

CARNEGIE CORPORATION OF NEW YORK ORAL HISTORY PROJECT

The Reminiscences of

Michael Waldman

Columbia Center for Oral History

Columbia University

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## PREFACE

The following oral history is the result of a recorded interview with Michael Waldman conducted by Myron A. Farber on March 25, 2013. This interview is part of the Carnegie Corporation of New York Oral History Project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose.

3PM

Session #1

Interviewee: Michael Waldman

Location: New York, NY

Interviewer: Myron A. Farber

Date: March 25, 2013

Q: This is Myron Farber on March 25, 2013 interviewing Michael Waldman for Columbia University's oral history of the Carnegie Corporation of New York. Michael, may I call you that?

Waldman: Yes.

Q: Michael, you are President of the Brennan Center for Justice [at the New York University School of Law].

Waldman: That's right.

Q: And have been since—

Waldman: Well, I came to the Brennan Center as Executive Director in October of 2005. We changed the title a year or two ago but it's the same job.

Q: Right. Before that, you're a Columbia College graduate, NYU [New York University] Law School?

Waldman: That's right.

Q: And, what was your work experience basically?

Waldman: Well, after law school—I graduated in 1987—I became the Legislative Director and then eventually the Executive Director, of Public Citizen's Congress Watch, which was at the time the largest consumer lobbying office in Washington, DC. It was the lobbying arm of the group started by Ralph Nader. And I worked then on consumer protection, on economic consequences of the savings and loan bailout, but especially on political reform and on campaign finance reform. I'd had some experience on that issue. Between college and law school, I co-authored a book called, *Who Runs Congress*, the fourth additional of it, which looked a great deal at how Congress was running then in the early days of PACs [political action committees].

Q: Of course, it's still a mystery.

Waldman: It's—well, it's more and more of a mystery. And of course, people want to know what's a book? But so, from 1987 to 1992, I worked at Congress Watch. Then in 1992, I left Congress Watch to go work for then-Governor [William J.] Clinton of Arkansas in his presidential campaign.

Q: And you followed him into the White House, did you not?

Waldman: I did. I went to work on his campaign as Deputy Communications Director in Little Rock, but also as a policy aide on political reform issues. When he became President-elect, when he was elected, he actually announced that campaign reform, political reform, would be one of his top priorities as president. So when I went to the White House with him, my title was Special Assistant to the President for Policy Coordination. And I worked a little bit as a speechwriter. I worked on this first inaugural and first State of the Union but mostly I was the policy aide on campaign finance reform.

Q: This is pretty heady stuff. You were only how many years out of law school? Six?

Waldman: Five. I was thirty-two, which is not that young for those jobs. I always thought the principal skill set was the ability to pull all-nighters. But it was heady because that was a time when these issues of democracy, of political reform, were front and center in the public dialogue. It was a chance to get something done.

Q: Right. Then in his second term, at least, even before that, you became his chief speechwriter, is that not true?

Waldman: That's right. In 1995, I became his Director of Speech Writing, and did that until almost the end of his two terms. I left in late 1999.

Q: Right. Is that a tough job?

Waldman: It's tough and kind of crazy and fun all at the same time because a presidential speech is not just words. And it's not just even designed to get applause. It's where policy and politics and presidential personality all come together. And Clinton—Bill Clinton personally was deeply involved in the writing of his speeches. And so it was a way to be involved in a lot of things and have a hand in a lot of things.

Q: But once he had a speech in hand and was delivering it, would he stay on script?

Waldman: No.

[Laughter]

Waldman: The short answer would be—we would measure text-to-delivery ratio. Unlike many of the other presidents, he didn't really even want a polished speech sometimes. He wanted almost closer to an outline, with as many facts and figures as you could include. He'd never had a speechwriter before he became president. We would write for him—if a speech he was going to give was supposed to be thirty minutes long, the text we would write would be fifteen minutes long. He would double it. And I used to tell the new speechwriters who came in, you know, don't worry. We'll give him [Ernest M.] Hemingway, he'll turn it into [William C.] Faulkner.

Q: [Laughs]

Waldman: Sentences get a lot longer. Of course, that was how we worked best. And we saw it even much more recently at the 2012 Democratic Convention when everybody knows he doubled the length of the speech that he had on his teleprompter.

Q: Right. He doesn't sound like Faulkner, oh, no.

Waldman: No. Well—

Q: I mean, he's closer to Hemingway than to Faulkner, that's for sure. But you also edited, I think, a book called, *My Fellow Americans [The Most Important Speeches of America's Presidents, from George Washington to Barack Obama]*, about the speeches that had been delivered by—is it just presidents?

Waldman: It was just presidents, yes.

Q: Right. Now, did every president have a speech writer?

Waldman: Well, it's interesting. I mean, presidents have always wanted to communicate to the public through their words. And when they did so, usually they had the advice and help of people around them, people they trusted. So George Washington had [Alexander] Hamilton and [James] Madison [Jr.] as his principal speech writers and working on his inaugural addresses and his farewell address.

The reality is, if you think about it, before radio and before television and before modern communications, Presidents didn't speak in public very often. Most of their communication was in writing. [Abraham] Lincoln, of course, rose to the Presidency in part because he was such a good speaker and debater. But he really only gave three or four major speeches as president, by which I mean, talking to live audiences.

Q: Three or four?

Waldman: Yes. The two inaugurals and the Gettysburg Address, which is so memorable, and the speech he gave right near the end of the war. Even his State of the Union speeches were in writing. And that was in fact the way it was considered appropriate. People didn't think the president was the principal actor in our constitutional system. One of the articles of impeachment against Andrew Johnson, Lincoln's successor, was that he went around the country and did a speaking tour, and that that was inappropriate. They said he spoke in a loud voice, which I suspect means he had been hitting the cider—

Q: [Laughs]

Waldman: —before he spoke, given what we know about him. But it wasn't until first [Theodore] Teddy Roosevelt but then really, Woodrow Wilson—in this beginning of the modern communications era, they realized the president had as, TR [Teddy Roosevelt] called it, a “bully pulpit,” the unique ability to speak to everybody. And so since then and especially starting with



Franklin [Delano] Roosevelt, presidents have used radio or television or the internet. Starting in the '30s, really, they've had speech writers working in the White House, working with them.

Q: Well, on March 4, 1865, I think it was, a month before he was killed, when Lincoln delivered the second inaugural, he *delivered* that actually—

Waldman: Yes.

Q: —at the Capitol. when he closed that with “malice toward none, with charity for all.” Has there ever been a better paragraph written?

Waldman: It's an extraordinary speech. It's an extraordinary written document. Many people have said that Lincoln, along with Mark Twain, created American English as something distinct from British English, from the fussier, European variety. That speech is really quite extraordinary. He sums up the causes and the course of the Civil War in one paragraph with a few very beautifully written sentences. But the thing that's important about that speech is it wasn't just nicely written. He was making a very clear, political point. He was making a point that the war was due to slavery. And that the North as well South was guilty. And that there ought to be a policy of Reconstruction that was somewhat lenient toward the South. You could take away what we would call talking points—political policy arguments—even from that greatest of American speeches. And so, people who think you're supposed to write these speeches so they can be carved on the wall of some marble library are missing the point. They're all political documents. And that one, very much so.

