



July 14, 2020

Democratic Platform Committee

Submitted electronically via [platform@demconvention.com](mailto:platform@demconvention.com)

Dear members of the Democratic Platform Committee:

The Constitutional Accountability Center (CAC) is a non-partisan think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. We work in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts, in accordance with constitutional text, history, and values, and a fair and impartial federal judiciary.

In 2016, the Democratic Party Platform Committee authored a platform that spoke of progressive values, commitments, and ideals. It included specific legislation for Congress to enact and goals for the Executive to achieve. However, missing from the platform was language conveying the importance of the role the federal courts play in achieving the party's goals.

In one swift moment, Supreme Court decisions can misinterpret, erode, or even eviscerate policy achievements that took decades to achieve. And this is no less true of the lower courts, as many critical issues never reach our high court. Ignoring the impact of the courts when outlining core policy commitments condemns any policy proposal to an uncertain future at best. Our political leaders must pass legislation and develop policies that restore constitutional and civil rights, they must commit to defending the constitutionality of landmark legislation, and, in order to ensure that policies furthering progressive values are upheld, they must consider whether judges appointed to the federal bench will be faithful to the whole Constitution's text, history, and values.

Therefore, CAC respectfully submits the following suggestions for the party's platform.

### **1. Appointing Fair-Minded Constitutionals to the Federal Judiciary**

The federal judiciary is far more conservative than in years past. This is a direct result of conservatives prioritizing remaking the courts and meeting little resistance from progressives in doing so. This effort has had disastrous results: Section Five of the Voting Rights Act has been gutted, making it more difficult to prevent states from implementing discriminatory voting practices; wealthy donors and corporations have far more political influence; the courthouse doors have been closed to more litigants; core constitutional rights have been eroded; and First Amendment rights have been wrongly interpreted to the point where

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they are weaponized against labor unions, consumers, and people from marginalized communities. The conservative remake of the courts has eroded or eliminated so many progressive legislative and policy efforts designed to protect or further the constitutional values of democracy, equality, and inclusion, it would be a grave mistake to ignore this fact when crafting legislative and policy strategies moving forward. Therefore, CAC encourages the Committee to include the following text in its platform:

***A fair, impartial, and independent judiciary is essential to our democracy and constitutional structure of checks and balances. We will nominate and confirm judges who are fair-minded constitutionalists and will abide by the Constitution's whole text, history, and values of equality, justice, and inclusion. We will block the confirmation of nominees to the bench who bend the law to protect corporations, the wealthy, and the powerful over all other people; roll back the clock on rulings that protect constitutional and civil rights; and would be a rubber stamp for the President.***

A poll conducted by Global Strategy Group indicated that 86 percent of voters surveyed say that “fair-minded constitutionalist” describes their ideal judge well. (“Communicating About Our Ideal Justice,” People for the American Way and Global Strategy Group, 2017.) Many progressive groups—including People for the American Way, the Leadership Conference for Civil and Human Rights, and we at CAC—utilize this phrase to connect with voters and activate them on the courts.

It is important to stress that judges should abide by the Constitution’s whole text, history, and values. Not only does polling [demonstrate](#) that this language resonates with voters, but it also keeps progressives on even footing with conservatives, who have long falsely claimed that they are the only ones who remain true to the Constitution’s text. Conservatives might honor the Constitution’s text, but often only to a certain point. Conservative jurists far too frequently focus on the Constitution as it existed in the 1700s, while minimizing later Amendments ratified to make our society more democratic, equal, inclusive, and free. Judges must not ignore our constitutional arc of progress. Rather, they should honor it by being faithful to the Constitution’s *whole* text.

In addition to noting the type of judge progressives should appoint, it is important to take a stand and make clear the type of judge who does not pass muster. Such jurists put the interests of big business and the powerful, including the President, over the interests of the individual. Indeed, since Chief Justice John Roberts and Justice Samuel Alito joined the Supreme Court, the Court has become increasingly friendly toward big business, ruling in favor of the U.S. Chamber of Commerce [70 percent](#) of the time. By comparison, a comparable period of the Rehnquist Court ruled for big business in 56 percent of Chamber cases, and a comparable period of the Burger Court in 43 percent of Chamber cases.

