

# **Why E-Democracy Failed in the United States**

by

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In 1868, When Thomas Edison was 21 years old, he took out his first patent. It was for an electric roll call counter for the U.S. Congress and local legislatures. The machine worked perfectly, but the various legislatures had no interest in it. As one legislator said: "This is exactly what we do not want."<sup>1</sup>

In the more than 100 years since Edison's invention, automated roll call voting has been perfected, has dramatically declined in price to the point where its cost is negligible, and is now widely used for non-governmental purposes. But to this day, a large fraction of votes taken by the more than 80,000 formal government legislative bodies in the U.S.—including school boards, town councils, state legislative committees, and even the U.S. Congress—are still done without a manual roll call vote, let alone an automated one. Clearly, legislative bodies are resistant to roll call voting. But if knowing how an elected representative votes is a central tenet of democratic accountability, maybe it's for reasons that, although they may be in the self interest of incumbent politicians, aren't in the interest of their constituents.

It turns out that automated roll call voting isn't the only e-democracy tool that hasn't been widely implemented by elected politicians. The failure to use such tools is endemic within contemporary legislatures.

What accounts for this failure? In this paper, I argue that the answer is simple: Elected officials have an intrinsic conflict of interest in revealing to their constituents unfavorable or controversial job performance information about themselves. To the extent they can act on this conflict of interest, democracy is diminished. To the extent that information technology is involved in this control, "e-democracy" is diminished. I conclude with a proposal to solve the problem of having the foxes (elected officials) buy the wire (democratic reforms) to guard the chickens (voters).

### ***E-Democracy Infrastructure vs. Superstructure***

Let us conceive of the system of democratic accountability more generally and e-democracy in particular as consisting of a multi-step information flow. The first step consists of facts concerning elected officials as documented by government and accessed by opinion leaders such as opposition candidates, the press, and interest groups. The second step consists of opinion leaders transmitting to their constituents the relevant information about their elected officials.

The nature and economics of information in the early and later steps of the multi-step information flow tend to be radically different. Information in the early stages tends to cover facts rather than opinions. Market-based provision of this type of information—including legislators' conflicts of interest, public deliberations, and official actions—is also more prone to be a public good, for reasons explained below.

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<sup>1</sup> Anthony G. Wilhelm, *Democracy in the Digital Age: Challenges to Political Life in Cyberspace* (New York: Routledge, 2000), p. 1.

An example of the first step in the information flow would be elected officials voting on a piece of legislation and creating a public record of their vote. An example of a later step would be an opposition candidate or newspaper reporting how a particular elected official voted.

For the most part, opinion leaders and the general public have no conflict of interest in using information technology to hold elected officials accountable for their actions. Thus, where they have control of information technology, e-democracy should thrive.

But if the system of democratic accountability includes a multi-step information flow, then the quality of the later information flows is fundamentally constrained by the quality of the initial information flow. Accordingly, let us call the first information step the “e-democracy infrastructure” and the later information steps the “e-democracy superstructure.”

Even a brilliant, innovative e-democracy superstructure may not be able to compensate for a lousy e-democracy infrastructure. Consider these common situations:

- An opinion leader who hates a particular public policy but doesn't know who to blame for its existence.
- An opinion leader who observes a failed government policy and knows who voted for it but cannot access whether the mistake was reasonable or not because no record of the public deliberations at the time the policy passed into law are accessible.
- An opinion leader who doesn't have the technical knowledge to understand the consequences of a particular bill but could infer those consequences by knowing the source of favors (e.g., gifts, campaign contributions, and other favors) given to its legislative champions.
- An opinion leader who must make perverse tradeoffs between being successful and accurately covering the performance of a particular legislator. Opinion leaders, such as reporters, often cover many aspects of government other than just the legislative performance of a particular legislator. They also know that most people most of the time only care about what actions government takes (e.g., when schools will be closed, garbage collected, and roads built), not who is responsible for them. Consequently, coverage of government may be highly profitable even without critical coverage of particular legislators. To the extent that legislators have monopoly access to government information, opinion leaders should be willing to trade favorable coverage for privileged access to legislators' information.

In all these cases, there may be little meaningful democratic accountability despite a vast flurry of information from opinion leaders about particular government policies.

There is abundant evidence in both the popular and academic literatures that the e-democracy superstructure is thriving. Although the Internet as a mass phenomenon is less than ten years old, it has become a significant political tool for political parties, candidates for office, interest groups, the media, and the general public. The e-democracy infrastructure, in contrast, is not doing well. In countless little ways, including sheer neglect, elected officials have kept the e-democracy infrastructure in a state of primeval development.

### ***Why the E-Democracy Infrastructure is a Public Good***

In addition to the distinction between e-democracy infrastructure and superstructure, there is also an important distinction between private and public sector provided e-democracy. It turns out that public sector e-democracy closely corresponds to the first step in the e-democracy information flows, the infrastructure, whereas private sector e-democracy tends to correspond to the later steps, the superstructure.

The explanation for this correspondence is that elected officials have a lot of control over information about their own immediate behavior; that is, the first step in the democratic system of information accountability. Without some type of government enforced and subsidized disclosure, it is unlikely that a private market providing this type of information would develop. Consider information about what you do in your own house. As long as you and your relatives have a common interest in keeping this information private, it's practically impossible for an outsider to get access to this information without breaking a law.

Of course, there is a price at which practically anything is for sale, including inside legislative information. But if the cost is sycophancy, campaign contributions, or some other perk, this is not healthy for democracy because easily accessible, widely distributed information is its lifeblood.<sup>2</sup>

For this reason, disclosure of unbiased basic factual information about the activities of elected officials is inherently a public good. In theory, it might be possible to pass a law granting private enterprise a property right to such information. But in practice, it is hard to enforce property rights to basic facts, and, even if such a thing were feasible, it would conflict with the fundamental democratic norm of political equality. In a democracy, each individual should have one vote and roughly equal ability to cast an informed vote. If those with greater economic resources have privileged access to essential political information, then democracy is weakened.

As a result, even the most committed libertarians—whether on economic or First Amendment grounds—rarely argue for private provision of such goods. It would be like arguing to privatize the air we breathe or the words we speak. The proposal would immediately be recognized as ludicrous. For example, I am not aware of a single legislature that sells exclusive rights to distribute information about its roll call votes.