Q: Do you know whether he wrote that himself?

Waldman: He did, yes.

Q: Right. Okay. The Brennan Center for Justice had an unusual beginning, did it not? 1995, maybe?

Waldman: That's right. So the Brennan Center began about a decade before I got there, when I was still in the White House. I actually followed its beginnings because I had been a graduate of NYU Law School. The Brennan Center was started by the clerks and family of the late Supreme Court Justice William [J.] Brennan [Jr.] as a living memorial to him when he left the bench. He, of course, was one of the greatest Supreme Court Justices in American history, considered the leading liberal justice, having a hand in the extraordinary array of path-breaking rulings that came out during his time on the bench during what we know of as the Warren Court era and then also the Burger Court after that. Brennan was known as the play-maker, the person who would very often put together the votes and come up with the legal strategies.

When he left the bench, his very devoted clerks and his family wanted to do something more than a static memorial. They wanted a living memorial. And they created this institution, the Brennan Center, not to be a photocopy of his views but to carry on his vision that the law was, above all else, a tool of advancing human dignity, and to carry forward his concept that the Constitution [of the United States] had to be a living document that worked well for each

generation. And they went to him and he was very honored, I gather, and pleased by the idea of this. But he said, I'll do it under one condition, which is that you don't treat my own views, my own opinions, as the basis of what you do. That would be originalism. And I don't want that.

So they started the Brennan Center. One of his clerks named [E. Joshua] Josh Rosenkranz, who was the original head of the Brennan Center, was the mover in creating it. And quite a few law schools were quite interested in hosting it. And New York University Law School was especially enthusiastic and the Brennan Center came to NYU.

Q: Actually, what is the relation between the two, between the [Brennan] Center and the law school? Did they supply you with any sort of support?

Waldman: The Brennan Center is a 501(c)(3) organization. That means it's a charitable institution. It is a separate entity from the law school. As of right now, in 2013, there's no financial support of any kind. Early on, there were loans and that sort of thing. But it's really a separate institution that draws on the intellectual capital of the law school and is part of the law school community but has its own governance and its own funding. Right now, a third of our Board of Directors, by the Brennan Center's bylaws, are nominated by the Dean of the law school. And the Dean, among other people, serves on the board.

Q: Was it fair to say that its overarching idea was to promote democracy?

Waldman: Well, so the Brennan Center has evolved some. But here's how I would describe it today, and this is pretty much truly how it's been throughout its time: we are both a think tank and a public interest legal organization and a communications hub. We focus on reforming and revitalizing the systems of democracy and justice. What I mean by that is, we really look at the public institutions of American life, especially those revolving around democracy over the time that we've been in existence, to ask if they live up to our core values as a country and how well are they working and who are they working for? Throughout most of the Brennan Center's time, we've had several programmatic units, but the largest and best known is our democracy program. We've focused very heavily on democracy reform as a core goal of the organization.

Q: The Center issues reports, drafts legislation—in those kinds of areas, just across all fronts, what does it do?

Waldman: Sure. We press for institutional reform in our democracy in a variety of ways. We do cutting edge and, we hope, credible research into how are voting systems work, how the campaign finance systems work and so forth. We publish studies. This is not research designed to sit on the shelf but to make an impact publicly. We often will draft policy reform proposals coming out of that research. We will publicize and spread the word about this work through a very robust communications operation—increasingly digital communications. We'll advocate and be part of advocacy coalitions very frequently to try to enact the reforms that come out of our research.

And we litigate. We litigate when necessary, very often to defend laws we've helped write or helped pass, or to try to blunt efforts to cut back on democracy and democratic rights. One of the ways we have, we think, forged a new model for legal advocacy—public interest legal advocacy—is in making sure that we make these public arguments using our research and communication skills, as well as our legal arguments. And that's been one of the things we've been able to build over the years.

Q: Well, was there in 1995 or is there now—maybe it's changed—comparable institutions to the Center?

Waldman: There really was not, at that point, anything comparable to the Brennan Center, in the sense of being pro-democracy, fighting for those values—but doing it with a really deep and respected set of intellectual tools, doing real research, doing respected research, being a jurisprudential force, not just an advocacy group with talking points or a partisan mouthpiece. And it was unusual then and it's actually still unusual now.

Q: Is it fair to say that the Brennan Center on the left, center-left or however you think is appropriate to describe it?

Waldman: I think people would regard us as progressive and I don't know if center-left is the right phrase. We're nonpartisan but we don't really hide what we're fighting for. And interestingly, as you know, there's been—among very conservative groups—a creation of a very effective infrastructure of organizations over a number of years that work across multiple issues

from the conservative side that have been very effective. And the Federalist Society, the Heritage Foundation, the American Enterprise Institute—very often on the more progressive side, you haven't had that kind of an infrastructure. Obviously, there were strong public interest legal groups. There were individual interest groups. There were all kinds of social movements. But you didn't have—and too often these days, you still don't have—really top quality institutions built for the long term on policy, on law and media—

Q: Doing your umbrella of things.

Waldman: Doing umbrella—doing a variety of things. So one of the ways we have been able to play a positive role is in focusing on the whole set of democracy issues—voting, campaign finance, redistricting, and the general dysfunction of government. Because of course, these things are all interlinked in the real world.

Q: Michael, do you have any sense of why these conservative organizations have been a potent force?

Waldman: I think they've been a potent force for several different reasons. One is that they have had a clarity of ideological vision, which suffuses everything they do. It's all part of a broader critique of the role of government, a broader focus on individual freedom—in the economic realm, especially. So part of it has been that they are part of a wider conservative movement that has a really clear kind of approach to things, which hasn't been the case for progressives for a long time. And the other thing is that they've focused on building institutions for the long term.

They've had patient funding that has helped them do that. So, there are a lot of achievements they've been able to win that seemed almost impossible to imagine years before, whether it was persuading the Supreme Court, after two hundred years, to announce that there is an individual right to own a gun in the Second Amendment or striking down a century of campaign finance law in Citizens United [v. Federal Election Commission]. These were things that took a lot of time and a lot of planning and a lot of long-term work.

Interestingly, conservative groups, if you want to call them that, very often have one additional thing going for them, which is that to the extent that they're talking about policies or laws that would reduce regulation or reduce taxes or reduce incumbencies on people with a lot of money, their personal economic interest at least and their philanthropic interest can be pulling in the same direction. It's very often hard for different groups, for more progressive groups because the philanthropic interests and the personal economic interests don't always pull in the same direction of potential supporters.

Q: Actually let me mention that. Now, when the Brennan Center started, the Carnegie Corporation of New York was among the first to fund it. Is that correct?

Waldman: Absolutely.

Q: Was it important?

Waldman: When the Brennan Center for Justice started, it was just an idea. It was the idea that there needed to be an institution that could bring the top level of thought and legal work to these key questions of democracy and institutional reform. The Carnegie Corporation was one of the very key early and consistent supporters of the Brennan Center and helped build it to what it's become. It was utterly critical to the birth and success of the Center right away.

Q: Do you recall who—when this was happening, David [A.] Hamburg was sort of finishing up as president of the corporation. And he was succeeded by Vartan Gregorian in 1997, I believe. Did that make a difference in its interest?

Waldman: So, I don't know the answer to that.

