

Money, Politics & the Constitution – Michael Waldman Opening Remarks

Opening Remarks: Michael Waldman (Brennan Center for Justice)

Michael Waldman:

Good morning, and welcome to *Money, Politics and the Constitution* on this beautiful, if chilly, spring day in this magnificent intergalactic law school classroom.

We are thrilled to have you here for what we hope will be a significant, meaty and utterly necessary conversation about how to build a jurisprudence that honors our democracy and free speech and that puts “We The People” back at the center of the constitutional order. We meet, obviously, in the wake of *Citizens United*. But this case, for all the clamor it has caused, is not a bolt out of the blue. It is part of a much longer debate about free speech and the Constitution, and how to build a self governing democracy. We are thrilled to have so many of the best thinkers and most creative minds and most ardent activists here to have that conversation.

I am Michael Waldman. I am the Executive Director of the Brennan Center for Justice, your host here today. As so many of you know, the Brennan Center is a think tank and advocacy group affiliated with NYU School of Law. We are nonpartisan. We focus on democracy and justice in their many manifestations. And we take our inspiration from Justice Brennan and his concept of the Constitution: that “The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.”

And of course the Brennan Center has been deeply involved in these issues from its inception. I first heard about the Brennan Center about one month into its existence. I was working in the White House, as the policy aide working on political reform issues. And this new organization from my alma mater showed up to lobby me and the White House on why the stale debates over campaign finance reform needed to be rethought, and why we ought to start by rethinking *Buckley v. Valeo*. That seems like a long time ago.

Yes, the Brennan Center began with a deep interest in thinking and rethinking these issues. The center was co-lead counsel in the *McConnell* case, of 2003, has been involved in *Citizens United* and so many of these other matters. And really what is exciting for us about this is not the

technicalities, not the hygienic notion of trying to get money out of politics or to purify politics in some way. What excites us is the way in which this issue speaks to the grandest themes of American history, and the grandest themes of the way the Constitution has developed over time.

The question of how one builds a self-governing democracy is at the very heart of the story of America. As we all know, at issue in the *Citizens United* case was the Tillman Act, which launched the modern era of campaign finance regulation. And from the moment that Theodore Roosevelt, who was caught in a scandal in his reelection campaign, first proposed what we regard as modern campaign finance these debates have gone on. I am always fond of remembering what President Roosevelt said, in arguing for his reforms at the time. “Sooner or later,” and imagine a modern president saying this, “Sooner or later, unless there is readjustment, there will come a riotous, wicked, murderous day of atonement.” Imagine what Justice Alito would have said if TR had said that in the State of the Union address! You had the President leading the tea parties in those days.

Yes, these debates are the American debate. There is no one answer; the folks here in this room don’t come close to having one answer, nor should we. But we all recognize that finding a way to have a self governing democracy that is consistent with the First Amendment must be a central goal. Well you’ve had these cases, you’ve had these laws over the years and this brings us to the present moment.

For those of us at the Brennan Center the stakes and the moment is pretty clear. We believe that *Citizens United* was wrongly decided. We believe that it is a watershed. We believe that it brings the law of campaign finance and money in politics to a kind of constitutional crisis. But *Citizens United* is not a bolt out of the blue. It is the product of years of careful and consistent and well organized efforts to enshrine a particular vision of the First Amendment in campaign finance law – a vision we think is deeply mistaken. And it is heightened by this new 5-0 majority on the court and its clear willingness to take bold, dramatic steps on campaign finance issues. As you know there have been four cases on campaign finance law brought before the Roberts Court. And in all four cases the court ruled against campaign finance regulation. A very different direction than the previous courts have done. So what is to be done about this?

We are working on a variety of responses.

* We believe, first, that public financing continues to be the answer. We are especially focused and especially excited about the vision of small donor public financing, to boost the very positive influx of small contributions that we’ve seen in recent years through the Internet. The versions of public financing that are being discussed in Congress now really are modeled on the New York City system of multiple matching funds for small contributions, and they do not have spending limits. This is a pro-participation vision of public finance.

* We have developed proposals, too, that give shareholders a voice in how corporate managers, under *Citizens United*, spend funds.

* And we believe as well that voter registration modernization – to bring millions of new voters to the rolls and into the system – is also a critical response, as part of a holistic understanding of how democracy works.

But it is clear that constitutional doctrine undergirds any work to improve democracy. We believe, and we hope many of you believe, that what is needed is a new doctrine, a new jurisprudence of campaign finance law – that respects the First Amendment, but also respects the self-governing democracy that is – as Justice Breyer says – at the heart of the constitutional order. This is a multi-year project, involving many different venues, to build such a jurisprudence. We hope you will be part of the effort, and we hope this conference helps launch it.

The discussions today will touch on some of these basic issues. And my colleagues will tell you a bit about it, bringing together the different perspectives here. Does the First Amendment in fact limit campaign finance reform and political reform? What are the voters’ interests in the first amendment? Is there a voter-centric vision of the First Amendment that can be a justification, an argument for some positive and necessary changes? What other constitutional principles are there, beyond the First Amendment that can be embodied in changes in law or in Court doctrine? These and other questions are at the core of what needs to be thought through.

We are thrilled to have the conversation begin with a keynote from a real leader in many, many realms in thinking through these issues.

Congresswoman Donna Edwards represents the fourth district of Maryland. She is a rising star in that state and in the country. She has, as Joe Biden would say, “a literally unique” pedigree on these issues. I first met Congresswoman Edwards about twenty years ago, when I was running Public Citizen’s Congress Watch. Congresswoman Edwards was an attorney working on campaign finance issues for that good government group. She had a long career as a public interest lawyer working for the Violence Against Women Act, and for varieties of political reform. She then was the Executive Director of the Arca Foundation, one of the really visionary foundations that funded democracy work well ahead of others.

And then, she did something really remarkable: she defeated an incumbent member of Congress in a primary to be elected to Congress. Congresswoman, as you know there are scholars here who will tell you that that is impossible to do. But you actually did it. And if nothing else we want to hear how that gets done.

She has been a leader on health care, and on these issues during her time in Congress, and we’re very thrilled to have her here to give a keynote, to give some concept of how the intellectual work that so many of try to do, and so many of you actually do, can help build a strong democracy movement in the halls of congress and in the streets of our country. So thank you Congresswoman Donna Edwards.