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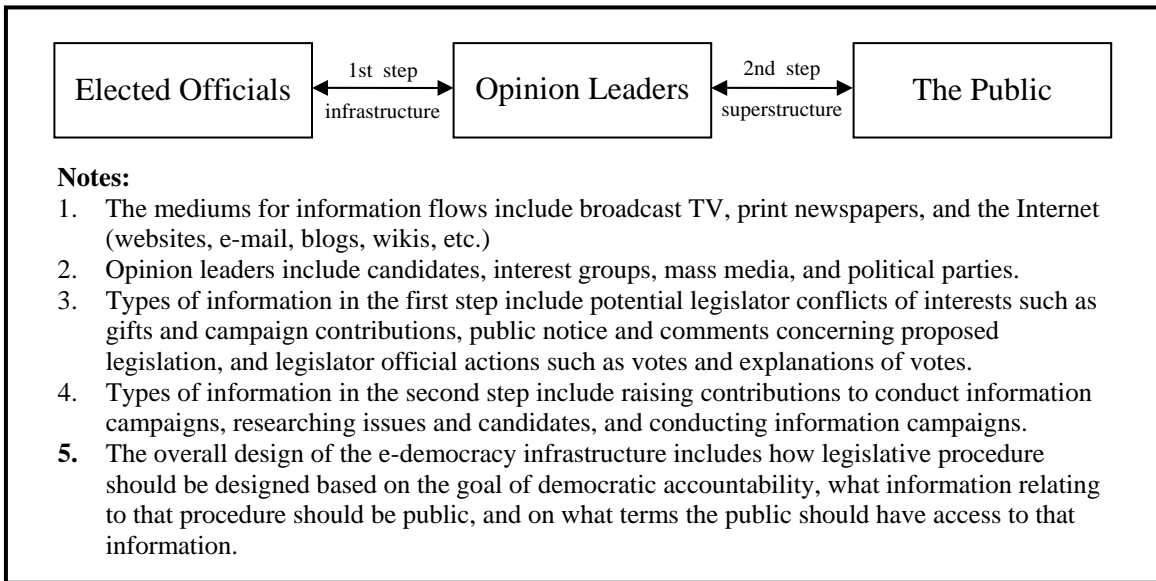
<sup>2</sup> Robert Alan Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

For the purposes of this essay, I will treat public sector e-democracy and e-democracy infrastructure as synonymous. But they don't need to be anymore than physical infrastructure such as roads need to be. Some roads are private. Nevertheless, we generally think of such infrastructure as public, or at least heavily government regulated.

Of course, the actual dividing lines between public and private sector e-democracy should be a hotly contested subject, just as it is in many other activities. I am inclined to believe that in a well-designed system of democratic institutions the e-democracy infrastructure would be only a subset of public sector e-democracy. This is due to the phenomenon of rational voter ignorance and non-participation, which creates democratic failure in the superstructure.<sup>3</sup> But to the extent that the system of democratic institutions allows elected officials to have a conflict of interest in controlling information about themselves, the sphere of public sector e-democracy should be correspondingly small.

The types of information I consider to be in the public sector e-democracy infrastructure include legislators' potential conflicts of interest (campaign contributions and gifts); legislators' public deliberation, including public meeting notice and comment; and legislators' official actions in passing legislation. The structure of legislative procedure also has a big influence on what types of information influence decisions and reach the public, so the design of such procedure is also part of the e-democracy infrastructure.

**Figure 1--Multi-Step E-Democracy Information Flows**



### ***Elected Officials Want Information Control***

What elected officials primarily want from e-democracy is extremely simple: to control information about themselves. They want positive information to be distributed and

<sup>3</sup> C. Edwin Baker, *Media, Markets, and Democracy, Communication, Society, and Politics* (Cambridge ; New York: Cambridge University Press, 2002), Anthony Downs, *An Economic Theory of Democracy* (New York,: Harper, 1957), Samuel L. Popkin, *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns* (Chicago: University of Chicago Press, 1991).

potentially negative information not to be distributed unless it later turns out to be positive.

Elected officials' control of the e-democracy superstructure is highly limited, not least because of the First Amendment, which puts a tight reign on elected officials' control of free speech. Once facts get into the public domain, it's pretty hard for elected officials to control what is done with them and how they are interpreted.

Elected officials' strategy, therefore, is to make it as costly as possible for opinion leaders to acquire potentially unfavorable basic facts. In the real world, this turns out to be very easy because the vast majority of opinion leaders are unwilling to invest the resources to gather even modestly expensive information about elected officials. Generally, unless elected officials are willing to heavily subsidize the acquisition of certain types of basic facts, opinion leaders won't bother to acquire them.

Seeking to acquire potentially unfavorable information about elected officials may also brand an opinion leader a troublemaker, which will entail costs far higher than just the direct costs of acquiring a piece of information. Consider a local education reporter with a quota of several articles a week about a local school system. If she harms her relationship with the school superintendent and board members, she probably won't be able to get the information and access to schools she needs in order to do her job well. Similarly, an activist who needs to be on good terms with an elected official in order to be effective doesn't want to needlessly burn any bridges.

Of course, there is abundant evidence that government leaders seek to control information about themselves. In dictatorships the state seeks to control all major means of public information dissemination and awful things routinely happen to those who seek to acquire and disseminate unfavorable things about the government.

With elected leaders, the desire to control information is no less strong; it is just hopefully channeled in more productive ways via the system of competitive elections and checks and balances. Elected officials, for example, routinely spend a large fraction of their time gathering campaign contributions to wage effective information campaigns against potential opponents. Often the information war chest will deter effective opposition and thus not need to be used. But, if deterrence fails, it will be used to tout oneself and attack one's enemy.

It only stands to reason that if politicians seek to control information in the e-democracy superstructure, they will seek to do the same in the e-democracy infrastructure, where they have direct control of democratic information systems as part of their official duties. The big difference is that the name of the game with the e-democracy superstructure is to make it as easy as possible for the public to acquire favorable information about oneself, whereas the name of the game with the e-democracy infrastructure is to make it as costly as possible for the same folks, especially political opponents, to acquire unfavorable information. One type of behavior tends to be highly visible; the other all but invisible.

## ***Evidence that the E-Democracy Infrastructure is Important***

What evidence is there that the e-democracy infrastructure is important? After all, what could be more boring to the public than wading through the morass of factual information that constitutes the e-democracy infrastructure? If only .01% of the population ever looks at 99.99% of this information, what possible political importance could it have?

The answer, I believe, is huge importance. Elected officials aren't worried that all their constituents will suddenly start poring through their records. That is about as likely to happen as that 100% of Americans will decide to become bee keepers. But they are afraid that just one opinion leader will, and he'll relay the information he finds to a larger audience.

I think that the fundamental intuition elected officials have that academics and lay people lack concerns the incentives of most potential opinion leaders. Elected officials learn day in and day out that on anything except a handful of high profile issues, the only opinion leaders that will take notice are special interest groups with a direct and large stake in the outcome. Moreover, these opinion leaders can be trusted not to share their information with the general public. As for the other opinion leaders, including the press, they must be spoon fed information from government officials or they won't get it. Remove the spoon, and they will remain clueless, although in theory there were means by which they could have bypassed the spoon and gotten the information directly.

In addition, since most opinion leaders are averse to alienating the powerful from which they want goodies, they are happy to overlook controversial information, especially if they feel they won't lose a scoop to their competitors. With today's monopoly local newspapers and rare local TV coverage, such a competitive threat is rarely a worry for local media.

The best evidence I have of the importance of the e-democracy infrastructure is elected officials' behavior, which demonstrates that they care deeply about retaining as much control as possible over potentially unfavorable information while pretending that they have absolutely nothing to hide and are happily sharing all the information they reasonably can. Let's now turn to two case studies: Congress, representing the national government, and my County Council, representing local government.

### ***Congress***

The Budget of the United States, Fiscal Year 2006, includes \$65 billion for information technology.<sup>4</sup> Says Karen Evans Administrator of E-Government and Information Technology within the Office of Management and Budget, "the focus of E-government is to provide better services to the public and to use technology to improve the lives of citizens."<sup>5</sup> Every federal agency now has its own website and many of those websites contain both a vast array of information and potent systems to search for it.

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<sup>4</sup> See [www.whitehouse.gov/omb/budget](http://www.whitehouse.gov/omb/budget).

