

## An open letter to Laurence Tribe

# Stop attacking Cornel West

For exercising his First Amendment rights

By Oliver Hall

**D**ear Professor Tribe,  
“WTF?!”  
So begins your recent tweet to your former colleague Cornel West in response to his announcement that he is running for President in 2024 as a minor party candidate.

You continue:

*Does @CornelWest really want to help the GOP nominee win – the way Ralph Nader helped GW Bush defeat Al Gore in 2000? Ego trips can come at a heavy price, Cornel.*

*Please stop this foolishness, before you really hurt the things you care to help.*

Here, in just 45 words broadcast to your 1.3 million followers, you manage to misrepresent the historical record and demean the efforts of a large proportion of the American electorate who, like West, believe that all Americans – not just Republicans and Democrats – have an equal right under the First Amendment to participate in the electoral process.

Worse, you do so knowing that your opinion carries great weight, particularly among liberals and progressives who rightly respect your work as a constitutional scholar.

Your dismissive suggestion that West’s candidacy is nothing more than an “ego trip” – a charge you and other Democratic loyalists also leveled at Nader – implies that these candidates have no legitimate reason to run for office; hence,

they must be driven by personal vanity. That is a cheap partisan smear and it isn’t even plausible on its face. Gallup, Suffolk University and other respected polls consistently show that a plurality if not a majority of Americans want more than two choices on their ballots.

Are they all, like West and Nader, on an ego trip?

A cursory review of West’s platform would disabuse you of that notion. It includes getting money out of politics and banning corporate lobbying, guaranteeing housing, a living wage and paid family and sick leave to all, Medicare for all, bringing our troops home, stopping all foreign military aid, closing military bases, disbanding NATO and banning nuclear weapons; and eliminating oil and gas subsidies and drilling on public lands, to name a few.

These are not Democratic Party planks. President Biden actively opposes each one.

When Nader ran on a similarly progressive agenda, Democrats worked actively to suppress his campaign. In 2003 he and other minor party candidates stood virtually alone in their opposition to the United States’ illegal invasion of Iraq. Congressional Democrats – including Senators John Kerry and Hillary Clinton, the Democratic presidential nominees in 2004 and 2016, respectively – voted to authorize it.

Nader championed single payer healthcare, while congressional Democrats, desper-

ate to pass the Affordable Care Act under President Obama, refused to allow debate on that alternative. And Democrats, with a few notable exceptions, are largely silent on Nader’s signature issue – a crackdown on corporate crime.

Today, the Democratic Party is all in on the war in Ukraine. Not one Democrat in the House or Senate voted against the \$40 billion in funding the U.S. authorized in May 2022. President Biden has declared that this funding will continue for “as long as it takes” to defeat the Russian invasion.

**W**hat is an avowedly anti-war socialist like West to do?

Joan Walsh and Jon Wiener recently argued in *The Nation*, echoing your “ego-trip” smear (was there a memo?), that West should run as a Democrat.

But the Democratic National Committee has announced that it will not even hold primary debates. President Biden will sail to renomination while the party does everything in its power to silence and marginalize his challengers.

As you know, our two-party system has not always been one in which only two parties participate. Minor parties have historically played a salutary role in that system by introducing new ideas the major parties ignored or opposed but eventually adopted. This includes the abolition of slavery, women’s suffrage, social security, the progressive income tax, the 40-hour work week and many more.



November 8, 2000 Al Gore and Joe Lieberman in Nashville, Tennessee. Gore lost his own state of Tennessee. Did Gore and Lieberman cost Gore and Lieberman the 2000 election? (AP Photo)

Was all of this mere “foolishness” as you now deride West’s candidacy?

Chief Justice Earl Warren disagreed. “All political ideas cannot and should not be channeled into the programs of our two major parties,” he wrote in *Sweezy v. New Hampshire*.

“History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted ... The absence of such voices would be a symptom of grave illness in our society.”

No doubt you believe that 2024 is not the right time for a dissident candidacy like West’s.

That is, after all, what Democrats say every time they face a challenge from the left. But what makes you so certain?

You state that Nader “helped” Bush defeat Gore in 2000 as if it is a proven fact. The truth is that neither you nor anyone else knows what would have happened if Nader hadn’t run.

