



July 28, 2012

Governor Ted Strickland
Chairman
Platform Drafting Committee
The Democratic National Committee

Re: The 2012 Democratic Party Platform

Dear Chairman Strickland and Members of the Committee:

Thank you for inviting the American Civil Liberties Union (ACLU) to offer testimony on the content for the proposed 2012 Democratic National Platform. The fundamental freedoms assured to all Americans under our Constitution are always at risk and the struggle to preserve our liberty is never over. If justice and civil liberties are denied one subset of Americans, we are all diminished. If we do not all share in the promise of equality, we are all less free. We urge the Committee to reaffirm its commitment to our democracy by offering a vision for America preserving our fundamental freedoms – to be free from discrimination and government intrusion, to an equal opportunity in employment and education and to marry and lead a life free from unwarranted government interference, to vote, to speak and associate freely, to believe according to our own consciences and without official state preference.

The ACLU is a non-partisan advocacy organization of over a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of equality and justice. We advocate for principles rooted in the U. S. Constitution and the civil rights and civil liberties laws of our country. In past years, we have expressed concern with national security policies representing a threat to our democratic commitment to the rule of law. Our concerns continue. But in 2012, we also express renewed concerns in a trend toward the marginalization and intolerance for, a newer set of oppressed classes on the basis of religion, ethnicity, race, immigration status, or sexual orientation. Giving voice to those concerns, we offer the following recommendations for Democratic Platform.

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I. Preserving our Democracy

a. National Security

Illegal government spying, indefinite detention without charge or trial and government-sponsored torture programs after 9/11 transcended the bounds of law and our most treasured values in the name of national security. Our way forward lies in decisively turning our backs on the policies and practices that violate our greatest strength: our Constitution and the commitment it embodies to the rule of law. Liberty and security do not compete in a zero-sum game; our freedoms are the very foundation of our strength and security. We urge the Committee to adopt the following provisions to restore checks and balances.

- **Fully Restore the Rule of Law to Detention Policy and Practices**

The Platform should state a commitment to full restoration of the rule of law to detention. The government should close the prison at Guantanamo by charging in federal criminal court any detainees alleged to have committed a crime, and transferring all other detainees to their home countries or to other countries where they will not be in danger of being tortured, abused, or imprisoned without charge or trial. The Democratic Party should call for an end to the use of indefinite detention without charge or trial of detainees at Guantanamo or of other prisoners picked up away from a battlefield and brought to prisons such as Bagram. Moreover, the faulty and untested military commissions should be terminated, and anyone charged with a crime should be brought before federal criminal courts for trial. These additional steps will end the terrible legacy that President Obama inherited from his predecessor at Guantanamo, and fulfill the promise of restoring the rule of law to America's military detention practices.

- **Restore the Constitution and the Rule of Law to the Use of Lethal Force**

The Democratic Party Platform should make clear that, absent a need to, as James Madison wrote, “repel a sudden attack” on the United States, it is the role of Congress alone to decide whether and when the United States should use significant military force. Decisions on whether to use military force require Congress's specific, advance authorization. Absent a sudden attack on the United States that requires the President to take immediate action to repel the attack, the President does not have the power under the Constitution to decide to take the United States into war. Such power belongs to the Congress, which did not authorize any president to engage in a regional or global battle. No president should be using the military to go beyond the limited authority provided by Congress, other than for the rare instance of repelling a sudden attack.

Similarly, the Democratic Party Platform should insist that the government comply with the law and refrain from the use of unlawful lethal force against terrorism suspects away from any battlefield. Targeted “kill lists” assembled

without any judicial review and “signature strikes” based on a “pattern of behavior” of young people whose identities are not even known must end. The law is clear: the government may use lethal force only in extremely narrow circumstances, when it is a last resort to address a specific, concrete and imminent threat of deadly harm, and the risk of harm to others is minimal. The Democratic Party Platform should call for an end to the use of lethal force away from a battlefield, unless it meets the legal requirements and there is an opportunity for judicial review.

b. Surveillance

Mass surveillance has become one of the U.S. government’s principal strategies for protecting national security. Since 2001, the government has asserted sweeping power to conduct dragnet collection and analysis of innocent Americans’ telephone calls and e-mails, web browsing records, financial records, credit reports, and library records. The government has also asserted expansive authority to monitor Americans’ peaceful political and religious activities. But this government surveillance activity is not directed solely at suspected terrorists and criminals. It is directed at all of us. We urge the Committee to adopt the following recommendations aimed at finally curtailing such abuses.