<sup>5</sup> See [www.whitehouse.gov/omb/egov/g-9-budget\\_highlights.html](http://www.whitehouse.gov/omb/egov/g-9-budget_highlights.html).

Congress, too, has taken to technology. All members of Congress have their own websites, which are frequently updated and contain a wealth of helpful information for constituents that puts members of Congress in a positive light. There is also a vast PR apparatus. Members of the House typically have a press secretary, and members of the Senate often have two or three press secretaries.<sup>6</sup> There are also supplementary PR folks, such as members of the House and Senate TV recording studios, which send out clips on behalf of members of Congress to local TV stations. The House and Senate press galleries also are subsidized by Congress and offer members a free, convenient location to hold a press conference to get out their message.

It is quite remarkable, then, that Congress has not found the resources to put basic print records about its own behavior online and in an easily accessible manner. Much of this has been well documented elsewhere, and I will repeat only some of the highlights here.

In his book *Computers in Congress*, written long before the Internet was invented, political scientist Stephen Frantzich observed Congressional resistance to using information technology to facilitate constituent access to information:

Congress has decided not to computerize, or to limit access to, information that might be interpreted as embarrassing.... [Individuals within Congress] do not want to make it too easy for their political opponents to evaluate them and wish to have unique access to data they can use for their own purposes.<sup>7</sup>

More recently, journalist David Corn wrote an excellent article on this phenomenon for *Wired* magazine. He catalogued many of the obvious documents Congress didn't put online or put online in a highly accessible way. These included a searchable database of floor votes, any subcommittee or committee votes, lobbyist reports, gift and expense reports, member financial disclosure reports, and timely hearing transcripts. Then he asked, "What could be behind the general reluctance of Congress to place all of its public material within keyboard reach of citizens across the country? Could it be that members of Congress want to control information about themselves and don't want to be scrutinized?" Then Corn answers his own question by citing others.<sup>8</sup>

"Exactly!" said Senator John McCain.

"[The Congressional Leadership] wanted to put everything up on the Web, except what would inconvenience members of Congress," said Larry Makinson, Executive Director of the Center of Responsive Politics.

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<sup>6</sup> Timothy E. Cook, *Making Laws and Making News: Media Strategies in the U.S. House of Representatives* (Washington, D.C.: Brookings Institution, 1989).

<sup>7</sup> Stephen E. Frantzich, *Computers in Congress: The Politics of Information, Managing Information ; V. 4* (Beverly Hills: Sage Publications, 1982), p. 216.

<sup>8</sup> David Corn, "Filegate.Gov--the Biggest Congressional Scandal of the Digital Age: Politicians Aren't Putting Public Docs on the Net, and No One Seems to Care," *Wired*, November 2000.

Corn wrote his article in 2000, but his observations remain as valid today as they did then.

Both groups on the left and right have agreed that Congress does a lousy job providing basic information about itself. In the early 1990s, Ralph Nader set up the Congressional Accountability Project, with Gary Ruskin as Executive Director, specifically to push for greater Congressional Accountability. In an op-ed in the *Los Angeles Times*, Nader and Ruskin wrote:

It's almost 2000. We're deep into the Internet Age. And it seems that nearly everything is on the Internet, except Congress....

If you fire up your Web browser looking for even the most important congressional information, chances are you won't find it. Congress has refused for years to place many of its most useful materials on the Internet. This is especially true regarding what our members of Congress really do in Washington. We get mainly what they want us to know, not what we need.

While individual members of Congress and congressional committees have Web pages, those pages are packed with self-serving fluff, obfuscation and public-relations claptrap.

The Library of Congress maintains the Thomas Web page (<http://thomas.loc.gov>), which is great for historians. But why not also make available the most useful, up-to-date congressional materials, so that citizens could easily obtain the information they need to help shape legislative efforts and participate in furthering congressional accountability? To ask the question is to answer it.<sup>9</sup>

The Heritage Foundation is widely regarded as a Republican think tank. In the mid-1990s the Executive Director of its Government Reform Project wrote an issue brief "Needed: A Congressional Freedom of Information Act."

Providing citizens outside of Washington with the means to closely examine and actively monitor the work of their elected representatives would do more to foster openness and prevent back room politics than any other single reform.... Increased public access would help level the playing field between ordinary citizens and high-powered lobbyists, whose ability to obtain inside information often enables them to influence legislation.... In their offices and at committee meetings, Members of Congress are conducting the public's business. The public has a right to know what occurs in a detailed and timely fashion.<sup>10</sup>

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<sup>9</sup> Ralph Nader and Gary Ruskin, "Congress Pulls the Shades on Net: If Members Are So Proud of What They Do, They Ought to Post Their Voting Records Clearly on the Net," *Los Angeles Times*, November 30 1999.

<sup>10</sup> Kenneth R. Weinstein and August Stofferahn, "Needed: A Congressional Freedom of Information Act," (Washington, DC: Heritage Foundation, 1996).

Much of this interest in Congressional transparency was stimulated by Newt Gingrich's vow in late 1994, as part of the Republican takeover of Congress and his ascendancy to the House speakership, to "change the rules of the House to require that all documents... be filed electronically... so that information is available to every citizen in the country at the same time it is available to the highest-paid Washington lobbyist."<sup>11</sup> Gingrich did put a lot of Congressional documents on the Internet (see [thomas.loc.gov](http://thomas.loc.gov)). But he decisively stopped short of providing the type of information that opposition candidates typically find most useful. That reality hasn't changed to the present and shows no evidence of changing, which may help explain why the Heritage Foundation never pursued the matter, the Congressional Accountability Project shut down, and the topic is no longer considered newsworthy.

Having said the above, the reform literature on e-democracy infrastructure has some very notable omissions, including 1) access to audio and video records of legislative proceedings, and 2) a grasp of how legislative procedure should be redesigned from the ground up in light of new types of public comments and accountability made possible by the Internet.

**Video Records.** It is not enough for public *print* records to be made accessible online. *Audio* and *video* recordings of such proceedings should also be made available. For example, the *Congressional Record* needs to incorporate video of floor proceedings as well as transcripts of floor proceedings. Congress is terrified that political opponents might get access to video coverage of meetings and use snippets against them in a future political campaign. As a result, it has devised a number of clever strategies to prevent this from happening.<sup>12</sup>

The Congressional recording studios tape floor proceedings and members of Congress use these snippets for their own political purposes. For example, in the U.S. Senate as many as 60 video press releases may be sent to local TV stations in a given week.

However, it is either illegal or practically impossible for opponents to use the video footage for a political purpose. Bona fide TV stations can get a direct TV feed of Congressional floor proceedings (and select committee hearings allowed by committee chairs). But before they broadcast the footage, they copyright it. It then becomes illegal for such content to be used without a broadcaster's permission, and broadcasters do not allow their footage to be used for political purposes. When a candidate uses their footage, such use implies a media endorsement, which violates journalistic ethics.

The same applies to C-SPAN. It retains a copyright of everything it broadcasts and doesn't maintain online archives. To get footage more than two weeks old, one must sign a contract promising C-SPAN not to use it for political purposes. C-SPAN has been great for educating the American public about public policy. But that's very different from being a vehicle for democratic accountability. If controversial policies cannot be linked to particular legislators, democratic accountability is weak. C-SPAN was designed by the

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<sup>11</sup> Corn, "Filegate.Gov."