Q: But—

Waldman: But I know that from early on, Vartan Gregorian was quite a supporter. And I know that [Geraldine] Geri [P.] Mannion, who became one of the real leading strategists for all the democracy issues across the board early on, was a key funder and supporter of the Brennan Center. This was all before I was at the Brennan Center. After I left the White House, among other things, I was actually retained by Carnegie to do a strategy paper for the Carnegie board in 2001 on some of these issues and what they ought to be funding. So I knew then how committed the organization was to fighting for democracy.



Q: Now Geri Mannion, who I believe headed the democracy program [Democracy and Civic Integration] here at Carnegie, was there at the beginning of the Brennan Center and has remained the contact for you at the Center at the Corporation. Isn't that correct?

Waldman: That's right.

Q: Is it important that you had the same person as—and in fact, has that been your experience with other foundations?

Waldman: It's a great question. It's a real strength that somebody like Geri with her knowledge and strategic sense, but also her passion for the issues, has been able to stay at it for as long as she did and as long as she has. She's still very widely consulted and respected in the whole field of philanthropy on these issues. People really listen to her. She's a key adviser to us now, many years after the starting of the Center. So it makes a big difference. And you're right, that, as I think about it, looking at other philanthropists and other funders—other foundations, it's pretty unusual to have that level of continuity on an issue. It makes a big difference.

Q: I was thinking of writers who publish at a house and then find [laughs] two years later when they want to build their career, the editor who was enthusiastic about them is gone.

Waldman: Exactly.

Q: But the Brennan Center doesn't have a field operation. But it attempts to make itself felt throughout the country. Isn't that correct? How do you do that?

Waldman: Well, we're based in New York. We're principally a think tank. We do not have a field operation. We don't have members. And when we want to have our voices heard and have our impact felt, we have to work with others. We have to work in coalitions—not just national coalitions but especially with state-based and local organizations in key states around the country. We consult and serve as a council and a counselor to those groups. We also, over time, became a leader of some of these coalitions because of our own strategic experience. And so, at any one time, we'll be working in several states and we'll have advocacy campaigns going on—again, with a few rare exceptions—and there are some—we're not the lead organizers.

Q: Right.

Waldman: But we work with the folks who are.

Q: Right. Some of whom have described your center as the go-to organization in their fields.

Waldman: We try to be. That's nice to hear.

Q: Now the Center has a democracy program as its largest program, as you said. And important components of that democracy program have been campaign finance reform and voter reform—voter rights. So I'd like to concentrate on those two. And I'd like, if you will—because this

becomes especially relevant to when we talk about Citizens United and its aftermath—I'd like you to try to give us a capsule history of what happened. Let's stick with the campaign finance reform for the time being. What happened in terms of campaign finance reform after, let's say, the McCain-Feingold legislation of 2002? Otherwise known as the bipartisan—

Waldman: Campaign Reform Act.

Q: Campaign reform act. How did we get from McCain-Feingold to McCutcheon [v. Federal Election Commission]. How did we get there? What happened?

Waldman: Well, the story really has to start even before McCain-Feingold. So this issue of campaign finance, of how we pay for politics in this country, it's been one of the great central issues in American history over time. We have a democracy rooted in the idea of one person, one vote. And we have a robust market system that inevitably creates concentrations of wealth and capital. There's sometimes a tension between those two things. We've sort of tried to draw the line over time between them so that both sets of values are advanced. But it hasn't always been so easy. And it's often been a fight.

Interestingly, in the 1800s, the very first federal campaign finance laws were what we now call civil service. Because in those days, the way people paid for their campaigns was they made their government employees kick in the money. But then in the late 1800s, with the rise of corporate capitalism in the United States and the growth of the trusts in the robber baron era, you started to see these new pools of money financing campaigns and really starting to dominate the way

elections were financed. The very first federal campaign finance law under this new era was passed in 1907. It was the Tillman Act. And that banned corporations from spending money directly—and we argued indirectly even—on campaigns out of their corporate treasury. The idea was that there was something different about a corporation from an actual person in its ability to raise and spend the money without really having a speech right at stake.

Well, over time, the campaign finance laws, they were full of loopholes. They really weren't enforced that much. You had to sort of push and pull. And it really rose to the level, once television came into the picture, where costs exploded. It started to cost more and more and more to run for office. And you started to see, as a result, more big money coming in and more corruption. That culminated in the first instance during the Watergate scandal. A big part of that scandal was a campaign finance scandal where there were bags of money being collected by Maurice [H.] Stans, who was the fundraiser for [Richard M.] Nixon. You had a lot of people convicted.

During that era, Congress passed the Federal Election Campaign Act—FECA—and that imposed contribution limits. It actually imposed a spending limit for campaigns. And it created a system of voluntary public financing for presidential campaigns. And two things happened—one good, one not so good. The good thing that happened is—well, let's start with the not-so-good.

Immediately, the Supreme Court got in the act and in the case of *Buckley v. Valeo*, it declared in terms much stronger than ever before that campaign money—campaign spending—was a form of speech and that you therefore could not limit the amount spent on a campaign. You couldn't have a spending limit. And you couldn't limit the amount an individual could spend on their own

campaign. You could, however, limit contributions to candidates and parties. The only legitimate reason for this potential violation of free speech, they said, was to fight corruption. And so, you couldn't corrupt yourself, so you could spend your own money. But you could corrupt someone else by giving them a campaign contribution, so it's okay to limit that. Well, that right there created the beginnings of a really distorted system, which over time led to a greater and greater arms race among candidates raising more and more money, and more and more ways for people trying to get around the rules and game the system. That was the bad part.

The good part is that a lot of the system worked very well and especially the public financing system. For a few decades, the presidential public financing system worked. And it's hard to imagine but you really had a system where people stopped raising money when they were running for President, once they got their party's nomination. It was great for competition. You had incumbent President Gerald [R.] Ford [Jr.] losing. You had incumbent President Jimmy Carter losing. You had incumbent President George H.W. Bush losing. There's no Congressional district in America with that much competition, election-to-election, and increased public trust and public confidence.

Well, like any governmental system, like any reform, over time, it started to erode in effect. It wasn't that it didn't work. It wasn't even that there were just unintended consequences. It's that there were ways in which it was no longer quite as relevant to the moment. The amount of money, among other things, wasn't big enough in the public financing. So you had the beginning in the 1980s, especially in the 1990s, of what was called soft money. And soft money was the idea that, even though there were limits on what you could give to a candidate for president and

even though they had promised they weren't going to raise money anymore, that you could still give really big contributions to political parties. In effect, it became a way of evading the rules and getting around the public financing and the contribution limits.

That was what led to McCain-Feingold. McCain-Feingold came after the failure of efforts—that I was quite involved in—to enact comprehensive campaign finance reform in the early '90s, which would have included a public financing system for congressional races, as well as dealing with soft money and other things. And [Arizona Senator John] McCain, who was a prominent Republican and [Wisconsin Senator Russ] Feingold, who was a prominent Democrat, they came together and said, let's focus on preserving the existing public financing system by saving it from this slush money, this outside money coming in to parties that was evading the rules. So it took several years. Carnegie's involvement, and a number of other major foundations, made a huge difference in really building a public effort for McCain-Feingold—business leaders, civic leaders. And finally, in 2003, McCain-Feingold was enacted with bipartisan support and the signature of President George W. Bush—who was so unhappy about signing it he didn't have a public ceremony.