## **2. Honor and Restore Constitutional and Civil Rights**

The Constitution is, in its most vital respects, a progressive document, written by revolutionaries and amended by those who prevailed in the most tumultuous social upheavals of our nation’s history—the Reconstruction Republicans after the Civil War, the Progressives and the Suffragists in the early Twentieth Century, and the civil rights and student movements in the 1950s and 1960s. Rather than shying away from the Constitution, progressives should fully embrace our nation’s constitutional story—a story that begins with the Founders’ decision to create a national government with the power to solve

national problems and continues with the efforts of subsequent generations to end chattel slavery, promote equality, and expand the right to vote. This story shatters the conservative myth of a weak, hamstrung federal government and offers an affirmative, progressive vision of our Constitution.

Polling [demonstrates](#) that when progressives root their arguments in the Constitution's text and history on a wide array of issues, from health care reform to gender equality, they get a "Constitution bump." The Constitution is a politically potent symbol and progressives benefit when they connect their policy goals to the Constitution's text and history. It is time for progressives to reclaim the Constitution. Therefore, CAC encourages the Committee to include the following language in its platform:

#### *Accountability*

***Congress has broad constitutional power to engage in vigorous oversight of the Executive Branch. Robust investigation ensures that Congress and the American people have a more complete picture of what an Administration is doing, the extent to which it is--or it is not--faithfully complying with the Constitution and federal law, and the ways in which Congress could legislate to correct any wrongdoing and to better serve the American people.***

***A Biden Administration would recognize Congress's broad oversight authority and cooperate in good faith with Congress to provide it with all non-privileged information it needs to exercise its constitutional functions.***

***We must end the judge-made doctrine of qualified immunity, which provides state actors sweeping immunity from suit and legitimizes violations of constitutional and civil rights. Additionally, we must give individuals a right to sue for damages when federal actors deprive them of their constitutional and civil rights.***

#### *Access to the Courts*

***The Constitution guarantees all persons the ability to vindicate their rights in court. Access to courts is the building block of the rule of law and all of our most precious constitutional guarantees. Courts matter, and the vitality of the rule of law depends on individuals being able to go to court to vindicate their legal rights and prevent abuse of power by the government.***

#### *Anti-corruption*

***A Biden Administration would comply with both the Foreign and Domestic Emoluments Clauses to ensure that the President and other senior federal officials are working only in the interests of the American people, not their own financial self-interest.***

## *Big Business*

***As its opening words reflect, the Constitution was written for the benefit of “We the People of the United States.” The Constitution thereby guarantees rights for “people” and “citizens,” but it never once extends fundamental rights to “corporations.”***

***The text, history, and values of the Constitution require that workers, consumers, and others whose constitutional and statutory rights have been violated by corporations and big business interests receive a fair and impartial day in court. We will support efforts to strictly limit the use of forced arbitration clauses in employment and service contracts, which unfairly strip consumers, workers, students, retirees, and investors of their right to their day in court.***

## *Criminal Justice*

***Abusive police practices coupled with devastating state-sanctioned violence have exacted systemic brutality and fatality upon Black people since our nation’s founding. The Fourteenth Amendment was added to the Constitution against the backdrop of a campaign of terror and violence against African Americans by white police officers. The Amendment was designed to put an end to such police violence and killings. Its Framers recognized that African Americans could not take their place as equal citizens in our nation if police officers were free to brutalize them. Congress must enact bold, comprehensive, and structural changes to enforce the Fourteenth Amendment and address rampant, systemic racism and white supremacy in law enforcement across America.***

## *Democracy*

***The Census is the cornerstone of our democracy. More than two centuries ago, our Constitution’s Framers established a democracy premised on the idea that all persons—no matter where they are from, regardless of whether they can vote—deserve equal representation in our government. The federal government has a constitutional obligation to count all persons, both citizens and non-citizens alike, in the decennial census.***

***There is no right protected by more parts of the Constitution than the right to vote. Over the course of our history, “We the People” amended the Constitution to make our democracy more inclusive and just, ensuring that people of color, women, poor people, and young adults could vote and be counted. It is essential to a well-functioning representative democracy that each person’s vote is counted and that the courts enforce the right to vote for all Americans.***

***We must rectify one of the worst rulings in Supreme Court history, *Shelby County v. Holder*, and exercise Congress’ broad authority under the Fifteenth Amendment to ensure the right to vote is free from racial discrimination. We will pass legislation creating a new, robust Section Four of the Voting Rights Act.***