- **Limit Unwarranted Government National Security Surveillance**

In the wake of 9/11, mass surveillance has become one of the U.S. government’s principal strategies for protecting national security. Over the past decade, the government has asserted sweeping power to conduct dragnet collection and analysis of innocent Americans’ telephone calls and e-mails, web browsing records, financial records, credit reports, and library records. The government has also asserted expansive authority to monitor Americans’ peaceful political and religious activities. But this government surveillance activity is not directed solely at suspected terrorists and criminals. It is directed at all of us. Increasingly, the government is engaged in warrantless surveillance that vacuums up sensitive information about innocent people. And this surveillance takes place in secret, with little or no oversight by the courts, by Congress, or by the public.

Using their power to collect massive amounts of private communications and data, agencies like the Federal Bureau of Investigation (FBI) and the National Security Agency (NSA) apply computer programs to draw links and make predictions about people’s behavior. Tracking people two, three, or four steps removed from the original surveillance target, they build “communities of interest” and construct maps of our associations and activities (see section below urging an end to racial profiling in racial, religious, and ethnic contexts). With this sensitive data, the government can compile vast dossiers about innocent people. The data sits indefinitely in government databases, and the names of many innocent Americans end up on bloated and inaccurate watch lists that affect whether we can fly on commercial airlines, whether we can renew our passports,

whether we are called aside for “secondary screening” at airports and borders, and even whether we can open bank accounts.

Surveillance laws like the Patriot Act and the FISA Amendments Act should be amended to limit surveillance to suspected terrorists, include meaningful protections for American information that is collected, and reinsert judges into their proper role as neutral arbiters.

- **Adopt Reasonable Cybersecurity Measures With Strict Privacy Protections**

Over the last several years, Congress and the executive branch have become increasingly concerned with cybersecurity, or efforts to protect computers, the internet, and stored information from hackers, terrorists and spies. While there are a number of cybersecurity approaches that are neutral in civil liberties terms, much emphasis has been placed on information-sharing and creating a statutory exemption to privacy laws so that companies that hold our sensitive information can give it to each other and the government. While technical data about threats certainly exists and while that data can and should be shared without violating privacy and civil liberties, any cybersecurity program must clearly prevent sensitive and personal electronic data from also being shared.

Cybersecurity programs should have strict and explicit privacy protections including limits on the types of sensitive data that companies can share with the government, limits on the use of cyber-information collected by the government, and stringent oversight mechanisms to ensure that cybersecurity does not become a back-door government surveillance program.

- c. Human Rights*

In addition to rights guaranteed by the Constitution, our government must be held accountable to universal human rights principles, whether before U. S. courts or such international bodies as the United Nations or through regional human rights mechanisms. We urge the Committee to adopt the following recommendations not just because of their implications for basic human rights, but because their adoption will help ensure a fairer and more just future.

- **Reject Torture**

The Platform should reaffirm the rejection of torture. No policy decision has done more damage to our national self-definition and moral authority than the embrace of torture. The current president rejected the torture legacy and has done much to restore the rule of law. But the President’s policy has been challenged by opponents in Congress, and the Democratic Party must reassert its commitment to the ban on torture.

The Platform should also recognize the need for accountability for those designed, authorized, and ordered torture and remedy for victims. If the torture prohibition

and U.S. moral authority are to be fully restored, the U.S. government must provide remedy to victims and hold to account, both criminally and civilly, those responsible for the program. None of the individuals who sought to challenge their treatment in U.S. custody have been allowed their day in court, and no victims or survivors have been compensated for their suffering. This continuing impunity threatens to undermine the universally recognized torture prohibition and sends the dangerous signal to government officials that there will be no consequences for the use of torture and other cruelty.