Q: [Laughs]

Waldman: But he did it.

So in those days, people were prone to hang up "Mission Accomplished" signs when something big happened and that certainly wouldn't have been appropriate then. So the first thing that

happened in 2003 is this was challenged and it went to court. And the Brennan Center, with the support of Carnegie, became the co-lead counsel defending the law in the Supreme Court. And we won a really significant victory. The case was called *McConnell v. FEC* [Federal Election Commission]. [Kentucky Senator Mitch] McConnell was the Republican leader in the Senate, as he still is now. And what the Supreme Court ruled was that not only was the prohibition on soft money, as it was called—these unregulated, large contributions to political parties—not only was it okay under the Constitution to limit those but the law also did something else that was important, which was it put limits on phony issue ads that were, in fact, political independent expenditures. So again, remember that in *Buckley v. Valeo*—and I’m sorry to go on at such length but this is what’s—

Q: Oh, that’s all right. But bear in mind *Buckley v. Valeo*. The per curiam opinion for the Court was believed to have been written by none other than William Brennan.

Waldman: Well, from what we understand, it was written by Brennan. And he was well aware of what the Center was doing and did not object to it. And one of the very first things—

Q: The Center was not happy with *Buckley* [v. *Valeo*]?

Waldman: One of the very first things the Center did in the late ‘90s when it got started was to urge that *Buckley* was wrongly decided and to try to overturn it. In fact, that was when I met the Brennan Center, when I was the policy aide in the White House on these issues. Just a few

months, I think, after it was created, they came to lobby me to urge that the White House, that the Clinton Administration should support overturning *Buckley v. Valeo*.

Q: Overturning a major opinion by the man [Brennan] who inspired the organization.

Waldman: So I don't know whether he had a change of heart. I don't know. I'm not speculating.

Q: What about *McConnell* [v. Federal Election Commission]?

Waldman: Well, he was off the bench by then. And had passed away in 1997. But I know that he was, I believe, tickled by the intellectual independence that the Center showed—that it showed that it was not just going to be a copy of his own views.

Q: But picking up with *McConnell*.

Waldman: But so, the *McConnell* case also said that the McCain-Feingold law had looked at what was going on then—which will sound quite familiar—which was that ads that are independent expenditures on behalf of candidates at that point—you could spend the money. But they were still covered by a number of campaign finance laws. A political action committee could make independent expenditures. And supposedly, if they were independent, they could spend in much larger amounts than would be able to be the case if that same political action committee gave a contribution to a campaign. This was the idea that if there was independence, then there wouldn't be corruption. That was one of the key parts of *Buckley v. Valeo* and so



when I say it sort of sent the system off in a kind of distorted direction, that started at the very beginning. Well, what you had was a lot of groups pretending to run issue ads but they were really campaign ads. They would say, do you hate child pornography? Call Senator Jones and tell him you don't like his vote in support of child pornography—running that a week before the election and pretending that that was a charitable expenditure on behalf of an issue, as opposed to a not very well disguised campaign ad. So McCain-Feingold said that if those ads were too close to an election—if it walks like a duck and quacks like a duck, it's a duck—it's a campaign ad.

One of the bases for doing that was also something the Brennan Center did with Carnegie support. The Brennan Center did studies looking at those ads and showing by the basis of how they were perceived by social science research and by test groups and so on, the people looked at them and said, no, you know what, they're campaign ads. They're not issue ads. And that was actually used by the Court in the argument. So it was social science research. It was jurisprudential thought and social science research. And then once the case came along, litigation strength in actually deposing the people who orchestrated these issue ads and getting them to admit, no, you know what, these are really campaign ads.

One of a ways the Brennan Center has been able work is we've been able very frequently to attract the talent of top flight lawyers from law firms as pro bono help or even on staff. And so, that case was done for the Brennan Center by a gentleman named Fritz Schwarz—Frederick A.O. Schwarz [Jr.], who is today still our Chief Counsel at the Brennan Center. But he was at

Cravath, Swaine and Moore [LLP] then, he is former Corporation Council of New York City and a very esteemed figure in the Bar [Association] of New York.

So in 2004, I believe, the Supreme Court upheld resoundingly McCain-Feingold in the McConnell case. Was it in '03?

Q: Well, what would've—

Waldman: It was right after it was passed.

Q: If I understand it correctly, which is rarely the case—of all the groups that operate in the areas that the Brennan Center does, and I don't just mean campaign finance—and there are dozens of these organizations who at least in part do this kind of thing—you've gotten the most money from Carnegie over the years of all these organizations. In fact, one Carnegie executive was overheard to describe the Brennan Center as a “beloved grantee,” something I've never heard of a grantee described as anywhere. [Laughs] It may be a first in philanthropy. But my point is this—

Waldman: [Laughs]

Q: My question, at least, is this: the money they have given has been what's called unrestricted funding. Isn't that correct?

Waldman: Well, not quite, I don't believe. First of all, we're delighted to be so well regarded. Again, because of the way the Brennan Center was conceived, that it wasn't going to be out marching on the streets with a result tomorrow, it was really critical that Carnegie and folks like them were able to invest in us for the long-term to build this intellectual force on these democracy issues. Carnegie was able to support the Brennan Center on a few different issues and eventually to provide support for our democracy program. So it was unrestricted, in the end, support for the democracy program.

Q: That's right.

Waldman: It was not unrestricted for the Brennan Center as a whole.

Q: No, that's what I meant really. Okay, I think you're right. I think McConnell was brought in 2003 and decided in 2004. But be that as it may, what happened after McConnell? McConnell essentially upheld the McCain-Feingold law, didn't it?

Waldman: It upheld it resoundingly. One question is, what happened in the real world? I would say, in the real world, McCain-Feingold worked. It worked within its limits, in that it led to the rise of what's called hard money, which means that money from individuals, under the campaign finance laws, became much more valuable again to candidates and to parties than had been the case just a few years earlier, when they could bring in million dollar checks from corporations and others from individuals for their party operations.

I think that the explosion in small donor campaign-giving—which first started in the Howard Dean campaign, really began a little bit in the McCain campaign of 2000, then much more so in the Howard Dean for President campaign, to a degree people don't recognize in the Kerry campaign later that year in 2004, and then, of course, starting in 2008 with [Barack H.] Obama and Hillary [R.] Clinton and this juggernaut of small contributors that now has been created by the Obama campaign in two cycles—that really wouldn't have happened, I don't think, but for the way McCain-Feingold did work to close off that soft money to the parties. Because it wasn't really the parties, it was really the candidates. The candidates raised the money. It just went to parties. That was the way it did work.

The way it didn't work, in a way, was it was kind of too late. The meaningful public financing system had been eroded so much by the soft money and other things like that, that it was hard to resuscitate it. And as I mentioned, there were long-term things that needed to be fixed in the federal public financing system—in particular, the amount of money that candidates would get was just no longer enough. As one professor I know noted, that the amount they were given under the public financing system was two-thirds of the amount spent by the [George S.] McGovern for President campaign, which was the least successful presidential campaign in American history. So to make that system work, you need not only to close off the outside loophole money but you need to expand the amount of public money to make it something candidates would want to be part of.