<sup>12</sup> See James H. Snider, "Senate Hypocrisy Over "Hot" Testimony," *Chicago Tribune*, 27 January 1999.

cable industry to cultivate goodwill with incumbent legislators. So it should be no surprise that since its creation the incumbent re-election rates in Congress have greatly increased.<sup>13</sup> C-SPAN may not have caused the problem, but its fear of alienating incumbents surely has made it much less a vehicle for democratic accountability than its ideals would suggest.

**Redesign of Legislative Institutions.** There has been a remarkable lack of thought about redesigning the legislative process in light of new information technology. For example, legislative public meeting systems have always relied overwhelmingly on synchronous (live, face-to-face) communications. But new information technology, which allows communication at a distance, greatly facilitates asynchronous communication. Thus, it should be easy to start the formal public comment process, as is already done with agency rulemakings, as soon as a meeting agenda is posted. Similarly, the ability to filter unwanted content is highly limited in a face-to-face meeting. It is extremely inefficient for both audience members and elected officials to listen to everyone who might want to speak. As a result, elected officials are given extraordinary control of public speech during public meetings. But with online speech combined with good filters, it is much easier for any member of the audience to filter out unwanted speech. As a result, a much more robust public meeting forum could be created, with elected officials losing at least some of their control of public meeting speech. But elected officials have proven strikingly unwilling to give up this control.

### ***Anne Arundel County's County Council***

As a local example to complement the national example of Congress, I chose the County Council in Anne Arundel County, Maryland. The County has a population of 506,000 people and an annual budget slightly over \$1 billion.

I chose Anne Arundel County primarily because it was convenient; I live there. But Anne Arundel County is also a good example because it has such a sophisticated e-government website. The Center for Digital Government ranks cities, counties, and states for the quality of their e-government. In 2005, it ranked Anne Arundel County, within the category of "counties with a population of 500,000 or more," as one of the top ten counties in the U.S. for the quality of the e-government services delivered through its website.<sup>14</sup> The contrast between the quality of its e-government and e-democracy services is thus striking. Many small towns in Vermont with a population less than 10,000 and a correspondingly small budget nevertheless find money for better e-democracy than in Anne Arundel County.

Anne Arundel County's website (see <http://www.aacounty.org>) does indeed offer a wealth of information and transactional services befitting a billion dollar organization. For example, via the website, citizens can research and pay many of their County bills,

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<sup>13</sup> E.g., see Figure 4 in Alan I. Abramowitz, Brad Alexander, and Matthew Gunning, "Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections" (paper presented at the Annual Meeting of the Southern Political Science Association, New Orleans, Louisiana, January 6-8 2005).

<sup>14</sup> Center for Digital Government, "2005 Digital Counties Survey," (Folsom, California: Center for Digital Government, June 2005).

including taxes, utilities, and permits; register for parks and recreation activities; and watch streaming video, including the Pet of the Week (which changes every week), a promotional video for economic development in Anne Arundel County, an Anne Arundel County Recycling video, and other assorted how-to and promotional videos. The website is updated frequently; for example, every public event sponsored by the County, including concerts, nature walks, and public meetings, is listed on the site. The front page of the website features a smiling, grandmotherly picture of the County Executive, with an e-mail address below her name inviting citizen feedback. The message for viewers is that this is an open government here to serve the needs of its citizens. On the top of each page is a search box, and in the left hand column a seemingly exhaustive list of anything a citizen might want to know about the County, including attention to little service oriented details such as maps, phone directories, and lists of County vacation days. The message is: if there is some important information about the County that you want, it's here.

In addition to its website, the County has an extensive I-NET (for "institutional network") and PEG (for Public, Educational, and Government) Access TV system. Its I-NET provides extremely high speed Internet service (more than 2 gigabits/second) to more than 100 government buildings, including police, fire, and schools. This is linked to the government access TV channel and studio. The state-of-the-art \$1 million studio is broadcast quality and includes 9 terabytes of storage, equivalent to more than 9,000 hours of standard definition video, to feed video to the PEG access TV channels. A server also allows high speed Internet access to hundreds of hours of video programming, including in-house training for the County's fire, police, and school personnel as well as a lost pet-of-the-week program for the general public. The County also has hundreds of video cameras in school buildings, school buses, traffic lights, public transportation centers, and other locations to ensure that citizens can be held accountable for their behavior.<sup>15</sup>

However, despite all this state-of-the-art information technology, the information systems for legislator and County Executive accountability are weak. Consider these elements of a well designed e-democracy system.

**Ethics (financial conflict-of-interest) Information.** Anne Arundel County has an Ethics Commission appointed by the County Executive, who is elected. Its primary mission is to ensure that County employees and members of County boards and commissions do not have financial conflicts of interest that might interfere with their job responsibilities. In addition, County Councilors and the County Executive must disclose the nature (but not the amount) of their major financial holdings. None of these files are made available online. To get access to them, a citizen must visit the Ethics Commission, show a valid ID, and fill out a form that includes one's name, address, telephone number, and valid ID number. The officer at the Ethics Commission must then keep track of every piece of paper the citizen views and report this to the relevant County Council member or the County Executive, depending on the document viewed. Invariably, elected officials believe the odds are high that anyone seeking this type of information is

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<sup>15</sup> E.g., Dionne Walker, "Schools Could Expand Security Cameras' Use," *Capital*, February 2, 2005.

engaged in a politically harmful act toward themselves. Even if some information was legitimately sensitive, it could be easily redacted electronically from the rest.

I listened to a work session as the County Council responded to a proposal to rewrite this section of the County's ethics code so the Ethics Commission would only send this information to County Councilors who requested in writing that it be sent. Previously, they were automatically sent without making a written request. The two County Councilors that commented on the proposed change, one a Democrat and one a Republican, both disliked it. They wanted to be sure to get a heads up on any reporter or potential opponent looking for this information. No other County Councilor opposed their request to keep the present system of automatic notice when someone requested a look at their financial disclosures.

**Ethics Commission Official** (commenting on a proposed amendment for manual as opposed to automatic disclosure): If you sent a letter saying 'I want to know every time someone looks at my files,' then we would send that information to you.

**Council Member Beidle:** I would suggest we put in an amendment so that we take this back the way it was because I want to know every time someone looks at my files. I always wonder what the agenda is. Why is someone pulling your financial disclosure.

**Council Chair Vitale:** I had a different concern. I didn't want to be reading about something in the newspaper or someone comes and looks for something and starts, you know, planning the demise of an individual... and now somebody is out to destroy this poor person. The idea that they might not find out about it until they read it in the newspaper.... God knows, I get a lot of my information after reading the newspaper. So yes, there will be an amendment to that. [To Beidle] So that will solve your other problem.

Arguably, the biggest flaw in the current ethics disclosure system is the difficulty of linking conflict of interest information from different sources so as to discover unexpected relationships and patterns. This is easy to do with today's information technology, but it's simply not done. For example, the Board of Elections controls campaign contribution information; the Ethics Commission financial, gift, and lobbyist disclosure information; the County Council roll call vote and public comment information; and various county offices control vendor contract, franchise award, and building permit information (the vast majority of lobbying is done by entities with a financial relationship with the County) . Each office is in a different location with different personnel and procedures. Much of this information is next to impossible to get, let alone link together. Even within an office, the key information, such as financial, gift, and lobbyist disclosure, are in different documents, or in formats, such as roll call votes by bill rather than legislator, so as to make them practically unusable.