- **End Trafficking in U.S. Government Contracts**

The Platform must commit to ending the trafficking, forced labor and abuse of foreign workers hired through U.S. government contracts to work in support of U.S. military and diplomatic missions abroad. Recruited from impoverished villages in countries such as India, Nepal and the Philippines, these men and women – known as Third Country Nationals - are charged exorbitant recruitment fees, lied to about what country they will be taken to and how much they will be paid, and often have no choice but to live and work in unacceptable and unsafe conditions. These abuses amount to modern day slavery; all on the U.S. tax payers' dime. Our government must commit to ending this unacceptable chain of profits based on trafficking and forced labor in U.S. government contracts.

- d. Free Speech*

Freedom of speech, of the press, of association, of assembly and petition -- this set of guarantees, protected by the First Amendment, comprises what we refer to as freedom of expression. The Supreme Court has written that this freedom is "the matrix, the indispensable condition of nearly every other form of freedom." Without it, other fundamental rights, like the right to vote, would wither and die. We urge the Committee to adopt a provision protecting the right of vigorous protest, even if that protest is against your own Party and candidates.

- **Respect Lawful Protest Rights**

The past four years have seen a disturbing trend of law enforcement agencies at all levels of government infringing on the rights of lawful protesters. Tactics include sequestering protesters away from the media, or discriminating against protesters with certain viewpoints. Certain agencies have also violated protesters' right to record police activity from public spaces (although the Department of Justice has been a leader in supporting the "right to record" and should be applauded). Additionally, federal law enforcement and security agencies have expanded their legal authority to interfere with, arrest, and prosecute lawful protesters for the exercise of their constitutional rights.

The Platform should reaffirm the right of lawful protest as protected under the First Amendment's freedoms of speech, assembly and petition. Further, the

Committee should follow the Department of Justice and include a plank supporting the right of citizens and journalists to record police activity from a public space. Both of these steps are doubly important in light of the coming party conventions.

e. Privacy

We are dedicated to protecting and expanding the right to privacy and increasing the control that individuals have over their personal information. We work to ensure that civil liberties are enhanced rather than compromised by new advances in science and technology. We urge the Committee to adopt provisions directed at these key threats arising out of the technological explosion of recent years.

- **Limit Location Tracking**

GPS and cell site technology provide law enforcement agents with powerful and inexpensive methods for tracking individuals over extended periods of time and over an unlimited expanse of space as they traverse public and private areas. In many parts of the country, the police have been tracking people for days, weeks, or months at a time, without ever having to demonstrate to a magistrate that they have a good reason to believe that tracking will turn up evidence of wrongdoing. Today, individuals' movements can be subject to remote monitoring and permanent recording without any judicial oversight. Innocent Americans can never be confident that they are free from round-the-clock surveillance by law enforcement of their activities. As Justice Sonya Sotomayor recently wrote, "The net result is that GPS monitoring--by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track--may alter the relationship between citizen and government in a way that is inimical to democratic society."

The Platform Committee should call for legislation to require law enforcement agents to secure a warrant based upon probable cause before obtaining geolocational information through GPS or cell phone tracking. The warrant and probable cause requirements, enshrined in the Fourth Amendment, ensure that an objective magistrate weighs the need to invade privacy when enforcing the law. Americans' privacy rights are threatened by warrantless access to geolocational information, and history teaches that the executive cannot be counted upon to police itself. A warrant requirement would ensure basic respect for the Fourth Amendment's prohibition on unreasonable searches and seizures.

- **Reject Mandatory Employment Verification**

The Platform Committee should reject any policy supporting a mandatory E-Verify system and roll back any existing mandates affecting certain government contractors and agencies. Such a system would, for the first time in history,

require a computer check against a massive error-prone government database before any American could start a new job. According to estimates of the E-Verify error rate drawn directly from the Department of Homeland Security's (DHS) own reports, at least 80,000 American workers lost out on a new job last year because of a mistake in the government database. If E-Verify becomes mandatory across the country, at least 1.2 million workers would have to go to DHS or to the Social Security Administration (SSA) to correct their records.

