describing the counterplan.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

How It Will Work

As described above, the Opportunity Impact Statement draws from the lessons of the Environmental Impact Statement. Similar to the EIS, the Opportunity Impact Statement will seek to "provide a full and fair discussion of significant... impacts" and "inform decision makers and die public of the reasonable alternatives which would avoid or minimize adverse impacts." As with the EIS, agency implementation of Opportunity Impact Statements will balance both the need for efficiency in review of necessary government-funded projects with evidence-based evaluation and transparency. The process envisions that an agency will have approval authority over projects within its mandate, and will use the Opportunity Impact Statement to guide and strengthen its evaluation of proposals.

The OIS will take place in four stages:

1. Opportunity Assessment

The Opportunity Assessment is an initial agency evaluation of the impact a project may have on affected communities' opportunity. This assessment will be submitted by those proposing the project under review, and will serve as either a gateway to a complete and full Opportunity Impact Statement or, with a Finding of Equal and Expanded Opportunity, permit the proposed plan to move forward without changes.

2. Draft OIS

The Draft OIS should encourage both solid analysis and clear presentation of the alternatives, allowing the agency, the applicant and members of the affected communities to understand the opportunity implications of the proposed project.

3. Public Comment

The process provides for an open and substantive Public Comment Period, including proactive outreach to stakeholders.

4. Final OIS

The Final OIS will assess, consider and respond to all comments. In many cases, the Opportunity Assessment or OIS will reveal no cause for denial or modification, and the project will go forward. Data and public comments developed in the process, however, may be part of subsequent monitoring or complaint resolution.

### Each Step In The Process Is Key

#### Here’s the process of the counterplan.

Jenkins et al. 12 — Alan Jenkins, Executive Director of The Opportunity Agenda—a communications, research, and policy organization dedicated to building the national will to expand opportunity for all, former Director of Human Rights at the Ford Foundation, served as Assistant to the Solicitor General at the U.S. Department of Justice, holds a J.D. from Harvard Law School, an M.A. in Media Studies from New School University, and a B.A. in Psychology and Social Relations from Harvard College, et al., with Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, former founder and Director of the Sex Workers Project at the Urban Justice Center in New York City, holds a J.D. from the University of San Francisco School of Law, Kevin Hsu, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, Nerissa Kunakemakorn, Former Robert L. Carter Fellow and Associate Counsel at The Opportunity Agenda, and Megan Haberle, Former Economic Opportunity Fellow and Associate Counsel at The Opportunity Agenda, 2012 (“Promoting Opportunity through Impact Statements: A Tool for Policymakers to Assess Equity,” American Constitution Society Issue Brief, April, Available Online at http://www.acslaw.org/sites/default/files/Jenkins\_et\_al\_-\_Promoting\_Opportunity\_through\_Impact\_Statements.pdf, Accessed 07-22-2012, p. 6)

Using empirical data, as well as community input and investigation, the Opportunity Impact Statement assesses the extent to which a publicly funded project will expand or contract opportunity for all (e.g., would jobs be created or lost; would affordable housing be created or destroyed?) and the extent to which it will equitably serve residents and communities of different races, incomes, and other diverse characteristics (e.g., would displacement or environmental hazards be equitably shared by affected communities?). These factors are considered in the context of communities’ differing assets, needs, and characteristics. Experience shows that simply asking these types of questions and requiring a thorough and public response will have a positive effect on the development of publicly subsidized or authorized projects. Also, where necessary, it will help identify and address potential and actual violations of equal opportunity laws in a timely manner. The OIS will help ensure that all funded projects comply with equal opportunity laws, and can also help determine which projects should be given priority for funding because of their positive impact on opportunity.

The OIS would require both a funding applicant and its government funding agency to evaluate whether or not its program will have an unlawful disparate impact on the basis of protected characteristics before implementing the program. To accomplish this analysis, the OIS process would utilize: data collection and review; public comment and participation; prioritization of equitable projects; and transparency and accountability.

#### Each stage in the OIS process is key.

#### A. Data collection and analysis.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The Opportunity Impact Statement will collect and analyze data regarding the characteristics of affected communities (e.g., employment rates and health status, socioeconomic and racial make-up, etc.), as well as the assets and opportunities currently available to those communities (e.g., access to hospitals, schools, banking, jobs, etc.), both independently and in comparison to surrounding communities. In some cases, historical patterns (e.g., patterns of hospital closings, housing segregation) will also be relevant. An important part of the analysis will be the consideration of alternative approaches to achieving the goals of the project that may be more effective in ensuring equal access to greater opportunity, as well as changes that could mitigate or remove negative implications. Also important will be consideration of the proposed project's compliance with equal opportunity laws and other applicable legal standards.

#### B. Public comment and participation.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

Members of the public-especially communities that would be positively or negatively affected by the proposed project will participate in the decision-making process in two ways. In the initial fact-finding stage, input from civil society will help guide information-gathering regarding relevant impacts, potential alternatives and sources of additional information. Once a preliminary assessment has been created, the public will have the opportunity to comment on the conclusions, express concerns or support, and complement factual information with practical human experiences and interaction.

#### C. Transparency and accountability.

Opportunity Agenda 9 — The Opportunity Agenda—a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America, 2009 (“The Opportunity Impact Statement,” *Poverty & Race*, Volume 18, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The OIS process will result in a public, written report, as well as a record of the goals, data, analysis and public comments that led to the report's conclusions. The report will guide governmental and community decision-making regarding the proposed project while providing guidelines for the future development and regulation of projects that are ultimately approved.