**Public Meeting Deliberation.** The only way to get the contents of agendas for County Council meetings is by going to the County website; there is no e-mail notification. County Council members and insiders presumably get access to these agendas many days before they are posted online.

Remarkably, no minutes of meetings are posted online. The only way to get access to minutes is to request them from someone who works directly for the County Council and sits at a desk greeting all County Councilors as they pass on their way to their nearby offices. The minutes of meetings costs 25 cents/page to photocopy. Minutes are long—usually more than 10 pages for a single meeting. But they tend to be filled with boilerplate language such as: “The Chairman called for the public hearing on Bill No. 38-03, as amended, concerning Public Ethics; and the Administrative Officer read a portion of the title.”

Boilerplate language on County Council meeting agendas say “written testimony of any length is welcome; please provide 10 copies.” But when people do submit written comments, it’s not mentioned in the meeting minutes or in any other written document that would be traceable. More generally, there is virtually no information in the minutes of a public hearing concerning what the public actually said.

For example, when I testified on the County ethics bill, Bill No. 38-03, and asked that my written comment be entered into the record, which I was told it was, the minutes merely noted: “The following persons spoke on Bill No. 38-03,” and then my name and that of another person who testified were listed.<sup>16</sup> There was no summary of the issues I addressed or whether I was for or against the bill or that I had asked that my statement be inserted in the record and that this request was granted. Here there appears to be some discretion on the part of the person keeping the minutes. In the same set of minutes but on another bill, the people who spoke out in support and against the bill are listed separately.

County Council meetings are televised live and rebroadcast twice. Copies of the bills being discussed are posted online but rarely the supporting documents, such as executive staff reports and information submitted by the general public, that County Council members have in front of them during the meeting or that they read in preparation for the meeting. No meeting video is made available online. But a copy of the video will be made for anyone who brings a videotape to the County Council.

In addition to public hearings, the County Council has work sessions that are required by state law because at least four members of the County Council are present. The current agendas for these meetings are posted on the website—four layers down from the home page of the website. The work session is where County officials and other experts explain legislation to County Council members in understandable English and there is a real give and take as County Councilors try to understand the strengths and weaknesses of proposed legislation. The work session is most akin to a Congressional Committee hearing in the give and take exchange between legislators and invited experts.

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<sup>16</sup> Testimony of Jim Snider, August 18, 2003 before the County Council of Anne Arundel County.

There are no written minutes for these work sessions, although audio tapes of them can be purchased for \$4/each. Due to technical failures, probably resulting from speakers not turning on their microphones when speaking (elected officials control their own mics), parts of some audiotapes feel like listening to an outdoor play in pitch black during a hurricane. Without knowing the individual County Councilors personally, it may also be hard to distinguish their voices even when they are crystal clear. Members of the public seeking to actually understand the implications of complex legislation would be well advised to attend these meetings. But there is virtually no publicity concerning them and it is extremely difficult to access any type of record about them.

The overall impression I get from comparing work sessions to public hearings is that County Councilors demand far greater expertise of the general public than they do of themselves. This is also reflected in the behavior of County staff, which tend to treat County Councilors as laypeople and the public as experts. During work sessions, County staff carefully summarize bills, explain what each part of a bill means and what parts might be controversial, and explain how bill language was derived and relates to other laws. All the public gets, in contrast, is intimidating bill language that is often impossible to understand outside of a larger context not contained in a bill. One County Council member put it well.

**Council Member Barbara Samorajczyk** (long pause as she again reads a passage of the County ethics bill and tries to make sense of it, then says): Okay, can you just tell me how this changes from the existing law? Why are we changing it and what does it change? I am having a hard time reading the words and understanding what they are saying.<sup>17</sup>

**Roll call Votes.** No County Council roll call votes are available online. Even in Congress, roll call votes are available by piece of legislation, even if not by legislator. But in Anne Arundel County, the only way to get roll call votes of any kind is to go through an employee who works directly for the County Council. To find out how a particular County Councilor voted over the course of a four year term, one would have to go line by line through written minutes over the course of a four year term. Using an average of 16 pages of minutes/meeting and 25 meetings/year (twice a month), that comes to 1600 photocopied pages and \$400 of printing.

My own experience provides a feel for the difficulties and politics of gathering County Council information.

**August 4, 2005.** I call the County Council's office and speak to Terri Cosey, the County Council's Senior Legislative Secretary, to request meeting minutes and a meeting videotape. Ms. Cosey assures me that the minutes will be sent out for free and that the cost of the videotape will be merely to bring in a tape.

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<sup>17</sup> August 12, 2003 County Council work session on Ethics Bill 38-03.

**August 16, 2005.** I visit the County Council's office to pick up my information and request some more. I ask why roll call votes and work sessions weren't on the County's website, and Ms. Cosey explains: "We do a lot of things by hand; we're not high-tech here."

When I ask her for the legislative history of the two most recent public ethics laws, one passed the previous week and one several years ago, she asks me: "Who are you with; my boss will want to know."

When I ask her why her boss would want to know, she replies: "This will take me a lot of time." I ask if I could locate the material myself. She replies: "No. You are not allowed access to the files."

**August 16, 2005.** I visit the County's Ethics Commission and asked Susan Murdock, Secretary to the Commission, where the financial documents are. She replies: "What is your name?" I ask her why that is important and she replies: "The executive director will want to know."

I ask her how many people had requested such documents and she replies: "Only one or two people have asked to see these documents since I've worked here." I ask how long she has worked here. She replies: "about a year."

I ask her how much the documents cost. She replies that in the past she has copied the documents for free, so she will do the same for me. But before I can read any of the documents, I will have to fill out a form so that County Councilors and the County Executive can know who was looking at their files.

I want to look at the records for the entire career of those in office but am told that records are only kept for four years, then destroyed.

**August 18, 2005.** Ms. Cosey from the County Council's office calls me back and gives me the following information. Audiotapes of work sessions will be \$7/each and photo copies of minutes 25 cents/page. Ms. Cosey refuses to just copy the parts of the minutes I want. I will have to have the entire minutes or I won't be able to get them at all.

I request the County Council's written policy on charging. She replies: "We don't have anything in writing." I ask: "why." She replies: "This has never been an issue."

I ask why audiotapes of work sessions are \$7 but videotapes of public meetings are only the cost of the videotape. She explains it is because they use special Lanier audiotape. I ask if I can buy an audiotape at Best Buy and bring it in to use. After all, that is what I had done with the videotape. She replies: "Yes, but we'd still have to charge you \$7 per tape."

**August 19, 2005.** From Ms. Cosey I pick up the meeting minutes and audiotapes of work sessions for ethics bills 38-03 and 58-05. Ms. Cosey decides not to charge me for the minutes and charges me \$4/audiotape.

I had asked for all audiotapes of the work sessions on ethics bills 38-03 and 58-05. She has come back with two audiotapes, one for each bill. I ask if there is a way to verify that there were only two work sessions in total. She replies: "No."

I ask how then did she verify that there was only one work session for each bill. She replies: "That's all there ever was; there is only one work session per bill."

I then ask her how if there were four public hearings on ethics bill 38-03 there could be only one work session. She replies that she will go back to the file to verify the number of work sessions. Sure enough, she comes back with another work session on the ethics bill.

I ask why she is now so confident that she has identified all the work sessions when she had previously been confident yet had missed one. She then goes into a back room and comes back with a document: a printed listing of all the topics discussed at work sessions over previous years.