At the same time, the system for correcting errors is a mess. Both the Department of Justice (DOJ) and DHS have said that employers often fail to notify workers about errors or remedies. When they do, employees have difficulty understanding the complicated error notification letters and there is no centralized forum for fixing records. Some workers actually have to write to many different federal agencies to request records and find errors. According to the General Accounting Office, in 2009, the average response time for such requests was a staggering 104 days.

Because E-Verify contains identifying information, including photos, and will very soon contain drivers' license information, it could easily become a de facto national identification system. E-Verify is internet-based and contains information on every American. It could expand to verify driver's licenses at airports or federal facilities and be combined with travel, financial, or watch list information. The errors and problems with E-Verify as an employment tool would then automatically become problems with travel and other fundamental freedoms.

Perhaps the biggest problem is that E-Verify simply does not work. According to DHS studies demonstrate that undocumented workers actually get through the system 54% of the time. The Committee should reject any effort to include language in support of mandatory E-Verify and incorporate language rolling back any existing mandates impacting government contractors and agencies.

II. Preserving Equality for All

a. Immigration

The fundamental constitutional protections of due process and equal protection embodied in our Constitution and Bill of Rights apply to every "person" and are not limited to citizens. When the government has the power to deny legal rights and due process to one vulnerable group, everyone's rights are at risk. We are dedicated to expanding and enforcing the civil liberties and civil rights of immigrants and to combating public and private discrimination against these groups. We urge the Committee to adopt provisions protecting this vulnerable and targeted group from the abuses of government at all levels.

- **Reduce the Number of Deportations by Prioritizing Removal of Those who Pose Threats to Public Safety and Making Family Unity a Central Goal**

Our immigration policy should be based on smart enforcement using carefully targeted resources, with the twin aims of protecting public safety and keeping families united. The Democratic Platform must prioritize the use of taxpayer funds for the removal of individuals with conviction for dangerous felonies, not the mass deportation of more than a million people without criminal records or solely with misdemeanor records, as has taken place over the course of the administration's first term. Sharpening DHS's focus on this priority category of deportations will mean that other immigrants who have deep ties to their communities—and mixed-status families with U.S. citizen spouses and children—are no longer the focus of enforcement efforts.

The unprecedentedly large number of deportations in recent years has caused fear and harm in immigrant communities, including family separations on an excessive scale characterized by tragic stories of American children losing their parents and, frequently, entering foster care. The Platform should reflect our national values of improving family unity by ensuring that family relationships and other equities are considered when deciding on immigration enforcement measures. The Platform should also include a plank advocating for a meaningful path to citizenship for hardworking aspiring citizens.

- **Stop Racial Profiling in Immigration Enforcement by Ending Federal Partnerships with State and Local Police, like 287(g) and Secure Communities, That Incentivize Discriminatory Police Practices**

No person should be targeted by police based on how he or she looks or sounds. The Democratic Platform should affirm that racial profiling in immigration enforcement is never acceptable, and should fully reject the use of Department of Homeland Security (DHS) partnerships with local law enforcement that enable biased policing at the state and local level. Such partnerships, including the 287(g) and Secure Communities programs, encourage local police to rely on unlawful assumptions and biases about individuals' immigration status, causing well justified fear and concern among immigrant communities.

Although 287(g) was designed to target serious public safety risks, the DHS Office of Inspector General reports that more than half of the people identified under the program were arrested for low-level, primarily traffic-related, offenses. Both 287(g) and Secure Communities, which checks fingerprints of everyone arrested and booked against immigration databases, threaten successful community policing initiatives across the country. These depend on immigrants being unafraid to talk to police about crimes they've suffered or witnessed, and on U.S. citizens having confidence that they will not routinely get detained unlawfully. As Los Angeles Police Department Chief Charlie Beck said recently, Secure Communities "tends to cause a divide . . . [T]here's a lack of trust, a lack

of reporting, a lack of cooperation with police. You know, I cannot prosecute crimes without witnesses.” By announcing an end to the 287(g) and Secure Communities programs in the Platform, the administration can seize the dual opportunity to curb discriminatory policing and respect state and local judgments on how best to protect the public.