You simply assume that a majority of the 97,488 Floridians who voted for him would have voted for Gore rather than Bush, thus clinching Florida and an Electoral College majority for Gore.

But the only thing we really know about these voters – apart from their support for Nader –

is that they rejected both Bush and Gore. Many were former Perot voters. Presumably some would have voted for Gore, but others would have voted for Bush, others would have stayed home, and others would have voted for one of the other seven presidential candidates on Florida’s ballot. Not only is your claim that Gore would have won Florida but for Nader unprovable speculation, but also, it assumes that the race would otherwise remain unchanged in Nader’s absence.

That is not a reasonable assumption. In a 2004 study, for example, the political scientist Solon Simmons concluded that Nader’s candidacy caused a statistically significant “mobilization effect,” the result of which was that “some large number but small proportion of the Gore vote would not have voted for Gore had Ralph Nader not been in the race and reminded them what a left agenda could feel like.”

Recall that Nader consistently polled higher than 5 percent during the election, but received only 2.74 percent of the vote – a margin of difference that translates to a few million votes. Based on your own assumptions, these erstwhile Nader supporters must have defected to Gore, but you fail to account for them.

A similar analysis applies to independent voters. If you insist on tallying votes in an

## Notable & Quotable



“Still, Mr. Kennedy’s early strength highlights Biden weaknesses Republicans are eager to exploit.”

“Polling conducted in May for Way to Win, a Democratic-aligned group, found that only 22 percent of Latino voters and 33 percent of Black voters were aware of “any specific thing” Mr. Biden had done in office to improve their lives.”

“There’s no single sentence that everybody can repeat that is sticking,” said Tory Gavito, the president of Way to Win. “What’s happening is the G.O.P. is flooding the airwaves with a narrative of economic failure, and it’s starting to resonate.”

– Why Robert Kennedy Jr.’s 2024 Bid Is a Headache for Biden, *New York Times*, June 19, 2023

(*Capitol Hill Citizen* contacted the Democratic Congressional Campaign Committee and the Democratic Senate Campaign Committee to ask for comment on the article. Specifically, we asked if they had a single sentence that everybody could repeat to identify a “specific thing” that President Biden had done in office to improve their lives. As we go to press, neither group has responded to our inquiry. Incommunicado again.)



imaginary world in which Nader didn't run, you must account for all the independents who voted for Gore because Nader ran to his left, thus enabling Gore to position himself more credibly as a centrist. In effect, Nader's candidacy neutered the standard Republican charge that the Democrat was a left-wing extremist – a line of attack to which Gore was particularly susceptible given his penchant for environmentalism and big government solutions.

How many independents, in your estimation, would have swung from Gore to Bush if Nader hadn't run? No one knows, of course, but that's just the point. Without Nader in the race, the entire dynamic of the election would change, and it's at least plausible if not probable that Gore would have received even fewer votes.

Assuming that you remain

unconvinced, let's suppose that, despite the near-complete lack of evidence, you really do know that Nader cost Gore the election. Even if that were true, it would be an exceedingly small factor very far down on a lengthy list.

To put things in perspective, here are just a few reasons why Gore lost, each of which had a far greater impact on the outcome of the election than Nader's campaign for the fledgling Green Party:

The Electoral College gave Bush the win, even though 543,895 more Americans voted for Gore.

Five Republican-appointed Supreme Court Justices ensured Bush's victory by halting a recount that was ongoing in Florida.

Florida Secretary of State Katherine Harris, a Republican who also served as state chair of the Bush-Cheney campaign, improperly purged thousands

of Democrats from the state's voter rolls.

Faulty ballot designs in several Florida counties cost Gore thousands more votes.

At least 250,000 registered Democrats in Florida voted for Bush instead of Gore.

Gore lost his home state of Tennessee, and Gore lost Bill Clinton's home state of Arkansas.

But for any one of these factors, Gore would have won the election regardless of the Nader vote in Florida.

Despite this long list of legitimate grievances you could raise about the conduct of the election, the Republicans, and your own candidate's campaign, you choose to blame a fellow citizen because he ran for public office in an ostensibly democratic society. And now you attack West for doing the same. It boils down to nothing more than scapegoating.

Your attacks on Nader, West and other minor party candidates over the years serve Democratic Party leaders' dual interests in evading responsibility for their own failings and deterring other parties and candidates from challenging Democrats' presumptive entitlement to the votes of any American to the left of Richard Nixon.

