January 12, 2021

President-Elect Joseph R. Biden Jr. c/o Dana Remus 1401 Constitution Avenue NW Washington, DC 20230

Dear President-Elect Biden,

We applaud your recognition of the need for structural reform of the Supreme Court and of the grave threat that the Court poses to our democracy and to your agenda as a result of extreme Republican court packing.

A government derives its legitimacy from the consent of the governed, but our current Supreme Court has become deeply undemocratic in both composition and action. It has been 50 years since a majority of the Court was appointed by Democratic presidents, and Republicans have appointed 15 of the last 19 justices despite getting fewer votes in 7 of the last 8 presidential elections. A majority of the current Court was appointed by Republican presidents who took office after losing the popular vote. The composition of the Court does not reflect the will of the American public, and has not for decades. Even more dangerous, the Court has become an active participant in efforts to undermine democracy and entrench minority rule — it has gutted the Voting Rights Act, embraced gerrymandering, invited unlimited corporate spending on our elections, and issued rulings making it harder for Americans to vote.

This is the intended result of an unprecedented and ruthless campaign in which Republicans have stolen two seats on the Court, refusing to fill one vacancy under President Obama eight months before an election and then jamming through a Trump confirmation just eight days before election day — even though more than 60 million Americans had already voted. Now, the Court looms as a threat to strike down the progressive policies resoundingly endorsed by the American people in this election — and to even turn back the clock on long-established rights we hold dear.

With great hope and optimism, we look forward to your administration working to restore our democracy and tackle big challenges including racial inequality, climate change, economic justice, and access to affordable healthcare. We also know, as you do, that the current Supreme Court is a threat to progress on any of those issues and many more. That's why it is critically important for your proposed commission on court reform to work quickly and recommend an effective solution.

As you work to assemble that commission, the following principles must be met:

1. The commission should be made up exclusively of members who acknowledge the need for structural reform of the courts. Just as a climate change commission

would never include a climate denier or a criminal justice reform commission would never include a skeptic of systemic racism, the prerequisite for each commissioner here must be the recognition that our Supreme Court needs to be reformed. Reasonable minds may disagree about the best way to restructure the Supreme Court and the federal judiciary, but all of the commissioners must agree that structural reform is necessary and appropriate.

- 2. The commission should represent America's diversity, with an extra focus on the Black, indigenous, people of color, women, and LGBTQ communities that are most endangered by the current Court.
- 3. The commission should reflect a diversity of legal experience. The Court has no responsibility more sacred than protecting vulnerable Americans from abuse at the hands of the privileged and powerful. To ensure the viewpoints of those most impacted by the judicial system are represented, the commission must include not only scholars with expertise in constitutional law, but also advocates for the individuals and communities who have been on the receiving end of this Supreme Court's worst decisions.
- 4. The commission should include representatives from the movement that has been advancing reform. An activist movement has sprung up to warn that the federal judiciary has become stacked with ideological judges who are out of step with Americans and the legal mainstream, and this movement must be represented on your commission.
- 5. **The commission must begin its work immediately**. The threat is urgent and the window for change is short. There is no time to waste.
- 6. The commission must produce reforms that immediately address the very urgent threat that the current, unbalanced Supreme Court poses to our democracy. Reforms such as a Supreme Court code of ethics are worthy of consideration, but alone they will not address the fundamental reality that our courts have been hijacked for partisan gain, and that they now threaten overwhelmingly popular progressive policies that your campaign endorsed, as well as long-standing civil rights and liberties. The commission must outline reforms that will quickly reverse Republicans' illegitimate theft of the Court to restore balance and safeguard our democracy and the rule of law both in the near future and for generations to come.

Sincerely,

Demand Justice
Demos
Indivisible
Just Democracy
People's Parity Project
Stand Up America
Take Back the Court