**August 22, 2005.** I come in to pick up the information I had previously requested, including the third audiotape, and ask for some new information based on what I had read in the previous minutes. Ms. Cosey refuses to speak to me. She says I will have to talk to her boss, Judy Holmes, from now on. I reply that I don't think I should waste the time of Ms. Holmes because my requests are for basic information. (Ms. Holmes, Administrative Officer to the County Council, manages the office of eight County Council staff). Ms. Cosey replies it doesn't matter and shows me into the office of Ms. Holmes.

I ask Ms. Holmes why people can bring in videotapes to get free tapings but cannot bring in audiotapes to get free tapings. She replies that I can. I reply that Ms. Cosey said I could not. She replies: "I don't know why Ms. Cosey would say I couldn't bring in my own audiotape; we've let others do it."

I ask why County Council minutes just give witness names, with no information about what they say or any documents they might have asked to be put in the record. Ms. Holmes explains: "We rely on state law on agendas and minutes and advertising; there is no supplementary County law."

I complain about the lack of detail in the minutes. She replies: "We don't write nearly as detailed minutes as we used to." She adds that she has never looked at the state code on minutes.

I ask her how often people make requests for detailed legislative histories on legislative bills, just like I am doing. She replies: "Maybe one person a year comes in to ask for this type of stuff. Maybe an attorney will come in if they have a case."

I ask her how often opposition candidates request this type of information. She replies: "I've been here since 1982, and it's very seldom than an opposition candidate will ask for this type of stuff. They may call in and ask how did such and such a County Councilor vote on a particular bill, and I'll usually just tell them on the telephone."

I ask her what the County policy is on charging for photo copies. She replies: "It's County policy, through the purchasing department, to charge 25 cents/copy for any copies we make. For videos, since no one else does it, we just set our own rules."

I ask her for a copy of the printed rules, and she says that they don't exist. I request the videotapes for three more meetings on ethics reform legislation and leave the requisite blank videotapes with Ms. Cosey.

**August 22, 2005.** County Councilor Cathy Vitale left a message on my home telephone answering machine. She did not say what she was calling about, but simply identified herself and said: "Jim, when you get a chance, please give me a call. Thank you." I did not call her back because my research was not done, and I didn't want to reveal my purpose in gathering the information I had requested.

**August 29, 2005.** Ms. Holmes is on vacation. I call JoAnne Gray, the number two person in the County Council Administration, directly under Ms. Holmes. I ask her how I would find out about ethics legislation that didn't pass over the last five years. She replies: "Basically, ask me." I tell her that I couldn't find any of this information on the County's website. She replies: "The website will only show legislation that has passed and been codified."

**Other Public Bodies.** In addition to the County Council, the County has numerous other public bodies and public hearings for specialized purposes. Compared to these entities, the County Council may be a paragon of openness and accountability. These bodies often hold public hearings and then make highly important recommendations that are then rubber stamped by the County Council. But it's not at all unusual for only a few members of the public to show up at these hearings. What is the cause of this problem? Is it derelict citizens not participating despite the best efforts of public officials? Or is it the other way around?

Of course, it's a little bit of both. But my own experience with a wide variety of public hearings is that public officials love to publicly claim that they have held a public hearing. But, in fact, they often seem to discourage public attendance, especially by potential critics, in subtle ways. Consider PEG access funding, which is part of the cable TV franchise process. In recent years, this money has come to be used as a hidden public relations and information technology budget for County officials. The County's avowed purpose for PEG access, to ensure that there is a local outlet "available for all forms of

public expression, community information, and debate of public issues,”<sup>18</sup> therefore comes across as little more than a rationalization for a PEG tax funding other budget priorities.

When a municipality, as part of the cable franchise renewal process, negotiates with a cable company for PEG access funding, it is required by federal law to conduct a needs assessment, including a public hearing. When I publicly complained about how the County’s \$5 million in PEG funding was being spent, I was told that the County held two public hearings in 1999 to conduct a PEG access needs assessment before the funds were allocated. When I was asked how many members of the public showed up at those hearings, I was told a total of about 20 people. Over subsequent years I repeatedly asked the cable coordinator--and one time his boss--to please notify me of the next public hearing for the next round of PEG funding. The next round of PEG funding was expected to be over \$10 million. In early 2005, two public hearings were held. But I was never notified of the hearing, and a total of about six members of the public showed up (none of which spoke and none of which were there to discuss PEG priorities but chatted privately with a cable representative about service complaints). When I eventually found out about the hearing, I called to complain to the Cable Coordinator. He told me that the County had spent at least \$1,000 to advertise the meeting in bona fide newspapers within the County. If I had missed those print classified ads, it was my problem.

Another time I wanted to testify before the County’s Charter Revision Commission. These Commission meetings were poorly publicized and poorly attended. I had previously spoken to the Commission’s Chair and been promised twenty minutes to present my views at the next meeting. I left work early to attend the meeting, which was more than an hour away from my office. When I arrived at the meeting, I was told it had been canceled at the last minute because one of the Commission members could not attend. No system was in place to notify anyone other than the commissioners and the press.

A simple e-mail notification system could have solved both these problems. Government officials within the County now make extensive use of e-mail lists for public newsletters, emergency alert systems, and internal employee communications. One company, GovDocs, specializes in such e-mail notification systems. Featured applications include foreclosure sales, sheriff’s 10 most wanted, recycling schedule, county surplus sales, employment opportunities, bidding notices, weather-related closings, West Nile virus notifications, consumer guides, parent newsletters, bus route changes, and press releases.

However, when I wrote an op-ed in my community’s local paper complaining about the County’s lack of e-mail notification of public meetings, the County Executive let it be known through an employee that it would cost \$100,000 to implement a useful public

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<sup>18</sup> Cable Franchise Act of 2000, Bill No. 57-00, October 16, 2000, p. 26.

meeting e-mail notification system and therefore wasn't a wise use of taxpayer's money.<sup>19</sup>

### ***Is E-Democracy Too Expensive?***

The most common public excuse I have heard from elected officials why they don't provide better access to legislative information is that their staff lacks the resources and it would cost too much money; they wouldn't want to raise taxes or cut other services to pay for it. This is an excellent public excuse because it appeals to taxpayer greed.

But how difficult and expensive would it really be to provide such information? A typical \$250 audio player, such as the Apple i-Pod, can now hold more than 130 years of County Council work sessions.<sup>20</sup> Using a typical USB 2.0 port found on the most inexpensive computers, this 130 years worth of work sessions could be transferred to a second device in a few minutes.<sup>21</sup> A similar calculation can be done for County Council meetings. A 300 gigabyte consumer hard drive now costs about \$250. That comes to about 3 years of video coverage on a consumer quality hard drive and 300 years on the County's 9 terabyte PEG access hard drive.<sup>22</sup> If the relevant decision involves minutes, the cost of storage and access is too small to estimate. Even a cheap consumer PC would allow for millions of years of public meeting agendas and minutes.

Admittedly, these are fairly trivial applications of new information technology. But if elected officials find it so difficult to use existing information technology for such obvious and easy applications—the type of applications my non-technical 15 year old daughter can do with ease on her computer—it shows the hurdle faced by anyone proposing e-democracy accountability reforms requiring a bit more creativity and effort.