- **Reduce Immigration Detention by Relying Primarily on Alternatives and Incarcerating Only Those Who Present a Flight Risk or Public Safety Threat**

The Platform should call for a plan to reform the immigration detention system, by replacing funding for immigration beds with more cost-effective and humane alternatives to detention. Currently, immigration detention beds are at a record level of 34,000, meaning that close to 400,000 alleged noncitizens are annually held by Immigration and Customs Enforcement (ICE), double the number from a decade ago, at a cost of more than \$2 billion in the last fiscal year. ICE operates an inefficient and dangerous number of facilities using a patchwork of contracts with state and local jails as well as private contractors. As a result, detention conditions vary greatly, with severe problems including sexual abuse and inadequate medical and mental health care.

Reliable alternatives to detention, which have been proven effective in securing attendance at removal proceedings, are underused despite costing less than 10% as much as a detention bed. The Platform should establish that all persons in immigration proceedings receive a realistic assessment of his or her flight and public safety risks, rather than automatic detention. In doing so, ICE can save significant taxpayer funds as well as reduce the humanitarian costs of tearing individuals who pose no threat to society away from their families and communities.

b. Voting Rights

When the Voting Rights Act was passed 46 years ago, poll taxes and literacy tests were among the tactics used to prevent African-Americans and other racial and language minorities from voting. Modern day efforts to suppress voter turnout and registration have taken many forms including photo ID requirements; proof of citizenship requirements for registration; reducing the number of days for early voting; restrictions on third-party voter registration activities; limiting the opportunity to make an address change at the polls on election day; systematic purges of registered voters; challenges to student voters as non-residents; unfounded allegations of voter fraud; and moving or closing precincts in minority communities. The Committee must adopt provisions aimed at rolling back such reactionary and discriminatory laws.

- **Oppose Voter Suppression Laws and Expand Ballot Access**

Robust enforcement of the laws that protect the fundamental right to vote is absolutely necessary to ensure that every vote is counted and no one is barred from the ballot box. In order for the United States to continue as one of the world's leading democracies, it must ensure all eligible citizens are able to register and cast their ballots. Elected officials should be seeking ways to encourage more voters, not passing laws which deny voters the ability to cast their ballots.

The Democratic Platform must emphasize the importance of upholding and strengthening voting rights laws, including the Voting Rights Act (VRA), the National Voter Registration Act (NVRA), and the Help America Vote Act (HAVA). The vigorous enforcement of these important civil rights laws by the Department of Justice (DOJ) is needed to combat the wave of the voter suppression laws that have recently cropped up in state legislatures nationwide, increasing barriers to the ballot box for the poor, people of color, students, the elderly, and people with disabilities. The Platform should encourage the Department of Justice to continue its work scrutinizing new voting restrictions aggressively for discriminatory purpose or effect. The Platform should emphasize the importance of DOJ bringing cases under Section 2 of the VRA in other states where necessary to challenge regressive voter laws.

In addition, the Democratic Party must work to not only turn back the tide on these retrogressive state measures, but to pass affirmative federal legislation that ensures citizens are not disfranchised. This should include legislation like the Democracy Restoration Act, which would restore voting rights to the millions of U.S. citizens with past convictions who have returned to their communities, but are still denied access to the ballot. Other federal legislative reforms should include modernizing voter registration processes, eliminating mandatory excuses to vote by mail, and developing uniform federal standards for early voting and casting and counting provisional ballots in federal elections.

Measures that repress voting are a dangerous and misguided step backward in our ongoing quest for a more democratic society and we urge the Committee to adopt this principle.

c. Employment

All women, especially the most marginalized, must have equal access to employment free from gender discrimination, sexual harassment in the workplace, pregnancy and parenting discrimination, and unsafe and unfair work conditions. We urge the Committee to adopt provisions assuring equal opportunities for women in the workplace.