Q: Which didn't happen.

Waldman: Which did not happen.

Q: Right.

Waldman: So partly because there was a bit of an exhaustion of reform fatigue after the effort to pass McCain-Feingold, people did not immediately come back and say, now let's pass the next set of federal reforms. The other thing that happened is that this deregulatory movement, this conservative—if you want to call it that—movement to try to undo campaign finance law really took up steam and gathered momentum. And you had, among other things, first of all, personnel shift in the Supreme Court. Sandra Day O'Connor was a key vote and a key voice in the McConnell case. But when she left the bench and was replaced by [Samuel A.] Alito [Jr.]. And then [William H.] Rehnquist left and he was quite strong on campaign reform. And he was replaced by [John G.] Roberts [Jr.]. All a sudden, for the first time, after years in which every single campaign finance law that came before the Court was upheld in significant measure, suddenly the Court started striking them down.

The first thing that happened was cases that really gutted the meaning of this—the restrictions in the law and then the McConnell case—on what was a phony issue ad and what was a campaign ad. And so it reopened the door for special interests, for wealthy interests to pour money into these phony issue ads that are really campaign ads really designed to sway voters in the run-up to an election. And it's pretty darn hard right now to make the case that one of those things is a campaign ad. So the first thing that happened was what's called the [Federal Election Commission v.] Wisconsin Right to Life case, just right after the personnel switched on the

court. Seeing their opening, seeing that there was potentially a radical deregulatory approach now on the Supreme Court, the forces that didn't like these campaign finance laws in the first place really mobilized. And waged a long-term, multi-year, well-funded and well-coordinated effort to strike at the heart of campaign finance law. And that's how we got Citizens United. So a guy named James Bopp [Jr.], who is the mover behind a number of these—

Q: I've dined at his table in Terre Haute [Indiana].

Waldman: He's very effective.

Q: Dinner was good too.

Waldman: [Laughs] I'm sure. But those cases are backed by, in a variety of ways, the National Right to Life Committee, the National Organization for Marriage, the US Chamber of Commerce and Bopp is Vice Chair of the Republican National Committee. There's a real drive from both economic conservatives, social conservatives—I don't think this is a particularly conservative position but anyway—they're going to knock away the edifice of campaign finance law as much as they can while they can. And so Citizens United, as you know—

Q: Wait, excuse me. Wisconsin Right to Law had to do with an advertisement, isn't it?

Waldman: That's right. It had to do with whether ads were really issue ads or were campaign ads. I don't remember the exact nomenclature, but they basically said that as long as it wasn't an overt call for the election of a candidate, then it was not a campaign ad.

Q: So what you were looking at was a reflection of the change in the Court.

Waldman: A reflection of the change in the Court, but there had been changes in the Court before. It was the change in the Court and a really well-funded and well-organized legal drive to strike down campaign finance laws too. Now, of course, you're seeing this in a whole host of areas where there's been a real push to move the courts and the interpretation of the Constitution in a new and somewhat radical direction. This was one of them. You're seeing it in other areas also.

So Citizens United was eventually decided in 2010. It was one of these cases where it was kind of a stupid case where the Federal Election Commission had regulated a movie—a documentary movie—as if it was a campaign ad basically—or ads for the documentary as if it was a campaign ad. It would've been very easy for the Court in a dozen different ways to say, you know what, that's not a campaign ad. That's a movie. And instead, they asked for a re-argument. It was pretty clear that they were going well beyond anything the parties had asked for. They ruled, as is well known, that corporations had the same First Amendment rights as natural persons to make independent campaign expenditures. The Court did not say corporations are people. What they said was, it didn't matter that corporations weren't people. They, the people within those corporations, still had the First Amendment rights.

The other thing that the Court said in Citizens United, which in the short run turned out to be even more significant—they said, in what we initially hoped was dicta—in other words, that it was kind of an opinion expressed by the Justice but not something they controlled as law—they also said that there could not be, as a matter of constitutional doctrine, any corrupting impact from corporate independent expenditures.

Q: They held that?

Waldman: They held that. And that's what gave us the rise of Super PACs and a lot of the immediate short-term consequences of Citizens United.

Q: That's right. Sum up for me, what are the real consequences, as it actually played out—after all, that was a 2010 decision. What have been the consequences of Citizens United?

Waldman: I think the consequences have been quite severe. And we're only seeing them at the beginning. A lot of journalists will call me and say, see, it didn't matter. It turns out Citizens United didn't matter, I assume they mean, because Obama won. Or because Exxon didn't go out and spend five hundred million dollars on a Senate race or something. I don't know what they mean. It's only a few years—one presidential cycle. We've only been through one congressional and one presidential cycle since Citizens United. And we're just getting started.



So what are the things that have happened? Well, it's true that right away you did not see something that could happen, which is corporations—for-profit corporations—dipping into their treasury and spending money directly on campaigns. They are now legally allowed to, when they were barred from doing it for a hundred years. But I don't think that means they're never going to do it. I think it's like a social norm. Right now, they think they'll get yelled at and in trouble if they do it. But once some firm starts doing it and lives to tell the tale, then there's very little protection against that. So number one, it's created the opportunity for that. Hasn't happened yet, though. It has, however, given a green light, in a variety of ways, to all different kinds of deregulation of political money. You have a sense among spenders and fundraisers in the political process that there are no rules anymore.

So, things that previously had been potentially legal, potentially illegal—nobody really knew—now they already know that just about everything has become legal. 501(c)(4) organizations have always existed—the Brennan Center has a 501(c)(4) auxiliary, so do many, many issue organizations of all different stripes. Those are the kinds that can make expenditures on issue ads and on electioneering. And contributions are unlimited and they don't have to be disclosed. Well, people used to be kind of afraid to just do that and make campaign spending, if that's really what it was, and use a 501(c)(4). But after Citizens United, you had an explosion in that kind of dark money—undisclosed money. And that's where you get a group like Crossroads GPS [Grassroots Policy Strategies], for example, which clearly is spending tens of millions of dollars on campaign ads but is pretending to be a charitable organization.

Q: Well, how about a phenomenon like—I think his name is Sheldon [G.] Adelson.

Waldman: So that's the third consequence—Super PACs. So when there's a Supreme Court case, like Citizens United, it has a progeny. It has other cases that follow from it. So there was a case called SpeechNOW[.org v. Federal Election Commission] that came out a year later that said, well, if corporations can make independent expenditures unlimited without corruption, then that means you can't have any limits on the amount of a corporate contribution to a political action committee to make those same independent expenditures. So that new kind of political action committee, with these potentially unlimited contributions from corporations—they call it a Super PAC. And what that meant was individuals or corporations could make unlimited contributions to PACs to kind of disguise their own role and have them make expenditures. As a result, you had somebody like Sheldon Adelson spending tens of millions of dollars on behalf of his favorite candidate, Newt [L.] Gingrich, in the Republican Primary. You had a different guy, Foster [S.] Friess, doing the same thing for Rick [J.] Santorum. You had several people doing the same thing for Governor [W. Mitt] Romney—there were several of them, so we don't know their names as well. And you wound up having the Super PACs play a bigger role in many ways than the candidate committees in these presidential races. You had the, as far as I'm concerned, appalling spectacle in 2012 of billionaires sponsoring presidential candidates as though they were prize race horses.