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<sup>19</sup> Subsequently, the County developed an event-based e-mail notification system. But its quality varies substantially by type of event, and for County Council meetings is practically useless. Anyone who goes to the County Council website will quickly discover that the County Council holds public hearings the first and third Monday of every month beginning at 7pm, except on holidays. All the e-mail notification system does is remind someone of this fact. All the dates for County Council meetings for the next few months are listed. For each meeting that one wants to receive a date reminder (but no agenda or minutes), one can click a button and enter an e-mail address. In contrast, a useful e-mail notification would provide unpredictable information. The more unpredictable the information, the more valuable it is. For example, if the e-mail notification system would alert me when the cable franchise agreement or an ethics bill was up for discussion, that would be truly useful information to me.

<sup>20</sup> Excellent quality spoken audio can now be done for about 3 megabytes/hour. On a 40 gigabyte i-Pod, that comes to more than 13,000 hours of audio. Work sessions only take place about once a month and last less than 8 hours each, which comes to 100 hours/year. The math is thus: 40,000 megabytes/3 megabytes/hour)/100 hours/year ~130 years.

<sup>21</sup> USB ports operate at 480 mbps second. That comes to a bit more than one minute to transfer 40 gigabytes.

<sup>22</sup> Good quality public meeting quality video now runs about 1 gigabyte/hour. The County Council meets twice a month for around four hours per meeting. That comes to about 100 hours/year. The math is thus: 300 gigabytes/1 gigabyte per hour)/100 hours/year ~ 3 years.

## ***Policy Recommendations***

The problem of the failure of e-democracy is part of a much larger problem: the failure of democratic institutions to be designed around the fact that within a branch of government elected officials have an intrinsic conflict of interest in instituting democratic reforms to make themselves more democratically accountable. To solve the failure of e-democracy, therefore, also requires solving this much larger problem.

Unfortunately, the Founders of the United States had a blindspot in designing their checks and balances system. They were deeply concerned about the corrupting influence of power. They understood that, given the chance, elected officials would seek to preserve and enhance their power, even at the expense of democratic institutions. Accordingly, they designed a government based on a separation of powers, where “ambition” would “counteract ambition.”<sup>23</sup> This included an elected president with veto power over legislation; an independent court with the ability to declare legislation unconstitutional; a legislature in which a two-thirds majority can override a presidential veto; and bicameralism in which legislation must pass both houses of the legislature.

The resulting system, mimicked by state and local governments, has worked remarkably well in ensuring that one branch of government cannot successfully usurp the power of another branch. But experience has proven it to have one major flaw: an inability to reign in the power of elected incumbents within the most powerful branch of government, the legislature. This is manifested in the high re-election rates of incumbents. For example, in every election since 1996, the re-election rate among incumbent members of the U.S. House of Representatives has been over 98 percent.<sup>24</sup>

The same pro-incumbent bias is evident in the states, especially in the big states with professional legislators. In California, every single incumbent legislator up for election in both the Assembly and Senate won re-election in 2004. In elections for state legislatures nationwide, only 61 percent of seats were even contested.<sup>25</sup>

Elected officials have achieved such electoral success by creating barriers to entry for potential challengers. These barriers to entry manifest themselves in thousands of little details of democratic design but are generally listed in broad categories such as legislative ethics, campaign finance, redistricting, legislative records, and voting systems.

The Constitution makes no mention that legislators might have a conflict of interest when designing institutions with a direct bearing on their own re-election. The major implicit exception is the First Amendment, which limits the ability of elected officials to turn the press into a PR vehicle for their own re-election.

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<sup>23</sup> Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Pocket Books, 2004), #51.

<sup>24</sup> Robert Richie, "Election 2004 by the Numbers," (Takoma Park, Maryland: Center for Voting and Democracy, 5 November 2004).

<sup>25</sup> Michael Doyle Bee, "It's Assigned Seating, Political Style, Whether Democrat or Republican: Once You're in Congress, You Tend to Stay," *Sacramento Bee*, 7 November 2004.

The Founders' blind spot may be attributed to the fact that within the conceptual confines of elected representative democracy such a conflict is insolvable. That is, if elected officials are the only possible type of democratic representative, then conflict-of-interest-free democratic reform is impossible. Of course, direct democracy would have been an alternative mechanism to deal with the conflict-of-interest problem, but the Founders—rightfully, in my opinion—had a profound distrust of continental scale direct democracy, which is why they set up a representative democracy in the first place.

The institutional innovation I propose is the Citizens Jury on Candidate Information and Electoral Systems (“Citizens Electoral Jury”). The three essential features of this proposal are that 1) the jury be constituted of a random selection of voters adequately large enough to be representative of the general population, 2) the jury’s jurisdiction be limited to candidate information and election rules, and 3) the jury be embedded in the checks and balances system of government.

The random selection of members gives the jury democratic legitimacy, provided that the sample of voters, like a poll, is adequately large to be highly representative of the preferences of the population covered by the legislature.

The narrow jurisdiction of the jury targets the area where conventional representative democracy, based on delegating decision making to elected representatives, breaks down.

Embedding the jury in the formal checks and balances system of government makes it difficult for elected officials to ignore or otherwise override the jury’s decisions when the jury fulfills its checking function.

The Citizens Electoral Jury, with its large-scale randomly selected citizen membership, has some of the same attributes as the “deliberative opinion polls” advocated by Jim Fishkin and others.<sup>26</sup> In both cases, the random selection of individuals, who are used to stand in for the general populace, is intended to solve the motivation and information problems that bedevil the population at large when considering a complex issue. As with delegating decisions to elected representatives, there are huge gains in efficiency from delegating decisions to citizen jury representatives because it is vastly more efficient for 500 people than 200 million people to deliberate. The free rider problems that plague large democratic bodies are also substantially mitigated.<sup>27</sup>

The Citizens Electoral Jury differs from a deliberative opinion polls in its second and third essential elements: its narrowly targeted jurisdiction and tight integration into the legal machinery of government. Like a regular opinion poll, any issue can be the subject of a deliberative opinion poll. But a Citizens Electoral Jury is only designed to deal with a narrow type of issue where elected officials have a direct conflict of interest. Similarly,

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<sup>26</sup> See Ned Crosby, *Healthy Democracy: Empowering a Clear and Informed Voice of the People* (Edina, MN: Beaver's Pond Press, 2003), Dahl, *Democracy and Its Critics*, James S. Fishkin, *The Voice of the People : Public Opinion and Democracy* (New Haven: Yale University Press, 1995).

<sup>27</sup> See Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, *Harvard Economic Studies*, V. 124 (Cambridge: Harvard University Press, 1965).

like a regular opinion poll, a deliberative opinion poll need not be integrated into the legal machinery of government. But such integration is an essential feature of a Citizens Electoral Jury.

I have discussed this Citizens Electoral Jury proposal in depth elsewhere and do not want to repeat myself here.<sup>28</sup> Let it suffice to say that the basic idea for such a jury has already been implemented in British Columbia. There, the Prime Minister of the Province created a body of 160 randomly selected individuals to deliberate from January through November 2004 on a democratic reform where elected officials had a blatant conflict of interest. The policy recommendation was then put on the ballot for a referendum, which took place on May 17, 2005 and received a 57.3% of the popular vote.