- **Support Pay Equity for Women**

In difficult economic times, it is more important than ever to guarantee that families take home every cent they rightfully earn. The Platform should support the work of the Administration's National Equal Pay Task force to ensure that everyone receives equal pay for equal work. This requires giving women the tools they need to find out about discrimination and to fight it. The Administration can do just that for the millions of women employed by federal contractors by issuing an executive order that will protect them from retaliation for discussing their wages and to urge the Office of Federal Contract Compliance at the Department of Labor to finish its rulemaking around wage data collection. And for the millions of women employed in home health care work, the Administration can bring immediate relief by finalizing the Wage and Hour Division's proposed rule to expand federal minimum wage and overtime protections to them, undoing the damage done by the Supreme Court's decision in *Long Island Care at Home v. Coke*.

In addition, the Democratic Platform should support Congressional passage of the long-overdue Paycheck Fairness Act, which would close loopholes in the Equal Pay Act that have made the law less effective over time, as well as the Equal Employment Opportunity Restoration Act (EEORA), which would restore workers' ability to effectively bring discrimination claims as a group and would reverse the damaging precedent established by Supreme Court's decision in *Wal-Mart v. Dukes*.

d. Education

More than 50 years after *Brown v. Board of Education*, many students of color continue to struggle in inadequate schools. We support affirmative action, school integration, the improvement and equalization of educational programs and facilities, and other initiatives that help ensure high-quality education for all students. In particular, we urge the Committee to address discriminatory school discipline policies that push certain students out of school and into the criminal justice system.

- **Eliminate Discriminatory Punitive School Discipline Policies**

Ensuring that every student receives a quality education in a healthy school environment must be a central goal for the next administration. This is necessary not only to keep the American economy globally competitive, but also to reverse the "school-to-prison pipeline"—the current national trend where children are pushed out of our public schools and into the juvenile and criminal justice systems because of overreliance on racially discriminatory punitive school discipline policies. The increased use of suspensions, expulsions and arrests decreases academic achievement and increases the likelihood that students will

end up in jail cells rather than in college classrooms. In addition, the burden falls disproportionately on students of color and students with disabilities, who are punished more harshly and more frequently for the same infractions that other kids engage in.

The Platform should encourage the work of the Supportive School Discipline Initiative (SSDI), an innovative collaboration between the Departments of Education and Justice, to issue guidance on the use of punitive school discipline policies and to support positive alternatives to these practices in school around the country. The Platform should call for SSDI to ensure that school discipline policies and practices comply with the nation's civil rights laws, through guidance, public education, and research. The Platform should also support crucial legislation to improve school discipline policies, including the Positive Behavior for Safe and Effective Schools Act, which allows schools to use Title I funds for positive behavioral support programs; the Keeping All Students Safe Act, which restricts the use of harmful restraint and seclusion practices in schools; and the Ending Corporal Punishment in Schools Act, a measure that would prohibit the use of physical punishment at school—a practice still legal in 19 states.

III. Preserving Liberty for All

a. Reproductive Rights

We seek a world that respects everyone's right to form intimate relationships and to decide whether and when to have children. With reproductive freedom comes opportunity: opportunity to build a secure, productive, and meaningful life. We urge the Committee to adopt provisions maximizing the true choices women should have to make their own decisions on matters of personal health.

- **Repeal Restrictions on Coverage of Abortion**

Abortion is an important part of women's reproductive health care, and as affirmed by the 1973 U.S. Supreme Court case *Roe v. Wade* and consistently upheld in subsequent cases, it is a legally and constitutionally protected medical practice. But bans on public funding for abortion services have severely restricted access to safe abortion care for women who depend on the government for their health care. The bans marginalize abortion care even though it is an integral part of women's health care. Moreover, these policies inflict disproportionate harm on low-income women and women of color, many of whom already face significant barriers to receiving timely, high quality health.

As a result of the Hyde Amendment and its progeny, women who rely on the government for their health care do not have access to a health care service readily available to women of means and women with private insurance. A woman who does not have independent financial resources must scramble to raise

the necessary funds, delay receiving care (which can increase the medical risks and costs) and may have no choice but to carry to term in circumstances where she is physically, emotionally, mentally and financially unprepared to or incapable of caring for a child. Through these policies, the government is selectively withholding health care benefits from women who seek to exercise their right of reproductive choice in a manner the government disfavors.