## Equality

***The Constitution guarantees equal protection of the laws for “all persons,” a broad and sweeping command prohibiting discrimination against any class of people. We will always fight to end discrimination on the basis of race, ethnicity, national origin, language, religion, gender, age, sexual orientation, gender identity or expression, disability, or citizenship status. We need to promote equity and acceptance and speak out against bigotry and other forms of intolerance that have entered our political discourse. It is unacceptable to target, defame, or exclude anyone because of their race, ethnicity, national origin, language, religion, gender, age, sexual orientation, gender identity or expression, disability, or citizenship status. While freedom of expression is a fundamental constitutional principle, we must condemn hate speech that creates a fertile climate for violence.***

We respectfully request that you use gender-neutral language whenever speaking on matters that affect all of us. There are also matters that primarily affect only certain groups of people on the gender spectrum but are described in binary terms. For example, when discussing abortion or access to birth control, the discussion is frequently limited to “women,” when these issues are a part of the lives of transgender men and non-binary people as well. However, it is also important to recognize that certain groups are disfavored in specific ways. For example, when discussing violence against women, trans women are often left out of the conversation. It would be important to highlight that trans women of color in particular face acts of violence at such high frequency that their life [expectancy](#) is 35 years of age.

## Freedom of Religion

***The First Amendment's protections of religious liberty exist in harmony with other constitutional protections of equality and liberty for all. But the Roberts Court has disrupted this balance, in the [words](#) of Justice Ginsburg, “cast[ing] totally aside countervailing rights and interests in its zeal to secure religious rights to the nth degree.” We will work to restore balance through legislation and by appointing judges who recognize the importance of interpreting our Constitution in a way that preserves equality and liberty for all in our inclusive, democratic society.***

## Gun Safety Reform

***The Supreme Court has held that the Constitution protects an individual's right to a gun in the home for self-defense, but the Constitution does not grant every person the right to have any gun they want, any time they want, anywhere they want. Government must respect our constitutional rights, but the Constitution does not limit governments' broad authority to pass and enforce sensible gun laws and regulations.***

## *Immigration*

***The Fourteenth Amendment's Citizenship Clause is one of the most important provisions of the Constitution, guaranteeing equal citizenship at birth. We recognize, according to its clear and majestic text, that all those born on U.S. soil are indeed U.S. citizens, regardless of the citizenship status of their parents.***

***We will no longer claim that the United States is a country of immigrants without also acknowledging that we live on stolen land and our American family is composed of indigenous people, descendants of enslaved people, and refugees.***

***President Trump's Muslim and African Ban exceeds the power delegated by Congress to the President and is a violation of the First Amendment's Establishment Clause, regardless of the Supreme Court's decision in Hawaii v. Trump. We will pass the NO BAN Act to remedy the impact of this wrongly decided case.***

## *Reproductive Rights*

***The Constitution guarantees the right to an abortion. The text and history of the Fourteenth Amendment protect personal individual rights essential to liberty, dignity, autonomy, and equal citizenship, which includes the right to abortion.***

### **3. Defend the Constitutionality of Landmark Legislation**

There will be times when defending constitutional values calls for litigation. Furthermore, we must ensure the courts give a vibrant interpretation to landmark laws, such as the Voting Rights Act and the Fair Housing Act. Therefore, we offer the following text for the platform:

***We will defend the Affordable Care Act in the courts.***

***We will defend the Dodd-Frank financial reform law and a robust Consumer Finance Protection Bureau.***

***We will defend the constitutionality of independent agencies, like the CFPB.***

***We will defend the Voting Rights Act to ensure every citizen can exercise their right to vote.***

***We will defend campaign finance laws to ensure a vibrant democracy where the voices of the rich and powerful cannot drown out the voice of any other individual.***

***We will defend the Fair Housing Act and disparate impact theory to ensure housing is accessible for families with children, women, LGBTQ+ people, people with disabilities, people of faith, and communities of color. It has played a critical role in protecting civil***

***rights, advancing equal opportunity, and addressing the segregation that still persists in America.***

## **Conclusion**

The courts matter to any policy agenda and to ignore their impact threatens to undermine the long-term success of any policy initiative. Therefore, who we put on the courts matters. Furthermore, every political party must work to honor and restore constitutional rights and values via legislation and policy, and defend them in the courts by using the Constitution's whole text and history.

Thank you for your consideration.

Sincerely,



**Elizabeth B. Wydra**  
President

cc: Andrew Grossman