Q: True. But what should the average citizen care? I mean, in this last race [2012 Presidential Election], you had all this money being spent on the Republican side—it didn't embellish the reputation of Karl [C.] Rove—but you had Barack Obama win the election! Is there something

we're missing here that enables a lot of people around the country to prevail over all this spending?

Waldman: Well, it's a good question. There's a few things that I would say. First of all, in the case of Obama, it helps to have someone who can raise a billion dollars themselves to counter the billion dollars on the other side. And it's kind of a truism in political science and in politics that, if you on your side have enough money, it doesn't matter how much the other side spends. Certainly, that's true if you have rough equality of spending, which is what you pretty much had in the Presidential race this time. That's less true down ballot [candidates for offices other than President and Vice President]. But again, you saw a lot of—in the partisan terms—the Democratic candidates who were faced with some of these Republican-oriented independent expenditures prevail. Although, there were a lot of Democratic independent expenditures too, from unions, women's groups, environmental groups and Democratic Super PACs. So there was outside money on both sides.

Look, I'd be thrilled if it turned out this was all much ado about nothing because that would mean that democracy was under less threat than I think it is. The one positive trend that may really diminish the power of big money over the next decade is the change in the way we as a society communicate and the way we get our information. As I said earlier, the rise of big spending came from the rise of thirty-second TV ads on broadcast stations as the way candidates and parties communicated with the voters. Well, those are less and less effective. Younger people don't sit and watch Channel 5 or Channel 4 fiddling with the antenna. They get their news—

Q: [Laughs]

Waldman: —from, as we all know, myriad different sources. They watch their TV on their laptop. They're getting news through their phone, through social networks. All these things could radically reduce the cost of campaigning and radically reduce the benefits to a candidate of having big money behind them. That's over the next ten years. It's still the case the candidates are spending all this money on broadcast TV but we don't know how efficacious that really is right now. So part of it may just be that the TV counts less and so all this spending on TV matters less. Part of it is we just have only seen one election and it happened to be when this was really a Democratic year. Even with all the money, the Democrats won. This was a Democratic wave election. And so, that was a big enough wave to overcome the money.

But I also think the other thing is the most significant impact of this stuff doesn't only come in the way campaigns are funded but on the way government works. You have candidates—elected officials—spending vast amounts of their time raising money, still not from little individual contributions on the internet but the old-fashioned way from lobbyists and special interests. And now they have the ability to give much more money than they used to. And so, I think that we're at the starting stages of major scandals and we just don't know what they are here yet. And we'll see a consequence in the way government works.

[Interruption]

Q: Michael, another area in which the Brennan Center has been deeply involved and that has been supported faithfully over the years by Carnegie is voter rights. What are the important issues there?

Waldman: Well, the issue there, in a way, is the issue that's been fought over for two centuries in the United States, which is who gets to vote and how and do we really believe that everybody who's a citizen should be able to vote. In the country's history, this is obviously something where there's been a lot of progress. We started out with only white men with property could vote. Then in the 1830s, we went to white men without property. In the 1860s, at least temporarily, we said that African American men also could vote. That was pulled back after Reconstruction was over and the Jim Crow era. We then expanded that right to vote further to half the population to women in 1919. And then, in a meaningful way in the 1960s with the Voting Rights Act, extended that right to vote to everybody who was a citizen of the country for the first time. It was a huge source of strength and pride that we've managed to widen the circle of participation and really make democracy meaningful.

What you've seen in recent years—really what happened was the Bush v. [Albert A.] Gore [Jr.] debacle—the Florida recount of 2000—woke everybody up to the fact that our election system was kind of ramshackle and that if you fiddled with the rules, you could really affect the outcome of the game. So what you've seen increasingly in the last few years is a push all across the country to make it harder for a lot of Americans to vote. These new laws that have been pushed especially would hit minorities, young people and poor people and students and senior citizens, making it harder for many of them to vote. And that would be hugely destructive in many, many

different ways. So there's become a big fight for the first time in years over this core issue of voting and the right to vote and who can vote. Carnegie was very, very early, very farsighted in support.

Q: I think Carnegie was giving seed money for registration of black voters as early as the '60s.

Waldman: That's right. I mean, what you had for a long time was Carnegie and others able to afford supporting the registration of people and expanding voting, but especially actually getting people to be able to register. What a number of people figured out was that it's great if people on the one side are supporting voter registration activities but if you can rewrite the laws to make it harder to register, you can suppress more votes than get brought in to the system through great registration activities. So what you really had starting a few years ago was a hue and cry about voter fraud and a push for restrictive laws to curb this supposed threat of voter fraud. Now in the work that was done by the Brennan Center and funded by Carnegie, we found—and this has been confirmed over and over again—first of all, that in terms of in-person voter impersonation, the only kind of fraud that would actually be stopped by, say, a strict voter ID [identification] requirement—you're more likely to be killed by lightning than to commit that kind of voter impersonation. It just doesn't happen in any meaningful way in this country. So the whole push for voter fraud starts out being based on a phony premise.

Q: It's a phantom.

Waldman: It's a phantom. Then you have, what are the particular kinds of restrictions that people are pushing for. Take something like voter ID, where again, Carnegie has been very involved. I'm not against—personally and institutionally, the Brennan Center too—I'm not against voter ID, per se. I'm not against requiring somebody to prove who they are to be able to vote. I'm against requiring forms of ID that people don't have. And research that we did showed that about eleven percent of eligible voters simply don't have a driver's license or another current form of government-issued photo ID. That's exactly what's being pushed—that kind of requirement that about one out of ten eligible voters don't have.

Q: They could get it though, right?

Waldman: They could get it. But sometimes the underlying paperwork is expensive. Sometimes it's not so easy to get. The offices where the IDs are being issued are only open one day a week. They don't make it very easy to get. And of course, if you had either an ID requirement that was really much more widespread so that it didn't have to be a driver's license but if you had a veterans card or if you had a student ID—these laws that are being passed are very narrow, very particular and really honestly, have a very distinct partisan impact. The voter ID law in Texas, for example, now the new law signed by Governor [James Richard] Rick Perry a couple of years ago, said that you could not use your University of Texas student ID as government ID, but you could use your concealed carry gun permit. That's an example of the precise and fine calibration that these laws have.

So what you really saw happen after the 2010 mid-term election, when Republicans who were pushing these laws got control of a number of statehouses, nineteen states passed a total of twenty-four laws cutting back on voting for the first time since the Jim Crow era. And the Brennan Center, in October of 2011, issued a study showing that these new laws, as they stood then, could make it far harder for at least five million people to vote. That's a lot of people. And what happened after that was really quite remarkable. I mean, hardest hit were minority voters, young voters, the poor, the elderly. That report broke open the issue, created a fierce, national debate—massive amounts of publicity for the issue.