The Platform Committee should denounce all federal statutory bans or limitations on insurance coverage for abortion and reaffirm its commitment to a woman's access to safe abortion care, regardless of her income or the source of her insurance.

b. LGBT Rights

The Platform should embrace an America free of discrimination based on sexual orientation and gender identity. This means an America where lesbian, gay, bisexual, and transgender (“LGBT”) people can live openly, with respect for their identities, relationships, and families, and where there is fair treatment on the job, in schools, housing, public places, health care, and government programs. The reality is that LGBT Americans fight our fires and police our streets. They build our cities and ably serve in our military. They pay taxes and worry about credit card bills. The 2012 Platform should strongly assert the right of LGBT people to be treated as equal citizens, deserving of the full and fair protections of our laws.

- **Establish the Freedom to Marry**

We recommend updating the Platform to endorse the freedom to marry for all committed and loving couples, as well as to call for passage of a complete legislative repeal of the so-called Defense of Marriage Act (DOMA) in the form of the Respect for Marriage Act.

The 2008 platform called for “equal responsibility, benefits, and protections” for same-sex couples. This language should be updated to reflect the basic truth that marriage matters to gay people in similar ways that it matters to everyone. Gay and lesbian couples want to get married to make a lifetime commitment to the person they love and to protect their families. As President Obama's endorsement made clear earlier this year, the freedom to marry whomever we love and want to share our life with is fundamental to who we are and what we stand for as a country. This view should now be embraced in the 2012 Platform.

The 2008 Platform stated opposition to DOMA. The Respect for Marriage Act, sponsored by Representative Jerrold Nadler (D-N.Y.) and Senator Dianne Feinstein (D-Calif.), would completely repeal DOMA and provide married gay and lesbian couples with certainty that, regardless of where they travel or move in the country, they will not be treated as legal strangers under federal law. The Respect for Marriage Act was endorsed by the Obama Administration. The 2012

Platform should include an endorsement of the Respect for Marriage Act in its restatement of opposition to DOMA.

- **Protect LGBT Students in our Nation's Public Schools**

We recommend including a call for passage of a comprehensive federal anti-discrimination prohibition in all public elementary and secondary schools based on a student's sexual orientation or gender identity. Discrimination and severe harassment are often a tragic part of LGBT students' daily lives at school. Despite this fact, there is no federal law that explicitly protects students on the basis of sexual orientation or gender identity in our nation's public elementary and secondary schools. The Student Non-Discrimination Act, sponsored by Representative Jared Polis (D-Colo.) and Senator Al Franken (D-Minn.), would have a profound impact in improving the lives of LGBT students in the U.S. by ensuring that discrimination and severe harassment of students on the basis of their sexual orientation or gender identity has no place in our nation's public elementary and secondary schools. It would do so in a way that both preserves the right of all students to speak freely and the right of all students to benefit equally from a public education. The Student Non-Discrimination Act was endorsed by the Obama Administration in April 2012. The 2012 Platform should include an endorsement of the Student Non-Discrimination Act as essential for the ability of LGBT students to obtain a world-class public education.

- c. HIV/AIDS*

The 2012 Platform should embrace an America where discrimination based on HIV status has ended, and where people with HIV have control over their medical information and care, and in which the government's HIV policy promotes public health and respect and compassion for people living with HIV and AIDS.

- **End Stigma and Discrimination Against People Living with HIV and AIDS**

We recommend including a specific call to end stigma and discrimination against people living with HIV and AIDS. In July 2010, the National HIV/AIDS Strategy for the United States was released. Among the many important recommendations included in the National Strategy is one to reduce stigma and discrimination against people living with HIV. Its inclusion was based on recognition of the persistent discrimination those living with HIV face, and the harm it does to efforts to fight the disease and limit its spread. The 2012 Platform should embrace the lead of President Obama and the National HIV/AIDS Strategy by calling for an end to stigma and discrimination against people living with HIV and AIDS, as well as strengthened enforcement of civil rights laws, such as the Americans with Disabilities Act, to protect those living with HIV and AIDS from discrimination.

d. Religious Liberties

Religious freedom is one of our most treasured liberties, a fundamental and defining feature of our national character. Religious freedom includes two complementary protections: the right to religious belief and expression, and a guarantee that the government does not favor religion or particular faiths. Thus, we have the right to a government that neither promotes nor disparages religion. We have the absolute right to believe whatever we want about God, faith, and religion. And, we have the right to act on our religious beliefs—unless those actions threaten the rights, welfare, and well-being of others.