What types of questions relating to the e-democracy infrastructure might such a Citizens Electoral Jury consider? Perhaps the most fundamental question is: To what extent should insiders be able to have information about legislative actions not widely available to the general public? Here are some specific suggestions:

**Anonymity.** To what extent should citizens be able to access public records about legislators anonymously? For example, should citizens be able to access roll call votes without identifying themselves?

**Cost.** What should citizens have to pay to access basic factual information about their elected representatives' actions? For example, should citizens have to spend \$400 in photocopying fees to track the roll call votes of an individual legislator during his or her term of office?

**Timeliness:** To what extent should citizens have access to public information at the same time that legislators and insiders have access to it? For example, should legislators have access to meeting agendas a week before the public? And in preparation for discussing and voting on agenda items, should they have access to public budget and program evaluation documents that the public can only access after a meeting by filing an official public records request?

**Integration.** To what extent should various related documents be linked together seamlessly to facilitate citizen access? For example, should meeting agenda, meeting minutes, meeting supporting documents, and meeting video coverage all be subdocuments linked together in a master document? Should the legislative history of a bill be dynamically integrated into a single document so that bill amendments--including amendment language, sponsors, and roll call votes--can easily be tracked?

**Comprehensiveness.** To what extent should records have the same fidelity as the legislative events they record? For example, should printed transcripts of meetings supplement printed summaries of meetings, and should video recordings supplement audio recordings of meetings?

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<sup>28</sup> J.H. Snider, "Solving a Classic Dilemma of Democratic Politics: Who Will Guard the Guardians?," *National Civic Review*, no. Winter (2006).

**Searchability.** To what extent should documents be well structured so they are easily searchable? For example, should citizens be able to easily search public meeting information by legislator, bill number, date, and type of action (such as a vote on an amendment or final bill)?

**Retention.** For how long should public records be retained online and offline? For example, should meeting agendas, minutes, and video footage be accessible online for more than a month?

**Exportability.** Should non-governmental entities be able to easily download legislative information from government websites? For example, should Google be able to download the legislative histories of bills so it can create a user friendly interface to search for legislators' roll call votes?

**Verifiability.** To what extent should independent entities be able to verify that public records are what they appear to be? For example, should legislators be able to modify posted meeting agendas, supporting documents, and transcripts after the date that publicly identifies their creation and without any verifiable public documentation of the modification?

In addition to questions relating to access to legislators' activities already designated as public, there are questions relating to what should be so designated: Should conference committee deliberations and votes be made public? Should legislators in the minority be able to go on the public record explaining their dissenting views? Should public meetings start taking official public comments at the moment a public meeting agenda, with supporting documents, is posted? Should legislative leaders have absolute control over everyone who can speak at a public meeting and thus prevent dissenting public viewpoints from being entered into the public record?

Here I would like to close with what I believe to be one of the greatest tragedies of the current e-democracy infrastructure: not creating the positive externality that would come from posting public meeting deliberation in a well-structured way on the Internet. In its informational inefficiency, the current public meeting system is akin to banning the New York Stock Exchange from publicly posting transaction prices, or taxing Google \$10,000 for every website it seeks to add to its search services. The public (including the media and academics) would greatly gain from the ability to search for public comments across the more than 80,000 political districts in the U.S. After all, most problems faced by local districts are quite similar. The public would also benefit from learning how others within its own political district have commented on the same types of problems over the decades. Unfortunately, however, all these valuable learning opportunities are ruled out because elected officials are so desperate to keep control of information that might demonstrate poor judgment at some time in the future.

## ***Why E-Democracy Isn't on the Public Policy Agenda***

The public policy agenda in Washington, DC and elsewhere is largely determined by what is perceived to be a politically plausible outcome. If a policy proposal has no chance of being enacted, it is very hard to get the press, lobbyists, and think tanks to pay attention to it. And one of the reasons these intermediaries won't pay attention to it is that foundations and corporations are practical and won't fund information campaigns that have no chance of resulting in change. As such, it's no surprise that the last big push for bringing democratic controls into the information age came when Newt Gingrich briefly put the issue on the political agenda.

Since, as I have argued, elected officials passionately care about controlling information about themselves, astute observers consider e-democracy reform practically hopeless. Even when parties and candidates in the opposition run on an e-democracy platform—such as the Republicans and their leader Gingrich did with the Contract with America in 1994—they may easily renege once they come into power and reflect on what is now their self interest.

There are a number of other contributing causes that may make e-democracy reform especially difficult. The public generally cares most about policies that have a direct causal bearing on themselves. Are the streets safe? Can their kids get a good education? Can they afford medical care? Such substantive policies are quite different from procedural policies such as e-democracy that have only an indirect effect on themselves. I ran for the House of Delegates in Maryland and knocked on about 7,000 doors. People asked me lots of questions about substantive issues such as abortion, gun control, and education. But I don't recall a single question about democratic procedure, despite the fact that that was a major part of my platform.

The public also is most easily mobilized about policies that take away things they have rather than give them something they don't have and might not even know they want. E-democracy is about foregone opportunities, not actual losses. No one revolted in Ancient Rome because they didn't have cars; they didn't know they could exist. In Vermont, I pay 17 cents a minute to call 30 miles from Jeffersonville to Burlington and 4 cents a minute to call Germany. Why doesn't the public revolt? It's because as long as they can remember they've paid 17 cents a minute or more to make such calls.

Another problem is the media. The media want easy access to information for itself, but it may not be in its interest for the public and potential competitors to have easy access. For example, local governments currently pay a fortune to post tiny notices of public meetings in local newspapers. If public bodies started using e-mail to post such notices, they'd lose a substantial source of revenue. Similarly, the powerful mass media get privileged access to legislatures and legislative documents. For example, certified members of the Radio/TV Press Gallery in the U.S. Congress have little incentive to encourage information technology to be used to help smaller competitors get the same information they currently have privileged access to.

Lastly, academic may have perverse incentives. They are generally rewarded for studying what is, not what might be. To the extent that important variation in e-democracy practices don't already exist because they are based on implementing new technologies, academics don't have anything to study that would generally help their careers.

### ***Recommendations for Future Research***

Political communication scholars have overwhelmingly focused on the e-democracy superstructure rather than the e-democracy infrastructure and have rarely drawn an explicit link between the two. Micro studies of information flows within the e-democracy superstructure demonstrate widespread use of the new information technology by political actors acting in the roles of political candidate, political party, interest group, and press. There needs to be more micro studies of the evolving e-democracy infrastructure. But, perhaps hardest to do of all, there needs to be macro studies of the mechanisms and significance of this linkage between the e-democracy infrastructure and superstructure.

A study comparing e-democracy in large legislatures with professional, long-term legislators versus small legislatures with amateur, short-term legislators might produce the counterintuitive result that district budget is not a good predictor of e-democracy but the strength of the re-election incentive is.

In the coming years, it is likely that there will be many more Citizens Electoral Jury type experiments in democratic reform. In addition to the British Columbia experiment, there are now proposed experiments in Ontario, Canada and the Netherlands. These should be studied for their general ability to solve problems of democratic reform, including problems of the e-democracy infrastructure.

### ***Conclusion***

E-democracy has fallen far short of its promise because elected officials not only want it to fail but also have acted on this self-interest in thousands of little ways, each of which taken individually may seem harmless, but collectively indicate a clear pattern of democratic abuse. I recommend solving this dilemma by taking decisions about the e-democracy infrastructure out of the hands of elected officials and putting them into the hands of a "Citizens Electoral Jury."

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