We and others strongly encouraged the Justice Department to get involved. And it did. Over time, public opinion began to focus on this and change. Then, we and the other organizations who work on voting rights went to court and actually sued. In a lot of states, the citizens themselves started to fight back. As a result, by Election Day 2012—one year later—every single one of the worst laws had been blocked or blunted or postponed or outright repealed. It was a remarkable victory for voters and for public interest law. The kinds of groups that have been working in this field and that, over the years, Carnegie supported. That doesn't mean that these fights don't continue, but it was a real victory. And now there's an opportunity to ask some of the deeper questions about why is our voting system so ramshackle and what can we do so that we don't have these fights over and over again.

Q: That's right. Now before we get to that part, I'd like to ask you something. Back as far as 1993, I think there was the Motor Voter [Act] law [National Voter Registration Act]. And in 2002, there was the HAVA. What's that stand for? HAVA?



Waldman: HAVA is the Help America Vote Act.

Q: Yes. What happened? You say this recent activity virtually is half a dozen years old. This activity, whether it's an attempt at suppression or attempt to plot block the suppression or what have you—What about those laws? Did they do anything?

Waldman: No, they did. They did some good things but they were before the recent suppression. In 1993, the National Voter Registration Act [NVRA], as it was called—Motor Voter—said that the motor vehicle departments in states mostly and also social welfare agencies should try to register voters. We're the only country where voters have to register themselves, where we rely on outside groups or voter registration drives or political parties to register the voters. In other countries, as our studies have shown, the government takes on the responsibility of making sure that everybody who's eligible to vote is on the list. NVRA a good first stab at trying to get more people registered. And it had a good impact.

HAVA was what came out of the aftermath of the Florida recount. It was the result of a bipartisan commission that former President Jimmy Carter and former President Gerald Ford chaired. And it did some good things and some bad things. I mean, it created for the first time state-wide electronic databases of voters that the states have. Although, they don't use them effectively as an actual voter list, but they exist. It moved the states especially toward electronic voting, which had initially—the way they were doing it was risky because they did it without paper records. And so, it would be too easy to commit fraud or hack the machines, though that's

been fixed somewhat. It had some other things that weren't so effective. But HAVA had some elements that were pretty positive.

Q: They weren't up to the task.

Waldman: They weren't up to the task. They moved things forward. But what we've seen now is you have requirements passed in South Carolina and in Texas and in Missouri and in Wisconsin and Pennsylvania for voter ID of the kind that millions of people just don't have. You saw in Florida and in Ohio cutbacks on early voting, so that many people who work wouldn't be able to get to vote. You saw in the state of Maine, which had the very successful election day registration system, where you could register on election day, the legislature there repealed that. Each of these cases, courts or the citizens actually overturned or blocked or slowed down what was being done. So again, like I said, in 2012 people actually got to vote. There was not a lot of disenfranchisement.

Q: Well, this whole idea of early voting—why isn't early voting true in all states? And substantially true?

Waldman: When it comes to voting, a lot of these issues were not partisan and not particularly controversial until recently. So early voting is something that turns out to be something voters love. And there's huge, in a sense, consumer demand for it. It's hard to think of a product that, in the private sector, that if there was that kind of consumer demand, what you do is you try to stop people from taking advantage.

Q: [Laughs] Right.

Waldman: What happened with early voting was that it especially became used in places like Florida by African American voters.

Q: Especially on Sundays, I think.

Waldman: Especially on Sundays. And so, suddenly it became a partisan effort to kind of change the rules in a way to benefit one party or another. I think, and we certainly believe, that there are reforms that are bipartisan, that are common sense reforms, that could make it so that we don't have these problems day in and day out, election after election. Voter registration modernization, which is a policy reform that the Brennan Center developed with support from Carnegie in 2008—to basically use these computerized lists and have it so that everybody winds up on the rolls. National minimum standards for early voting, so that it doesn't matter where you live. There's enough time to do early voting. And that way, people have an easier time voting and that really helps with the long lines. And national minimum standards on election administration. So, it turns out that there just aren't enough voting machines and there's manipulation of where the voting machines go and where the polling places are, so that in urban neighborhoods you have long lines. You don't have those lines in suburban neighborhoods. So why aren't there more voting machines in the urban neighborhoods?

Q: Well, related to that kind of manipulation is a larger manipulation, is it not, of redistricting and gerrymandering. Doesn't that have—and hasn't it in fact had—especially in the recent time—a profound impact upon what votes count?

Waldman: So the issue of redistricting and gerrymandering is a third major challenge to having an effective democracy. This is an extra challenge because unlike the other two, it's a little harder to figure out, A, what to do about it, and B, whether it would make that much of a difference. So the real problem in some respects—as long as you've had politicians drawing the lines for their own districts, that's inevitably subject to manipulation and self-interest. When Republicans have a chance to do it, they do it. When Democrats have the chance to do it, they do it. It's gotten more and more brazen, so that you have what's called, for example, mid-decade redistricting, where they don't wait for the census. They just—as soon as one party or another gets control of the state legislature, they'll zap through another set of legislative lines.

There are reforms that can make a difference. For example, moving, as a number of states have, to a commission—some kind of nonpartisan or bipartisan commission to draw the lines seems to have had an impact in places like California or Iowa or Arizona. Other places, like in Florida, have very strong constitutional provisions in their state constitutions so that if the legislators try to game it for one party or another, the judges wind up taking over. And we've been doing research at the Brennan Center to see what kind of impact those reforms have. It seems as if they have some impact but not necessarily as much as people hoped. But in a lot of ways, the problems can't necessarily be solved so much by reform because no matter what system you have, the way we live in this country now is so sorted out that a lot of the lack of competition

that you find in redistricting comes from just where people live. And the problem in some ways is not redistricting but districting. I live in Park Slope, Brooklyn and you'd have to draw a pretty funny looking district to make that a electorally competitive district for a Republican. And there are plenty of districts that are just the same for Republicans. And so, it's also the case that redistricting reform has been made more complex by the multiple values that people are trying to push in redistricting. We want to have competition. We don't want politicians to be able to stay in office without a real threat of being ousted by voters.

We also want to have minority representation. We want to make sure that disadvantaged or disfavored communities get a voice in the legislature. We also want to make sure that there is meaningful community representation, that all different, real communities have their voices heard. Sometimes, these things all work together and sometimes, these things are actually at odds. So it can be kind of complicated. This whole issue is going to get thrown up in the air again, potentially this year, because the Supreme Court has heard a case, which as of this conversation has not been decided, where they may strike down the heart of the Voting Rights Act. And if that's the case, then a lot of redistricting schemes, a lot of the lines that have been drawn—which were drawn in part to protect minority communities and make sure the rising Hispanic communities could have a voice in the southwest and so forth—those things will now be potentially threatened.

Q: Wait a minute. Wait a minute. In an oral argument about Section 5 [of the Voting Rights Act] last month, Justice [Antonin Gregory] Scalia said that people like you—he didn't name you, but

he must have had you in mind—you want to perpetuate racial entitlement by keeping Section 5 of the Voting Rights Act.

Waldman: And when he said that in the courtroom, people gasped. I think he said probably a little more than he intended to say there.

Q: Well, that often happens. But you know Chief Justice Roberts says—he makes no secret of it—this is not the first time. I mean, actually, it's interesting, though, isn't it, that in 2009 the Supreme Court skirted this issue, didn't it?