- **Ensure Religion is Not Used to Discriminate**

Though the right to religious practice deserves strong protection, religion cannot be used as a license to discriminate. When religious organizations receive government funding to deliver social services, they cannot use that money to discriminate against the people they help or against the people they hire, or pick and choose which particular services they will deliver. The government cannot delegate to religious organizations the right to use taxpayer funds to impose their beliefs on others. Religious organizations cannot use taxpayer funds to pay for religious activities or pressure beneficiaries to subscribe to certain religious beliefs. Government-funded discrimination, in any guise, is antithetical to basic American values and to the Constitution.

Religion cannot be used as an excuse to discriminate against employees, customers, or patients. When an organization operates in the public sphere, it must play by the same rules every other institution does. Such organizations should not be given loopholes from laws that ensure equality in the workplace or guarantee access to public accommodations and health care, thus sanctioning discrimination in the name of religion. No American should be denied opportunities, vital services, or equal treatment.

The Platform should ensure religion is not used to discriminate by:

- Calling for the overhaul of faith-based regulations to prohibit discrimination, explicitly religious activities, and proselytization in government-funded services;
- Supporting efforts to protect or include provisions that prohibit discrimination against beneficiaries, employees, or services in social service programs; and
- Opposing efforts to create discriminatory exemptions in government contracts and grants, as well as in laws and regulations that guarantee equal opportunity and access to services.

IV. Pursuing Justice for All

a. Criminal Justice

We seek an end to excessively harsh crime policies that result in mass incarceration and stand in the way of a just and equal society. At all levels, we should work to reduce the number of people entering jails and prisons by reforming our nation's punitive drug policies and challenging police and prosecutorial misconduct and other governmental abuses of power. We urge the Committee to take the following key steps to help achieve these ends.

- **End Racial Profiling**

The Committee should endorse the End Racial Profiling Act and urge its adoption. The legislation would define racial profiling, make it illegal, provide victims of the practice with legal recourse and implement a system of data collection that would track profiling and provide wrongly accused police departments with a defense.

The platform should also include language asserting:

- The use of race, religion, ethnicity, national origin or any other group characteristics as a proxy for criminal suspicion violates the constitutional guarantee to equal justice under law.
- Such profiling is counter-productive. It breeds resentment and suspicion among minority communities toward law enforcement, undercutting cooperation and a belief in the legitimacy of police authority. Experts also agree that profiling takes energy and resources away from effective law enforcement tactics, hindering crime prevention and making it more likely that criminal behavior will go unpunished.
- National legislation is the only effective way to stop profiling. Some states have taken praiseworthy action to eliminate racial profiling, but until national standards are adopted and appropriate funding allocated, profiling will continue.

The Platform should also call for executive action prohibiting racial profiling by federal officers and banning law enforcement practices that disproportionately target people for investigation and enforcement based on race, ethnicity, national origin, sex or religion. This order should include a mandate that federal agencies collect data on hit rates for stops and searches, and that such data be disaggregated by group. Additionally, the Platform should call on the Department of Justice to issue updated guidelines regarding the use of race by federal law enforcement agencies. The new guidelines should clarify that federal law enforcement officials may not use race, ethnicity, religion, national origin, or sex

to any degree, except that officers may rely on these factors in a specific suspect description as they would any noticeable characteristic of a subject.

We are most grateful for being invited to offer these recommendations for inclusion in the Democratic Party's 2012 Platform.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Michael W. Macleod-Ball
Chief of Staff, Washington Legislative Office