But they do not serve the interest of truth. And they are an affront to the fundamental principle underlying our democracy, that "government derives its just powers from the consent of the governed," as Thomas Jefferson wrote in the Declaration of Independence.

To which West might reply, "WTF, Professor Tribe? Are you speaking now as a constitutional scholar, or just another partisan hack?"

Sincerely  
**Oliver Hall**

CHC

*Oliver Hall is founder and general counsel of the Center for Competitive Democracy, a 501(c)(3) dedicated to strengthening American democracy by eliminating barriers to participation in the political process. He has represented Ralph Nader in private practice.*

# Democratic sheepdog caucus

*Progressives within the Democratic Party are nothing more than sheepdogs. They run to the left of other more mainstream Democratic candidates and suck young and old activists alike into the corporate duopoly. The political term sheepdog was coined and introduced into political discourse into by our brothers at the Black Agenda Report – Bruce Dixon and Glen Ford. We have lost both in recent years – Dixon died at 68 in 2019 and Ford at age 71 in 2021.*

The following is an excerpt from an article titled – *Presidential Candidate Bernie Sanders: Sheepdogging for Hillary and the Democrats in 2016* – by Bruce Dixon published in May 2015 by *Black Agenda Report*.

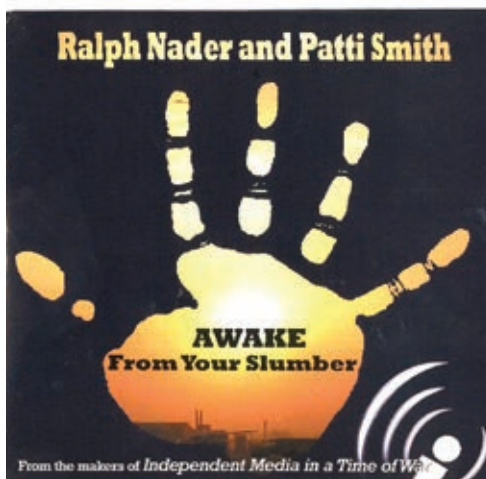
... Bernie Sanders is this election's Democratic sheepdog. The sheepdog is a card the Democratic party plays every presidential primary season when there's no White House Democrat running for re-election. The sheepdog is a presidential candidate running ostensibly to the left of the establishment Democrat to whom the billionaires will award the nomination. Sheepdogs are herders, and the sheepdog candidate is charged with herding activists and voters back into the Democratic fold who might otherwise drift leftward and outside of the Democratic Party, either staying home or trying to build something outside the two party box.

In 1984 and 1988, the sheepdog candidate was Jesse Jackson. In 92 it was California governor Jerry Brown. In 2000 and 2004 the designated sheepdog was Al Sharpton, and in 2008 it was Dennis Kucinich. This year it's Vermont Senator Ber-

nie Sanders. The function of the sheepdog candidate is to give left activists and voters a reason, however illusory, to believe there's a place of influence for them inside the Democratic Party, if and only if the eventual Democratic nominee can win in November.

Despite casting millions of voters for the likes of Jesse Jackson, Al Sharpton and other sheepdogs, those leftish Democrat voters are always disregarded when Democrats actually win. Bill Clinton gave us NAFTA, a vicious "welfare reform," no peace dividend or push for DC statehood, lowered unemployment but mostly in part time and low-wage jobs, and mass incarceration of black and brown people. President Obama doubled down on bailouts of bankers and GM, and immunized them from prosecution but failed to address the most catastrophic fall in black household wealth in history. We got health care for some instead of Medicare for All, the Patriot Act renewed instead of repealed, a race to privatize public education, drone wars and still more mass incarceration of black and brown people. And if President Obama gets his way, we may soon have a global job-destroying wage-lowering NAFTA on steroids, with the TTP and TTIP.

The sheepdog's job is to divert the energy and enthusiasm of activists a year, a year and a half out from a November election away from building an alternative to the Democratic party, and into his doomed effort. When the sheepdog inevitably folds in the late spring or early summer before a November election, there's no time remaining to win ballot access for alternative parties or candidates, no time to raise money or organize any effective challenge to the two capitalist parties ... **CHC**



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