Waldman: Yes. In a case called NAMUDNO [Northwest Austin Municipal Utility District No. 1 v. Holder] in 2009—the very same set of issues came before the Court. And so, the Voting Rights Act was passed in 1965 and it gets reauthorized every couple of decades. It had last been reauthorized in 2006 by an almost-unanimous vote of Congress. The part of the Voting Rights Act that we're talking about is the Section 5, which says that those areas that have a history of discrimination when it comes to voting, they have to have the Justice Department of the United States government approve the changes they make in voting laws before they go into effect. And as Roberts said, does this mean the South is more racist than the North? No, it's not only the South. It's not only southern states that are covered. Other parts of the country from Brooklyn, New York to New Hampshire are covered, as well, based on the record.

But anyway, the case came before the Supreme Court in 2009. A number of the Justices were withering in their questions, implying that this was a relic, implying that it was going to be struck

down. Then the decision came down and it was a bizarre decision in a way because it read as if it was written by civil rights group. It said, the Voting Rights Act is a glorious thing. It is one of the monuments of American history. A triumph of justice and the American way. We're all very proud of it and it's had wonderful positive effects. Then they whispered, by the way, it's unconstitutional. We're not going to rule that way this time. Come back to us in a few years. And they said, Congress should fiddle with it or we'll strike it down next time. And then—

Q: Congress didn't do anything.

Waldman: It didn't do anything because it had just unanimously—practically unanimously—voted for it a few years before. Congress didn't need to do anything because it's plenty constitutional.

Q: Michael, what's going to happen now?

Waldman: Well, so now, they've had the same argument—

Q: I should say, Justice Waldman. Justice Waldman, what's going to happen?

Waldman: Justice Waldman would vote to uphold it. But Justice Waldman isn't in the Court. We don't know. I think there's a pretty decent chance, based on the argument, that they will either strike down Section 5 or say Section 5 is wonderful but the coverage formula—which is Section 4, saying who's covered—that has to be changed. And if they do that, they'll say, well, see

where I'm holding it. We're just telling Congress to go fiddle with it a little. Of course, that's deeply mischievous were that to be the case, because of course Congress isn't going to start writing a new coverage formula covering more states. It's a very different Congress than even the Congress that last time passed it.

But the fact is, there's already a mandate right now—as we speak in the spring of 2013—to do something about the way we run elections, to make them run better, to register everybody and to make sure that the people don't get blocked from voting by things like endless lines. If they gut the Voting Rights Act, there'll be another mandate, which is to make sure that there's equality once again in voting. And so, I wouldn't be surprised if there was at least a push for federal voting legislation. If that's the case, I'm hoping that we do more than just restoring the Voting Rights Act and its teeth. I hope we'll take this opportunity to modernize elections so that everybody's registered.

Q: What about this bipartisan presidential commission that President Obama recommended at the State of the Union that is going—that has been appointed, I think.

Waldman: Some of the members have.

Q: Some of the members have.

Waldman: The good news is, on Election Night, President Obama talked about the long lines and said we have to fix it. And in his inaugural address, he was very passionate about it and talked



about this kind of election reform as being in the long flow of history, from Seneca Falls [Convention on Women's Rights] to some Selma [African American Rights] to Stonewall [Gay Rights], as he's put it. That was all the good news. The good news in his State of the Union address was he talked about it again and again in passionate and persuasive terms. The not necessarily so good news was instead of urging Congress to act, he appointed a commission to look at a fairly narrow range of things.

Q: Was it really?

Waldman: Yes. To look at best practices, to make recommendations to state and local governments for best practices of how to improve the Election Day experience and access to the polls on Election Day. And now we don't know what they're going to actually do. The good part of it is that he appointed a well-known Republican lawyer, [Benjamin] Ben [L.] Ginsberg, who was Governor Romney's counsel, as well as his [Obama's] own campaign counsel, [Robert] Bob Bauer.

Q: Who you've worked with before, haven't you not?

Waldman: Well, Bauer teaches at NYU. I've never worked with him. But he was the White House counsel. He's a very well-respected person. And it's true that Bauer was pretty involved in pushing for voter registration modernization a few years ago, before he went in to work for Obama. So it may well be that some good comes of it. But we're urging them to be bold. And certainly, it wouldn't be the first time in history if a commission was not the most effective way

to get change in Washington, as opposed to a real social movement pushing for legislative action. So we'll see. We want Congress to step up to its role.

Q: Michael—

Waldman: And I'm going to have to go soon.

Q: Sure. Can you give me a couple of minutes?

Waldman: Sure.

Q: The Carnegie support for the Brennan Center has come to an end, has it not?

Waldman: Basically, yes.

Q: Why is that the case? Do you know?

Waldman: My understanding is that Carnegie has, among other things, shifted some of its internal strategies. And so, we are grateful for the support they were able to give us for so long.

Q: They're apparently still open to projects—individual project support.

Waldman: That's right.

Q: You going to follow that path to some extent?

Waldman: When we have projects that are up their alley, we're certainly eager for now for them to receive support.

Q: Now, with respect to other foundations, you wrote in 2010, "as the need increases, funding for organizations like the Brennan Center to defend reform in the courts has plummeted."

Plummeted with other foundations, also?

Waldman: There's a few phenomena when it comes to funding and support for democracy reform that are long-term challenges. One is that it tends to be a boom and bust cycle, where when elections are coming, there will often be support from folks for voting work and other things and then, once the elections are over, interest fades away. And of course, that's a challenge. Because when it comes to, for example, voting laws, 2013 is the "on year"—not 2012. We saw in 2010—and early 2011, after the mid-term elections that year—people who wanted to restrict voting rights—for example, the organization ALEC, the American Legislative Exchange Council—they were ready to go. A lot of the voting rights groups were less funded and less able to do it. Similarly, the folks who brought Citizens United, that case, and who are still pushing to end campaign finance law in the United States, they are still on the move.

Q: And still funded.

Waldman: They're still on the move. They're still funded. Fortunately, as the prominence of these issues has grown, there have been foundation funders and individual philanthropists who've seen the centrality of these democracy issues. And so we are hopeful and optimistic that the funding will be there for this work.

Q: Well, in 1990, when this Brennan Center started, Joshua Rosenkranz, who you mentioned earlier, said that "Carnegie Corporation is responsible for putting the Brennan Center on the map." And you agree with that, it seems.

Waldman: Yes. Carnegie was critical. Critical at the beginning when others weren't there. Critical in seeing the importance of these democracy issues.

Q: Well, maybe critical again sometime. But before I let you go, it's incumbent upon me to ask you this on behalf of the Carnegie staff and on behalf of my wife and I would be grateful for just a yes or no answer—will Hillary [R. Clinton] run?

Waldman: [Laughs] I have no idea.

Q: That's more words.

Waldman: I would bet—I bet yes. But my guess is as good as anybody else's. What do you think?

Q: [Laughs] I just ask the questions. Thank you.

Waldman: So let me—just to get back to this last point because it's obviously pretty important. Carnegie was there at a very critical moment. And we know that foundations shift priorities. That doesn't take away from the incredibly valuable support that they've given not just to us, but to this whole movement. Carnegie and its staff especially, are really, really well respected in the whole area of civic participation in voting and democracy.

Q: And to some extent, they've influenced where other foundations have been willing to do?

Waldman: Absolutely. Absolutely.

Q: Thank you, Michael Waldman.

Waldman: Thank you.

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